



September 22, 2022

The Honorable Hank Bauer  
 Chairman  
 North Carolina Alcoholic Beverage Control Commission  
 400 E Tryon Rd, Raleigh, NC 27610

Dear Chairman Bauer:

On behalf of thousands of licensed permittees, the North Carolina Retail Merchants Association (NCRMA), the North Carolina Restaurant and Lodging Association (NCRLA), the North Carolina Independent Wine Retailers Association (NCIWRA), the North Carolina Petroleum and Convenience Marketers Association (NCPCM), the North Carolina Craft Brewers Guild (Guild) and the North Carolina Bar Owners Association (NCBOA) respectfully request the North Carolina Alcoholic Beverage Control Commission (NC ABC Commission) halt the implementation by Johnson Brothers Mutual Distributing of North Carolina (Johnson Brothers) of a split case fee on wine of \$0.72 per bottle until the implications of this split case fee are fully understood. Should the NC ABC Commission believe split case fees should be the proper public policy for North Carolina, we encourage the NC ABC Commission to proceed with rule-making pursuant to Chapter 150B of the North Carolina General Statutes. This request is similar in nature to the request made by the same parties with respect to a split case fee announced by Empire Distributing (Empire).

It should be noted that in 2019, Johnson Brothers pursued a split case fee on wine and many of the same parties listed above reacted in a similar fashion (see Attached Letter to then NC ABC Commission Chairman Zander Guy). The sheer magnitude of Johnson Brothers' market reach in the State of North Carolina further necessitates the need for action from the NC ABC Commission. The combination of what is arguably an illegal quantity discount in the form of a split case fee from Johnson Brothers with a similar action from Empire would have a detrimental impact on the retail tier in North Carolina including retailers, restaurants, breweries and tap rooms, convenience stores, bars, wine shops and bottle shops as well as on North Carolina wineries, other North Carolina wholesalers, and most importantly North Carolina consumers.

As stated in Johnson Brother's 2019 letter to Chairman Guy with emphasis:

*With its purchase of Mutual Distributing, Johnson Brothers is now the wholesaler of both Gallo and Constellation Brands for a large part of North Carolina. These two brands are the largest two wine brands in the United States and together represent approximately 35% of the United States wine market. When Johnson Brothers' total wine portfolio is accounted for, Johnson Brothers' market share increases even more. Johnson Brothers' decision to start charging retailers and restaurants a split case fee of \$2.16 per case break of wine*

*will force retailers and restaurants to make economic decisions they should not be forced to make without the NC ABC Commission fully understanding the implications of this action.*

*If this scenario occurred with every other product or service they sell, retailers and restaurants would simply seek another vendor of the product. However, in this case, retailers and restaurants cannot simply not pass along the split case fee to customers, nor can they choose not to do business with Johnson Brothers for the simple reason that North Carolina law prevents retailers and restaurants from purchasing the two largest wine brands, and many other popular brands of wine, from anyone other than Johnson Brothers in nearly the entire state of North Carolina. As one person described the situation, it would be as if InBev and Miller Coors were only distributed by one wholesaler that had the franchise rights to nearly all of North Carolina.*

*The situation with Johnson Brothers is similar and the retailer and restaurant have no choice but to buy from Johnson Brothers and are being economically coerced to buy more product under the business practices of the wholesaler. The exclusive franchise rights of a wine wholesaler comes with responsibility to service the permittees in their franchise area and in this case it should come without charging permittees a fee for what should be provided in the normal course of business, especially in light of the fact that the wholesaler gets paid at the time of delivery and the permittee cannot return the product.*

In 2019, Johnson Brothers eventually pivoted and, rather than pursue what many considered to be an illegal split case fee, instead slightly raised its prices across a segment of its wine portfolio. This accomplished three things 1) it maintained a more positive relationship with its customer base 2) it diffused and ended a heated disagreement among organizations representing the wholesale and retail tiers as to the illegality/legality of a split case fee on wine and 3) customers were not negatively impacted by a potential reduction in the variety of wine on the shelves or significant price increases of over \$0.72 per bottle.

As previously stated, none of the signatories to this letter, nor the permittees they represent, have any issues or disagreements with the argument put forth by the North Carolina Beer and Wine Wholesalers Association signed by Tim Kent as it relates to the increased costs being realized by their industry. All three tiers are experiencing significant increases in costs for labor, energy, fuel, supply chain, freight, raw materials etc. The price points for everything a business sells have increased over the past twelve months, but those dealing with the consuming public are spreading these increased costs evenly across products in general or on a specific brand or item. As an example, eggs are at an all-time high because of the avian bird flu and the prices reflect this supply chain issue.

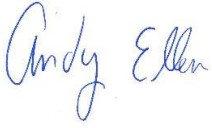
### **Response to Letter from Tim Kent with the North Carolina Beer and Wine Wholesalers Association**

As Mr. Kent stated in his letter to you dated September 8, 2022, our organizations, and the individuals representing these organizations, have the utmost respect for each other and the overwhelming majority of the time we are in agreement on the alcohol policy of the State of North Carolina with a clear example being the development of policy regulating the delivery of alcohol in North Carolina.

There are many points in Mr. Kent's letter we respectfully take issue with and disagree on. However, we do not feel communicating these issues through written correspondence would adequately convey the gravity of their importance or provide an opportunity for robust discourse where all affected parties are represented. As stated at the beginning of this correspondence, we believe the best course of action would be for the NC ABC

Commission to convene the parties on both sides of this issue to discuss the illegality/legality of split case fees on wine in North Carolina.

Respectfully,



Andy Ellen  
President and General Counsel  
North Carolina Retail Merchants Association



Gary Harris  
Executive Director  
North Carolina Petroleum and Convenience  
Marketers Association



Lynn Minges  
President and CEO  
North Carolina Restaurant and Lodging Association



Doug Diesing  
North Carolina Independent Wine Retailers Association



Lisa Parker  
Executive Director  
North Carolina Craft Brewers Guild



Jason Ruth  
Vice-President  
North Carolina Bar Owners Association

- cc: The Honorable Tim Moffitt, Chair, North Carolina House of Representatives Committee on Alcohol Beverage Control
- The Honorable Chuck Edwards, Chair, North Carolina Senate Committee on Commerce and Insurance
- The Honorable Todd Johnson, Chair, North Carolina Senate Committee on Commerce and Insurance
- The Honorable Tom McInnis, Chair, North Carolina Senate Committee on Commerce and Insurance