

Senate Law & Justice Committee

Senator Pat Stefano, Chairman

www.senatorstefano.com

The Senate Law and Justice Committee will hold a public hearing on Wednesday, May 6th at 10 A.M. regarding the PLCB's response to the COVID-19 pandemic. The hearing will consist of the following panels:

PANEL 1 – Licensee Community

- John Longstreet, PA Restaurant & Lodging Association
- Jon Myerow, Founder and CEO of Tria
- Lauren Harris, -----Wine Director for Tria
- Sean Faeth, Director of Sales and Operations for The Artisan's Cellar

PANEL 2 -- PLCB

- Tim Holden, Chair
- Mike Negra, Member
- Mary Isenhour, Member
- Charlie Mooney, Executive Director

Attachments:

- John Longstreet PRLA Testimony.pdf
- Jon Myerow Tria Testimony.pdf
- Lauren Harris Tria Testimony.pdf
- Sean Faeth Artisan's Cellar Testimony.pdf
- PLCB COVID-19 Testimony revised.pdf



Testimony of the Pennsylvania Restaurant & Lodging Association
Senate Law & Justice Committee
May 6, 2020

Chairmen Stefano, Brewster and members of the Senate Law & Justice Committee. My name is John Longstreet and I am the President & CEO of the Pennsylvania Restaurant & Lodging Association (PRLA). PRLA is proud to represent the entirety of the hospitality and tourism industry--an industry that has been more impacted than any other because of this crisis and yet continues to fight to come out on the other side of it.

As the COVID-19 crisis spread throughout Pennsylvania, our members shut down their businesses in an effort to stem the transmission of the virus. At that time, I am not sure anyone truly understood how disastrous the next 8 weeks (and counting) would be. In our Commonwealth 96 percent of restaurant operators have laid off employees, consisting of 332,000 individuals, representing 81 percent of the entire workforce. The businesses that remain open are desperately trying to survive with a take-out model that in good cases might amount to 30 percent of their total pre-coronavirus business.

Nothing about the last two months has been easy for our industry but there are some things that could have been easier—one of these items is the PLCB decision making as the crisis began. Our industry, more than any other, understands the need to ensure safety of guests and employees and respect the decision the PLCB needed to make when it shut down operations in March—but just as our industry has worked to be creative, serve the public and do it safely—for five weeks our members were not able to access product, were not able to get answers and suffered even more financial hardship because the hard stop of wine to licensees that held a wine expanded permit (WEP) – a permit that I might add was not inexpensive to acquire.

For five weeks, grocery stores that held a WEP continued to have access to product—product that was not available to restaurants. For five weeks, our association reached out to the PLCB, legislators and others to try and find a way to get products to licensees who invested in the same license grocery stores did, met the same requirements but for some reason were completely blocked out of accessing an item that would have helped, at least marginally, during this time and provided an added convenience to customers.

We do appreciate all of the steps the PLCB has taken in the past two weeks to open up product to consumers and licensees—we know this crisis has not been easy to navigate—but it could have been handled better and licensees that were already suffering were forced to suffer more because of it. Some of those impacted are here to tell their story today. I think we all hope that this type of crisis will never happen again, but, if it does, we would like the PLCB to recognize that we are their partner and if our restaurants are forced to close permanently as a result of this pandemic—the PLCB will suffer financially, as well. We can work together to serve the consumers of Pennsylvania and we look forward to solving these past problems and coming up with additional solutions to help licensees in the future.

Senate Law & Justice Committee

Hearing re: PLCB Operations During COVID-19

May 6, 2020

Testimony of Jon Myerow, Founder and CEO of the Tria restaurant group

Good afternoon Chairman Stefano, Chairman Brewster and members of the Senate Law & Justice Committee.

Thank you for giving me the opportunity to testify regarding the PLCB's operations during the COVID-19 pandemic. My name is Jon Myerow and I am the founder and CEO of Tria, a group of three bars in Center City, Philadelphia. Our first location, Tria Rittenhouse, opened 16 years ago this week and was Philadelphia's first casual wine bar. We opened Tria Wash West in 2007 to offer the same experience west of Broad Street. We launched Tria Taproom in 2013, which focuses on beer, wine and cocktails exclusively on draft. Tria was a pioneer in making available to everyone the amazing and uncommon small-production beverages that were previously available only in expensive restaurants, if they were available at all. Translation: almost 100% SLOs. All three Tria locations have received numerous local and national accolades and awards, including a nomination for the nation's best beverage program by the James Beard Foundation.

Today I give our restaurants a 50% chance of survival. Our two locations that remain open for takeout and delivery have seen sales plummet by 85% during what is normally our busiest season. It is important to note that Tria Rittenhouse and Tria Wash West have Wine Expanded Permits (WEPs), which have been critical to our short-term survival.

Since nonessential businesses closed on Monday, March 16, I have never worked so hard in my entire life. Trying to survive is a strong motivator. Unfortunately, many of those hours were spent simply trying to buy the main product that we sell: special order wine.

On Monday, March 16, when I learned that nonessential services would be shutting down, my first move was to determine that we had paid for wines that were waiting for us at our designated store at 1218 Chestnut Street. I had no idea if and when the store would close, and surprisingly neither did the store's staff—on mid-afternoon Monday, the staff didn't know what time the store would close that day and if it would open on Tuesday. Not willing to take a chance, we rented a vehicle and some members of my team picked up our wine late Monday afternoon. It was apparently a hectic scene at the store, but

we eventually got our wine. Later we learned that the store would be open Tuesday. I was surprised that the PLCB did not communicate this to their teams.

In the weeks to follow, I placed countless phone call and wrote numerous emails simply trying to figure out how to buy more wine. Over 50% of our takeout sales are wine, but with our customers concerned about their own finances, only the less expensive wines are selling. We desperately needed to find quality wines that we could purchase for about \$10. A lot of our inventory costs us more than \$15 per bottle, and those wines are not moving.

Our only legal option for a while was to order wines from a PA Limited Winery that also offers wines from other states. I am not sure how that this is legal, but it is. Offering PA wines themselves is not a good option because the PA wineries themselves are selling them at lower prices than we could, and besides, they are currently ubiquitous.

Finally, around April 3, I was introduced to a PLCB On Premise Account Manager who could sell me wine if I ordered 50 cases and limited my selections to what was in the distribution center. It was at this time that I learned that supermarkets, who oddly operate with restaurant licenses, were able to access product throughout this entire time, while restaurants needed to fend for themselves. 50 cases is a prohibitive quantity for a small restaurant, but they were kind enough to split our two locations into two 30-case orders. Because we had no access to the wines we had chosen to carry, we had to change our list dramatically to offer inexpensive wines, but at least we had product. It is frustrating that:

1. The PLCB did not inform WEP licensees on Day 1 that this option was available.
2. The PLCB did not relax delivery minimums.
3. The PLCB made no effort to help restaurants get the SLO products that we generally purchase.

We have spent dozens of hours changing our wine list as we have progressed from our pre-pandemic wines, to the PA Limited Winery wines, and then to the PLCB distribution center wines.

Finally, on April 20, the PLCB announced that they would resume a limited special order program. Doing this earlier would have prevented us from jumping through hoops for over one month to keep product flowing into our businesses. Regrettably, even this new development involved jumping through hoops, as actually placing orders proved to be difficult at the beginning. It seems to be getting better.

It is frustrating that amidst a catastrophe that the restaurant industry faces, the PLCB did nothing to help the industry for over one month. In contrast, New York state took action to help licensed restaurants on

March 17. Distilleries and supermarkets, and to a lesser extent breweries, wineries and beer distributors have weathered the COVID-19 pandemic well. The restaurant industry, the nation's second largest industry by employment, has not. Such an unprecedented disaster demands unprecedented flexibility. My industry needs the state to help.

Senate Law & Justice Committee
Hearing re: PLCB Operations During COVID-19
May 7, 2020
Testimony of Lauren Harris, Wine Director, Tria Restaurant Group

Good afternoon Chairman Stefano, Chairman Brewster, and members of the Senate Law & Justice Committee. Thank you for hearing my account today. I am responsible for making the selections, placing the orders, training the team, and presenting to the public the wines of Tria.

The past few weeks have been a trying experience for wine purchasing to say the least. Tria is known for bringing guests a special experience with not just exemplary customer service but special, carefully produced, honest wines from small producers. The hallmark of these wines exemplifies the message of Tria. I pride myself on seeking out these beautiful expressions to offer our guests and it has been wildly frustrating to have my hands tied behind my back for the past few weeks.

I have had to rewrite our entire wine program almost every week since the PLCB started reacting to Covid-19. My experience has been:

Week 1: I cannot purchase any wine for the restaurant. We must drastically lower the margins of our wine prices to sell whatever we can to generate any possible revenue.

Week 2: I can purchase wine from a small local business that specializes in PA wineries and can sell wine from a handful of other states. This does not really align with our brand offerings, but we needed to procure wine to sell.

Week 3: I can purchase wine from the listed offerings by the PLCB, which is the list that grocery stores order from. These selections are everywhere, and drastically off brand for what Tria typically offers. I must also order a minimum of 30 cases for each location to place an order.

Week 4: I can purchase wine from the "luxury" list offered by the PLCB which is supposed to, in theory, be a better option. We find a handful of wines we can stomach selling and again re write the Tria wine list--compromising our identity while desperately trying to take care of our guests and survive. We must again purchase a minimum of 30 cases for each location to place an order.

Week 5: I may finally purchase SLO wines from my vendors, (who have been barred from selling anyone anything in the state up and until now.) The rules are: I must place an order with vendor, vendor puts order into LOOP, we pay for the wine (most likely on a Monday). Once the wine is paid for the vendor can make an appointment with one of a handful of warehouses in the state, the appointment can only be made by calling the warehouse. Warehouses are not picking up the phones, and some don't know how to take appointments yet, their advice was to call Harrisburg because no one is telling them anything.

Finally, my vendors gain appointments which they can only make on Tuesday and Thursdays. I then must make an appointment to pick up my wine, which I am only permitted to do on Wednesday and Fridays, but this appointment cannot be made by me until my wine has been delivered and checked in by warehouse. Further, some vendors could not get appointments and some licensees couldn't get appointments to pick up wine they had already paid for. It was an interesting system to announce on

Friday and attempt to put into place on a Monday with extraordinarily little direction. I was finally able pick up wine on Friday (that I had purchased on a Monday) to deliver myself to the restaurants.

This is all too difficult and nothing the PLCB is putting into motion is helping restaurants survive. I do not believe they are trying to hurt us, but I have never seen such a lack of organization so broad and sweeping. It would make sense to me, instead of further conflicting the strained restaurant/PLCB relationship, that this state-run-system do everything in its power to support the small businesses-- alleviate the hoop jumping, relax the ardent systems and make it easier for us to live through this and come out on the other side.

Testimony Before the Pennsylvania Senate Law & Justice Committee

Wednesday, May 6, 2020

Good morning and thank you for allowing me the opportunity to share my experiences with you regarding the Pennsylvania Liquor Control Board's decisions and actions during the COVID-19 pandemic and their effects on small businesses.

My name is Sean Faeth, and I am the Director of Sales and Operations for The Artisan's Cellar, located in West Chester, Pennsylvania. We have a Pennsylvania Importer License, and we import and distribute approximately 800 boutique wines from over 200 small family wineries in over 20 countries. Most of these wines are handmade by small family farms, and many are organic, biodynamic, or sustainably produced.

We also have a Pennsylvania Winery License, as we fill kegs with wine from some of these same growers within our facility for distribution in Pennsylvania as well as to distributors in other states.

During my testimony, I will focus on five key areas as follows:

- 1) Our company and my personal background and experience
- 2) What working with the PLCB is like in normal times
- 3) How we learned of the PLCB's COVID-19 restrictions, and how these have affected our business
- 4) How the reopening process has gone thus far and its effect on our company
- 5) Suggested ways the PLCB could improve our operations and our livelihoods

Our Company and My Personal Background and Experience

Artisan's Cellar is a small company, founded by our owner and President, Scott Braunschweig, which began operations in 2010. We occupy a modern, 16,000 square foot facility, half of which is for the import and distribution side of our business and offices, and half is our licensed winery.

We employ eight people including myself, after hiring two new sales reps and a keg / winery sales manager since January of this year. Before the pandemic struck, we planned to hire another sales rep soon, and a second delivery driver later this year.

We sell in both Pennsylvania and Delaware, our total revenue was nearly \$1.3 Million in 2019, and Pennsylvania accounted for 82% of our business. Nearly all our Pennsylvania sales are derived from the Special Order or SO Program (formerly Special Liquor Order or SLO), with less than 9% derived from the PLCB's Luxury Program in 2019. We just started selling through the Luxury channel last year.

Artisan's has been on a solid growth trajectory over the past two years, which was much due to three wine-enthusiast friends investing in our company so we could hire more sales reps, source more products, and expand our capabilities. Our revenue grew 37% in 2019, and we were up 38% in 2020 before the PLCB shut us down in March. Our goal was to double our revenue in 2020, which we would have accomplished as we more than doubled our number of sales representatives this year; however, this is highly doubtful now.

I have been in the food and beverage business my whole working career and have been a Pennsylvania resident since 2008. I have worked in many different roles on both the restaurant and supply side, so I have a deep understanding of many aspects of the food and beverage industry including product selection and sourcing, bakery production, winery operations, wholesale distribution, logistics, retail sales, staff hiring, training and management; P&L statement work, facilities management, and more.

I started as a Fromager (cheesemonger or specialist) in New York City. Then I worked at Tria Café in Philadelphia for a few years, which included management roles and opening one of their locations. I also managed at the Philadelphia restaurant, Talula's Garden, for a few years and was the Director of Operations for Metropolitan Bakery. I have been with Artisan's Cellar for over four years, first as a sales rep and then in my current role, where I manage the sales team, select the products for our portfolio, maintain relationships with our suppliers, oversee order fulfillment, packing, and delivery; and pretty much anything else that needs doing.

I am heavily involved in our day-to-day operations, and have taken charge of the delivery and service aspects of our Covid-19 response, while our President, Scott Braunschweig has been busy communicating with our Legislator (House Rep. Christina Sappey) lawyers, bankers, and many other colleagues and associates. Scott secured our PPP loan, SBA and rent deferrals, and continues to evaluate other relief opportunities. He also keeps our many suppliers and our staff updated on our continuing efforts to navigate through and survive this pandemic. We have kept our staff fully employed during this time, despite not being able to secure any Pennsylvania sales for six weeks.

What Working with the PLCB is Like in Normal Times

I'm here to testify regarding the challenges that small wine distributors like Artisan's Cellar have experienced since Governor Tom Wolf placed severe restrictions on our industry and our company resulting from the COVID-19 pandemic. However, I feel that you can't fully understand the "pain" we've experienced as a small distributor dealing with the PLCB during the COVID-19 crisis, until you fully understand the pain we've endured working with the PLCB before the virus arrived.

Some of you may already be familiar with the day-to-day rules and requirements of the PLCB, yet some may not be, so I'll do my best to be clear and concise. We have ten years' experience dealing with the PLCB prior to COVID-19, and only seven weeks since the restrictions were imposed. Therefore, much of my testimony explains our relationship and operations pre-COVID, yet I'll still provide an accurate description of

what's occurred since. We believe some or all of you will be surprised and possibly appalled by what selling through the PLCB is like for a small business, so we hope something can now be done to improve all this.

A key point I wish to emphasize from the very start today, is that the PLCB is not built for, nor is it supportive of small business. We don't feel their intent is necessarily malicious, as the people we work with at the PLCB are helpful and pleasant, and when we have problems, they are generally responsive. But the majority of the PLCB's decisions and practices create a considerable drag on our ability to operate efficiently, and to grow and prosper. It is often very clear that they are not aware of the effect their decisions and practices have on small businesses like Artisan's Cellar.

I will first explain how the wine business in Pennsylvania normally works. I will lay out some pricing basics for both sides of the business, review the categories of wine sales in Pennsylvania, explain the order processing and delivery rules we are required to follow, and then go into some detail as to how on-premise and off-premise business is affected.

I wish to show that the PLCB's considerations have a significant "blind spot" with regard to how small businesses function. Finally, I would like to offer some solutions which I believe are reasonable and actionable, which would allow the PLCB to service both Pennsylvania's citizens and small businesses alike, in a far more efficient and effective manner.

To begin, I will explain how our business works in Pennsylvania, and when appropriate, contrast it with the typical operations in other markets or states. Most states have "three-tier" distribution systems, where an importer or distributor purchases the wine from their suppliers, adds their mark-up and sells to restaurants and bars, who then add their mark-ups to derive the price the general public pays.

In Pennsylvania, we have a fourth tier, the PLCB, which is positioned between distributors and our customers, adding a substantial markup. Special Order (SO) distributors like Artisan's don't necessarily benefit from PLCB stores, which require licensees to pick up there, often with the buyer's personal cars. Last week's ruling to allow us the ability to deliver directly to licensees helps us with some accounts, but not all.

To serve as base lines for our continued discussion, a typical retailer will mark-up their bottles about 50%, plus or minus, depending on their discounting strategy. Therefore, in other states where distributors sell directly to retailers, bottles which the retailer pays \$10 wholesale for become \$15 or \$16 to their clients.

A restaurant will typically markup wines between 4 and 5 times for by the glass wines, partially to cover the risk of not being able to sell the entire opened bottle. Thus, a \$10 bottle will be \$8 to \$10 by the 5 oz. glass, and often more, especially in larger city markets. For by the bottle sales, they will typically mark them up by 2.5 or 3 times, resulting in a price of \$25 to \$30 on their wine list.

Obviously, by the glass sales are the highest volume and the placements distributors compete for most. In Philadelphia, the upper normal range restaurants are comfortable paying is \$15 to \$18 per bottle

from us. In the suburbs, that average is more like \$10 to \$15. These numbers all vary depending on the type of place and the goals of their wine program.

In Pennsylvania, there are a few ways the PLCB categorizes wines. The state controls the vast majority of retail sales in its Fine Wine and Good Spirits stores. Within these stores, they offer “listed” wines, which are in every store statewide and are the big brands from national distributors, such as Breakthru Beverage and Southern Wine and Spirits. The PLCB also offers “luxury” wines, which are smaller production, more limited wines. These wines are offered in as many as 80 of the PLCB’s Premium Collection stores, but most often, only in a handful of stores depending on the item. The state also offers e-commerce, which I cannot speak to. Despite multiple calls and emails to this department requesting information on how we can begin working together, I have never heard back. So, I have not had the opportunity to learn about this particular channel, though I would love to.

Restaurants and bars can access and purchase any of the listed or luxury wines, as well as SO’s. As mentioned previously, except for a handful of luxury sales, Artisan’s primary business is in Special Orders which often cost more than listed wines because they come from small growers that farm responsibly and produce limited quantities.

There is a mandated pricing structure for SO wines, as well as mandated procedures for processing these orders and for making deliveries, all of which are burdensome for small vendors.

The PLCB takes between 25 to 30% of the total selling price a licensee or retail consumer pays for their wine (they both pay the same price). To remain competitive, we must take lower than industry standard margins in Pennsylvania on most of the products we sell. When a customer thinks our wine is too expensive by a dollar or two, it is due to this PLCB burden.

When we sell a bottle of wine through SO, the PLCB adds a 10% mark-up, a \$1.37 handling fee, applies the 18% Johnstown Flood tax, plus applicable sales taxes. We are then allowed to add up to \$3 per bottle to cover our shipping and delivery costs, which is exempt from the markup and taxes just mentioned.

Now that you know how the PLCB affects our pricing, let’s circle back to the prices I used in my baseline examples earlier, which would typically apply in other states. For the retailer, that \$10 wholesale cost becomes \$13.89 in Pennsylvania, and retail licensees (those with Wine Expanded Permits or WEP’s) here might charge \$21 with a typical 50% markup rather than \$15 to \$16.

A Pennsylvania restaurant must also pay \$13.89, so their by the glass wines might cost \$11 to \$14, as opposed to \$8 to \$10. And for by the bottle prices, that bottle might sell for \$35 to \$42 compared to \$25 to \$30.

In general terms, Pennsylvania licensees pay the national average *retail* cost for SO wines, and they receive no wholesale pricing benefits. Thus, a wine we might sell in Delaware for \$14, with a higher margin, is about \$20 in Pennsylvania. This makes many wines we sell non-competitive here, where in other markets

they might be high volume movers. It also means that dollar for dollar, the general public pays more for lower quality, and not only are we being squeezed profit-wise by the PLCB, every consumer that buys an SO glass or bottle in Pennsylvania is being squeezed for more money too.

It's important to mention that the PLCB provides a 10% discount to licensees for listed products only, making those products more attractive for many restaurants and WEP's, putting our SO wines at an even further competitive disadvantage.

Taking orders and making deliveries is also burdensome under the Special Order program. The PLCB mandates that we deliver any amount ordered to any store a licensee or private citizen selects. The SO program is available to any citizen in the state, so a person in Erie can order a \$10 bottle of wine from us, which we must ship at a cost of \$15-17 via FedEx, plus the \$6 cost for the protective box. Therefore, we must pay up to \$23 to ship a single bottle across the state, for which we only intended to make a \$2 profit, plus our \$2 allowable freight adder on this sale. We don't charge the maximum \$3 allowable for the bottles we sell under \$22.

The state does not allow us to add a surcharge or a shipping and handling fee to cover these higher shipping costs, and we are not allowed to decline these orders if we have the product in stock. In these instances, the PLCB keeps their entire margin and handling fee. When the PLCB enacted the single bottle rule a couple years ago, we complained to the SO Department, and their response was that we should charge the maximum \$3 allowed for freight on all our bottles, and we should increase the prices for all our wines to cover this requirement. So everyone must pay more for our products across the board to cover the extra cost to ship individual bottles here and there.

The PLCB often uses SO orders as an argument for their value, that is, any citizen can get any wine sold in the state. For us, it feels like we are being forced to make our better wines available, even single bottles, thereby embellishing the role of the PLCB by making their selections more interesting, without the benefit of capturing a repeat order.

For our regular licensee customers, the "historic" Act 39 of 2016 made the steps of processing customer orders significantly more involved than it is in most other private industries.

In other states, it is a four-step process:

- 1) Receive order
- 2) Create invoice
- 3) Pack order
- 4) Deliver order

Customer pays their bill in 30 days.

In Pennsylvania, it is an eleven-step process:

- 1) We receive order
- 2) We enter order into PLCB's antiquated online order portal
- 3) We alert customer their order is ready for approval
- 4) Customer logs on to approve the order on their side of the order portal
- 5) We confirm the order in the order portal again
- 6) We create invoices and box labels created by the PLCB system
- 7) We pack the order
- 8) We deliver to a PLCB store selected by customer
- 9) PLCB employee scans in the order
- 10) PLCB employee creates new paperwork for licensees
- 11) Licensees go to state store and pick up their order or hire a service to pick up and deliver to them – costing them time, money, or both.

In Pennsylvania, the licensee pays for their order at Step 5, when we re-approve their order, and before we have even delivered it to their store. The PLCB then pays us for this sale 60 days from pick up. As a side note, our payments to our suppliers are due in 45 or 60 days, so unless we make sales the day products hit our warehouse, we must pay for the wine before we receive payment for any sales. In most markets, the terms are set so distributors would hopefully be able to capture some income before their bills come due.

The PLCB system makes it harder for both licensees and small vendors to do business through increased cost, decreased convenience, unfair, and often impractical and burdensome requirements.

For on-premise sales, the PLCB significantly restricts our potential volume of sales. Because accounts must pay in advance for their wine, they rarely order a case at a time of higher end bottles, instead ordering three or six bottles at a time. They must also take lower margins to sell wines they are passionate about. I believe the challenges related to above-average pricing are obvious to you now.

The system for off-premise sales is not any better. As for retail sales specifically at PLCB stores, there are only two avenues for small distributors to sell our products... luxury sales which are highly limited to us and presently cut off, as well as e-commerce, which hasn't been an option for us at all. Both these avenues are controlled by PLCB buyers in Harrisburg who, especially for smaller vendors, are very difficult to reach and establish a relationship with.

A third retail option, that doesn't involve PLCB stores, is retail via licensees with Wine Expanded Permits (WEP's), and this is the only legal avenue we have at all right now until restaurants are allowed to re-open. In normal markets, retail can make up 50% to 60% of a distributor's business, yet in Pennsylvania, access to retail is severely limited by the needs of the PLCB and the significant price burdens the PLCB puts on SO wines.

As mentioned, our first avenue for retail sales are luxury sales through the PLCB's Fine Wine and Good Spirits Stores, of which there are about 80 out of the PLCB's 600+ state-run stores. Remember, these stores offer far more listed products in addition to our luxury products, providing larger distributors like Breakthru and Southern with a substantial competitive advantage. The PLCB also has e-commerce, which gives the same substantial competitive advantage to larger distributors that offer listed products, and my frustrations trying to connect with this group and sell through this potentially lucrative channel have already been addressed.

Because we exclusively work with small volume producers, we only sell luxury products to the PLCB, and not listed. There are single buyers for each of the major categories the PLCB purchases: California, Non-California US, Italy, France, Southern Hemisphere, and one person selecting for Spain, Austria, Germany, Eastern Europe, Sake, Meads, and other various items. If one of these buyers doesn't necessarily care for our style of products, that entire category immediately becomes unavailable to us.

All these buyers work in Harrisburg, and when we approach them, we are often given a list of things they are searching for. We are welcome to offer other products than those products or categories requested; however, meeting their specific requests obviously yields the largest volume of sales. This is really too bad because we have so many delicious products to offer, but the buyers have total power over what they buy and what they reject, and we have little opportunity to learn their reasoning and provide other options. The communication and training between us and the PLCB store employees is also thick with layers of bureaucracy, so the buyers are hesitant to purchase items of unknown regions or styles. In other markets, we have direct access to the workers on the floor and can train them on new items. If we are good trainers, we get better sales. But in Pennsylvania, we don't really have access to turn good teaching skills into more sales on the floor.

As for luxury pricing, the PLCB's goal is to meet or beat average national retail prices, though they have an unusually high margin. The goal I was told to shoot for is 35%, and the top margin is 40%, versus a standard of 33%. So, in order to meet both their price and margin goals, as a vendor, we are forced to accept very small margins. Larger companies selling national brands often have extra "padding" added in for discounts which they can access to meet these needs, some of which are supported by the large wineries they represent. But for small distributors like us, it is nearly impossible to secure discounts from our small suppliers and producers to make the PLCB's specified pricing work, so we must take the financial hit on the chin.

The result is the PLCB nearly doubles the purchasing cost of the item to reach their price to the consumer. The most we have been able to make on a luxury sale to the PLCB is \$2.67 a bottle, without any

the extra freight allowance, while the PLCB made about \$15 on that item. The lowest we've taken is \$0.87 a bottle while the PLCB made \$10.22 on the same item.

After receiving an order, we submit an invoice to the PLCB, who then processes it. This can take over a month before we can ship the order while our suppliers continue to pay warehousing fees.

And that's not all... as once we make the sale, there are potentially additional fees charged to us. We are required to generate special labels to PLCB standards, even though the SO portal creates labels for every single SO order we pass through every day. We must then instruct and coordinate having a third-party warehouse in New Jersey apply the labels precisely. We never actually handle the boxes ourselves, and it is cheaper for us to send the wine straight from our suppliers' warehouses in New Jersey than using the PLCB's consolidator. If the PLCB warehouse applies the labels incorrectly, we can be charged \$60 for each invoice, plus \$2 per case. For a statewide sale, there are typically three invoices. For an order of 100 cases total, improper labels could cost us nearly \$400.

As mentioned, the third avenue for retail sales in Pennsylvania, aside from luxury and e-commerce, is through Wine Expanded Permit (WEP) customers. These are special permits that allow restaurants, bars, and grocery stores to sell up to four bottles to go at a time. The licensees pay \$2,000 a year plus an annual renewal fee of 2% of the wine purchased for off-premises consumption. Remember, this fee is after the licensees have already had the pleasure of paying retail prices, which the PLCB has already profited significantly from.

WEP's are typically used by large chain grocery stores or small independent markets. Some bars and restaurants have built out sections of their stores to stock and sell retail. We compete with the PLCB for the business at WEP's, and the PLCB has enormous non-competitive advantages over us when it comes to grocery chains. The PLCB maintains warehouses that hold listed items which are used to service their own stores, and WEP's can get direct delivery to their door from these warehouses for orders of 50 cases or more.

Currently, SO distributors are not allowed to deliver directly to any licensee regardless of the size of the order, although a Commonwealth Court Judge ruled just last week that the PLCB must allow us to deliver directly. Larger WEP's such as grocery stores chose to work with the PLCB and receive delivery in order to minimize their labor costs, and we have historically been locked out.

For a few weeks in 2016, we worked with the new Whole Foods in the Fairmount neighborhood of Philadelphia, selling them \$2,000 worth of wine each week. But once they learned they could get direct delivery from the PLCB, they chose to stop working with us. If we had been able to deliver direct like the PLCB could, we'd have kept this lucrative account and secured significant sales ever since.

The majority of our best accounts are WEP's, suggesting there is a hunger in the Pennsylvania markets for a type of wine the PLCB does not offer. WEP's are filling this void, primarily buying and selling SO's for these two reasons:

- 1) Price: Because they must pay retail price, they do not want to purchase items that are on the PLCB shelves and have their mark-up highlighted by the price comparison.
- 2) Selection: Because the PLCB doesn't carry highly sought-after small production wines, SO's give our customers the ability to create a personality for their store and differentiate themselves from their competitors, which are chain grocery stores and the PLCB.

Isn't it a shame that both distributors and our licensee customers must compete directly with the PLCB?

And wouldn't a free market system greatly benefit every licensee and retail consumer in Pennsylvania?

WEP's are only allowed to sell four bottles at a time, which further hampers our ability to achieve higher volume sales through this channel. To abide by the law, WEP's must make their customers leave the store and put the four bottles in their car before returning to complete another purchase.

How We Learned of the PLCB's COVID-19 Restrictions, and How These Have Affected Our Business

Covid-19 has obviously upended our normal lives. I applaud many of the decisions Pennsylvania's Governor and our health officials have made, and the steps they have taken to protect public health; and while some of these are causing economic difficulty, they were still the correct choices. I do not envy anyone having to make them.

However, this does not mean that the PLCB has made the correct choices, as many of their decisions were poorly considered and hastily executed.

As I mentioned before, I have taken the lead on all aspects of Artisan's response to Covid-19, including sharing information with our accounts, assisting with product selections, organizing our staff and their activities, processing and packing orders, seeking clarification on new delivery regulations, and more. Since the PLCB re-opened its first few stores for SO products, I have personally made all the deliveries to the Licensee Service Centers, so I can speak thoroughly and accurately as to what has been happening.

On Thursday, March 12th it was becoming clear that the coronavirus would have a sudden and severe impact on all Pennsylvanians. Montgomery County had its first reported cases that afternoon. That weekend, I dropped my wife in the city to meet some friends for a Saturday brunch. It was a sunny and warm early spring day and people were out and about. However, I started to get nervous calls from my friends in the restaurant business after learning that the PLCB would be shutting down stores in Montgomery County. Two of our largest WEP accounts started calling us to build up extra stock, sensing they may be shut off from being able to get deliveries. I spent much of Sunday afternoon speaking with one of our largest clients to put together an order for such an eventuality.

On Monday, March 16th, I instructed our delivery driver to make all the deliveries we were currently able to, though we typically do not deliver until Tuesdays. He left with a full van after completing his normal Monday morning duties.

At 12:47, we received an email from the PLCB announcing that they were going to “suspend Special Orders indefinitely, effective Monday, March 16.” We were told orders in transit would be dealt with on a case by case basis, and they were doing this because “the stores and Licensee Service Centers that remain open are dealing with unprecedented traffic from retail customers and licensees, and we believe this temporary suspension of Special Orders will help alleviate some of the pressure.”

I called the few people who had not yet approved their orders and let them know they needed to approve immediately, or we could not guarantee delivery. They approved, and as quickly as I could, I packed and prepared another handful of orders and loaded them into my car. Luckily, I was able to make those deliveries.

These are the last Pennsylvania deliveries we would be able to make until April 23rd.

So, without warning, we were immediately cut off from our customers. Throughout the remainder of March and much of April, we would be considered an essential business, as would our WEP accounts, though we would have no legal way to serve them.

I’d also like to take a moment to address the stated reason for shutting down SO orders. “The licensee and service centers that remain open are dealing with unprecedented traffic from retail customers and licensees.” These licensees are our customers, so this is basically saying “We are too busy to let you generate any sales in this busy time.” This is restricting free commerce and is totally unfair, if even legal. There was no concern about our ability to safely deliver, or of our customers to safely remain open. It was based solely on the PLCB being too busy to deal with us.

Shortly thereafter, the state shut down all PLCB stores. Pennsylvania was the only state in the country to do so. During this time, however, the PLCB kept some of the warehouses who service listed wines open, and they were delivering to WEP accounts as usual, especially grocery stores. This choice favored the larger distributors like Breakthru and Southern by keeping their products flowing through the supply chain and via direct delivery, while ours were cut off.

The PLCB also had the gall to reach out to one of our largest accounts, who had been begging the PLCB for access to our SO products via phone requests and multiple emails, and offer her delivery of listed products if she could buy 50 cases. So not only did the PLCB shut us off, they tried to steal our business and a top account.

The PLCB eventually opened online ordering, but their initial offering was limited to a core group of 1,000 listed products coming from their warehouses. Again, favoring the larger distributors. Despite us having some items on the PLCB shelves, they were inaccessible to the public until the week of April 18th, when the

state began limited curbside pickup. Even then, unless someone knew about our products already, they were invisible to the general public. As of the morning of May 1st, when I began my first draft of this testimony, the PLCB website was still only offering a limited selection, and none of the luxury wines we sold them could be found.

So, what could have been done that would allow a safe flow of product from small vendors like Artisan's to the public?

Scott Braunschweig, Artisan's President and Founder, wrote many emails to his local House Representatives and offered creative solutions starting as early as March 16th. He suggested temporary direct delivery from us to our accounts, whereby we would process the paperwork as usual, and once the delivery was complete, we would email the PLCB proof of delivery who could then process the paperwork internally. Scott also suggested the PLCB only open Licensee Service Centers, which are never open to the general public, enabling PLCB employees, our delivery personnel, and our customers picking up, to follow the CDC guidelines and enforce the use of PPE, social distancing, and sanitary procedures to ensure the safety of all.

The PLCB told us these options were illegal and unworkable for various technical reasons. We have carried the burden of selling our wines with their significant markup for years – is it unreasonable to expect that their staff make a temporary change to their procedures or technology?

The Senate passed Act 39 in 2016, allowing direct delivery by SO distributors, so all the PLCB had to do was enact something they already had the authority to do. As mentioned before, they have now been ordered to do so by a Judge.

Furthermore, we were getting calls and emails from private retail clients asking if we could ship wine to their homes, but with the order portal closed to us, we could not. Since the PLCB was having difficulty filling orders for retail clients and shipping them from their stores or service centers, we could have easily shipped SO orders directly to retail clients via FedEx. FedEx requires identification and a signature for delivery of alcohol, and tracking numbers or delivery notices could have been forwarded to the PLCB to process. Our shipping costs might have been burdensome unless we asked for full or mixed case orders, but at least we would have generated some income, and serviced Pennsylvania consumers.

As we spoke with our distributor peers and customers, we learned that nearly every one of them was separately suggesting the same things to the PLCB, so instead of making any of these simple and reasonable changes, our ability to sell remained totally shut off and we were left without any Pennsylvania income for nearly six weeks. And six weeks later, these proved to be exactly what the PLCB would do after a six-week delay.

Scott, with the help of our attorney that specializes in PLCB licensing, also asked our House Representative about an easy change the PLCB could make that would help Artisan's in particular, which could be accomplished by the Board issuing a simple statement. I mentioned above that Artisan's also has a Winery

License for filling kegs, private labeling bottles, and soon, the canning of bulk wine from the same wineries we import bottles from. Scott asked that we be granted the right to operate the same as a Limited Winery, a Limited Distiller, or a licensed Brewery, all of which can self-distribute, selling and delivering directly to licensees and retail consumers.

There are currently 418 Limited Winery licensees in the state, 127 Limited Distilleries, 435 Breweries that can all self-distribute, and only 3 Winery Licenses issued in Pennsylvania. One for the Boston Beer Company, owner of Samuel Adams, who uses their license to produce hard ciders here, Clover Hill Vineyards & Winery, who also have a Limited Winery License used to self-distribute, and Artisan's Cellar. So out of 983 licenses for which self-distribution is allowed, Artisan's is the only company that is prohibited from selling and delivering direct, as we are required to sell solely through the SO Program in Pennsylvania which was shuttered on March 16th.

This could have been *extremely* beneficial to Artisan's during COVID-19 as it would enable us to sell wine in kegs to the hundreds Pennsylvania breweries that operate brewpubs and tasting rooms which currently offer takeout beer plus wine from Limited Wineries in Growlers.

Losing six-week's revenue is devastating for a small company like Artisan's, and we'll never recover these sales. I mentioned previously that our revenue rose 37% in 2019 and we were up 38% as of March 16th in 2020. For the period between March 17th and April 22nd when sales resumed to WEP's only, we were down 89% this year from 2019, and this doesn't take into account that we had three new sales reps ready to hit the streets this year, so our 2020 sales would have been much greater.

Since our sales resumed to WEP's (only) on April 22nd, our revenue is down 44% from last year, again, not accounting for the additional revenue our new reps would have contributed. Much of our sales in the first week we resumed were due to pent up demand, and they totaled \$20,421. However, our sales last week totaled just \$6,468, a decrease of 68% from the week before. And these figures include Delaware sales.

We cannot sustain our business on such low income. We secured a PPP Loan which has kept our employees working and paid, but this only covers 35% of our typical monthly expenditures.

How the Reopening Process has Gone Thus Far and its Effect on Our Company

The re-opening process wasn't much better than the manner in which the announcement was handled. On Monday, April 20th, we received an email at 10:56am that the PLCB would be re-opening SO orders for WEP holders only. These deliveries could only be made to Licensee Service Centers, as we had asked for several weeks before.

We would be allowed to deliver beginning Thursday, April 23rd but with several restrictions.

First, only 14 service centers were to be opened for SO orders across the state, and there was only one location to service all of Philadelphia. Both vendors and licensees were required to make appointments for

delivery and pickups. Vendors could only deliver to the centers on Tuesdays and Thursdays, and licensees could only pick up on Wednesdays and Fridays, and licensees were only allowed to pick up once per week.

We started calling a few Licensee Centers immediately on Monday to schedule appointments. One center took over fifteen calls for them to answer the phone. None of them knew that we needed to make appointments. When we checked with Harrisburg, we were told “Maybe they haven’t checked their email yet.” For something as big as re-opening SO, one would hope they could ensure their managers were aware of the policy and procedural changes.

On Tuesday, we began calling early again, and I tasked one of our sales reps with scheduling our appointments. He called one store over 20 times and got no answer. On Wednesday, he repeated this task and was finally able to schedule the required appointments.

The appointment process is still unclear. There are no good communication channels, and we haven’t been able to schedule consistent weekly appointments which we could better plan for. One of our licensees was not allowed to pick up their order from us at the service center last week because the PLCB over-charged him by \$33. So his order couldn’t be released and he could not schedule another appointment until this week.

The second requirement was that orders “are separated by pallet or shrink wrap, for each licensee.” We were told that, “noncompliance with any of these requirements will result in the Special Order shipment being refused.” This request is totally absurd and unreasonable, and again shows the PLCB’s bias toward the large companies, who typically deliver in box trucks or tractor-trailers.

We drive a Ford van that can only accommodate two pallets due to its weight limitation and floorspace. We had to schedule multiple deliveries per day to meet the PLCB’s individual pallet requirement, which was also not welcomed by the service center staff because their floor space was now taken up with pallets when they would normally be able to stack cases. In addition, many of our buyers pick their cases up themselves using their personal cars, so what were they to do with pallets? They ended up taking their cases, loading their cars, and leaving the pallets behind.

We are lucky that we store our inventory in our onsite warehouse, and make our own deliveries so we could manage the logistical challenges, though I spent all of that first Monday rushing to learn what was actually happening and how, then creating a new delivery SOP on the fly in time to communicate it to my staff and our buyers by end of day.

Our friends and peers who warehouse their products in New Jersey were not able to take advantage of the first week of sales at all because of the last-minute nature of this re-opening announcement. They use third party shippers who require orders to be entered in advance.

We followed the PLCB’s rules, but they were impractical for everyone involved, so by the second week, the service center personnel allowed us to deliver cases as we previously did, as that system always worked best for everyone.

I hope I've made it clear that by continuing to operate their own warehouses for listed products only, delivering to larger accounts directly, and prohibiting SO distributors from functioning, the PLCB severely disfavored us and only allowed themselves and large national distributors to continue operating for six weeks. Rather than seek solutions to the crisis involving SO's, especially those that were suggested to them repeatedly, they chose to do nothing.

It took filing and winning a court case last week to get the PLCB to move forward with direct delivery by SO distributors which they were mandated to do by Act 39 in 2016 as well. The Judge provided no time frame though, so it is yet to be determined if or when this will help us during the pandemic.

As for health safety, the PLCB's current systems add another set of hands on the product by making them pass through service centers, increasing the chances of spreading COVID-19. The PLCB had systems in place that would have allowed us some access to revenue for six weeks, but instead, they made choice to cut us off from our customers and to shut us down.

Suggested Ways the PLCB Could Improve Our Operations and Our Livelihoods

I began my testimony by stating, "The PLCB is not built for, nor is it supportive of small business," and "the majority of the PLCB's decisions and practices create a considerable drag on our ability to operate efficiently, and to grow and prosper. It is often very clear that they are not aware of the effect their decisions and practices have on small businesses like Artisan's Cellar," also stating, "the PLCBs considerations have a significant "blind spot" with regard to how small businesses function."

It is probably unreasonable to expect full privatization of the PLCB anytime soon. There are too many employees, labor union considerations, too much inventory, and the PLCB does return some revenue to the state besides taxes. For the larger vendors, the system works quite well. However, our needs and wants aren't the same as those of the large national companies.

It's well known that the PLCB consults with personnel from Breakthru Beverage when they make any changes to their policies, procedures, and systems, including those arising from Act 39, except for direct delivery because the large companies prefer warehouse to warehouse logistics.

We, and I'm certain I'm speaking on behalf of all the smaller SO distributors, propose that Pennsylvania follows a semi-privatization route that would only involve Special Orders, especially now that direct delivery will soon commence. SO distributors don't really need the PLCB for anything; however, we are still required to use their order portal which tacks on the PLCB markup and taxes, and there will be exceptions when direct delivery isn't practical due to accessibility, impractical order volumes, or when the licensee prefers store pickup.

I propose that when SO orders are delivered directly, the SO distributor handles the transaction and only pays the 18% Johnstown Flood tax which pays into the Pennsylvania General Fund and applicable sales

taxes. And for those SO orders that still move through the PLCB store system, the PLCB mark up, handling fee, and applicable taxes would apply. No changes would be required for the PLCB's listed or luxury product systems, which make up the largest portion of their sales.

As stated, many of the problems we encountered, past and present, were caused by a basic lack of knowledge of small business operations on the part of those making decisions in Harrisburg, which were exasperated by poor communication. The PLCB spends a lot of time listening to their major suppliers, why not spend time meeting and talking with small SO distributors as well? Form an advisory board that meets once per Quarter. I would be happy to participate and help the processes and our relationship improve.

Thank you, again for this opportunity. I would be happy to answer any questions.

**Senate Law & Justice Committee
May 6, 2020**

Written Remarks of the Pennsylvania Liquor Control Board

**Tim Holden, Chairman, testifying with
Mike Negra, Board Member
Mary Isenhour, Board Member
Charlie Mooney, Executive Director**

Chairman Stefano, Chairman Brewster, and members of the Senate Law & Justice Committee, thank you for this opportunity to discuss the Pennsylvania Liquor Control Board's (PLCB) response to the COVID-19 public health crisis. We want to begin by thanking our customers and licensees for their patience and understanding during this unprecedented time. Throughout this public health crisis, the PLCB has sought to balance the health and safety of our communities and employees, with our responsibilities as a wine and spirits wholesaler and retailer, as well as the Commonwealth's alcohol regulator. This morning we will provide background on the steps the agency has taken to respond to the pandemic, discuss the current status of the PLCB's wholesale and retail operations, and briefly highlight some of the agency's policy actions related to the crisis.

The statewide effort to mitigate the COVID-19 public health crisis resulted in the closure of Fine Wine and Good Spirits stores, initially in the Southeast Pennsylvania collar counties and subsequently the remainder of the Commonwealth. Since the closure of the Fine Wine & Good Spirits stores, the crisis has been continually monitored, in consultation with the Wolf Administration and public health experts at the Pennsylvania Department of Health, to assess opportunities to safely resume the sale of wine and spirits. It is important to note that sales to wine expanded permit holders who participate in the licensee delivery program, which allows product to flow directly from our distribution

centers to licensees, has remained uninterrupted throughout the COVID-19 crisis.

The re-opening of PLCB retail operations began with the resumption of limited e-commerce sales on April 1. As anticipated, demand for wine and spirits through our website initially outpaced our ability to fulfill orders. For perspective, in fiscal year 2018-19, the PLCB transacted and fulfilled 39,000 e-commerce orders for \$5 million in sales. While the e-commerce segment of our business has grown exponentially for the past few years, the e-commerce fulfillment infrastructure was not designed to handle the daily volume of transactions conducted in the agency's brick and mortar stores. Within days, the agency leveraged its licensee service centers and all Premium Collection locations for e-commerce fulfillment, which significantly increased e-commerce order capacity. Throughout this process the agency has remained committed to the safety of our customers and employees by implementing best practices to reduce the spread of COVID-19 as recommended by the Centers for Disease Control and Prevention and the Pennsylvania Department of Health. From April 1 through 30, the PLCB processed more than 116,600 e-commerce orders, which totaled \$11.1 million (excluding sales tax).

On April 20, the agency began a limited curbside pickup program. Similar to restarting e-commerce sales, demand outpaced capacity for curbside pickup at the initial wave of 176 Fine Wine & Good Spirits stores. However, the first phase of curbside pickup allowed the PLCB to identify operational efficiencies and, on April 27, the agency opened 389 additional stores for curbside pickup. Now 580 Fine Wine & Good Spirits stores offer curbside pickup. Through April 30, curbside pickup sales totaled more than 213,000 orders and \$17.4 million (including sales tax).

In response to concerns from suppliers and licensees, the PLCB resumed a limited special order program for licensees with wine expanded

permits on April 22. The special order portfolio includes specialty items that are not stocked in Fine Wine & Good Spirits stores.

On May 1, the PLCB resumed fulfillment of retail licensees' orders for wine and spirits through 13 licensee service centers. Additionally, the PLCB is working through processes and procedures to allow licensees to resume product pickup at the remaining 580 Fine Wine & Good Spirits stores. As counties move through the phased reopening process, we will be altering our operational capacity to ease restrictions and allow for a smoother shopping experience for both licensees and retail consumers.

The PLCB will open Fine Wine & Good Spirits stores to the public in counties designated in the yellow phase in accordance with the three-phased re-opening plan established by the Governor's Office. Consequently, the agency intends to open 77 stores in the 24 counties moving to the yellow phase on May 8. During this process the PLCB remains fully committed to the safety of our communities, customers and employees. Re-opened stores will be operated in accordance with best practices for retail interactions to prevent the spread of COVID-19 as recommended by the Centers for Disease Control and Prevention and the Pennsylvania Department of Health. For example, stores will limit the number of customers allowed in a store at any one time and customers and employees will be required to wear masks and maintain social distance, guided by signage throughout the stores. Prior to opening to the public, each location was professionally sanitized, and plexiglass was installed at registers to provide a physical barrier between clerks and customers at registers. Store employees will also perform enhanced and frequent cleaning and disinfecting practices.

From a regulatory perspective, the PLCB has adopted customer- and business-friendly special allowances within its authority to implement, including allowing retail licensees to continue sales of beer and wine for off-premises consumption even though on-premises food sales have ceased; suspending fees and deadlines for submission of license applications; extending authority expirations; permitting distilleries to

shift operations to create hand sanitizer; allowing the sale of facemasks and hand sanitizer at retail and distributor licensees; easing safekeeping requirements; expediting certifications for licensees through the Responsible Alcohol Management program (a requirement to sell wine to go); and relaxing beer line cleaning requirements.

During these extraordinary times, the PLCB is keenly aware of the significant impact the agency's decisions have had on retail customers and the licensee community. The PLCB remains committed to balancing the need to mitigate the spread of COVID-19 and serve our customers and the Commonwealth's beverage alcohol industry.

In closing, we would like to again thank our valued customers for their patience during this public health crisis. Also, we express our sincere appreciation to the PLCB's employees for their dedication to serving our customers in these uncertain times. Thank you for this opportunity to update the committee and we look forward to answering your questions.