

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

FOUR M, INC., d/b/a Quick Shop Foods,
an Iowa corporation on behalf of itself
and all others similarly situated; and
STEVEN MARK EBELSHEISER,
formerly d/b/a Four M, Inc. and Quick
Shop Foods, individually and as
authorized agent and/or successor in
interest of Four M, Inc., d/b/a Quick Shop
Foods, and all others similarly situated,

Plaintiff,

v.

STATE OF IOWA, IOWA
DEPARTMENT OF COMMERCE –
ALCOHOLIC BEVERAGES DIVISION,

Defendant.

Case No. _____

**CLASS ACTION PETITION AT LAW
AND JURY DEMAND**

COMES NOW the Plaintiffs, Four M, Inc., d/b/a Quick Shop Foods, on behalf of itself and all others similarly situated, and Steven Mark Ebelsheiser, formerly d/b/a Four M, Inc. and Quick Shop Foods, individually, on behalf of himself, as authorized agent and/or successor in interest of Four M, Inc., d/b/a Quick Shop Foods, and on behalf of all other similarly situated persons and/or entities who purchased alcoholic liquor from the State of Iowa, Iowa Department of Commerce—Alcoholic Beverages Division, makes the following allegations based upon information and belief, except to allegations specifically pertaining to Plaintiffs, which are based on personal knowledge:

NATURE OF THE ACTION

1. Plaintiffs bring this action on behalf of themselves and the class of all similarly situated Class “E” liquor license holders who purchased alcoholic liquor from

and were overcharged by the State of Iowa, Iowa Department of Commerce – Alcoholic Beverages Division (hereinafter “Defendant” or “ABD”) on the purchase of liquor.

2. The State of Iowa, by law, is the sole wholesaler and distributor of alcoholic liquor within the State of Iowa. Accordingly, the State of Iowa, through the ABD, has a monopoly on the sale of alcoholic liquor within the state.

3. Because of concern of its creation of the monopolistic position of the State of Iowa with respect to the sale of alcoholic liquor in the state and in an effort to prevent an abuse of the State’s monopolistic pricing power, the Iowa Legislature enacted a statute that sets a cap on the price that the ABD may charge retailers, proprietors, and all Class E liquor license holders on the purchase of alcoholic liquor from the ABD.

4. However, the ABD has illegally charged Plaintiffs and other similarly situated retailers, proprietors, and all Class E liquor license holders in excess of that statutory cap on the price of alcoholic liquor.

5. This is a civil action seeking monetary damages.

6. As described below, Defendant’s practices violate Iowa statutory law as well as all societal norms of honesty, fair dealing, and decency.

HISTORICAL AND STATUTORY BACKGROUND

7. On or about March 6, 1934, with the passage of The Liquor Control Act, the State of Iowa was established as a “control state,” assuming direct control over the wholesale and retail sale of all alcoholic liquors except beer.

8. In 1972, Chapter 123 of the Iowa Code was created.

9. In 1986, The Iowa Beer and Liquor Department was renamed the Iowa Alcoholic Beverages Division (ABD). The ABD retained its role as the sole wholesaler of all alcoholic liquor sold in Iowa.

10. Iowa Code Chapter 123 defines classes of liquor control licenses.

11. The ABD sells alcoholic liquor at wholesale only.

12. The ABD sells alcoholic liquor only to class “E” liquor licensees.

13. By law, the price of alcoholic liquor sold by the ABD shall consist of the manufacturer’s price plus a *markup of up to fifty percent of the wholesale price paid by the ABD* for the alcoholic liquor. The ABD may increase the markup on selected kinds of alcoholic liquor sold by the ABD only if the average return to the ABD on all sales of alcoholic liquor does not exceed the wholesale price paid by the ABD and the fifty percent markup. See Iowa Code §123.24.

PARTIES, JURISDICTION, AND VENUE

14. Four M, Inc., d/b/a Quick Shop Foods, was an Iowa corporation doing business in the State of Iowa and that maintained a class “E” liquor license from the State of Iowa from approximately 1997 until approximately 2016.

15. Steven Mark Ebelsheiser was, at all material times hereto, and is a resident of Wapello County, Iowa. Mr. Ebelsheiser was, at all material times hereto, an owner and officer of Four M, Inc., d/b/a Quick Shop Foods. Mr. Ebelsheiser was and is an authorized agent for and/or a successor in interest of Four M, Inc., d/b/a Quick Shop Foods.

16. Defendant State of Iowa, Iowa Department of Commerce – Alcoholic Beverages Division, had, at all material times hereto, and has its principal place of business in Polk County, Iowa.

17. The damages giving rise to this Petition are sufficient to meet the jurisdictional requirements for the amount in controversy.

18. The conduct giving rise to this action primarily occurred in Polk County, Iowa.

BACKGROUND FACTS

19. Four M, Inc., d/b/a Quick Shop Foods, was a convenience and liquor store located in Ottumwa, Wapello County, Iowa, that maintained a class “E” liquor license from the State of Iowa from approximately 1997 until approximately 2016.

20. As a class “E” licensee, Four M, Inc., d/b/a Quick Shop Foods regularly purchased alcoholic liquor from the ABD.

21. During all relevant times hereto, the ABD sold alcoholic liquor to class “E” licensees, including Four M, Inc., d/b/a Quick Shop Foods, at a price in excess of what was allowable by law.

22. More specifically, the markup that the ABD charged class “E” licensees, including Four M, Inc., d/b/a Quick Shop Foods, on the sale of alcoholic liquor was in excess of the 50% cap above the wholesale price that the ABD paid on said alcoholic liquor.

23. The ABD has charged a markup in excess of the 50% cap above the wholesale price on purchases of alcoholic liquor by all class “E” licensees, including Four M, Inc., d/b/a Quick Shop Foods, over the course of many years.

CLASS ACTION ALLEGATIONS

24. Description of the Class: Plaintiffs bring this class action, pursuant to Iowa Rule of Civil Procedure 1.261, on behalf of themselves and all persons and/or entities similarly situated and defined as the “Class” as follows:

All persons and/or entities who, during the applicable statute of limitations, held a class “E” liquor license from the State of Iowa and purchased alcoholic liquor from the ABD.

25. If the facts and/or positions taken by the ABD warrant, appropriate subclasses may be created, or this Class may be narrowed or expanded. Plaintiffs reserve the right to amend the foregoing class definition before this Court determines whether certification is appropriate.

26. Excluded from the Class are ABD’s officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns. Also excluded from the Class are any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff. Also specifically excluded are any individuals who are not Iowa citizens at the time this action was commenced.

27. The time period for each of the Class is the number of years immediately preceding the date on which this Class Action Petition at Law and Jury Demand was filed as allowed by the applicable statute of limitations, going forward into the future until such time as ABD remedies the conduct complained of herein.

28. The named Plaintiffs are representative of an ascertainable class in that they were one of an ascertainable group of persons and/or entities that held a class “E” liquor license from the State of Iowa and purchased alcoholic liquor on a regular and ongoing basis from the ABD.

29. Numerosity: The members of the proposed Class are so numerous that individual joinder of all members is impracticable. The exact number and identities of all of the members of the proposed class are not known at this time and can be ascertained only through appropriate discovery. Plaintiffs estimate and believe that there are, at least, several hundreds of Class members. Plaintiffs believe that Defendant has records maintained in the ordinary course that will readily reveal the exact number and identities of all Class members.

30. Common Questions of Law and Fact Predominate: This action involves questions of law and fact common to each member of the Class, which predominate over any questions affecting individual Class members. Such common questions include, but are not limited to:

- a. Whether the ABD charged an excessive markup on the price of alcoholic liquor it sold to Class members in violation of State law;
- b. Whether the ABD's excessive and illegal markup on the price of alcoholic liquor it sold caused legally cognizable injury to Plaintiffs and members of the Class; and
- c. Whether Plaintiffs and the members of the Class are entitled to monetary damages, and, if so, the appropriate measure of damages.

31. Typicality: Plaintiffs' claims are typical of, if not identical to, the claims of the members of the Class because they have been harmed by the exact same course of unlawful conduct on the part of Defendant as alleged herein. The claims of all Class members:

- a. Present the same elements and burden of proof;

- b. Rely upon Defendant's same course of conduct; and
- c. Rely upon the same legal arguments.

32. Superiority of Class Action: Plaintiffs and the members of the Class suffered, and will continue to suffer, harm as a result of the ABD's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Class is impractical. The damages suffered by many, if not most, of the individual Class members are relatively small compared to the burden and expense that would be required by individual litigation of their claims against the ABD. For this reason, it would be virtually impossible for Plaintiffs and many, if not most, of the Class members, on an individual basis, to obtain effective redress for the wrongs done to them. And, even if all of the individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. The cost to the court system of adjudication of such individual claims would be substantial. Individual litigation multiplies exponentially the delay and expense to all parties in the court system of resolving the controversies created by the ABD's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all Class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the Class members.

33. Risk of Inconsistent or Varying Adjudication: Class action treatment is proper, and this action should be maintained as a class action because the risks of separate actions by individual members of the Class would create a risk of:

- a. Inconsistent or varying adjudications with respect to individual Class members, which would establish incompatible standards of conduct for the ABD as the party opposing the Class; and/or
- b. Adjudications with respect to individual Class members would, as a practical matter, be dispositive of the interests of other Class members not party to the adjudication or would substantially impair or impede their ability to protect their interests.

34. Adequacy of Representation: Plaintiffs will fairly and adequately represent and protect the interests of all members of the Class. Plaintiffs are adequate representatives and have no interests adverse to the interests of the absent Class members. Plaintiffs have retained counsel with experience in prosecuting complex litigation. Plaintiffs and their undersigned counsel are committed to vigorously prosecuting this action on behalf of the Class and have the resources to do so.

35. Plaintiffs do not believe any difficulties are likely to be encountered in the administration of this action as a class action.

36. Plaintiffs believe that Defendant's records maintained in the ordinary course of business will readily reveal the identity, current or last known address, and other identifying data for each and every Class Member. Plaintiffs also believe that such records will also reveal all of the relevant details necessary to calculate the amounts of

money by which the ABD overcharged each Class member in connection with its excessive and illegal markup of alcoholic liquor.

COUNT I

(BREACH OF CONTRACT, INCLUDING BREACH OF THE IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING AND UNJUST ENRICHMENT)

(On Behalf of Plaintiffs and the Class)

37. Plaintiffs reallege and incorporate by reference the allegations pled in Paragraphs 1-36 above as if fully pled herein.

38. Plaintiffs and the Class members contracted, expressly or impliedly, with the ABD for the purchase of alcoholic liquor.

39. The purchase orders, invoices, payments, and receipts between the Class members, including Plaintiffs, and the ABD for the purchase of alcoholic liquor constituted contracts and/or evidence of contracts between the parties.

40. The ABD charged Plaintiffs and the Class members in excess of the statutory cap on the price ABD could charge for the purchase of alcoholic liquor, and to that extent was illegal and a breach of contract.

41. The statutory terms of the cap on the price or markup that can be charged by the ABD on the purchase of alcoholic liquor, under Iowa Code §123.24, are either expressly or impliedly incorporated into the contracts between the Class members, including Plaintiffs, and the ABD.

42. To the extent the ABD's charges on the purchase of alcoholic liquor were above the statutory cap, the charges were excessive and illegal; and, accordingly, the contracts between the ABD and the Class members, including Plaintiffs, were illegal to that extent.

43. Therefore, the ABD must be required to reimburse the Class members, including Plaintiffs, for the excessive markup. This required reimbursement and restitution is based on, *inter alia*, the unjust enrichment theory of liability.

44. In other words, if the ABD and the State of Iowa, through the ABD's deposit of its profits into the State's General Fund, are permitted to keep proceeds from the excessive and illegal markup on the sale of alcoholic liquor, then the ABD and the State of Iowa will have received a financial benefit for which it was not entitled by law, which violates the fundamental principles of justice, equity, fairness, and good conscience.

45. Because the ABD and the State of Iowa have retained and/or used the money from these excessive and illegal markups and overcharges on the purchase of alcoholic liquors, i.e., money to which the State of Iowa is not entitled, the principles of justice, equity, fairness, and good conscience require that the State reimburse the Class members, including Plaintiffs, for the overcharged amounts.

46. In addition, under the law of Iowa, good faith and fair dealing is implied in every contract. All contracts impose upon each party a duty of good faith and fair dealing.

47. The implied duty of good faith and fair dealing, an implied term in the contracts between the Class members, including Plaintiffs, and the ABD, encompassed and required that the ABD would not charge the Class members, including Plaintiffs, in excess of the cap provided by statute on the purchase of alcoholic liquors.

48. The ABD's excessive and illegal markup on the price of alcoholic liquor purchased by the Class members, including Plaintiffs, violated the implied covenant of good faith and fair dealing, and was a breach of the contracts.

49. As a result of the Defendant's breaches of contracts as detailed above, Plaintiffs and the Class members have sustained damages.

50. The Defendant's breaches of contracts with Plaintiffs and Class members as detailed above have caused Plaintiffs and the Class members damage, and Plaintiffs and the Class members hereby make claim for the following elements of damage, harm, and loss:

- a. Compensatory damages in an amount equivalent to the overcharge resulting from Defendant's excessive and illegal markup of alcoholic liquor purchased by Plaintiffs and the Class members;
- b. Consequential damages;
- c. Interest;
- d. Attorney's fees;
- e. Costs;
- f. Any other additional element of damage or law recoverable under Iowa law not specifically set forth herein.

WHEREFORE, the Plaintiffs, Four M, Inc., d/b/a Quick Shop Foods, on behalf of itself and all others similarly situated, and Steven Mark Ebelsheiser, formerly d/b/a Four M, Inc. and Quick Shop Foods, individually, on behalf of himself, as authorized agent and/or successor in interest of Four M, Inc., d/b/a Quick Shop Foods, and on behalf of all other similarly situated persons and/or entities respectfully request that the Court enter an

order certifying this action to proceed as a class action pursuant to Iowa Rule of Civil Procedure 1.262, designating the Plaintiffs as named representatives of the Class, and designating the undersigned as Class counsel. Further, Plaintiffs, on behalf of themselves and the Class members, do hereby make claim and demand judgment against the Defendant, State of Iowa, Iowa Department of Commerce—Alcoholic Beverages Division, in an amount that will fully and fairly compensate Plaintiffs and Class members for all of the damages sustained by them, together with interest thereon at the maximum legal rate, for attorney’s fees, and for costs of this action. Damages shall include damages for compensatory damages, consequential damages, attorney’s fees, costs, with interest provided by law, and such other relief as the Court deems just and equitable.

JURY DEMAND

Plaintiffs request jury trial of all issues in this Class Action Petition at Law and Jury Demand submissible to a jury.

Respectfully submitted,

Dated: December 20, 2019

FOUR M, INC., d/b/a Quick Shop Foods, an Iowa corporation on behalf of itself and all others similarly situated; and STEVEN MARK EBELSHEISER, formerly d/b/a Four M, Inc. and Quick Shop Foods, individually and as authorized agent and/or successor in interest of Four M, Inc., d/b/a Quick Shop Foods, and all others similarly situated,

Plaintiff

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