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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

ALEXANDRA PELGRIFT, individually, on
behalf of other members of the general public
similarly situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act of 2004 (“PAGA”);

Plaintiffs,

v.

THE 21ST AMENDMENT BREWERY CAFÉ,
LLC; a California limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: CGC-20-585227

Honorable Ethan P. Schulman
Department 304

CLASS ACTION

**PLAINTIFF’S SECOND
SUPPLEMENTAL BRIEF IN SUPPORT
OF PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Second Supplemental Declaration of
Proposed Class Counsel (Douglas Han); and
Second Amended [Proposed] Order filed
concurrently herewith]

Hearing Date: March 18, 2022
Hearing Time: 11:00 a.m.
Hearing Place: Department 304

Complaint Filed: June 29, 2020
FAC Filed: November 4, 2021
Trial Date: None Set

1 Plaintiff Alexandra Pelgrift (“Plaintiff”) provides this supplemental submission in response
2 to the Court’s tentative ruling on Plaintiff’s Motion for Preliminary Approval of Class Action
3 Settlement scheduled for hearing on February 7, 2022. On February 4, 2022, the Court continued the
4 Motion to March 18, 2022, with instructions to address the concerns outlined in the ruling.

5 **I. Class Certification and Fairness of the Settlement Consideration.**

6 Defendant operates a brewpub in San Francisco, California and a tap room in San Leandro,
7 California. (Second Supplemental Declaration of Douglas Han (“Second Supp. Han Decl.”), ¶ 4.) At
8 its two locations, Defendant sells its own craft beer as well as food. (*Ibid.*) Defendant’s business
9 mainly involves brewing craft beer to serve to customers.

10 The Class includes the following job titles: Assistant Brewer (5 positions), Bartender (23),
11 Back of the House (BOH) Line Cook (3), Brewer (17), BusserRunner/RunnerBusser (8), Dishwasher
12 (11), Front of the House (FOH) Bartender (3), FOH Server (13), Front Office Administrator (1),
13 Host (7), Junior Accountant (3), Lead Tap Room Bartender (1), Line Cook (27), Maintenance Lead
14 (2), Maintenance Tech (1), Packaging Lead (3), Packaging Operator (18), Prep Cook (4), Production
15 Brewer Lead (2), QA Technician (1), Server (2), Tap Room Bar Tender (19), TR Lead Bartender
16 (2), and Warehouse Specialist (5). (Second Supp. Han Decl., *supra*, at ¶ 5.)

17 These job titles are further divided into seven departments: Brewery (25), Dining (55),
18 General & Administrative (4), Kitchen (42), Maintenance (8), Tap Room (27), and Warehouse (21).
19 One hundred and twenty-four (124) were full-time employees and fifty-eight (58) were part-time
20 employees. (Second Supp. Han Decl., *supra*, at ¶ 6.) These employees were all classified as non-
21 exempt employees. (*Ibid.*) Defendant provided time and pay data for all Class Members from
22 October 7, 2018 to May 14, 2021. (*Ibid.*) The data set included all job titles. (*Ibid.*)

23 **II. Distribution Based on Workweeks Is Fair.**

24 The meal break analysis provides some insight to the even and consistent nature of the
25 violations during the Class Period. (Second Supp. Han Decl., *supra*, at ¶ 7.) Class Member punch
26 records can show “unique violations” such as short, late, or missing breaks or missing second meal
27 breaks for eligible shifts. (*Ibid.*) For the years 2018, 2019, 2020, and 2021 the percentage of unique
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1 meal break violations was 15.7%, 14.9%, 13.8%, and 14.4%, respectively. (Second Supp. Han Decl.,
2 *supra*, at ¶ 7.) The total unique meal break violations were 14.9%. (*Ibid.*) The data shows that these
3 unique meal break violations occurred at a consistent range. The conclusion is that Class Members
4 working during these years, regardless of job title, would show a consistent violation rate. If Class
5 Members worked longer during this period, they would be subject to more meal break violations.

6 Further, as the distribution relates to off-the-clock work and rest break violations, these
7 violations were based on pressures to work through, skip, or work off-the-clock. (Second Supp. Han
8 Decl., *supra*, at ¶ 8.) These theories, while Plaintiff believes were prevalent among the Class
9 Members, are based on anecdotal evidence Class Counsel received during interviews with Class
10 Members. (*Ibid.*) Class Counsel interviewed five Class Members who worked as a Host, Bartender,
11 Food Runner, Busser, Line Cook, and Warehouse Specialist. (*Ibid.*) Therefore, Plaintiff attributed
12 similar violation rates for the Class.

13 While these individuals provided information supporting Plaintiff's theories, obtaining a
14 formula to determine how many rest breaks or how much off-the-clock work would have worked for
15 each job title would be difficult and impractical as these violations are not documented like the meal
16 break violations. (Second Supp. Han Decl., *supra*, at ¶ 8.) The Parties would need an expert to
17 formulate a statically significant sample of Class Members for these depositions. (*Id.* at ¶ 9.) Without
18 factoring in the job titles and based solely on statistics using a 5% margin of error and 95%
19 confidence level, one would have to depose or survey one hundred twenty-five (125) Class Members
20 to have a statistically significant sample. (*Ibid.*) We could not justify the costs. (*Ibid.*) Another
21 alternative is to allow a claims procedure where a Class Member would receive a survey/claim form
22 with the Class Notice which would identify the range of rest breaks and off-the-clock work worked
23 and assign value based on the number of violations the Class Member claimed. (*Ibid.*) While the
24 method is a possibility, it would be based on an honor system. (*Ibid.*) While alternative methods may
25 exist, Plaintiff's counsel believes that they are impractical for this case. (*Ibid.*)

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By contrast, if Plaintiff's allegations and investigation are accepted as true for most Class Members, the formula based on the length of employment would be fair and most practical. In light of the fact that there are some measures of documented violation that could be tied to the length of employment and some violations that cannot be substantiated without sworn testimony, a fair approach is to tie the distribution based on length of employment.

III. Modifications to the Settlement Agreement and Notice Packet.

The chart below lists the Court's concerns, provided in the tentative ruling, and the revisions/submissions made to address each concern.

Ruling	Revisions/Submissions
II. Distribution B. Second Distribution The Court encouraged the parties to consider sending two rounds of settlement checks before a cy pres distribution.	The Settlement Agreement and Class Notice have been amended to address this issue. (Second Supplemental Declaration of Douglas Han ("Second Supp. Han Decl."), ¶ 10; Exhibit 2, §§ (III)(J)(6), (III)(L)(8); Exhibit 3, § 10, ¶ C.3.) The Settlement Agreement and Class Notice have also been amended to reflect the increased Administration Costs, including the mailing of a second round of settlement checks. (Second Supp. Han Decl., at ¶¶ 3(g), 10; Exhibit 2, at §§ (I)(A), (III)(J)(4); Exhibit 3, at § 10, ¶ 2; Exhibit 8.)
III. Notice A. LWDA As before, Plaintiff satisfied her notice obligations to the LWDA. If the settlement is further amended,	A true and correct copy of the email confirmation and LWDA submission evidencing the submission of the Second Amended Joint Stipulation and Settlement

1 2 3 4 5	notice of the amended settlement must also be given to the LWDA.	Agreement to the LWDA is attached as Exhibit 6 to the Second Supplemental Declaration of Douglas Han. (Second Supp. Han Decl., <i>supra</i> , at ¶¶ 3(e), 11; Exhibit 6.)
6 7 8 9 10 11 12 13 14 15 16 17 18	B. Class Notice Process 1. Efficacy Consistent with its obligation to ensure that members of the class receive the best notice practicable under the circumstances, the Court intends to direct distribution of notice by both mail and email to the extent available. Moreover, the Court may require additional methods of distributing notice if sufficient mailing and/or email addresses are not available.	The Settlement Agreement has been amended accordingly. (Second Supp. Han Decl., <i>supra</i> , at ¶ 12; Exhibit 2, <i>supra</i> , at §§ (I)(KK), (I)(LL), (III)(K), (III)(L)(2)(a)-(b), (III)(L)(2)(f), (III)(L)(4)(a)-(b).) The Settlement Agreement and Class Notice have also been amended to reflect the increased Administration Costs, including emailing the Notice Packet to Class Members. (Second Supp. Han Decl., at ¶ 12; Exhibit 2, at §§ (I)(A), (III)(J)(4); Exhibit 3, <i>supra</i> , at § 10, ¶ 2; Exhibit 8, <i>supra</i> .)
19 20 21 22 23 24 25	2. Filing Notice of Appearance The Court has explained that it will not require objector to file documents simply because the parties have agreed to require a filing – they may send materials to Plaintiff and Plaintiff will file a notice of appearance pursuant to paragraph III(L)(3)(b) of the proposed settlement.	The Settlement Agreement has been amended accordingly. (Second Supp. Han Decl., <i>supra</i> , at ¶ 13; Exhibit 2, <i>supra</i> , at § (III)(L)(3)(b).)
26 27 28	C. Class Notice Substance Proposed Notice, Pages 3 and 12, Sections 2 and 14:	The Class Notice has been amended accordingly. (Second Supp. Han Decl.,

1	The notice will need to be updated to reflect that this	<i>supra</i> , at ¶ 14; Exhibit 3, <i>supra</i> , at § 2, ¶
2	case has been reassigned.	4, § 12.)
3	Proposed Notice, Page 8, Section 8: It should be	The Class Notice has been amended
4	“‘OPT OUT’ FROM” rather than “‘OPT OUT’	accordingly. (Second Supp. Han Decl.,
5	FORM.”	<i>supra</i> , at ¶ 15; Exhibit 3, <i>supra</i> , at § 8, ¶
6		1.)
7	Proposed Notice, Page 10, Section 10: “subject to	The Class Notice has been amended
8	Court approval” should be removed from the first	accordingly. (Second Supp. Han Decl.,
9	line of the second paragraph as redundant.	<i>supra</i> , at ¶ 16; Exhibit 3, <i>supra</i> , at § 10, ¶
10		2.)
11	Proposed Notice, Pages 10-11, Section 10: The	The Class Notice has been amended
12	estimated settlement share figures should be	accordingly. (Second Supp. Han Decl.,
13	described as “estimated” amounts rather than	<i>supra</i> , at ¶ 17; Exhibit 3, <i>supra</i> , at § 10, ¶¶
14	“approximate” amounts.	A.2, B.2.)
15	Proposed Notice, Page 12, Section 12:	(1) The Class Notice has been
16	(1) After the first paragraph of Section 12, there	amended accordingly. (Second
17	should be a new section, entitled “Getting	Supp. Han Decl., <i>supra</i> , at ¶ 18;
18	More Information” or something similar.	Exhibit 3, <i>supra</i> , at § 13.)
19	(2) The sentence that begins, “For more detailed	(2) The Class Notice has been
20	information,” should be revised to include	amended accordingly. (Second
21	the room number (Room 103) and hours of	Supp. Han Decl., <i>supra</i> , at ¶ 18;
22	operation for the Civil Records Division	Exhibit 3, <i>supra</i> , at § 13, ¶ 2.)
23	(currently 8:30 a.m. to 12:30 p.m.), with	
24	directions to the Court’s civil records	
25	webpage.	
26	Exclusion Form:	The Exclusion Form has been amended to
27	(1) The sentence beginning “DO NOT SIGN”	address these issues. (Second Supp. Han
28		

1	should end “THE CLASS ACTION	Decl., <i>supra</i> , at ¶ 19; Exhibit 4.)
2	SETTLEMENT.”	
3	(2) In the sentence beginning “IT IS MY	
4	DECISION,” “THE ACTION REFERRED	
5	TO ABOVE” should be replaced with “THE	
6	CLASS PORTION OF THE	
7	SETTLEMENT.”	
8	(3) “I will release any claims that I have during	
9	the PAGA Timeframe” should be replaced	
10	with “I will release the PAGA Released	
11	Claims.”	
12	(4) A request for exclusion may be submitted by	
13	the putative class member or an authorized	
14	representative. The form should have a field	
15	to enter the name of the authorized	
16	representative, if applicable.	
17	Objection Form:	The Notice of Objection Form has been
18	(1) The use of the Objection Form is optional.	amended to address these issues. (Second
19	The language in the bold and capitalized	Supp. Han Decl., <i>supra</i> , at ¶ 20; Exhibit
20	paragraph should reflect that (“YOU MAY	5.)
21	FILL OUT...”), rather than provide that use	
22	of the form is mandatory.	
23	(2) The parties may wish to replace “Eligible	
24	Aggrieved Employees” with “You,” as no	
25	class member has a right to object to the	
26	PAGA portion of the proposed settlement.	
27	(3) A representative may submit an objection on	

behalf of an objector. There should be a field on the form to enter the name of a representative, if any.

(4) “Attach additional pages if necessary” should be, “Attach any additional pages and copies of any supporting documents.”

IV. Miscellaneous

A. Effective Date

The Court expressed concern that settlement funds may be disbursed to class members while an appeal is pending. The parties have revised the definition of “Effective Final Settlement Date.” The parties believe this fully addresses the issue. But paragraphs III(L)(7)(a)-(b) do not use the definition of Effective Final Settlement Date, they are triggered, in the first instance, by the entry of the final approval order. Accordingly, to the extent the parties intended to address this issue, the parties have not completely addressed the issue.

The Settlement Agreement has been amended to address this issue. (Second Supp Han Decl., *supra*, at ¶ 21; Exhibit 2, *supra*, at § (III)(L)(7)(a).)

B. Proposed Order

Plaintiff has provided a Word-editable version of the Proposed Order to the Court via email. If there are revisions to the Proposed Order, Plaintiff is asked to provide a Word-editable version of the updated Proposed Order in the same way.

On March 4, 2022, Plaintiff emailed a copy of the Second Amended Proposed Order to complexlit@sftc.org. (Second Supp. Han Decl., *supra*, at ¶ 22.)

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1 Dated: March 4, 2022

JUSTICE LAW CORPORATION

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3 By: 
4 Douglas Han
5 Shunt Tatavos-Gharajeh
6 Haig Hogdanian
7 *Attorneys for Plaintiff*
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is aokada@justicelawcorp.com

On March 4, 2022, I served the foregoing document described as

**PLAINTIFF'S SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

for the following case: **Pelgrift v. The 21st Amendment Brewery Cafe, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-783168-20**
Court Case No.: CGC-20-585227
San Francisco County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 4, 2022, at Pasadena, California.



Anna Okada