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13 MARVIN MANN, and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SANTA CLARA**
16 **(UNLIMITED JURISDICTION)**

17 MARVIN MANN, on behalf of himself,
and all others similarly situated,

18 *Plaintiff(s),*

19 vs.
20

21 WALNUT BREWERY, INC., a Colorado
corporation doing business as Rock Bottom
22 Brewery; SPB HOSPITALITY, LLC, a
Delaware limited liability company; and
23 DOES 1–50, inclusive,

24 *Defendants.*

Case No.: 21CV377897

**DECLARATION OF DAVID SPIVAK IN
SUPPORT OF PLAINTIFF’S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Action filed: March 10, 2021
Dept: 3, The Honorable Patricia
M. Lucas
Date: June 22, 2022
Time: 1:30 p.m.



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2802), wage statement penalties (Lab. Code § 226), waiting time penalties (Lab. Code §§ 201–203), unfair competition (Bus. & Prof. Code §§ 17200, *et seq.*), and adding a cause of action for civil penalties under PAGA (Lab. Code §§ 2698, *et seq.*) A true and correct copy of the complaint is attached hereto as **Exhibit 3**.

7. On May 10, 2021, Defendants removed the action to the United States District Court for the Northern District of California where the case is assigned to the Honorable Yvonne Gonzalez Rogers, Case No. 4:21-CV-03500-YGR. A true and correct copy of Defendants’ Notice of Removal dated May 10, 2021, is attached hereto as **Exhibit 4**.

8. On May 17, 2021, Defendants filed their Motion to Dismiss, Compel Arbitration, and Stay Proceedings. A true and correct copy of Defendants’ Motion is attached hereto as **Exhibit 5**.

9. On May 25, 2021, the parties decided that it was in their mutual interests to discuss Plaintiff’s allegations informally through mediation. On September 20, 2021, in receipt of the parties’ September 17, 2021, Stipulation to Postpone Briefing and Hearing Schedules for Defendants’ Motion to Dismiss, Compel Arbitration, and Stay Proceedings, the Court issued an order Administratively Terminating Motion Pending ADR and Setting Compliance Deadline for November 12, 2021. A true and correct copy of the Court’s order dated September 20, 2021, is attached hereto as **Exhibit 6**.

10. On November 9, 2021, in receipt of the parties’ Joint Statement representing that they had complied with the Court’s order setting a compliance deadline in light of the parties’ pending mediation, the Court issued an order vacating the compliance hearing set for November 12, 2021, and set a further compliance deadline for February 11, 2022, in light of the parties’ anticipated settlement. A true and correct copy of the Court’s order dated November 9, 2021, is attached hereto as **Exhibit 7**.

11. On February 10, 2022, in receipt of the parties’ February 4th, 2022, Joint Stipulation to Remand, the Court issued an order remanding the case to the Santa Clara Superior Court. A true and correct copy of the Court’s order dated February 10, 2022, is attached hereto as **Exhibit 8**.

12. On October 20, 2021, the Parties attended and participated in good faith, arms’ length settlement discussions at a mediation session with Michael Loeb, Esq., a highly experienced professional mediator. Although the Parties did not settle at mediation, they



continued confidential settlement negotiations with the assistance of the mediator. On November 2, 2021, the Parties agreed to the material terms of the Settlement.

13. In advance of the mediation, and before agreeing to the terms of the Settlement, the Parties engaged in informal discovery. Through informal discovery, Defendants produced Plaintiff's personnel file, copies of Defendants' relevant company written policies, time-keeping records, and time and payroll data for a random sample of putative class members specifically selected by Plaintiff's counsel. Now that the Parties have finalized the long-form Settlement, Plaintiff submits it to this Court for preliminary approval.

Ascertainable and Numerous Class

14. A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendants' records and Defendants have agreed to share the relevant information from their records to facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

15. The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. Defendants estimate that there are approximately 130 Class Members. Plaintiff maintains that it would be impractical and economically inefficient to require each Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. In light of these considerations, the Settlement Class' membership is sufficiently numerous.

Predominant Common Questions

16. A question of law or fact is common to the members of a class if it may be resolved through common proof. In this case, there are many predominant common questions. Plaintiff asserts all class members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendants' alleged uniform policy of failing to properly account for all time worked and failing to, among other things, properly pay minimum and overtime wages, provide off-duty meal and rest periods, indemnify the Class Members for all business expenses, timely pay wages upon termination, and provide compliant wage statements, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the



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1 correct rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest
2 periods in compliance with California law; (3) Whether Defendants failed to pay the class one
3 additional hour of pay on workdays they failed to provide the class with one or more meal or rest
4 periods in compliance with California law; (4) Whether Defendants failed to indemnify the class
5 Members for all business expenses; (5) Whether Defendants knowingly and intentionally failed
6 to provide the class with accurate wage statements; (6) Whether Defendants willfully failed to
7 provide the class with timely final wages; and (7) Whether Defendants engaged in unfair
8 competition within the meaning of Business and Professions Code section 17200, *et seq.*, with
9 respect to the class. Therefore, common questions predominate.

10 *Typicality*

11 17. Plaintiff contends that his claims are typical for the purposes of certifying the
12 Settlement Class. Plaintiff, like absent Class Members was subject to the same relevant policies
13 and procedures governing his compensation, hours of work, meal and rest periods, and
14 reimbursement of business expenses. Because Plaintiff contends that he was subject to the same
15 general course of conduct as absent Class Members, resolving the common questions as they
16 apply to Plaintiff will determine Defendants' *prima facie* liability to all the Class Members.
17 Moreover, Plaintiff's claims could potentially be subject to the same primary affirmative
18 defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical of the
19 Class.

20 *Adequacy*

21 18. The adequacy requirement is met where the plaintiff is represented by counsel
22 qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to
23 the class' interests. In other words, where the plaintiff has adequate counsel, the plaintiff may
24 represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's
25 ability to represent the class.

26 19. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
27 with the absent Settlement Class Members. Plaintiff contends that he is an adequate class
28 representative. Plaintiff and the Class Members have strong and co-extensive interests in this
litigation because they all worked for Defendants during the relevant time period, allegedly
suffered the same alleged injuries from the same alleged course of conduct, and there is no
evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff



1 has demonstrated his commitment to the Settlement Class by, among other things, retaining
2 experienced counsel, providing counsel with documents and extensively speaking with them to
3 assist in identifying the claims asserted in this case, and meaningfully participating in the
4 mediation and subsequent negotiations that led to the Settlement, and exposing himself to the
5 risk of attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. Thus,
6 Plaintiff is adequate to serve as Settlement Class Representative.

7 ***Background of Class Counsel***

8 20. In 1991, I earned a Bachelor of the Arts degree with a major in Political Science
9 from the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from
10 Southwestern University School of Law.

11 21. In December of 1995, the Supreme Court for the State of California admitted me
12 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
13 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
14 2013, I became admitted to the New York State Bar.

15 22. My law practice has always focused on representation of private and public
16 employees with claims of unpaid wages, wrongful termination, harassment, family and medical
17 leave, whistleblowing, discrimination, benefits, and civil rights violations. One of my websites,
18 FightWrongfulTermination.com, provides a further description of my practice.

19 23. I have tried many cases before California and federal courts, government agencies
20 and neutral arbitrators. I am a member of the California Employment Lawyers Association
21 (CELA).

22 24. Since I started practicing law, I have tried many cases before courts, arbitrators
23 and government agencies. Some of my cases are:

24 A. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
25 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special
26 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
27 discipline. The jury awarded compensatory damages. Court subsequently awarded additional
back pay and gave Plaintiffs a retroactive promotion. *See* "Lawsuit Puts Customs Service on
Trial: Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, San Diego
Union-Tribune, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias
And Retaliation" by Valerie Alvord, San Diego Union-Tribune, May 16, 1998.



1 B. *Jorge Guzman v. Department of Justice*, United States District Court,
2 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
3 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
4 and police brutality by agents of the Office of the Inspector General. Jury found the Defendants
5 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent
6 in Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
7 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
8 1999.

9 C. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton
10 (the Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights
11 claims and wrongful termination claims against employer in a month-long jury trial. The jury
12 awarded compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost His
13 Job" by Dan Weikel, Los Angeles Times, September 28, 2000; "Punitive Damages Awarded to
14 Fired Social Worker" by Dan Weikel, Los Angeles Times, June 10, 2000; "A Whistleblower's
15 Revenge" by Susan Goldsmith, New Times Los Angeles, June 8, 2000.

16 D. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County
17 Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004.
18 Plaintiff, who I represented pro bono sought the return of \$45,000.00 he paid to an attorney
19 escrow officer who subsequently absconded with the money. The jury awarded compensatory
20 damages. The Judgment with interest is now far in excess of that amount. Soon after this case
21 was litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono
22 Legal Services.

23 E. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
24 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
25 Customs Agent, followed by an award of Attorneys' fees and costs.

26 F. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West before the
27 Honorable Robert Polis (ret.) (2008). In that case, I represented a victim of FMLA violations and
28 wrongful termination against his former employer. The Neutral Arbitrator awarded
compensatory and liquidated damages. The claims for damages, attorney's fees and costs were
resolved shortly thereafter by means of a confidential settlement.

G. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no.



1 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
2 first and only case to be successfully prosecuted through trial under the Labor Code Private
3 Attorney Generals Act of 2004, Labor Code §§ 2698, et seq. on behalf of plaintiffs and other
4 aggrieved employees against someone other than an employer for civil penalties including unpaid
5 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
6 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
7 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

8 25. Since 2007, I have prosecuted several traditional wage & hour class actions as the
9 sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*, *Singery*
10 *v. Quality Vessel Engineering*, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The*
11 *Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no.
12 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in
13 this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
14 motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with
15 an hourly rate of \$525.00 for my services.

16 26. In my representation of employees, I have prosecuted several lawsuits on behalf
17 of employees with claims of rest and meal period and overtime violations or other wage claims.

18 27. I have been involved in the prosecution of numerous wage and hour class actions
19 at various stages of litigation. A small sampling of the wage and hour class action cases in which
20 I have been counsel of records is as follows:

21 A. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
22 Court, Case No. VCU-245496 (appointed Class Counsel and granted final approval class action
23 settlement on behalf of assistant fitness manager employees).

24 B. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
25 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
26 court on behalf of nonexempt employees).

27 C. *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct.,
Case No. BC465017 (appointed Class Counsel and granted final approval by this Court of class
action settlement on behalf of merchandiser employees).

D. *Deckard v. MSL Community Management LLC*, Riverside County
Superior Court, Case No. RIC1204182 (appointed Class Counsel and granted final approval of



class action settlement on behalf of caregivers and medical technicians).

E. *DiCato v. Francesca's Collections, Inc.*, San Diego County Superior Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class Counsel and granted final approval of class action settlement on behalf of boutique manager and assistant manager employees).

F. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No. BC440058 (appointed Class Counsel and granted final approval by this Court of class action settlement on behalf of personal trainer employees).

G. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class action settlement on behalf of medical devices employees).

H. *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (appointed Class Counsel and granted final approval of class action settlement on behalf of hourly employees).

I. *La Fleur v. Medical Management International, Inc.*, United States District Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class Counsel and granted final approval of class action settlement on behalf of practice managers).

J. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court, Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class action settlement on behalf of non-exempt hourly employees excluding truck drivers).

K. *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (appointed Class Counsel and granted final approval of class action settlement on behalf of security guard employees).

L. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement on behalf of dairy and agricultural laborers).

M. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No. BC442608 (appointed Class Counsel and granted final approval by this Court of class action settlement on behalf of call concert rigging employees).

N. *Nardone v. Sequoia Beverage Company, LP*, Tulare County Superior Court, Case No. VCU-248370 (appointed Class Counsel and granted final approval of class



1 action settlement by the court on behalf of hourly employees).

2 O. *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.*, United
3 States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN
4 (appointed Class Counsel and granted final approval of class action settlement on behalf of virtual
customer account executives).

5 P. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No.
6 BC511072 (appointed Class Counsel and granted final approval of class action settlement on
7 behalf of bobtail truck drivers).

8 Q. *Sandoval v. Rite Aid Corp.*, Los Angeles Superior Court, Case No.
9 BC431249 (granted class certification through contested motion and appointed Class Counsel in
10 case on behalf of former pharmacy employees based on late final wage payments in violation of
11 Labor Code §§ 201–203).

12 R. *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District
13 of Colorado, Case No. 13-CV-01229-REB-BNB (appointed Class Counsel and granted final
14 approval of class action settlement by the court on behalf of auditor employees).

15 S. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed
16 Class Counsel and granted final approval by this Court of class action settlement involving
alleged misclassification of sales employees and unpaid vacation pay).

17 T. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.
18 BC462917 (appointed Class Counsel and granted final approval by this Court of class action
19 settlement on behalf of service account manager employees).

20 U. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case
21 No. BC421485 (granted class certification through contested motion and appointed Class
22 Counsel in case on behalf of former security workers based on late final wage payments in
violation of Labor Code §§ 201–203).

23 V. *Vang v. Burlington Coat Factory Corporation*, United States District
24 Court Central District of California, Case No. 09-CV-08061-CAS-JCx (appointed Class Counsel
25 and granted final approval of class action settlement by the court on behalf of assistant store
26 manager employees).

27 W. *Volney-Parris v. Southern California Edison Company*, Los Angeles
Superior Court, Case No. BC493038 (appointed Class Counsel and granted final approval of



class action settlement on behalf of customer specialist employees).

X. *White v. 20/20 Communications, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1301718 (appointed Class Counsel and granted final approval of class action settlement on behalf of hourly employees).

Class Action Treatment Is Superior

28. A class action is also superior to other means adjudicating the issues in this action. The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. In view of the *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly superior to all of them. Thus, this consideration supports conditional class action treatment for purposes of this Settlement only.

Exposure & Risk Analysis

29. The Settlement resulted from thorough, arms' length, negotiations between experienced counsel with the assistance of a respected mediator after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendants' estimated exposure.

30. I prepared spreadsheets to determine Defendants' maximum exposure in connection with the settlement negotiations. True and correct copies of the spreadsheets I prepared are collectively attached to this declaration as **Exhibit 9**. As a result of Plaintiff's Counsel's analysis of potential monetary recoveries for all claims in this case, Plaintiff's Counsel determined that such monetary remedies could reach \$6,009,505.29 million (of which \$5,006,350 consists of civil penalties) – for defendants with the resources to afford a judgment in this amount. *Id.* The estimates are in essence “home run” projections that omit data points that will undoubtedly reduce the maximum possible damages award and do not factor in any of the risks involved in litigating this Action. The GSA under the Settlement before the Court involves a total payment of about 5% of this amount. A settlement for approximately 5% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.



31. I am aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.¹ PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.² Plaintiff's initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Accounting for such risks, Plaintiff believes a class settlement for \$2750,000 is fair and reasonable.

32. The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff. Defendants deny all allegations of unpaid off-the-clock work. Plaintiff will rely on declarations and witness statements to prove this claim. Generally, a court will not certify a class unless it can determine an appropriate classwide methodology. See, e.g., *Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a class-wide methodology.

¹ In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein* suffered a particularly sizeable injury – the court found that the defendant's policies caused damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in *Bernstein*, who the court noted had received "millions of dollars from the state of California" to train their flight attendants, engaged in glaring violations of the labor code, such as failing to compensate its flight attendants for work performed outside of "block time" (time during which the aircraft is moving), including time spent participating in pre-flight briefings, boarding passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2017) 227 F. Supp. 3d 1049, 1055-1058. Indeed, defendant's liability was so clear in *Bernstein* that the case was resolved on the plaintiffs' motion for summary judgment. *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) U.S. Dist. LEXIS 13253.

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d 1058, the court awarded approximately \$102 million in damages, primarily based on the defendants' failures to comply with the requirements of California Labor Code section 226.

² In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the amended judgment is attached as **Exhibit 10**. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct copy of the judgment transcript is attached as **Exhibit 11**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.



33. There are risks that Plaintiff will not recover an award of premium wages against Defendants for unprovided rest and meal periods. Defendants contend that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal.4th at 1004. So long as an employer provides employees with a “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of Defendants’ time records the exact reasons why a meal period appears to be short or late would be difficult and almost impossible because Plaintiff and the Class Members did not record their meal breaks. It is difficult to ascertain whether Plaintiff and comparable employees did actually take an off-duty, uninterrupted meal or rest break because time records produced by Defendants for mediation do not show any indication of such breaks. Additionally, Defendants contend they did not impede or discourage Plaintiff, or any other employees, from taking their meal or rest periods. Defendants also contend that employees voluntarily skipped their meal breaks to not lose out on base pay or tips, and although they did not always issue premium pay for missed breaks, they always paid employees for all hours worked. Defendants claim that they have no documents recording the employee’s rest breaks. Furthermore, in the recent case of *Alfredo Sanchez v. Miguel Martinez* (2020) 54 Cal. App. 5th 535, the Court of Appeal, Third Appellate District, held that employees could not recover both unpaid minimum wages and one-hour premiums for unpaid rest break claims. Although the Court of Appeal found both theories of liability to be legitimate, it explained that the plaintiffs could not recover under both simultaneously based on the rule against double recovery. Therefore, there is a significant risk to Plaintiff’s meal and rest period claims which led his counsel to discount the settlement value in negotiations.

34. Additionally, there are other risks to Plaintiff’s rest period claim. Employers are not required to record rest periods and such periods are paid. Unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. Managing



such claims at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective.

35. There is a risk that the Court may consider Plaintiff's claims as to Defendants' alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that Defendants required Plaintiff and the Class Members to use their personal mobile telephones to perform their job duties but did not reimburse them for such expenses, nor did they provide them with mobile phones as an alternative. There is a risk that the Court may consider Plaintiff's claims to be individual in nature and unfit for class wide resolution. Defendants also deny this allegation.

36. Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is derivative of them. On their face, the wage statements issued by Defendants comply with the requirements of Labor Code section 226. Further, to the extent that Plaintiff claims Defendants' wage statements were inaccurate because they did not include wages or premium payments that they contend Defendants should have paid, Plaintiff's claims are subject to additional risk, as case law suggests that such premium payments are not to be considered wages, and therefore do not give rise to claims under section 203. *See Jones v. Spherion Staffing, LLC*, 2012 U.S. Dist. LEXIS 112396 at * 26 (C.D. Cal. Aug. 7, 2012) (no claim for Labor Code section 203 penalties based on meal period claims because "the underlying violation that gives rise to a section 226.7 [meal period] claim is not the nonpayment of wages"); *Nguyen v. Baxter Healthcare Corp.* 2011 U.S. Dist. LEXIS 141135 at * 24 (C.D. Cal. Nov. 28, 2011) (holding that Section 226(a) does not even cover meal period premium pay). Accordingly, the *Jones* and *Nguyen* decisions will likely foreclose this claim.³

³ Moreover, the Court of Appeal's decision in *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444, holding that a defendant's failure to pay meal premiums does not give rise to violations of Labor Code sections 226 or 203, is currently pending before the California Supreme Court. *Naranjo v. Spectrum Security Services, Inc.* 2020 Cal. LEXIS 167. Tellingly, the



37. Plaintiff's claims for untimely wages is predicated on Labor Code section 201 to 203. Defendants can argue based on the *Jones* and *Nguyen* decisions, *supra*, that meal or rest premium pay is not a "wage" for purposes of Labor Code section 203 penalties. Further, in the recent decision *Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App. 5th 1239, the Court of Appeal held that unlawful meal and rest periods under section 226.7 cannot serve as a basis for recovery of penalties under section 203. *Id.* at 1252 ("We conclude that the administrative and legislative history of the statute indicates that . . . the Legislature intended section 226.7 first and foremost to *compensate* employees Section 226.7's additional hour of pay is a premium wage not a penalty.") (internal citations and quotation marks omitted). Under the *Loews* decision, it is highly unlikely that the Court will permit untimely wage penalties for Defendants' alleged failure to provide meal and rest period penalties.

38. Regarding PAGA, a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. This is particularly the case considering Defendants' financial condition. Moreover, the current COVID-19 pandemic could motivate the Court to further reduce the penalty award to avoid what it may consider a confiscatory taking.

39. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a significant discount for settlement purposes. For mediation purposes, I estimated a maximum exposure of approximately \$5,000,000 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. Plaintiff's counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. Although two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the

California Supreme Court chose not to depublish the Court of Appeal's decision in advance of its ruling. *Id.*



1 same violation for the same pay period under different Labor Code provisions. This may be
2 because the PAGA does not provide for what many employers characterize as claim splitting and
3 not merely stacking.

4 40. The United States Supreme Court announced on December 15, 2021 that, in the
5 near future, it will hear the matter of *Viking River Cruises, Inc. v. Moriana*, No. 20-1573, and
6 decide (likely no later than the end of summer 2022) whether or not to overrule the California
7 Supreme Court's decision in *Iskanian v. CLS Transportation* (2014) 59 Cal.4th 348 that a private
8 arbitration agreement cannot deprive an employee of his right to sue under PAGA in a court of
9 law. If the Supreme Court sides with the Petitioner, Plaintiff's PAGA claim may be subject to an
10 arbitration agreement allowing only bilateral arbitration and, consequently, inhibiting the claim
11 altogether. While such an outcome would conflict squarely with *EEOC v. Waffle House* (2002)
12 534 US 279 (private settlement agreements do not preclude government prosecutions on behalf
13 of employee signatories to such agreements), this potential outcome is a risk.

14 41. The settlement of PAGA penalties in the sum of \$4,000, of which 75% (\$3,000)
15 will be paid to the LWDA and 25% (\$1,000) will be distributed to the Class, is reasonable and
16 appropriate under the circumstances. The Parties negotiated a good faith amount for PAGA
17 penalties to be paid to the LWDA and to the Class. The portion to be paid to the LWDA was not
18 the result of self-interest at the expense of other Class Members.

19 42. While Plaintiff believes the evidence gathered through Plaintiff's discovery
20 supports the merits of the claims asserted in this lawsuit, Plaintiff recognizes that continued
21 litigation presents significant risks that support a downward departure from Defendants'
22 estimated liability exposure. In view of the risks, the Settlement reflects Class Counsel's estimate
23 of the total amount of damages, monetary penalties or other relief that the class could reasonably
24 expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant
25 risks. It also represents a fair, adequate, and reasonable compromise amount for these claims and
26 warrants preliminary approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir.
27 June 3, 2014) 2014 WL 2465049, * 3.

Settlement Share Payments

43. The Settlement Share payments will be paid to each Class Member based on his or her
Individual Paychecks compared to the aggregate total of all Class Members' Individual
Paychecks. Because this method compensates Class Members based on the extent of their



potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

Attorneys' Fees and Costs

44. I intend to request Class Counsel Attorneys' Fees of \$91,666.66 (one-third of the GSA) and up to \$15,000.00 for actual reasonable litigation costs and expenses incurred in prosecuting the Action. These amounts are reasonable, given the facts and circumstances of the case. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al*. Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No.



CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

45. The amount of fees and costs requested is commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Class Counsel achieved for the Class, and (6) the other cases Class Counsel turned down to devote time to this matter. Class Counsel also interviewed and obtained information from putative class members, met and conferred with Defendants' counsel on numerous occasions, reviewed and analyzed the data and documents provided by Defendants and obtained through other sources, researched applicable law, and estimates of "damages" for purposes of settlement discussions, among other tasks.

46. Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. Considering the amount of the attorney fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

Class Representative Payment

47. The Settlement provides that Plaintiff may seek a Class Representative Payment of \$15,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action and the risks he undertook on behalf of Class Members. Here, Plaintiff has devoted many hours



1 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
2 retaining experienced counsel, providing them with information about his work history with
3 Defendants and Defendants' policies and practices with respect to the wage and hour claims at
4 issue, assisting counsel in identifying witnesses, participating in mediation, and being actively
5 involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In
6 doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay
7 Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§
8 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class
9 shows that the proposed Class Representative Payment is fair, adequate, and reasonable, and thus
warrants preliminary approval.

Settlement Administration Costs

11 48. With regard to the settlement administration costs provision (Settlement, ¶ III.C.),
12 it is reasonable. Before agreeing to Phoenix Settlement Administrators, the Parties sought and
13 reviewed bids from other reputable third-party administrators:

14 A. CPT Group, Inc. = \$10,000;

15 B. Phoenix Settlement Administrators = \$7,000; and

16 C. ILYM Group, Inc. = \$8,990

17 A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 12**. A true
18 and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 13**. A true and
19 correct copy of the bid from Phoenix Settlement Administrators is attached hereto as **Exhibit 14**.
Thus, settlement administration costs provision should be given preliminary approval.

Notice By First Class U.S. Mail Only (No Email)

21 49. The Settlement requires distribution of the Notice of Class Action Settlement by
22 First Class U.S. mail only. Settlement, § IV(B)(2). Although there are current employee Class
23 Members, it is uncertain whether Defendants' records of their contact information include email
24 addresses and Class Members, who perform all of their work away from a desk, are not in a
position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.

25 50. The Notice (Exhibit A to the Settlement) provides Class Members with all
26 pertinent information that they need to fully evaluate their options and exercise their rights under
the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the
Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid;



(4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the Individual Settlement Class Member's estimated payment. Additionally, the Class Notice will include the number of Individual Paychecks a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights.

Settlement Administration Duties

51. The duties of the Settlement Administrator are spelled out in paragraph III(F) of the Settlement and in the bid provided by Phoenix Settlement Administrators a true and correct copy of which is attached hereto as **Exhibit 14**.

Notice of Settlement to the LWDA

51. Pursuant to Labor Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement with the Labor and Workforce Development Agency ("LWDA") at the same time Plaintiff's Motion is being filed with the Court. A true and correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 15**.

I declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on 05 / 25 / 2022 at Encino, California.



DAVID SPIVAK,
Declarant



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8 Attorneys for Plaintiff(s),

9 MARVIN MANN, and all others similarly situated

(Additional attorneys for parties on following page)

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SANTA CLARA**

13 **(UNLIMITED JURISDICTION)**

14 MARVIN MANN, on behalf of himself and all
15 others similarly situated, and as an “aggrieved
16 employee” on behalf of other “aggrieved
17 employees” under the Labor Code Private
Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 WALNUT BREWERY, INC., a Colorado
21 corporation doing business as Rock Bottom
22 Brewery; SPB HOSPITALITY, LLC, a Delaware
limited liability company; and DOES 1–50,
inclusive,

23 *Defendant(s).*

Case No. 21CV377897

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE OF CLAIMS**

Action filed: March 10, 2021

Dept: 3, The Honorable Patricia
M. Lucas

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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MARVIN MANN, and all others similarly situated

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Attorneys for Defendant(s),
WALNUT BREWERY, INC. and SPB HOSPITALITY, LLC

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement
2 Agreement” or “Agreement”) is made and entered into by and between Plaintiff Marvin Mann
3 (“Plaintiff” or “Class Representative”), individually and on behalf of all putative class members,
4 on the one hand, and Defendants Walnut Brewery, Inc. and SPB Hospitality, LLC (collectively
5 “Defendants”). Plaintiff and Defendants are collectively referred to herein as the “Parties.”
6

7 **I. DEFINITIONS.**

8 The following definitions are applicable to this Settlement Agreement, in addition to other
9 terms defined elsewhere in the Agreement:

10 **A. “Action”** shall mean: (1) the civil action commenced on March 10, 2021, by
11 Plaintiff against Defendants in the Superior Court of California, County of Santa Clara, Case No.
12 21CV377897, entitled: “Marvin Mann, on behalf of himself, and all others similarly situated, and
13 as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the Labor Code
14 Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Walnut Brewery, Inc., a Colorado
15 corporation doing business as Rock Bottom Brewery, *et al.*; and DOES 1 through 50, inclusive,
16 *Defendant(s)*.”
17

18 **B. “Class,” “Class Members,” or “Settlement Class”** shall mean all persons
19 Defendants employed as hourly, non-exempt employees, who worked at Rock Bottom Restaurant
20 & Brewery in Campbell, California during the Class Period. Defendants estimate that, as of
21 October 20, 2021, there were approximately 130 members.
22

23 **C. “Class Counsel”** shall mean the attorneys representing Plaintiff in the Action:
24 David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law
25 Group.
26

27 **D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses**
28

1 **Payment**” shall mean the amounts awarded to Class Counsel by the Court to compensate them
2 for, respectively, their fees and expenses in connection with the Action, including their pre-filing
3 investigation, their filing of the Action and all related litigation activities, this Settlement, and all
4 post-Settlement compliance procedures.

5 **E. “Class Notice**” shall mean the Notice of Proposed Settlement attached as **Exhibit**
6 **A** and incorporated by reference into this Agreement.

7 **F. “Class Period**” shall mean the period of time from June 01, 2020, through
8 October 20, 2021.

9 **G. “Class Representative Payment**” shall mean the special payment made to
10 Plaintiff in his capacity as Class Representative to compensate him for initiating the Action,
11 performing work in support of the Action, and undertaking the risk of liability for attorneys’ fees
12 and expenses in the event he was unsuccessful in the prosecution of the Action.

13 **H. “Court**” shall mean the Superior Court for the County of Santa Clara, Downtown
14 Superior Court, 191 North First Street, San Jose, CA 95113.

15 **I. “Defense Counsel**” shall mean the attorneys representing Defendants in the
16 Action: Aron Z. Karabel of Waller Lansden Dortch & Davis, LLP and Adam Miller of Miller
17 Miller Gerber LLP.

18 **J. “Effective Date**” is defined as follows: If no objection to this Settlement or to any
19 of the terms and or conditions of the Settlement are filed by Plaintiff, another member of the
20 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that
21 the Court enters an order of final approval of this Settlement; however, if any objection to this
22 Settlement or to any of the terms and or conditions of the Settlement is filed by a member of the
23 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the
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1 expiration of the time for the filing any appeal of the order of final approval of this Settlement.
2 If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has
3 been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of
4 the appeal or the dissolution of the writ.

5 **K. “Final Approval Hearing”** shall mean the hearing to be conducted by the Court
6 to determine whether to approve finally and implement the terms of this Agreement.

7
8 **L. “Gross Settlement Amount”** shall mean the Gross Settlement Amount of
9 Two Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00) payable by
10 Defendants as provided by this Agreement. The Gross Settlement Amount is non-reversionary;
11 no portion of the Gross Settlement Amount will return to Defendants. Defendants’ employer-
12 side payroll taxes arising from the payments made under this Settlement will be paid by
13 Defendants separate from and in addition to the Gross Settlement Amount. Defendants estimated
14 for purposes of mediation that there are 2,568 Paychecks by 130 Class Members for the period
15 of June 01, 2020, through October 20, 2021.. Before the Parties seek or a Party seeks court
16 approval of the Settlement, the Settlement Administrator will advise Plaintiff’s counsel of
17 Defendants’ report of the total number of Paychecks and Class Members. If the Paychecks and/or
18 Class Members for the Class Period exceeds the referenced 2,568 Paychecks and/or 130 Class
19 Members by more than 10.00%, the Gross Settlement Amount, will increase proportionally
20 according to the number of additional Paychecks or Class Members, whichever results in a higher
21 increase in the Gross Settlement Amount.
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24 **M. “Judgment”** shall mean the Order of Final Judgment entered by the Court that
25 the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
26 this Action.
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1 **N. “Net Settlement Amount”** shall mean \$275,000.00 payable by Defendants
2 pursuant to this Settlement, less:

- 3 1. the Class Representative Payment approved by the Court;
- 4 2. the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
5 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
6 \$15,000.00) approved by the Court;
- 7 3. the Settlement Administrator’s reasonable fees and expenses approved by
8 the Court (not to exceed \$10,000.00);
- 9 4. the amount of \$4,000.00 as PAGA Penalties for the PAGA claim, of which
10 \$1,000.00 will be paid to the PAGA Members and \$3,000.00 will be paid to the LWDA;
- 11 5. any other fees or expenses (other than attorneys’ fees and expenses)
12 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
13 the Court.

14 **O. “PAGA”** means the California Labor Code Private Attorneys General Act of
15 2004 (Lab. Code §§ 2698, *et seq.*).

16 **P. “PAGA Members”** means all individuals Defendants employed as hourly, non-
17 exempt employees, who worked at Rock Bottom Restaurant & Brewery in Campbell, California
18 during the PAGA Period.

19 **Q. “PAGA Penalties”** means the portion of the Gross Settlement Amount that the
20 Parties have agreed to allocate as civil penalties in order to settle claims arising under PAGA.
21 The Parties have agreed to allocate Four Thousand Dollars and Zero Cents (\$4,000.00), of which,
22 payment from the Gross Settlement Amount to the LWDA will be made in the amount of Three
23 Thousand Dollars and Zero Cents (\$3,000.00), which is 75% of the PAGA Penalties. One
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1 Thousand Dollars and Zero Cents (\$1,000.00), 25% of the PAGA Penalties, will remain in the
2 Net Settlement Amount for distribution pro rate to PAGA Members as described in this
3 agreement. PAGA Members will receive payment from the employee portion of the PAGA
4 Penalties regardless of whether they submit a request for exclusion if the PAGA Penalties are
5 approved by the Court.
6

7 **R. “PAGA Period”** shall mean June 01, 2020, through October 20, 2021.

8 **S. “Participating Class”** or **“Participating Class Members”** shall mean all
9 Settlement Class members who do not submit a valid and timely letter requesting to be excluded
10 from the Settlement, consistent with the terms set forth in this Settlement Agreement.

11 **T. “Preliminary Approval of the Settlement”** shall mean the Court’s preliminary
12 approval of the Settlement without material change.
13

14 **U. “Released Claims”** shall mean all claims, rights, demands, liabilities and causes
15 of action that are alleged, or reasonably could have been alleged based on the facts and claims
16 during the period of June 01, 2020, through October 20, 2021 asserted in the Operative Complaint
17 and/or in the letter(s) sent by Plaintiff to the LWDA concerning Defendants and the other
18 Released Parties, whether sounding in law or equity, tort, contract, statute, or other applicable
19 federal, state or local law or regulation, including but not limited to the following claims: failure
20 to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure
21 to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay
22 wages, failure to maintain required payroll records, unfair business practices that could have been
23 premised on the claims, causes of action or legal theories of relief described above or any of the
24 claims, causes of action or legal theories of relief pleaded in the Action, all claims under PAGA
25 or for civil penalties that could have been premised on the claims, causes of action or legal
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1 theories described above or any of the claims, causes of action or legal theories of relief pleaded
2 in the Action or Plaintiff's letter(s) to the LWDA, including but not limited to the California
3 Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510,
4 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2699, and any and
5 all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or
6 attorneys' fees or costs resulting therefrom. Released Claims shall not apply to claims for
7 workers' compensation benefits, unemployment insurance benefits, or any other claim or right
8 that as a matter of law cannot be waived or released. The Parties acknowledge that Released
9 Claims includes any claims for penalties by a PAGA Member resulting from any LWDA
10 investigation. The Parties will meet and confer in good faith if the Court requires changes to the
11 scope of the Released Claims.
12

13 **V. "Released Parties"** shall mean Defendants, SPB Hospitality, LLC, Walnut
14 Brewery, Inc., Craft Brewery Group, LLC, and any of their former and present agents,
15 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
16 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions,
17 joint venturers, assigns, predecessors, successors, service providers, insurers, consultants,
18 subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated
19 organizations, and all persons acting under, by, through or in concert with any of them, and each
20 of them.
21

22 **W. "Response Deadline"** shall mean the date 60 days after the Settlement
23 Administrator mails the Class Notice to Class Members, which is the last date on which Class
24 Members may submit Exclusion Requests, written objections to the Settlement, or Workweek
25 disputes. In the event the 60th day falls on a Sunday or federal holiday, the Response Deadline
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1 will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline
2 for Exclusion Requests or Objections will be extended fifteen (15) calendar days for any Class
3 Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day
4 falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to
5 the next day on which the U.S. Postal Service is open.

6
7 **X. “Settlement”** shall mean the disposition of the Action and all related claims
8 effectuated by this Agreement.

9 **Y. “Settlement Account”** shall mean a fund within the meaning of Treasury
10 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
11 Administrator for the benefit of Participating Class Members and PAGA Members.

12 **Z. “Settlement Administrator”** shall mean Phoenix Settlement Administrators or
13 another administrator proposed by the Parties and appointed by the Court to administer the
14 Settlement. The Parties represent that they do not have any financial interest in the Settlement
15 Administrator or otherwise have a relationship with the Settlement Administrator that could
16 create a conflict of interest.

17
18 **AA. “Settlement Share”** shall mean each Settlement Class Member’s allocated share
19 of the Net Settlement Amount as provided by this Agreement and any payment a PAGA Member
20 is eligible to receive from the PAGA Penalties per Section III.C.4.

21 **II. RECITALS**

22
23 **A.** On or about December 31, 2020, Plaintiff, through his attorneys, sent a letter to
24 the Labor Workforce Development Agency (“LWDA”) alleging the following against
25 Defendant: failure to pay wages, failure to provide meal periods, failure to authorize and permit
26 rest periods, failure to indemnify for business expenses, failure to issue proper wage statements,
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1 failure to timely pay wages, failure to maintain required payroll records, and related allegations
2 (the “PAGA letter”). Plaintiff asserted these representative claims on behalf of all Class Members
3 who are or were employed during the applicable statutory period.

4 **B.** On March 10, 2021, Plaintiff filed a class action complaint in the Santa Clara
5 Superior Court, alleging the same wage and hour claims as set forth in the earlier PAGA letter
6 and adding a cause of action for unfair competition and a cause of action under the Labor Code
7 Private Attorneys General Act of 2004 (“PAGA”). This complaint is the “Operative Complaint.”

8 **C.** On May 17, 2021, Defendants filed a Motion to Dismiss Plaintiff’s Complaint and
9 denied, and continues to deny, all of Plaintiff’s material allegations. Specifically, Defendants
10 deny the failure to pay wages, failure to provide meal periods, failure to authorize and permit rest
11 periods, failure to indemnify for business expenses, failure to issue proper wage statements,
12 failure to timely pay wages, failure to maintain required payroll records, and related allegations
13 in the Action. Defendants contend that they have complied with the Labor Code, the Business &
14 Professions Code, and the applicable Wage Order at all times. Defendants further allege that the
15 Plaintiff’s claims are not amenable to class treatment because common issues do not predominate
16 and further that all such claims are subject to an agreement to arbitrate that Defendants have
17 entered into with Plaintiff and the Class Members.

18 **D.** The Parties thereafter engaged in an informal, voluntary exchange of information
19 in the context of privileged settlement discussions to facilitate an early mediation. The Parties
20 exchanged discovery requests, documents, information, and data including but not limited to ,
21 and related activities.

22 **E.** On October 20, 2021, following much of the foregoing informal discovery and
23 exchange of information, the Parties participated in a mediation session presided over by
24

1 Mediator Michael Loeb, an experienced class action mediator. During the mediation, the Parties
2 had a full day of productive negotiations and reached agreement on a class-wide settlement
3 during follow-up discussions after the mediation session. During the mediation sessions, each
4 side, represented by his/their respective counsel, recognized the risk of an adverse result in the
5 Action and agreed to settle the Action and all other matters covered by this Agreement pursuant
6 to the terms and conditions of this Agreement.
7

8 **F.** Based on their own thorough, independent investigation and evaluation of this
9 case, Class Counsel are of the opinion that the settlement with Defendants for the consideration
10 and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest
11 of the Settlement Class in light of all known facts and circumstances, including the risk of
12 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
13 Defendants, the risks of adverse determinations on the merits, and numerous potential appellate
14 issues. Although Defendants contend that they have no liability in this case, Defendants' counsel
15 shares Class Counsel's belief that the Agreement represents a fair and adequate settlement given
16 the respective risks associated with the case.
17

18 **G.** This Agreement represents a compromise and settlement of highly disputed
19 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants
20 that Plaintiff's claims in the Action have merit or that it has any liability to Plaintiff or the Class
21 on those claims or to the State, or as an admission by Plaintiff that Defendants' defenses raised
22 in the Action have merit. This Agreement is intended to fully, finally, and forever compromise,
23 release, resolve, discharge, and settle the released claims subject to the terms and conditions set
24 forth in this Agreement.
25

26 Based on the foregoing Recitals, the Parties agree as follows:
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1 **III. SETTLEMENT TERMS AND CONDITIONS**

2 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
3 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
4 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not
5 preliminarily and finally approved, the conditional certification of the Settlement Class will be
6 of no force or effect, does not constitute an admission by Defendants that class certification is
7 proper, and will not be deemed admissible in this or any other proceeding, and that the Parties
8 will litigate the issue of class certification.
9

10 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
11 Agreement, the Gross Settlement Amount of Two Hundred and Seventy-Five Thousand Dollars
12 and Zero Cents (\$275,000.00), plus Defendants' employer share of employer-side payroll taxes,
13 is the maximum amount payable by Defendants. In no event will Defendants be required to pay
14 more than the Gross Settlement Amount for distribution to the Plaintiff, Class Counsel, Class
15 Members, LWDA, and Settlement Administrator. However, if the number of Class Members
16 during the Class Period increases by more than 10.00% from 130 Class Members, the Defendants
17 will pay a pro rata increase in the Gross Settlement Amount, including pro rata increases in the
18 Class Counsel Fees Payment, and allocation to the Private Attorneys General Act claim.
19 Likewise, if the number of Paychecks during the Class Period increases by more than 10.00%
20 from 2,568 Paychecks, the Defendants will pay a pro rata increase in the Gross Settlement
21 Amount, including pro rata increases in the Class Counsel Fees Payment, and allocation to the
22 Private Attorneys General Act claim. The release provisions of this Settlement will not take effect
23 until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement.
24

25 **C. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
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1 conditions of this Agreement, the Settlement Administrator will make the following payments
2 out of the Gross Settlement Amount as follows:

3 **1. To Plaintiff.**

4 **(a) Class Representative Payment.** In addition to his Settlement
5 Share, Plaintiff will apply to the Court for an award of not more than Fifteen Thousand Dollars
6 and Zero Cents (\$15,000.00) as his Class Representative Payment. Defendants will not oppose a
7 Class Representative Payment of not more than \$15,000.00. Plaintiff will receive no other
8 payment other than his Settlement Share and Class Representative Payment and acknowledges
9 that he is aware of no other facts or circumstances related to his employment with Defendants
10 that could give rise to any additional entitlement to any further payments. The Settlement
11 Administrator will pay the Class Representative Payment approved by the Court out of the Gross
12 Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class
13 Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that
14 payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due
15 on the Class Representative Payment. The Class Representative Payment is in exchange for the
16 release of Released Claims against the Released Parties, the general Release of Claims by
17 Plaintiff, and for Plaintiff's time, effort and risk in bringing and prosecuting the Action. Any
18 adjustments made by the Court to the requested Class Representative Payment shall not be
19 deemed a material modification of this Settlement Agreement. In the event that the Court reduces
20 or does not approve the requested Class Representative Payment, the Settlement Agreement
21 remains in full force and effect, Plaintiff shall not have the right to revoke the Settlement for that
22 reason, it shall remain binding, and any portion of the Class Representative Payment not awarded
23 to Plaintiff will not revert to Defendants, but instead shall be returned to the Net Settlement
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1 Amount.

2 **2. To Class Counsel.** Class Counsel will apply to the Court for an award of
3 not more than Ninety-One Thousand Six Hundred and Sixty-Six Dollars and Sixty-Six Cents
4 (\$91,666.66) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class Counsel
5 Fees Payment and an amount not more than Fifteen Thousand Dollars and Zero Cents
6 (\$15,000.00) as their Class Counsel Litigation Expenses Payment, and Defendants will not
7 oppose this request. The Settlement Administrator will pay the amount approved by the Court
8 (but not more than Ninety-One Thousand Six Hundred and Sixty-Six Dollars and Sixty-Six Cents
9 (\$91,666.66) in fees and not more than Fifteen Thousand Dollars and Zero Cents (\$15,000.00)
10 in expenses) out of the Gross Settlement Amount. Withholding and deductions will not be taken
11 from the Class Counsel Fees and Litigation Expenses Payment and one or more Forms 1099 will
12 be issued to Class Counsel with respect to those payments.
13

14 **3. To the Settlement Administrator.** The Settlement Administrator will be
15 paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the
16 Court in an amount currently estimated to not exceed Ten Thousand Dollars and Zero Cents
17 (\$10,000.00).
18

19 **4. To the LWDA.** The Parties will jointly apply to the Court for approval of
20 a settlement of claims under the Private Attorneys General Act (“PAGA”), California Labor Code
21 section 2698, *et seq.*, for Four Thousand Dollars and Zero Cents (\$4,000.00), of which, payment
22 from the Gross Settlement Amount to the LWDA will be made in the amount of Three Thousand
23 Dollars and Zero Cents (\$3,000.00), which is 75% of the PAGA settlement. One Thousand
24 Dollars and Zero Cents (\$1,000.00), 25% of the PAGA settlement, will remain in the Net
25 Settlement Amount for distribution and will be distributed to PAGA Members on a *pro rata* basis
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1 based on the total number of Individual Paychecks (full or partial) worked by each PAGA
2 Member during the PAGA Period. Partial Paychecks shall be rounded up to the nearest whole
3 integer. PAGA Members shall receive their portion of the PAGA Penalties regardless of their
4 decision to submit a request for exclusion to opt out of the Settlement.

5 **D. Allocation of Net Settlement Amount and Calculation of Settlement Shares.**

6 Subject to the terms and conditions of this Agreement, the Settlement Administrator will
7 distribute a payment from the Net Settlement Amount to each Participating Class Member. The
8 Settlement Share for each Participating Class Member will be calculated as follows,
9 understanding that the formulas below do not constitute an admission by either party, and are
10 intended only to provide a practical means to simplify and administer the claims process:
11

12 **(a) Participating Class Members' Settlement Shares.** The
13 settlement shares are allocated 33.33% to wages (for which employment taxes will be deducted
14 and W-2s issued) and 66.67% to penalties and interest (for which 1099s will be issued).
15

16 **(b) Class Portion of Settlement Ratio Calculation.** The Settlement
17 Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional
18 number comprised of (a) that Class Member's Individual Paychecks as the numerator, and (b)
19 the aggregate total of all Class Members' Individual Paychecks as the denominator. The
20 Settlement Administrator shall assign to each Class Member the "Settlement Share" which shall
21 be calculated by multiplying that Class Member's Settlement Ratio by amount allocated to Class
22 Members from the Net Settlement Amount.
23

24 **(c) PAGA Portion of Settlement Ratio Calculation.** The Settlement
25 Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional
26 number comprised of (a) that PAGA Member's Individual Paychecks during the PAGA Period
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1 as the numerator, and (b) the aggregate total of all PAGA Members' Individual Paychecks during
2 the PAGA Period as the denominator. The Settlement Administrator shall assign to each PAGA
3 Member the "Settlement Share" which shall be calculated by multiplying that PAGA Member's
4 Settlement Ratio by amount allocated to PAGA Members from the Net Settlement Amount.

5
6 **2. Settlement Share Worksheet.** Upon calculation of the Class Members'
7 and PAGA Members' Settlement Share, the Settlement Administrator shall furnish to Class
8 Counsel and Defense counsel a worksheet containing a list unique identifying numbers for each
9 of the Class Members with their corresponding Individual Paychecks and Settlement Shares.

10 **E. Taxes and Withholdings.** Each Settlement Share is intended, in part, to settle the
11 Class Members' claims for Defendants' failure to pay wages, failure to provide meal periods,
12 failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to
13 issue proper wage statements, failure to timely pay wages, failure to maintain required payroll
14 records, and related violations of PAGA and the unfair competition law. Each Class Member
15 shall be individually responsible for the employee's share of applicable payroll tax withholdings
16 and deductions. Accordingly, each Settlement Share allocated to wages will be reduced by
17 applicable employee-side payroll tax withholdings and deductions, and the Settlement
18 Administrator will issue a Form W-2 to each Participating Class Member. The remaining non-
19 wage payments will be reported on an IRS Form-1099 by the Settlement Administrator. For
20 PAGA Members who submit a timely and valid request for exclusion to opt out of the class
21 portion of the Settlement, 100% of the individual Settlement Share to that individual shall be
22 allocated as penalties, and not wages, for which the Settlement Administrator will issue to the
23 PAGA Member an IRS Form-1099. Defendants will be responsible for the normal employer's
24 share of any payroll tax attributable to the wage portion of the Settlement Share payments.
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1 Defendants' payment of the normal employer's share of payroll taxes attributable to the wage
2 portion of the Settlement Share payments will be in addition to the Gross Settlement Amount or
3 Net Settlement Amount.

4 **F. Appointment of Settlement Administrator.** The Parties will ask the Court to
5 appoint Phoenix Settlement Administrators, a qualified administrator, to serve as the Settlement
6 Administrator, which, as a condition of appointment, will agree to be bound by this Agreement
7 with respect to the performance of its duties and its compensation. The Settlement
8 Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class
9 Members; and using reasonable measures to contact all Class Members, including conducting a
10 National Change of Address search on all Class Members before mailing the Class Notice to
11 each Class Member's address. The Settlement Administrator's duties will also include re-mailing
12 the Class Notice to the Class Member's new address for those Class Members whose address has
13 changed; providing the Parties with weekly status reports about the delivery of Class Notice;
14 calculating Settlement Shares; issuing and distributing checks to effectuate the payments due
15 under the Settlement; reporting to the Court as required; and otherwise administering the
16 Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and
17 expenses, including the cost of printing and mailing the Class Notice, will be paid out of the
18 Gross Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of
19 the Settlement Administrator's fees and expenses that are not used, or which are not awarded by
20 the Court will not revert to Defendants, but instead will be part of the Net Settlement Amount for
21 distribution to Participating Class Members. If the Settlement Administrator's fees and expenses
22 exceed Ten Thousand Dollars and Zero Cents (\$10,000.00), such cost will be deducted from the
23 Net Settlement Amount.
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1 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

2 **A. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel
3 will move the Court for an order granting Preliminary Approval of the Settlement (the “Motion
4 for Preliminary Approval”), setting a date for the Final Approval Hearing, and approving the
5 Class Notice (attached as **Exhibit A** to this Agreement), the Exclusion Request form (attached
6 as **Exhibit B** to this Agreement), and the Paychecks Dispute form (attached as **Exhibit C** to this
7 Agreement). Any disagreement among the Parties concerning the Class Notice or other
8 documents necessary to implement the Settlement will be referred to the Court.
9

10 **1.** At the hearing on the Motion for Preliminary Approval, the Parties
11 anticipate that they will appear and support the granting of the motion, and that Class Counsel
12 will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to Class
13 and Setting Hearing for Final Approval of Settlement.
14

15 **2.** Should the Court decline to approve the Settlement, the Settlement will be
16 null and void and the Parties will have no further obligations under it.

17 **B. Notice to Class Members.** After the Court enters its order granting Preliminary
18 Approval of the Settlement, every Class Member will be provided with a “Class Notice.”

19 **1. List of Class Members.** Within fourteen (14) days after the Court grants
20 Preliminary Approval of the Settlement, Defendants shall provide to the Settlement
21 Administrator:
22

23 **(a)** An electronic database of all Class Members, last known mailing
24 address, Social Security number, and Defendants’ employee identification number (“Class
25 Members’ Data”).

26 **(b)** Corresponding to each Class Member’s name, Defendants shall
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1 provide a figure indicating the total number of Paychecks during the Class Period in which that
2 Class Member was employed by Defendants as a Class Member. That number of Paychecks shall
3 be referred to as that Class Member's "Individual Paychecks."

4 (c) If any of the Class Members' Data are unavailable to Defendants,
5 Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct
6 or otherwise agree upon the Class Members' Data prior to when it must be submitted to the
7 Settlement Administrator. Class Members' Data will otherwise remain confidential and will not
8 be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to
9 Defendants' express written authorization or by order of the Court.

11 **2. Mailing of Class Notice.** Within fourteen (14) days after receiving the
12 Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will
13 mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing
14 address information provided by Defendants, unless modified by any updated address
15 information that the Settlement Administrator obtains in the course of administration of the
16 Settlement.

18 **3. Returned Class Notice.** If a Class Notice is returned because of an
19 incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days
20 from receipt of the returned Class Notice, search for a more current address for the Class Member
21 and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the
22 Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find
23 a more current address. The Settlement Administrator will be responsible for taking reasonable
24 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
25 address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S.
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1 Postal Service. These reasonable steps shall include the tracking of all undelivered mail;
2 performing address searches for all mail returned without a forwarding address; and promptly re-
3 mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed,
4 the Settlement Administrator will note for its own records and notify Class Counsel and
5 Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status
6 report provided to the Parties.
7

8 **4. Declaration of Settlement Administrator.** Not later than twenty-one
9 (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide
10 the Parties for filing with the Court a declaration of due diligence setting forth its compliance
11 with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement
12 Administrator will supplement its declaration of due diligence if any material changes occur from
13 the date of the filing of its prior declaration.
14

15 **C. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
16 estimated Settlement Share, the Class Member may produce evidence to the Settlement
17 Administrator for the Class Period. In order for the dispute to be considered, he/she must follow
18 the directions on the Class Notice. To be valid and timely, all disputes and supporting documents
19 must be postmarked by the Response Deadline. A Class Member may use the Paychecks Dispute
20 form (**Exhibit C** to this Settlement), though a Class Member is not obligated to do so to dispute
21 information in the Class Notice. Absent evidence rebutting Defendants' records, Defendants'
22 records will be presumed determinative. However, if a Class Member produces evidence contrary
23 to Defendants' records by the Response Deadline, the Settlement Administrator shall notify Class
24 Counsel and Defense Counsel to discuss and resolve the dispute, including providing all available
25 relevant information to all counsel. The Parties will resolve all disputes jointly, which shall be
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1 final and binding on any Class Member disputes and shall thereafter instruct the Settlement
2 Administrator how to proceed in processing the dispute. If the Parties cannot reach an agreement,
3 the dispute shall be submitted to the Court for final determination. All such disputes are to be
4 resolved or submitted to the Court not later than fourteen (14) calendar days after the Response
5 Deadline.

6
7 **D. Requests for Exclusion from Settlement; and Objections to Settlement.** Class
8 Members may submit requests to be excluded from the effect of the Settlement, or objections to
9 the Settlement, pursuant to the following procedures:

10 **1. Request for Exclusion from Settlement.** A Class Member may request
11 to be excluded from the effect of this Agreement, and any payment of amounts under this
12 Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class
13 Member wants to be excluded from this Action. This letter must include the Class Member's
14 name, address, telephone number, signature, and a clear statement requesting to be excluded from
15 the settlement of the class claims, as set forth on the Request for Exclusion form or similar to the
16 following: "I wish to exclude myself from the class settlement reached in the matter of *Mann v.*
17 *Walnut Brewery, Inc.* I understand that by excluding myself, I will not receive money from the
18 settlement of my individual claims." To be valid and timely, the request to be excluded must be
19 postmarked by the Response Deadline and received by the Settlement Administrator. A Class
20 Member may use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class
21 Member is not obligated to do so to request exclusion from the Settlement. A Class Member who
22 properly submits a valid and timely request to be excluded from the Action shall not receive any
23 payment of any kind in connection with this Agreement or this Action, shall not be bound by or
24 receive any benefit of this Agreement, and shall have no standing to object to the Settlement,
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1 except that the request for exclusion shall not be effective as to the release of claims arising under
2 PAGA and shall not preclude the Class Member from receiving their share of the PAGA
3 Penalties. A request for exclusion must be mailed to the Settlement Administrator at the address
4 provided on the Class Notice. The Settlement Administrator shall transmit the request for
5 exclusion to counsel for the Parties as follows:
6

7 *To Class Counsel:*

8 David G. Spivak, Esq.
9 The Spivak Law Firm
10 8605 Santa Monica Bl
11 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Aron Z. Karabel, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union St.
Suite 2700
Nashville, TN 37219

12 **2. Objections to Settlement.** The Class Notice will provide that any Class
13 Member who does not request exclusion from the Action and who wishes to object to the
14 Settlement should submit an objection in writing to the Settlement Administrator. To be valid,
15 an objection must be postmarked by the Response Deadline and received by the Settlement
16 Administrator. The written objection to the Settlement should set forth the grounds for the
17 objection and the other information required by this paragraph. The objection should be mailed
18 to the Settlement Administrator at the address provided on the Class Notice. The Settlement
19 Administrator shall transmit the objections to counsel for the Parties as follows:
20

21 *To Class Counsel:*

22 David G. Spivak, Esq.
23 The Spivak Law Firm
24 8605 Santa Monica Bl
25 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Aron Z. Karabel, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union St.
Suite 2700
Nashville, TN 37219

26 Counsel will promptly file such objection with the Court.
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1 The written objection should state the objecting Class Member's full name, address, and
2 the approximate dates of his or her employment with Defendants. The written objection should
3 state the basis for each specific objection and any legal support in clear and concise terms. The
4 written objection also should state whether the Class Member intends to formally intervene and
5 become a party of record in the action, and upon formally intervening, appear and argue at the
6 Final Approval Hearing.
7

8 Regardless of whether an objecting Class Member complies with the objection procedure
9 encouraged above, the Court will provide a Class Member with the opportunity to speak at the
10 final approval hearing regardless of whether he or she has filed an appearance or submitted a
11 written opposition beforehand. If the objecting Class Member does not formally intervene in the
12 action and/or the Court rejects the Class Member's objection, the Class Member will still be
13 bound by the terms of this Agreement.
14

15 **E. Report.** Not later than fourteen (14) days after the deadline for submission of
16 requests for exclusion, the Settlement Administrator will provide the Parties with a complete and
17 accurate list of all Class Members who sent timely requests to be excluded from the Action and
18 all Class Members who objected to the settlement.

19 **F. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
20 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member
21 to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.
22 If Class Members accounting for more than 10.00% of the Class submit valid requests to be
23 excluded from the Settlement, then Defendants shall have the unilateral right to void this
24 Settlement (the "Voiding Right"). Defendants may do so by giving notice to Class Counsel and
25 the Court of their election to void the Settlement not later than the later of (i) seven (7) days
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1 before the Final Approval Hearing; or (ii) ten (10) days after receiving notice that the Voiding
2 Right has accrued. No sums shall be payable by Defendants if this Agreement is voided as
3 provided for herein with one exception: Defendants agree to pay any fees owing to the Settlement
4 Administrator for services rendered in the event Defendants exercise their right to void the
5 Settlement.

6
7 **G. Additional Briefing and Final Approval.** Plaintiff will file with the Court a
8 motion for final approval of the Settlement and payment of the Settlement Administrator's
9 reasonable fees and expenses and a memorandum in support of their motion; and Plaintiff and
10 Class Counsel will serve on Defendants and file with the Court a motion for awards of the Class
11 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
12 Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.

13
14 Before the Final Approval Hearing, the Parties shall be entitled to file and serve a
15 response to any Class Member's objection to the Settlement and/or reply in support of their
16 motion for final approval of the Settlement, and payment of the Settlement Administrator's
17 reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff
18 and Class Counsel may file replies in support of their motions for the Class Representative
19 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

20
21 If the Court ultimately does not grant final approval of the Settlement or grants final
22 approval conditioned on any material change to the Settlement, then either Party will have the
23 unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no further
24 obligations under the Settlement, including any obligation by Defendants to pay the Gross
25 Settlement Amount or any amounts that otherwise would have been payable under this
26 Agreement, except that Defendants and Plaintiff will jointly and equally pay the Settlement
27

1 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
2 right to void the Settlement under this Paragraph. However, an award by the Court of a lesser
3 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment,
4 the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not
5 constitute a material modification to the Settlement within the meaning of this Paragraph and
6 shall not render the Settlement voidable. Plaintiff and Class Counsel shall retain the right to
7 appeal awards of attorneys' fees and costs less than requested.
8

9 Upon final approval of the Settlement by the Court at or after the Final Approval Hearing,
10 the Parties will present for the Court's approval and entry a Proposed Final Order and Judgment.
11 The Final Order and Judgment shall permanently bar all Participating Class Members from
12 prosecuting against Defendants any claims within the scope of the Releases contained in this
13 Agreement.
14

15 After entry of the Judgment, the Court will have continuing jurisdiction over the Action
16 and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement
17 administration matters, and (iii) addressing such post-Judgment matters as may be appropriate
18 under court rules or applicable law.

19 **H. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
20 terms and conditions of this Agreement, and that no Class Member timely objects to the
21 Settlement and formally intervenes into the action as required under the California Supreme
22 Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106
23 (2018) or files a motion pursuant to Civil Procedure Code section 663, Defendants, and their
24 counsel hereby waive, except as provided for in this Agreement or prohibited by law, any and all
25 rights to appeal from the Judgment, including all rights to any post-judgment proceeding and
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1 appellate proceeding, such as a motion to vacate judgment, a motion for new trial, any
2 extraordinary writ, and any appeal, and the Judgment therefore will become non-appealable at
3 the time it is entered. The waiver of appeal does not include any waiver of the right to oppose
4 any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken from the
5 Judgment, the time for consummation of the Settlement (including making any payments under
6 the Settlement) will be suspended until the appeal is fully and finally resolved and the Judgment,
7 consistent with the terms of this Agreement, becomes Final.

9 **I. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
10 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
11 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies
12 the Judgment such that there is a material modification to the Settlement, and that court's decision
13 is not completely reversed and the Judgment is not fully affirmed on review by a higher court,
14 then either Plaintiff or Defendants will have the unilateral right to void the Settlement, which the
15 Party must do by giving written notice to the other Parties, the reviewing court, and the Court,
16 not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or
17 materially modifying the Judgment becomes final. The Party exercising his/their right to
18 unilaterally void the Settlement pursuant to this provision agrees to pay any fees owing to the
19 Settlement Administrator for services rendered. An order vacating, reversing or modifying the
20 Court's award of the Class Representative Payment, or the Class Counsel Fees Payment and/or
21 Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material
22 modification of the Judgment within the meaning of this paragraph, and shall not render the
23 Settlement voidable.

26 **J. Establishment of Settlement Account.** The Settlement Administrator shall
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1 establish a Settlement Account for distributing Settlement Shares and Payments identified in this
2 Agreement. Within ten (10) calendar days of the Effective Date, Defendants shall pay the Gross
3 Settlement Amount into the Settlement Account. Should the 10th calendar day following the
4 Effective Date fall on a weekend or state/federal holiday, Defendants shall remit payment on the
5 following weekday/non-holiday.
6

7 **K. Default on Payment.** In the event Defendants fail to pay any portion of the Gross
8 Settlement Amount, it shall be considered a default. In the event Defendants fail to make any
9 payment on the date it is due, the Settlement Administrator will provide notice to Class Counsel
10 and Defense Counsel within five (5) business days of the missed payment. Thereafter,
11 Defendants will have fifteen (15) days to cure the default and tender payment to the Settlement
12 Administrator. In the event Defendants fail to cure the default within the times set forth herein,
13 Plaintiff may, among other remedies, elect to enter judgment against Defendants, on an ex parte
14 basis, for the balance of the unpaid Gross Settlement Amount to date, and Plaintiff will be entitled
15 to recover interest at ten percent (10%) per year and reasonable attorneys' fees and costs.
16

17 **L. Payment of Settlement Shares.** Within ten (10) calendar days of receipt of the
18 Gross Settlement Amount, the Settlement Administrator shall pay Settlement Shares, from the
19 Settlement Account, to all Class Members (who do not submit valid requests to be excluded from
20 the Action). The Settlement Administrator shall pay each Settlement Share by sending a check
21 in the appropriate amount to the Class Member at the address indicated in the list of Class
22 Member names and addresses provided by Defendants, or as subsequently determined by the
23 Settlement Administrator to be the correct address.
24

25 **M. Uncashed Settlement Share Checks.** Any check issued by the Settlement
26 Administrator to Class Members who do not timely and validly opt out shall be negotiable for
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1 one hundred and eighty (180) calendar days. Those funds represented by checks returned as
2 undeliverable and those checks remaining un-cashed for more than 180 days after issuance
3 (collectively, “Voided Settlement Checks”), plus any interest that has accrued on those funds,
4 will be paid to the California Unclaimed Property Fund.

5 **N.** The Settlement Administrator will mail or wire all required payments no later than
6 fourteen (14) calendar days after receipt of the funds representing the Gross Settlement Amount
7 from Defendants. Proof of payment will be filed with the Court.

8 **O. Final Report by Settlement Administrator to Court.** Within ten (10) calendar
9 days after final disbursement of all funds from the Settlement Account, the Settlement
10 Administrator will serve on the Parties for filing with the Court a declaration providing a final
11 summary report on the disbursements of all funds from the Settlement Account.

12
13 **V. RELEASE OF CLAIMS**

14 **A. Plaintiff and Class Members.** The Parties agree that it is their intent that the
15 resolution set forth in this Settlement will release and discharge the Released Claims by way of
16 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other
17 action of any kind by each and all of the Settlement Class Members (including participation to
18 any extent in any representative or collective action) against the Released Parties. This release
19 will not take effect until Defendants have paid the Gross Settlement Amount in full per this
20 Settlement Agreement. All PAGA Members, regardless of whether they submit timely and valid
21 requests for exclusion from the Settlement, will release all Released Claims under PAGA against
22 the Released Parties. The State of California will also release all Released Claims under PAGA
23 against the Released Parties.

24 **B. Release of Claims by Plaintiff.** Upon the Effective Date, and only after
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1 Defendants pay the entirety of the Gross Settlement Amount, Plaintiff will be deemed to have
2 released the Released Parties of and from all of the Released Claims during the Class Period.
3 These claims include all claims alleged or that could have been alleged based on the facts,
4 circumstances, and/or primary rights at issue in the Complaint and any amendments thereto. They
5 include without limitation: (1) all claims for failure to pay wages earned, including minimum
6 wages, and overtime wages; (2) all claims for failure to provide rest periods and claims for rest
7 period premium pay; (3) all claims for failure to provide meal periods and claims for meal period
8 premium pay; (4) all claims for failure to provide accurate wage statements and related penalties;
9 (5) all claims for failure to timely pay wages during employment and at termination; (6) all claims
10 for violation of California Business and Professions Code §§ 17200, et seq., to the extent such
11 claims are predicated on the other claims released herein; and (7) all claims for violation of
12 PAGA and all related claims for penalties, to the extent such claims are predicated on the other
13 claims released herein. Plaintiff's release set forth herein shall include a waiver of all rights under
14 California Civil Code §1542, which includes a release of all known and unknown claims against
15 the Released Parties during the Class Period. Civil Code section 1542 provides:

16
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18 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
19 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
20 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**
21 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
22 **SETTLEMENT WITH THE DEBTOR.**

23 Upon the Effective Date, Plaintiff will be deemed to have waived his rights under Civil Code
24 §1542 during the Class Period, as set forth above. Plaintiff's release excludes any claim for
25 worker's compensation. It also includes his claims, if any, for harassment, discrimination,
26 wrongful termination, negligent infliction of emotional distress and intentional infliction of
27 emotional distress and related prayers for compensatory and punitive damages, interest, attorney
28 fees and costs.

1 **C. Class Counsel.** As of the date the Judgment becomes Final, and except as
2 otherwise provided by this Agreement, Class Counsel and any counsel associated with Class
3 Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation
4 David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys' fees
5 and expenses against Defendants or the Released Parties arising from or related to the Action,
6 except those incurred to enforce this Agreement and collect the Judgment, including but not
7 limited to claims based on the California Labor Code, the California Civil Code, the California
8 Code of Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the "Class
9 Counsel Released Claims").
10

11 **D. Tax Liability.** Defendants make no representation as to the tax treatment or legal
12 effect of the payments called for in this Agreement, and Plaintiff, Settlement Class Members,
13 and PAGA Members are not relying on any statement, representation, or calculation by
14 Defendants or by the Settlement Administrator in this regard. Plaintiff, Settlement Class
15 Members, and PAGA Members understand and agree that except for Defendants' payment of the
16 employer's portion of any payroll taxes, they will be solely responsible for the payment of any
17 taxes and penalties assessed on the payments described herein.
18

19 **E. Circular 230 Disclaimer.** EACH PARTY TO THIS AGREEMENT (FOR
20 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
21 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
22 PARTY") ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS
23 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
24 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
25 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
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1 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
2 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
3 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
4 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND
5 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH
6 THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
7 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR
8 TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
9 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
10 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
11 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
12 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
13 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
14 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
15 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
16 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
17 AGREEMENT.
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20 **VI. NON-PUBLICITY PROVISION**

21 The Parties and their counsel agree that they will not issue any press releases, initiate any
22 contact with the press, respond to any press inquiry, or have any communication with the press
23 about the fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree
24 that they will not engage in any advertising or distribute any marketing materials relating to the
25 Settlement of this case in any manner that identifies the Defendants, including but not limited to
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1 any postings on any websites maintained by Class Counsel. Neither Plaintiff nor Class Counsel
2 will discuss the terms or the fact of the Settlement with third parties other than (1) their immediate
3 family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3)
4 other Class Members. Plaintiff and Class Counsel agree not to publish any of the terms or
5 conditions of this Settlement in any manner that identifies the Defendants. However, Class
6 Counsel may identify this Settlement in other matters to demonstrate their adequacy as counsel
7 in such other matters.
8

9 **VII. MISCELLANEOUS TERMS**

10 **A. No Effect on Other Benefits.** The Settlement Shares will not result in any
11 additional employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and
12 shall not have any effect on the eligibility for, or calculation of, any employee benefit. Plaintiff
13 and Class Members will be deemed to have waived all such claims, whether known or unknown
14 by them, as part of their release of claims under this Agreement.
15

16 **B. No Admission of Liability.** Defendants deny that they have engaged in any
17 unlawful activity, have failed to comply with the law in any respect, or have any liability to
18 anyone under the claims asserted in the Action. This Agreement is entered into solely for the
19 purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will
20 be construed as an admission of liability or wrongdoing by Defendants, or an admission by
21 Plaintiff that any of his claims was non-meritorious or any defense asserted by Defendants was
22 meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the
23 Action will have no bearing on, and will not be admissible in connection with, any litigation
24 (other than solely in connection with the Settlement).
25

26 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
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1 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
2 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
3 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
4 Defendants or any other Released Parties, including, but not limited to, evidence of a
5 presumption, concession, indication or admission by any of the Released Parties of any liability,
6 fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in
7 evidence against any of the Released Parties, in any further proceeding in the Action, or any other
8 civil, criminal or administrative action or proceeding except for purposes of effectuating the
9 Settlement pursuant to this Agreement.
10

11 **D. Integrated Agreement.** After this Agreement is signed and delivered by all
12 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
13 between the Parties relating to the Settlement, and it will then be deemed that no oral
14 representations, warranties, covenants, or inducements have been made to any Party concerning
15 this Agreement or its exhibits other than the representations, warranties, covenants, and
16 inducements expressly stated in this Agreement and its exhibits.
17

18 **E. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
19 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
20 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
21 its terms, and to execute any other documents required to effectuate the terms of this Agreement.
22 The Parties and their counsel will cooperate with each other and use their best efforts to effect
23 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
24 the form or content of any document needed to implement the Agreement, or on any supplemental
25 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will
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1 seek the assistance of the Court, and in all cases, all such documents, supplemental provisions
2 and assistance of the court will be consistent with this Agreement.

3 **F. Use and Return of Documents and Data.** Upon written request from
4 Defendants, Class Counsel will return or destroy all originals, copies, and summaries of
5 documents and data provided to Class Counsel by Defendants in connection with the settlement
6 negotiations in this matter. Class Counsel will confirm in writing to Defendants the destruction
7 of all such documents and data within fourteen (14) days of such request.
8

9 **G. Modification of Agreement.** This Agreement, and all parts of it, may be
10 amended, modified, changed, or waived only by an express written instrument signed by all
11 Parties or their successors-in-interest.

12 **H. Agreement Binding on Successors.** This Agreement will be binding upon, and
13 inure to the benefit of, the successors of each of the Parties.
14

15 **I. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
16 be governed by and interpreted according to the laws of the State of California, without giving
17 effect to any conflict of law principles or choice of law principles.

18 **J. Cooperation in Drafting.** The Parties have cooperated in the drafting and
19 preparation of this Agreement. This Agreement will not be construed against any Party on the
20 basis that the Party was the drafter or participated in the drafting.

21 **K. Fair Settlement.** The Parties and their respective counsel believe and warrant that
22 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived
23 at this Agreement through arms-length negotiations, considering all relevant factors, current and
24 potential.
25

26 **L. Headings.** The descriptive heading of any section or paragraph of this Agreement
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is inserted for convenience of reference only and does not constitute a part of this Agreement.

M. Notice. All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third calendar day after mailing by United States mail, addressed as follows:

To Class Counsel:
David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:
Aron Z. Karabel, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union St.
Suite 2700
Nashville, TN 37219

N. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

[Signature Page to Follow]

03 / 21 / 2022

Dated: February __, 2022

By:

MARVIN MANN

April 28, 2022

Dated: February __, 2022

By:

Steven D. Guterman
Corporate Counsel
Walnut Brewery, Inc., Craft Brewery
Group, LLC, and SPB Hospitality, LLC

THE SPIVAK LAW FIRM

03 / 28 / 2022
Dated: February __, 2022

By:

DAVID G. SPIVAK, Attorneys for
Plaintiff, MARVIN MANN, and all
others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: February 18, 2022

By:

WALTER L. HAINES, Attorneys for
Plaintiff, MARVIN MANN, and all
others similarly situated

WALLER LANSDEN DORTCH & DAVIS,
LLP

Dated: February __, 2022

By:

ARON Z. KARABEL, Attorneys for
Defendants, WALNUT BREWERY,
INC., Craft Brewery Group, LLC, and
SPB HOSPITALITY, LLC

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EXHIBIT A

1 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND**
2 **HEARING DATE FOR COURT APPROVAL**

3 *Marvin Mann v. Walnut Brewery, Inc., et al., Case No. 21CV377897*

4 **As a current or former hourly, non-exempt employees, who worked at Rock Bottom**
5 **Restaurant & Brewery in Campbell, California in California, you may be entitled to**
6 **receive money from a class action settlement.**

7 PSA ID: <<PSA ID>>

8 Please provide current address (if different) here:

9 <<Name>>

10 <<Address1>>

11 <<Address2>>

12 <<City>>, <<State>> <<Zip Code>>

13 *The Santa Clara County Superior Court has authorized this Class Notice.*
14 *This is not a solicitation from a lawyer.*

15 YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION
16 SETTLEMENT IF YOU ARE A CURRENT OR FORMER HOURLY, NON-EXEMPT
17 EMPLOYEE, WHO WORKED AT ROCK BOTTOM RESTAURANT & BREWERY IN
18 CAMPBELL, CALIFORNIA FOR WALNUT BREWERY, INC., CRAFT BREWERY
19 GROUP, LLC AND SPB HOSPITALITY, LLC BETWEEN JUNE 1, 2020, AND OCTOBER
20 20, 2021.

- 21 • A proposed settlement of \$275,000.00 (the “Gross Settlement Amount”) will be used to pay
22 claims to: All persons Defendants Walnut Brewery, Inc. and SPB Hospitality, LLC employed
23 as hourly, non-exempt employees, who worked at Rock Bottom Restaurant & Brewery in
24 Campbell, California during the “Class Period” of June 01, 2020, to October 20, 2021 (the
25 “Class Members”). The Gross Settlement Amount includes (a) expenses and fees of the
26 Settlement Administrator up to \$10,000.00; (b) an Class Representative Payment of
27 \$15,000.00 to the Plaintiff Marvin Mann as the class representative; (c) attorneys’ fees of up
28 to \$91,666.66 and litigation expenses of up to \$15,000.00 to Class Counsel; and (d) \$4,000.00
allocated to settle claims brought pursuant to the Private Attorneys General Act, California
Labor Code Section 2698, *et seq.* (“PAGA”) (75% of which will go to the California Labor
& Workforce Development Agency (“LWDA”) and 25% of which will go to Class
Members). The Court must approve these payments at the Final Approval Hearing.
- Defendants estimated for purposes of mediation that there are 2,568 Paychecks by 130 Class
Members for the period of June 01, 2020, through October 20, 2021. Before the Parties seek
or a Party seeks court approval of the Settlement, the Settlement Administrator will advise
Plaintiff’s counsel of Defendants’ report of the total number of Paychecks and Class
Members. If the total Paychecks and/or Class Members for the Class Period exceeds the
referenced 2,568 Paychecks and/or 130 Class Members by more than 10.00%, the Gross
Settlement Amount, including the Class Counsel Fees Payment, the Class Representative

Payment, and the LWDA payment, will increase proportionally according to the number of additional Paychecks or Class Members, whichever results in a higher increase in the Gross Settlement Amount.

- The settlement resolves a lawsuit entitled *Marvin Mann v. Walnut Brewery, Inc., et al.*, Case No. 21CV377897 (the “Action”) for Defendants’ alleged failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and other legal consequences that would follow from these failures, including claims under California’s Business & Professions Code and PAGA. This settlement avoids the costs and risks from continuing the Action, pays money to persons like you, and releases Defendants from alleged liability.
- The Court has not made a determination of the validity of the claims in the Action. Defendants deny any and all liability arising from any of the claims and contend that they are not responsible for failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, or related wrongs, and fully complied with all applicable laws.
- Class Members will receive a payment based on the number of Paychecks, rounded up to the nearest full Paycheck, during the Class Period.

**PLEASE READ THIS ENTIRE CLASS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED BY IT.**

HOW MUCH WILL I GET?

You have a total number of <<number of Paychecks>> Paychecks during the Class Period.
It is expected that you will receive approximately <<Individual Settlement Payment amount>> from this Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Action.
OPT OUT	Receive no payment and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Action. However, you may not opt out of the PAGA Released Claims.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix Settlement Administrators, about why you do not like the settlement, and they will forward your concerns to counsel which will then be provided to the Court.
DISPUTE THE PAYCHECKS CALCULATION	If you feel that you worked a different amount of Paychecks as an hourly, non-exempt employees, who worked at Rock Bottom Restaurant & Brewery in Campbell, California than identified

1		above, you may dispute that calculation by writing to the Settlement Administrator.
2	ATTEND A HEARING	You have the right to attend a fairness hearing that will be
3		conducted by the Court, but you are not required to attend. If you
4		timely file and serve a written objection, and if you also want to
5		speak about your objection at the hearing, you should send a letter
6		to the Settlement Administrator, Phoenix Settlement
		Administrators, providing notice of your intention to appear and
		speak at the hearing.

7 **IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT**

8 **1. Why did I get this Class Notice?**

9 You were sent this Class Notice because you have a right to know about the proposed settlement
10 in the Action and about all of your options before the Court rules on whether to finally approve
11 the settlement. If the Court approves the settlement, and after any objections and appeals are
12 resolved, a “Settlement Administrator” appointed by the Court will make the payments that the
13 settlement allows. This Class Notice explains the Action, the proposed settlement, your legal
14 rights, and what benefits are available and how to receive them.

15 The Court in charge of this case is the Santa Clara County Superior Court. The person who sued
16 is called “Plaintiff” and the organizations he sued are called “Defendants.”

15 **2. What is the Action about?**

16 In the Action, Marvin Mann (“Plaintiff”) alleged multiple violations of the California Labor
17 Code, the California Business & Professions Code, and PAGA, including causes of action for:
18 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
19 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
20 timely pay wages, failure to maintain required payroll records, unfair competition under
21 California’s Business & Professions Code, and claims for civil penalties for violations of the
22 PAGA.

21 **3. Why is there a settlement?**

22 The parties disagree on the probable outcome of the case with respect to liability, damages, and
23 how much money could be recovered if the Plaintiff won at trial. Defendants believe the Plaintiff
24 would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiff or
25 Defendants. There has been no trial in this case. Instead, both sides recognize the risks, expenses,
26 and disruption associated with continued litigation and they have therefore chosen to resolve
27 their differences by entering into a settlement. By doing so, the parties can avoid the cost of a
28 trial, yet Class Members are still entitled to receive payments if they comply with the instructions
in this Class Notice. The parties entered into this settlement after arms-length negotiations while
using the services of an experienced and neutral mediator. The Plaintiff and Class Counsel

1 believe that the proposed settlement is fair and reasonable and is in the best interest of the Class
2 Members.

3 **4. What is a class action settlement?**

4 The Court must approve the terms of the proposed settlement as fair and reasonable. Once
5 approved, the settlement will affect all Class Members, except those who have properly opted
6 out. This Class Notice explains your legal rights, the terms of the settlement, what you must do
7 to participate, and the amount of money you may receive. Please read this entire Class Notice
8 carefully.

9 **5. What should I do?**

10 You can do nothing, and if you are entitled to a payment, you will be paid. Be mindful, however,
11 that if this Class Notice reaches you and the address where you now live is different, you need
12 to contact the Settlement Administrator and provide updated information so that any future
13 correspondence or the settlement check itself reaches you and is not returned as an address
14 unknown.

15 **6. How much will my payment be?**

16 After all fees, costs, and offsets are taken as set forth under the Settlement Agreement (which is
17 available for review), the remainder will be used to pay Class Members a pro-rata payment based
18 on the number of Paychecks each Class Member worked during the Class Period and PAGA
19 Members a pro-rata payment based on the number of Paychecks each PAGA Member worked
20 during the PAGA Period (“Pro-Rata Share”).

21 The Settlement Administrator shall determine by how many Paychecks each such Class Member
22 has.

23 Your estimated payment is listed above, on page 2 of this document. If you do not dispute your
24 Paychecks calculation, and do not opt out of the settlement, you will be bound by the settlement
25 and receive a settlement payment. **In other words, you do not need to take any action to
26 receive a settlement payment.**

27 If you wish to dispute the number of Paychecks credited to you or anything else about your
28 employment status, you must write to the Settlement Administrator indicating what you believe
is incorrect and return it on or before <<date>> [60 days after initial mailing] via U.S. Mail with
proof of the submission date (such as a postmark or delivery service date stamp). You may use
the enclosed Paychecks Dispute Form for this purpose. If the Settlement Administrator re-mailed
your Class Notice to a new address, you will have additional 15 days from the date of the re-
mailed Class Notice to write to the Settlement Administrator to dispute your Paychecks
information. You must also send any documents or other information that you contend supports
your belief that the information set forth above is incorrect. The Settlement Administrator will
resolve any dispute based upon Defendants’ records and any information you provide. Please be

1 advised that the information on this Notice is presumed to be correct unless the documents you
2 submit are company records from Defendants.

3 7. When would I get my payment?

4 The Court will hold a hearing on <<final approval hearing date>> at <<final approval hearing
5 time>> [a/p].m to decide whether to approve the proposed settlement. If the Court approves the
6 settlement and anyone objects, there may be appeals. It is always uncertain when these objections
7 and appeals can be resolved, and resolving them can take time. To check on the progress of the
8 settlement, call the Settlement Administrator at <<settlement administrator phone number>>, or
9 contact Class Counsel (see below for Class Counsel's contact information.). Please be patient.

10 You will have 180 days to cash your settlement check. If a mailed individual settlement payment
11 is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check),
12 all uncashed funds will be paid to the California State Controller's Office Unclaimed Property
13 Fund with the identity of the Class Member to whom the funds belong, to be held for the Class
14 Member.

15 8. What am I releasing?

16 If you do not exclude yourself from the settlement (according to the procedures explained below),
17 you will release certain claims as follows:

18 The Parties agree that it is their intent that the resolution set forth in this Settlement will
19 release and discharge the Released Claims by way of any further attempt, by lawsuit,
20 administrative claim or action, arbitration, demand, or other action of any kind by each
21 and all of the Settlement Class Members (including participation to any extent in any
22 representative or collective action) against the Released Parties. This release will not take
23 effect until Defendants have paid the Gross Settlement Amount in full per this Settlement
24 Agreement. All PAGA Members, regardless of whether they submit timely and valid
25 requests for exclusion from the Settlement, will release all Released Claims under PAGA
26 against the Released Parties. The State of California will also release all Released Claims
27 under PAGA against the Released Parties.

28 **"Released Claims"** shall mean all claims, rights, demands, liabilities and causes of action
that are alleged, or reasonably could have been alleged based on the facts and claims
during the period of June 01, 2020, through October 20, 2021 asserted in the operative
complaint filed by Plaintiff in the Action and/or in the letter(s) sent by Plaintiff to the
LWDA concerning Defendants and the other Released Parties, whether sounding in law
or equity, tort, contract, statute, or other applicable federal, state or local law or regulation,
including but not limited to the following claims: failure to pay wages, failure to provide
meal periods, failure to authorize and permit rest periods, failure to indemnify for
business expenses, failure to issue proper wage statements, failure to timely pay wages,
failure to maintain required payroll records, unfair business practices that could have been
premised on the claims, causes of action or legal theories of relief described above or any
of the claims, causes of action or legal theories of relief pleaded in the Action, all claims

1 under PAGA or for civil penalties that could have been premised on the claims, causes of
2 action or legal theories described above or any of the claims, causes of action or legal
3 theories of relief pleaded in the Action or Plaintiff's letter(s) to the LWDA, including but
4 not limited to the California Code of Regulations and to Labor Code sections 201, 202,
5 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197,
6 1197.1, 1198, 2802, and 2699; and any and all damages, restitution, disgorgement, civil
7 penalties, statutory penalties, taxes, interest or attorneys' fees or costs resulting therefrom.
8 Released Claims shall not apply to claims for workers' compensation benefits,
9 unemployment insurance benefits, or any other claim or right that as a matter of law
10 cannot be waived or released. The Parties acknowledge that Released Claims includes
11 any claims for penalties by a PAGA Member resulting from any LWDA investigation.
12 The Parties will meet and confer in good faith if the Court requires changes to the scope
13 of the Released Claims.

14 **"Released Parties"** shall mean Defendants, SPB Hospitality, LLC, Walnut Brewery,
15 Inc., Craft Brewery Group, LLC, and any of their former and present agents, employees,
16 servants, officers, directors, partners, trustees, representatives, shareholders,
17 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations,
18 divisions, joint venturers, assigns, predecessors, successors, service providers, insurers,
19 consultants, subcontractors, joint employers, employee benefit plans and fiduciaries
20 thereof, affiliated organizations, and all persons acting under, by, through or in concert
21 with any of them, and each of them.

22 The release provisions of this Settlement will not take effect until Defendants have paid the Gross
23 Settlement Amount in full per this Settlement Agreement.

24 9. How can I opt out of this settlement?

25 You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail
26 to the Settlement Administrator with the following sentence, or something similar, stating: "I
27 request to be excluded from the class action proceedings in the matter of *Marvin Mann v. Walnut*
28 *Brewery, Inc.*, Case No. 21CV377897." You may use the enclosed "Election not to Participate
in Settlement Form" for this purpose. You will have 60 **days** from the date of mailing of this
Class Notice to do so. Your Opt-Out request must be in writing and mailed to the Settlement
Administrator, Phoenix Settlement Administrators, <<settlement administrator mailing
address>> and be postmarked no later than <<response deadline>>, or it will not be considered,
and you will be bound by the settlement. If the Settlement Administrator re-mailed your Class
Notice to a new address, you will have additional 15 days from the date of the re-mailed Class
Notice to opt out. You must include your full name (and former names, if any) and address in
your request and you must sign the written request. However, you cannot opt-out of the PAGA
Released Claims and will receive your pro rate share of the PAGA Penalties whether or not you
opt of out of the settlement.

10. Do I have a lawyer in this case?

1 The Court has appointed David G. Spivak of the The Spivak Law Firm, 8605 Santa Monica Bl,
2 PMB 42554, West Hollywood, CA 90069, Telephone: (213) 725-9094 Main,
3 david@spivaklaw.com, and Walter Haines of United Employees Law Group to represent you
4 and other Class Members in the Action. These lawyers are called Class Counsel. They will be
compensated from the Gross Settlement Amount as discussed in this Class Notice. If you want
to be represented by your own lawyer, you may hire one at your own expense.

5 **11. How will the lawyers be paid?**

6 Class Counsel will ask the Court to award them fees of approximately 33 and 1/3% (one-third)
7 of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs of
8 not more than \$15,000.00 incurred in connection with the Action. The Court may choose to
award less than the amount requested by Class Counsel.

9 **12. How do I tell the Court that I do not like the settlement?**

10 You can ask the Court to deny approval by objecting. You cannot ask the Court to order a larger
11 settlement; the Court can only approve or deny the settlement. If the Court denies the settlement,
12 no settlement payments will be sent out and the Action will continue. If that is what you want to
happen, you must object.

13 You may object to the proposed settlement in writing or in person. You may also appear at the
14 Final Approval Hearing, either in person or through your own attorney. If you appear through
15 your own attorney, you are responsible for paying that attorney. All written objections and
16 supporting papers should (a) clearly identify the case name and number (*Marvin Mann v. Walnut
Brewery, Inc.*, Case No. 21CV377897), (b) be submitted to the Settlement Administrator by
17 mailing them to the Settlement Administrator, Phoenix Settlement Administrators, <<settlement
18 administrator mailing address>>, and (c) be filed or postmarked on or before <<response
19 deadline>>. If the Settlement Administrator re-mailed your Class Notice to a new address, you
will have additional 15 days from the date of the re-mailed Class Notice to object. Class Members
may appear at the final approval hearing to be heard on their objections, even if they have not
previously served a written objection.

20 **13. When and where will the Court decide whether to approve the settlement?**

21 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
22 hearing time>> [a/p].m in Department 3 at the Santa Clara County Superior Court, Downtown
23 Superior Court, 191 North First Street, San Jose, CA 95113, (The Honorable Patricia M. Lucas
presiding). At this hearing, the Court will consider whether the settlement is fair, reasonable, and
adequate. If there are objections that were properly made, the Court will consider them. The
24 Court will listen to people who have asked to speak at the hearing. The Court may also decide
25 how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to
approve the settlement. We do not know how long this decision will take.

26 **14. Do I have to come to the hearing?**

1 No. Class Counsel will answer any questions that the Court may have. But you are welcome to
2 come at your own expense. If you sent an objection, you do not have to come to Court to talk
3 about it. As long as you timely mailed your written objection, the Court will consider it. You
may also pay your own lawyer to attend, but it is not required.

4 **15. May I speak at the hearing?**

5 Regardless of whether you properly objected to the settlement, you may speak at the fairness
6 hearing.

7 **16. What happens if I do nothing at all?**

8 You will participate in the settlement and receive payment. You will be bound by the release as
9 set forth herein.

10 **GETTING MORE INFORMATION**

11 This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel
12 or the Settlement Administrator if you would like more information about the case. You may
13 call <<settlement administrator phone number>> or write the Settlement Administrator, Phoenix
Settlement Administrators, located at <<settlement administrator mailing address>>.

14 You can also access the Santa Clara County Superior Court's Online Services at
15 <https://www.>, or by visiting the Clerk's Office at the Santa Clara County
Superior Court, Downtown Superior Court, 191 North First Street, San Jose, CA 95113),
16 between _:0 a.m. and _:0 p.m., Monday through Friday, excluding Court holidays.

17 **PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE**
18 **TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

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EXHIBIT B

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR
A SHARE OF THE SETTLEMENT PROCEEDS,
DO NOT FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND
SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, POSTMARKED NOT LATER
THAN <<RESPONSE DEADLINE>>:**

Mann v. Walnut Brewery, Inc. Class Action Settlement Administrator
c/o _____

I declare as follows: I have received notice of the proposed settlement in this action, and I wish to be excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be bound by the Settlement and also will not share in the settlement proceeds.

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on _____.

Dated: _____
(Signature)

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EXHIBIT C

PAYCHECK DISPUTE FORM

Superior Court of The State of California
For The County of Santa Clara
Marvin Mann v. Walnut Brewery, Inc., Case No. 21CV377897

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

TO ALL HOURLY, NON-EXEMPT EMPLOYEES, WHO WORKED AT ROCK BOTTOM RESTAURANT & BREWERY IN CAMPBELL, CALIFORNIA AT ANYTIME BETWEEN JUNE 1, 2020, THROUGH OCTOBER 20, 2021.

The amount of your estimated Settlement Award is based upon the number of Eligible Paychecks you worked between June 01, 2020, and October 20, 2021, and Eligible Paychecks you worked between June 01, 2020, and October 20, 2021. "Individual Class Paychecks" are defined as any Paycheck in which you worked at least one (1) day as an hourly, non-exempt employee, who worked at Rock Bottom Restaurant & Brewery in Campbell, California for Craft Brewery Group, LLC, Walnut Brewery, Inc., and SPB Hospitality, LLC (collectively "Defendants") in California during the pay period. "Individual PAGA Paychecks" are defined as any Paycheck in which you worked at least one (1) day as an hourly, non-exempt employees, who worked at Rock Bottom Restaurant & Brewery in Campbell, California for Defendants during the pay period during the period of June 01, 2020, through October 20, 2021. The number of Class and PAGA Paychecks applicable to your claim are set forth below.

YOUR ELIGIBLE PAYCHECKS

Defendants' records indicate that you worked <<number of Paychecks>> Paychecks between June 01, 2020, and October 20, 2021, and <<number of Paychecks>> Paychecks between June 01, 2020, through October 20, 2021.

YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE

Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment in the approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This process may take six months or more. You will receive a Form W-2 reflecting the payment to you. Your Settlement Share reflected on this Notice is only an estimate. The exact amount of the payment could vary, up or down.

If you wish to dispute the number of Individual Class Paychecks credited to you, or anything else about your employment status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to the Settlement Administrator via U.S. Mail with proof of the submission date (such as a postmark or delivery service date stamp). You must also send any documents or other information that you contend supports your belief that the information set forth above is incorrect. The Settlement Administrator will resolve any dispute based upon Defendants' records and any information you provide. Please be advised that the information on this Paychecks Dispute Form is presumed to be correct unless the documents you submit are company records from Defendants.

1 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF PAYCHECKS, RECEIPT**
2 **OF A DIRECT SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED**
3 **TO TAKE ANY ACTION**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)

MARVIN MANN, on behalf of himself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

WALNUT BREWERY, INC., a Colorado corporation doing business as Rock Bottom Brewery; SPB HOSPITALITY, LLC, a Delaware limited liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 21CV377897

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Action filed: March 10, 2021
Dept: 3, The Honorable Patricia M. Lucas

The Motion of Plaintiff Marvin Mann (hereafter referred to as “Plaintiff”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, The Honorable Patricia M. Lucas presiding. The Court having considered the Motion, the Joint

1 Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement
2 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

3 1. The Court grants preliminary approval of the Settlement and the Settlement Class
4 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
5 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
6 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
7 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
8 Settlement falls within the range of reasonableness and appears to be presumptively valid,
9 subject only to any objections that may be raised at the final hearing and final approval by this
10 Court. The Court will make a determination at the hearing on the motion for final approval of
11 class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair,
12 adequate and reasonable to the Settlement Class.
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14 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
15 all persons Defendants employed as hourly, non-exempt employees, who worked at Rock
16 Bottom Restaurant & Brewery in Campbell, California for Defendants (collectively “Class
17 Members”), who worked anytime during the Class Period. The “Class Period” shall mean the
18 period of time from June 01, 2020, through October 20, 2021. Defendants estimated for purposes
19 of mediation that there are 2,568 Paychecks by 130 Class Members for the Class Period. Before
20 the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator
21 will advise Plaintiff’s counsel of Defendants’ report of the total number of Paychecks and Class
22 Members. If the Paychecks and/or Class Members for the Class Period exceeds the referenced
23 2,568 Paychecks and/or 130 Class Members by more than 10.00%, the Gross Settlement
24 Amount, including the Class Counsel Fees Payment, the Class Representative Payment, and the
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1 LWDA payment will increase proportionally according to the number of additional Paychecks
2 or Class Members, whichever results in a higher increase in the Gross Settlement Amount. The
3 “Effective Date” means as follows: If no objection to the Settlement or to any of the terms and
4 or conditions of the Settlement are filed by Plaintiff, another member of the Settlement class, or
5 any intervenor to this Lawsuit, the Effective Date shall occur on the day that the Court enters an
6 order of final approval of this Settlement; however, if any objection to the Settlement or to any
7 of the terms and or conditions of the Settlement is filed by a member of the Settlement class, or
8 any intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for
9 the filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any
10 writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ
11 dissolved and when there is no further time to appeal the dismissal of the appeal or the
12 dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation
13 of Defendants to pay any funds into the Settlement Account (as defined in the Settlement).
14

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16 3. This action is provisionally certified pursuant to section 382 of the California
17 Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action
18 for purposes of settlement only with respect to the proposed Settlement Class.

19 4. The Court hereby preliminarily finds that the Settlement was the product of
20 serious, informed, non-collusive negotiations conducted at arm’s length by the Parties. In
21 making this preliminary finding, the Court considered the nature of the claims set forth in the
22 pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the
23 allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement
24 represents a compromise of the Parties’ respective positions. The Court further preliminarily
25 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
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1 preferential treatment to any individual Class Member. Accordingly, the Court preliminarily
2 finds that the Settlement was entered into in good faith.

3 5. The Court finds that the dates set forth in the Settlement for mailing and
4 distribution of the Class Notice meet the requirements of due process and provide the best notice
5 practicable under the circumstances and constitutes due and sufficient notice to all persons
6 entitled thereto and directs the mailing of the Class Notice by first class mail to the Settlement
7 Class as set forth in the Settlement. Accordingly, the Court orders the following implementation
8 schedule for further proceedings:
9

10 a. By _____, Defendants shall provide
11 _____, the appointed Settlement Administrator,
12 with: (a) An electronic database of all Class Members, last known mailing
13 address, Social Security number and Defendants' employee identification
14 number ("Class Members' Data"); and (b) Corresponding to each Class
15 Member's name, Defendants shall provide a figure indicating the total
16 number of Paychecks during the Class Period and the PAGA Period in which
17 Defendants employed the Class Member. That number of Paychecks shall be
18 referred to as that Class Member's "Individual Paychecks;" (c) If any of the
19 Class Members' Data are unavailable to Defendants, Defendants will so
20 inform Class Counsel and the Parties will make their best efforts to
21 reconstruct or otherwise agree upon the Class Members' Data prior to when
22 it must be submitted to the Settlement Administrator. Class Members' Data
23 will otherwise remain confidential and will not be disclosed to anyone, except
24 as necessary to applicable taxing authorities, or pursuant to Defendants'
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1 express written authorization or by order of the Court.

2 b. **Mailing of Class Notice.** By _____, approximately
3 fourteen (14) days after receiving the Class Members' Data, or as soon
4 thereafter as it can do so, the Settlement Administrator will mail the Class
5 Notice to all identified Class Members via first-class U.S. mail using the
6 mailing address information provided by Defendants, unless modified by any
7 updated address information that the Settlement Administrator obtains in the
8 course of administration of the Settlement.
9

10 c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect
11 address, the Settlement Administrator will promptly, and not later than ten
12 (10) days from receipt of the returned Class Notice, search for a more current
13 address for the Class Member and re-mail the Class Notice to the Class
14 Member. The Settlement Administrator will use the Class Members' Data
15 and otherwise work with Defendants' Counsel and Class Counsel to find a
16 more current address. The Settlement Administrator will be responsible for
17 taking reasonable steps, consistent with its agreed-upon job parameters, court
18 orders, and fee, to trace the mailing address of any Class Member for whom
19 a Class Notice is returned as undeliverable by the U.S. Postal Service. These
20 reasonable steps shall include the tracking of all undelivered mail;
21 performing address searches for all mail returned without a forwarding
22 address; and promptly re-mailing to Class Members for whom new addresses
23 are found. If the Class Notice is re-mailed, the Settlement Administrator will
24 note for its own records and notify Class Counsel and Defendants' Counsel
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1 of the date and address of each such re-mailing as part of a weekly status
2 report provided to the Parties.

3 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
4 court days prior to the Final Approval Hearing, the Settlement Administrator
5 will provide the Parties for filing with the Court a declaration of due diligence
6 setting forth its compliance with its obligations under this Agreement. Prior
7 to the Final Approval Hearing, the Settlement Administrator will supplement
8 its declaration of due diligence if any material changes occur from the date
9 of the filing of its prior declaration.
10

11 e. **Requests for Exclusion from Settlement; and Objections to Settlement.**
12 Class Members may submit requests to be excluded from the effect of the
13 Settlement, or objections to the Settlement, pursuant to the following
14 procedures:
15

16 i. **Request for Exclusion from Settlement.** A Class Member may
17 request to be excluded from the effect of this Agreement, though not
18 the PAGA Released Claims, and any payment of amounts under this
19 Agreement, though not the PAGA Payment, by timely mailing a letter
20 to the Settlement Administrator stating that the Class Member wants
21 to be excluded from this matter (the “Action”). This letter must
22 include the Class Member’s name, address, telephone number, and
23 signature. To be valid and timely, the request to be excluded must be
24 postmarked by the date specified in the Class Notice
25 (_____, or 60 days from the initial mailing of the Class
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1 Notice by the Settlement Administrator). A Class Member who
2 properly submits a valid and timely request to be excluded from the
3 Action shall not receive any payment of any kind in connection with
4 this Agreement or this Action, shall not be bound by or receive any
5 benefit of this Agreement, and shall have no standing to object to the
6 Settlement. A request for exclusion must be mailed to the Settlement
7 Administrator at the address provided on the Class Notice. The
8 Settlement Administrator shall transmit the request for exclusion to
9 counsel for the Parties as follows:
10

11
12 *To Class Counsel:*

13 David G. Spivak, Esq.
14 The Spivak Law Firm
15 8605 Santa Monica Bl
16 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Aron Z. Karabel, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union St.
Suite 2700
Nashville, TN 37219

- 17 ii. **Objections to Settlement.** The Class Notice will provide that any
18 Class Member who does not request exclusion from the Action and
19 who wishes to object to the Settlement should submit an objection in
20 writing to the Settlement Administrator by _____, or 60
21 days after the Settlement Administrator mails the Class Notice, a
22 written objection to the Settlement which sets forth the grounds for
23 the objection and the other information required by this paragraph.
24 The objection should be mailed to the Settlement Administrator at the
25 address provided on the Class Notice. The Settlement Administrator
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shall transmit the objections to counsel for the Parties as follows:

To Class Counsel:

David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Aron Z. Karabel, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union St.
Suite 2700
Nashville, TN 37219

The written objection should state the objecting Class Member's full name, address, and the approximate dates of his or her employment with Defendants. The written objection should state the basis for each specific objection and any legal support in clear and concise terms. The written objection also should state whether the Class Member intends to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the Final Approval Hearing. However, the objectors will be provided with the opportunity to speak at the final approval hearing regardless of whether they have filed an appearance or submitted a written opposition beforehand.

If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member may still be bound by the terms of this Agreement.

- f. **Report.** Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who sent timely requests to be excluded from the Action and all Class Members who

1 objected to the settlement.

2 6. The Court approves, as to form and content, the Class Notice in substantially the
3 form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the
4 form attached as Exhibit B to the Settlement, and the Paychecks Dispute form in substantially
5 the form attached as Exhibit C to the Settlement.

6 7. The Court approves, for settlement purposes only, David G. Spivak of The
7 Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

8 8. The Court approves, for settlement purposes only, Marvin Mann as the Class
9 Representative.

10 9. The Court approves Phoenix Settlement Administrators as the Settlement
11 Administrator.

12 10. The Court preliminarily approves Class Counsel's request for attorneys' fees and
13 costs subject to final review by the Court.

14 11. The Court preliminarily approves the estimated Settlement Administrator costs
15 payable to the Settlement Administrator subject to final review by the Court.

16 12. The Court preliminarily approves Plaintiff's Class Representative Payment
17 subject to final review by the Court.

18 13. A Final Approval Hearing shall be held on _____ at _____.m. in
19 Department 3 of the Superior Court for the State of California, County of Santa Clara, located
20 at the Downtown Superior Court, 191 North First Street, San Jose, CA 95113 to consider the
21 fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by
22 this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys'
23 fees and costs and the Class Representative Payment to the Class Representative. The notice of
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1 motion and all briefs and materials in support of the motion for final approval of class action
2 settlement and motion for attorneys' fees and litigation costs shall be served and filed with this
3 Court on or before _____.

4 14. If for any reason the Court does not execute and file a final approval order and
5 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason,
6 the proposed Settlement that is the subject of this order, and all evidence and proceedings had
7 in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to
8 the litigation, as more specifically set forth in the Settlement.

9 15. The Court expressly reserves the right to adjourn or continue the Final Approval
10 Hearing from time to time without further notice to members of the Class. The Plaintiff shall
11 give prompt notice of any continuance to Settlement Class Members who object to the
12 Settlement.
13

14 **IT IS SO ORDERED.**

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18 **DATE**

17 _____
18 **THE HONORABLE PATRICIA M.**
19 **LUCAS**
20 **SUPERIOR COURT JUDGE**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)

MARVIN MANN, on behalf of himself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

WALNUT BREWERY, INC., a Colorado corporation doing business as Rock Bottom Brewery; SPB HOSPITALITY, LLC, a Delaware limited liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 21CV377897

[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT

Action filed: March 10, 2021
Dept: 3, The Honorable Patricia M. Lucas

This matter came on for hearing on _____ at _____.m. in Department 3 of the above-captioned court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed herewith

1 which provides for a Gross Settlement Amount (“GSA”) of up to \$275,000.00 in compromise of
2 all disputed claims on behalf of all hourly, non-exempt employees, who worked at Rock Bottom
3 Restaurant & Brewery in Campbell, California for Defendants at any time during the period of
4 June 01, 2020, to October 20, 2021 (collectively “Class Members”) (“Settlement Class Period”).
5 All capitalized terms used herein shall have the same meaning as defined in the Settlement.
6

7 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
8 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
9 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
10 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
11 and the evidence and argument received by the Court in conjunction with the motions for
12 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
13 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
14 DETERMINATIONS¹:
15

16 1. The Court has jurisdiction over the subject matter of this matter (the “Action”)
17 and over all Parties to the Action, including all Class Members. Pursuant to this Court’s Order
18 Granting Preliminary Approval of Class Action Settlement of _____, the Class Notice
19 was sent to each Class Member by First Class U.S. mail. The Class Notice informed Class
20 Members of the terms of the Settlement, their right to receive their proportional share of the
21 Settlement, their right to request exclusion, their right to comment upon or object to the
22 Settlement, and their right to appear in person or by counsel at the final approval hearing and be
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24
25 _____
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on _____ is attached hereto as **Exhibit A** and incorporated by
28 reference. A true and correct copy of the Court’s Minute Order dated _____ is
attached hereto as **Exhibit B** and incorporated by reference.

1 heard regarding final approval of the Settlement. Adequate periods of time were provided by
2 each of these procedures. No member of the Settlement Class presented written objections to the
3 proposed Settlement as part of this notice process, stated an intention to appear, or actually
4 appeared at the final approval hearing.

5 2. For purposes of this Final Order and Judgment, the Class Members are all hourly,
6 non-exempt employees of Defendants, who worked at Rock Bottom Restaurant & Brewery in
7 Campbell, California during the Class Period, any time during the Settlement Class Period.

8 3. The Court finds and determines that the notice procedure afforded adequate
9 protections to Class Members and provides the basis for the Court to make an informed decision
10 regarding final approval of the Settlement based on the responses of Class Members. The Court
11 finds and determines that the notice provided in this case was the best notice practicable, which
12 satisfied the requirements of law and due process as to all persons entitled to such notice.
13

14 **Release by Plaintiff and Class Members.** The Parties agree that it is their intent that the
15 resolution set forth in this Settlement will release and discharge the Released Claims by way of
16 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other
17 action of any kind by each and all of the Settlement Class Members (including participation to
18 any extent in any representative or collective action) against the Released Parties. This release
19 will not take effect until Defendants have paid the GSA in full per this Settlement Agreement.
20 All PAGA Members, regardless of whether they submit timely and valid requests for exclusion
21 from the Settlement, will release all Released Claims under PAGA against the Released Parties.
22 The State of California will also release all Released Claims under PAGA against the Released
23 Parties. **“Released Claims”** shall mean all claims, rights, demands, liabilities and causes of action
24 that are alleged, or reasonably could have been alleged based on the facts and claims during the
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1 period of June 01, 2020 through October 20, 2021 asserted in the operative complaint filed by
2 Plaintiff in this matter and/or in the letter(s) sent by Plaintiff to the LWDA concerning
3 Defendants and the other Released Parties, whether sounding in law or equity, tort, contract,
4 statute, or other applicable federal, state or local law or regulation, including but not limited to
5 the following claims: failure to pay wages, failure to provide meal periods, failure to authorize
6 and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage
7 statements, failure to timely pay wages, failure to maintain required payroll records, unfair
8 business practices that could have been premised on the claims, causes of action or legal theories
9 of relief described above or any of the claims, causes of action or legal theories of relief pleaded
10 in the Action, all claims under PAGA or for civil penalties that could have been premised on the
11 claims, causes of action or legal theories described above or any of the claims, causes of action
12 or legal theories of relief pleaded in the Action or Plaintiff's letter(s) to the LWDA, including
13 but not limited to the California Code of Regulations and to Labor Code sections 201, 202, 203,
14 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1,
15 1198, 2802, and 2699; and any and all damages, restitution, disgorgement, civil penalties,
16 statutory penalties, taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims
17 shall not apply to claims for workers' compensation benefits, unemployment insurance benefits,
18 or any other claim or right that as a matter of law cannot be waived or released. The Parties
19 acknowledge that Released Claims includes any claims for penalties by a PAGA Member
20 resulting from any LWDA investigation. The Parties will meet and confer in good faith if the
21 Court requires changes to the scope of the Released Claims. **“Released Parties”** shall mean
22 Defendants, SPB Hospitality, LLC, Walnut Brewery, Inc., Craft Brewery Group, LLC, and any
23 of their former and present agents, employees, servants, officers, directors, partners, trustees,
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1 representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors,
2 related corporations, divisions, joint venturers, assigns, predecessors, successors, service
3 providers, insurers, consultants, subcontractors, joint employers, employee benefit plans and
4 fiduciaries thereof, affiliated organizations, and all persons acting under, by, through or in concert
5 with any of them, and each of them.

6
7 2. The Court further finds and determines that the terms of the Settlement are fair,
8 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
9 provisions of the Settlement, including the release of claims contained therein, should be and
10 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
11 according to its terms. The “Effective Date” means as follows: If no objection to the Settlement
12 or to any of the terms and or conditions of the Settlement have been filed by Plaintiff, another
13 member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur
14 on the day of this order; however, if any objection to the Settlement or to any of the terms and or
15 conditions of the Settlement is filed by a member of the Settlement class, or any intervenor to
16 this Action, the Effective Date shall occur upon the expiration of the time for the filing any appeal
17 of the order of final approval of the Settlement. If an appeal is filed or any writ granted, then the
18 Effective Date shall occur after the appeal has been dismissed or the writ dissolved and when
19 there is no further time to appeal the dismissal of the appeal or the dissolution of the writ. The
20 occurrence of the Effective Date is a prerequisite to any obligation of Defendants to pay any
21 funds into the Settlement Account (as defined in the Settlement).

22
23
24 3. As of the Effective Date of Settlement, and for the duration of the Settlement Class
25 Period, all Class Members are hereby deemed to have waived and released all Released Claims
26 and are forever barred and enjoined from prosecuting the Released Claims against the Released
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1 Parties as fully set forth in the Settlement. No objections were received by the Parties or the Court
2 through the date of this Final Order and Judgment. The Court finds _____ Class Member(s)—
3 _____—submitted a request for exclusion from the Settlement as determined by
4 the Settlement Administrator and therefore is/are not in the Settlement Class.

5 4. The Court finds and determines that (a) the Settlement Shares to be paid to those
6 Class Members who did not submit a valid and timely letter requesting to be excluded from the
7 Settlement (the “Participating Class Members”) and (b) the LWDA payment as civil penalties
8 under the California Labor Code Private Attorneys General Act of 2004, as amended, California
9 Labor Code sections 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The
10 Court hereby grants final approval to, and orders the payment of, those amounts be made to the
11 Participating Class Members and to the California Labor & Workforce Development Agency
12 (“LWDA”), in accordance with the terms of the Settlement.
13

14 5. The Court further grants final approval to and orders that the following payments
15 be made in accordance with the terms of the Settlement:
16

17 a. Class Counsel fees & costs of \$91,666.66 in attorneys’ fees and
18 \$15,000.00 in litigation costs to Class Counsel;

19 b. \$15,000.00 as a Class Representative Payment award payable to Plaintiff
20 Marvin Mann for his service as a Class Representative;

21 c. \$10,000.00 in costs of the Settlement Administrator payable to Phoenix
22 Settlement Administrators for its services as the Settlement Administrator; and
23

24 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
25 LWDA.

26 7. The settlement shall proceed as directed in the Settlement, and no payments
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1 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement.
2 Without affecting the finality of this Final Order and Judgment in any way, the Court retains
3 jurisdiction of all matters relating to the interpretation, administration, implementation,
4 effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to
5 California Rule of Court 3.769(h).

6
7 8. Within 10 calendar days of the Effective Date of Settlement, Defendants shall
8 deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the
9 total amount of all Settlement Shares to Participating Class Members, (ii) the Court approved
10 Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment, (iv) the
11 Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.

12
13 9. Defendants' payment of such sums shall be the sole financial obligation of
14 Defendants under the Settlement and shall be in full satisfaction of all claims released herein,
15 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
16 expenses.

17
18 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
19 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
20 Share check. After the expiration of the 180-day period, on Defendants' behalf, the Settlement
21 Administrator shall remit any amounts from Voided Settlement Checks and otherwise unclaimed
22 (the "Residue"), plus interest on the Residue at the legal rate of interest from the date of entry of
23 the initial judgement to the California Unclaimed Property Fund.

24
25 11. The Parties shall file a final accounting report by _____. A non-
26 appearance case review re submission of a final report is scheduled for _____ at
27 _____**.m. in Department 3.** The Parties shall also prepare and file a stipulation and
28

1 proposed order and proposed Amended Final Order and Judgment by _____ which
2 includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds
3 to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for
4 the class and defense counsel in accord with the proposed Amended Final Order and Judgment.
5 If there are objections by any party or non-party, class counsel shall immediately notify the Court
6 and the matter will be set for further hearing. A non-appearance hearing for the lodging of the
7 stipulation and proposed order and separate amended judgment is scheduled for
8 _____ at _____.m. in Department 3.

10 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
11 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
12 deposit funds for distribution by the Settlement Administrator to Participating Class Members in
13 accordance with the Settlement.

15 13. The Court hereby enters final judgment in this case in accordance with the terms
16 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this
17 Final Order and Judgment.

18 14. The Parties are hereby ordered to comply with the terms of the Settlement.

19 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
20 provided by the Settlement and this Final Order and Judgment.

21 16. The Settlement is not an admission by Defendants nor is this Final Order and
22 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
23 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used
24 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order
25 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
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1 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
2 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
3 admission or concession with regard to, the denials or defenses of Defendants, and shall not be
4 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
5 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
6 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
7 and any other papers and records on file in the Action may be filed in this Court or in any other
8 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
9 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
10 the Released Claims.
11

12 17. This document shall constitute a Judgment for purposes of California Rule of
13 Court 3.769(h).
14

15 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
16

17
18 **DATE**

17
18 **THE HONORABLE PATRICIA M.**
19 **LUCAS**
20 **SUPERIOR COURT JUDGE**
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EXHIBIT 2

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 31, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Marvin Mann/Walnut Brewery, Inc., et al.*

To whom it may concern:

This notice concerns the following employers:

1. Walnut Brewery, Inc., a Colorado corporation, doing business as Rock Bottom Brewery; and
2. SPB Hospitality, LLC, a Delaware limited liability company.

Collectively, the aforementioned employers are herein referred to as “Rock Bottom.”

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Marvin Mann (hereafter “Mann”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as hourly employees, including but not limited to bartenders, servers, bussers, dishwashers, cooks, chefs, and other hourly employees in comparable positions (hereafter referred to collectively as “Aggrieved Employees”) by Rock Bottom of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Rock Bottom has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California.

Mann and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order” or “Wage Order 5”), paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

In approximately July 2020, Rock Bottom began to employ Mann to work at its Rock Bottom restaurant and brewery in Campbell, California as a non-exempt, hourly bartender and server. Mann continuously worked for Rock Bottom in this capacity from the time of his hire until on or about November 17, 2020, when his employment ended.

At all relevant times, Rock Bottom compensated Mann and the other Aggrieved Employees on an hourly basis and issued their paychecks on a weekly basis. At all relevant times, Rock Bottom classified Mann and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and Wage Order.

Rock Bottom failed to provide Mann and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Instead, Rock Bottom required Mann and the Aggrieved Employees to work through their meal periods. Rock Bottom failed to provide Mann and the Aggrieved Employees from taking meal periods due to low staffing and heavy workload. At all relevant times, Rock Bottom required Mann and the Aggrieved Employees to work while they ate. On those seldom occasions where Mann and the Aggrieved Employees tried to take their duty-free meal periods, management disciplined them and expressly prohibited them from taking the meal period.

Moreover, Rock Bottom failed to authorize or permit Mann and the Aggrieved Employees to take duty-free, unrestricted 10-minute rest periods every four hours worked or major portion thereof in violation of California law. Due to high workload and low staffing levels, Rock Bottom failed to authorize and permit Mann and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. Rock Bottom did not seek

an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. When Mann and the Aggrieved Employees clocked-out for the day, the computer always displayed a “break violation” message, which management instructed Mann and the Aggrieved Employees to ignore.

Furthermore, Rock Bottom failed to pay premium wages for each workday it failed to provide Mann and the other Aggrieved Employees with a timely meal period in compliance with California law. Rock Bottom also failed to pay premium wages for each workday it failed to provide Mann and the other Aggrieved Employees with a timely rest period in compliance with California law. Mann complained to management about Rock Bottom’s meal and rest period violations, and their failure to hire sufficient staff. Rock Bottom took no action to resolve his complaints.

Rock Bottom required Mann and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. At all relevant times, Rock Bottom required Mann and the Aggrieved Employees to use their personal mobile telephones to perform their job duties but did not reimburse them for their mobile phone expenses, nor did they provide them with mobile phones as an alternative. Rock Bottom frequently contacted Mann and the Aggrieved Employees, and required the employees to communicate with each other and coordinate scheduling and other business affairs, on their personal mobile phones during and outside work hours.

Rock Bottom also required Mann and the Aggrieved Employees to perform work while clocked out and failed to compensate them for this time. Rock Bottom management instructed Mann and the Aggrieved Employees to clock-out at specific times, even while still working. At all relevant times, Rock Bottom instructed Mann and the Aggrieved employees to perform necessary work duties while clocked-out, including but not limited to, counting cash in the cash drawer, restocking, preparing for the next shift by stocking the work station, disposing of garbage, and cleaning. At all relevant times, Mann and the Aggrieved Employees spent an average of 30 minutes a day performing such work while they were clocked-out. Rock Bottom also required Mann and the Aggrieved

Employees to coordinate schedules and communicate with management and other employees, all while clocked out. Rock Bottom failed to compensate Mann and the Aggrieved Employees for the time they spent on these off-the-clock activities.

Rock Bottom failed to issue to Mann and the Aggrieved Employees complete and accurate wage statements as a result of its failure to state all hours worked at the correct rates of pay, and all wages earned including rest period and meal period premium wages as described above. Rock Bottom also failed to timely pay Mann and the Aggrieved Employees all earned wages described above during and at the conclusion of employment. Moreover, Rock Bottom failed to maintain accurate employee records of Mann and the Aggrieved Employees.

For the reasons stated herein, Mann alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Rock Bottom failed to provide Mann and the other Aggrieved Employees with all timely, off-duty rest breaks and meal periods;
- b) Rock Bottom failed to compensate Mann and the other Aggrieved Employees at one hour's pay for each day in which they were not provided one or more meal periods required by law;
- c) Rock Bottom failed to compensate Mann and the other Aggrieved Employees at one hour's pay for each day in which they were not provided one or more rest breaks required by law;
- d) Rock Bottom failed to pay Mann and the other Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum, regular and overtime pay due to off-the-clock work;
- e) Rock Bottom failed to pay Mann and the other Aggrieved Employees additional "reporting time" wages on days during which they

communicated by phone with Rock Bottom management or on-duty employees outside of their scheduled work hours.

- f) Rock Bottom failed to indemnify Mann and the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- g) Rock Bottom failed to provide Mann and the Aggrieved Employees with accurate wage statements;
- h) Rock Bottom failed to timely pay Mann and the Aggrieved Employees all earned and unpaid wages during employment;
- i) Rock Bottom failed to timely pay Mann and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment; and
- j) Rock Bottom willfully failed to maintain accurate employment records regarding Mann and the Aggrieved Employees.

Accordingly, Mann now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Rock Bottom's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry[.]" Wage Order § 1. The phrase "public housekeeping industry" includes restaurants. *Id.* § 2 (P)(1).

At all relevant times during the applicable limitations period, Rock Bottom operated restaurants. Accordingly, Mann and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Provide Rest Breaks And Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of Wage Order 5 states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the

meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the- job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

...

- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day’s written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

In relevant part, Section 12 of Wage Order 5 states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

Section 17 of the Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and

Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

Rock Bottom has intentionally and improperly failed to provide all duty-free meal periods free from any work or duties to Mann and the other Aggrieved Employees as required by law. Rock Bottom also intentionally and improperly failed to provide all duty-free rest breaks free from any work or duties to Mann and the other Aggrieved Employees as required by law. Due to the workload and failure to hire sufficient staff members, Rock Bottom denied Mann and the other Aggrieved Employees their 30-minute off-duty meal period and 10-minute rest breaks every four hours worked or major fraction thereof as required by the Wage Order. Moreover, Rock Bottom failed to pay Mann and Aggrieved Employees premium wages on workdays it failed to provide them with one or more timely meal and rest periods as required by law. In failing to do so, Rock Bottom violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Mann seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Failure to Indemnify for Expenses
(Lab Code § 2802 and 1198)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

At relevant times during the applicable limitations period, Rock Bottom required Mann and the Aggrieved to use their personal mobile phones for work related activities without reimbursing them for mobile phone expenses. Accordingly, Mann seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Pay All Wages for All Hours Worked at the Correct Rates of
Pay
(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for

all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington*

Memorial Hosp. v. Superior Court (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Rock Bottom knowingly failed to pay Mann and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for hours they worked while off-the-clock. At Rock Bottom’s direction, Mann and the Aggrieved Employees have worked off the clock without pay, including after clocking out at the end of their shifts. Such work included: counting the cash drawer, restocking, preparing for the next shift, taking out the garbage, cleaning.

Accordingly, Mann seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;
- 6) The inclusive dates of the period for which the employee is paid;

- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 8) The name and address of the legal entity that is the employer; and
- 9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, Rock Bottom violated California Labor Code section 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Rock Bottom failed to state in the wage statements it issued to Mann and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock prior to clocking in at the beginning of their shifts (as described above).

Rock Bottom's violation was knowing and intentional. Rock Bottom instructed Mann and the Aggrieved Employees to ignore the "break violation" message when they clocked-out on the computer. Mann and the Aggrieved Employees complained about Rock Bottom's Labor Code violations to management. Mann and the Aggrieved Employees notified Rock Bottom that it failed to provide them with duty-free meal and rest periods. Rock Bottom ignored their complaints.

Accordingly, Mann now seeks civil penalties for the Labor Code violations that Rock Bottom has committed against himself and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages During Employment

(Lab. Code § 204)

California Labor Code § 204 states that all wages (other than those mentioned in Labor Code sections 201-202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Rock Bottom failed to pay Mann and the other Aggrieved Employees for work performed after they clocked out. Rock Bottom failed to provide Mann and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Rock Bottom also failed to provide Mann and the Aggrieved Employees with all premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Rock Bottom failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

Accordingly, Mann seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee for each subsequent violation of California Labor Code § 204 (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, Rock Bottom failed to provide Mann and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work performed off-the-clock. As a result, Rock Bottom failed to pay Mann and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Rock Bottom has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Mann seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each Aggrieved Employee per pay period in which

subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, 1198)

Labor Code § 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.

- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Rock Bottom failed to pay Mann and the other Aggrieved Employees for work performed after they clocked out. Rock Bottom failed to provide Mann and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Rock Bottom also failed to provide Mann and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. Rock Bottom did not record the hours worked off the clock. As a result, Rock Bottom has failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Mann and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

Accordingly, Mann seeks civil penalties from Rock Bottom on behalf of himself and the other Aggrieved Employee as follows:

1. \$500 for each aggrieved employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Marvin Mann
Walter Haines, Esq.

Walnut Brewery, Inc., doing business as Rock Bottom Brewery
c/o Agent for Service of Process
CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

SPB Hospitality, LLC
c/o Agent for Service of Process
The Corporation Trust Company,
Corporation Trust Center
1209 Orange St.
New Castle, DE 19801

EXHIBIT 3

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3 MAYA CHEAITANI (PL 507677)

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4 THE SPIVAK LAW FIRM

5 16530 Ventura Blvd., Suite 203

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6 Telephone (213) 725-9094

7 Facsimile (213) 634-2485

8 Attorneys for Plaintiff,

9 MARVIN MANN, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **(UNLIMITED JURISDICTION)**

13 MARVIN MANN, on behalf of himself, all
14 others similarly situated, and as an “aggrieved
15 employee” on behalf of other “aggrieved
16 employees” under the Labor Code Private
17 Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 WALNUT BREWERY, INC., a Colorado
21 corporation doing business as Rock Bottom
22 Brewery; SPB HOSPITALITY, LLC, a
23 Delaware limited liability company; and DOES
24 1-50, inclusive,

25 *Defendants.*

Case No.: **21CV377897**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201–203);
6. Failure to Maintain Accurate Employment Records (Lab. Code §§ 1174, 1174.5, and 1998);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

Walter Haines (SBN 71075)
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1 Plaintiff, MARVIN MANN (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class and representative action against Defendant WALNUT
5 BREWERY, INC., a Colorado corporation doing business as Rock Bottom Brewery, SPB
6 HOSPITALITY, LLC, a Delaware limited liability company, and DOES 1-50, inclusive
7 (collectively “Defendants”) for alleged violations of the California Labor Code, Industrial
8 Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), and the Business and
9 Professions Code.

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 him and other similarly situated current and former employees in California for unpaid wages and
12 other related relief. These claims are based on Defendants’ alleged failures to: (1) Provide all
13 meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours
14 worked at the correct rates of pay, (3) Indemnify Plaintiff and the below-described Class for
15 reasonable expenses incurred while performing their duties, (4) Provide accurate and complete
16 itemized written wage statements, (5) Timely pay all final wages upon termination of
17 employment, (6) Maintain accurate employment records, and (7) Fairly compete. Accordingly,
18 Plaintiff now seeks to recover unpaid wages and related relief through this class and representative
19 action.

20 PARTIES

21 3. Plaintiff MARVIN MANN is a resident of California.

22 4. In approximately July 2020, Defendants began to employ Plaintiff to work at their
23 Rock Bottom restaurant and brewery in Campbell, California, as a non-exempt hourly bartender
24 and server. Plaintiff continuously worked for Defendants in this capacity from the time of his hire
25 until on or about November 17, 2020, when his employment ended.

26 5. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
27 California Code of Regulations § 11050 and an “aggrieved employee” within the meaning of
28 Labor Code § 2699(c).

6. Defendant WALNUT BREWERY, INC., is a corporation organized and existing
under the laws of Colorado and a citizen of California based on Plaintiff’s information and belief.

7. Defendant SPB HOSPITALITY, LLC, is a limited liability company organized



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and existing under the laws of Delaware based on Plaintiff's information and belief.

8. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

9. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees, servants, masters, and/or employers of the remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment and with the approval and ratification of each of the other Defendants.

10. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein.

11. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

12. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

13. **Class Definition:** The Class is defined as follows: All California-based persons Defendants employed on an hourly basis, including as bartenders, servers, bussers, dishwashers, cooks, chefs, and in comparable positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action



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1 (“Class” or “Class Members”).

2 14. **Reservation of Rights:** Pursuant to Rule of Court 3.765 (b), Plaintiff reserves the
3 right to amend or modify the class definition with greater specificity, by further division into
4 subclasses and/or by limitation to particular issues.

5 15. **Numerosity:** The Class Members are so numerous that the individual joinder of
6 each individual Class Member is impractical. While Plaintiff does not currently know the exact
7 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
8 minimum required for numerosity under California laws.

9 16. **Commonality and Predominance:** Common questions of law and fact exist as to
10 all Class Members and predominate over any questions which affect only individual Class
11 Members. These questions include, but are not limited to:

12 A. Whether Defendants failed to provide the Class Members with all meal and
13 rest periods in compliance with California law;

14 B. Whether Defendants failed to pay all wages earned to the Class Members
15 for all hours worked at the correct rates of pay;

16 C. Whether Defendants failed to indemnify the Class Members for the
17 reasonable expenses they incurred during the course of performing their duties;

18 D. Whether Defendants knowingly and intentionally failed to provide the
19 Class Members with accurate written wage statements;

20 E. Whether Defendants willfully failed to provide the Class Members with
21 timely final wages upon termination of employment;

22 F. Whether Defendants willfully failed to maintain accurate employment
23 records of the Class Members;

24 G. Whether Defendants engaged in unfair competition within the meaning of
25 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

26 H. Whether Class Members are entitled to restitution of money or property
27 that Defendants may have acquired from them through alleged Labor Code violations.

28 17. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims.
Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
Code, the Wage Order, and the Business and Professions Code.



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1 18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
2 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
3 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
4 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
5 Members.

6 19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
7 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
8 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
9 Plaintiff and absent Class Members.

10 20. **Superiority:** A class action is vastly superior to other available means for fair and
11 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
12 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
13 and efficiently prosecute their common claims in a single forum without the unnecessary
14 duplication of effort and expense that numerous individual actions would entail. In addition, the
15 monetary amounts due to many individual Class Members are likely to be relatively small and
16 would thus make it difficult, if not impossible, for individual Class Members to both seek and
17 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
18 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
19 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

20 **STATEMENT OF FACTS**

21 21. In approximately July 2020, Defendants began to employ Plaintiff to work at their
22 Rock Bottom restaurant and brewery in Campbell, California, as a non-exempt, hourly bartender
23 and server. Plaintiff continuously worked for Defendants in this capacity from the time of his hire
24 until on or about November 17, 2020, when his employment ended.

25 22. At all relevant times, Defendants compensated Plaintiff and the Class Members on
26 an hourly basis and issued their paychecks on a weekly basis. At all relevant times, Defendants
27 classified Plaintiff and the Class Members as non-exempt employees entitled to the protections
28 of both the Labor Code and the Wage Order.

23 23. Defendants failed to provide Plaintiff and the Class Members with an off-duty, 30-
24 minute meal period before the end of the fifth hour worked. Instead, Defendants required Plaintiff
25 and the Class Members to work through their meal periods. Defendants failed to provide Plaintiff



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1 and the Class Members from taking meal periods due to low staffing and heavy workload. At all
2 relevant times, Defendants required Plaintiff and the Class Members to work while they ate. On
3 those seldom occasions where Plaintiff and the Class Members tried to take their duty-free meal
4 periods, management disciplined them and expressly prohibited them from taking the meal
5 period.

6 24. Moreover, Defendants failed to authorize or permit Plaintiff and the Class
7 Members to take duty-free, unrestricted ten-minute rest periods every four hours worked or major
8 portion thereof in violation of California law. Due to the high workload and low staffing levels,
9 Defendants failed to authorize and permit Plaintiff and the Class Members to take a ten-minute,
10 paid, duty-free rest break every four hours or major portion thereof. Defendants did not seek an
11 exemption from the rest period protections of the Wage Order from the California Division of
12 Labor Standards Enforcement. When Plaintiff and the Class Members clocked-out for the day,
13 the computer always displayed a “break violation” message, which management instructed
14 Plaintiff and the Class Members to ignore.

15 25. Furthermore, Defendants failed to pay premium wages for each workday they
16 failed to provide Plaintiff and the Class Members with a timely meal period in compliance with
17 California law. Defendants also failed to pay premium wages for each workday they failed to
18 provide Plaintiff and the Class Members with a timely rest period in compliance with California
19 law. Plaintiff complained to management about Defendants’ meal and rest period violations, and
20 their failure to hire sufficient staff. Defendants took no action to resolve his complaints.

21 26. Defendants required Plaintiff and the Class Members to incur certain business
22 expenses in the course of performing their duties. At all relevant times, Defendants required
23 Plaintiff and the Class Members to use their personal mobile telephones to perform their job duties
24 but did not reimburse them for their mobile phone expenses, nor did they provide them with
25 mobile phones as an alternative. Defendants frequently contacted Plaintiff and the Class
26 Members, and required the employees to communicate with each other and coordinate scheduling
27 and other business affairs, on their personal mobile phones during and outside work hours.

28 27. Defendants also required Plaintiff and the Class Members to perform work while
clocked-out and failed to compensate them for this time. Defendants’ management instructed
Plaintiff and the Class Members to clock-out at specific time, even while still working. At all
relevant times, Defendants instructed Plaintiff and the Class Members to perform necessary work



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1 duties while clocked-out, including but not limited to, counting cash in the cash drawer,
2 restocking, preparing for the next shift by stocking the work station, disposing of garbage, and
3 cleaning. At all relevant times, Plaintiff and the Class Members spent an average of 30-minutes
4 per day performing such work while they were clocked-out. Defendants also required Plaintiff
5 and the Class Members to coordinate schedules and communicate with management and other
6 employees, all while clocked-out. Defendants failed to compensate Plaintiff and the Class
Members for the time they spent on these off-the-clock activities.

7 28. Defendants failed to issue to Plaintiff and the Class Members complete and
8 accurate wage statements as a result of their failure to state all hours worked at the correct rates
9 of pay, and all wages earned including rest period and meal period premium wages as described
10 above. Defendants also failed to timely pay Plaintiff and the Class Members all earned wages
11 described above during and at the conclusion of employment. Moreover, Defendants failed to
12 maintain accurate employee records of Plaintiff and the Class Members.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

16 29. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

17 30. At all relevant times during the applicable limitations period, Plaintiff and the
18 Class Members have been employees of Defendants and entitled to the benefits and protections
19 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

20 31. In relevant part, California Labor Code § 1198 states:

21 The maximum hours of work and the standard conditions of labor
22 fixed by the commission shall be the maximum hours of work and
23 the standard conditions of labor for employees. The employment
of any employee for longer hours than those fixed by the order or
under conditions of labor prohibited by the order is unlawful.

24 32. In relevant part, California Labor Code § 512 states:

25
26 An employer shall not employ an employee for a work period of
27 more than five hours per day without providing the employee with
28 a meal period of not less than 30 minutes, except that if the total
work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the



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1 employer and employee.

2 An employer shall not employ an employee for a work period of
3 more than 10 hours per day without providing the employee with
4 a second meal period of not less than 30 minutes, except that if the
5 total hours worked is no more than 12 hours, the second meal
period may be waived by mutual consent of the employer and the
employee only if the first meal period was not waived.

6 33. In relevant part, § 12 of the Wage Order states:

7
8 **Rest Periods**

9 (A) “Every employer shall authorize and permit all employees
10 to take rest periods, which insofar as practicable shall be in the
11 middle of each work period. The authorized rest period time shall
12 be based on the total hours worked daily at the rate of ten (10)
13 minutes net rest time per four (4) hours or major fraction thereof.
14 However, a rest period need not be authorized for employees
whose total daily work time is less than three and one-half (3 1/2)
hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.”

15 (B) If an employer fails to provide an employee a rest period in
16 accordance with the applicable provisions of this Order, the
17 employer shall pay the employee one (1) hour of pay at the
employee’s regular rate of compensation for each work day that
the rest period is not provided.”

18 34. In relevant part, § 11 of the Wage Order states:

19 **Meal Periods**

20 (A) “No employer shall employ any person for a work period
21 of more than five (5) hours without a meal period of not less than
22 30 minutes, except that when a work period of not more than six
23 (6) hours will complete the day’s work the meal period may be
24 waived by mutual consent of the employee and the employer.
Unless the employee is relieved of all duty during a 30-minute
meal period, the meal period shall be considered an ‘on duty’ meal
25 period and counted as time worked. An ‘on duty’ meal period shall
26 be permitted only when the nature of the work prevents an
employee from being relieved of all duty and when by written
agreement between the parties an on-the-job paid meal period is
27 agreed to. The written agreement shall state that the employee
28 may, in writing, revoke the agreement at any time.”



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(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

35. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.

36. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours.

37. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

38. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty-free meal periods and 10-minute rest periods free from any work duties in accordance with the Wage Order.

39. At all relevant times, Defendants have intentionally and improperly failed to provide all duty-free meal periods free from any work or duties to Plaintiff and the Class Members as required by law. Defendants also intentional and improperly failed to provide all duty-free rest breaks free from any work or duties to Plaintiff as required by law. Due to the workload and failure to hire sufficient staff members, Defendants denied Plaintiff and the Class Members their 30-minute off-duty meal periods and 10-minute rest breaks every four hours



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1 worked or major fraction thereof as required by the Wage Order. Moreover, Defendants failed to
2 pay Plaintiff and the Class Members premium wages on workdays they failed to provide them
3 with one or more timely meal and/or rest periods as required by California law.

4 40. Plaintiff is informed and believes and thereon alleges that, at all relevant times
5 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
6 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
7 breaks required by California law.

8 41. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
9 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
10 wages owed for all meal periods and rest breaks not provided to them.

11 42. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
12 the Class Members are entitled to premium wages for workdays in which one or more off-duty
13 meal periods were not provided to them, and for workdays in which one or more rest breaks were
14 not provided to them.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

17 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

18 **(By Plaintiff and the Class against Defendants)**

19 43. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

20 44. At all relevant times, Plaintiff and the other Class Members have been non-exempt
21 employees of Defendants and entitled to the benefits and protections of California Labor Code
22 §§ 510, 1194, 1197, and 1198 and the Wage Order.

23 45. In relevant part, § 3 of the Wage Order states:

24 **(A) Daily Overtime - General Provisions**

25 (1) The following overtime provisions are applicable to employees
26 18 years of age or over and to employees 16 or 17 years of age who
27 are not required by law to attend school and are not otherwise
28 prohibited by law from engaging in the subject work. Such
employees shall not be employed more than eight (8) hours in any
workday or more than 40 hours in any workweek unless the
employee receives one and one-half (1 ½) times such employee's
regular rate of pay for all hours worked over 40 hours in the
workweek. Eight (8) hours of labor constitutes a day's work.
Employment beyond eight (8) hours in any workday or more than



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six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

46. Labor Code § 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

47. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

48. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

49. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.



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1 50. In conjunction, these provisions of the Labor Code require employers to pay non-
2 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
3 worked, including unrecorded hours when the employer knew or reasonably should have known
4 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)

5 51. At all relevant times during the applicable limitations period, Defendants failed to
6 compensate Plaintiff and the Class Members for all hours worked at the correct rates of pay,
7 including, but not limited to, all regular and overtime wages for hours they worked while off-the-
8 clock. At Defendants' direction, Plaintiff and the Class Members have worked off-the-clock
9 without pay, including after clocking-out at the end of their shifts. Such work included: counting
10 the cash drawer, restocking, preparing for the next shift, taking out the garbage, and cleaning.

11 52. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
12 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
13 failure to compensate Plaintiff and the other Class Members for all hours worked as required by
California law.

14 53. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
15 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
16 the full amount of wages earned during each pay period during the applicable limitations period,
17 including minimum and overtime wages.

18 54. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members,
19 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid
20 wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject
21 to proof.

THIRD CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff and the Class against Defendants)

25 55. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 56. At all relevant times, Plaintiff and the Class Members have been non-exempt
27 employees of Defendants and entitled to the benefits and protections of the California Labor Code
28 §§ 1198 and 2802 and the Wage Order.



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1 57. In pertinent part, California Labor Code § 2802 (a) states:

2 “An employer shall indemnify his or her employee [s] for all
3 necessary expenditures incurred by the employee in direct
4 consequence of the discharge of his or her duties.”

5 58. California Labor Code § 1198 prohibits employers from employing their
6 employees under conditions prohibited by the Wage Order.

7 59. At all relevant times during the applicable limitations period, Defendants required
8 Plaintiff and the Class Members to incur certain business expenses which they failed to indemnify
9 them for both during and after their employment ended. Defendants required Plaintiff and the
10 Class Members to use their personal mobile phones for work-related activities without
11 reimbursing them for mobile phone expenses.

12 60. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
13 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
14 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
15 during the course of performing their duties.

16 61. Therefore, pursuant to California Labor Code § 2802 (b), Plaintiff and the Class
17 Members are entitled to reimbursement for all necessary expenditures and losses and interest
18 thereon, due and owing to them within four years of the date of the filing of the Complaint until
19 the entry of judgment.

20 62. Accordingly, with respect to this cause of action, on behalf of himself and the
21 Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys’
22 fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

25 **(Lab. Code § 226)**

26 **(By Plaintiff and the Class against all Defendants)**

27 63. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

28 64. At all relevant times during the applicable limitations period, Plaintiff and the
other Class Members have been employees of Defendants and entitled to the benefits and
protections of California Labor Code § 226.

 65. Pursuant to California Labor Code § 226 (a), Plaintiff and the other Class



Members were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized statement showing:

- (1) Gross wages earned,
- (2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,
- (3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) Net wages earned,
- (6) The inclusive dates of the period for which the employee is paid,
- (7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) The name and address of the legal entity that is the employer, and
- (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

66. Pursuant to California Labor Code § 226 (e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

67. Pursuant to California Labor Code § 226 (e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226 (a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

- A. The amount of the gross wages or net wages paid to the employee during



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1 the pay period or any of the other information required to be provided on the itemized wage
2 statement pursuant to California Labor Code § 226 (a);

3 B. Which deductions the employer made from gross wages to determine the
4 net wages paid to the employee during the pay period;

5 C. The name and address of the employer and, if the employer is a farm labor
6 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
7 address of the legal entity that secured the services of the employer during the pay period; and

8 D. The name of the employee and only the last four digits of his or her social
9 security number or an employee identification number other than a social security number.

10 68. “Promptly and easily determine,” as stated in California Labor Code §
11 226 (e), means a reasonable person would be able to readily ascertain the information without
12 reference to other documents or information.

13 69. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
14 with all meal and rest periods in compliance with California law. They also failed to provide them
15 with premium wages on workdays they failed to provide them with one or more meal and/or rest
16 periods in compliance with California law. Further, Defendants failed to compensate Plaintiff and
17 the other Class Members for all hours worked. As a result, Defendants have failed to properly
18 itemize Plaintiff and the other Class Members’ gross and net wages earned, total hours worked,
19 hourly rate of pay, the corresponding number of hours worked at each hourly rate, and other
20 requirements of California Labor Code § 226. As a result, Defendants have violated California
21 Labor Code § 226.

22 70. Defendants’ violation was knowing and intentional. Defendants instructed
23 Plaintiff and the Class Members to ignore the “break violation” message when they clocked-out
24 on the computer. Plaintiff and the Class Members complained about Defendants’ Labor Code
25 violations to management. Plaintiff and the Class Members notified Defendants that they failed
26 to provide them with duty-free meal and rest periods. Defendants ignored their complaints.

27 71. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
28 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
the other Class Members with accurate wage statements but intentionally provided wage
statements that Defendants knew were not accurate.

72. As a result of being provided with inaccurate wage statements by Defendants,



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1 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
2 wage statements were violated and they were misled about the amount of wages they had actually
3 earned and were owed. In addition, the absence of accurate information on their wage statements
4 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
5 and mathematical computations to determine the amounts of wages owed, has caused difficulty
6 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
7 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
8 and the other Class Members were not able to ascertain from the wage statements whether
9 Defendants complied with their obligations under California Labor Code § 226 (a).

10 73. Pursuant to California Labor Code § 226 (e), Plaintiff and the other Class
11 Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
12 for the initial pay period in which a violation of California Labor Code § 226 (a) occurred and
13 one hundred dollars for each violation of California Labor Code § 226 (a) in a subsequent pay
14 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member,
15 and are also entitled to an award of costs and reasonable attorneys' fees.

16 74. Accordingly, with respect to this cause of action, on behalf of himself and the other
17 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
18 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
19 proof.

20 **FIFTH CAUSE OF ACTION**

21 **WAITING TIME PENALTIES**

22 **(Lab. Code §§ 201-203)**

23 **(By Plaintiff and the Class against all Defendants)**

24 75. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 76. At all relevant times during the applicable limitations period, Plaintiff and the
26 Class have been non-exempt employees of Defendants and entitled to the benefits and
27 protections of California Labor Code §§ 201-203, and the Wage Order.

28 77. Labor Code § 201 provides that all earned and unpaid wages of an employee who
is discharged are due and payable immediately at the time of discharge.

78. Labor Code § 202 provides that all earned and unpaid wages of an employee who
quits after providing at least 72-hours notice before quitting are due and payable at the time of



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1 quitting and that all earned and unpaid wages of an employee who quits without providing at
2 least 72-hours notice before quitting are due and payable within 72 hours.

3 79. Labor Code § 203 provides that the wages of an employee continue on a daily
4 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
5 unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

6 80. Defendants failed to pay Plaintiff and the Class Members whose employment ended
7 all of the earned but unpaid wages described above by the conclusion of their employment with
8 Defendants. By failing to pay Plaintiff and the Class Members as set forth above by such time,
9 Defendants are liable for violations of Labor Code §§ 201, 202, and 203.

10 81. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
11 and the Class all of their earned and unpaid wages have been willful in that, at all relevant times,
12 Defendants have deliberately maintained policies and practices that violate the requirements of
13 the Labor Code and the Wage Order, even though at all relevant times, they have had the ability
14 to comply with those legal requirements.

15 82. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
16 himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
17 for each Class Member.

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

20 **(Lab. Code §§ 1174, 1174.5, 1198)**

21 **(By Plaintiff and the Class against all Defendants)**

22 83. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 84. At all relevant times, Plaintiff and the Class have been non-exempt employees of
24 Defendants and entitled to the benefits and protections of California Labor Code §§ 1174,
25 1174.5, 1198 and the Wage Order.

26 85. Labor Code § 1174, which also pertains to recordkeeping, states:

27 Every person employing labor in this state shall:

28 ...

(c) Keep a record showing the names and addresses of all
employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or
establishments at which employees are employed, payroll records
showing the hours worked daily by and the wages paid to, and the



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number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

86. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

87. Section 7 of Wage Order states,

A. Every employer shall keep accurate information with respect to each employee including the following:

- 1) Full name, home address, occupation and social security number.
- 2) Birth date, if under 18 years, and designation as a minor.
- 3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- 4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- 5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- 6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.



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- B. Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

- C. All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

- D. Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

88. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

89. Defendants failed to pay Plaintiff and the Class Members for work performed after they clocked-out. Defendants failed to provide Plaintiff and the Class Members with all meal and rest periods in compliance with California law. Defendants also failed to provide Plaintiff and the Class Members with premium wages on workdays they failed to provide them with one or more meal and/or rest periods in compliance with California law. Defendants did not record the hours worked off-the-clock. As a results, Defendants have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Plaintiff and the Class Members' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

90. Plaintiff is informed and believes that Defendants' failure to maintain the records of Plaintiff and the Class have been willful in that Defendants have the duty and ability to maintain accurate employment records in accordance with Labor Code §§ 1174, 1174.5, and 1198 and the Wage Order but have intentionally adopted policies or practice that are incompatible with those requirements.

91. As a result of Defendants' unlawful conduct, Plaintiff and the other class

1 members have suffered damages in an amount, subject to proof, to the extent they were not paid
2 the full amount of wages earned during each pay period during the applicable limitations period,
3 including but not limited to the total premium wages earned for missed meal and rest periods,
4 split shift premiums, overtime records, records pertaining to unpaid hours worked and unpaid
5 reporting time pay.

6 **SEVENTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **(Bus. & Prof. Code §§ 17200, et seq.)**

9 **(By Plaintiff and the Class against all Defendants)**

10 92. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

11 93. At all relevant times during the applicable limitations period, Plaintiff and the
12 other Class Members have been employees of Defendants and entitled to the benefits and
13 protections of the Business and Professions Code §§ 17200, et seq.

14 94. The unlawful conduct of Defendants alleged herein amounts to and constitutes
15 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
16 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
17 unfairly gained a competitive advantage over other comparable companies doing business in
18 California that comply with their legal obligations to, among other things, pay their employees
19 premium wages for workdays in which they did not provide employees with one or more meal
20 and rest periods, reimburse their employees for reasonable expenses incurred during the course
21 of performing their duties, and pay them all earned wages for all regular and overtime hours
22 worked.

23 95. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
24 other Class Members have suffered injuries in fact and lost money or property. Defendants
25 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and
26 premium wages and reimbursement for expenses that Plaintiff and the other Class Members
27 incurred during the course of performing their duties.

28 96. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
other Class Members are entitled to restitution of all monies rightfully belonging to them that
Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
and unfair business practices.



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97. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

98. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

99. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning December 31, 2019 and ending on the date that final judgment is entered in this action.

100. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied



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1 by the payment of wages for weekly, biweekly, or semimonthly
2 payroll if the wages are paid not more than seven calendar days
3 following the close of the payroll period.

4 101. Defendants paid wages to employees on regular intervals. Defendants, however,
5 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On
6 information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved
7 Employees on such intervals for all wages earned and all hours worked.

8 102. During the applicable time period, Defendants violated California Labor Code
9 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

10 103. California Labor Code §§ 2699 (a) and (g) authorize an aggrieved employee, on
11 behalf of themselves and other current or former employees, to bring a civil action to recover
12 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

13 104. Pursuant to California Labor Code §§ 2699 (a) and (f), Plaintiff and the Class are
14 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
15 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the
16 applicable limitations period in the following amounts:

17 A. For violations of California Labor Code § 204, one hundred dollars
18 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
19 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
20 (penalty amounts established by California Labor Code § 210).

21 B. For violations of California Labor Code § 226 (a), two hundred fifty
22 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
23 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
24 established by California Labor Code § 226.3).

25 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
26 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
27 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
28 established by California Labor Code § 558).

D. For violations of California Labor Code § 1197, one hundred dollars
(\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per



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1 pay period (regardless of whether the initial violations were intentionally committed) (penalty
2 amounts established by California Labor Code § 1197.1).

3 E. For violations of California Labor Code § 1174, five hundred dollars
4 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
5 California Labor Code § 1174.5).

6 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
7 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
8 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
9 period for each subsequent violation (penalty amounts established by California Labor Code
§ 2699 (f) (2)).

10 105. Plaintiff has complied with the procedures for bringing suit specified in
11 California Labor Code § 2699.3. By letter dated December 31, 2020, Plaintiff filed written notice
12 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
13 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
14 to have been violated, including the facts and theories to support the alleged violations. A true
15 and correct copy of the notice to the LWDA dated December 31, 2020 is attached as Exhibit A.
16 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
17 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
18 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
does not intend to investigate these allegations.

19 106. Pursuant to California Labor Code § 2699 (g), Plaintiff and the Class Members
20 are entitled to an award of civil penalties, reasonable attorney’s fees and costs in connection with
21 their claims for civil penalties.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
24 relief and judgment against Defendants as follows:

- 25 A. An order that the action be certified as a class action;
- 26 B. An order that Plaintiff be appointed class representative;
- 27 C. An order that counsel for Plaintiff be appointed class counsel;
- 28 D. Unpaid Wages;
- E. Actual Damages;



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- F. Statutory Damages;
- G. Civil Penalties;
- H. Liquidated Damages;
- I. Restitution;
- J. Declaratory and injunctive relief;
- K. Equitable relief;
- L. Pre-judgment interest;
- M. Statutory penalties;
- N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: 03 / 10 / 2021

By 

DAVID SPIVAK,
CARL KAPLAN,
MAYA CHEAITANI,
Attorneys for Plaintiff, MARVIN MANN, and
all others similarly situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 31, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: *Marvin Mann/Walnut Brewery, Inc., et al.*

To Whom It May Concern:

This notice concerns the following employers:

1. Walnut Brewery, Inc., a Colorado corporation, doing business as Rock Bottom Brewery; and
2. SPB Hospitality, LLC, a Delaware limited liability company.

Collectively, the aforementioned employers are herein referred to as “Rock Bottom.”

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Marvin Mann (hereafter “Mann”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as hourly employees, including but not limited to bartenders, servers, bussers, dishwashers, cooks, chefs, and other hourly employees in comparable positions (hereafter referred to collectively as “Aggrieved Employees”) by Rock Bottom of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Rock Bottom has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California.

Mann and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order” or “Wage Order 5”), paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

In approximately July 2020, Rock Bottom began to employ Mann to work at its Rock Bottom restaurant and brewery in Campbell, California as a non-exempt, hourly bartender and server. Mann continuously worked for Rock Bottom in this capacity from the time of his hire until on or about November 17, 2020, when his employment ended.

At all relevant times, Rock Bottom compensated Mann and the other Aggrieved Employees on an hourly basis and issued their paychecks on a weekly basis. At all relevant times, Rock Bottom classified Mann and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and Wage Order.

Rock Bottom failed to provide Mann and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Instead, Rock Bottom required Mann and the Aggrieved Employees to work through their meal periods. Rock Bottom failed to provide Mann and the Aggrieved Employees from taking meal periods due to low staffing and heavy workload. At all relevant times, Rock Bottom required Mann and the Aggrieved Employees to work while they ate. On those seldom occasions where Mann and the Aggrieved Employees tried to take their duty-free meal periods, management disciplined them and expressly prohibited them from taking the meal period.

Moreover, Rock Bottom failed to authorize or permit Mann and the Aggrieved Employees to take duty-free, unrestricted 10-minute rest periods every four hours worked or major portion thereof in violation of California law. Due to high workload and low staffing levels, Rock Bottom failed to authorize and permit Mann and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. Rock Bottom did not seek

an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. When Mann and the Aggrieved Employees clocked-out for the day, the computer always displayed a “break violation” message, which management instructed Mann and the Aggrieved Employees to ignore.

Furthermore, Rock Bottom failed to pay premium wages for each workday it failed to provide Mann and the other Aggrieved Employees with a timely meal period in compliance with California law. Rock Bottom also failed to pay premium wages for each workday it failed to provide Mann and the other Aggrieved Employees with a timely rest period in compliance with California law. Mann complained to management about Rock Bottom’s meal and rest period violations, and their failure to hire sufficient staff. Rock Bottom took no action to resolve his complaints.

Rock Bottom required Mann and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. At all relevant times, Rock Bottom required Mann and the Aggrieved Employees to use their personal mobile telephones to perform their job duties but did not reimburse them for their mobile phone expenses, nor did they provide them with mobile phones as an alternative. Rock Bottom frequently contacted Mann and the Aggrieved Employees, and required the employees to communicate with each other and coordinate scheduling and other business affairs, on their personal mobile phones during and outside work hours.

Rock Bottom also required Mann and the Aggrieved Employees to perform work while clocked out and failed to compensate them for this time. Rock Bottom management instructed Mann and the Aggrieved Employees to clock-out at specific times, even while still working. At all relevant times, Rock Bottom instructed Mann and the Aggrieved employees to perform necessary work duties while clocked-out, including but not limited to, counting cash in the cash drawer, restocking, preparing for the next shift by stocking the work station, disposing of garbage, and cleaning. At all relevant times, Mann and the Aggrieved Employees spent an average of 30 minutes a day performing such work while they were clocked-out. Rock Bottom also required Mann and the Aggrieved

Employees to coordinate schedules and communicate with management and other employees, all while clocked out. Rock Bottom failed to compensate Mann and the Aggrieved Employees for the time they spent on these off-the-clock activities.

Rock Bottom failed to issue to Mann and the Aggrieved Employees complete and accurate wage statements as a result of its failure to state all hours worked at the correct rates of pay, and all wages earned including rest period and meal period premium wages as described above. Rock Bottom also failed to timely pay Mann and the Aggrieved Employees all earned wages described above during and at the conclusion of employment. Moreover, Rock Bottom failed to maintain accurate employee records of Mann and the Aggrieved Employees.

For the reasons stated herein, Mann alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Rock Bottom failed to provide Mann and the other Aggrieved Employees with all timely, off-duty rest breaks and meal periods;
- b) Rock Bottom failed to compensate Mann and the other Aggrieved Employees at one hour's pay for each day in which they were not provided one or more meal periods required by law;
- c) Rock Bottom failed to compensate Mann and the other Aggrieved Employees at one hour's pay for each day in which they were not provided one or more rest breaks required by law;
- d) Rock Bottom failed to pay Mann and the other Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum, regular and overtime pay due to off-the-clock work;
- e) Rock Bottom failed to pay Mann and the other Aggrieved Employees additional "reporting time" wages on days during which they

communicated by phone with Rock Bottom management or on-duty employees outside of their scheduled work hours.

- f) Rock Bottom failed to indemnify Mann and the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- g) Rock Bottom failed to provide Mann and the Aggrieved Employees with accurate wage statements;
- h) Rock Bottom failed to timely pay Mann and the Aggrieved Employees all earned and unpaid wages during employment;
- i) Rock Bottom failed to timely pay Mann and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment; and
- j) Rock Bottom willfully failed to maintain accurate employment records regarding Mann and the Aggrieved Employees.

Accordingly, Mann now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Rock Bottom's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry[.]" Wage Order § 1. The phrase "public housekeeping industry" includes restaurants. *Id.* § 2 (P)(1).

At all relevant times during the applicable limitations period, Rock Bottom operated restaurants. Accordingly, Mann and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Provide Rest Breaks And Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of Wage Order 5 states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the

meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the- job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

...

- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day’s written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

In relevant part, Section 12 of Wage Order 5 states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

Section 17 of the Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and

Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

Rock Bottom has intentionally and improperly failed to provide all duty-free meal periods free from any work or duties to Mann and the other Aggrieved Employees as required by law. Rock Bottom also intentionally and improperly failed to provide all duty-free rest breaks free from any work or duties to Mann and the other Aggrieved Employees as required by law. Due to the workload and failure to hire sufficient staff members, Rock Bottom denied Mann and the other Aggrieved Employees their 30-minute off-duty meal period and 10-minute rest breaks every four hours worked or major fraction thereof as required by the Wage Order. Moreover, Rock Bottom failed to pay Mann and Aggrieved Employees premium wages on workdays it failed to provide them with one or more timely meal and rest periods as required by law. In failing to do so, Rock Bottom violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Mann seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Failure to Indemnify for Expenses
(Lab Code § 2802 and 1198)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

At relevant times during the applicable limitations period, Rock Bottom required Mann and the Aggrieved to use their personal mobile phones for work related activities without reimbursing them for mobile phone expenses. Accordingly, Mann seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Pay All Wages for All Hours Worked at the Correct Rates of
Pay
(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for

all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington*

Memorial Hosp. v. Superior Court (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Rock Bottom knowingly failed to pay Mann and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for hours they worked while off-the-clock. At Rock Bottom’s direction, Mann and the Aggrieved Employees have worked off the clock without pay, including after clocking out at the end of their shifts. Such work included: counting the cash drawer, restocking, preparing for the next shift, taking out the garbage, cleaning.

Accordingly, Mann seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;
- 6) The inclusive dates of the period for which the employee is paid;

- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 8) The name and address of the legal entity that is the employer; and
- 9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, Rock Bottom violated California Labor Code section 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Rock Bottom failed to state in the wage statements it issued to Mann and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock prior to clocking in at the beginning of their shifts (as described above).

Rock Bottom's violation was knowing and intentional. Rock Bottom instructed Mann and the Aggrieved Employees to ignore the "break violation" message when they clocked-out on the computer. Mann and the Aggrieved Employees complained about Rock Bottom's Labor Code violations to management. Mann and the Aggrieved Employees notified Rock Bottom that it failed to provide them with duty-free meal and rest periods. Rock Bottom ignored their complaints.

Accordingly, Mann now seeks civil penalties for the Labor Code violations that Rock Bottom has committed against himself and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages During Employment

(Lab. Code § 204)

California Labor Code § 204 states that all wages (other than those mentioned in Labor Code sections 201-202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Rock Bottom failed to pay Mann and the other Aggrieved Employees for work performed after they clocked out. Rock Bottom failed to provide Mann and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Rock Bottom also failed to provide Mann and the Aggrieved Employees with all premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Rock Bottom failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

Accordingly, Mann seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee for each subsequent violation of California Labor Code § 204 (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, Rock Bottom failed to provide Mann and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work performed off-the-clock. As a result, Rock Bottom failed to pay Mann and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Rock Bottom has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Mann seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each Aggrieved Employee per pay period in which

subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, 1198)

Labor Code § 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.

- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Rock Bottom failed to pay Mann and the other Aggrieved Employees for work performed after they clocked out. Rock Bottom failed to provide Mann and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Rock Bottom also failed to provide Mann and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. Rock Bottom did not record the hours worked off the clock. As a result, Rock Bottom has failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Mann and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

Accordingly, Mann seeks civil penalties from Rock Bottom on behalf of himself and the other Aggrieved Employee as follows:

1. \$500 for each aggrieved employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Marvin Mann
Walter Haines, Esq.

Walnut Brewery, Inc., doing business as Rock Bottom Brewery
c/o Agent for Service of Process
CSC - Lawyers Incorporating Service
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Sacramento, CA 95833

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EXHIBIT 4

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and SPB Hospitality, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARVIN MANN, on behalf of himself,
all others similarly situated, and as an
“aggrieved employee” on behalf of other
“aggrieved employees” under the Labor
Code Private Attorneys General Act of
2004,

Plaintiff(s),

vs.

WALNUT BREWERY, INC., a Colorado
corporation doing business as Rock
Bottom Brewery; SPB HOSPITALITY,
LLC, a Delaware limited liability
company; and DOES
1-50, inclusive,

Defendants

Case No: _____

**DEFENDANTS WALNUT
BREWERY, INC. AND SPB
HOSPITALITY, LLC’S NOTICE
OF REMOVAL**

1 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446
2
3 et seq., Defendants Walnut Brewery, Inc. (“Walnut Brewery”) and SPB Hospitality,
4 LLC (“SPB”) (collectively referred to herein as, “Defendants”) hereby provide notice
5
6 of removal of this action from the Superior Court of California, County of Santa Clara
7
8 to the United States District Court for the Northern District of California. In support
9
10 of removal, Defendants state the following:

11 1. On March 10, 2021, Plaintiff Marvin Mann (“Plaintiff”), on behalf of
12 himself and others similarly situated, commenced this action under the California Labor
13 Code Private Attorneys General Act of 2004 in the Superior Court of California, County
14 of Santa Clara, styled *Marvin Mann, et al. v. Walnut Brewery, Inc., SPB Hospitality,*
15 *LLC, et al.*, Case No. 21CV377897.

16 2. On April 9, 2021, Plaintiff purportedly served Walnut Brewery with a
17
18 Summons, Civil Case Cover Sheet, Complaint, Civil Lawsuit Notice, and Alternative
19
20 Dispute Resolution Information Sheet. On April 13, 2021, Plaintiff purportedly served
21
22 SPB with the same process.

23 3. On April 16, 2021, Plaintiff’s counsel delivered the filed Summonses,
24
25 Complaint, and Proofs of Service to Defendants’ undersigned counsel via email, at
26
27 which time the undersigned counsel accepted service on behalf of Defendants. Pursuant
28 to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon
Defendants in this action are attached hereto as **Exhibit A**.

1 4. Defendants are filing this Notice of Removal within thirty (30) days of
2 receiving notice of the Summons and Complaint and, thus, this Notice of Removal is
3 timely filed under 28 U.S.C. § 1446(b).

4 5. This action is removed on the basis of diversity of citizenship pursuant to
5 28 U.S.C. §§ 1332 and 1441(b). Plaintiff is a citizen and resident of California (Compl.
6 at ¶ 3).

7 6. Walnut Brewery is a Colorado corporation (Compl. at ¶ 6) with its
8 principal place of business in Colorado. *See Hertz Corp. v. Friend*, 559 U.S. 77, 80-81
9 (2010) (“[A] corporation shall be deemed to be a citizen of any State by which it has
10 been incorporated *and of the State where it has its principal place of business...* We
11 believe that the ‘nerve center’ will typically be found at a corporation’s headquarters.”)
12 (internal citations omitted); *Tanious v. Gattoni*, No. 20-cv-08595-JSW, 2021 U.S. Dist.
13 LEXIS 70748, at *9 (N.D. Cali. April 8, 2021) (“[A]n entity’s registration as a ‘foreign
14 corporation’ in California does not make it a California corporation.”).

15 7. SPB is a Delaware limited liability company (Compl. at ¶ 7) with its
16 principal place of business in Tennessee. None of SPB’s owners are domiciled in
17 California.

18 8. The fictitious defendants named in the complaint are disregarded for
19 purposes of determining the existence of diversity of citizenship. 28 U.S.C. §1441(b);
20 *see also Tanious*, 2021 U.S. Dist. LEXIS 70748 at *9.

1 9. Where the amount of damages is not specified in the Complaint, removal
2 is appropriate where “it is ‘more likely than not’ that the amount in controversy
3 exceeds” the jurisdictional threshold of \$75,000. *Sanchez v. Monumental Life Ins. Co.*,
4 102 F.3d 398, 404 (9th Cir. 1996). A district court “must assume that the allegations of
5 the complaint are true, and that a jury will return a verdict for the plaintiff on all claims
6 made in the complaint” when measuring the amount in controversy. *Calagno v. Rite*
7 *Aid Corp.*, No. 4:20-cv-05476-YGR, 2020 U.S. Dist. LEXIS 216287, at *4-5 (N.D.
8 Cali. Nov. 13, 2020) (internal citation omitted). “[T]he amount in controversy is
9 determined by the complaint operative at the time of removal and encompasses all relief
10 a court may grant on that complaint if the plaintiff is victorious.” *Chavez v. JPMorgan*
11 *Chase & Co.*, 888 F.3d 413, 414-15 (9th Cir. 2018).

12 10. Plaintiff contends that Plaintiff “continuously worked for Defendants” as
13 a non-exempt hourly bartender and server from July 2020 until November 17, 2020.
14 (Compl. at ¶ 4).

15 11. In the Complaint, Plaintiff seeks, among other relief, unpaid wages, actual
16 damages, statutory damages, liquidated damages, restitution, statutory penalties, and
17 reasonable attorneys’ fees on behalf of himself and other Class Members for
18 Defendants’ alleged violation of California wage and hour laws. More specifically,
19 Plaintiff seeks:
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- a. Premium wages for workdays in which one or more off-duty meal periods were not provided and for workdays in which one or more rest breaks were not provided to them. (**Count 1 - Failure to Provide Meal and Rest Periods**)
- b. Unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages and an award of reasonable attorneys' fees. (**Count 2 - Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay**)
- c. Reimbursement for all necessary expenditures and losses due and owing within four years of the date of the filing of the Complaint until the entry of judgment, and all reasonable attorneys' fees. (**Count 3 - Failure to Indemnify**)
- d. The greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226 (a) occurred and one hundred dollars for each violation of California Labor Code § 226 (a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and an award of reasonable attorneys' fees. (**Count 4 - Wage Statement Penalties**)
- e. Waiting time penalties on behalf of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member. (**Count 5 - Waiting Time Penalties**)
- f. Damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including but not limited to the total premium wages earned for missed meal and rest periods, split shift premiums, overtime records, records pertaining to unpaid hours worked and unpaid reporting time pay. (**Count 6 - Failure to Maintain Accurate Employment Records**)
- g. Restitution of all monies rightfully belonging Plaintiff and Class Members that Defendants did not pay them, or that Defendants

otherwise retained by means of their unlawful and unfair business practices, and an award of reasonable attorneys' fees. (**Count 7 - Unfair Competition**)

12. Plaintiff also seeks civil penalties and attorneys' fees on behalf of himself and each Aggrieved Employee for Defendants' alleged violation of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 in the following amounts:

- a. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation.
- b. For violations of California Labor Code § 226 (a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation.
- c. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period.
- d. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed).
- e. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each violation.

1 f. For violations of California Labor Code §§ 201, 202, 203, 226.7,
2 1194, 1198, and 2802, one hundred dollars (\$100.00) for each
3 Aggrieved Employee per pay period for each initial violation and
4 two hundred dollars (\$200.00) for each Aggrieved Employee per
5 pay period for each subsequent violation.

6 13. Based on a fair reading of the Complaint, and without conceding the merits
7 of the claims, Plaintiff, both individually and on behalf of others similarly situated, is
8 seeking in excess of \$75,000 in damages, exclusive of interest and costs.

9 14. Pursuant to 28 U.S.C. § 1332, this action may be removed to this Court
10 given Plaintiff's asserted damages and the diverse citizenship of the parties. The matter
11 is one in which the district courts have original jurisdiction and Plaintiff originally
12 brought this civil action in the Superior Court of California, County of Santa Clara.

13 15. Pursuant to 28 U.S.C. § 1441(a), venue is proper in the United States
14 District Court for the Northern District of California, San Jose Division, which
15 embraces the County of Santa Clara, California, the place where the state court action
16 was pending.

17 16. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly serve copies of
18 this Notice of Removal on Plaintiff's counsel and upon the Clerk of Court, Superior
19 Court of California, County of Santa Clara. A copy is attached hereto as **Exhibit B**.

20 By filing this Notice of Removal to the United States District Court for the
21 Northern District of California, Defendants do not waive, either expressly or impliedly,
22 their respective rights to assert any defense they could have asserted in the Superior
23 Court of California, County of Santa Clara.

1 Court of California, County of Santa Clara. Defendants reserve the right to amend or
2 supplement this Notice of Removal.

3
4
5 Dated: May 10, 2021

WALLER LANSDEN DORTCH & DAVIS, LLP

6 By: /s/ John Tishler

7 Adam I. Miller (269990)

8 Corey A. Miller (278031)

MILLER GERBER LLP

9 18301 Von Karman Ave, Suite 950

10 Irvine, CA 92612

(714) 450-3800 Phone

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12 John Tishler (Bar No. 252670)

13 Aron Z. Karabel, *pro hac vice forthcoming*

14 Flynnne M. Dowdy, *pro hac vice forthcoming*

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19 aron.karabel@wallerlaw.com

flynnne.dowdy@wallerlaw.com

20 *Attorney for Defendants Walnut Brewery, Inc. and SPB Hospitality, LLC*
21
22
23
24
25
26
27

DECLARATION OF SERVICE

Case Name: **Marvin Mann vs. Walnut Brewery, Inc., et al.**
Case No.

I declare:

I am employed in the City of Nashville, County of Davidson, State of Tennessee. I am over the age of 18 years and not a party to the action. My business address is WALLER LANSDEN DORTCH & DAVIS LLP, 511 Union Street, Ste. 2700, Nashville, Tennessee 37219. On **May 10, 2021**, I served the documents named below on the party(ies) in this action as follows:

DOCUMENTS SERVED:

DEFENDANTS WALNUT BREWERY, INC. AND SPB HOSPITALITY, LLC'S NOTICE OF REMOVAL

☐ BY MAIL: I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Nashville, Tennessee. I am familiar with the practice of the WALLER LANSDEN DORTCH & DAVIS LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

☐ BY FACSIMILE I caused said documents to be transmitted by fax transmission from 615-850-6804 and the transmission was reported as complete and without error. A copy of the transmission report is attached to the proof of service.

☒ BY EMAIL: I served the above documents to: david@spivaklaw.com; carl@spivaklaw.com; maya@spivaklaw.com.

☐ ELECTRONIC FILING: by submitting a true copy of the foregoing on the Clerk of the U.S. District Court for the Northern District of California using its ECF system.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **May 10, 2021**, at Nashville, Tennessee.

/s/ John Tishler
JOHN TISHLER

SERVICE LIST

David G. Spivak, Esq. Carl J. Kaplan, Esq. Maya Cheaitani, Esq. The Spivak Law Firm 16530 Ventura Blvd., Suite 203 Encino, CA 91436 (213) 725-9094; Fax: (213) 634-2485 david@spivaklaw.com carl@spivaklaw.com maya@spivaklaw.com <i>Attorneys for Plaintiff, Marvin Mann</i>	
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SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: WALNUT BREWERY, INC., a Colorado corporation
(AVISO AL DEMANDADO): doing business as Rock Bottom Brewery; SPB HOSPITALITY, LLC, a Delaware limited liability company; and DOES 1-50, inclusive

YOU ARE BEING SUED BY PLAINTIFF: MARVIN MANN, on behalf of himself,
(LO ESTÁ DEMANDANDO EL DEMANDANTE): all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004

E-FILED
3/10/2021 11:48 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV377897
Reviewed By: R. Walker
Envelope: 6003645

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of Santa Clara
191 North First Street
San Jose, California 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: David Spivak, Esq.

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

The Spivak Law Firm

16530 Ventura Blvd., Ste. 203, Encino, CA 91436

213-725-9094

DATE: 3/10/2021 11:48 AM Clerk of Court

Clerk, by R. Walker
(Secretario)

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

21CV377897

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Spivak, Esq.; Carl Kaplan, Esq. SBN: 179684; 323019 The Spivak Law Firm 16530 Ventura Blvd., Ste. 203, Encino, CA 91436 TELEPHONE NO.: 213-725-9094 FAX NO.: 213-634-2485 ATTORNEY FOR (Name): Marvin Mann		FOR COURT USE ONLY Electronically Filed by Superior Court of CA, County of Santa Clara, on 3/10/2021 11:48 AM Reviewed By: R. Walker Case #21CV377897 Envelope: 6003645 CASE NUMBER: 21CV377897 JUDGE: Hon. Patricia M. Lucas / D3 DEPT:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, 95113 BRANCH NAME: Downtown Superior Court		
CASE NAME: MARVIN MANN, et al. v. WALNUT BREWERY, INC., et al.		
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less) Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|---|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☒ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☒ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Eight (8)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 03 / 10 / 2021

David Spivak, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

E-FILED
3/10/2021 11:48 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV377897
Reviewed By: R. Walker

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6 Telephone (213) 725-9094

7 Facsimile (213) 634-2485

8 Attorneys for Plaintiff,

9 MARVIN MANN, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **(UNLIMITED JURISDICTION)**

13 MARVIN MANN, on behalf of himself, all
14 others similarly situated, and as an “aggrieved
15 employee” on behalf of other “aggrieved
16 employees” under the Labor Code Private
17 Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 WALNUT BREWERY, INC., a Colorado
21 corporation doing business as Rock Bottom
22 Brewery; SPB HOSPITALITY, LLC, a
23 Delaware limited liability company; and DOES
24 1-50, inclusive,

25 *Defendants.*

Case No.: **21CV377897**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201–203);
6. Failure to Maintain Accurate Employment Records (Lab. Code §§ 1174, 1174.5, and 1998);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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Plaintiff, MARVIN MANN (hereafter “Plaintiff”), on behalf of himself and all others similarly situated, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class and representative action against Defendant WALNUT BREWERY, INC., a Colorado corporation doing business as Rock Bottom Brewery, SPB HOSPITALITY, LLC, a Delaware limited liability company, and DOES 1-50, inclusive (collectively “Defendants”) for alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), and the Business and Professions Code.

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him and other similarly situated current and former employees in California for unpaid wages and other related relief. These claims are based on Defendants’ alleged failures to: (1) Provide all meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours worked at the correct rates of pay, (3) Indemnify Plaintiff and the below-described Class for reasonable expenses incurred while performing their duties, (4) Provide accurate and complete itemized written wage statements, (5) Timely pay all final wages upon termination of employment, (6) Maintain accurate employment records, and (7) Fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages and related relief through this class and representative action.

PARTIES

3. Plaintiff MARVIN MANN is a resident of California.

4. In approximately July 2020, Defendants began to employ Plaintiff to work at their Rock Bottom restaurant and brewery in Campbell, California, as a non-exempt hourly bartender and server. Plaintiff continuously worked for Defendants in this capacity from the time of his hire until on or about November 17, 2020, when his employment ended.

5. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an “aggrieved employee” within the meaning of Labor Code § 2699(c).

6. Defendant WALNUT BREWERY, INC., is a corporation organized and existing under the laws of Colorado and a citizen of California based on Plaintiff’s information and belief.

7. Defendant SPB HOSPITALITY, LLC, is a limited liability company organized



and existing under the laws of Delaware based on Plaintiff's information and belief.

8. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

9. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees, servants, masters, and/or employers of the remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment and with the approval and ratification of each of the other Defendants.

10. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein.

11. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

12. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

13. **Class Definition:** The Class is defined as follows: All California-based persons Defendants employed on an hourly basis, including as bartenders, servers, bussers, dishwashers, cooks, chefs, and in comparable positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action



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1 (“Class” or “Class Members”).

2 14. **Reservation of Rights:** Pursuant to Rule of Court 3.765 (b), Plaintiff reserves the
3 right to amend or modify the class definition with greater specificity, by further division into
4 subclasses and/or by limitation to particular issues.

5 15. **Numerosity:** The Class Members are so numerous that the individual joinder of
6 each individual Class Member is impractical. While Plaintiff does not currently know the exact
7 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
8 minimum required for numerosity under California laws.

9 16. **Commonality and Predominance:** Common questions of law and fact exist as to
10 all Class Members and predominate over any questions which affect only individual Class
11 Members. These questions include, but are not limited to:

12 A. Whether Defendants failed to provide the Class Members with all meal and
13 rest periods in compliance with California law;

14 B. Whether Defendants failed to pay all wages earned to the Class Members
15 for all hours worked at the correct rates of pay;

16 C. Whether Defendants failed to indemnify the Class Members for the
17 reasonable expenses they incurred during the course of performing their duties;

18 D. Whether Defendants knowingly and intentionally failed to provide the
19 Class Members with accurate written wage statements;

20 E. Whether Defendants willfully failed to provide the Class Members with
21 timely final wages upon termination of employment;

22 F. Whether Defendants willfully failed to maintain accurate employment
23 records of the Class Members;

24 G. Whether Defendants engaged in unfair competition within the meaning of
25 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

26 H. Whether Class Members are entitled to restitution of money or property
27 that Defendants may have acquired from them through alleged Labor Code violations.

28 17. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims.
Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
Code, the Wage Order, and the Business and Professions Code.



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18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

20. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

21. In approximately July 2020, Defendants began to employ Plaintiff to work at their Rock Bottom restaurant and brewery in Campbell, California, as a non-exempt, hourly bartender and server. Plaintiff continuously worked for Defendants in this capacity from the time of his hire until on or about November 17, 2020, when his employment ended.

22. At all relevant times, Defendants compensated Plaintiff and the Class Members on an hourly basis and issued their paychecks on a weekly basis. At all relevant times, Defendants classified Plaintiff and the Class Members as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

23. Defendants failed to provide Plaintiff and the Class Members with an off-duty, 30-minute meal period before the end of the fifth hour worked. Instead, Defendants required Plaintiff and the Class Members to work through their meal periods. Defendants failed to provide Plaintiff



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1 and the Class Members from taking meal periods due to low staffing and heavy workload. At all
 2 relevant times, Defendants required Plaintiff and the Class Members to work while they ate. On
 3 those seldom occasions where Plaintiff and the Class Members tried to take their duty-free meal
 4 periods, management disciplined them and expressly prohibited them from taking the meal
 5 period.

6 24. Moreover, Defendants failed to authorize or permit Plaintiff and the Class
 7 Members to take duty-free, unrestricted ten-minute rest periods every four hours worked or major
 8 portion thereof in violation of California law. Due to the high workload and low staffing levels,
 9 Defendants failed to authorize and permit Plaintiff and the Class Members to take a ten-minute,
 10 paid, duty-free rest break every four hours or major portion thereof. Defendants did not seek an
 11 exemption from the rest period protections of the Wage Order from the California Division of
 12 Labor Standards Enforcement. When Plaintiff and the Class Members clocked-out for the day,
 13 the computer always displayed a “break violation” message, which management instructed
 14 Plaintiff and the Class Members to ignore.

15 25. Furthermore, Defendants failed to pay premium wages for each workday they
 16 failed to provide Plaintiff and the Class Members with a timely meal period in compliance with
 17 California law. Defendants also failed to pay premium wages for each workday they failed to
 18 provide Plaintiff and the Class Members with a timely rest period in compliance with California
 19 law. Plaintiff complained to management about Defendants’ meal and rest period violations, and
 20 their failure to hire sufficient staff. Defendants took no action to resolve his complaints.

21 26. Defendants required Plaintiff and the Class Members to incur certain business
 22 expenses in the course of performing their duties. At all relevant times, Defendants required
 23 Plaintiff and the Class Members to use their personal mobile telephones to perform their job duties
 24 but did not reimburse them for their mobile phone expenses, nor did they provide them with
 25 mobile phones as an alternative. Defendants frequently contacted Plaintiff and the Class
 26 Members, and required the employees to communicate with each other and coordinate scheduling
 27 and other business affairs, on their personal mobile phones during and outside work hours.

28 27. Defendants also required Plaintiff and the Class Members to perform work while
 clocked-out and failed to compensate them for this time. Defendants’ management instructed
 Plaintiff and the Class Members to clock-out at specific time, even while still working. At all
 relevant times, Defendants instructed Plaintiff and the Class Members to perform necessary work



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1 duties while clocked-out, including but not limited to, counting cash in the cash drawer,
 2 restocking, preparing for the next shift by stocking the work station, disposing of garbage, and
 3 cleaning. At all relevant times, Plaintiff and the Class Members spent an average of 30-minutes
 4 per day performing such work while they were clocked-out. Defendants also required Plaintiff
 5 and the Class Members to coordinate schedules and communicate with management and other
 6 employees, all while clocked-out. Defendants failed to compensate Plaintiff and the Class
 Members for the time they spent on these off-the-clock activities.

7 28. Defendants failed to issue to Plaintiff and the Class Members complete and
 8 accurate wage statements as a result of their failure to state all hours worked at the correct rates
 9 of pay, and all wages earned including rest period and meal period premium wages as described
 10 above. Defendants also failed to timely pay Plaintiff and the Class Members all earned wages
 11 described above during and at the conclusion of employment. Moreover, Defendants failed to
 12 maintain accurate employee records of Plaintiff and the Class Members.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

16 29. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

17 30. At all relevant times during the applicable limitations period, Plaintiff and the
 18 Class Members have been employees of Defendants and entitled to the benefits and protections
 19 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

20 31. In relevant part, California Labor Code § 1198 states:

21 The maximum hours of work and the standard conditions of labor
 22 fixed by the commission shall be the maximum hours of work and
 23 the standard conditions of labor for employees. The employment
 of any employee for longer hours than those fixed by the order or
 under conditions of labor prohibited by the order is unlawful.

24 32. In relevant part, California Labor Code § 512 states:

25 An employer shall not employ an employee for a work period of
 26 more than five hours per day without providing the employee with
 27 a meal period of not less than 30 minutes, except that if the total
 28 work period per day of the employee is no more than six hours, the
 meal period may be waived by mutual consent of both the



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1 employer and employee.

2 An employer shall not employ an employee for a work period of
3 more than 10 hours per day without providing the employee with
4 a second meal period of not less than 30 minutes, except that if the
5 total hours worked is no more than 12 hours, the second meal
6 period may be waived by mutual consent of the employer and the
7 employee only if the first meal period was not waived.

8 33. In relevant part, § 12 of the Wage Order states:

9 **Rest Periods**

10 (A) “Every employer shall authorize and permit all employees
11 to take rest periods, which insofar as practicable shall be in the
12 middle of each work period. The authorized rest period time shall
13 be based on the total hours worked daily at the rate of ten (10)
14 minutes net rest time per four (4) hours or major fraction thereof.
15 However, a rest period need not be authorized for employees
16 whose total daily work time is less than three and one-half (3 1/2)
17 hours. Authorized rest period time shall be counted as hours
18 worked for which there shall be no deduction from wages.”

19 (B) If an employer fails to provide an employee a rest period in
20 accordance with the applicable provisions of this Order, the
21 employer shall pay the employee one (1) hour of pay at the
22 employee’s regular rate of compensation for each work day that
23 the rest period is not provided.”

24 34. In relevant part, § 11 of the Wage Order states:

25 **Meal Periods**

26 (A) “No employer shall employ any person for a work period
27 of more than five (5) hours without a meal period of not less than
28 30 minutes, except that when a work period of not more than six
(6) hours will complete the day’s work the meal period may be
waived by mutual consent of the employee and the employer.
Unless the employee is relieved of all duty during a 30-minute
meal period, the meal period shall be considered an ‘on duty’ meal
period and counted as time worked. An ‘on duty’ meal period shall
be permitted only when the nature of the work prevents an
employee from being relieved of all duty and when by written
agreement between the parties an on-the-job paid meal period is
agreed to. The written agreement shall state that the employee
may, in writing, revoke the agreement at any time.”



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(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided."

35. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

36. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours.

37. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

38. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty-free meal periods and 10-minute rest periods free from any work duties in accordance with the Wage Order.

39. At all relevant times, Defendants have intentionally and improperly failed to provide all duty-free meal periods free from any work or duties to Plaintiff and the Class Members as required by law. Defendants also intentional and improperly failed to provide all duty-free rest breaks free from any work or duties to Plaintiff as required by law. Due to the workload and failure to hire sufficient staff members, Defendants denied Plaintiff and the Class Members their 30-minute off-duty meal periods and 10-minute rest breaks every four hours



1 worked or major fraction thereof as required by the Wage Order. Moreover, Defendants failed to
 2 pay Plaintiff and the Class Members premium wages on workdays they failed to provide them
 3 with one or more timely meal and/or rest periods as required by California law.

4 40. Plaintiff is informed and believes and thereon alleges that, at all relevant times
 5 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
 6 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
 7 breaks required by California law.

8 41. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
 9 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
 10 wages owed for all meal periods and rest breaks not provided to them.

11 42. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
 12 the Class Members are entitled to premium wages for workdays in which one or more off-duty
 13 meal periods were not provided to them, and for workdays in which one or more rest breaks were
 14 not provided to them.

15 SECOND CAUSE OF ACTION

16 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

17 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

18 **(By Plaintiff and the Class against Defendants)**

19 43. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

20 44. At all relevant times, Plaintiff and the other Class Members have been non-exempt
 21 employees of Defendants and entitled to the benefits and protections of California Labor Code
 22 §§ 510, 1194, 1197, and 1198 and the Wage Order.

23 45. In relevant part, § 3 of the Wage Order states:

24 (A) Daily Overtime - General Provisions

25 (1) The following overtime provisions are applicable to employees
 26 18 years of age or over and to employees 16 or 17 years of age who
 27 are not required by law to attend school and are not otherwise
 28 prohibited by law from engaging in the subject work. Such
 employees shall not be employed more than eight (8) hours in any
 workday or more than 40 hours in any workweek unless the
 employee receives one and one-half (1 ½) times such employee's
 regular rate of pay for all hours worked over 40 hours in the
 workweek. Eight (8) hours of labor constitutes a day's work.
 Employment beyond eight (8) hours in any workday or more than



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six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

46. Labor Code § 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

47. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

48. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

49. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.



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50. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

51. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for hours they worked while off-the-clock. At Defendants' direction, Plaintiff and the Class Members have worked off-the-clock without pay, including after clocking-out at the end of their shifts. Such work included: counting the cash drawer, restocking, preparing for the next shift, taking out the garbage, and cleaning.

52. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Class Members for all hours worked as required by California law.

53. As a result of Defendants' unlawful conduct, Plaintiff and the other Class Members have suffered damages, in an amount subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum and overtime wages.

54. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

THIRD CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff and the Class against Defendants)

55. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

56. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802 and the Wage Order.



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1 57. In pertinent part, California Labor Code § 2802 (a) states:

2 “An employer shall indemnify his or her employee [s] for all
3 necessary expenditures incurred by the employee in direct
4 consequence of the discharge of his or her duties.”

5 58. California Labor Code § 1198 prohibits employers from employing their
6 employees under conditions prohibited by the Wage Order.

7 59. At all relevant times during the applicable limitations period, Defendants required
8 Plaintiff and the Class Members to incur certain business expenses which they failed to indemnify
9 them for both during and after their employment ended. Defendants required Plaintiff and the
10 Class Members to use their personal mobile phones for work-related activities without
11 reimbursing them for mobile phone expenses.

12 60. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
13 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
14 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
15 during the course of performing their duties.

16 61. Therefore, pursuant to California Labor Code § 2802 (b), Plaintiff and the Class
17 Members are entitled to reimbursement for all necessary expenditures and losses and interest
18 thereon, due and owing to them within four years of the date of the filing of the Complaint until
19 the entry of judgment.

20 62. Accordingly, with respect to this cause of action, on behalf of himself and the
21 Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys’
22 fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

25 **(Lab. Code § 226)**

26 **(By Plaintiff and the Class against all Defendants)**

27 63. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

28 64. At all relevant times during the applicable limitations period, Plaintiff and the
other Class Members have been employees of Defendants and entitled to the benefits and
protections of California Labor Code § 226.

 65. Pursuant to California Labor Code § 226 (a), Plaintiff and the other Class



Members were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized statement showing:

- (1) Gross wages earned,
- (2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,
- (3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) Net wages earned,
- (6) The inclusive dates of the period for which the employee is paid,
- (7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) The name and address of the legal entity that is the employer, and
- (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

66. Pursuant to California Labor Code § 226 (e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

67. Pursuant to California Labor Code § 226 (e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226 (a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

- A. The amount of the gross wages or net wages paid to the employee during



1 the pay period or any of the other information required to be provided on the itemized wage
2 statement pursuant to California Labor Code § 226 (a);

3 B. Which deductions the employer made from gross wages to determine the
4 net wages paid to the employee during the pay period;

5 C. The name and address of the employer and, if the employer is a farm labor
6 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
7 address of the legal entity that secured the services of the employer during the pay period; and

8 D. The name of the employee and only the last four digits of his or her social
9 security number or an employee identification number other than a social security number.

10 68. “Promptly and easily determine,” as stated in California Labor Code §
11 226 (e), means a reasonable person would be able to readily ascertain the information without
12 reference to other documents or information.

13 69. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
14 with all meal and rest periods in compliance with California law. They also failed to provide them
15 with premium wages on workdays they failed to provide them with one or more meal and/or rest
16 periods in compliance with California law. Further, Defendants failed to compensate Plaintiff and
17 the other Class Members for all hours worked. As a result, Defendants have failed to properly
18 itemize Plaintiff and the other Class Members’ gross and net wages earned, total hours worked,
19 hourly rate of pay, the corresponding number of hours worked at each hourly rate, and other
20 requirements of California Labor Code § 226. As a result, Defendants have violated California
21 Labor Code § 226.

22 70. Defendants’ violation was knowing and intentional. Defendants instructed
23 Plaintiff and the Class Members to ignore the “break violation” message when they clocked-out
24 on the computer. Plaintiff and the Class Members complained about Defendants’ Labor Code
25 violations to management. Plaintiff and the Class Members notified Defendants that they failed
26 to provide them with duty-free meal and rest periods. Defendants ignored their complaints.

27 71. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
28 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
the other Class Members with accurate wage statements but intentionally provided wage
statements that Defendants knew were not accurate.

72. As a result of being provided with inaccurate wage statements by Defendants,



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1 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
 2 wage statements were violated and they were misled about the amount of wages they had actually
 3 earned and were owed. In addition, the absence of accurate information on their wage statements
 4 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
 5 and mathematical computations to determine the amounts of wages owed, has caused difficulty
 6 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
 7 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
 8 and the other Class Members were not able to ascertain from the wage statements whether
 Defendants complied with their obligations under California Labor Code § 226 (a).

9 73. Pursuant to California Labor Code § 226 (e), Plaintiff and the other Class
 10 Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
 11 for the initial pay period in which a violation of California Labor Code § 226 (a) occurred and
 12 one hundred dollars for each violation of California Labor Code § 226 (a) in a subsequent pay
 13 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member,
 14 and are also entitled to an award of costs and reasonable attorneys' fees.

15 74. Accordingly, with respect to this cause of action, on behalf of himself and the other
 16 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
 17 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
 18 proof.

19 **FIFTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

21 **(Lab. Code §§ 201-203)**

22 **(By Plaintiff and the Class against all Defendants)**

23 75. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24 76. At all relevant times during the applicable limitations period, Plaintiff and the
 25 Class have been non-exempt employees of Defendants and entitled to the benefits and
 26 protections of California Labor Code §§ 201-203, and the Wage Order.

27 77. Labor Code § 201 provides that all earned and unpaid wages of an employee who
 28 is discharged are due and payable immediately at the time of discharge.

78. Labor Code § 202 provides that all earned and unpaid wages of an employee who
 quits after providing at least 72-hours notice before quitting are due and payable at the time of



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quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

79. Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

80. Defendants failed to pay Plaintiff and the Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Defendants. By failing to pay Plaintiff and the Class Members as set forth above by such time, Defendants are liable for violations of Labor Code §§ 201, 202, and 203.

81. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

82. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

SIXTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

(Lab. Code §§ 1174, 1174.5, 1198)

(By Plaintiff and the Class against all Defendants)

83. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

84. At all relevant times, Plaintiff and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 1174, 1174.5, 1198 and the Wage Order.

85. Labor Code § 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the



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number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

86. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

87. Section 7 of Wage Order states,

A. Every employer shall keep accurate information with respect to each employee including the following:

- 1) Full name, home address, occupation and social security number.
- 2) Birth date, if under 18 years, and designation as a minor.
- 3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- 4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- 5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- 6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.



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B. Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

C. All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

D. Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

88. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

89. Defendants failed to pay Plaintiff and the Class Members for work performed after they clocked-out. Defendants failed to provide Plaintiff and the Class Members with all meal and rest periods in compliance with California law. Defendants also failed to provide Plaintiff and the Class Members with premium wages on workdays they failed to provide them with one or more meal and/or rest periods in compliance with California law. Defendants did not record the hours worked off-the-clock. As a results, Defendants have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Plaintiff and the Class Members' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

90. Plaintiff is informed and believes that Defendants' failure to maintain the records of Plaintiff and the Class have been willful in that Defendants have the duty and ability to maintain accurate employment records in accordance with Labor Code §§ 1174, 1174.5, and 1198 and the Wage Order but have intentionally adopted policies or practice that are incompatible with those requirements.

91. As a result of Defendants' unlawful conduct, Plaintiff and the other class



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members have suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including but not limited to the total premium wages earned for missed meal and rest periods, split shift premiums, overtime records, records pertaining to unpaid hours worked and unpaid reporting time pay.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, et seq.)

(By Plaintiff and the Class against all Defendants)

92. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

93. At all relevant times during the applicable limitations period, Plaintiff and the other Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, et seq.

94. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest periods, reimburse their employees for reasonable expenses incurred during the course of performing their duties, and pay them all earned wages for all regular and overtime hours worked.

95. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the other Class Members have suffered injuries in fact and lost money or property. Defendants deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and premium wages and reimbursement for expenses that Plaintiff and the other Class Members incurred during the course of performing their duties.

96. Pursuant to California Business & Professions Code § 17203, Plaintiff and the other Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful and unfair business practices.



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97. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

98. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

99. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning December 31, 2019 and ending on the date that final judgment is entered in this action.

100. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied



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1 by the payment of wages for weekly, biweekly, or semimonthly
2 payroll if the wages are paid not more than seven calendar days
3 following the close of the payroll period.

4 101. Defendants paid wages to employees on regular intervals. Defendants, however,
5 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On
6 information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved
7 Employees on such intervals for all wages earned and all hours worked.

8 102. During the applicable time period, Defendants violated California Labor Code
9 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

10 103. California Labor Code §§ 2699 (a) and (g) authorize an aggrieved employee, on
11 behalf of themselves and other current or former employees, to bring a civil action to recover
12 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

13 104. Pursuant to California Labor Code §§ 2699 (a) and (f), Plaintiff and the Class are
14 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
15 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the
16 applicable limitations period in the following amounts:

17 A. For violations of California Labor Code § 204, one hundred dollars
18 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
19 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
20 (penalty amounts established by California Labor Code § 210).

21 B. For violations of California Labor Code § 226 (a), two hundred fifty
22 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
23 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
24 established by California Labor Code § 226.3).

25 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
26 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
27 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
28 established by California Labor Code § 558).

D. For violations of California Labor Code § 1197, one hundred dollars
(\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per



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1 pay period (regardless of whether the initial violations were intentionally committed) (penalty
2 amounts established by California Labor Code § 1197.1).

3 E. For violations of California Labor Code § 1174, five hundred dollars
4 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
5 California Labor Code § 1174.5).

6 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
7 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
8 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
9 period for each subsequent violation (penalty amounts established by California Labor Code
10 § 2699 (f) (2)).

11 105. Plaintiff has complied with the procedures for bringing suit specified in
12 California Labor Code § 2699.3. By letter dated December 31, 2020, Plaintiff filed written notice
13 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
14 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
15 to have been violated, including the facts and theories to support the alleged violations. A true
16 and correct copy of the notice to the LWDA dated December 31, 2020 is attached as Exhibit A.
17 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
18 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
19 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
20 does not intend to investigate these allegations.

21 106. Pursuant to California Labor Code § 2699 (g), Plaintiff and the Class Members
22 are entitled to an award of civil penalties, reasonable attorney’s fees and costs in connection with
23 their claims for civil penalties.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
26 relief and judgment against Defendants as follows:

- 27 A. An order that the action be certified as a class action;
- 28 B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid Wages;
- E. Actual Damages;



- F. Statutory Damages;
- G. Civil Penalties;
- H. Liquidated Damages;
- I. Restitution;
- J. Declaratory and injunctive relief;
- K. Equitable relief;
- L. Pre-judgment interest;
- M. Statutory penalties;
- N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: 03 / 10 / 2021

By



DAVID SPIVAK,
CARL KAPLAN,
MAYA CHEAITANI,
Attorneys for Plaintiff, MARVIN MANN, and
all others similarly situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 31, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: *Marvin Mann/Walnut Brewery, Inc., et al.*

To Whom It May Concern:

This notice concerns the following employers:

1. Walnut Brewery, Inc., a Colorado corporation, doing business as Rock Bottom Brewery; and
2. SPB Hospitality, LLC, a Delaware limited liability company.

Collectively, the aforementioned employers are herein referred to as “Rock Bottom.”

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Marvin Mann (hereafter “Mann”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as hourly employees, including but not limited to bartenders, servers, bussers, dishwashers, cooks, chefs, and other hourly employees in comparable positions (hereafter referred to collectively as “Aggrieved Employees”) by Rock Bottom of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Rock Bottom has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California.

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 2 of 21

Mann and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order” or “Wage Order 5”), paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

In approximately July 2020, Rock Bottom began to employ Mann to work at its Rock Bottom restaurant and brewery in Campbell, California as a non-exempt, hourly bartender and server. Mann continuously worked for Rock Bottom in this capacity from the time of his hire until on or about November 17, 2020, when his employment ended.

At all relevant times, Rock Bottom compensated Mann and the other Aggrieved Employees on an hourly basis and issued their paychecks on a weekly basis. At all relevant times, Rock Bottom classified Mann and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and Wage Order.

Rock Bottom failed to provide Mann and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Instead, Rock Bottom required Mann and the Aggrieved Employees to work through their meal periods. Rock Bottom failed to provide Mann and the Aggrieved Employees from taking meal periods due to low staffing and heavy workload. At all relevant times, Rock Bottom required Mann and the Aggrieved Employees to work while they ate. On those seldom occasions where Mann and the Aggrieved Employees tried to take their duty-free meal periods, management disciplined them and expressly prohibited them from taking the meal period.

Moreover, Rock Bottom failed to authorize or permit Mann and the Aggrieved Employees to take duty-free, unrestricted 10-minute rest periods every four hours worked or major portion thereof in violation of California law. Due to high workload and low staffing levels, Rock Bottom failed to authorize and permit Mann and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. Rock Bottom did not seek

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 3 of 21

an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. When Mann and the Aggrieved Employees clocked-out for the day, the computer always displayed a “break violation” message, which management instructed Mann and the Aggrieved Employees to ignore.

Furthermore, Rock Bottom failed to pay premium wages for each workday it failed to provide Mann and the other Aggrieved Employees with a timely meal period in compliance with California law. Rock Bottom also failed to pay premium wages for each workday it failed to provide Mann and the other Aggrieved Employees with a timely rest period in compliance with California law. Mann complained to management about Rock Bottom’s meal and rest period violations, and their failure to hire sufficient staff. Rock Bottom took no action to resolve his complaints.

Rock Bottom required Mann and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. At all relevant times, Rock Bottom required Mann and the Aggrieved Employees to use their personal mobile telephones to perform their job duties but did not reimburse them for their mobile phone expenses, nor did they provide them with mobile phones as an alternative. Rock Bottom frequently contacted Mann and the Aggrieved Employees, and required the employees to communicate with each other and coordinate scheduling and other business affairs, on their personal mobile phones during and outside work hours.

Rock Bottom also required Mann and the Aggrieved Employees to perform work while clocked out and failed to compensate them for this time. Rock Bottom management instructed Mann and the Aggrieved Employees to clock-out at specific times, even while still working. At all relevant times, Rock Bottom instructed Mann and the Aggrieved employees to perform necessary work duties while clocked-out, including but not limited to, counting cash in the cash drawer, restocking, preparing for the next shift by stocking the work station, disposing of garbage, and cleaning. At all relevant times, Mann and the Aggrieved Employees spent an average of 30 minutes a day performing such work while they were clocked-out. Rock Bottom also required Mann and the Aggrieved

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 4 of 21

Employees to coordinate schedules and communicate with management and other employees, all while clocked out. Rock Bottom failed to compensate Mann and the Aggrieved Employees for the time they spent on these off-the-clock activities.

Rock Bottom failed to issue to Mann and the Aggrieved Employees complete and accurate wage statements as a result of its failure to state all hours worked at the correct rates of pay, and all wages earned including rest period and meal period premium wages as described above. Rock Bottom also failed to timely pay Mann and the Aggrieved Employees all earned wages described above during and at the conclusion of employment. Moreover, Rock Bottom failed to maintain accurate employee records of Mann and the Aggrieved Employees.

For the reasons stated herein, Mann alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Rock Bottom failed to provide Mann and the other Aggrieved Employees with all timely, off-duty rest breaks and meal periods;
- b) Rock Bottom failed to compensate Mann and the other Aggrieved Employees at one hour's pay for each day in which they were not provided one or more meal periods required by law;
- c) Rock Bottom failed to compensate Mann and the other Aggrieved Employees at one hour's pay for each day in which they were not provided one or more rest breaks required by law;
- d) Rock Bottom failed to pay Mann and the other Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum, regular and overtime pay due to off-the-clock work;
- e) Rock Bottom failed to pay Mann and the other Aggrieved Employees additional "reporting time" wages on days during which they

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 5 of 21

communicated by phone with Rock Bottom management or on-duty employees outside of their scheduled work hours.

- f) Rock Bottom failed to indemnify Mann and the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- g) Rock Bottom failed to provide Mann and the Aggrieved Employees with accurate wage statements;
- h) Rock Bottom failed to timely pay Mann and the Aggrieved Employees all earned and unpaid wages during employment;
- i) Rock Bottom failed to timely pay Mann and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment; and
- j) Rock Bottom willfully failed to maintain accurate employment records regarding Mann and the Aggrieved Employees.

Accordingly, Mann now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Rock Bottom's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry[.]" Wage Order § 1. The phrase "public housekeeping industry" includes restaurants. *Id.* § 2 (P)(1).

At all relevant times during the applicable limitations period, Rock Bottom operated restaurants. Accordingly, Mann and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 6 of 21

Failure To Provide Rest Breaks And Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of Wage Order 5 states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 7 of 21

meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the- job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

...

- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day’s written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

In relevant part, Section 12 of Wage Order 5 states:

Rest Periods:

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 8 of 21

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

Section 17 of the Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 9 of 21

Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

Rock Bottom has intentionally and improperly failed to provide all duty-free meal periods free from any work or duties to Mann and the other Aggrieved Employees as required by law. Rock Bottom also intentionally and improperly failed to provide all duty-free rest breaks free from any work or duties to Mann and the other Aggrieved Employees as required by law. Due to the workload and failure to hire sufficient staff members, Rock Bottom denied Mann and the other Aggrieved Employees their 30-minute off-duty meal period and 10-minute rest breaks every four hours worked or major fraction thereof as required by the Wage Order. Moreover, Rock Bottom failed to pay Mann and Aggrieved Employees premium wages on workdays it failed to provide them with one or more timely meal and rest periods as required by law. In failing to do so, Rock Bottom violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Mann seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 10 of 21

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Failure to Indemnify for Expenses
(Lab Code § 2802 and 1198)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

At relevant times during the applicable limitations period, Rock Bottom required Mann and the Aggrieved to use their personal mobile phones for work related activities without reimbursing them for mobile phone expenses. Accordingly, Mann seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 11 of 21

Failure to Pay All Wages for All Hours Worked at the Correct Rates of
Pay
(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 12 of 21

all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington*

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 13 of 21

Memorial Hosp. v. Superior Court (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Rock Bottom knowingly failed to pay Mann and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for hours they worked while off-the-clock. At Rock Bottom’s direction, Mann and the Aggrieved Employees have worked off the clock without pay, including after clocking out at the end of their shifts. Such work included: counting the cash drawer, restocking, preparing for the next shift, taking out the garbage, cleaning.

Accordingly, Mann seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 14 of 21

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;
- 6) The inclusive dates of the period for which the employee is paid;

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 15 of 21

- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 8) The name and address of the legal entity that is the employer; and
- 9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, Rock Bottom violated California Labor Code section 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Rock Bottom failed to state in the wage statements it issued to Mann and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock prior to clocking in at the beginning of their shifts (as described above).

Rock Bottom's violation was knowing and intentional. Rock Bottom instructed Mann and the Aggrieved Employees to ignore the "break violation" message when they clocked-out on the computer. Mann and the Aggrieved Employees complained about Rock Bottom's Labor Code violations to management. Mann and the Aggrieved Employees notified Rock Bottom that it failed to provide them with duty-free meal and rest periods. Rock Bottom ignored their complaints.

Accordingly, Mann now seeks civil penalties for the Labor Code violations that Rock Bottom has committed against himself and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages During Employment

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 16 of 21

(Lab. Code § 204)

California Labor Code § 204 states that all wages (other than those mentioned in Labor Code sections 201-202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Rock Bottom failed to pay Mann and the other Aggrieved Employees for work performed after they clocked out. Rock Bottom failed to provide Mann and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Rock Bottom also failed to provide Mann and the Aggrieved Employees with all premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Rock Bottom failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

Accordingly, Mann seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee for each subsequent violation of California Labor Code § 204 (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202 and 203)

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 17 of 21

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, Rock Bottom failed to provide Mann and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work performed off-the-clock. As a result, Rock Bottom failed to pay Mann and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Rock Bottom has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Mann seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each Aggrieved Employee per pay period in which

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 18 of 21

subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, 1198)

Labor Code § 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 19 of 21

- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Rock Bottom failed to pay Mann and the other Aggrieved Employees for work performed after they clocked out. Rock Bottom failed to provide Mann and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Rock Bottom also failed to provide Mann and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. Rock Bottom did not record the hours worked off the clock. As a result, Rock Bottom has failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Mann and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 20 of 21

Accordingly, Mann seeks civil penalties from Rock Bottom on behalf of himself and the other Aggrieved Employee as follows:

1. \$500 for each aggrieved employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Marvin Mann
Walter Haines, Esq.

Walnut Brewery, Inc., doing business as Rock Bottom Brewery
c/o Agent for Service of Process
CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

LWDA / Walnut Brewery, Inc., et al.

12/31/20

Page 21 of 21

SPB Hospitality, LLC
c/o Agent for Service of Process
The Corporation Trust Company,
Corporation Trust Center
1209 Orange St.
New Castle, DE 19801

21CV377897**CIVIL LAWSUIT NOTICE**

Superior Court of California, County of Santa Clara
191 North First St., San José, CA 95113

CASE NUMBER: _____

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of <_CountyName_> Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 201 North First Street, San José (408-882-2900 x-2926).

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: **Hon. Patricia M. Lucas** Department: **3**

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: **07/07/21** Time: **2:30 pm** in Department: **3**

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

**SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Spivak, 179684 The Spivak Law Firm 16530 Ventura Blvd., Suite 203 Encino, CA 91436 TELEPHONE NO.: (818)582-3039 ATTORNEY FOR (Name):	FOR COURT USE ONLY System System Electronically Filed by Superior Court of CA, County of Santa Clara, on 4/16/2021 11:45 AM
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Santa Clara County 191 N. First Street San Jose, CA 95113-1090	Reviewed By: System System Case #21CV377897 Envelope: 6257646
PLAINTIFF/PETITIONER: Marvin Mann, et al. DEFENDANT/RESPONDENT: Walnut Brewerv. Inc.. et al.	CASE NUMBER: 21CV377897
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: Mann/Rock Bottom

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Summons; Civil Case Cover Sheet; Complaint; Civil Lawsuit Notice; Alternative dispute Resolution Information Sheet

3. a. Party served: SPB HOSPITALITY, LLC, a Delaware limited liability company

b. Person Served: Jim Mazany - Person Authorized to Accept Service of Process

4. Address where the party was served: 1875 S Bascom Ave, #700
Campbell, CA 95008

5. I served the party

- b. **by substituted service.** On (date): 04/13/2021 at (time): 2:10PM I left the documents listed in item 2 with or in the presence of: Nick Forbes - Person In Charge of Office
 (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 (4) A declaration of mailing is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:
 d. on behalf of:
 SPB HOSPITALITY, LLC, a Delaware limited liability company

under: Other: Limited Liability Company

7. Person who served papers

- a. Name: Gary Genest
 b. Address: One Legal - P-000618-Sonoma
 1400 North McDowell Blvd, Ste 300
 Petaluma, CA 94954
 c. Telephone number: 415-491-0606
 d. The fee for service was: \$ 113.25
 e. I am:
 (3) registered California process server.
 (i) Employee or independent contractor.
 (ii) Registration No. 1560
 (iii) County Santa Clara

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Date: 04/14/2021

Gary Genest

(NAME OF PERSON WHO SERVED PAPERS)

GyG

(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): David Spivak, 179684 The Spivak Law Firm 16530 Ventura Blvd. Encino, CA 91436		TELEPHONE NO.: (818)582-3039		FOR COURT USE ONLY	
ATTORNEY FOR (Name):		Ref. No. or File No. Mann/Rock Bottom			
Insert name of court, judicial district or branch court, if any: Santa Clara - First Street 191 N. First Street San Jose, CA 95113-1090					
PLAINTIFF: Marvin Mann, et al.					
DEFENDANT: Walnut Brewery, Inc., et al.					
PROOF OF SERVICE BY MAIL				CASE NUMBER: 21CV377897	

BY FAX

I am a citizen of the United States, over the age of 18 and not a party to the within action. My business address is 1400 N. McDowell Blvd, Petaluma, CA 94954.

On 04/15/2021, after substituted service under section CCP 415.20(a) or 415.20(b) or FRCP 4(e)(2)(B) or FRCP 4(h)(1)(B) was made (if applicable), I mailed copies of the:

Summons; Civil Case Cover Sheet; Complaint; Civil Lawsuit Notice; Alternative dispute Resolution Information Sheet

to the person to be served at the place where the copies were left by placing a true copy thereof enclosed in a sealed envelope, with First Class postage thereon fully prepaid, in the United States Mail at PETALUMA, California, addressed as follows:

SPB HOSPITALITY, LLC, a Delaware limited liability company

Jim Mazany

1875 S Bascom Ave, #700

Campbell, CA 95008

I am readily familiar with the firm's practice for collection and processing of documents for mailing. Under that practice, it would be deposited within the United States Postal Service, on that same day, with postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

Fee for Service: \$ 113.25

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on 04/15/2021 at Petaluma, California.

One Legal - P-000618-Sonoma
1400 North McDowell Blvd, Ste 300
Petaluma, CA 94954



Cesar Lopez

OL# 16130105

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 16530 Ventura Blvd., Suite 203, Encino, California 91436.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Friday, April 16, 2021, I served the foregoing document described as **PROOF OF SERVICE OF SUMMONS ON DEFENDANT SPB HOSPITALITY, LLC** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

WALNUT BREWERY, INC.
c/o CSC - Lawyers Incorporating Service
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

SPB HOSPITALITY, LLC
c/o Jim Mazany
Agent for Service of Process
1875 S Bascom Ave, #700
Campbell, CA 95008

XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 312, Encino, California 91436.

EXECUTED on Friday, April 16, 2021, at Encino, California.

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

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



BRECK OYAMA

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Spivak, 179684 The Spivak Law Firm 16530 Ventura Blvd., Suite 203 Encino, CA 91436 TELEPHONE NO.: (818)582-3039 ATTORNEY FOR (Name):	FOR COURT USE ONLY System System Electronically Filed by Superior Court of CA, County of Santa Clara, on 4/16/2021 11:45 AM Reviewed By: System System Case #21CV377897 Envelope: 6257646
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Santa Clara County 191 N. First Street San Jose, CA 95113-1090	
PLAINTIFF/PETITIONER: Marvin Mann, et al. DEFENDANT/RESPONDENT: Walnut Brewery, Inc., et al.	CASE NUMBER: 21CV377897
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: Mann/Rock Bottom

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action. **BY FAX**
 2. I served copies of:

Summons; Civil Case Cover Sheet; Complaint; Civil Lawsuit Notice; Alternative Dispute Resolution (ADR) Information Sheet

3. a. Party served: **WALNUT BREWERY, INC.,** a Colorado corporation doing business as **Rock Bottom Brewery**

b. Person Served: **CSC - Susie Vang - Person Authorized to Accept Service of Process**

4. Address where the party was served: **2710 Gateway Oaks Drive, Suite 150N**
Sacramento, CA 95833

5. I served the party

a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **04/09/2021** (2) at (time): **1:45PM**

6. The "Notice to the Person Served" (on the summons) was completed as follows:

d. on behalf of:

WALNUT BREWERY, INC., a Colorado corporation doing business as **Rock Bottom Brewery**
 under: **CCP 416.10 (corporation)**

7. Person who served papers

a. Name: **Tyler Anthony DiMaria**

b. Address: **One Legal - P-000618-Sonoma**
1400 North McDowell Blvd, Ste 300
Petaluma, CA 94954

c. Telephone number: **415-491-0606**

d. The fee for service was: **\$ 40.00**

e I am:

(3) registered California process server.

(i) Employee or independent contractor.

(ii) Registration No.: **2006-06**

(iii) County: **Sacramento**

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Date: **04/09/2021**

Tyler Anthony DiMaria

(NAME OF PERSON WHO SERVED PAPERS)



(SIGNATURE)

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 16530 Ventura Blvd., Suite 203, Encino, California 91436.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Friday, April 16, 2021, I served the foregoing document described as **PROOF OF SERVICE OF SUMMONS ON DEFENDANT WALNUT BREWERY, INC.** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

WALNUT BREWERY, INC.
c/o CSC - Lawyers Incorporating Service
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

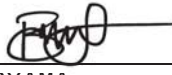
SPB HOSPITALITY, LLC
c/o Jim Mazany
Agent for Service of Process
1875 S Bascom Ave, #700
Campbell, CA 95008

XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 312, Encino, California 91436.

EXECUTED on Friday, April 16, 2021, at Encino, California.

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

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



BRECK OYAMA

1 Adam I. Miller, Esq. – (SBN 269990)
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10 511 Union Street, Suite 2700
Nashville, TN 37219
Telephone: 615-850-8729
11 Facsimile: 615-850-6804

12 Attorneys for Defendants, Walnut Brewery, Inc.
13 and SPB Hospitality, LLC

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SANTA CLARA SAN JOSE – UNLIMITED JURISDICTION**
16

17
18 MARVIN MANN, on behalf of himself, all
19 others similarly situated, and as an “aggrieved
20 employee” on behalf of other “aggrieved
21 employees” under the Labor Code Private
Attorneys General Act of 2004,

22 Plaintiff(s),

23 vs.

24 WALNUT BREWERY, INC., a Colorado
25 corporation doing business as Rock Bottom
Brewery; SPB HOSPITALITY, LLC, a
26 Delaware limited liability company; and DOES
1-50, inclusive,

27 Defendants.
28

Case No. 21CV377897

**DEFENDANTS WALNUT BREWERY,
INC. AND SPB HOSPITALITY, LLC’S
NOTICE OF ADVERSE PARTY AND
STATE COURT OF REMOVAL OF
ACTION**

Complaint Filed: March 10, 2021

1 PLEASE TAKE NOTICE that Defendants Walnut Brewery, Inc. and SPB Hospitality, LLC
2 have removed this action to the United States District Court for the Northern District of California.
3 A copy of the Notice of Removal along with the attachments thereto, all of which have been filed in
4 the United States District Court for the Northern District of California, are attached hereto as
5 **Exhibit A.**

6
7 Dated: May 10, 2021

MILLER MILLER GERBER LLP

8
9 

10
11 BY:

Adam I. Miller
Attorney for Defendants Walnut Brewery, Inc. and
SPB Hospitality, LLC

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
MARVIN MANN, et. al.

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
David Spivak, Spivak Lawa, 16530 Ventura Blvd, Ste 203, Encino, CA 91436 david@spivaklaw.com

DEFENDANTS
WALNUT BREWERY, INC., et. al.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
John Tisher, Waller Lansden, 511 Union St, Ste 2700, Nashville, TN 37219 615-244-6380 john.tishler@wallerlaw.com

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment Of Veteran's Benefits ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury -Medical Malpractice CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/ Accommodations ☐ 445 Amer. w/Disabilities-- Employment ☐ 446 Amer. w/Disabilities--Other ☐ 448 Education	PERSONAL INJURY ☐ 365 Personal Injury -- Product Liability ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty OTHER ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee-- Conditions of Confinement	☐ 625 Drug Related Seizure of Property 21 USC § 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☒ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC § 158 ☐ 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent--Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS--Third Party 26 USC § 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC § 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced & Corrupt Organizations ☐ 480 Consumer Credit ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/ Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation--Transfer ☐ 8 Multidistrict Litigation--Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Cal. Lab.Code. Sections 201-203, 226, 510, 512, 1174, 1194, 1197, 1198, 2698 et. seq. Bus & Prof Code Sec. 17200 et. seq.
Brief description of cause:
Allegations of failure to pay wages, provide meal and rest breaks and claims under the Private Attorneys Gen. Act. of 2004

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. ☐ DEMAND \$ ☐ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) ☐ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA-MCKINLEYVILLE

DATE 05/10/2021

SIGNATURE OF ATTORNEY OF RECORD John Tisher

EXHIBIT 5

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Facsimile: 615-850-6804

Attorneys for Defendants, Walnut Brewery, Inc.
and SPB Hospitality, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARVIN MANN, on behalf of himself, all
others similarly situated, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff(s),

vs.

WALNUT BREWERY, INC., a Colorado
corporation doing business as Rock Bottom
Brewery; SPB HOSPITALITY, LLC, a
Delaware limited liability company; and DOES
1-50, inclusive,

Defendants

Case No: 5:21-cv-03500

**NOTICE OF DEFENDANTS WALNUT
BREWERY, INC. AND SPB
HOSPITALITY, LLC’S MOTION AND
MOTION TO DISMISS, COMPEL
ARBITRATION, AND STAY
PROCEEDINGS**

Hearing Date: July 6, 2021
Time: 10:00 a.m.

Hon. Virginia K. DeMarchi

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD: NOTICE

IS HEREBY GIVEN THAT on July 6, 2021, at 10:00 a.m., before the Honorable Virginia K. DeMarchi, in Courtroom 2 of the United States Courthouse for the Northern District of California, San Jose Courthouse, located at 280 South 1st Street, San Jose, CA 95113 Defendants Walnut Brewery, Inc. (“Walnut Brewery”) and SPB Hospitality, LLC (“SPB”) (collectively referred to herein as, “Defendants”) will and hereby do move, pursuant to Federal Rule of Civil Procedure 12(b)(6) and the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 *et seq.*, to (1) dismiss all substantive claims against SPB that arose prior to June 1, 2020, the date it’s owner acquired the assets of Plaintiff Marvin Mann’s (“Plaintiff”) actual employer; (2) compel Plaintiff’s remaining claims in Counts I through VII to arbitration and dismiss them from this action; (3) dismiss the class and collective action claims alleged in Counts I through VII; and (4) pending resolution of the arbitration, stay the Private Attorneys General Act of 2004 (“PAGA”) claims alleged in Count VIII.

There is a valid and enforceable agreement to arbitrate. As a condition of his employment and in exchange for SPB’s (including affiliates’) agreement to arbitrate their disputes, Plaintiff agreed to resolve any and all employment disputes through mutually binding arbitration and waived his right to participate in a class or collective action lawsuit concerning those claims. Furthermore, Plaintiff’s claims against SPB that predate its formation and acquisition of his employer are barred as a matter of law. The Court must compel any remaining substantive claims against Defendants to arbitration and should stay the PAGA claims pending resolution of the arbitration proceedings.

In support of this Motion, Defendants rely on the contemporaneously filed Memorandum of Points and Authorities, the Declaration of Julie Johnson, all pleadings and documents on file in this matter, and such other and further evidence as may be presented at or before the hearing on this matter.

Dated: May 17, 2021

**MILLER MILLER GERBER LLP
ATTORNEYS AT LAW**

By: /s/ Adam I. Miller

Adam I. Miller (269990)

Corey A. Miller (278031)

Attorneys for Defendants, Walnut Brewery, Inc. and
SPB Hospitality, LLC

WALLER LANSDEN DORTCH & DAVIS, LLP

John Tishler (Bar No. 252670)

Aron Z. Karabel, *pro hac vice forthcoming*

Flynne M. Dowdy, *pro hac vice forthcoming*

Attorneys for Defendants, Walnut Brewery, Inc. and
SPB Hospitality, LLC

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY 1

III. STANDARD OF REVIEW 4

IV. ARGUMENT..... 5

A. The Court Must Dismiss All Substantive Claims Against Defendants and
Compel All Viable Claims to Arbitration 5

1.The Court must dismiss all claims against SPB that arose prior to June 1, 2020. 5

2. The Court must compel Plaintiff’s remaining claims against Defendant in Counts
I-VII to arbitration and should also dismiss them from this action..... 7

i. There is an agreement to arbitrate and Plaintiff’s wage and hour claims fit
squarely within its scope..... 7

ii. The Arbitration Agreement is valid and enforceable..... 8

iii. The Court should dismiss all claims that it compels to arbitration..... 9

B. The Court Must Dismiss Plaintiff’s Class Action Claims Set Forth In
Counts I-VII. 10

C. The Court Should Stay Plaintiff’s PAGA Claims Pending Resolution of the
Arbitration 10

V. CONCLUSION 12

TABLE OF AUTHORITIES

Supreme Court Cases

<i>AT&T Mobility LLC v. Concepcion</i> , 131 S.Ct. 1740, 1745-47 (2011).....	7, 8
<i>Dean Witter Reynolds Inc. v. Byrd</i> , 470 U.S. 213, 221 (1985).....	7
<i>Epic Sys. Corp. v. Lewis</i> , 138 S.Ct. 1612, 1632 (2018).....	7
<i>Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.</i> 473 U.S. 614, 625–26 (1985).....	7

Federal Cases

<i>Aviles v. Quik Pick Express, LLC</i> , 703 Fed. Appx. 631 (9th Cir. Nov. 24, 2017).....	11
<i>Bankwitz v. Ecolab, Inc.</i> , 2017 U.S. Dist. LEXIS 171786 (N.D. Cal. Oct. 17, 2017).....	11
<i>Benavidez v. Cty. of San Diego</i> , 2021 U.S. App. LEXIS 10334, at *16-17 (9th Cir. April 12, 2021).....	4
<i>Blau v. AT&T Mobility</i> , 2012 U.S. Dist. LEXIS 217, at *9 (N.D. Cal. Jan. 3, 2012)	5
<i>Del Puerto Water Dist. v. United States Bureau of Reclamation</i> , 271 F. Supp. 2d 1224 (E.D. Cal. 2003).....	4
<i>Eidmann v. Walgreen Co.</i> , 2021 U.S. Dist. LEXIS 36800, at *7 (N.D. Cal. Feb. 26, 2021).....	1
<i>Estate of Horner v. Bailor</i> , 2019 U.S. Dist. LEXIS 47371, at *2 n. 2 (N.D. Cal. March 21, 2019)	2
<i>Fabian v. Lemahieu</i> , 2019 U.S. Dist. LEXIS 172906, at **26-27 (N.D. Cal. Oct. 4, 2009)	8

1	<i>Forsyth v. HP Inc.</i> ,	
2	2018 U.S. Dist. LEXIS 20362, at *9-10 (N.D. Cal. Feb. 6, 2018)	10
3	<i>Georgia-Pacific v. Officemax Inc.</i> ,	
4	2013 U.S. Dist. LEXIS 133657, at *22 (N.D. Cal. Sept. 18, 2013)	9
5	<i>Gerritsen v. Warner Bros. Entm't Inc.</i> ,	
6	112 F. Supp. 3d 1011 (C.D. Cal. 2015)	1
7	<i>Gilbers Enters. v. Amazon</i> ,	
8	2019 U.S. Dist. LEXIS 210831 (C.D. Cal. Sept. 23, 2019).....	11
9	<i>Hermosillo v. Davey Tree Surgery Co.</i> ,	
10	2018 U.S. Dist. LEXIS 117426, at * 20 (N.D. Cal. July 13, 2018).....	1
11	<i>InterDigital Tech. Corp. v. Pegatron Corp.</i> ,	
12	2016 U.S. Dist. LEXIS 7441, at *12 (N.D. Cal. Jan. 20, 2016)	4
13	<i>Juarez v. Soc. Fin., Inc.</i> ,	
14	2021 U.S. Dist. LEXIS 70430, at *11 (N.D. Cal. April 12, 2021)	8
15	<i>Lifescan, Inc. v. Pernaier Diabetic Servs., Inc.</i> ,	
16	363 F.3d 1010 (9th Cir. 2004).	7
17	<i>Loewen v. Lyft, Inc.</i> ,	
18	129 F. Supp. 3d 945 (N.D. Cal. 2015).....	9
19	<i>Medina v. EMC Mortg. Corp.</i> ,	
20	2010 U.S. Dist. LEXIS 62746 (N.D. Cal. June 24, 2010).....	6
21	<i>Morvant v. P.F. Chang's China Bistro, Inc.</i> ,	
22	870 F. Supp. 2d 831 (N.D. Cal. 2012)	7, 8
23	<i>Nanavati v. Adecco USA, Inc.</i> ,	
24	99 F. Supp. 3d 1072 (N.D. Cal. 2015)	8
25	<i>Ortega Soco-Unocal 76 v. City of Calexico</i> ,	
26	2010 U.S. Dist. LEXIS 155067 (S.D. Cal. Feb. 2, 2010)	6
27		
28		

1	<i>Sakkab v. Luxottica Retail N. Am., Inc.</i> ,	
2	803 F.3d 425 (9th Cir. 2015)	10
3	<i>Samson v. NAMA Holdings, LLC</i> ,	
4	637 F.3d 915 (9th Cir. 2011)	8
5	<i>Whitworth v. SolarCity Corp.</i> ,	
6	336 F. Supp. 3d 1119 (N.D. Cal. Aug. 21, 2018)	11
7	<i>Woods v. Vector Mktg. Corp.</i> ,	
8	2014 U.S. Dist. LEXIS 121165, at *6 (N.D. Cal. Aug. 28, 2014).....	8
9	<i>Wuest v. Comcast Corp.</i> ,	
10	2017 U.S. Dist. LEXIS 228519, at *3 (N.D. Cal. Oct. 5, 2017).	4
11		
12	<u>California State Cases</u>	
13	<i>DeLeon v. Verizon Wireless, LLC</i> ,	
14	143 Cal. Rptr. 3d 810 (Ct. App. 2012).....	9
15	<u>Federal Statutes</u>	
16	9 U.S.C. § 2.....	7
17	9 U.S.C. § 4.....	4
18		
19	<u>Federal Rules</u>	
20	Federal Rule of Civil Procedure 1	11
21	Federal Rule of Civil Procedure 12(b)(6)	4
22		
23		
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This lawsuit should be before an arbitrator. Plaintiff is the subject of a valid and binding
4 arbitration agreement in which he agreed to arbitrate any claims or disputes arising out of his
5 employment. In the same agreement, Plaintiff also waived any right to bring claims on behalf of a
6 class. Additionally, any claims asserted against SPB that arose prior to its formation and affiliation
7 with Rock Bottom Restaurant and Brewery (“Rock Bottom”) (i.e., June 1, 2020) are barred as a matter
8 of law. Lastly, Plaintiff’s PAGA claims for civil penalties should be stayed pending arbitration
9 because they are derivative of his substantive claims. For these reasons, the Court should grant
10 Defendants’ Motion.
11

12
13 **II. STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY**

14 SPB, a Delaware limited liability company was formed on May 13, 2020. (Compl. at ¶ 7). *See*
15 *also* Delaware Department of State Profile attached hereto as **Exhibit C**.¹ In July 2020, SPB hired
16 Plaintiff to work as an hourly, non-exempt bartender and server at Rock Bottom in Campbell,
17 California. (Compl. at ¶ 4). Prior to Plaintiff’s hire, Rock Bottom was a subsidiary of CraftWorks
18 Parent, LLC (“CraftWorks Parent”) (Declaration of Julie Johnson, filed contemporaneously herewith,
19 at ¶ 4). In March 2020, CraftWorks Parent and its subsidiaries filed for bankruptcy in the United States
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21
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25 ¹ *See Eidmann v. Walgreen Co.*, 2021 U.S. Dist. LEXIS 36800, at *7 (N.D. Cal. Feb. 26, 2021) (finding
26 that documents published on government websites are proper for judicial notice given their reliability);
27 *Gerritsen v. Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015) (taking judicial
28 notice of business entity profiles on California Secretary of State website).

1 Bankruptcy Court for the District of Delaware. *See* Voluntary Petition attached hereto as **Exhibit D**.²
 2 DBFLF CFTWE Holdings L.P. (“DBFLF”)—SPB’s owner—purchased Rock Bottom’s assets from
 3 CraftWorks Parent out of the bankruptcy proceeding, free and clear of all liens, claims, encumbrances,
 4 and other interests. *See* the Sale Order attached hereto as **Exhibit G**, *infra*. The sale closed on June 1,
 5 2020. A copy of the Notice of Sale is attached hereto as **Exhibit E**. The court dismissed the bankruptcy
 6 proceedings in October 2021. The Order of Dismissal is attached hereto as **Exhibit F**. Rock Bottom
 7 now operates as a subsidiary of SPB. (Johnson Decl. at ¶ 4).
 8

9 When SPB hired Plaintiff, Equifax—SPB’s third party employment verification vendor—sent
 10 Plaintiff a secure link to his email address (mm3gmen@gmail.com) so that he could review, sign, and
 11 acknowledge receipt of onboarding documents and employment forms. (*Id.* at ¶ 7). These documents
 12 included, but were not limited to, policies and procedures concerning meal breaks, rest periods, and
 13 compliance with wage and hour laws. (*Id.*) The secure link required Plaintiff to enter his email and
 14 temporary password. (*Id.* at ¶ 8). The webpage then prompted Plaintiff to create his own password to
 15 gain access to the employment documents. (*Id.*) Plaintiff accessed the documents on July 28, 2020 at
 16 4:17 p.m. and, at 4:35 p.m., Plaintiff reviewed and signed the Mutual Agreement to Arbitrate
 17 Employment Disputes (the “Arbitration Agreement”) (*Id.* at ¶¶ 9-10).
 18

19 The Arbitration Agreement contains the following covenant:

20 Under the procedure described below, and in exchange for the offer of employment
 21 extended to you by SPB Hospitality or by one of its Subsidiaries, and/or your continued
 22 employment with SPB Hospitality or one of its Subsidiaries, along with the mutual
 23 promises in this Arbitration Agreement, you and the Company agree that all disputes
 24 between you and the Company (including employees and agents of SPB Hospitality
 25 and its Subsidiaries and affiliates) will be resolved through voluntary mediation if
 possible and, if not resolved through mediation, through mandatory mutual binding

26 ² *See Estate of Horner v. Bailor*, 2019 U.S. Dist. LEXIS 47371, at *2 n. 2 (N.D. Cal. March 21,
 27 2019) (taking judicial notice of orders from bankruptcy proceeding and considering them on a
 28 motion to dismiss because they were matters of public record).

arbitration. You and the Company agree that this Agreement shall apply to all positions you may hold as an employee of SPB Hospitality or any of its Subsidiaries.

(*Id.* at Ex. B, p. 1).

The Arbitration Agreement covers all “employment-related disputes...including without limitation claims alleging a violation of wage and hour laws[.] (*Id.*) Additionally, Plaintiff waived his right to participate in a class or collective action and agreed that:

To the extent permissible by law, there shall be no right or authority for any dispute to be arbitrated as a class action or collective action (“Class Action Waiver”). THIS MEANS THAT ALL DISPUTES BETWEEN YOU AND THE COMPANY ARISING OUT OF YOUR EMPLOYMENT OR THE TERMINATION OF YOUR EMPLOYMENT SHALL PROCEED IN ARBITRATION SOLELY ON AN INDIVIDUAL BASIS, AND THAT THE ARBITRATOR’S AUTHORITY TO RESOLVE ANY DISPUTE AND TO MAKE WRITTEN AWARDS WILL BE LIMITED TO YOUR INDIVIDUAL CLAIMS.

(*Id.* at 3). By signing the Arbitration Agreement, Plaintiff voluntarily agreed to abide by its terms as a condition of his employment. (*Id.* at 6).

On or about November 17, 2020, Rock Bottom terminated Plaintiff’s employment. (Compl. at ¶ 4). On March 10, 2021, Plaintiff filed this action in the Superior Court of California, Santa Clara County alleging that Defendants committed California wage and hour law violations against him and similarly situated hourly employees (i.e., bartenders, servers, dishwashers, cooks, and chefs, etc.) “during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered.” (Compl. at ¶ 13) (emphasis added).

More specifically, Plaintiff, on behalf of himself and the purported class, alleges that Defendants:

- failed to provide to provide rest breaks and meal periods (Count I);
- failed to pay all wages earned for all hours worked (Count II);
- failed to indemnify for necessary expenditures (Count III);
- failed to provide accurate written wage statements (Count IV);
- owe waiting time penalties for failure to timely pay earned and unpaid wages (Count V);
- failed to maintain accurate employment records (Count VI); and
- engaged in unfair competition (Count VII).

1 Plaintiff further alleges in Count VIII that, pursuant to the PAGA, Defendants owe him, the
 2 purported class members, and the State of California civil penalties for the California Labor Code
 3 violations set forth in Counts I through VII. (Compl. ¶¶ 99-106). On May 10, 2021, Defendants
 4 removed this action based on diversity jurisdiction.
 5

6 **III. STANDARD OF REVIEW**

7 To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a complaint must allege enough
 8 facts to state a claim to relief that is plausible on its face. *Benavidez v. Cty. of San Diego*, 2021 U.S.
 9 App. LEXIS 10334, at *16-17 (9th Cir. April 12, 2021). Although courts must construe all facts in the
 10 light most favorable to the plaintiff, courts “need not accept as true, allegations that contradict facts
 11 which may be judicially noticed” such as matters of public record. *Del Puerto Water Dist. v. United*
 12 *States Bureau of Reclamation*, 271 F. Supp. 2d 1224, 1231 (E.D. Cal. 2003) (internal citation omitted).
 13

14 The FAA governs the enforceability of arbitration agreements. *Wuest v. Comcast Corp.*, 2017
 15 U.S. Dist. LEXIS 228519, at *3 (N.D. Cal. Oct. 5, 2017). “Under the FAA, the party seeking to invoke
 16 an arbitration agreement may petition the district court which, save for such agreement, would have
 17 jurisdiction [to hear the case], for an order directing that such arbitration proceed in the manner
 18 provided for in such agreement.” (*Id.*) (quoting 9 U.S.C. § 4). In deciding whether a dispute is
 19 arbitrable, the court must only determine whether the parties agreed to arbitrate and, if so, whether the
 20 claims are within the scope of the arbitration agreement. *InterDigital Tech. Corp. v. Pegatron Corp.*,
 21 2016 U.S. Dist. LEXIS 7441, at *12 (N.D. Cal. Jan. 20, 2016) (internal citations omitted). The FAA
 22 does not place a high burden upon the party moving to compel arbitration. The movant need only make
 23 a *prima facie* showing that an agreement to arbitrate exists, and then the burden shifts to the party
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 25
 26
 27
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opposing arbitration “to put the making of that agreement in issue.” *Blau v. AT&T Mobility*, 2012 U.S. Dist. LEXIS 217, at *9 (N.D. Cal. Jan. 3, 2012) (internal quotation marks and citations omitted).

IV. ARGUMENT

Plaintiff filed this action in the wrong forum and has a contractual obligation to arbitrate his employment claims, some of which are barred as a matter of law. Moreover, Plaintiff seeks to proceed as class representative; however, he waived his right to do so when he agreed to abide by the terms of the Arbitration Agreement. Plaintiff’s PAGA claims should be stayed so that the arbitrator can resolve the issues of fact and law that have a direct bearing on the claims that remain under this Court’s jurisdiction.

A. The Court Must Dismiss All Substantive Claims Against Defendants and Compel All Viable Claims to Arbitration

1. The Court must dismiss all claims against SPB that arose prior to June 1, 2020.

Plaintiff seeks to recover damages for Defendants’ alleged wage and hour violations that have occurred since March 10, 2017. (Compl. at ¶ 13) However, SPB was not formed until May 13, 2020 and cannot be held liable for claims that predate its existence and its acquisition of the assets of CraftWorks Parent.

DBFLF—SPB’s sole owner—did not purchase the assets of CraftWorks Parent until June 1, 2020 at 12:01 a.m. *See Exhibit E*. Prior to the acquisition of assets, Rock Bottom was a wholly owned subsidiary of Craft Brewery Holding, Inc. (Johnson Decl. at ¶ 4). Both Craft Brewery Holding, Inc. and Rock Bottom were subsidiaries of CraftWorks Parent. (*Id.*)

On May 25, 2020, the Bankruptcy Court for the District of Delaware entered an Order Authorizing and Approving Semi-Private Sale of Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests (the “Sale Order” attached as **Exhibit G**). With respect to DBFLF’s assumption of liability, the court specifically ordered that:

The Buyer is not a “successor,” “successor-in-interest,” “continuation,” “alter ego” or “substantial continuation” to or of the Debtors or their estates by reason of any theory of Law or equity whatsoever, and the Buyer shall not assume, nor be deemed to assume, or in any way be responsible for any liability, claim or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales Law, successor liability, successor-in-interest liability, substantial continuation liability, alter ego liability, or similar liability except to the extent expressly included in the Assumed Liabilities or provided in the Agreement or this Order. Neither the purchase of the Purchased Assets by the Buyer, nor the fact that the Buyer is using any of the Purchased Assets previously operated by the Debtors, will cause the Buyer or any of its Affiliates to be deemed a successor, successor-in-interest, continuation, alter ego, or substantial continuation in any respect to the Debtors’ business within the meaning of any foreign, federal, state or local law, rule, doctrine or regulation, including, without limitation, revenue, pension, ERISA, COBRA coverage, Family Medical Leave Act of 1993, Worker Adjustment and Retraining Notification of 1988 (“WARN”), IRC, Tax, labor, employment, environmental, or other Law, rule or regulation (including, without limitation, filing requirements under any such Laws, rules or regulations), or under any products liability Law or doctrine with respect to the Debtors’ liability under such Law, rule or regulation or doctrine, except to the extent expressly included in the Assumed Liabilities or provided in the Agreement.

(**Exhibit G** at ¶ 37) (emphasis added).

The Sale Order further specifies that “[f]or the avoidance of doubt, transfer of title and possession of the Purchased Assets shall be free and clear of any claims and other Liens pursuant to any successor, successor-in-interest, continuation, alter ego or substantial continuation theory[.]” (*Id.* at ¶ 38).

In accordance with the Sale Order, SPB cannot be liable for any of Plaintiff's employment law claims that predate its owner's ownership interest in Rock Bottom. Notwithstanding the Sale Order, SPB also did not exist until 10 days before the sale closed. For these reasons, claims against SPB that arose before its existence cannot survive. *Medina v. EMC Mortg. Corp.*, 2010 U.S. Dist. LEXIS 62746 (N.D. Cal. June 24, 2010) (dismissing claims against entity that predated its formation); *Ortega Soco-Unocal 76 v. City of Calexico*, 2010 U.S. Dist. LEXIS 155067 (S.D. Cal. Feb. 2, 2010) (same). Accordingly, the Court should dismiss all claims against SPB that predate June 1, 2020 (the date of sale) or, in the alternative, May 13, 2020 (SPB's date of formation).

2. The Court must compel Plaintiff's remaining claims against Defendant in Counts I-VII to arbitration and should also dismiss them from this action.

The FAA “reflects ‘a liberal federal policy favoring arbitration’ and requires federal courts to compel arbitration of any claim covered by a written and enforceable arbitration agreement.” *Morvant v. P.F. Chang’s China Bistro, Inc.*, 870 F. Supp. 2d 831, 836 (N.D. Cal. 2012) (citing *AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740, 1745-47 (2011)). A written agreement to arbitrate “shall be valid, irrevocable, and enforceable, save upon grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2; *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625–26 (1985) (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 221 (1985)). In a recent term, the United States Supreme Court reinforced that principle stating: “Congress has instructed that arbitration agreements ... must be enforced as written.” *Epic Sys. Corp. v. Lewis*, 138 S.Ct. 1612, 1632 (2018).

A court must compel arbitration when: “(1) there is an agreement between the parties to arbitrate; (2) the claims at issue fall within the scope of the agreement; and (3) the agreement is valid and enforceable.” *Id.* (citing *Lifescan, Inc. v. Pernaier Diabetic Servs., Inc.*, 363 F.3d 1010, 1012 (9th Cir. 2004)). Here, all three elements are satisfied.

- i. There is an agreement to arbitrate and Plaintiff's wage and hour claims fit squarely within its scope.

There is no dispute that the parties entered into a mutually binding agreement to arbitrate all “disputes arising during [Plaintiff's] employment and any disputes concerning [his] separation from employment.” *See* Johnson Decl. Ex. B at 1. There is also no dispute that the Agreement expressly applies to “claims alleging a violation of wage and hour law” by SPB, its subsidiaries, and affiliates. *Id.* In this case, Plaintiff alleges that Defendants violated thirteen provisions of the California Labor Code. Plaintiff's meal break, rest period, and wage payment claims undoubtedly arise from his

1 employment at Rock Bottom and are the exact types of claims contemplated in the Arbitration
2 Agreement.

3 ii. The Arbitration Agreement is valid and enforceable.

4 The Supreme Court held in *Concepcion* that courts must enforce arbitration agreements
5 according to their terms and “on equal footing with other contracts.” *Concepcion*, 563 U.S. 333 at 339;
6 *see also Woods v. Vector Mktg. Corp.*, 2014 U.S. Dist. LEXIS 121165, at *6 (N.D. Cal. Aug. 28, 2014)
7 (citing *Samson v. NAMA Holdings, LLC*, 637 F.3d 915, 924 (9th Cir. 2011)). The FAA preempts any
8 state law that seeks to prohibit the arbitration of a particular claim. *Concepcion*, 563 U.S. 333 at 341.
9 The validity of the Arbitration Agreement is governed by and construed in accordance with the laws
10 of the State of California. *Morvant*, 870 F. Supp. 2d at 836.

12 Here, the requisite elements of a contract under California law have been met: offer,
13 acceptance, consideration, and mutual assent to the terms. *Fabian v. Lemahieu*, 2019 U.S. Dist.
14 LEXIS 172906, at **26-27 (N.D. Cal. Oct. 4, 2009). Plaintiff signed the Arbitration Agreement on
15 July 28, 2020. In exchange for that agreement to arbitrate, Plaintiff received adequate and sufficient
16 consideration including (1) a mutually binding promise by SPB (and its affiliates) to arbitrate all
17 disputes that they may have against Plaintiff; and (2) employment with Rock Bottom. *See Johnson*
18 *Decl. at Ex. B; Juarez v. Soc. Fin., Inc.*, 2021 U.S. Dist. LEXIS 70430, at *11 (N.D. Cal. April 12,
19 2021) (finding that mutual agreement to arbitrate is sufficient consideration).³

21 Additionally, the unambiguous terms of the Arbitration Agreement confirm Plaintiff’s intent
22
23

24
25 ³ *Nanavati v. Adecco USA, Inc.*, 99 F. Supp. 3d 1072, 1076 (N.D. Cal. 2015) (“In the absence of evidence raising any
26 doubts as to the provenance of the electronic signature on the [Arbitration] Agreement, the detailed [human resources
27 manager’s] declaration easily satisfies Defendant’s low burden to authenticate Plaintiff’s electronic signature and establish
28 the existence of a valid arbitration agreement.”).

1 to arbitrate such disputes and states that:

2 [I]n exchange for the offer of employment extended to you by SPB Hospitality or by
 3 one of its Subsidiaries, and/or your continued employment with SPB Hospitality or one
 4 of its Subsidiaries, along with the mutual promises in this Arbitration Agreement, you
 5 and the Company agree that all disputes between you and the Company (including
 6 employees and agents of SPB Hospitality and its Subsidiaries and affiliates) will be
 7 resolved through voluntary mediation if possible and, if not resolved through
 8 mediation, through mandatory mutual binding arbitration.

9 *See Johnson Decl. at Ex. B.*

10 California courts favor enforcement of the parties' intentions as expressed in the contract.
 11 *See Georgia-Pacific v. Officemax Inc.*, 2013 U.S. Dist. LEXIS 133657, at *22 (N.D. Cal. Sept. 18,
 12 2013) (internal citation omitted). There is no dispute that the parties intended to be bound by the
 13 Agreement and arbitrate any disputes related to Plaintiff's employment. *DeLeon v. Verizon*
 14 *Wireless, LLC*, 143 Cal. Rptr. 3d 810, 813 (Ct. App. 2012) (holding that any determination of a
 15 meeting of the minds, and thus offer and acceptance, is based on an objective standard). Thus,
 16 Defendants' Motion should be granted as there is no law or fact that prohibits this Court from
 17 enforcing the terms of that agreement.

18 iii. The Court should dismiss all claims that it compels to arbitration.

19 While the FAA requires the Court to grant Defendants' motion to stay claims compelled to
 20 arbitration, it is within the Court's discretion to dismiss all claims that it compels to arbitration; and
 21 there is "no compelling reason to keep [those claims] on the Court's docket." *Loewen v. Lyft, Inc.*, 129
 22 F. Supp. 3d 945, 966 (N.D. Cal. 2015). Defendants move the Court to dismiss the claims covered by
 23 the Arbitration Agreement because it is in the interest of judicial economy and efficiency to allow
 24 these claims to exist only in the forum that has proper jurisdiction to adjudicate them.

1 **B. The Court Must Dismiss Plaintiff’s Class Action Claims Set Forth In Counts I-**
2 **VII.**

3 In California, class action waivers contained in arbitration agreements are enforceable. *Sakkab*
4 *v. Luxottica Retail N. Am., Inc.*, 803 F.3d 425, 436 (9th Cir. 2015) (applying *Concepcion* and holding
5 that a California law prohibiting class action waivers could not be applied to arbitration agreements).
6 Indeed, courts must not interfere with the parties “freedom to select informal procedures” to arbitrate
7 employment claims. *See id.*

8 In this case, all of Plaintiff’s employment claims must proceed to arbitration. Plaintiff
9 voluntarily and contractually waived his right to raise class or collective actions claims in the
10 Arbitration Agreement and explicitly agreed that he would only be allowed to proceed in arbitration
11 “on an individual basis.” *See* Johnson Decl., Ex. B at 3. Here, Plaintiff has “no right or authority for
12 any dispute to be arbitrated as a class action or collective action.” *Id.* The arbitrator’s authority is
13 limited to resolving the purported Labor Code violations committed against Plaintiff and no one else.
14 *Id.* If the other purported class members wish to bring employment claims against Defendants, then
15 they will have to do so in a separately filed action. Accordingly, the Court should dismiss all class
16 action claims set forth in Counts I through VII.

17
18
19 **C. The Court Should Stay Plaintiff’s PAGA Claims Pending Resolution of the**
20 **Arbitration.**

21 This Court has broad discretion to stay the PAGA claims against both Defendants. Defendants
22 respectfully request that the Court grant such relief because no harm, hardship, or inequity will result
23 from the stay and the arbitration will simplify the issues of proof and questions of law. *See Forsyth v.*
24 *HP Inc.*, 2018 U.S. Dist. LEXIS 20362, at *9-10 (N.D. Cal. Feb. 6, 2018) (internal citations omitted).

25 A stay pending arbitration of Plaintiff’s substantive state law claims (Counts I through VII) is
26 appropriate because “the PAGA claims are derivative in nature of [their] substantive claims that will
27
28

1 proceed to arbitration, and the outcome of the nonarbitrable PAGA claims will depend upon the
 2 arbitrator's decision." *Whitworth v. SolarCity Corp.*, 336 F. Supp. 3d 1119, 1131 (N.D. Cal. Aug. 21,
 3 2018) (internal citation omitted). The Court may assess civil penalties against Defendants only if it
 4 first finds that they violated the California Labor Code. *See* Cal. Labor Code § 2689 *et seq.* Here, that
 5 decision is solely within the purview of the arbitrator. *See Bankwitz v. Ecolab, Inc.*, 2017 U.S. Dist.
 6 LEXIS 171786 (N.D. Cal. Oct. 17, 2017) ("[I]f the Court were to stay the PAGA claims pending
 7 arbitration of the individual claims and [p]laintiffs were to lose those claims in arbitration, [defendant]
 8 might be able to demonstrate that the outcome of those proceedings have a collateral estoppel effect
 9 on the question of [p]laintiffs' standing under PAGA."); *Gilbers Enters. v. Amazon*, 2019 U.S. Dist.
 10 LEXIS 210831 (C.D. Cal. Sept. 23, 2019) (staying PAGA claims pending arbitration and considering
 11 the potential for collateral estoppel).

12
 13 Although a stay is not mandatory, Defendants' request promotes judicial efficiency through
 14 the just and speedy resolution of claims.⁴ *Whitworth*, 336 F. Supp. 3d at 1131 (citing Fed. R. Civ. P.
 15 1). *See also Aviles v. Quik Pick Express, LLC*, 703 Fed. Appx. 631 (9th Cir. Nov. 24, 2017) (staying
 16 PAGA claim pending arbitration of individual wage and hour claims); *Hermosillo v. Davey Tree*
 17

18
 19 ⁴ The Court should also stay the claims against Walnut Brewery if it disagrees with Defendants that
 20 those allegations are "Covered Claims" as defined in the Arbitration Agreement. Walnut Brewery
 21 never employed Rock Bottom employees and, therefore, cannot be liable to Plaintiff or any other
 22 members of the purported class for their wage and hour claims. *See* Johnson Decl. at ¶ 5. For some
 23 reason, Plaintiff believes that both Walnut Brewery and SPB employed him. As explained in Ms.
 24 Johnson's declaration, this is not true. Even if Walnut Brewery were found liable to Plaintiff or the
 25 class members, it does not have any assets to satisfy a judgment against it. *See Exhibit E.*
 26 Notwithstanding these matters of fact, the most efficient way to handle the claims against Defendants
 27 would be for the arbitrator to decide the merits of the substantive claims against SPB first as that
 28 decision will likely resolve any claims that Plaintiff has made against Walnut Brewery.

1 *Surgery Co.*, No. 18-CV-00393-LHK, 2018 U.S. Dist. LEXIS 117426, at * 20 (N.D. Cal. July 13,
2 2018) (same).

3
4 **V. CONCLUSION**

5 For the foregoing reasons, the Court should dismiss all substantive claims against Defendants
6 and compel them to arbitration, bar Plaintiff from pursuing his class action claims and claims against
7 SPB that predate its existence and stay the PAGA claims pending resolution of the arbitration.

8
9
10 Dated: May 17, 2021

**MILLER MILLER GERBER LLP
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EXHIBIT 6

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MARVIN MANN,

Plaintiff(s),

vs.

WALNUT BREWERY, INC., et al.,

Defendant.

CASE NO. 21-cv-03500-YGR

**ORDER ADMINISTRATIVELY TERMINATING
MOTION PENDING ADR AND SETTING
COMPLIANCE DEADLINE**

Re: Dkt. Nos. 4, 19

The Court is in receipt of the parties' stipulation at Docket Number 19 seeking to postpone briefing and a hearing in connection with defendants' pending motion to dismiss, compel arbitration, and stay proceedings at Docket Number 4. In light of the pending mediation of the above-captioned action, defendants' pending motion is deemed withdrawn without prejudice to resetting the motion if alternative dispute resolution does not resolve the issues in this action.

Furthermore, the Court hereby **SETS** a compliance deadline for **9:01 a.m. on November 12, 2021**. Five (5) business days prior to the date of the compliance deadline, the parties shall file either (a) **JOINT STATUS REPORT** indicating whether the motion needs to be reset and a schedule; or (b) a one-page **JOINT STATEMENT** setting forth an explanation regarding the failure to comply. If compliance is complete, the compliance deadline will be taken off calendar.

This Order administratively terminates Docket Number 4.

IT IS SO ORDERED.

Dated: September 20, 2021


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT 7

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MARVIN MANN,

Plaintiff(s),

vs.

WALNUT BREWERY, INC., *et al.*,

Defendants.

Case No.: 4:21-cv-03500-YGR

**ORDER VACATING COMPLIANCE HEARING
AND SETTING FURTHER COMPLIANCE
DEADLINE**

On November 5, 2021, the parties in this action filed a Joint Statement representing that they had complied with this Court's order setting a compliance deadline in light of the parties' pending mediation. (Dkt. No. 20.) Having timely filed such statement, the Court **VACATES** the compliance hearing set for November 12, 2021.

Furthermore, in light of the parties' anticipated settlement, the Court hereby **SETS** a further compliance deadline for **9:01 a.m. on February 11, 2022**. Five (5) business days prior to the date of the compliance deadline, the parties shall file either: (a) a motion for preliminary approval of the class settlement; or (b) a Joint Status Report setting forth an explanation regarding the failure to comply.

IT IS SO ORDERED.

Dated: November 9, 2021



**YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE**

EXHIBIT 8

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5 Attorney for Plaintiff,

6 MARVIN MANN and all others similarly situated

7 (Additional Counsel on Following Page)

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

11 MARVIN MANN, on behalf of himself, all
12 others similarly situated, and as an “aggrieved
13 employee” on behalf of other “aggrieved
14 employees” under the Labor Code Private
Attorneys General Act of 2004,

15 *Plaintiff(s),*

16 vs.

17 WALNUT BREWERY, INC., a Colorado
18 corporation doing business as Rock Bottom
19 Brewery; SPB HOSPITALITY, LLC, a
20 Delaware limited liability company; and DOES
1-50, inclusive,

21 *Defendants.*

Case No.: 4:21-CV-03500-YGR

**ORDER GRANTING JOINT
STIPULATION TO REMAND**

Hon. Yvonne Gonzalez Rogers
U.S. District Court Judge



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1 The Joint Stipulation is entered into and by and between Plaintiff Marvin Mann
 2 (“Plaintiff”), by and through his counsel of record, and Defendants Walnut Brewery, Inc. and SPB
 3 Hospitality, LLC (“Defendants”), by and through their counsel of record. Plaintiff and Defendants
 4 (collectively, the “Parties”) respectfully stipulate to the following:

5 **WHEREAS**, this putative class action was filed against Defendants in the Superior Court
 6 of California for Santa Clara County on March 10, 2021, Case No. 21CV377897.

7 **WHEREAS**, Defendants removed this action to the United States District Court for the
 8 Northern District of California on May 10, 2021.

9 **WHEREAS**, on October 20, 2021, the Parties attended mediation with Michael Loeb, Esq.
 10 Although the Parties did not settle at mediation, they continued confidential settlement
 11 negotiations with the assistance of the mediator. On November 2, 2021, the Parties agreed to the
 12 material terms. They intend to enter into a long form settlement agreement within the next 30 days.
 13 They have also agreed to seek remand to the Santa Clara County Superior Court for further
 14 proceedings.

15 **WHEREAS**, the Parties also agree that Defendant’s foregoing consent to remand this
 16 lawsuit to the Superior Court for settlement purposes does not constitute a waiver of its right to a
 17 federal forum. To that end, the Parties agree that, should the Superior Court not grant preliminary,
 18 and then final, approval of the Parties’ proposed class action settlement, Defendant retains the right
 19 to remove the case back to federal court on the same legal grounds and bases are previously done,
 20 and further, Plaintiff agrees he will not move to remand based on the timing of Defendant’s
 21 subsequent removal of this lawsuit to the United States District Court for the Northern District of
 22 California.

23 **THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and among the
 24 Parties, that this Court remand this lawsuit to the Superior Court for the State of California,
 25 County of Santa Clara.

26 4893-8372-4292.2



27 SPIVAK LAW

28 Employee Rights Attorneys
 16530 Ventura Bl. Ste 203
 Encino CA 91436
 (213) 725-9094 Tel
 (213) 634-2485 Fax
 SpivakLaw.com

1 IT IS SO STIPULATED.

3 THE SPIVAK LAW FIRM

4 Dated: February 4, 2022

By: /s/ David Spivak

5 DAVID SPIVAK

Attorney for Plaintiff, MARVIN MANN

7 MILLER MILLER GERBER LLP

WALLER LANSDEN DORTCH & DAVIS, LLP

9 Dated: February 4, 2022

By: /s/ Aron Z. Karabel

10 ADAM I. MILLER

COREY A. MILLER

11 JOHN TISHLER

ARON Z. KARABEL

12 FLYNNE M. DOWDY

Attorneys for Defendants, WALNUT

13 BREWERY, INC., and SPB HOSPITALITY,

14 LLC.

15 ~~[PROPOSED]~~ ORDER

16 After considering the joint stipulation of the Parties, and good cause appearing, the
17 Court rules as follows: this Court remands this lawsuit to the Superior Court for the State of
18 California, County of Santa Clara.
19

20 IT IS SO ORDERED.

21 February 10, 2022

22 Date



The Honorable Yvonne Gonzalez Rogers

United States District Judge



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 203
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

4893-8372-4292.2

EXHIBIT 9

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:	Marvin Mann v. Walnut Brewery, Inc.
Case no.:	21CV377897 / NDCA 4:21-cv-03500-YGR
Court:	Santa Clara County Superior Court / ND CA
Judge:	Hon. Patricia M. Lucas, Dept. 3 (Santa Clara)
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Saturday, March 11, 2017
Lab.Code § 203 (waiting time penalties) period begins:	Sunday, March 11, 2018
Lab.Code § 2699 (civil penalties) period begins:	Wednesday, January 1, 2020
Lab.Code § 226 (pay stub penalties) period begins:	Tuesday, March 10, 2020
LWDA Notice:	Thursday, December 31, 2020
Lawsuit:	Wednesday, March 10, 2021
Sample begin:	Friday, July 10, 2020
Sample end:	Monday, September 14, 2020
Sample calendar days:	66
Mediation:	Wednesday, October 20, 2021
Anticipated Settlement Period end date:	Thursday, February 17, 2022
Settlement Period to Sample Period:	2733%

Classes / Groups sizes

UCL Class Members:	129
UCL Workweeks:	2,568
UCL Wage Statements:	2,568
UCL Workdays:	9,835
UCL Calendar days:	1,684
UCL Months:	55.36
 Waiting Time Penalties Class Members:	 71
 PAGA Aggrieved Employees:	 129
PAGA Wage Statements:	2,568
 Wage Statement Class Members:	 129
Wage Statement Class Wage Statements:	2,568

Averages

Average Hourly Rate:	\$ 15.21
Average Overtime Rate:	\$ 22.82
Average Doubletime Rate:	\$ 30.42
 Average Work Hours Per Day:	 6
Average Work Hours Per Week:	21
Average Workdays Per Week:	3.83
Workdays to Calendar Days (%):	54.71%
Paycycle:	Weekly (52 / year)
Paychecks Per Year:	

Confidential Settlement Communication

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Case title:	Marvin Mann v. Walnut Brewery, Inc.
Case no.:	21CV377897 / NDCA 4:21-cv-03500-YGR
Court:	Santa Clara
Judge:	Hon. Patricia M. Lucas, Dept. 3 (Santa Clara)
Page subject:	Unpaid wages
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Average Hourly Rate:	\$	15.21
Unpaid hours per pay week:		4
Actionable workweeks:		2,568
Interest:		10%

Unpaid wages:	\$	171,860.83
Liquidated damages:	\$	171,860.83

Confidential Settlement Communication

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Case title:	Marvin Mann v. Walnut Brewery, Inc.
Case no.:	21CV377897 / NDCA 4:21-cv-03500-YGR
Court:	Santa Clara County Superior Court / ND CA
Judge:	Hon. Patricia M. Lucas, Dept. 3 (Santa Clara)
Page subject:	Unpaid Overtime on Nondiscretionary compensation (bonuses, awards, commissions)

Average Hourly Rate:	\$	15.21
Average Overtime Rate:	\$	22.82
Average Doubletime Rate:	\$	30.42
Average Work Hours Per Day:		5.59
Average Work Hours Per Week:		21.38
Average Workdays Per Week:		3.83
Monthly non-discretionary compensation:	\$	-
Weekly non-discretionary compensation:	\$	-
Workday non-discretionary compensation:		#DIV/0!
Hourly non-discretionary compensation:		#DIV/0!
Unpaid hourly non-discretionary overtime pay on nondiscretionary compensation:		#DIV/0!
Average overtime hours per week:		0
UCL Workweeks:		2,568.00
Interest rate:		10%
Unpaid non-discretionary overtime pay on nondiscretionary compensation:		#DIV/0!

Confidential Settlement Communication

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Case title:	Marvin Mann v. Walnut Brewery, Inc.
Case no.:	21CV377897 / NDCA 4:21-cv-03500-YGR
Court:	Santa Clara
Judge:	Hon. Patricia M. Lucas, Dept. 3 (Santa Clara)
Page subject:	Unprovided Meal Periods
Authority:	Lab.Code §§ 226.7, 512, and 1198
Average Hourly Rate:	\$ 15.21
Actionable workdays:	9,835
>>Percentage qualifying for meal periods:	69%
Violation rate (%)	81%
Meal period premium wages:	\$ 83,609.79

Confidential Settlement Communication

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Case title:	Marvin Mann v. Walnut Brewery, Inc.
Case no.:	21CV377897 / NDCA 4:21-cv-03500-YGR
Court:	Santa Clara
Judge:	Hon. Patricia M. Lucas, Dept. 3 (Santa Clara)
Page subject:	Unprovided Rest Periods
Authority:	Lab.Code §§ 226.7 and 1198

Average Hourly Rate:	\$	15.21
Actionable workdays:		9,835
>>Percentage qualifying for rest periods:		94%
Violation rate (%)		100%

Rest period premium wages:	\$	140,621.22
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Case title:	Marvin Mann v. Walnut Brewery, Inc.
Case no.:	21CV377897 / NDCA 4:21-cv-03500-YGR
Court:	Santa Clara
Judge:	Hon. Patricia M. Lucas, Dept. 3 (Santa Clara)
Page subject:	Unreimbursed expenses
Authority:	Lab.Code § 2802

Mileage

IRS Mileage Rate:		
Miles Per Workweek:		
UCL Workweeks:		2,568
Interest rate:		10%
Unreimbursed mileage	\$	-

Telecom

Plaintiff's Telecom provider:		Virgin (AT&T)
UCL Months:		55
Average Monthly Telecom bill:	\$	90.00
Percentage attributable to work:		75%
Interest rate:		10%
Unreimbursed Telecom costs:	\$	3,751.71

Tools

Unprovided tools:		n/a
Cost of tools:	\$	-
UCL Class Members:		0
Interest rate:		10%
Unreimbursed tools and supplies:	\$	-

Uniforms

Unprovided free uniform items:		n/a
Cost of uniform items:		0
UCL Class Members:		0
Interest rate:		10%
Unreimbursed uniforms:	\$	-

Unreimbursed expenses:	\$	3,751.71
------------------------	----	----------

Confidential Settlement Communication

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Case title:	Marvin Mann v. Walnut Brewery, Inc.
Case no.:	21CV377897 / NDCA 4:21-cv-03500-YGR
Court:	Santa Clara
Judge:	Hon. Patricia M. Lucas, Dept. 3 (Santa Clara)
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226

Wage Statement Class Members:		129
Wage Statement Class Wage Statements:		2,568
Initial penalty:	\$	50.00
Subsequent penalty:	\$	100.00
Statutory wage statement penalties:	\$	250,350.00

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Case title:	Marvin Mann v. Walnut Brewery, Inc.
Case no.:	21CV377897 / NDCA 4:21-cv-03500-YGR
Court:	Santa Clara
Judge:	Hon. Patricia M. Lucas, Dept. 3 (Santa Clara)
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:		71
Days waiting:		30
Average Hourly Rate:	\$	15.21
Average Overtime Rate:	\$	22.82
Average Doubletime Rate:	\$	30.42
Average Work Hours Per Day:		5.59
Regular Hours Per Day:		5.59
Overtime Hours Per Day:		-
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	181,100.91

Confidential Settlement Communication

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Case title:	Marvin Mann v. Walnut Brewery, Inc.
Case no.:	21CV377897 / NDCA 4:21-cv-03500-YGR
Court:	Santa Clara
Judge:	Hon. Patricia M. Lucas, Dept. 3 (Santa Clara)
Page subject:	PAGA Civil Penalties
Authority:	Lab.Code §§ 2698, <i>et seq.</i>

Labor Code violation	Labor Code Civil Penalty Statute	Initial penalty	Subsequent penalty	Pay periods	Total
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	\$ 250.00	2,568	\$ 641,850.00
Meal periods (Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00	2,568	\$ 256,750.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00	2,568	\$ 513,500.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	\$ 200.00	2,568	\$ 513,500.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	\$ 250.00	\$ 1,000.00	2,568	\$ 2,567,250.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00	2,568	\$ 513,500.00
Total:				\$	5,006,350.00

Confidential Settlement Communication

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Case title:	Marvin Mann v. Walnut Brewery, Inc.
Case no.:	21CV377897 / NDCA 4:21-cv-03500-YGR
Court:	Santa Clara
Judge:	Hon. Patricia M. Lucas, Dept. 3 (Santa Clara)
Page subject:	
Authority:	Totals Various

Restitution		Reduction to	Demand
Unpaid wages:	\$ 171,860.83	100%	\$ 171,860.83
Liquidated damages:	\$ 171,860.83	100%	\$ 171,860.83
Meal period premium wages:	\$ 83,609.79	100%	\$ 83,609.79
Rest period premium wages:	\$ 140,621.22	100%	\$ 140,621.22
Unreimbursed expenses:	\$ 3,751.71	100%	\$ 3,751.71
Restitution subtotal:	\$ 571,704.38		\$ 571,704.38
Penalties			
Statutory wage statement penalties:	\$ 250,350.00	100%	\$ 250,350.00
Waiting time penalties:	\$ 181,100.91	100%	\$ 181,100.91
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 641,850.00	100%	\$ 641,850.00
Meal periods Lab.Code § 512):civil penalties:	\$ 256,750.00	100%	\$ 256,750.00
Rest periods (Lab.Code § 1198):civil penalties:	\$ 513,500.00	100%	\$ 513,500.00
Business expenses (Lab.Code § 2802):civil penalties:	\$ 513,500.00	100%	\$ 513,500.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 2,567,250.00	100%	\$ 2,567,250.00
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 513,500.00	100%	\$ 513,500.00
Penalties subtotal:	\$ 5,437,800.91		\$ 5,437,800.91
Grand total:	\$ 6,009,505.29		\$ 6,009,505.29

EXHIBIT 10

41
FILED

Superior Court Of California
County Of Los Angeles

JUN 21 2012

John A. Clarke, Executive Officer/Clerk
BY Nancy Sandoval Deputy

Received

MAY 18 2012

Fax Filing

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
(UNLIMITED JURISDICTION)**

ALINA GHRDILYAN; EVGENIA
SULTANIAN; and all others similarly situated,

Plaintiffs,

vs.

RJ FINANCIAL, INC., a California
corporation; RAMIL ABALKHAD, an
individual; and DOES 1 through 50, inclusive,

Defendants.

Case No.: BC430633

**~~(PROPOSED)~~ JUDGMENT AGAINST
DEFENDANT RAMIL ABALKHAD**

Action filed: 01/28/2010
CMC: 09/29/2010, 8:30 a.m.
FSC: 04/09/2012, 8:30 a.m.
Trial: 04/09/2012, 8:30 a.m.
Dept: 41, Hon. Ronald M.
Sohigian

Plaintiffs Alina Ghrdilyan and Evgenia Sultanian ("Plaintiffs") filed a complaint Defendant RJ Financial, Inc., a California corporation, on January 28, 2010. On February 24, 2010, Plaintiffs filed a First Amended Complaint which added Ramil Abalkhad, an individual, as a defendant, and a claim against him for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("The PAGA"). In the First Amended Complaint, the Plaintiffs contended that Defendants violated Labor Code sections 226.7, 510, 512, 1194, 1197, and 1198 and Industrial Welfare Commission Wage Order 7-2001 and in so doing, was liable to the Plaintiffs and other aggrieved employees under the PAGA.

On July 26, 2011, the Court granted Plaintiffs' motion to compel further responses to deposition questions, and ordered Defendant Ramil Abalkhad to pay monetary sanctions to

1 Plaintiffs in the amount of \$2,700.00. Defendant Ramil Abalkhad has not paid such amount to
2 date.

3 On April 10 through 23, 2012, the case was tried in Department 41 of the above-entitled
4 court, the Honorable Ronald M. Sohigian, presiding. Defendant Ramil Abalkhad was present
5 throughout the trial. Plaintiffs Alina Ghrdilyan and Evgenia Sultanian appeared for the trial.
6 David Spivak of the Spivak Law Firm and Louis Benowitz of the Law Offices of Louis
7 Benowitz represented the Plaintiffs, Alina Ghrdilyan and Evgenia Sultanian, and the other
8 aggrieved employees. F. Michael Sabzevar of the Law Office of Michael Sabzevar represented
9 the Defendant Ramil Abalkhad.

10 Before the trial without a jury began, Defendant RJ Financial, Inc. petitioned for
11 bankruptcy protection. Pursuant to 11 U.S.C. section 362, the claims against RJ Financial, Inc.
12 were stayed, and the case proceeded to trial against Defendant Ramil Abalkhad only on the
13 claim for civil penalties under the PAGA.

14 The jury was waived. Testimony was heard and documentary evidence was admitted.
15 Following argument, the court considered the evidence. Only Plaintiffs requested a written
16 statement of decision, however, on April 23, 2012, the Court orally presented its tentative
17 statement of decision on the record.

18 **Plaintiff Alina Ghrdilyan**

19 In its tentative statement of decision, the Court awarded the following amounts to
20 Plaintiff Alina Ghrdilyan: (1) For violations of Labor Code sections 510 and 512, \$7,654.60
21 pursuant to Labor Code section 558; and (2) For violations of Labor Code sections 1198 and
22 Wage Order 7, \$14,218.00 pursuant to Labor Code section 1197.1. This totals \$21,872.60 for
23 Plaintiff Alina Ghrdilyan, of which \$4,572.60 is wages. Of the \$17,300.00 in civil penalties that
24 do not represent wages, twenty-five percent (25%), \$4,325.00, is awarded to Plaintiff Alina
25 Ghrdilyan, and the remaining seventy-five percent (75%), \$12,975.00, is awarded to the
26 California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

27 **Plaintiff Evgenia Sultanian**

28 Additionally, the Court awarded the following amounts to Plaintiff Evgenia Sultanian:
(1) For violations of Labor Code sections 510 and 512, \$5,264.19 pursuant to Labor Code
section 558; and (2) For violations of Labor Code sections 1198 and Wage Order 7, \$13,936.50
pursuant to Labor Code section 1197.1. This totals \$19,200.69 for Plaintiff Evgenia Sultanian,

of which \$3,000.69 represents wages. Of the \$16,200.00 in civil penalties that do not represent wages, twenty-five percent (25%), \$4,050.00, is awarded to Plaintiff Evgenia Sultanian, and the remaining seventy-five percent (75%), \$12,150.00, is awarded to the California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

Other Aggrieved Employees

Moreover, the Court awarded the following amounts to the other aggrieved employees:

(1) For violations of Labor Code sections 510 and 512, \$125,000.00 pursuant to Labor Code section 558; and (2) For violations of Labor Code sections 1198 and Wage Order 7, \$200,000.00 pursuant to Labor Code section 1197.1. This totals \$325,000.00 for the aggrieved employees. Of the \$325,000.00 in civil penalties, twenty-five percent (25%), \$81,250.00, is awarded to the aggrieved employees other than the two named-Plaintiffs, and the remaining seventy-five percent (75%), \$243,750.00, is awarded to the California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

As part of its statement of decision, the Court stated that, in committing the acts that led to the Court's award, Defendant Ramil Abalkhad had "the intention simply of trying to run things through and get off as cheaply as he could while he was running his businesses."

After more than ten days had passed from the Court's tentative statement of decision, Defendant Ramil Abalkhad did not request a written statement of decision, object to the tentative statement of decision, nor specify omitted issues to be included in the statement of decision. The Court adopted that tentative statement of decision as its final statement of decision in the manner prescribed by Rule of Court 3.1590(c)(4).

In accordance with the court's Statement of Decision, it is hereby ORDERED, ADJUDGED AND DECREED:

~~1. Plaintiffs Alina Ghrdilyan and Evgenia Sultanian shall have judgment against Defendant Ramil Abalkhad in the amount of \$2,700.00 as sanctions against Defendant Ramil Abalkhad pursuant to the Court's July 26, 2011 decision on Plaintiffs' motion to compel.~~

1 Plaintiff Alina Ghrdilyan shall have judgment under the PAGA against Defendant Ramil Abalkhad in the amount of \$8,897.60.

2 Plaintiff Evgenia Sultanian shall have judgment under the PAGA against Defendant Ramil Abalkhad in the amount of \$7,050.69.

1 **43** The aggrieved employees shall have judgment under the PAGA against
2 Defendant Ramil Abalkhad in the amount of \$81,250.

3 **4** The California Labor & Workforce Development Agency shall have judgment
4 against Defendant Ramil Abalkhad in the amount of \$268,875.00.

5 The total amount awarded against Defendant Ramil Abalkhad, exclusive of interest,
6 attorneys' fees and costs, is ~~\$268,875.00~~ **\$366,073.29**

7 Defendant Ramil Abalkhad must pay the Plaintiffs and their attorneys on the First
8 Amended Complaint attorneys' fees in the amount of \$ **581,770.78** ^{TP} and costs in the amount
9 of \$ **21,272.88** ^{AP}

10 The total amount awarded against Defendant Ramil Abalkhad, inclusive of attorneys'
11 fees and costs, is \$ **969,116.95** ^{TP}, plus interest thereon at the legal rate of ten percent (10%)
12 per year.

13 IT IS SO ORDERED, ADJUDGED AND DECREED.

14 **JUNE 21, 2012**
15 DATE

Ronald M. Sohigian
16 THE HONORABLE RONALD
17 SOHIGIAN, JUDGE OF THE
18 SUPERIOR COURT
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PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 9454 Wilshire Blvd., Suite 303, Beverly Hills, California 90212.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Friday, May 18, 2012, I served the foregoing document described as [PROPOSED] JUDGMENT AGAINST DEFENDANT RAMIL ABALKHAD on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

F. Michael Sabzevar, Esq.
Law Ofc F Michael Sabzevar
16633 Ventura Blvd #555
Encino, CA 91436
msabzevar@aol.com

XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 9454 Wilshire Boulevard, Suite 303, Beverly Hills, California 90212.

____ (BY PERSONAL SERVICE) My agent delivered such envelope by hand to the home/offices of the addressee.

EXECUTED on Friday, May 18, 2012, at Beverly Hills, California.

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

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


BROCK OYAMA

EXHIBIT 11

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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(THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)

THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
AGAINST RJ CASE.

OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
365 AT 375.

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON
5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 12



Class Action Administrators

www.cptgroup.com

Contact Name: Timothy N. Phillips, Jr.

Randi Martz

Corporate Headquarters

50 Corporate Park, Irvine CA 92606

Tim@cptgroup.com

Main Number: (800) 542-0900

Direct Number: (818) 415-2703

Fax Number: (949) 428-1074

Case Name: WIP

Date: January 7, 2022

All-In Settlement

Requesting Attorney: **David Spivak**

* Class Members: **130**

Plaintiff or Defense: **Plaintiff**

** Opt-Out Rate: **1.5%**

Firm Name: **The Spivak Law Firm**

Opt-Outs Received: **2**

Telephone: **(818) 582-3086**

Postage Total: **\$765.41**

Email: david@spivaklaw.com

Grand Total: **\$13,689.31**

***** DISCOUNTED FLAT FEE: \$10,000.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.

*** This price is valid for administration of a maximum of 2 opt-out's filed. Any additional opt-out's filed above 2 will be billed at the rate of \$8.00 per member.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup / Spanish Translation / Static Website

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	1	\$95.00
System Programming/Data Base Setup	\$150.00	1	\$150.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
Total			\$2,245.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / Notice & Opt-Out Form in English & Spanish / Postage (up to 3 oz.)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	\$150.00	1	\$150.00
Project Manager-Opt-Out/Notice Format	\$95.00	2	\$190.00
Merged Data	\$0.50	130	\$65.00
Mailing of Notice Pack	\$2.50	130	\$325.00
Estimated Postage for 9x12 Envelope*	\$4.75	130	\$617.50
Total			\$1,347.50

*Additional charges will apply if the postage exceeds 3 oz. The final rate will be determined at the time of mailing.

Returned Mail

Notices Returned as Undeliverable / Skip Traces / Remail Notice Packets / Postage

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	\$0.50	13	\$6.50
Skip Traces	\$1.25	11	\$13.75
Remail Packs	\$3.00	10	\$30.00
Estimated Postage (up to 2 oz.)	\$4.75	10	\$47.50
Clerical Staff	\$60.00	1	\$60.00
Total			\$157.75

Opt-Out Processing

Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Opt-Out Data Base	\$150.00	4	\$600.00
Opt-Out Processing	\$10.00	2	\$20.00
Clerical Staff	\$60.00	1	\$60.00
Deficiency/Dispute Letters	\$20.00	1	\$20.00
Estimated Postage (up to 1 oz.)	\$0.58	1	\$0.58
Project Manager	\$95.00	1	\$95.00
Call Center Support	\$3.00	26	\$78.00
Total			\$873.58

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	128	\$25.60
Total			\$460.60

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/ Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.50	128	\$320.00
Estimated Postage (up to 1 oz.)	\$0.58	128	\$74.24
Total			\$2,384.24

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	2	\$10.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	10	\$12.50
Remail Undeliverable Checks	\$2.50	10	\$25.00
Estimated Postage (up to 1 oz.)	\$0.58	12	\$6.96
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	2	\$300.00
Project Manager - Acnt Files Sent to Atty	\$150.00	2	\$300.00
Project Supervisor - Final Declaration	\$150.00	2	\$300.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$4,104.46

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

Escheat Processing

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
UPEnterprise Reporting Services	\$0.15	27	\$4.05
Project Manager - Fall Reporting	\$95.00	2	\$190.00
Project Supervisor-Fall Reporting	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues - Winter/Spring QTR	\$5.00	3	\$13.50
Estimated Postage (up to 1 oz.) for Reissue	\$0.58	3	\$1.57
Project Manager - June Remittance	\$95.00	2	\$190.00
Project Supervisor- June Remittance	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$2,116.18
Grand Total:			\$13,689.31

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("CPT").

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work product resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disenabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.
4. **CPT Obligations.** Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. **Mutual Obligations.**
- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and/or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. Term and Termination.
- a) Term. The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) Effect of Termination. Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination", Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
- Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.
- a. Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the

other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b. Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. Liability.
- a. Liability Cap. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b. Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.
- a. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and

- the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
 - c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
 - d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
 - e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
 - f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
 - g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
 - h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
- o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
- p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 13

Case Name: TBD

Friday, January 7, 2022

Requesting Attorney
E-Mail
ILYM Contact
E-Mail
Contact Number

David Spivak
david@spivaklaw.com
Sean Hartranft
Sean@ilymgroupclassaction.com
949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS	
Total Number of Class Members	130
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
One-Page Notice Posted to ILYM Group Website	Yes
Certified Spanish Translations	Yes

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$650.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	4	\$480.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	0	\$0.00
Report Processing	Hourly	\$70.00	3	\$210.00
NCOA	Per Piece	\$39.70	1	\$39.70
Toll-Free Call Center	Flat Fee	\$95.00	1	\$95.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$2,964.70

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING

Fulfillment Notice, English & Spanish	Per Piece	\$3.00	130	\$390.00
USPS First Class Postage	Per Piece	\$0.76	130	\$98.80
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$3.00	26	\$78.00
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$866.80

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)

Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Print & Mail (Including W2/1099 Stub & Release)	Per Check	\$1.50	130	\$195.00
USPS First Class Postage	Per Piece	\$0.55	130	\$71.50
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	26	\$52.00
Preparation of Taxes	Hourly	\$120.00	10	\$1,200.00
Annual Filing of Tax Return	Per Year	\$1,000.00	1	\$1,000.00

***Additional Bank fees may apply*

Subtotal \$3,068.50

CASE CONCLUSION

Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Process Unclaimed Funds to State Controller's Office	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$1,440.00

Total Case Estimate: \$8,990.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 14



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

January 7, 2022

CASE ASSUMPTIONS

Class Members	130
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	129
Subtotal Admin Only	\$8,544.39

Not-to-Exceed Total \$7,000.00

For 130 Class Members

Pricing Good for Scope of Estimate Only

Includes All Aspects of Escheating to the State of CA

Spanish Translation Included

Case: Mann v. RockBottom Brewery, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: David Spivak
Firm: The Spivak Law Firm
Contact Number:
Email: david@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **130** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	33		\$65.00
NCOA (USPS)	\$100.00	1		\$100.00
Total				\$715.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Spanish Translation	\$800.00	1		\$800.00
Data Merge & Duplication Scrub	\$0.10	130		\$13.00
Notice Packet & Opt-Out Form	\$1.30	130		\$169.00
Estimated Postage (up to 2 oz.)*	\$0.70	130		\$91.00
Static Website	\$100.00	1		Included
Check Cashing Reminder Postcard	\$0.60	27		NA
Postage Included				
Total				\$1,273.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	4		\$220.00
Skip Tracing Undeliverables	\$0.85	33		\$27.63
Remail Notice Packets	\$0.75	30		\$22.13
Estimated Postage	\$0.73	30		\$21.54
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$341.29

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	7		\$70.00
Case Manager	\$85.00	3		\$255.00
Total				\$1,045.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	2		\$270.00
Check Run Setup & Printing	\$135.00	3		\$405.00
Mail Class Checks *	\$1.10	129		\$141.90
Estimated Postage	\$0.53	129		\$68.37
Total				\$1,385.27

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	4		\$460.00
Remail Undeliverable Checks (Postage Included)	\$1.35	26		\$34.83
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	6		\$510.00
Conclusion Reports	\$115.00	4		\$460.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	4		\$460.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Contolers Office	\$300.00	1		\$300.00
Estimated <u>19</u> Total Class Members				
Total				\$3,784.83

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$8,544.39



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 15

1 **PROOF OF SERVICE**

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County of Los
6 Angeles, State of California. I am over the age of 18 years, and not a party to the within action.
7 My business address is 15303 Ventura Bl, Ste 900, Sherman Oaks, CA 91403.

8 2. I am familiar with the practice of The Spivak Law Firm, for collection and
9 processing of correspondence for mailing with the United States Postal Service. It is the practice
10 that correspondence is deposited with the United States Postal Service the same day it is
11 submitted for mailing.

12 On Tuesday, May 31, 2022, I served the foregoing document described as
13 **DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF'S MOTION FOR**
14 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on interested parties
15 by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully
16 prepaid, addressed as follows:

17 **Flynn M. Dowdy, Esq.**
18 **Aaron Z. Karabel, Esq.**
19 **Waller Lansden Dortch & Davis, LLP**
20 **511 Union Street, Suite 2700**
21 **Nashville, TN 37219**

22 **Cory Miller, Esq.**
23 **Adam Miller, Esq.**
24 **Miller Miller Gerber LLP**
25 **18301 Von Karman Avenue, Suite 950**
26 **Irvine, CA 92612**

27 _____ (BY MAIL) I caused such an envelope to be mailed by placing it for collection and
mailing, in the course of ordinary business practice, with other correspondence of The Spivak
Law Firm, 15303 Ventura Bl, Ste 900, Sherman Oaks, CA 91403.

XXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service
addresses listed above from my electronic service address stacy@spivaklaw.com.

EXECUTED on Tuesday, May 31, 2022, at Thousand Oaks, California.

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

(Federal) I declare that I am employed in the office of a member of the bar of this court at
whose direction the service was made.