

DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com

MAYA CHEAITANI (SBN 335777)
maya@spivaklaw.com

THE SPIVAK LAW FIRM
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094
Facsimile: (213) 634-2485

WALTER HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Ave, Suite 201
Huntington Beach, CA 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
MARVIN MANN, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

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

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.: 21CV377897

**NOTICE OF MOTION AND
PLAINTIFF'S UNOPPOSED 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.

Submitted Herewith Under Separate Cover

1. Memorandum of Points and Authorities;
2. Declaration of David Spivak;
3. Declaration of Walter Haines;
4. [Proposed] Order.



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

Marvin Mann vs. Walnut Brewery, Inc., et al.

Notice of Motion and Plaintiff's Motion for
Preliminary Approval of Class Action Settlement

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 22, 2022 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Department 3 of the Santa Clara Superior Court, located at 191 N. First Street, San Jose, CA, 95113-1090, Plaintiff Marvin Mann ("Plaintiff") will and hereby does move this Court for an order: (1) provisionally certifying the Settlement Class solely for settlement purposes pursuant to Code of Civil Procedure section 382; (2) preliminarily approving the Joint Stipulation of Class Action Settlement (the "Settlement")¹, (3) appointing David Spivak of The Spivak Law Firm and Walter Haines of United Employees Law Group as Class Counsel; (4) appointing Plaintiff as Class Representative; (5) approving the use of the proposed notice procedures and related forms; and (6) scheduling a hearing date for motion for final approval of class action settlement and awards of attorneys' fees and costs.

"Class" or "Class Members" means all persons Defendants employed as hourly, non-exempt employees, who worked at Rock Bottom Restaurant & Brewery in Campbell, California during the Class Period ("Settlement Class"). The "Class Period" means the period of time from June 01, 2020, through October 20, 2021.

This Motion is made on the following grounds: (1) the Settlement Class meets all the requirements for class certification for settlement purposes only under Code Civil Procedure section 382; (2) Plaintiff and his counsel are adequate to represent the Settlement Class; (3) for Settlement purposes, Plaintiff is adequate to serve as Class Representative; (4) the Settlement warrants preliminary approval based on all indicia for fairness, reasonableness, and adequacy; (5) the proposed notice procedures, and related forms, fully comport with due process and adequately apprise Class Members of their rights; and (6) in view of the foregoing, a final approval hearing must be scheduled to allow Settlement Class members an opportunity to be heard regarding the Settlement and to give it finality.

The Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declaration of David Spivak, the Declaration of Walter Haines, the

¹ The Settlement is attached as Exhibit 1 to the Declaration of David Spivak ("DS"), which is submitted herewith under a separate cover.



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 Declaration of Marvin Mann, all papers and pleadings on file with the Court in this action, all
2 matters judicially noticeable, and on such oral and documentary evidence as may be presented in
3 connection with the hearing on the Motion.

4
5 Respectfully submitted,

6 THE SPIVAK LAW FIRM

7
8 DATED: May 25, 2022

By



DAVID SPIVAK
MAYA CHEAITANI,
Attorneys for Plaintiff,
MARVIN MANN



24
25
26 **SPIVAK LAW**
Employee Rights Attorneys

27 Mail:
8605 Santa Monica Bl
PMB 42554
28 West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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 **NOTICE OF**
13 **MOTION AND PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY**
14 **APPROVAL OF CLASS ACTION SETTLEMENT** on interested parties by placing a true and
15 correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as
16 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.