

1 Brian S. Kabateck, SBN 152054  
2 [bsk@kbklawyers.com](mailto:bsk@kbklawyers.com)  
3 Shant A. Karnikian, SBN 285048  
4 [sk@kbklawyers.com](mailto:sk@kbklawyers.com)  
5 Marina R. Pacheco, SBN 296485  
6 [mrp@kbklawyers.com](mailto:mrp@kbklawyers.com)  
7 **KABATECK LLP**  
8 633 W. 5<sup>th</sup> Street, Suite 3200  
9 Los Angeles, CA 90071  
10 Telephone: (213) 217-5000  
11 Facsimile: (213) 217-5010

12 Timothy Blood, SBN 149343  
13 [tblood@bholaw.com](mailto:tblood@bholaw.com)  
14 Leslie Hurst, SBN 178432  
15 [L.Hurst@bholaw.com](mailto:L.Hurst@bholaw.com)  
16 **Blood Hurst & O'Reardon LLP**  
17 501 W. Broadway, Suite 1490  
18 San Diego, CA 92101  
19 Phone Number: (619) 338-1100  
20 Fax Number: (619) 338-1101  
21 Attorneys for Plaintiffs

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
23 **FOR THE COUNTY OF MONTEREY**

24 Monterey Martini Inc. dba Lalla Oceanside Grill,  
25 individually, and on behalf of all others similarly  
26 situated,

27 Plaintiff(s),

28 vs.

COUNTY OF MONTEREY; COUNTY OF  
MONTEREY HEALTH DEPARTMENT; and  
CALIFORNIA DEPARTMENT OF  
ALCOHOLIC BEVERAGE CONTROL; DOES  
1 THROUGH 10, inclusive,

Defendant(s).

Case No.

**CLASS ACTION COMPLAINT FOR:**

- 1) **VIOLATION OF GOVERNMENT  
CODE § 53723**
- 2) **VIOLATION OF THE  
CALIFORNIA CONSTITUTION  
ARTICLE XIII, C § 2  
(PROPOSITION 218)**
- 3) **VIOLATION OF MANDATORY  
DUTY (GOVERNMENT CODE §  
815.6)**
- 4) **DECLARATORY AND  
INJUNCTIVE RELIEF**
- 5) **MONEY HAD AND RECEIVED**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**6) UNJUST ENRICHMENT**

**REQUEST FOR JURY TRIAL**

Plaintiff Monterey Martini Inc. dba Lalla Oceanside Grill (“Monterey Martini”), individually, and on behalf of all others similarly situated, allege(s) as follows against Defendants County of Monterey (the “County”); County of Monterey Health Department; and California Department of Alcoholic Beverage Control (collectively, “Defendants”):

**INTRODUCTION**

1. Monterey County is home to hundreds of restaurants—big and small, internationally famous and best kept secrets, fine-dining or the local hole-in-the-wall. Some serve breakfast, lunch, dinner and late-night snacks, while others may only be open a few hours each day. The restaurants of Monterey County represent a mosaic of cultures and are an economic lifeline for the thousands who work in the industry. Each one of these small businesses have one indisputable fact in common: They all must pay both the County and the State a fee to operate their business or risk being in violation of the law. Each member of this case has dutifully complied with the law and paid the County and/or State the required fees to operate during 2020.

2. On March 11, 2020, COVID-19 was declared a pandemic by the World Health Organization. On March 13, 2020 President Trump declared a national emergency as a result of COVID-19. In the immediate aftermath, the State of California and County of Monterey issued a variety of government orders requiring individuals to remain in their homes with limited exceptions. These orders also required the closure of non-essential businesses thereby severely limiting and/or completely closing the operating ability of Plaintiff and the proposed Class members’ businesses.

3. Specifically, on March 17, 2020, the County of Monterey, by and through the County Health Officer, Edward Moreno, MD, ordered the immediate closure of all businesses

1 within the County not deemed Essential Businesses, and all in-door dining for all restaurants (the  
2 “County Order”). The County Order was extended and amended by other subsequent orders  
3 which all severely limited and/or completely closed the operating ability of Plaintiff and the  
4 proposed Class members’ businesses.

5 4. On March 19, 2020, California Governor Gavin Newsom issued Executive Order  
6 N-33-20, which similar to the County Order, required individuals to stay in their homes with the  
7 exception of critical infrastructure sectors (the “State Order”). The State Order also imposed  
8 similar restrictions on the restaurant industry.

9 5. Since then, subsequent orders have been issued by the County of Monterey and  
10 State of California requiring Plaintiff’s and the Class members’ businesses to remain closed,  
11 and/or imposing certain restrictions on their operations, and/or altering their permissible  
12 operations, including, but not limited to: Order of the State Public Health Officer (March 19,  
13 2020); Order of the Health Officer of the County of Monterey Directing all Individuals Living in  
14 the County to Shelter at Their Place of Residence (March 17, 2020); California Executive Order  
15 N-60-20 (May 4, 2020); Order of the State Public Health Officer (May 7, 2020); California  
16 Executive Order N-83-20 (October 28, 2020); California Department of Public Health Limited  
17 Stay at Home Order (November 19, 2020); and California Department of Public Health Regional  
18 Stay at Home Order (December 3, 2020), leaving restaurants in a constant state of limbo. These  
19 subsequent orders, along with the County Order and State Order are collectively referred to as  
20 (the “Orders”).  
21

22 6. Few industries have been hit as hard as the restaurant industry by the COVID-19  
23 pandemic. A survey by the National Restaurant Association published on September 14, 2020  
24 found that nearly 1 in 6 restaurants (representing nearly 100,000 restaurants) is closed either  
25 permanently or long-term; nearly 3 million restaurant employees were out of work; and the  
26 industry is on track to lose \$240 billion in sales by the end of the year. The survey also found  
27  
28

1 that overwhelmingly, most restaurants are still struggling to survive and don't expect their  
2 position to improve over the next six months.

3 7. Despite requiring the closure and/or severely limiting the operating ability of  
4 these businesses, the County and State continued to charge the businesses permit and licensing  
5 fees, as well as late charges. Specifically, at issue in this action are the following fees, taxes,  
6 and/or charges (and any penalty fees) levied by the County and State entities against Plaintiff and  
7 the proposed Class:

- 8 a) Monterey County public health permit and licensing fees and/or tax; and
- 9 b) State of California Department of Alcoholic Beverage Control fees and/or  
10 tax

11 8. Further, the County and State entities have failed to provide refunds for fees,  
12 taxes, and/or charges that were paid, even though the government orders specifically prevented  
13 Plaintiff and the Class from operating their businesses.

14 9. The County and State entities received these fees, taxes, and/or charges from  
15 Plaintiff and the Class but failed to use the money for their benefit as intended.

16 10. Now, California's restaurant owners are struggling to pay their bills and keep  
17 workers employed. Nearly 70% of California's restaurant owners are at risk of being evicted  
18 from their property as the bills pile up, including fees, taxes, and other charges levied by the  
19 same government entities that are restricting the restaurants' ability to fully operate.

20 11. Ironically, the same County and State government officials who forced the closure  
21 of these businesses have also been continuing to collect a wide range of government fees under  
22 the threat of revoking licenses and permits. Plaintiff and the Class members have continued to  
23 pay these fees or risk losing their licenses to operate—when the government eventually allows  
24 such operations.

25 12. To be clear, this action does not dispute the propriety of the health and safety  
26 Orders, it simply demands fairness. Each member of this class has complied with the law and  
27  
28

1 have closed (in whole or in part) as required by the Orders. The class does not – for the purpose  
2 of this action – dispute the propriety of the Orders. If the government closed or limited  
3 Plaintiffs’ business operations, it must return the fees, taxes, and/or charges that it should have  
4 never been allowed to collect during this pandemic.

5 13. Through this action, Monterey Martini individually, and on behalf of all others  
6 similarly situated seeks a declaration that the County and State’s imposition and collection of  
7 fees, taxes, and/or charges from businesses that are prevented from operating is unlawful;  
8 injunctive relief preventing the further collection of said fees; a refund of all fees, taxes, and/or  
9 charges collected; and damages sustained as a result of their legally mandated participation in the  
10 public health permit and/or license program with the County of Monterey and the State of  
11 California Department of Alcoholic and Beverage Control.

12 14. All allegations in this Complaint are based on information and belief and/or are  
13 likely to have evidentiary support after a reasonable opportunity for further investigation or  
14 discovery. Whenever allegations in this Complaint are contrary or inconsistent, such allegations  
15 shall be deemed alternative.  
16

17 **THE PARTIES**

18 15. Plaintiff Monterey Martini Inc. dba Lalla Oceanside Grill is a California limited  
19 liability company having its principal place of business at 654 Cannery Row, Monterey, CA  
20 93940. Plaintiff Monterey Martini brings this action individually and on behalf of the class of all  
21 businesses or related persons who have paid the unconstitutional and illegal fees, taxes, and/or  
22 charges in connection with a public permit and/or license to the County of Monterey, County of  
23 Monterey Health Department, and the State of California Department of Alcoholic Beverage  
24 Control, while being prevented from operating.

25 16. Defendant County of Monterey is a county organized and existing as a legal  
26 subdivision under the laws of the State of California.  
27  
28

1           17. Defendant County of Monterey Health Department provides public health  
2 services to Monterey County residents.

3           18. Defendant State of California Department of Alcoholic Beverage Control  
4 regulates and enforces the use, sale, and enforcement of licenses to sell alcohol.

5           19. At all relevant times mentioned herein, the true names and capacities, whether  
6 individual, corporate, associate or otherwise, of Defendants and DOES 1 through 10, inclusive,  
7 are currently unknown to Plaintiff, who therefore brings suit against these Defendants by their  
8 fictitious names and capacities. Plaintiff is informed and believes and thereupon alleges that each  
9 fictitiously named Defendant, whether acting for itself or as an agent, corporation, association, or  
10 otherwise, is liable or responsible to Plaintiff and proximately caused injuries and damages to  
11 Plaintiff as alleged herein. While at this time Plaintiff is unaware of the true names and  
12 capacities of the DOE Defendants, Plaintiff will amend its Complaint to show the true names and  
13 capacities of DOES 1 through 10, inclusive, when those identities have been ascertained.  
14

15           20. At all relevant times mentioned herein, Defendants were the agents, employees,  
16 supervisors, servants and joint venturers of each other, and in doing the things hereafter alleged,  
17 were acting within the course, scope and authority of such agency, employment and joint  
18 venture and with the consent and permission of each of the other Defendants. All actions of  
19 each Defendant alleged in the causes of action into which this paragraph is incorporated by  
20 reference were ratified and approved by the officers or managing agents of every other  
21 Defendant.  
22

### **JURISDICTION AND VENUE**

23           22. This Court has jurisdiction over the entire action by virtue of the fact that this is a  
24 civil action wherein the matter in controversy, exclusive of interest and costs, exceeds the  
25 jurisdictional minimum of the Court. The acts and omissions complained of in this action took  
26 place, in whole or in part, in the State of California.  
27

28           23. Venue is proper in this county pursuant to Section 395(a) of the California Code

1 of Civil Procedure because the alleged wrongs occurred in this county.

2 **GENERAL ALLEGATIONS**

3 24. Beginning on March 17 and 19, 2020, the County of Monterey and State of  
4 California issued governmental orders requiring individuals to remain in their homes with  
5 limited exceptions. These orders also required the closure of non-essential businesses.  
6 Throughout the months that followed, and up to the filing of this Complaint, the County and  
7 State issued numerous subsequent orders requiring Plaintiff's and the Class members' businesses  
8 to remain closed, and/or imposing certain restrictions on their operations, and/or altering their  
9 permissible operations.

10 25. Despite requiring the closure of these businesses and/or severely limiting their  
11 operations, the County and State entities continued to charge, collect and fail to partially or  
12 completely refund the businesses public health permit and licensing fees, alcoholic beverage  
13 control fees, business license fees, as well as late charges.

14 26. Further, the County and State entities failed to provide refunds for said fees, taxes,  
15 and/or charges, despite the fact that the government orders specifically prevented Plaintiff and  
16 the Class from operating their businesses.

17 27. The County and State entities received these fees, taxes, and/or charges from  
18 Plaintiff but failed to use the money for Plaintiff's benefit as intended.

19 28. Specifically, pursuant to California Business and Professions Code section 23320,  
20 Defendant California Department of Alcoholic Beverage Control had a mandatory duty to refund  
21 Plaintiff and the Class members for their annual fee paid "in the event that the license application  
22 is withdrawn or denied" but failed to provide such refund. Cal. Bus. & Prof. Code § 23320.

23 29. Similarly, pursuant to Monterey County Ordinance 10.04.020 and 10.04.070, the  
24 County of Monterey and the County of Monterey Health Department have a duty to charge  
25 health services fees that are proportional to the reasonable expenses incurred when enforcing  
26 public health measures. However, the taxes, fees, and/or charges were not proportional to those  
27  
28

1 services as required.

2 30. When levying taxes, pursuant to California Government Code section 37101, all  
3 Defendants are mandated to “levy the tax so that the measure of tax fairly reflects that proportion  
4 of the taxed activity actually carried on within the taxing jurisdiction.” Cal. Gov’t. Code §  
5 37101.

6 31. In addition, the collection of the Monterey County public health permit and  
7 licensing fee(s) and/or tax constituted a tax by a local government who imposed, extended, or  
8 increased the tax without voter approval as is required by Government Code § 53723.

9 32. The collection of the Monterey County public health permit and licensing fee(s)  
10 and/or tax constituted a tax by a local government who imposed, extended, or increased the tax  
11 without voter approval as is required by Proposition 218.

12 **CLASS ACTION ALLEGATIONS**

13 34. Plaintiff brings this action on behalf of itself and all others similarly situated  
14 under California Code of Civil Procedure section 382.

15 35. Subject to confirmation, clarification and/or modification based on discovery to  
16 be conducted in this action, the Class that Plaintiff seeks to represent shall be defined as follows:  
17

18 During the fullest period allowed by law, all businesses or related persons who  
19 have paid the unconstitutional and illegal fees, taxes, and/or charges in connection  
20 with a public permit and/or license to the County of Monterey Health Department  
21 and/or the California Department of Alcoholic Beverage Control, while being  
prevented from operating in whole or in part.

22 36. Plaintiff seeks only declaratory relief, injunctive relief, and damages in the form  
23 of refunds or credits on behalf of themselves and the Class Members. Plaintiff disclaims any  
24 intent or right to seek any recovery in this action for personal injuries or emotional distress  
25 suffered by Plaintiff and/or the Class Members.

26 37. This action is properly maintainable as a class action.

27 38. The Class is so numerous that joinder of all members would be impracticable.  
28



1           39. Plaintiff is committed to prosecuting the action and has retained competent counsel  
2 experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other  
3 members of the Class and Plaintiff has the same interests as the other members of the Class.  
4 Plaintiff is an adequate representative of the Class.

5           40. Questions of law and fact common to the members of the Class predominate over  
6 any questions affecting any individual members, and a class action is superior to all other  
7 available methods for the fair and efficient adjudication of the controversy.

8           41. The common questions of law and fact include, but are not limited to:

9                   a) Whether the County's and State's fees, taxes, and/or other charges levied  
10 against businesses it ordered to close have been improperly applied and collected;

11                   b) Whether the County and State are obligated to refund the fees, taxes, and/or  
12 other charges;

13                   c) Whether Plaintiff and the members of the Class are entitled to declaratory and  
14 injunctive relief; and

15                   d) Whether Plaintiff and the members of the Class are entitled to recover illegally  
16 collected fees, taxes, and/or other charges.

17           42. The prosecution of separate actions by individual members of the Class would  
18 create the risk of inconsistent or varying adjudications and would establish incompatible  
19 standards of conduct for Defendants. The Defendants have acted, or have refused to act, on  
20 grounds generally applicable to the Class, making preliminary and final injunctive relief on behalf  
21 of the Class as a whole, appropriate.

22                                   **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23           43. Plaintiff complied, or otherwise substantially complied, with the formal claim  
24 presentation requirements of the California Government Claims Act (codified at GOVT. CODE  
25 §§ 810, *et seq.*). Within six months of the incident(s) complained of herein, Plaintiff presented  
26 written notice of Plaintiff's claims to the public-entity-defendant(s) named herein. See GOVT.  
27  
28

1 CODE § 910. Plaintiff's claims were rejected by express notice and/or upon the lapse of forty-  
2 five days following claim presentation. See GOVT. CODE § 912.4. Plaintiff(s) filed this action  
3 within six months of service of any express rejection and/or, where no express rejection was  
4 served, within two years of the date each cause of action accrued or the applicable statute of  
5 limitations, whichever is sooner. See GOVT. CODE § 945.6. A true and correct copy of  
6 Plaintiff's government claim(s), and any rejection from public-entity-defendant(s) named  
7 herein, is(are) attached hereto as Exhibit "A".

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF GOVERNMENT CODE § 53723**

10 **(Against Defendants County of Monterey, County of Monterey Health Department and**  
11 **DOES 1 to 10)**

12 44. Plaintiffs reallege and incorporate by reference the allegations contained in the  
13 preceding paragraphs of this complaint, as though fully set forth herein.

14 45. Proposition 62, approved by California voters in the 1986 General Election, added  
15 § 53720 *et seq.* to the California Government Code.

16 46. Section 53723 provides that "[n]o local government ... may impose any general  
17 tax unless and until such general tax is submitted to the electorate of the local government and  
18 approved by a majority vote of the voters voting in an election on the issue."

19 47. The collection of the Monterey County public health permit and licensing fee(s)  
20 and/or tax constituted a tax by a local government who imposed, extended, or increased the tax  
21 without voter approval as is required by Government Code § 53723.

22 48. The continued imposition and collection of the Monterey County public health  
23 permit and licensing fee(s) and/or tax without voter approval is an ongoing and continuous  
24 violation, which is violated anew with each collection of the Monterey County public health  
25 permit and licensing fee(s) and/or tax from Plaintiffs.

26 49. It is necessary and appropriate for this Court to declare that the past and ongoing  
27  
28

1 imposition and collection of the Monterey County public health permit and licensing fee(s)  
2 and/or tax is invalid and illegal until such time as is approved by the voters pursuant to the  
3 provisions of Government Code § 53723.

4 50. There exists a justiciable controversy between the parties which is ripe for  
5 adjudication. Plaintiffs contend that the Monterey County public health permit and licensing  
6 fee(s) and/or tax imposed by the County is invalid and in violation of Government Code §  
7 53723. Plaintiffs are informed and believe, and based thereon allege, that Defendants deny such  
8 contention and contend otherwise. Declaratory judgment is appropriate and necessary  
9 at this time with respect to this issue, to avoid a potential multiplicity of actions, to prevent  
10 irreparable harm, to ensure proper enforcement of the law, and to resolve a matter of substantial  
11 public interest.

12 51. Plaintiffs have no adequate remedy at law and may suffer irreparable injury  
13 absent injunctive relief. The Court should issue a preliminary and permanent injunction  
14 prohibiting Defendants from imposing and collecting the Monterey County public health permit  
15 and licensing fee(s) and/or tax as it is invalid and unlawful.

17 **SECOND CAUSE OF ACTION**

18 **VIOLATION OF THE CALIFORNIA CONSTITUTION ARTICLE XIII, C § 2**

19 **(PROPOSITION 218)**

20 **(Against Defendants County of Monterey, County of Monterey Health Department and**

21 **DOES 1 to 10)**

22 52. Plaintiffs reallege and incorporate by reference the allegations contained in the  
23 preceding paragraphs of this complaint, as though fully set forth herein.

24 53. Proposition 218, known as the “Right to Vote on Taxes Act,” amended the  
25 California Constitution to ensure that citizens would have the right to vote on whether local  
26 governments should enact taxes, such as the charges at issue in this case. This constitutional  
27 amendment protects taxpayers by limiting the methods by which local governments can impose,  
28

1 extend, or increase taxes, fees and charges without taxpayer consent. Proposition 218 requires  
2 voter approval prior to an imposition, increase, or extension of general taxes, assessments, and  
3 certain user fees.

4 54. The collection of the Monterey County public health permit and licensing fee(s)  
5 and/or tax constituted a tax by a local government who imposed, extended, or increased the tax  
6 without voter approval as is required by Proposition 218.

7 55. It is necessary and appropriate for this Court to declare that the past and ongoing  
8 imposition and collection of the Monterey County public health permit and licensing fee(s)  
9 and/or tax is invalid and illegal until such time as is approved by the voters pursuant to the  
10 provisions of Proposition 218.

11 56. An actual controversy now exists between each Plaintiff and the County as to the  
12 legality of the Monterey County public health permit and licensing fee(s) and/or tax as imposed.  
13 It is necessary and appropriate for this Court to declare that the Monterey County public health  
14 permit and licensing fee(s) and/or tax is invalid and illegal until such time as is approved by the  
15 voters pursuant to the provisions of the California Constitution Article XIII, C § 2 and  
16 Proposition 218.

17 57. Plaintiffs have no adequate remedy at law and may suffer irreparable injury  
18 absent injunctive relief. The Court should thus issue a preliminary and permanent injunction  
19 prohibiting Defendants from imposing and collecting the Monterey County public health permit  
20 and licensing fee(s) and/or tax as it is invalid and unlawful.

21  
22 **THIRD CAUSE OF ACTION**

23 **VIOLATION OF MANDATORY DUTY**

24 **(GOVERNMENT CODE § 815.6)**

25 **(Against all Defendants and DOES 1 to 10)**

26 58. Plaintiffs reallege and incorporate by reference the allegations contained in the  
27 preceding paragraphs of this complaint, as though fully set forth herein.  
28

1           59. Pursuant to California Business and Professions Code section 23320, Defendant  
2 California Department of Alcoholic Beverage Control had a mandatory duty to refund Plaintiff  
3 and the Class members for their annual fee paid “in the event that the license application is  
4 withdrawn or denied.” Cal. Bus. & Prof. Code § 23320.

5           60. Similarly, pursuant to Monterey County Ordinance 10.04.020 and 10.04.070, the  
6 County of Monterey and the County of Monterey Health Department have a duty to charge  
7 health services fees that are proportional to the reasonable expenses incurred when enforcing  
8 public health measures. However, the taxes, fees, and/or charges were not proportional to those  
9 services as required.

10           62. When levying taxes, pursuant to California Government Code section 37101, all  
11 Defendants are mandated to “levy the tax so that the measure of tax fairly reflects that proportion  
12 of the taxed activity actually carried on within the taxing jurisdiction.” Cal. Gov’t. Code §  
13 37101.

14           63. Defendant California Department of Alcoholic Beverage Control violated  
15 Government Code section 815.6 and Business and Professions Code section 23320 when it failed  
16 to refund Plaintiff and the Class for the alcohol license fees, taxes, and/or charges paid despite  
17 the fact that their businesses were prevented and/or limited from using said permit or license.  
18

19           64. Defendants County of Monterey and County of Monterey Health Department  
20 violated Government Code section 815.6 and Monterey County Ordinances 10.04.020 and  
21 10.04.070 when they failed to refund Plaintiff and the Class members for their public health  
22 permit fees, taxes, and/or charges despite the fact that their businesses were prevented and/or  
23 limited from using said permit or license and/or reduce the fees to be proportional to the decrease  
24 in services that were being provided and/or costs of administration.

25           65. All Defendants violated California Government Code section 37101 when they  
26 levied the public health permit fees and/or taxes and the alcohol license fees, taxes, and/or  
27 charges, and business licensing fees, charges, and/or taxes against Plaintiff and the Class, despite  
28

1 the fact that their businesses were ordered to close and/or severely limited in their abilities to  
2 operate and that the services provided by the health department were substantially decreased.

3 66. As a result of Defendants' violations, Plaintiffs were harmed and continue to be  
4 harmed because they are forced to pay for licensing and/or permit fees when they cannot fully  
5 operate their businesses.

6 67. Defendants' failure to refund Plaintiffs and the Class is a substantial factor in  
7 causing Plaintiffs' harm.

8 **FOURTH CAUSE OF ACTION**

9 **DECLARATORY AND INJUNCTIVE RELIEF**

10 **(Against all Defendants and DOES 1 to 10)**

11 68. Plaintiffs reallege and incorporate by reference the allegations contained in the  
12 preceding paragraphs of this complaint, as though fully set forth herein.

13 69. The County and State have collected, and continue to collect, the public health  
14 permit and licensing fees and the California Department of Alcoholic Beverage Control fees  
15 from Plaintiff and the Class in clear violation of the law.

16 70. Legal remedies available to Plaintiff and the Class are inadequate to redress the  
17 illegal collection of said fees, taxes, and/or charges.

18 71. The County and State provide no procedure for Plaintiff and the Class to obtain a  
19 refund of the illegally collected fees, taxes, and/or charges. Further, because the County and  
20 State entities continue to collect the illegal fees, taxes, and/or charges from businesses ordered to  
21 close down, a refund alone is inadequate relief and would require the Class to file a multiplicity  
22 of actions.

23 72. Declaratory relief is proper regarding the subject matter of this action because  
24 there is an actual and present controversy between the parties concerning Plaintiffs obligations to  
25 pay the County and State for their businesses' public health permit and licensing fees, alcohol  
26 and beverage control fees, and business license charges, taxes, and/or fees, despite being  
27  
28

1 required to shut down their operations. By the terms and provisions of California Code of Civil  
2 Procedure § 1060, this Court has the power to declare the obligations and duties of the parties  
3 and to give such other relief as may be necessary.

4 73. By virtue of the foregoing, there exists an actual, justiciable controversy between  
5 the parties. Plaintiff contends that the County's and State's imposition and collection of fees,  
6 taxes, and/or charges from businesses that are prevented from operating is unlawful. Despite  
7 requiring the closure and/or severely limiting the operating ability of these businesses, the  
8 County and State continue to charge the businesses public health permit and licensing fees, and  
9 alcohol and beverage control fees, as well as late charges. The County and State received these  
10 fees, taxes, and/or charges from Plaintiffs but failed to use the money for Plaintiffs' benefit as  
11 intended, since these businesses have been ordered closed and/or had their operations severely  
12 limited due to the governmental orders. The County and State do not refund the money to  
13 Plaintiffs.

14 74. Accordingly, Plaintiff and the Class are entitled to:

- 15 a) A declaration that the County and State are unlawfully levying these fees,  
16 taxes, and/or charges against businesses ordered to close down, and  
17 b) an injunction preventing further collection of the public health permit and  
18 licensing fees by the County and alcohol and beverage control fees and/or tax by  
19 the State against Plaintiff and the Class.  
20

21 **FIFTH CAUSE OF ACTION**

22 **MONEY HAD AND RECEIVED**

23 **(Against all Defendants and DOES 1 to 10)**

24 75. Plaintiffs reallege and incorporate by reference the allegations contained in the  
25 preceding paragraphs of this complaint, as though fully set forth herein.

26 76. Defendants received money that was intended to be used for the benefit of  
27 Plaintiff and the Class. Namely, the County continues to charge Plaintiff and the Class for their  
28

1 public health permit and licensing fees and/or tax as well as late charges, and the State entities  
2 continue to charge the alcohol and beverage control fees and late charges. Plaintiff and the Class  
3 have paid these fees, taxes, and/or charges to the County and State, including late fees.

4 77. That money was not used for the benefit of Plaintiff and the Class because the  
5 County and State ordered their businesses to shut down and/or severely limited their operations.  
6 These monies which have been collected belong to Plaintiff and the members of the Class, and in  
7 fairness should be returned to Plaintiff and the members of the Class. The County and State have  
8 no legal or equitable right to retain these monies.

9 78. Defendants have not given the money back to Plaintiffs. Specifically, the County  
10 failed to provide refunds for fees, taxes, and/or charges that were paid for the 2019-2020 and  
11 2020-2021 years, despite the fact that the County's Orders specifically prevented Plaintiffs from  
12 operating their businesses. Similarly, the state entities have not refunded Plaintiff and the Class  
13 for their alcohol and beverage control fees.

14 79. Accordingly, Plaintiff and the members of the Class are entitled to return of all  
15 monies collected under the guise of a permit or licensing fee by the County and State, along with  
16 statutory interest.  
17

18 **SIXTH CAUSE OF ACTION**

19 **UNJUST ENRICHMENT**

20 **(Against all Defendants and DOES 1 to 10)**

21 80. Plaintiffs reallege and incorporate by reference the allegations contained in the  
22 preceding paragraphs of this complaint, as though fully set forth herein.

23 81. Defendants received a benefit from Plaintiffs. Namely, the County charged and  
24 received money from Plaintiffs for their public health permit and licensing fees and/or tax,  
25 business license fees, taxes, and/or charges, as well as late charges. The state entities received  
26 money from Plaintiffs for their alcohol and beverage control fees.  
27  
28



1           82.     The County and State have thus been unjustly enriched by the illegal exaction of  
2 money from Plaintiff and Class members under the guise of a permit and/or licensing fee and/or  
3 tax at the expense of Plaintiff and the Class.

4           83.     The County's and State's retention of these fees, taxes, and/or charges is unjust  
5 because the money was not used for Plaintiffs' benefit as intended. Plaintiff and the Class are  
6 entitled to full reimbursement from the County and State in the actual amount by which the  
7 County and State have been unjustly enriched at the expense of the Plaintiff and the Class.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

///

///

1 **PRAYER FOR DAMAGES**

2 WHEREFORE, Plaintiff and the Class pray for damages and other judicial relief as  
3 follows:

- 4 1. Judgment in favor of Plaintiff and the proposed Class and against Defendants on all  
5 causes of action alleged herein;
- 6 2. For general, special, compensatory, and incidental damages, plus prejudgment  
7 interest and other damages according to proof;
- 8 3. A declaration that the County's and State's collection of fees, taxes, and other  
9 charges from the proposed class members is invalid for one or more of the reasons  
10 alleged herein;
- 11 4. Injunctive relief preventing the County and State from levying fees, taxes, and other  
12 charges against Plaintiff and the proposed Class;
- 13 5. Any and all other equitable relief, including preliminary and permanent injunctive  
14 relief, that the Court deems appropriate;
- 15 6. For attorneys' fees and costs;
- 16 7. For costs of suit herein;
- 17 8. For pre-judgment interest as provided for by applicable law; and
- 18 9. For such further relief as the Court may deem just and proper.
- 19
- 20

21 Dated: April 6, 2021

**KABATECK LLP**

22  
23 By:  \_\_\_\_\_

Brian S. Kabateck  
Shant A. Karnikian  
Marina R. Pacheco

*Attorneys for Plaintiffs*

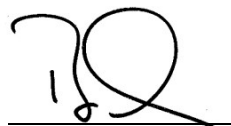
1 **JURY DEMAND**

2 Plaintiff requests a trial by jury for all claims so triable.

3  
4 Dated: April 6, 2021

**KABATECK LLP**

5  
6  
7 By: \_\_\_\_\_



8 Brian S. Kabateck  
9 Shant A. Karnikian  
10 Marina R. Pacheco

11 *Attorneys for Plaintiffs*