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12 Attorneys for Plaintiffs
13 CALIFORNIA CRAFT BREWERS
14 ASSOCIATION; TOPA TOPA BREWING
15 COMPANY, LLC; GREEN CHEEK BEER
16 COMPANY, LLC; SECOND CHANCE
17 BEER COMPANY, LLC; CHAPMAN CBC,
18 LLC dba CHAPMAN CRAFTED BEER;
19 BIKE DOG BREWING COMPANY, LLC;
20 & 1150 HOWARD PARTNERS, LP dba
21 CELLARMAKER BREWING COMPANY

22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA**

24 CALIFORNIA CRAFT BREWERS
25 ASSOCIATION, a California nonprofit
26 mutual benefit corporation; TOPA
27 TOPA BREWING COMPANY, LLC,
28 a California limited liability company;
GREEN CHEEK BEER COMPANY,
LLC, a California limited liability
company, SECOND CHANCE BEER
COMPANY, LLC, a California limited
liability company, CHAPMAN CBC,
LLC, California limited liability
company, dba CHAPMAN CRAFTED
BEER, BIKE DOG BREWING
COMPANY, LLC, a California limited
liability company, and 1150 HOWARD
PARTNERS, LP, a California limited
partnership, dba CELLARMAKER
BREWING COMPANY,

Plaintiffs,

CASE NO.

Hon.

COMPLAINT FOR:

1. **VIOLATION OF THE
EQUAL PROTECTION
CLAUSE OF THE 14TH
AMENDMENT OF THE
UNITED STATES
CONSTITUTION**
2. **VIOLATION OF THE DUE
PROCESS CLAUSE OF
THE 14TH AMENDMENT
OF THE UNITED STATES
CONSTITUTION**

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vs.

GAVIN NEWSOM, in his official capacity as Governor of California; SANDRA SHEWRY, in her official capacity as California State Public Health Officer; and DOES 1 through 10, inclusive,

Defendants.

DEMAND FOR JURY TRIAL

1 Plaintiffs California Craft Brewers Association (“CCBA”); Topa Topa
2 Brewing Company (“Topa Topa”); Green Cheek Beer Company, LLC (“Green
3 Cheek”), Second Chance Beer Company, LLC (“Second Chance”), Chapman
4 CBC, LLC dba Chapman Crafted Beer (“Chapman Crafted Beer”), Bike Dog
5 Brewing Company, LLC (“Bike Dog”), and 1150 Howard Partners, LP dba
6 Cellarmaker Brewing Company (“Cellarmaker”) (collectively, “California Craft
7 Brewers”) bring this complaint against Defendants Governor Gavin Newsom
8 (“Newsom”) and Sandra Shewry (collectively, “Defendants”) as follows:

9 **INTRODUCTION**

10 1. The worldwide beer industry has reached extraordinary heights in
11 the last decade. California breweries were a catalyst for this exponential growth,
12 particularly craft breweries, and California remains one of the most revered and
13 lauded locations for beer in the world. In fact, in the 2012 biennial World Beer
14 Cup Competition, California craft brewers won an astounding fifty-five medals,
15 which was more than any other state or country. Most recently, in the 2020
16 Great American Beer Festival, California craft brewers again won the most
17 medals with sixty-three.

18 2. California beer manufacturers have also been, and remain, a model
19 citizen of California. As of 2019, California’s craft beer industry supported
20 61,335 jobs, paying nearly \$3.5 billion to its workers. In 2018, California beer
21 manufacturers paid \$906.1 million in state and local taxes.

22 3. California Craft Brewers recognize and support health and safety
23 measures designed to protect California’s citizens during the current global
24 pandemic. However, the measures implemented by California to effectuate that
25 goal are invalid and unfair, and they are decimating California’s breweries,
26 along with the small business owners and employees that depend upon them.

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1 4. California cannot infringe upon the rights guaranteed to California’s
2 citizens by the United States Constitution. As one United States District Court
3 explained: “[T]he solution to a national crisis can never be permitted to
4 supersede the commitment to individual liberty that stands as the foundation of
5 the American experiment.” *Cnty of Butler v. Wolf*, No. 2:20-cv-677, (W.D.P.A.
6 September 14, 2020).

7 5. Litigants across the country have challenged government action
8 implemented to combat the novel coronavirus (“COVID-19”) on the ground that
9 such actions violate certain constitutional rights. Some have succeeded, others
10 have not. Plaintiffs in this case, an association and six beer manufacturers with
11 tasting rooms, are better positioned than any other COVID-19 litigant, even the
12 successful ones.

13 6. In response to the COVID-19 pandemic, and with the stated goal of
14 slowing the spread of the virus, Defendant Newsom issued a series of executive
15 orders that, among other things, prohibited beer manufacturers from operating
16 tasting rooms unless they contemporaneously provide sit-down, dine-in meals,
17 whether or not such businesses were previously licensed or equipped to provide
18 such meals. California’s mandate was not supported by scientific data, or an
19 explanation of how the provision of meals achieves the goal of slowing the
20 spread of the virus.

21 7. Only beer tasting rooms are required to serve meals; wine tasting
22 rooms are not. Even wineries that share a tasting room with beer manufacturers
23 may continue to sell and serve wine to customers without food, while the beer
24 manufacturer is prohibited from selling beer to the same customers in the same
25 tasting room unless it also sells food. To date, Defendants have not presented
26 any valid basis for treating beer manufacturers different than wineries. COVID-
27 19 does not impact a winery differently than it impacts a beer manufacturer.

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1 8. Beer manufacturers and wineries are regulated by California’s
2 Department of Alcoholic Beverage Control (“ABC”) and by the various
3 Business and Professions Code statutes enacted by California’s legislature.
4 Neither the ABC regulations, nor California’s Business and Professions Code,
5 require beer manufacturers or wineries to serve a meal in order to operate their
6 tasting room.

7 9. Requiring beer manufacturers to serve food as a prerequisite to
8 operating their tasting room is arbitrary, irrational and unconstitutional. There
9 are no facts evidencing a rational relationship between the meal requirement and
10 the prevention of COVID-19, and Defendants have presented none.

11 10. Requiring beer manufacturers to serve food as a prerequisite to
12 operating their tasting room, but exempting similarly situated wineries, and in
13 some cases identically situated wineries, from the meal requirement, is similarly
14 arbitrary, irrational and unconstitutional.

15 11. Plaintiffs also have no ability to challenge or appeal Defendants’
16 executive orders, in violation of their constitutional rights to procedural due
17 process.

18 12. Plaintiffs have suffered, and continue to suffer, substantial and
19 irreparable harm. Businesses are closing, jobs are lost, and livelihoods are being
20 destroyed.

21 13. Defendants’ executive orders and related state action requiring beer
22 manufacturers to provide meals to operate a tasting room violate the Equal
23 Protection Clause and Due Process Clause of the Fourteenth Amendment to the
24 United States Constitution. Plaintiffs respectfully bring the instant action for an
25 order from this Court declaring the executive orders requiring California’s beer
26 manufacturers to provide meals in order to operate a tasting room as
27 unconstitutional.

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THE PARTIES

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2 14. Plaintiff CCBA is a California nonprofit mutual benefit corporation
3 that represents the craft and specialty brewing industry in California. CCBA is,
4 and at all relevant times was, a California corporation authorized to do and
5 doing business in California. CCBA maintains its principal place of business in
6 Sacramento, California. CCBA has standing to pursue these claims due to the
7 direct harm it has suffered as a result of Defendants’ conduct, as well as in a
8 representative capacity on behalf of its members who have suffered and
9 continue to suffer immediate injury as a result of Defendants’ conduct.

10 15. Plaintiff Topa Topa is an award-winning beer manufacturer who
11 operates tasting rooms. Topa Topa is, and at all relevant times was, a California
12 limited liability company authorized to do and doing business in California.
13 Topa Topa maintains its principal place of business in Ventura, California.

14 16. Plaintiff the Green Cheek is an award-winning beer manufacturer
15 who operate tasting rooms. Green Cheek is, and at all relevant times was, a
16 California limited liability company authorized to do and doing business in
17 California. Green Cheek maintains its principal place of business in Orange,
18 California.

19 17. Plaintiff Second Chance is an award-winning beer manufacturer
20 who operates two tasting rooms in San Diego, California. Second Chance is,
21 and at all relevant times was, a California limited liability company authorized
22 to do and doing business in California. Second Chance maintains its principal
23 place of business in San Diego, California.

24 18. Plaintiff Chapman Crafted Beer is an award-winning beer
25 manufacturer who operates a tasting room. Chapman Crafted Beer is, and at all
26 relevant times was, a California limited liability company authorized to do and
27 doing business in California. Chapman Crafted Beer maintains its principal
28 place of business in Orange, California.

1 19. Plaintiff Bike Dog is an award-winning beer manufacturer who
2 operates tasting rooms. Bike Dog is, and at all relevant times was, a California
3 limited liability company authorized to do and doing business in California.
4 Bike Dog maintains its principal place of business in Sacramento, California.

5 20. Plaintiff Cellarmaker is an award-winning beer manufacturer who
6 operates tasting rooms. Cellarmaker is, and at all relevant times was, a
7 California limited partnership authorized to do and doing business in California.
8 Cellarmaker maintains its principal place of business in San Francisco,
9 California.

10 21. Defendant Newsom is named as a defendant in this action in his
11 official capacity as the Governor of California. As the Governor of California,
12 Newsom is entrusted to “see that the law is faithfully executed.” Cal. Const.
13 Art. V, §1.

14 22. Defendant Sandra Shewry is named as a defendant in this action in
15 her official capacity as State Public Health Officer and Interim Director of the
16 California Department of Public Health (the “CDPH”). As of the filing of this
17 complaint, Governor Newsom has appointed Thomas Aragon as California’s
18 new Public Health Officer and Director of the CDPH. This Complaint will be
19 amended to name Mr. Aragon as a defendant if he is confirmed by the California
20 Senate for this position.

21 23. Each Defendant acted under color of state law with respect to all
22 acts or omissions alleged here.

23 24. Plaintiffs currently do not know the true names and capacities of the
24 defendants sued as DOES 1 through 10, inclusive, and therefore sues these
25 defendants by fictitious names. Plaintiffs will amend the Complaint to add the
26 true names and capacities of these defendants when they are ascertained. Each
27 of the fictitiously named Doe defendants is responsible in some manner for the
28 events and happenings alleged in this Complaint and for Plaintiffs’ damages.

1 conditional use permitting and compliance with a host of additional rules and
2 regulations that would completely transform the business model of beer
3 manufacturers who, at their core, are manufacturers of alcoholic beverage
4 products just like wine manufacturers. Again, the ABC Act, the primary source
5 for statutes and regulations governing the operations of beer and wine
6 manufacturers, does not require these businesses to operate a kitchen or serve
7 food in order to serve their alcoholic beverages to customers at their tasting
8 rooms. In certain scenarios, installing and operating a kitchen may be
9 impossible for beer manufacturers and wineries due to local requirements that
10 would apply to such facilities and operations. This issue was similarly raised by
11 Caymus Wineries in their recent litigation against the state, *i.e.*, that wineries in
12 Napa county were not permitted to serve food due to local regulations.

13 33. Indeed, the regulatory environment facing beer and wine
14 manufacturers is so similar that it has led to joint tasting room locations across
15 the state, including Plaintiff Topa Topa and Fox Wines in Santa Barbara, as well
16 as Deft Brewing and Lost Coast Meadery in San Diego and nearly 100 other
17 similar joint winery and brewery locations across the state. The distinct
18 similarity of winery and brewery operations is further evidenced by the fact that
19 multiple businesses across the State have been issued licenses to be beer
20 manufacturers and wineries within the same physical premises.

21 **Defendants' Unconstitutional Discrimination**
22 **Against Beer Manufacturers**

23 34. In response to COVID-19, Governor Newsom declared a State of
24 Emergency on March 4, 2020. Shortly thereafter, on March 19, 2020, Governor
25 Newsom issued the first "lockdown order," Executive Order No. N-33-20,
26 which ordered all Californians to stay in their homes.

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1 35. Many businesses were forced to shut down due to Governor
2 Newsom’s State of Emergency and lockdown order. This caused many
3 employees to be furloughed and fired from their chosen professions, including
4 individuals working for beer manufacturers.

5 36. On May 4, 2020, Governor Newsom empowered the California
6 Public Health Officer (“PHO”) to establish “criteria and procedures” applicable
7 to reopening businesses through Executive Order N-60-20.

8 37. On May 12, 2020, the California Department of Public Health
9 (“CDPH”) issued the following order: “Brewpubs, breweries, bars, pubs, craft
10 distilleries and wineries should remain closed until those establishments are
11 allowed to resume modified or full operation unless they are offering sit-down,
12 dine-in meals. Alcohol can only be sold in the same transaction as a meal.”

13 38. Then, on June 28, 2020 and July 1, 2020, the California Department
14 of Public Health (“CDPH”) narrowed this sit-down, dine-in meal requirement to
15 beer manufacturers, eliminating the need for wine manufacturers to comply.
16 The July 1, 2020 closure Guidance ordered “all brewpubs, breweries, bars, and
17 pubs in these counties must close, both indoors and outdoors, unless they are
18 offering sit down, dine-in meals as described under the actions section of the
19 guidance issued on June 28.” There is no reasonably articulated end date for the
20 removal of this requirement.

21 39. These Guidance orders shall be referred to herein as the “Challenged
22 CDPH Guidance.”

23 40. The CDPH did not explain why wine manufacturers were exempted
24 from the sit down, dine-in meal requirement from the Challenged CDPH
25 Guidance that was issued pursuant to Governor Newsom’s executive order. It is
26 public knowledge, however, that Governor Newsom owns multiple wineries. It
27 is also public knowledge that Caymus Wineries challenged the sit-down, dine-in
28 meal requirement as it applied to wineries, the State settled that lawsuit, and

1 now wineries are not subject to the requirement. The terms of the State’s
2 settlement with Caymus Wineries, however, are not public. A settlement of
3 such suit between Caymus Wineries and the State does not justify
4 unconstitutional and disparate treatment of beer manufacturers.

5 **The State Gives Pretextual and Unjustified**
6 **Explanation For Unequal Treatment**

7 41. After the Challenged CDPH Guidance was issued, and throughout
8 the summer of 2020, CCBA engaged CDPH in a discussion about the inequities
9 of the sit-down, dine-in requirement imposed on beer manufacturers.

10 42. Specifically, on September 15, 2020, representatives from CCBA
11 and CDPH discussed the issue. CCBA requested that beer manufacturers
12 receive equal treatment with wine manufacturers. CCBA also demanded from
13 CDPH the legal and factual basis underpinning its differential treatment of beer
14 and wine manufacturers as it relates to the sit-down, dine-in meal requirement in
15 the Challenged CDPH Guidance.

16 43. On November 3, 2020, CDPH responded to CCBA’s request for
17 additional information (the “CDPH Letter”). In this response, CDPH provides
18 the stated justification for the differential treatment of beer and wine
19 manufacturers.

20 44. In the CDPH letter, CDPH explained that the State had implemented
21 a 4-tier “Blueprint” for reopening businesses, and that the Blueprint was
22 developed based upon evaluation of several risk-based criteria. This risk-based
23 criteria includes the following: (1) the “[a]bility to accommodate face covering
24 wearing at all times (e.g. eating and drinking would require removal of face
25 covering)”; (2) the “[a]bility to physically distance between individuals from
26 different households”; (3) the “[a]bility to limit the number of people per square
27 foot”; (4) the [a]bility to limit duration of exposure”; (5) the “[a]bility to limit
28 amount of mixing of people from differing households and communities”; (6)

1 the “[a]bility to limit amount of physical interactions of visitors/patrons”; (7) the
2 [a]bility to optimize ventilation (e.g. indoor vs outdoor, air exchange and
3 filtration)””; and (8) the “[a]bility to limit activities that are known to cause
4 increased spread (e.g. singing, shouting, heavy breathing; loud environs will
5 cause people to raise voice).”

6 45. Then, the CDPH described its stated justification for the differential
7 treatment between beer and wine manufacturers:

8 In response to your question about why breweries are
9 treated differently than wineries in the sector reopening
10 framework, CDPH determined that mixing between
11 greater numbers of people from differing households was
12 more likely at breweries. Breweries are generally found
13 in all areas of the state (e.g., urban, suburban, and rural
14 communities). As such, breweries are often social hubs
15 and meeting locations for different households in a
16 community. In contrast, wineries are generally located in
17 certain regions of the state (e.g., Napa, Sonoma, Amador,
18 and Paso Robles), are often settings people travel to visit,
19 often have limited seating, and often operate with more
20 limited hours and; consequently, and generally not social
21 hubs or meeting locations for different households in a
22 community. While there are certainly exceptions in both
23 directions, these generalizations guided the distinction in
24 what allowances are made in different tiers.

25 46. CDPH’s stated justification is not grounded in science, data, or any
26 other reliable source. It is baseless speculation and, as to certain fundamental
27 assumptions, wildly inaccurate. Indeed, there are over 4,000 wine
28 manufacturers located across the State, with hundreds if not thousands located
outside of the areas named by the State that are also within the same areas as
beer manufacturers.¹

47. Highlighting the inequities presented by the Challenged CDPH
Guidance are the multiple beer manufacturers that share tasting room space with

¹ For further information, including a telling graphic showing the sprawling nature of California’s 4,000+ wineries, please visit California Winery Map (americanwineryguide.com).

1 wine manufacturers across the state. Customers are forced to order food if they
2 want a beer, but may drink a glass of wine by itself. The circumstances
3 surrounding the events are exactly the same, but Defendants decreed winners
4 and losers in the Challenged CDPH Guidance without any rationale based in
5 legitimate public health considerations.

6 48. Moreover, the sit-down, dine-in meal requirement increases, rather
7 than reduces, the public health risk. It increases the points of contact with which
8 consumers must interact and increases the amount of time that a customer must
9 keep their face covering removed. By forcing customers to reduce the amount
10 of time that face coverings are being worn – a concern of paramount importance
11 in the State’s public messaging and other public health guidelines – the
12 regulation thereby increases the likelihood of the transmission of COVID-19.
13 Additionally, because most beer manufacturers do not have kitchens, they must
14 contract with third-parties and rely on those third-parties to be as careful as they
15 are about maintaining safe practices.

16 **Beer Manufacturers Have Been**
17 **Substantially and Irreparably Harmed**

18 49. Plaintiffs, along with CCBA’s members, have been irreparably
19 harmed by the State’s actions in response to COVID-19, including most
20 significantly by the sit-down, dine-in meal requirement in the Challenged CDPH
21 Guidance.

22 50. In May 2020, just a couple months into the pandemic, the National
23 Beer Wholesalers Association estimated that beer manufacturers could lose as
24 much as \$8 billion from government orders through June 2020.

25 51. Now, as the Challenged CDPH Guidance has been in place for
26 months, the impact on California breweries has been devastating. For many
27 such businesses, the damage is already irreparable and permanent closure is
28 imminent. Plaintiffs have incurred substantial damages, including lost revenue

1 from tasting room sales, lost revenue from beer sales associated with tasting
2 room operations, and various expenses incurred in attempted compliance with
3 the food requirement.

4 52. Certain beer manufacturers have been unable to serve food at all,
5 others have been unable to procure food service for seven days a week or find a
6 reliable third party to deliver upon expressed commitments to provide food
7 during all business hours, and still others struggle to obtain enough food to last
8 all day. Due to the Challenged CDPH Guidance, all of these circumstances
9 result in losses because the beer manufacturer cannot serve its beer without also
10 serving food.

11 53. Plaintiff CCBA has lost fifteen percent of its members as a result of
12 financial hardship or closures related to COVID-19.

13 54. Plaintiffs' losses continue to increase each day, and are expected to
14 continue to increase through the holiday season and beyond.

15 55. Plaintiffs have also incurred non-monetary damages including
16 reputational damage, customer confusion, and the perils of competing in an
17 environment that is patently unfair.

18 56. In short, the Challenged CDPH Guidance has caused, and continues
19 to cause, considerable damage to Plaintiffs and similarly situated beer
20 manufacturers, including injuries to their businesses and reputation, as well as
21 injuries to their relationships with customers, employees, and vendors.

22 **California Beer Manufacturers Are Well Positioned**
23 **To Operate Safely Once The Sit-Down, Dine-In**
24 **Meal Requirement Is Stricken**

25 57. Once the sit-down, dine-in meal requirement is stricken, Plaintiffs,
26 and CCBA's members, are happy to operate in a manner that will comply with
27 all remaining applicable local, state and federal safety guidance, including
28 guidance from the CDPH, Centers for Disease Control and Prevention ("CDC"),

1 Occupational Safety and Health Administration (“OSHA”), and the U.S. Food
2 and Drug Administration (“FDA”).

3 58. In fact, Plaintiffs and beer manufacturers across the state have
4 already implemented robust protocols directed at protecting customer safety that
5 go above-and-beyond recommended guidelines. This includes limiting table
6 size to six people, requiring customers to wear facemasks during the times when
7 a customer must leave their table for any reason, requiring employees to wear
8 facemasks at all times, spacing tables six feet (or more) away from one another,
9 requiring employees to wash their hands regularly, requiring employees to wear
10 gloves, requiring temperature checks, requiring tables and other surfaces to be
11 sanitized at regular intervals. Many beer manufacturers have also implemented
12 additional policies to prevent mingling amongst customers, including replacing
13 traditional bar service with table service and even physically separating guest
14 areas. Finally, many beer manufacturers have expanded their outside service
15 areas or created entirely new ones.

16 59. Beer manufacturers are uniquely well-positioned to operate pursuant
17 to strict cleanliness standards. Good beer is not possible without pristine
18 cleanliness and sanitation. Beer manufacturers can, and have, implemented
19 cleanliness and sanitation principles utilized in their back-of-house operations to
20 their front-of-house, consumer-facing operations. Indeed, Plaintiffs receive high
21 praise from their customers for the seriousness with which they treat COVID-19
22 and the lengths to which they go to protect their customers.

23 60. Plaintiffs are entitled to be treated equally to other similarity-situated
24 businesses, namely wine manufacturers. There is no basis, rational or otherwise,
25 for the distinction Defendants have drawn in imposing the sit-down, dine-in
26 requirement on beer manufacturers and not wine manufacturers, and Plaintiffs
27 have been denied due process of law.

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FIRST CAUSE OF ACTION

**[Violation of the Equal Protection Clause
of the Fourteenth Amendment of the United States Constitution]
(Against All Defendants)**

61. Plaintiffs incorporate by reference and re-allege each and every allegation set forth in all preceding paragraphs as if fully set forth herein.

62. The Equal Protection Clause of the 14th Amendment to the United States Constitution forbids any state to “deny to any person within its jurisdiction equal protection of the laws.” U.S. Const. Amend. XIV. The Equal Protection Clause requires government action to treat similarly situated people and businesses similarly, and prohibits government action from making arbitrary distinctions that are insufficiently justified.

63. Beer manufacturers and wine manufacturers are substantially similar businesses, with essentially identical public health risk profiles. Both manufacture an alcoholic beverage, and the primary difference between the two is the beverage they manufacture. Wine manufacturers may actually present a more heightened public health risk than beer manufacturers because most wine has a higher alcohol by volume content than most beer.

64. Despite the similarities between beer and wine manufacturers, Defendants have treated beer manufacturers differently from wine manufacturers with respect to the sit-down, dine-in meal requirement that is currently imposed only on beer manufacturers, not wine manufacturers, pursuant to the Challenged CDPH Guidance.

65. Defendants’ differential treatment of beer manufacturers and wine manufacturers has no rational basis, is arbitrary, and relies on factual assumptions that exceed the bounds of rational speculation both in its origin and in its application. Moreover, this differential treatment has no real or substantial relation to public health. In fact, the sit-down, dine-in meal requirement

1 imposed on beer manufacturers does not protect public health by limiting
2 customers’ personal interactions, and in fact does the opposite by increasing
3 customers’ personal interactions and the surfaces with which they must come in
4 contact, while increasing the amount of time guests are unable to wear face
5 coverings. Moreover, imposing the sit-down, dine-in meal requirement on beer
6 manufacturers does not keep California citizens who seek an alcoholic beverage
7 at home entirely, it just sends them to a winery instead – which is likely to be
8 very nearby (even next door) to the beer manufacturer they would have
9 otherwise visited.

10 66. Plaintiffs have no adequate remedy at law. They have suffered, and
11 will continue to suffer, serious and irreparable harm unless Defendants are
12 enjoined from implementing and enforcing the Challenged CDPH Guidance.

13 67. Plaintiffs respectfully seek a declaration that the Challenged CDPH
14 Guidance violates the Equal Protection Clause of the Fourteenth Amendment of
15 the United States Constitution.

16 68. Plaintiffs are entitled to attorney’s fees pursuant to 42 U.S.C. §
17 1988.

18 **SECOND CAUSE OF ACTION**

19 **[Violation of the Due Process Clause**

20 **of the Fourteenth Amendment of the United States Constitution]**

21 **(Against All Defendants)**

22 69. Plaintiffs incorporate by reference and re-allege each and every
23 allegation set forth in all preceding paragraphs as if fully set forth herein.

24 70. The Due Process Clause of the 14th Amendment to the United
25 States Constitution forbids states from taking action to “deprive any person of
26 life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV.
27 The touchstone of due process is protection of the individual against the
28 arbitrary action of the government.” *Wolff v. McDonnell*, 4188 U.S. 539, 558

1 (1974). The Supreme Court has held that the Due Process Clause was intended
2 to prevent government officials “from abusing their power, or employing it as an
3 instrument of oppression.” *County of Sacramento v. Lewis*, 523 U.S. 833, 846
4 (1998) (quoting *Collins v. Harker Heights*, 502 U.S. 115, 126 (1992)).

5 Moreover, the Due Process Clause requires a meaningful procedure for
6 challenging government action. *Logan v. Zimmerman Brush Co.*, 102 S. Ct.
7 1148, 1155 (1982).

8 71. Plaintiffs have fundamental liberty and property interests, protected
9 by the Due Process Clause, in conducting their lawful businesses.

10 72. The Challenged CDPH Guidance violates the substantive and
11 procedural components of the Due Process Clause.

12 73. The Challenged CDPH Guidance is arbitrary and invites arbitrary
13 enforcement. Moreover, it strips Plaintiffs of their right to engage in the
14 occupation of their choosing free from unreasonable government interference.
15 The Challenged CDPH Guidance was also implemented without affording
16 Plaintiffs a constitutionally-adequate hearing, and does not provide Plaintiffs (or
17 other California beer manufacturers) with a meaningful procedure for
18 challenging the government action at issue that has, and continues to, deprive
19 them of liberty and property.

20 74. As a direct and proximate cause of Defendants actions described
21 herein, Plaintiffs have been harmed, including by being deprived of their liberty
22 and property rights without either substantive or procedural due process of law
23 in violation of the Due Process Clause.

24 75. Plaintiffs have no adequate remedy at law. They have suffered, and
25 will continue to suffer, serious and irreparable harm unless Defendants are
26 enjoined from implementing and enforcing the Challenged CDPH Guidance.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury.

DATED: December 17, 2020 MORTENSON TAGGART LLP

By: /s/ Craig A. Taggart
Michael D. Mortenson
Craig A. Taggart
Robert A. Schultz
Attorneys for Plaintiffs