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ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
09/21/2020
Clerk of the Court
BY: ERNALYN BURA
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

DBI BEVERAGE INC., a Tennessee corporation; DBI BEVERAGE NAPA, a California corporation; DBI BEVERAGE SACRAMENTO, a California corporation; DBI BEVERAGE SAN FRANCISCO, a California corporation; DBI BEVERAGE SAN JOAQUIN, a California corporation; and DBI BEVERAGE SAN JOSE, a California corporation,

Plaintiffs,

v.

WSJ, LLC d/b/a SEISMIC BREWING COMPANY, a Delaware limited liability company; and DOES 1 through 20, inclusive,

Defendants.

CASE NO. CGC-20-582694

FIRST AMENDED COMPLAINT FOR DAMAGES

1. **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 25000.9**
2. **BREACH OF CONTRACT**
3. **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

<u>JURY TRIAL DEMANDED</u>

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Plaintiffs hereby allege as follows:

I. INTRODUCTION

1. This is a civil action for damages against the defendants for unreasonably withholding consent to the sale of the plaintiffs' beer distribution business in violation of California Business & Professions Code Section 25000.9, for breach of contract, and for breach of covenant of good faith and fair dealing.

II. JURISDICTION AND VENUE

2. This Court has personal jurisdiction over the defendants because it transacts business in the State of California and because it agreed to be subject to personal jurisdiction.

3. This Court has subject matter jurisdiction over this matter because defendants maintains its principal place of business in the State of California and consented to jurisdiction within this state.

4. Venue is proper in the County of San Francisco because the events which combined to produce the injuries occurred in San Francisco, the contract between the parties was to be performed in San Francisco, and the defendants do business in San Francisco. The amount in controversy exceeds the jurisdictional minimum of this Court.

III. PARTIES

A. Plaintiffs

5. Plaintiff DBI Beverage Inc. ("DBI Beverage") is a Tennessee corporation with its principal place of business at Two Ingram Boulevard, La Vergne, Tennessee. DBI Beverage's business is the distribution of beer and other non-alcoholic beverages. Until recently, DBI Beverage maintained five wholly-owned subsidiaries (also named as plaintiffs) that distributed beer and other beverage products in Northern California: DBI Beverage Napa, DBI Beverage Sacramento, DBI Beverage San Francisco, DBI Beverage San Joaquin, and DBI Beverage San Jose (collectively the "Northern California subsidiaries"). DBI Beverage sold the assets in its Northern California subsidiaries to Harbor Distributing, LLC ("Harbor") on or about September 13, 2019.

6. Plaintiff DBI Beverage Napa ("DBI Napa") is a California corporation with its principal place of business at 2449 Watney Way, Fairfield, California. DBI Napa is a wholly-owned

subsidiary of DBI Beverage. Until the sale of substantially all of its assets to Harbor on or about September 13, 2019, DBI Napa was engaged in the business of beer and beverage products distribution in the counties of Napa, Solano, Lake, and Mendocino through distribution branches located in the cities of Fairfield and Ukiah. Until events giving rise to this complaint, DBI Napa distributed beer manufactured by the defendants.

7. Plaintiff DBI Beverage Sacramento ("DBI Sacramento") is a California corporation with its principal place of business at 3500 Carlin Drive, West Sacramento, California. DBI Sacramento is a wholly-owned subsidiary of DBI Beverage. Until the sale of substantially all of its assets to Harbor on or about September 13, 2019, DBI Sacramento was engaged in the business of beer and beverage products distribution in all or parts of the counties of Alpine, Butte, Colusa, El Dorado Nevada, Placer, Plumas, Sacramento, Sierra, Sutter, Yolo, and Yuba through distribution branches located in the cities of West Sacramento, Chico, and Truckee. Until events giving rise to this complaint, DBI Sacramento distributed beer manufactured by the defendants.

8. Plaintiff DBI Beverage San Francisco ("DBI San Francisco") is a California corporation with its principal place of business at 245 South Spruce Street, No. 900, South San Francisco, California. DBI San Francisco is a wholly-owned subsidiary of DBI Beverage. Until the sale of substantially all of its assets to Harbor on or about September 13, 2019, DBI San Francisco was engaged in the business of beer and beverage products distribution in the counties of San Francisco and San Mateo. Until events giving rise to this complaint, DBI San Francisco distributed beer manufactured by the defendants.

9. Plaintiff DBI Beverage San Joaquin ("DBI San Joaquin") is a California corporation with its principal place of business at 4547 Frontier Way, Stockton, California. DBI San Joaquin is a wholly-owned subsidiary of DBI Beverage. Until the sale of substantially all of its assets to Harbor on or about September 13, 2019, DBI San Joaquin was engaged in the business of beer and beverage products distribution in all or parts of the counties of Alpine, Amador, Calaveras, Mariposa, Sacramento, San Joaquin, Stanislaus, and Tuolumne through distribution branches located in the cities of Stockton and Ceres. Until events giving rise to this complaint, DBI San Joaquin distributed beer manufactured by the defendants.

10. Plaintiff DBI Beverage San Jose ("DBI San Jose") is a California corporation with its principal place of business at 500 Piercy Road, San Jose, California. DBI San Jose is a wholly-owned subsidiary of DBI Beverage. Until the sale of substantially all of its assets to Harbor on or about September 13, 2019, DBI San Jose was engaged in the business of beer and beverage products distribution in Santa Clara county. Until events giving rise to this complaint, DBI San Jose distributed beer manufactured by the defendants.

B. Defendants

11. Defendant WSJ, LLC is a Delaware limited liability company doing business as Seismic Brewing Company ("WSJ") and is primarily engaged in the business of manufacturing beer. On information and belief, WSJ is headquartered at 2932 Dutton Avenue, Santa Rosa, California and its primary brewery and principal place of business is located at 2870 Duke Court in Santa Rosa, California, where at all times relevant to this complaint, it was licensed by the California Department of Alcoholic Beverage Control ("ABC") as a "small beer manufacturer" under license number 567727. WSJ also maintains the "Seismic Taproom" at 6700 Sebastopol Avenue in Sebastopol, California where it brews and sells beer directly to consumers under ABC license number 594139. On information and belief, WSJ also maintains a principal place of business at 421 Aviation Boulevard, Santa Rosa, California.

12. The true names and capacities, whether individual, corporate, associate, or otherwise of defendants DOE 1 through DOE 10, inclusive, are unknown to the plaintiffs, who therefore sue said defendants by fictitious names pursuant to California Code of Civil Procedure 474. Plaintiffs further allege each fictitious defendant is in some manner responsible for the acts and occurrences set forth herein. Plaintiffs will amend this Complaint to identify the doe defendants' true names once ascertained.

IV. FACTS IN SUPPORT OF COMPLAINT

13. On or about March 10, 2017, WSJ entered into five separate distribution agreements with each of DBI Beverages' five Northern California subsidiaries. These agreements were valid and effective until terminated in accordance with their terms.

14. WSJ's agreement with DBI Napa granted DBI Napa exclusive rights to distribute

WSJ's beer in Napa County, Solano County, and the city of Iselton in Sacramento County.

15. WSJ's agreement with DBI Sacramento granted DBI Sacramento exclusive rights to distribute WSJ's beer in parts of Alpine County; Butte County; Colusa County (excluding the city of Maxwell); El Dorado County; Nevada County; Placer County; Plumas County (limited to the town of La Porte); Sacramento County (excluding the cities of Galt and Iselton, and the town of Herald); Sierra County; Sutter County; Yolo County; and Yuba County.

16. WSJ's agreement with DBI San Francisco granted DBI San Francisco exclusive rights to distribute WSJ's beer in the counties of San Francisco and San Mateo.

17. WSJ's agreement with DBI San Joaquin granted DBI San Joaquin exclusive rights to distribute WSJ's beer in Amador County; Calaveras County, San Joaquin County; Tuolumne County; Alpine County (except for Woodsford, Markleeville, Kirkwood Ski Area, Grover Hot Springs, Picketts, Pine Hills, Hope Valley, and Fredericksburg); parts of Mariposa County (including Coulterville, Greely Hill, Evergreen, Horseshoe Bend, and Mather); parts of Sacramento County (the city of Galt and town of Herald); and parts of Stanislaus County (the town of Westley and the northern portion of the county beginning at the southernmost point of the town of Ceres, specifically including the towns of Ceres, Empire, Hickman Hughson, Knights Ferry, LaGrange, Modesto, Oakdale, Riverbank, Salida, Valley Home, and Waterford).

18. WSJ's agreement with DBI San Jose granted DBI San Jose exclusive rights to distribute WSJ's beer in Santa Clara county.

19. Each of the agreements between WSJ and DBI Beverage's Northern California subsidiaries contained the following identical provisions:

a. Paragraph 11(a) of the agreements provides: "Assignment. Except as provided herein, neither Supplier nor Distributor shall effect an assignment of its rights and obligations under this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld, conditioned or delayed. Further, notwithstanding anything to the contrary in this Agreement, Supplier agrees that it will not oppose, or withhold its consent to, any assignment of this Agreement, or interest therein, to the extent to do so would be in violation of

California law."

b. Paragraph 11(a)(ii) of the agreements provides in part: "Supplier shall have ten (10) business days from receiving a written notice of Distributor's intent to engage in a transaction requiring Supplier's consent under this Section 11(a) to make reasonable requests for information about the transaction. Supplier shall have fifteen (15) days following receipt of the information responsive in all material requests to its information requests to approve or disapprove the transaction. . . . In the event Supplier fails to respond by the fifteenth day, it shall be deemed to have provided its consent to the transaction. Should Supplier unreasonably withhold its consent to a transaction under this Section 11(a), such action shall constitute a material breach of this Agreement."

c. Paragraph 9(e) of the agreements provides, in part: "Termination. By Supplier With Stipulated Fair Market Value Termination Payment. Subject to the restrictions set forth in this Agreement, Supplier shall have the right to terminate this Agreement or terminate Distributor's rights to sell the Products in a portion of the Territory . . . for any reason or no reason (A) by providing Distributor with written notice that it is exercising its right . . . and (B) by paying Distributor . . . a 'Termination Payment' in an amount equal to three (3) times Distributor's Gross Profits from the sale of the Products for the 12 month period immediately preceding the Termination Date."

d. Paragraph 9(f) of the agreements provide, in part: "Remedies. In the event that Supplier terminates this Agreement for reasons other than those specified in subsections (a), (c), and (d) of this Section 9 . . . notwithstanding any contrary provision in this Agreement, Distributor shall be entitled to pursue all rights and remedies available to it due to Supplier's breach of this Agreement."

e. Paragraph 9(g) of the agreements provide, in part: "Effect on Termination. On termination of this Agreement for any reason: (i) Any indebtedness which may then be owing or which is to become due and owing shall become due and

> payable immediately; . . . (iii) Distributor shall sell to Supplier or Supplier's designee, at Distributor's Laid-in Cost plus a Fifty Cent $0.50 per case or keg handling fee, any or, all sealed cases of saleable . . . Products that Distributor may have in inventory at the time this Agreement is terminated."

20. On July 8, 2019, DBI Beverage notified WSJ in writing that DBI Beverage intended to engage in an asset purchase transaction whereby Harbor would purchase the assets of DBI Beverage's five Northern California subsidiaries.

21. The July 8, 2019 letter followed the approval process set forth in paragraph 11(a)(ii) of the distribution agreements because it was a "written notice of Distributor's intent to engage in a transaction requiring Supplier's consent under . . . Section 11(a)."

22. The July 8, 2019 letter notified WSJ that Harbor had "agreed to acquire substantially all of DBI's assets related to its beverage distribution business." The letter requested WSJ's consent to the assignment to Harbor of the distribution rights owned by DBI Beverage's five Northern California subsidiaries.

23. WSJ was advised that the target "closing" date of Harbor's acquisition of DBI Beverage's assets was September 13, 2019 and that neither the sale of any of DBI's assets nor the assignment of any of DBI Beverage's rights to Harbor would occur until "the closing of the transaction contemplated by the Agreement."

24. DBI Beverage's July 8, 2019 letter directed WSJ to contact certain personnel within DBI Beverage and/or Harbor with questions about the acquisition or assignment of rights.

25. WSJ did not request information about the Harbor/DBI transaction within 10 days of receiving DBI Beverage's July 8, 2019 letter.

26. At the time it received DBI Beverage's July 8, 2019 letter, WSJ knew or had reason to know that Harbor had been in existence for over 30 years, that it was part of Reyes Beer Division (the largest beer distributor in the United States), that Harbor had more than 12,500 customers, more than 2,000 distinct product SKUs, over 600,000 square feet of warehouse space in Southern California, 875 full time employees, and a delivery fleet of over 180 trucks, all supporting the sale of more than 26 million cases of beverages per year.

27. From on or about July 8, 2019 to on or about September 12, 2019, WSJ learned, knew or had reason to know that Harbor was a well-established beer distributor reasonably capable of distributing WSJ's beer.

28. By phone call on or about September 6, 2019, WSJ informed DBI Beverage for the first time that WSJ would not consent to the assignment of rights to Harbor.

29. On knowledge and belief, WSJ knew as early as August 30, 2019 that it would not consent to the assignment of rights to Harbor, yet WSJ did not convey that information to DBI Beverage until on or around September 6, 2019.

30. On September 9, 2019 – the same week the DBI Beverage/Harbor transaction was set to close – WSJ informed DBI Beverage for the first time that, going forward, WSJ would use Markstein Beverage Co of Sacramento ("Markstein") to cover the former DBI Sacramento and DBI Napa territories, Donaghy Sales, LLC ("Donaghy") to cover the former "DBI Valley" territories, and Stone Distributing Co. ("Stone") to cover the former DBI San Jose territories.

31. WSJ unreasonably delayed consent by waiting until the week of the transaction to provide information about its preferred distributors, and by communicating its refusal to consent to the assignment just one week before the DBI Beverage/Harbor transaction closed.

32. Learning the identities of WSJ's preferred distributors on so late a date did not give DBI Beverage a reasonable amount of time to mitigate its damages by negotiating payment from those distributors as compensation for DBI Beverage's distribution rights.

33. Notwithstanding that, between on or about September 6, 2019 and September 13, 2019, Markstein informed DBI Beverage that Markstein was willing to pay DBI Beverage for the distribution rights of WSJ beers in territories formerly covered by the DBI Sacramento and DBI Napa distributors. However, on knowledge and belief, when Markstein relayed this same information to Chris Jackson, president of WSJ, Jackson directed Markstein not to pay DBI Beverage. In turn, Hayden Markstein, president of Markstein, informed DBI Beverage that "I have been instructed by WSJ not to the pay DBI Beverage for the distribution rights of WSJ's beers."

34. On information and belief, Jackson, or another representative of WSJ, also advised Donaghy, Stone, and possibly other distributors not to pay DBI Beverage for the distribution rights of

WSJ's beer.

35. On September 12, 2019, WSJ wrote a letter to DBI Beverage and formally indicated that WSJ declined to consent to the assignment of distribution rights to Harbor.

36. In its September 12, 2019 letter, WSJ refused to consent for three stated reasons. First, Harbor purportedly insisted on a new distribution contract with WSJ that "would not allow Seismic [WSJ] to terminate the agreement without cause." Second, WSJ was purportedly "unable to evaluate Harbor's qualifications to perform under the 'best efforts' standard required under the existing DBI Agreement" because WSJ "did not receive much of the … information" it requested of Harbor. Third, DBI Beverage purportedly failed to perform under the distribution agreements which "gave Seismic [WSJ] little confidence in the transfer of rights to Harbor to distribute its products."

37. WSJ's three reasons for refusing to consent to the assignment of distribution rights to Harbor were pretextual, and WSJ's refusal to consent to the assignment of distribution rights to Harbor was unreasonable.

38. It was unreasonable for WSJ to refuse to consent to the assignment based on Harbor's purported refusal to agree to the terms, because the terms presented by Harbor were reasonable and standard within the beer distribution industry.

39. WSJ had sufficient information to evaluate Harbor as a competent distributor of beer, and WSJ's purported refusal to consent to the assignment because of Harbor's failure to provide certain information was pretextual. Moreover, WSJ's request for such additional information was unreasonable under paragraph 11(a)(ii) of the DBI Beverage distribution agreements.

40. It was unreasonable for WSJ to refuse to consent to the assignments on the basis that DBI Beverage's Northern California subsidiaries failed to meet certain sales goals. WSJ did not previously advise DBI Beverage of any alleged failures to perform and did not allow DBI Beverage any opportunity to cure such purported failure. Moreover, because an assignment of distribution rights would have made Harbor the distributor, DBI Beverage's performance failures were not relevant.

41. Between March 10, 2017 and September 11, 2019, WSJ never notified DBI Beverage or any of its five Northern California subsidiaries that the distributor had failed to perform under any

of the distribution agreements.

42. Also in its September 12, 2019 letter, WSJ purportedly terminated the agreements with DBI "because DBI attempted to assign the rights to distribute [WSJ]'s beers to Harbor/Reyes, and Seismic reasonably did not consent to such transfer" in alleged violation of section 9(c)(iii) of the distribution agreements.

43. WSJ knew that Harbor's acquisition of DBI Beverage's assets would not be finalized or completed before September 13, 2019.

44. WSJ knew or had reason to believe that any assignment of distribution rights from DBI Beverage to Harbor would not become final until the transaction between DBI Beverage and Harbor closed on September 13, 2019 Moreover, WSJ knew the assignment of rights would not take effect without WSJ's consent.

45. In paragraph 9(e) of its distribution agreements with DBI Beverage's Northern California subsidiaries, WSJ agreed that if it terminated a distributor without cause, among other things, WSJ would be required to pay the distributor a "Termination Payment" equal to three times the distributor's "Gross Profits" from the preceding 12 months.

46. In paragraph 9(f) of its distribution agreements with DBI Beverage's Northern California subsidiaries, WSJ agreed that in the event it terminates the distribution agreements for reasons other than those specified in paragraphs 9(a), 9(c) and 9(d), "Distributor shall be entitled to pursue all rights and remedies available to it due to Supplier's breach of this Agreement."

47. One factor that bears on the value of a beer distributor is the number and quality of beer brands it has the right to exclusively distribute within a given geographic territory.

48. Because WSJ refused to consent to the assignment of DBI Beverage's distribution rights to Harbor, DBI Beverage's assets became less valuable, and Harbor paid DBI Beverage a lower price for them than it would have had WSJ consented to the assignment of distribution rights.

49. Moreover, WSJ has refused to pay approximately $66,371.84 owed to DBI Beverage and/or one of its Northern California subsidiaries from unpaid invoices.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION
VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 25000.9

50. Plaintiffs hereby reallege and incorporate by reference each allegation set forth above as though fully set forth herein.

51. Defendant WSJ is a holder of at least one beer manufacturing license in the state of California.

52. At all times relevant to this complaint, Plaintiffs DBI Napa, DBI Sacramento, DBI San Francisco, DBI San Joaquin, and DBI San Jose maintained an ownership interest in the exclusive distribution rights of at least some of WSJ's beer brands in territories covered under their distribution agreements with WSJ.

53. Plaintiffs DBI Beverage and its five Northern California subsidiaries requested that WSJ approval the sale and transfer of DBI Beverage's assets and distribution rights to Harbor.

54. WSJ unreasonably withheld its consent and unreasonably denied approval of the sale, transfer, and assignment of Plaintiffs' ownership interest in the exclusive distribution rights of WSJ's beer brands.

55. As a direct and legal result of Defendants' aforementioned acts and/or omissions, Plaintiffs have suffered and continue to suffer economic damages in an amount to be determined at trial, plus interest and costs of suit.

56. Defendants' aforementioned acts and/or omissions was a substantial factor in causing the damages incurred by Plaintiffs.

WHEREFORE, Plaintiffs pray for judgment against Defendants, as set forth herein.

SECOND CAUSE OF ACTION
BREACH OF CONTRACT

57. Plaintiffs hereby realleges and incorporates by reference each allegation set forth above as though fully set forth herein.

58. At all times relevant to this complaint, Plaintiffs DBI Napa, DBI Sacramento, DBI San Francisco, DBI San Joaquin, and DBI San Jose had valid written distribution agreements with

Defendants.

59. Plaintiffs each performed, substantially performed, tendered performance, or were excused from performing their obligations pursuant to their respective distribution agreements with Defendants.

60. Defendants breached its distribution agreements with Plaintiffs in at least the following ways:

a. Defendants unreasonably withheld its consent to assignment of distribution rights in violation of Paragraph 11(a) of Plaintiffs' distribution agreements;

b. Defendants unreasonably delayed and conditioned written consent to the assignment of distribution rights in violation of Paragraph 11(a) of Plaintiffs' distribution agreements;

c. Defendants unlawfully terminated Plaintiffs' distribution agreements in violation of Paragraph 9(c)(iii) of Plaintiffs' distribution agreements;

d. Defendants unlawfully terminated Plaintiffs' distribution agreements in violation of Paragraph 9(d) of Plaintiffs' distribution agreements;

e. Defendants unlawfully terminated Plaintiffs' distribution agreements without cause, without notice, and without paying Plaintiffs a "Termination Payment" equivalent to three-times each of Plaintiff's Gross Profits for the 12-month period preceding termination, pursuant to Paragraph 9(e);

f. Defendants breached Paragraph 9(g) of the distribution agreements by refusing to pay past due amounts, amounts which became due shortly after termination, or amounts owed for the resale of inventory to the defendant;

g. Defendants opposed and withheld consent to assignment of distribution rights in violation of California law, which violated paragraph 11(a) of Plaintiffs' distribution agreements;

61. As a direct and legal result of Defendants' aforementioned acts and/or omissions, Plaintiffs have suffered and continue to suffer economic damages in an amount to be determined at trial, plus interest and costs of suit.

62. Defendants' breaches of Plaintiffs' distribution agreements were substantial factors in causing the damages incurred by Plaintiffs.

WHEREFORE, Plaintiffs pray for judgment against Defendants, as set forth herein.

THIRD CAUSE OF ACTION
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

63. Plaintiff hereby realleges and incorporates by reference each allegation set forth above as though fully set forth herein.

64. At all times relevant to this complaint, Plaintiffs DBI Napa, DBI Sacramento, DBI San Francisco, DBI San Joaquin, and DBI San Jose had valid written distribution agreements with Defendants.

65. Plaintiffs each performed, substantially performed, tendered performance, or were excused from performing their obligations pursuant to their respective distribution agreements with Defendants.

66. Defendants unfairly prevented Plaintiffs from receiving the benefits they were entitled to under the distribution agreements by:

a. interfering with Plaintiffs' ability to obtain compensation for their distribution rights from other distributors;

b. unreasonably withholding or delaying consent to the assignment of distribution rights to Harbor;

c. unlawfully terminating the distribution agreements with Plaintiffs;

d. refusing to pay plaintiffs a reasonable compensation for terminating the distribution agreements without cause; and

67. As a direct and legal result of Defendants' aforementioned acts and/or omissions, Plaintiffs have suffered and continue to suffer economic damages in an amount to be determined at trial, plus interest and costs of suit.

68. Defendants' aforementioned acts or omissions were substantial factors in causing the damages incurred by Plaintiffs.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor on every claim for relief set forth above and award them relief including, but not limited to, the following:

1. For damages to be determined at trial;
2. For pre- and post-judgment interest on all damages as allowed by the law;
3. For costs of suit incurred herein;
4. For attorney fees as provided for in the contracts and under existing law; and
5. For such other and further relief as the Court may deem just and proper.

Dated: September 21, 2020

COTCHETT, PITRE & McCARTHY, LLP

By: ______________________________

NIALL P. McCARTHY
SARVENAZ J. FAHIMI
KELSEY J. MOE

Attorneys for Plaintiffs DBI Beverage Inc., et al.

PROOF OF SERVICE

I am employed in the County of San Mateo. I am over the age of 18 years and not a party to this action. My business address is the Law Offices of Cotchett, Pitre & McCarthy, LLP, San Francisco Airport Office Center, 840 Malcolm Road, Burlingame, California, 94010. On this day, I served the following document(s) in the manner described below:

1. FIRST AMENDED COMPLAINT FOR DAMAGES

✓ **VIA E-MAIL:** My e mail address is cbarbosa@cpmlegal.com. I am readily familiar with this firm's practice for causing documents to be served by e-mail. Following that practice, I caused the aforementioned document(s) to be emailed to the addressee(s) specified below.

AND

✓ **VIA MAIL:** I am readily familiar with this firm's practice for causing documents to be served by first class mail. Following that practice, I caused the sealed envelope containing the aforementioned document(s) to be delivered via first class mail to the addressee(s) specified below.

J. Noah Hagey Andrew Levine Gunnar K. Martz **BRAUNHAGEY & BORDEN LLP** 351 California Street, 10th Floor San Francisco, CA 94104 Tel: (415) 599-0210 J. Noah Cell: (510) 332-7823 Fax: (415) 276-1808 hagey@braunhagey.com levine@braunhagey.com martz@braunhagey.com	**COUNSEL FOR DEFENDANT WSJ, LLC dba SEISMIC BREWING COMPANY**

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Burlingame, California, on September 21, 2020.

CINDY BARBOSA

LAW OFFICES
COTCHETT, PITRE & McCARTHY, LLP