

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

01/11/2021 at 04:18:18 PM
Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

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

12 Attorneys for Plaintiffs

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN DIEGO**

15 640 Tenth LP dba Cowboy Star Restaurant and
16 Butcher Shop, individually, and on behalf of all
17 others similarly situated,

18 Plaintiff(s),

19 vs.

20 COUNTY OF SAN DIEGO; DEPARTMENT OF
21 ENVIRONMENTAL HEALTH; and
22 CALIFORNIA DEPARTMENT OF ALCOHOL
23 BEVERAGE CONTROL; DOES 1 THROUGH
24 10, inclusive,

25 Defendant(s).

Case No. 37-2021-00001129-CU-MC-CTL

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**
- 6) **UNJUST ENRICHMENT**

REQUEST FOR JURY TRIAL

1 Plaintiff 640 Tenth LP dba Cowboy Star Restaurant and Butcher Shop (“640 Tenth”),
2 individually, and on behalf of all others similarly situated, allege(s) as follows against Defendants
3 County of San Diego (the “County”); Department of Environmental Health; and California
4 Department of Alcohol Beverage Control (collectively, “Defendants”):

5 **INTRODUCTION**

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

15
16 2. On March 11, 2020, COVID-19 was declared a pandemic by the World Health
17 Organization. On March 13, 2020 President Trump declared a national emergency as a result of
18 COVID-19. In the immediate aftermath, the State of California and County of San Diego issued
19 a variety of government orders requiring individuals to remain in their homes with limited
20 exceptions. These orders also required the closure of non-essential businesses thereby severely
21 limiting and/or completely closing the operating ability of Plaintiff and the proposed Class
22 members’ businesses.

23 3. Specifically, on March 16, 2020, the County of San Diego, by and through the
24 County Health Officer, Wilma J. Wooten, ordered the immediate closure of all bars and
25 nightclubs that do not serve food, breweries, wineries, tap rooms, and required all permanent
26 food facilities to limit their services to delivery, take-out, or drive thru only (the “County
27 Order”).
28

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

5 5. Since then, subsequent orders have been issued by the County of San Diego and
6 State of California requiring Plaintiff’s and the Class members’ businesses to remain closed,
7 and/or imposing certain restrictions on their operations, and/or altering their permissible
8 operations, including, but not limited to: Order of the State Public Health Officer (March 19,
9 2020); County of San Diego Health Officer Order for the Control of COVID-19 (March 29,
10 2020); California Executive Order N-60-20 (May 4, 2020); Order of the State Public Health
11 Officer (May 7, 2020); California Executive Order N-83-20 (October 28, 2020); California
12 Department of Public Health Limited Stay at Home Order (November 19, 2020); and California
13 Department of Public Health Regional Stay at Home Order (December 3, 2020), leaving
14 restaurants in a constant state of limbo. These subsequent orders, along with the County Order
15 and State Order are collectively referred to as (the “Orders”).
16

17 6. Few industries have been hit as hard as the restaurant industry by the COVID-19
18 pandemic. A survey by the National Restaurant Association published on September 14, 2020
19 found that nearly 1 in 6 restaurants (representing nearly 100,000 restaurants) is closed either
20 permanently or long-term; nearly 3 million restaurant employees were out of work; and the
21 industry is on track to lose \$240 billion in sales by the end of the year. The survey also found
22 that overwhelmingly, most restaurants are still struggling to survive and don’t expect their
23 position to improve over the next six months.

24 7. Despite requiring the closure and/or severely limiting the operating ability of
25 these businesses, the County and State continued to charge the businesses permit and licensing
26 fees, as well as late charges. Specifically, at issue in this action are the following fees, taxes,
27
28

1 and/or charges (and any penalty fees) levied by the County and State entities against Plaintiff and
2 the proposed Class:

- 3 a) San Diego County public health permit and licensing fees and/or tax; and
- 4 b) State of California Department of Alcohol and Beverage Control fees and/or
- 5 tax

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

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

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

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

20 12. To be clear, this action does not dispute the propriety of the health and safety
21 Orders, it simply demands fairness. Each member of this class has complied with the law and
22 have closed (in whole or in part) as required by the Orders. The class does not – for the purpose
23 of this action – dispute the propriety of the Orders. If the government closed or limited
24 Plaintiffs’ business operations, it must return the fees, taxes, and/or charges that it should have
25 never been allowed to collect during this pandemic.

26 13. Through this action, 640 Tenth individually, and on behalf of all
27
28

1 others similarly situated seeks a declaration that the County and State's imposition and collection
2 of fees, taxes, and/or charges from businesses that are prevented from operating is unlawful;
3 injunctive relief preventing the further collection of said fees; a refund of all fees, taxes, and/or
4 charges collected; and damages sustained as a result of their legally mandated participation in the
5 public health permit and/or license program with the County of San Diego and the State of
6 California Department of Alcohol and Beverage Control.

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

11 **THE PARTIES**

12 14. Plaintiff 640 Tenth LP dba Cowboy Star Restaurant and Butcher Shop is a
13 California limited liability company having its principal place of business at 640 10th Ave. San
14 Diego, CA 92101. Plaintiff 640 Tenth brings this action individually and on behalf of the class
15 of all businesses or related persons who have paid the unconstitutional and illegal fees, taxes,
16 and/or charges in connection with a public permit and/or license to the County of San Diego
17 Department of Environmental Health and the State of California Department of Alcohol and
18 Beverage Control, while being prevented from operating.

19 15. Defendant County of San Diego is a charter county organized and existing as a
20 legal subdivision under the laws of the State of California.

21 16. Defendant County of San Diego Department of Environmental Health provides
22 public health services to San Diego County residents.

23 17. Defendant State of California Department of Alcohol and Beverage Control
24 regulates and enforces the use, sale, and enforcement of licenses to sell alcohol.

25 18. At all relevant times mentioned herein, the true names and capacities, whether
26 individual, corporate, associate or otherwise, of Defendants and DOES 1 through 10, inclusive,
27
28

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

8
9 19. At all relevant times mentioned herein, Defendants were the agents, employees,
10 supervisors, servants and joint venturers of each other, and in doing the things hereafter alleged,
11 were acting within the course, scope and authority of such agency, employment and joint
12 venture and with the consent and permission of each of the other Defendants. All actions of
13 each Defendant alleged in the causes of action into which this paragraph is incorporated by
14 reference were ratified and approved by the officers or managing agents of every other
15 Defendant.

16 **JURISDICTION AND VENUE**

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

21 21. Venue is proper in this county pursuant to Section 395(a) of the California Code
22 of Civil Procedure because the alleged wrongs occurred in this county.

23 **GENERAL ALLEGATIONS**

24 22. Beginning on March 12 and 19, 2020, the County of San Diego and State of
25 California respectively issued governmental orders requiring individuals to remain in their
26 homes with limited exceptions. These orders also required the closure of non-essential
27 businesses. Throughout the months that followed, and up to the filing of this Complaint, the
28

1 County and State issued numerous subsequent orders requiring Plaintiff's and the Class
2 members' businesses to remain closed, and/or imposing certain restrictions on their operations,
3 and/or altering their permissible operations.

4 23. Despite requiring the closure of these businesses and/or severely limiting their
5 operations, the County and State entities continued to charge, collect and fail to partially or
6 completely refund the businesses public health permit and licensing fees, alcohol beverage
7 control fees, as well as late charges.

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

11 25. The County and State entities received these fees, taxes, and/or charges from
12 Plaintiffs but failed to use the money for Plaintiffs' benefit as intended.

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

17 27. Similarly, pursuant to San Diego County Ordinance 65.109 (a)-(c), the County of
18 San Diego and the County of San Diego Department of Environmental Health have a duty to
19 refund public health permit fees to Plaintiff and the Class members in the event of excess,
20 erroneous, or double payment.

21 28. When levying taxes, pursuant to California Government Code section 37101, all
22 Defendants are mandated to "levy the tax so that the measure of tax fairly reflects that proportion
23 of the taxed activity actually carried on within the taxing jurisdiction." Cal. Gov't. Code §
24 37101.

25 29. In addition, the collection of the San Diego County public health permit and
26 licensing fee(s) and/or tax constituted a tax by a local government who imposed, extended, or
27
28

1 increased the tax without voter approval as is required by Government Code § 53723.

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

5 **CLASS ACTION ALLEGATIONS**

6 31. Plaintiff brings this action on behalf of itself and all others similarly situated
7 under California Code of Civil Procedure section 382.

8 32. Subject to confirmation, clarification and/or modification based on discovery to
9 be conducted in this action, the Class that Plaintiff seeks to represent shall be defined as follows:
10

11 During the fullest period allowed by law, all businesses or related persons who
12 have paid the unconstitutional and illegal fees, taxes, and/or charges in connection
13 with a public permit and/or license to the County of San Diego, San Diego County
14 Department of Environmental Health and the California Department of Alcohol
15 Beverage Control, while being prevented from operating in whole or in part.

16 33. Plaintiff seeks only declaratory relief, injunctive relief, and damages in the form
17 of refunds or credits on behalf of themselves and the Class Members. Plaintiff disclaims any
18 intent or right to seek any recovery in this action for personal injuries or emotional distress
19 suffered by Plaintiff and/or the Class Members.

20 34. This action is properly maintainable as a class action.

21 35. the Class is so numerous that joinder of all members would be impracticable.

22 36. Plaintiff is committed to prosecuting the action and has retained competent counsel
23 experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other
24 members of the Class and Plaintiff has the same interests as the other members of the Class.
25 Plaintiff is an adequate representative of the Class.

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

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

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

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

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

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

10 39. The prosecution of separate actions by individual members of the Class would
11 create the risk of inconsistent or varying adjudications and would establish incompatible
12 standards of conduct for Defendants. The Defendants have acted, or have refused to act, on
13 grounds generally applicable to the Class, making preliminary and final injunctive relief on behalf
14 of the Class as a whole, appropriate.

15
16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 40. Plaintiff complied, or otherwise substantially complied, with the formal claim
18 presentation requirements of the California Government Claims Act (codified at GOVT. CODE
19 §§ 810, *et seq.*). Within six months of the incident(s) complained of herein, Plaintiff presented
20 written notice of Plaintiff's claims to the public-entity-defendant(s) named herein. See GOVT.
21 CODE § 910. Plaintiff's claims were rejected by express notice and/or upon the lapse of forty-
22 five days following claim presentation. See GOVT. CODE § 912.4. Plaintiff(s) filed this action
23 within six months of service of any express rejection and/or, where no express rejection was
24 served, within two years of the date each cause of action accrued or the applicable statute of
25 limitations, whichever is sooner. See GOVT. CODE § 945.6. A true and correct copy of
26 Plaintiff's government claim(s), and any rejection from public-entity-defendant(s) named
27 herein, is(are) attached hereto as Exhibit "A".
28

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF GOVERNMENT CODE § 53723**

3 **(Against Defendants County of San Diego and**

4 **San Diego County Department of Environmental Health and DOES 1 to 10)**

5 41. Plaintiffs reallege and incorporate by reference the allegations contained in the
6 preceding paragraphs of this complaint, as though fully set forth herein.

7 42. Proposition 62, approved by California voters in the 1986 General Election, added
8 § 53720 *et seq.* to the California Government Code.

9 43. Section 53723 provides that “[n]o local government ... may impose any general
10 tax unless and until such general tax is submitted to the electorate of the local government and
11 approved by a majority vote of the voters voting in an election on the issue.”

12 44. The collection of the San Diego County public health permit and licensing fee(s)
13 and/or tax constituted a tax by a local government who imposed, extended, or increased the tax
14 without voter approval as is required by Government Code § 53723.

15 45. The continued imposition and collection of the San Diego County public health
16 permit and licensing fee(s) and/or tax without voter approval is an ongoing and continuous
17 violation, which is violated anew with each collection of the San Diego County public health
18 permit and licensing fee(s) and/or tax from Plaintiffs.

19 46. It is necessary and appropriate for this Court to declare that the past and ongoing
20 imposition and collection of the San Diego County public health permit and licensing fee(s)
21 and/or tax is invalid and illegal until such time as is approved by the voters pursuant to the
22 provisions of Government Code § 53723.

23 47. There exists a justiciable controversy between the parties which is ripe for
24 adjudication. Plaintiffs contend that the San Diego County public health permit and licensing
25 fee(s) and/or tax imposed by the County is invalid and in violation of Government Code §
26 53723. Plaintiffs are informed and believe, and based thereon allege, that Defendants deny such
27
28

1 contention and contend otherwise. Declaratory judgment is appropriate and necessary
2 at this time with respect to this issue, to avoid a potential multiplicity of actions, to prevent
3 irreparable harm, to ensure proper enforcement of the law, and to resolve a matter of substantial
4 public interest.

5 48. Plaintiffs have no adequate remedy at law and may suffer irreparable injury
6 absent injunctive relief. The Court should issue a preliminary and permanent injunction
7 prohibiting Defendants from imposing and collecting the San Diego County public health permit
8 and licensing fee(s) and/or tax as it is invalid and unlawful.

9 **SECOND CAUSE OF ACTION**

10 **VIOLATION OF THE CALIFORNIA CONSTITUTION ARTICLE XIII, C § 2**
11 **(PROPOSITION 218)**

12 **(Against Defendants County of San Diego and**

13 **San Diego County Department of Environmental Health and DOES 1 to 10)**

14 49. Plaintiffs reallege and incorporate by reference the allegations contained in the
15 preceding paragraphs of this complaint, as though fully set forth herein.

16 50. Proposition 218, known as the “Right to Vote on Taxes Act,” amended the
17 California Constitution to ensure that citizens would have the right to vote on whether local
18 governments should enact taxes, such as the charges at issue in this case. This constitutional
19 amendment protects taxpayers by limiting the methods by which local governments can impose,
20 extend, or increase taxes, fees and charges without taxpayer consent. Proposition 218 requires
21 voter approval prior to an imposition, increase, or extension of general taxes, assessments, and
22 certain user fees.
23

24 51. The collection of the San Diego County public health permit and licensing fee(s)
25 and/or tax constituted a tax by a local government who imposed, extended, or increased the tax
26 without voter approval as is required by Proposition 218.

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

1 imposition and collection of the San Diego 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 Proposition 218.

4 53. An actual controversy now exists between each Plaintiff and the County as to the
5 legality of the San Diego County public health permit and licensing fee(s) and/or tax as imposed.
6 It is necessary and appropriate for this Court to declare that the San Diego County public health
7 permit and licensing fee(s) and/or tax is invalid and illegal until such time as is
8 approved by the voters pursuant to the provisions of the California Constitution Article XIII, C §
9 2 and Proposition 218.

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

14
15 **THIRD CAUSE OF ACTION**

16 **VIOLATION OF MANDATORY DUTY**

17 **(GOVERNMENT CODE § 815.6)**

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

19 55. Plaintiffs reallege and incorporate by reference the allegations contained in the
20 preceding paragraphs of this complaint, as though fully set forth herein.

21 56. Pursuant to California Business and Professions Code section 23320, Defendant
22 California Department of Alcohol Beverage Control had a mandatory duty to refund Plaintiff and
23 the Class members for their annual fee paid “in the event that the license application is
24 withdrawn or denied.” Cal. Bus. & Prof. Code § 23320.

25 57. Pursuant to San Diego County Ordinance 65.109 (a)-(c), the County also has a
26 duty to refund public health permit fees to Plaintiff and the Class members in the event of excess,
27 erroneous, or double payment.

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

5 59. Defendant California Department of Alcohol Beverage Control violated
6 Government Code section 815.6 and Business and Professions Code section 23320 when it failed
7 to refund Plaintiff and the Class for the alcohol license fees, taxes, and/or charges paid despite
8 the fact that their businesses were prevented and/or limited from using said permit or license.

9 60. Defendants County of San Diego and San Diego County Department of
10 Environmental Health violated Government Code section 815.6 and San Diego County
11 Ordinance 65.109 (a)-(c) when it failed to refund Plaintiff and the Class members for their public
12 health permit fees, taxes, and/or charges despite the fact that their businesses were prevented
13 and/or limited from using said permit or license.
14

15 61. All Defendants violated California Government Code section 37101 when they
16 levied the public health permit fees and/or taxes and the alcohol license fees, taxes, and/or
17 charges against Plaintiff and the Class, despite the fact that their businesses were ordered to close
18 and/or severely limited in their abilities to operate.

19 62. As a result of Defendants’ violations, Plaintiffs were harmed and continue to be
20 harmed because they are forced to pay for licensing and/or permit fees when they cannot fully
21 operate their businesses.

22 63. Defendants’ failure to refund Plaintiffs and the Class is a substantial factor in
23 causing Plaintiffs’ harm.

24 **FOURTH CAUSE OF ACTION**
25 **DECLARATORY AND INJUNCTIVE RELIEF**
26 **(Against all Defendants and DOES 1 to 10)**
27
28

1 64. Plaintiffs reallege and incorporate by reference the allegations contained in the
2 preceding paragraphs of this complaint, as though fully set forth herein.

3 65. The County and State have collected, and continue to collect, the public health
4 permit and licensing fees and the California Department of Alcohol Beverage Control fees from
5 Plaintiff and the Class in clear violation of the law.

6 66. Legal remedies available to Plaintiff and the Class are inadequate to redress the
7 illegal collection of said fees, taxes, and/or charges.

8 67. The County and State provide no procedure for Plaintiff and the Class to obtain a
9 refund of the illegally collected fees, taxes, and/or charges. Further, because the County and
10 State entities continue to collect the illegal fees, taxes, and/or charges from businesses ordered to
11 close down, a refund alone is inadequate relief and would require the Class to file a multiplicity
12 of actions.

13 68. Declaratory relief is proper regarding the subject matter of this action because
14 there is an actual and present controversy between the parties concerning Plaintiffs obligations to
15 pay the County and State for their businesses public health permit and licensing fees and alcohol
16 and beverage control fees, despite being required to shut down their operations. By the terms
17 and provisions of California Code of Civil Procedure § 1060, this Court has the power to declare
18 the obligations and duties of the parties and to give such other relief as may be necessary.

19 69. By virtue of the foregoing, there exists an actual, justiciable controversy between
20 the parties. Plaintiff contends that the County's and State's imposition and collection of fees,
21 taxes, and/or charges from businesses that are prevented from operating is unlawful. Despite
22 requiring the closure and/or severely limiting the operating ability of these businesses, the
23 County and State continue to charge the businesses public health permit and licensing fees, and
24 alcohol and beverage control fees, as well as late charges. The County and State received these
25 fees, taxes, and/or charges from Plaintiffs but failed to use the money for Plaintiffs' benefit as
26 intended, since these businesses have been ordered closed and/or had their operations severely
27
28

1 limited due to the governmental orders. The County and State do not refund the money to
2 Plaintiffs.

3 70. Accordingly, Plaintiff and the Class are entitled to:

4 a) A declaration that the County and State are unlawfully levying these fees,
5 taxes, and/or charges against businesses ordered to close down, and

6 b) an injunction preventing further collection of the public health permit and
7 licensing fees by the County and alcohol and beverage control fees and/or tax by
8 the State against Plaintiff and the Class.

9 **FIFTH CAUSE OF ACTION**

10 **MONEY HAD AND RECEIVED**

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

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

14 72. Defendants received money that was intended to be used for the benefit of
15 Plaintiff and the Class. Namely, the County continues to charge Plaintiff and the Class for their
16 public health permit and licensing fees and/or tax as well as late charges, and the State entities
17 continue to charge the alcohol and beverage control fees and late charges. Plaintiff and the Class
18 have paid these fees, taxes, and/or charges to the County and State, including late fees.

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

24 74. Defendants have not given the money back to Plaintiffs. Specifically, the County
25 failed to provide refunds for fees, taxes, and/or charges that were paid for the 2019-2020 and
26 2020-2021 years, despite the fact that the County's Orders specifically prevented Plaintiffs from
27
28

1 operating their businesses. Similarly, the state entities have not refunded Plaintiff and the Class
2 for their alcohol and beverage control fees.

3 75. Accordingly, Plaintiff and the members of the Class are entitled to return of all
4 monies collected under the guise of a permit or licensing fee by the County and State, along with
5 statutory interest.

6 **SIXTH CAUSE OF ACTION**

7 **UNJUST ENRICHMENT**

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

9 76. Plaintiffs reallege and incorporate by reference the allegations contained in the
10 preceding paragraphs of this complaint, as though fully set forth herein.

11 77. Defendants received a benefit from Plaintiffs. Namely, the County charged and
12 received money from Plaintiffs for their public health permit and licensing fees and/or tax as
13 well as late charges. The state entities received money from Plaintiffs for their alcohol and
14 beverage control fees.

15 78. The County and State have thus been unjustly enriched by the illegal exaction of
16 money from Plaintiff and Class members under the guise of a permit and/or licensing fee and/or
17 tax at the expense of Plaintiff and the Class.

18 79. The County's and State's retention of these fees, taxes, and/or charges is unjust
19 because the money was not used for Plaintiffs' benefit as intended. Plaintiff and the Class are
20 entitled to full reimbursement from the County and State in the actual amount by which the
21 County and State have been unjustly enriched at the expense of the Plaintiff and the Class.

22 **PRAYER FOR DAMAGES**

23 WHEREFORE, Plaintiff and the Class pray for damages and other judicial relief as
24 follows:

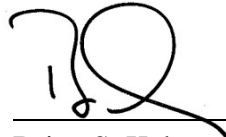
- 25
26 1. Judgment in favor of Plaintiff and the proposed Class and against Defendants on all
27 causes of action alleged herein;
28

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

Dated: January 7, 2021

KABATECK LLP

By: _____


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

Attorneys for Plaintiffs

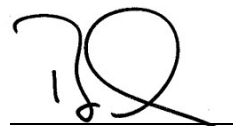
1 **JURY DEMAND**

2 Plaintiffs request a trial by jury for all claims so triable.

3
4 Dated: January 7, 2021

KABATECK LLP

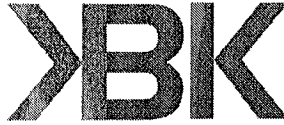
5
6
7 By: _____



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

11 *Attorneys for Plaintiffs*

EXHIBIT A



Kabateck LLP

October 22, 2020

VIA OVERNIGHT MAIL

County of San Diego
Board of Supervisors
Attention: Claims Division
1600 Pacific Highway, Room 355
San Diego, CA 92101

Re: Claim of 640 Tenth LP dba Cowboy Star Restaurant and Butcher Shop, individually and on behalf of the class of all businesses or related persons who have paid the unconstitutional and illegal taxes, fees and/or charges in connection with the a public permit and/or license to the County of San Diego, Department of Environmental Health while being prevented from operating

Dear Honorable Board of Supervisors:

Please find enclosed with this correspondence an original and copy of the properly completed and executed Claim against the County of San Diego regarding Claim of 640 Tenth LP dba Cowboy Star Restaurant and Butcher Shop, individually and on behalf of the class of all businesses or related persons who have paid the unconstitutional and illegal taxes, fees, and/or charges in connection with the a public permit and/or license to the County of San Diego, Department of Environmental Health, while being prevented from operating.

Please file the originals, conform the copies thereof and return the conformed copies in the enclosed self-addressed, stamped envelope.

If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

KABATECK LLP

A handwritten signature in black ink, appearing to read 'B. Kabateck'. The signature is fluid and cursive, with a large loop at the end.

BRIAN S. KABATECK, Esq.

Enclosures



CLAIM AGAINST THE COUNTY OF SAN DIEGO
(FOR DAMAGES TO PERSONS OR PERSONAL PROPERTY)

Time Stamp _____

Received by via
 U.S. Mail
 Inter-Office Mail
 Over the Counter

File No: _____

A claim must be filed with the Claims Division of the County of San Diego within 6 months after which the incident or event occurred. Be sure your claim is against the County of San Diego, not another public entity. Where space is insufficient, please use additional paper and identify information by paragraph and number. Completed claims must be mailed or delivered to:

County of San Diego, Claims Division, 1600 Pacific Highway, Room 355, San Diego, CA 92101- Phone (619) 531-4899

TO THE HONORABLE BOARD OF SUPERVISORS – THE COUNTY OF SAN DIEGO, CALIFORNIA

The undersigned respectfully submits the following claim and information relative to damage to persons and/or personal property:

Claimant Information		
Last Name See attached	First Name	Middle Name
Street Address 640 10th Ave.	City San Diego	Zip 92101
Home Phone (include area code) See Attached	Work Phone (include area code)	E-mail Address
Birth Date n/a	Driver's License Number n/a	
Name, telephone and post office address to which claimant desires notices to be sent, if other than above: Brian S. Kabateck, 633 W. Fifth Street, Suite 3200, Los Angeles, CA 90071		
Claim Information		
Date of Occurrence or Event from which the claim arises: See attached	Time of Occurrence or Event from which the claim arises:	
Location, including address (if none, nearest cross street) and city: See attached		
Specify the particular occurrence, event, act or omission you claim caused the injury or damage (use additional paper if necessary): See attached		
State how or wherein the County of San Diego or its employees were at fault. Give the name(s) of the County department and employee(s) causing the damage or injury: See Attached.		

Give a description of the property damage or loss, as is known at the time of the claim:
See attached.

Give a description of the injury, as is known at the time of the claim:
See attached.

Social Security Number (required for Federal reporting requirements):
n/a

Name and address of any other person injured:
See attached

Name and address of the owner of any damaged property:
See attached

Damages Claimed

Amount claimed as of this date: \$ _____
Estimated amount of future costs: \$ _____
Total amount claimed: \$ _____

Basis for computation of amounts claimed (include copies of all bills, invoices, estimates, etc):
See attached

Damaged Vehicle (if applicable)

Make: n/a	Model:	Year:
--------------	--------	-------

License Plate Number:	Mileage:
-----------------------	----------

Insurance Company:	Policy Number:
--------------------	----------------

Additional Information

Names and Address of witnesses, hospitals, doctors, etc:

A.

B.

C.

Any additional information that might be helpful in considering this claim:

See attached

➤ WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM (PENAL CODE § 72; INSURANCE CODE § 556.1)

I have read the matters and statements made in the above claim and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters I believe the same to be true. I certify under penalty of perjury that the foregoing is TRUE and CORRECT.

Signed this 20 day of October, 2020 at Los Angeles

[Signature]
Claimant's Signature

COUNTY OF SAN DIEGO – ATTACHMENT TO CLAIMS FOR DAMAGES TO PERSON OR PROPERTY

Preface

California's restaurants, 60% of which are owned by people of color, have been disproportionately impacted by the economic harm caused by the health and safety rules controlling COVID-19. It is without dispute that the government-ordered closure of neighborhood restaurants have wreaked havoc on small businesses that are the cornerstones of every California community. These small business owners are struggling to pay their bills and keep people employed. Close to 70% of the state's restaurant owners are at risk of being evicted from their property as the bills pile up, including fees and taxes levied by the same government entities that are restricting the restaurants ability to fully operate. In a cruel twist of irony, the same local and state government officials who forced these restaurants to close have been continuing to collect a wide range of government fees under the threat of permanent closure and most restaurants have continued to pay these fees or risk losing their licenses to operate. This claim does not dispute the propriety of the health and safety orders, it simply demands fairness: If the government closed or limited our operation, return to the restaurant operators the fees and taxes you never should have been allowed to collect during this pandemic.

Nature of the Claim

Pursuant to Government Code Section 905 *et seq.* and other provisions of law, Claimants (as identified below) present this claim for a refund and damages from the County of San Diego, Department of Environmental Health ("County"), in connection with the County's imposition and collection of unconstitutional and illegal taxes, fees, and/or charges, in connection with the a public health permit and/or license from the County of San Diego, Department of Environmental Health, while being prevented from operating. Claimants seek a full refund of all taxes, fees, and/or charges, collected by the County, injunctive relief, and any damages sustained as a result of their legally required participation in the public health permit and/or license program with the County of San Diego.

Name and Address of Claimants

640 Tenth LP dba Cowboy Star Restaurant and Butcher Shop, individually and on behalf of the class of all businesses or related persons who have paid the unconstitutional and illegal taxes, fees and/or charges in connection with the a

public permit and/or license to the County of San Diego, Department of Environmental Health, while being prevented from operating. 640 Tenth LP dba Cowboy Star Restaurant and Butcher Shop address is 640 10th Ave. San Diego, CA 92101. Claimants are represented by Brian S. Kabateck of Kabateck LLP, 633 West Fifth Street, Suite 3200, Los Angeles, CA 90071.

Description of Claim

On March 12, 2020, due to the COVID-19 pandemic, the County, by and through the County of San Diego Health Officer, Wilma J. Wooten ordered the closure of all bars and other business establishments in the County that serve alcohol and do not serve food, and all on-site dining for all restaurants (the "Order"). Despite requiring the closure of these businesses, the County continued to charge the businesses public health permit and licensing fees as well as late charges, despite the fact that the County's Order specifically prevented claimants from operating their businesses. Further, the County failed to provide refunds for taxes, fees, and/or charges that were paid for the 2019-2020, and 2020-2021 years, despite the fact that the County's Order specifically prevented claimants from operating their businesses.

The County has also imposed the taxes, fees, and/or charges unequally and arbitrarily, directly and indirectly, on certain businesses that are still able to operate but not others who are not. Cal. Const., art. XIII D, § 6(b)(3) provides, "[t]he amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel." The taxes, fees, and/or charges, are based solely on ownership of the businesses, and not any particular business activity as each business is being prevented from operating, and are not proportional to the use of the County services on violation of Cal. Const., art. XIII section 1 of the California Constitution, Government Code section 37101 *et seq.* and the federal commerce clause of the Fifth Amendment. Further, the Order constitutes an amendment to the scope and effect of an existing statute in violation of Proposition 218. Since the County had no authority to charge the fees, taxes, or charges, its charging of said fees constitutes an unlawful taking in violation of the United States and California Constitution, and the County was unjustly enriched by the charging of these fees. Further, the County received these fees, taxes, and/or charges and failed to use the money for the claimants benefit as intended, and did not refund the money to claimants.