

Multiple Documents

Part	Description
1	12 pages
2	Exhibit-1
3	Exhibit-2
4	Certificate/Proof of Service

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10
11 Attorneys for Plaintiff
Thelonious Sphere Monk, Jr., as Administrator of and on behalf of the
12 Estate of Thelonious Sphere Monk, deceased,

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16

17 THELONIOUS SPHERE MONK, JR.,)
as Administrator of and on behalf of the)
18 ESTATE OF THELONIOUS SPHERE MONK,)
Deceased,)

19 Plaintiff,)

20 vs.)

21 NORTH COAST BREWING CO., INC., a)
California Corporation,)

22)
23 Defendant.)
24)

Case No.: 17-cv-05015

FIRST AMENDED COMPLAINT FOR

(1) Trademark Infringement (15 U.S.C. § 1125(a))

(2) California Civil Code § 3344.1

(3) New Jersey Common Law Right of Publicity

(4) Unjust Enrichment

25 DEMAND FOR JURY TRIAL

26 **FIRST AMENDED COMPLAINT FOR TRADEMARK INFRINGEMENT, VIOLATIONS**
27 **OF RIGHTS OF PUBLICITY, AND UNJUST ENRICHMENT**
28 (INJUNCTIVE RELIEF DEMANDED)

1 Plaintiff, THELONIOUS SPHERE MONK, JR., as Administrator of and on behalf of the
2 ESTATE OF THELONIOUS SPHERE MONK (“Plaintiff”), by and through undersigned counsel,
3 brings this Complaint against Defendant, NORTH COAST BREWING CO., INC. (“Defendant”),
4 for damages and injunctive relief, and in support thereof states as follows:

5 **JURISDICTION AND VENUE**

6 1. This is an action arising under the Lanham Act, 15 U.S.C. § 1121, California Civil
7 Code § 3344.1, California and New Jersey common law.

8 2. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. §§
9 1331 and 1338.

10 3. This Court has supplemental jurisdiction of the California Civil Code and New
11 Jersey claims pursuant to 28 U.S.C. § 1367(a).

12 4. This Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because the
13 citizenship of the parties is completely diverse and the amount in controversy exceeds \$75,000.

14 5. Defendant is subject to personal jurisdiction in California.

15 6. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because the events
16 giving rise to the claims occurred in this district, Defendant engaged in infringement in this district,
17 and Defendant is subject to personal jurisdiction in this district.

18 **THE PLAINTIFF**

19 7. Plaintiff, THELONIOUS SPHERE (T.S.) MONK, JR. brings this action as
20 Representative of and on behalf of the Estate of his deceased father THELONIOUS SPHERE
21 MONK.

22 8. Thelonious Sphere Monk lived in New Jersey at the time of his death on February
23 17, 1982. Thelonious Sphere Monk resided in New Jersey for at least ten years prior to his death.

24 9. THELONIOUS SPHERE (T.S.) MONK, JR. was duly appointed the Administrator
25 of the ESTATE OF THELONIOUS SPHERE MONK on April 11, 1983 (the “Monk Estate” or
26 “Estate of Thelonious Monk”) by the New York County Surrogate’s Court and currently possesses
27 all rights and powers necessary to prosecute this action as shown in the Letters of Administration
28 attached as Exhibit 1.

THELONIOUS MONK JAZZ LEGEND

10. Thelonious Monk (“Monk”) was born in Rocky Mount, North Carolina in 1917. Monk grew up in New York City where he became a world-renowned jazz pianist and composer. 2017 marks the 100th anniversary of Monk’s birth.

11. Monk learned to play piano at age six years old. He was largely self-taught. Monk’s early career as a jazz pianist coincides with jazz’s recognition as a major form of musical expression in the 1920s through the 1940s.

12. Monk was a pioneer of the Bebop style of jazz music. Bebop-style performers like Monk began to shift jazz from danceable popular music toward a more challenging “musician’s music.” By divorcing itself from dance music, bebop established itself more as an *avant-garde* art form, thus lessening its potential popular and commercial appeal. Monk led this *avant-garde* movement and, in the process, he became one of the most famous jazz musicians of all time.

13. Monk’s *avant-garde* approach extended beyond music to his personal style. Monk adopted a distinctive style in suits, hats, facial hair and sunglasses. Monk cultivated a unique look. The images of Monk shown below from different stages of his career demonstrate a consistent and iconic look and style. This “Monk look” became synonymous with Monk’s music.



THE COMPLETE 1961 **THELONIOUS MONK** AMSTERDAM CONCERT
QUARTET



1 14. Monk's musical composition "Round Midnight" is the most recorded jazz
2 composition of all time.

3 15. Monk is the second most recorded composer of jazz music of all time, behind only
4 Duke Ellington.

5 16. The Smithsonian Institution maintains a permanent exhibit on Monk, and his piano
6 will be housed at the African American Museum in Washington, DC.

7 17. Monk is a member of the Downbeat Jazz Hall of Fame, the ASCAP Composer's Hall
8 of Fame, and his music is studied at major universities worldwide.

9 18. The musical album "Live at Carnegie Hall", featuring Thelonious Monk and John
10 Coltrane, is the second best-selling jazz album of all time.

11 19. For his achievements throughout his illustrious career, Monk received a Grammy
12 Lifetime Achievement Award, a special Pulitzer Prize, and his own star on the Hollywood Walk of
13 Fame.

14 20. The name THELONIOUS MONK is famous and valuable.

15 21. The image of THELONIOUS MONK is famous and valuable.

16 22. The likeness of THELONIOUS MONK is famous and valuable.

17 23. THELONIOUS MONK is registered as a personality with the California Secretary of
18 State.

19 24. The THELONIOUS MONK name, image and likeness are the sole property of the
20 Monk Estate.

21 **THE DEFENDANT**

22 25. Defendant NORTH COAST BREWING CO., INC. ("North Coast") is a California
23 corporation with its principal place of business in California and can be served with process through
24 its registered agent Mark E. Ruedrich, 455 North Main Street, Fort Bragg, CA 95437.

25 26. North Coast is a craft brewery.

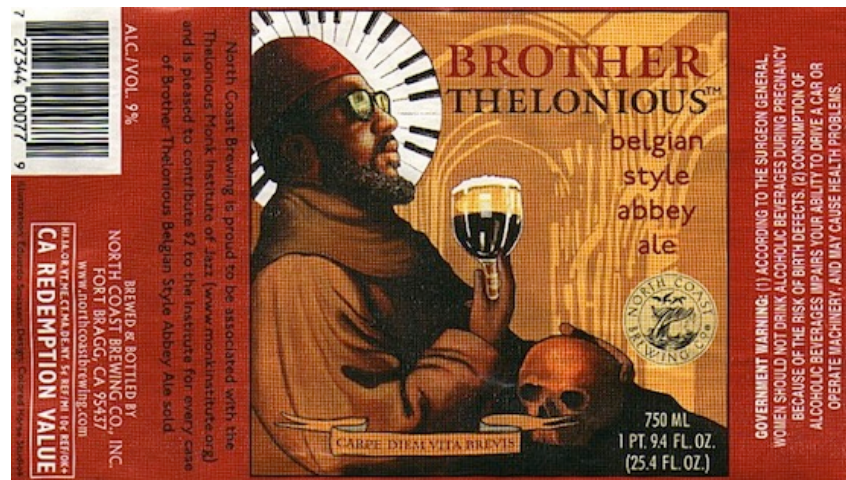
26 27. North Coast makes and sells beer and ale, among other related products.

27 28. For many years, North Coast has brewed and sold a Trappist ale brewed in the style
28 of those originally created by late 18th century Belgian monks fleeing the French Revolution. These

1 so called “Trappist” ales were originally brewed in Trappist monasteries exclusively by and for the
2 monks who lived there. These ales are described as “dark and sweet” and are often bottled in the
3 manner of sparkling wines using larger bottles and caged corks. Eventually, a Trappist certification
4 system emerged. To qualify, the brewery must be in a monastery, the monks must play a role in its
5 production and the policies and the profits from the sale must be used to support the monastery or
6 social programs outside.

7 29. For many years, North Coast has produced, distributed and sold an ale brewed in the
8 Trappist style called BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE.

9 30. North Coast has consistently distributed, marketed and sold BROTHER
10 THELONIOUS BELGIAN STYLE ABBEY ALE using a label that prominently features the name,
11 image and likeness of Thelonious Monk, as shown below.



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27 31. North Coast’s packaging for BROTHER THELONIOUS BELGIAN STYLE
28 ABBEY ALE features the name, images and likeness of Thelonious Monk, with Monk holding a

1 goblet of the product contained in the bottle. Monk is shown wearing his signature sunglasses, hat
2 and facial hair. In addition, a halo of piano keys surrounds Monk's head in a manner evocative of
3 saintly characters featured in medieval religious paintings.

4 32. "BROTHER THELONIOUS" is the principal feature in large print in all the product
5 packaging for BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE.

6 33. In addition to its use of the Monk name, image and likeness on the packaging for
7 North Coast BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE, North Coast features
8 the Monk name, image and likeness in all of its advertising, marketing and sales materials for
9 BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE.

10 34. North Coast operates a store on its website and in its physical premises where it
11 advertises, markets and sells products using the Monk name, image and likeness, including
12 BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE, as well as at least seventeen (17)
13 other items including cups, hats, hoodies, iron on patches, soap, t-shirts, tap handles, metal and neon
14 signs, pins, playing cards, mouse pads, posters, and food products, all of which feature the name,
15 image and likeness of THELONIOUS MONK.

16 35. North Coast also uses the Monk name, image and likeness in connection with
17 promotional events at Jazz festivals and other locations, an example of which is shown below where
18 North Coast uses the Monk name as a marquee for a beer garden.



1 36. The entirety of North Coast's uses of the THELONIOUS MONK name, image and
2 likeness is without the permission of the Monk Estate and is unauthorized, as of at least January 11,
3 2016.

4 37. Prior to this present dispute, T.S. Monk verbally agreed to permit North Coast to
5 utilize the THELONIOUS MONK name, image and likeness for the limited purpose of solely
6 marketing and distributing BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE in
7 exchange for North Coast's agreement to donate a portion of the profits from the sale of BROTHER
8 THELONIOUS BELGIAN STYLE ABBEY ALE to the Thelonious Monk Institute of Jazz.

9 38. At no time prior has T.S. Monk or the Monk Estate authorized North Coast to utilize
10 the THELONIOUS MONK name, image or likeness for the sale of merchandise such as cups, hats,
11 hoodies, iron on patches, soap, t-shirts, tap handles, metal and neon signs, pins, playing cards,
12 mouse pads, posters, and food products.

13 39. On January 11, 2016, Monk notified North Coast that any consent previously given
14 to North Coast by T.S. Monk or the Monk Estate for North Coast to use the THELONIOUS MONK
15 name, image or likeness for sale of BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE
16 was immediately terminated and revoked, and that North Coast could no longer use the
17 THELONIOUS MONK name, image and likeness without entering into a merchandising agreement
18 with the Estate of Thelonious Monk, and advised North Coast that all royalty payments must be
19 made to The Monk Estate. A true and correct copy of the T.S. Monk and The Monk Estate's notice
20 to North Coast is attached hereto as Exhibit 2.

21 40. Despite this notice, since January 11, 2016, North Coast has continued to exploit the
22 THELONIOUS MONK name, image and likeness without permission of the Monk Estate and
23 without compensating the Monk Estate, causing significant damage to the Monk Estate and
24 effecting the value of the THELONIOUS MONK name, image and likeness.

25 41. Plaintiff has engaged the undersigned attorneys concerning this dispute and has
26 agreed to pay them a reasonable fee.

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28

FIRST CLAIM FOR RELIEF

TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1125(a)

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3 42. Plaintiff incorporates the allegations of paragraphs 1 through 41 of this Complaint as
4 if fully set forth herein.

5 43. The THELONIOUS MONK name, image and likeness is a name, symbol or device
6 that is known and used by the Estate of Thelonious Monk to indicate the source of the music, style,
7 image and persona created by Thelonious Monk, recognized as associated with Thelonious Monk,
8 and to distinguish the distinctive features of Thelonious Monk.

9 44. The name, image and likeness of THELONIOUS MONK is famous and valuable.

10 45. The name, image and likeness of THELONIOUS MONK is the sole property of the
11 Estate of Thelonious Monk.

12 46. The Estate of Thelonious Monk has consistently used the name, image and likeness
13 of THELONIOUS MONK to indicate the source of the music, style, image and persona created by
14 Thelonious Monk, recognized as associated with Thelonious Monk, and to distinguish the
15 distinctive features of Thelonious Monk.

16 47. The name, image and likeness of THELONIOUS MONK cannot be used without the
17 permission and authority of the Estate of Thelonious Monk.

18 48. North Coast used, and continues to use, the name, image and likeness of
19 THELONIOUS MONK in connection with the sale of BROTHER THELONIOUS BELGIAN
20 STYLE ABBEY ALE and other products that feature the name, image and likeness of
21 THELONIOUS MONK.

22 49. North Coast used, and continues to use, the name, image and likeness of
23 THELONIOUS MONK on and in connection with the container of BROTHER THELONIOUS
24 BELGIAN STYLE ABBEY ALE that North Coast sold.

25 50. North Coast used, and continues to use, the name, image and likeness of
26 THELONIOUS MONK on and in connection with commercial advertising for BROTHER
27 THELONIOUS BELGIAN STYLE ABBEY ALE and other products that feature the name, image
28 and likeness of THELONIOUS MONK.

1 51. North Coast’s use, and continued use, of the name, image and likeness of
 2 THELONIOUS MONK on and in connection with the container of BROTHER THELONIOUS
 3 BELGIAN STYLE ABBEY ALE and other products sold by North Coast is likely to cause
 4 confusion, mistake, or deceive as to whether THELONIOUS MONK or the Monk Estate is
 5 connected with, affiliated with, sponsors or approves North Coast’s sale of BROTHER
 6 THELONIOUS BELGIAN STYLE ABBEY ALE and other products that feature the name, image
 7 and likeness of THELONIOUS MONK.

8 52. North Coast’s use, and continued use, of the name, image and likeness of
 9 THELONIOUS MONK on and in connection with commercial advertising for BROTHER
 10 THELONIOUS BELGIAN STYLE ABBEY ALE and other products sold by North Coast is likely
 11 to cause confusion, mistake, or deceive as to whether THELONIOUS MONK or the Monk Estate is
 12 connected with, affiliated with, sponsors or approves North Coast’s sale of BROTHER
 13 THELONIOUS BELGIAN STYLE ABBEY ALE and other products that feature the name, image
 14 and likeness of THELONIOUS MONK.

15 53. North Coast’s use, and continued use, of the name, image and likeness of
 16 THELONIOUS MONK on and in connection with commercial advertising for BROTHER
 17 THELONIOUS BELGIAN STYLE ABBEY ALE and other products sold by North Coast
 18 misrepresents the nature, characteristics, or qualities of North Coast’s goods and services.

19 54. The Monk Estate has been significantly damaged due to North Coast’s unauthorized
 20 use of the name, image and likeness of THELONIOUS MONK and will be continued to be
 21 damaged for future uses by North Coast.

22 55. The harm caused to the Monk Estate has been irreparable.

23 **SECOND CLAIM FOR RELIEF**

24 **VIOLATION OF CALIFORNIA CIVIL CODE § 3344.1**

25 56. Plaintiff incorporates the allegations of paragraphs 1 through 41 of this Complaint as
 26 if fully set forth herein.

27 57. Thelonious Sphere Monk was domiciled in New Jersey at the time of his death.

28 58. New Jersey law recognizes a postmortem right of publicity.

1 59. The name, image and likeness of THELONIOUS MONK passed to the Estate of
2 Thelonious Monk upon his death.

3 60. California Civil Code § 3344.1 is consistent with New Jersey law.

4 61. The Estate of Thelonious Monk registered THELONIOUS MONK as a personality
5 California Civil Code § 3344.1 with the California Secretary of State.

6 62. The personality right of THELONIOUS MONK is famous and valuable.

7 63. The personality right of THELONIOUS MONK cannot be used without the
8 permission and authority of the Estate of Thelonious Monk.

9 64. North Coast knowingly used the personality right of THELONIOUS MONK for
10 advertising, selling, or soliciting the sale of BROTHER THELONIOUS BELGIAN STYLE
11 ABBEY ALE and other products without the consent of the Estate of Thelonious Monk in violation
12 of California Civil Code § 3344.1.

13 65. North Coast has profited from its violations.

14 66. The Monk Estate has been damaged.

15 67. The harm caused to the Monk Estate has been irreparable.

16 **THIRD CLAIM FOR RELIEF**

17 **VIOLATION OF NEW JERSEY COMMON LAW RIGHT OF PUBLICITY**

18 68. Plaintiff incorporates the allegations of paragraphs 1 through 41 of this Complaint as
19 if fully set forth herein.

20 69. Thelonious Sphere Monk was domiciled in New Jersey at the time of his death.

21 70. New Jersey law recognizes a postmortem right of publicity.

22 71. The personality right of THELONIOUS MONK passed to the Estate of Thelonious
23 Monk upon his death.

24 72. The personality right of THELONIOUS MONK is the sole property of the Estate of
25 Thelonious Monk.

26 73. The personality right of THELONIOUS MONK is famous and valuable.

27 74. The personality right of THELONIOUS MONK cannot be used without the
28 permission and authority of the Estate of Thelonious Monk.

1 75. North Coast infringed the personality right of THELONIOUS MONK for
2 advertising, selling, or soliciting the sale of BROTHER THELONIOUS BELGIAN STYLE
3 ABBEY ALE and other products without the consent of the Estate of Thelonious Monk.

- 4 76. North Coast has profited from its violations.
- 5 77. The Monk Estate has been damaged.
- 6 78. The harm caused to the Monk Estate has been irreparable.

7 **FOURTH CLAIM FOR RELIEF**
8 **UNJUST ENRICHMENT**

9 79. Plaintiff incorporates the allegations of paragraphs 1 through 41 of this Complaint as
10 if fully set forth herein.
11 80. The name, image and likeness of THELONIOUS MONK is the sole property of the
12 Estate of Thelonious Monk.

13 81. The name, image and likeness of THELONIOUS MONK is famous and valuable.
14 82. The name, image and likeness of THELONIOUS MONK cannot be used without the
15 permission and authority of the Estate of Thelonious Monk.

16 83. North Coast used the name, image and likeness of THELONIOUS MONK for
17 advertising, selling, or soliciting the sale of BROTHER THELONIOUS BELGIAN STYLE
18 ABBEY ALE and other products without the consent of the Estate of Thelonious Monk.

19 84. By reason of the foregoing, North Coast was and continues to be unjustly enriched
20 through unlicensed and unauthorized exploitation of the name, image and likeness of
21 THELONIOUS MONK.

22 85. The Monk Estate is entitled to just compensation under the common law of the State
23 of California.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, the Plaintiff prays for judgment against the Defendant that:

- 26 a. Defendant be preliminarily and permanently enjoined from committing the
27 acts alleged herein in violation of 15 U.S.C. § 1125, California Civil Code § 3344.1,
28 and New Jersey common law;

1 b. Defendant be ordered to pay Plaintiff's actual, consequential, incidental, and
2 special damages, as well as the Defendant's profits attributable to the violations
3 alleged;

4 c. Defendant be ordered to pay Plaintiff's attorneys' fees and costs to the extent
5 available under the statutes sued hereunder;

6 d. Plaintiff be awarded punitive damages; and

7 e. Plaintiff be awarded such other and further relief as the Court deems just and
8 proper.
9

10 **JURY DEMAND**

11 Plaintiff respectfully requests a jury trial on all issues triable thereby.

12 Dated: September 12, 2017

13 Respectfully submitted,

14 By: /s/ Jonah A. Grossbardt

15 Jonah A. Grossbardt

16 SAVUR THREADGOLD LLP

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22 Joel B. Rothman (*pro hac vice*)

23 SCHNEIDER ROTHMAN Intellectual

24 INTELLECTUAL PROPERTY

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26 4651 North Federal Highway

27 Boca Raton, FL 33431

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Facsimile: (561) 404-4353

E-mail: Joel.rothman@sriplaw.com

Attorneys for Plaintiff

Thelonious Sphere Monk, Jr.,

as Administrator of and on behalf of the

Estate of Thelonious

Sphere Monk, deceased

EXHIBIT 1

C20 (Rev. 1/07)

Certificate# 227778

Surrogate's Court of the State of New York New York County

File#: 1982-5484

Certificate of Appointment of Administrator

Name of Decedent: **Thelonious Sphere Monk**

Date of Death: February 17, 1982

Domicile: New Jersey

Fiduciary Appointed: **Thelonious Sphere Monk Jr**
160 West 85th Street
New York NY 10024

Letters Issued: LETTERS OF ADMINISTRATION

Letters Issued On: April 11, 1983

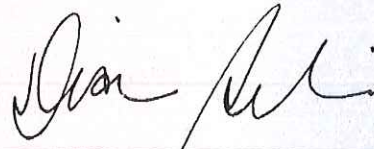
Limitations: Ltd ltrs - power to collect up to value of estate, ,

and such Letters are unrevoked and in full force as of this date.

Dated: August 17, 2017
New York, New York

IN TESTIMONY WHEREOF, the seal of the New York
County Surrogate's Court has been affixed.

WITNESS, Honorable Nora S. Anderson, Judge of the
New York County Surrogate's Court.



Diana Sanabria, Chief Clerk
New York County Surrogate's Court

*This Certificate is Not Valid Without the Raised Seal of the New York County Surrogate's Court
and expires six months from the issue date of this certificate.*

EXHIBIT 2



Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, NY 10036

(212) 790-9200 Tel
(212) 575-0671 Fax
www.cll.com

Thomas Kjellberg
(212) 790-9202
txk@cll.com

January 11, 2016

By Email - tnoah@dergnoah.com

Todd A. Noah, Esq.
Dergosits & Noah LLP
Three Embarcadero Center
Suite 410
San Francisco, CA 94111

Re: North Coast Brewing Company, Inc.; BROTHER THELONIOUS

Dear Mr. Noah:

Further to our telephone conversation of December 15, 2015, I write on behalf of the Estate of Thelonious Monk and Thelonious Sphere Monk III ("T.S. Monk"), owner of 100% of the right of publicity of Thelonious Monk, regarding the commercial use by North Coast Brewing Company, Inc. ("NCB") of Thelonious Monk's name and likeness on "Brother Thelonious" ale and related merchandise, and for purposes of advertising and selling such product and merchandise.

Previously, royalties for NCB's commercial use of Thelonious Monk's name and likeness have been remitted, at the direction of T.S. Monk, to The Thelonious Monk Institute of Jazz. NCB is hereby advised that such direction is revoked; and NCB is hereby authorized and directed to make payment of any and all such royalties directly to T.S. Monk and the Estate.

NCB's ability to make continued commercial use of Thelonious Monk's name and likeness is, however, contingent on NCB's entering into a merchandising agreement with T.S. Monk and the Estate at standard industry rates, which shall be computed as a percentage of the retail sale price of all such merchandise sold by NCB.

We look forward to discussing the terms of that agreement as soon as possible.

Sincerely,

Thomas Kjellberg

cc: Peter R. Porcino, Esq.
Steven A. Reich, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2017, I served the Amended Complaint by email and U.S. mail to counsel for Defendant North Coast Brewing Co., Inc. at the following address:

Robert W. Zelnick
Attorney at Law
McDermott Will & Emery
500 North Capital Street N.W.
Washington, D.C. 20001-1531
Email rzelnick@mwe.com

Dated: September 12, 2017

/s/ Jonah A. Grossbardt
Jonah A. Grossbardt

General Information

Court	United States District Court for the Northern District of California; United States District Court for the Northern District of California
Federal Nature of Suit	Property Rights - Trademark[840]
Docket Number	4:17-cv-05015