



1 Margaret J. Grover (Bar No. 112701)
 2 **WENDEL, ROSEN, BLACK & DEAN LLP**
 3 1111 Broadway, 24th Floor
 4 Oakland, California 94607-4036
 5 Telephone: (510) 834-6600
 6 Fax: (510) 834-1928
 7 mgrover@wendel.com

FILED
 ALAMEDA COUNTY

FEB 13 2015

CLERK OF THE SUPERIOR COURT
 By John Deputy

8 Attorneys for Plaintiff
 9 ZACHARY M. GOMBER

10
 11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 COUNTY OF ALAMEDA

13 ZACHARY M. GOMBER,

Case No. **RG15758604**

14 Plaintiff,

**COMPLAINT FOR: FAILURE TO PAY
 MINIMUM WAGE; FAILURE TO PAY
 OVERTIME WAGES; FAILURE TO PAY
 WAGES UPON TERMINATION OF
 EMPLOYMENT; UNFAIR
 COMPETITION; DEFAMATION; AND,
 CONVERSION**

15 vs.

16 A DONKEY AND GOAT, LLC, JARED
 17 BRANDT, TRACY BRANDT, and DOES 1
 18 through 20,

REQUEST FOR JURY TRIAL

19 Defendants.

20 Plaintiff Zachary M. Gomber brings this Complaint against A Donkey and Goat, LLC,
 21 Jared Brandt, Tracy Brandt, and Does 1 through 20 and alleges as follows.

PARTIES

BY FAX

- 22 1. Plaintiff Zachary M. Gomber is an individual who, at all times relevant to this
 23 complaint, resided in the City of Berkeley, County of Alameda, California.
- 24 2. Defendant A Donkey and Goat, LLC is a California limited liability company with
 25 its principal place of business in the City of Berkeley, County of Alameda, California.
- 26 3. Plaintiff is informed and believes, and on that basis alleges, that Defendant Jared
 27 Brandt is an individual who, at all times relevant to this complaint, resided in the County of
 28 Alameda, California.

1 27. As a direct and proximate result of Defendants' refusal to pay overtime wages,
2 Mr. Gomber has sustained damages in an amount in excess of the Court's minimum jurisdiction to
3 be proven at trial.

4 **THIRD CAUSE OF ACTION**
5 **(Failure to Provide Meal and Rest Periods)**
6 **Against A Donkey and Goat, LLC and Does 1 through 5**

7 28. Mr. Gomber incorporates Paragraphs 1 through 16, above, as though fully set forth.

8 29. During his employment with the Winery, Mr. Gomber was denied the meal and rest
9 periods required under California Labor Code Sections 226.7 and 512. The Winery failed to
10 provide Mr. Gomber with an uninterrupted 30 minute meal for every workday in which he worked
11 a shift that was longer than five hours. The Winery failed to provide Mr. Gomber with a second
12 uninterrupted 30 minute meal for every workday in which he worked a shift that was longer than
13 ten hours. The Winery failed to provide Mr. Gomber with a 10 minute rest period for each work
14 period that was 4 hours or a major portion thereof.

15 30. Mr. Gomber is entitled to one hour of premium pay, as a penalty, for each day that
16 the Winery failed to provide one or more of the meal periods required under California Labor
17 Code Sections 226.7 and 512.

18 31. Mr. Gomber is entitled to one hour of premium pay, as a penalty, for each day that
19 the Winery failed to provide one or more of the rest periods required under California Labor Code
20 Sections 226.7 and 512.

21 32. The Winery failed to pay premium wages to Mr. Gomber when he was denied a the
22 meal and rest periods required under California Labor Code Sections 226.7 and 512.

23 33. Mr. Gomber seeks payment of all meal and rest period premium compensation that
24 is due under California Labor Code Section 226.7 and 512, according to proof.

25 **FOURTH CAUSE OF ACTION**
26 **(Failure to Pay Wages Upon Termination)**
27 **Against A Donkey and Goat, LLC and Does 1 through 5**

28 34. Mr. Gomber incorporates Paragraphs 1 through 16, above, as though fully set forth.

35. California Labor Code Sections 201 and 202 require employers to pay employees
all wages due on the day of any involuntary termination of employment.

1 missed meal and rest periods; , as stated above, his wage statements therefore, did not reflect the
2 correct gross wages earned or net wages earned.

3 45. An employee is deemed to have suffered an injury within the meaning of California
4 Labor Code Section 226(e) if the employer fails to provide a complete and accurate wage
5 statement containing all required categories of information and the employee cannot promptly and
6 easily determine the information required under Labor Code Section 226(a) from the wage
7 statement alone.

8 46. Mr. Gomber has suffered injury within the meaning of Labor Code Section 226(e)
9 because his wage statement was missing required information and he could not ascertain this
10 information from the wage statements provided to him.

11 47. An employee suffering injury as a result of a knowing and intentional failure by an
12 employer to comply with Labor Code Section 226(a) is entitled to recover the greater of all actual
13 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
14 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed
15 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
16 reasonable attorney's fees.

17 48. Mr. Gomber seeks payment of penalties due under Labor Code Section 226,
18 according to proof.

19 **SIXTH CAUSE OF ACTION**
20 **(Unfair Competition)**
21 **Against All Defendants**

22 49. Mr. Gomber incorporates Paragraphs 1 through 16, above, as though fully set forth.

23 50. Defendants' conduct, as alleged in this Complaint, has been and continues to be
24 unfair, unlawful, and harmful to Plaintiff.

25 51. Mr. Gomber seeks to force important rights affecting the public interest within the
26 meaning of California Code of Civil Procedure Section 1021.5. California Business and
27 Professions Code Section 17200 *et seq.* sec prohibits unlawful and unfair business practices.
28

1 52. California wage and hour laws express fundamental public policies. Properly
2 providing employees with wages earned is a fundamental public policy of this State and of the
3 United States.

4 53. Labor Code Section 90.5(a) articulates the public policies of this State to enforce
5 vigorously all minimum labor standards, to ensure that employees are not required or permitted to
6 work under substandard and unlawful conditions, and to protect law-abiding employers and
7 employees from competitors who lower their costs by failing to comply with minimum labor
8 standards.

9 54. Defendants have violated statutes and California's public policies. Through the
10 conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these
11 public policies, have violated specific provisions of the California Labor Code, and have engaged
12 in other unlawful and unfair business practices in violation of California Business and Professions
13 Code Section 17200 *et seq.* depriving Mr. Gomber and others of rights, benefits, and privileges
14 guaranteed to all employees under law.

15 55. Defendants' conduct, as alleged herein, constitutes unfair competition in violation
16 of Section 17200 *et seq.* of the Business and Professions Code.

17 56. Defendants, by engaging in the conduct alleged in this Complaint, either knew or in
18 the exercise of reasonable care should have known, that the conduct was an unlawful.

19 57. As a direct and proximate result of the Defendants' acts, Mr. Gomber has been
20 damaged in amounts to be proven at trial.

21 58. Unless restrained by this Court, Defendants will continue to engage in the unlawful
22 conduct alleged.

23 59. Pursuant to California Business and Professions Code Section 17200 *et seq.*, this
24 Court should make orders or judgments, including the appointment of a receiver, as may be
25 necessary to prevent the Defendants' use or employment of any unlawful practice. The Court
26 should order disgorgement of profits necessary to restore Mr. Gomber to the money Defendants
27 have unlawfully refused to pay.

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**SEVENTH CAUSE OF ACTION
(Defamation)
Against All Defendants**

60. Mr. Gomber incorporates Paragraphs 1 through 16, above, as though fully set forth.

61. Mr. Gomber is informed and believes and thereon alleges that on numerous occasions on and after September 28, 2014, Defendants made defamatory libelous, slanderous, and unprivileged statements about Mr. Gomber and then published these statements to third parties.

62. Defendants' false and defamatory statements regarding Mr. Gomber include, but are not limited to, the following:

- Plaintiff was involved in theft;
- Plaintiff intentionally violated laws and/or regulations applicable to the wine industry; and
- Plaintiff acted dishonestly.

63. Mr. Gomber is trained in wine-making and was building a career in the wine industry. Some of the third parties to whom Defendants published these false and defamatory statements are in the wine industry.

64. As a result of these false and defamatory statements, Mr. Gomber's good reputation has been damaged and he has been denied opportunities to work in his chosen profession.

65. As a direct and proximate result of Defendants' false and defamatory statements, Mr. Gomber has sustained damages in an amount in excess of the Court's minimum jurisdiction to be proven at trial.

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**EIGHTH CAUSE OF ACTION
(Conversion)
Against All Defendants**

66. Mr. Gomber incorporates Paragraphs 1 through 16, above, as though fully set forth.

67. At all times mentioned herein, Plaintiff was and still is the owner of, and was and is still entitled to possession of, approximately 15 cases of 2013 Skin-fermented Roussanne from the Girard Vineyard. When Mr. Gomber's employment was terminated, this wine was in building 1330, on the second shelf up from the floor on the shelving unit under the heater. Twelve cases of

1 this wine is bottled in 22 ounce bottles purchased by Mr. Gomber in Speakeasy boxes. The other
2 three cases are in old glass that the Winery authorized Mr. Gomber to use.

3 68. Defendants, have failed and refused, and continue to fail and refuse to return the
4 wine and bottles to Mr. Gomber

5 69. As a direct and proximate result of Defendants' refusal to return the wine and
6 bottles, Mr. Gomber has sustained damages in an amount in excess of the Court's minimum
7 jurisdiction to be proven at trial.

8 70. Defendants' acts alleged above were willful, wanton, malicious, oppressive and
9 undertaken with the intent to defraud and justify the awarding of exemplary and punitive damages
10 in an amount to be proven at trial.

11 **REQUEST FOR RELIEF**

12 WHEREFORE, Zachary M. Gomber respectfully requests the Court to enter the following
13 relief:

- 14 1. An award of unpaid minimum wages for work performed by Mr. Gomber during
15 2011;
- 16 2. An award of unpaid minimum wages for work performed by Mr. Gomber in excess
17 of 8 hours per day or in excess of 40 hours per workweek at any time during 2012 through
18 services rendered during 2011;
- 19 3. An award of liquidated damages under California Labor Code Section 1194.2 in an
20 amount equal to the minimum wages unlawfully unpaid and interest thereon;
- 21 4. An award of overtime wages for work performed by Mr. Gomber in excess of 8
22 hours per day or in excess of 40 hours per workweek at any time during 2012 through services
23 rendered during 2011;
- 24 5. An award of all meal and rest period premium compensation that is due under
25 California Labor Code Section 226.7 and 512;
- 26 6. An award of penalties under California Labor Code Sections 201 through 203;
- 27 7. An award of penalties under California Labor Code Sections.226;

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- 1 8. An order enjoining Defendants, and their agents, servants, and employees, from
- 2 failing to pay minimum wages, from failing to pay overtime wages, from failing to provide meal
- 3 and rest periods or premium pay in lieu thereof, and from failing to issue accurately itemized wage
- 4 statements;
- 5 9. An order of restitution for unfair competition pursuant to Business and Professions
- 6 Code Section 17200 *et seq.*
- 7 10. An award of damages according to proof;
- 8 11. An award requiring disgorgement of property and any improperly obtained money
- 9 to Plaintiff according to proof pursuant to Business & Professions Code §17203 on its Fifth Cause
- 10 of Action for unfair competition.
- 11 12. An award of punitive and/or exemplary damages as to the ** Cause of Action; and
- 12 13. An award of pre-judgment interest;
- 13 14. An award of reasonable attorney's fees and costs of prosecuting this action;
- 14 15. Such other and further relief as the Court may deem just and proper.

16 DATED: February 13, 2015

WENDEL, ROSEN, BLACK & DEAN LLP

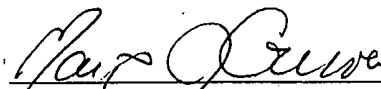
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18 By: Margaret J. Grover
19 Margaret J. Grover
20 Attorneys for Plaintiff ZACHARY M. GOMBER
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1 **REQUEST FOR TRIAL BY JURY**

2 Plaintiff Zachary M. Gomber requests trial by jury for all claims and causes of action for
3 which a jury trial is appropriate.
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5 DATED: February 13, 2015

WENDEL, ROSEN, BLACK & DEAN LLP

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7 By: 
8 Margaret J. Grover
9 Attorneys for Plaintiff ZACHARY M. GOMBER
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1111 Broadway, 24th Floor
Oakland, California 94607-4036