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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF ORANGE**

15 Pizzeria Ortica LLC, individually, and on behalf
16 of all others similarly situated,

17 Plaintiff(s),

18 vs.

19 COUNTY OF ORANGE; ORANGE COUNTY
20 HEALTH CARE AGENCY; and CALIFORNIA
21 DEPARTMENT OF ALCOHOL BEVERAGE
22 CONTROL; DOES 1 THROUGH 10, inclusive,

23 Defendant(s).

Case No. 30-2021-01178203-CU-MC-CXC
Assigned for all purposes to: Judge Kirk Nakamura
Dept: CX103

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 Pizzeria Ortica LLC dba Pizzeria Ortica (“Pizzeria Ortica”), individually, and on
2 behalf of all others similarly situated, allege(s) as follows against Defendants County of Orange
3 (the “County”); Orange County Health Care Agency; and California Department of Alcohol
4 Beverage Control (collectively, “Defendants”):

5 **INTRODUCTION**

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

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

21 3. Specifically, on March 17, 2020, the County of Orange, by and through the County
22 Health Officer, Nichole Quick, prohibited all public gatherings that were not engaged in “essential
23 activities” which were specifically defined in Order. Plaintiff’s business did not fall under the
24 definition of “essential activities” which defined The Order required restaurants and other
25 facilities that serve food to limit their services to delivery or carry out only (the “County
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1 Order”). The County Order was extended and amended by other subsequent orders which all
2 severely limited and/or completely closed the operating ability of Plaintiff and the proposed
3 Class members’ businesses.

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

8 5. Since then, subsequent orders have been issued by the County of Orange and
9 State of California requiring Plaintiff’s and the Class members’ businesses to remain closed,
10 and/or imposing certain restrictions on their operations, and/or altering their permissible
11 operations, including, but not limited to: Order of the State Public Health Officer (March 19,
12 2020); Amended Order and Guidance of the Orange County Health Officer (March 18, 2020);
13 California Executive Order N-60-20 (May 4, 2020); Order of the State Public Health Officer
14 (May 7, 2020); California Executive Order N-83-20 (October 28, 2020); California Department
15 of Public Health Limited Stay at Home Order (November 19, 2020); and California Department
16 of Public Health Regional Stay at Home Order (December 3, 2020), leaving restaurants in a
17 constant state of limbo. These subsequent orders, along with the County Order and State Order
18 are collectively referred to as (the “Orders”).

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

26 7. Despite requiring the closure and/or severely limiting the operating ability of
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1 these businesses, the County and State continued to charge the businesses permit and licensing
2 fees, as well as late charges. Specifically, at issue in this action are the following fees, taxes,
3 and/or charges (and any penalty fees) levied by the County and State entities against Plaintiff and
4 the proposed Class:

- 5 a) Orange County public health permit and licensing fees and/or tax; and
- 6 b) State of California Department of Alcohol and Beverage Control fees and/or
7 tax

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

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

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

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

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

3 13. Through this action, Pizzeria Ortica individually, and on behalf of all
4 others similarly situated seeks a declaration that the County and State's imposition and collection
5 of fees, taxes, and/or charges from businesses that are prevented from operating is unlawful;
6 injunctive relief preventing the further collection of said fees; a refund of all fees, taxes, and/or
7 charges collected; and damages sustained as a result of their legally mandated participation in the
8 public health permit and/or license program with the County of Orange and the State of
9 California Department of Alcohol and Beverage Control.

10 13. All allegations in this Complaint are based on information and belief and/or are
11 likely to have evidentiary support after a reasonable opportunity for further investigation or
12 discovery. Whenever allegations in this Complaint are contrary or inconsistent, such allegations
13 shall be deemed alternative.
14

15 **THE PARTIES**

16 14. Plaintiff Pizzeria Ortica LLC dba Pizzeria Ortica is a California limited liability
17 company having its principal place of business at 650 Anton Blvd. Ste J, Costa Mesa, CA 92626.
18 Plaintiff Pizzeria Ortica brings this action individually and on behalf of the class of all businesses
19 or related persons who have paid the unconstitutional and illegal fees, taxes, and/or charges in
20 connection with a public permit and/or license to the County of Orange, Orange County Health
21 Care Agency and the State of California Department of Alcohol and Beverage Control, while
22 being prevented from operating.

23 15. Defendant County of Orange is a charter county organized and existing as a legal
24 subdivision under the laws of the State of California.

25 16. Defendant County of Orange County Health Care Agency provides public health
26 services to Orange County residents.
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1 17. Defendant State of California Department of Alcohol and Beverage Control
2 regulates and enforces the use, sale, and enforcement of licenses to sell alcohol.

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

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

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

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

1 **GENERAL ALLEGATIONS**

2 22. Beginning on March 17 and 19, 2020, the County of Orange and State of
3 California respectively issued governmental orders requiring individuals to remain in their
4 homes with limited exceptions. These orders also required the closure of non-essential
5 businesses. Throughout the months that followed, and up to the filing of this Complaint, the
6 County and State issued numerous subsequent orders requiring Plaintiff's and the Class
7 members' businesses to remain closed, and/or imposing certain restrictions on their operations,
8 and/or altering their permissible operations.

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

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

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

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

22 27. Similarly, pursuant to Orange County Ordinance §§ 4-4-41 and 4-4-54, the
23 County of Orange and the Orange County Health Care Agency have a duty to charge health
24 services fees that are proportional to the reasonable expenses incurred when enforcing public
25 health measures. However, the taxes, fees, and/or charges were not proportional to those services
26 as required.
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1 28. 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 29. In addition, the collection of the Orange County public health permit and
6 licensing fee(s) and/or tax constituted a tax by a local government who imposed, extended, or
7 increased the tax without voter approval as is required by Government Code § 53723.

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

11 **CLASS ACTION ALLEGATIONS**

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

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

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17 During the fullest period allowed by law, all businesses or related persons who
18 have paid the unconstitutional and illegal fees, taxes, and/or charges in connection
19 with a public permit and/or license to the Orange County Health Care Agency,
20 County of Orange and/or the California Department of Alcohol Beverage Control,
while being prevented from operating in whole or in part.

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

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

26 35. The Class is so numerous that joinder of all members would be impracticable.
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1 36. Plaintiff is committed to prosecuting the action and has retained competent counsel
2 experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other
3 members of the Class and Plaintiff has the same interests as the other members of the Class.
4 Plaintiff is an adequate representative of the Class.

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

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

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

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

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

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

17 39. The prosecution of separate actions by individual members of the Class would
18 create the risk of inconsistent or varying adjudications and would establish incompatible
19 standards of conduct for Defendants. The Defendants have acted, or have refused to act, on
20 grounds generally applicable to the Class, making preliminary and final injunctive relief on behalf
21 of the Class as a whole, appropriate.
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23 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF GOVERNMENT CODE § 53723**

10 **(Against Defendants County of Orange and**

11 **Orange County Health Care Agency and DOES 1 to 10)**

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

14 42. Proposition 62, approved by California voters in the 1986 General Election, added
15 § 53720 *et seq.* to the California Government Code.

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

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

22 45. The continued imposition and collection of the Orange County public health
23 permit and licensing fee(s) and/or tax without voter approval is an ongoing and continuous
24 violation, which is violated anew with each collection of the Orange County public health
25 permit and licensing fee(s) and/or tax from Plaintiffs.

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

4 47. There exists a justiciable controversy between the parties which is ripe for
5 adjudication. Plaintiffs contend that the Orange County public health permit and licensing fee(s)
6 and/or tax imposed by the County is invalid and in violation of Government Code § 53723.
7 Plaintiffs are informed and believe, and based thereon allege, that Defendants deny such
8 contention and contend otherwise. Declaratory judgment is appropriate and necessary
9 at this time with respect to this issue, to avoid a potential multiplicity of actions, to prevent
10 irreparable harm, to ensure proper enforcement of the law, and to resolve a matter of substantial
11 public interest.

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

17 **SECOND CAUSE OF ACTION**

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

20 **(Against Defendants County of Orange and**
21 **Orange County Health Care Agency and DOES to 10)**

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

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

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

7 52. It is necessary and appropriate for this Court to declare that the past and ongoing
8 imposition and collection of the Orange County public health permit and licensing fee(s) and/or
9 tax is invalid and illegal until such time as is approved by the voters pursuant to the provisions of
10 Proposition 218.

11 53. An actual controversy now exists between each Plaintiff and the County as to the
12 legality of the Orange County public health permit and licensing fee(s) and/or tax as imposed. It
13 is necessary and appropriate for this Court to declare that the Orange County public health
14 permit and licensing fee(s) and/or tax is invalid and illegal until such time as is
15 approved by the voters pursuant to the provisions of the California Constitution Article XIII, C §
16 2 and Proposition 218.

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

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22 **THIRD CAUSE OF ACTION**

23 **VIOLATION OF MANDATORY DUTY**

24 **(GOVERNMENT CODE § 815.6)**

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

26 55. Plaintiffs reallege and incorporate by reference the allegations contained in the
27 preceding paragraphs of this complaint, as though fully set forth herein.
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1 56. Pursuant to California Business and Professions Code section 23320, Defendant
2 California Department of Alcohol Beverage Control had a mandatory duty to refund Plaintiff and
3 the Class members for their annual fee paid “in the event that the license application is
4 withdrawn or denied.” Cal. Bus. & Prof. Code § 23320.

5 57. Similarly, pursuant to Orange County Ordinance §§ 4-4-41 and 4-4-54, the
6 County of Orange and the Orange County Health Care Agency have a duty to charge health
7 services fees that are proportional to the reasonable expenses incurred when enforcing public
8 health measures. However, the taxes, fees, and/or charges were not proportional to those services
9 as required.

10 58. When levying taxes, pursuant to California Government Code section 37101, all
11 Defendants are mandated to “levy the tax so that the measure of tax fairly reflects that proportion
12 of the taxed activity actually carried on within the taxing jurisdiction.” Cal. Gov’t. Code §
13 37101.

14 59. Defendant California Department of Alcohol Beverage Control violated
15 Government Code section 815.6 and Business and Professions Code section 23320 when it failed
16 to refund Plaintiff and the Class for the alcohol license fees, taxes, and/or charges paid despite
17 the fact that their businesses were prevented and/or limited from using said permit or license.
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19 60. Defendants County of Orange and Orange County Health Care Agency violated
20 Government Code section 815.6 and Orange County Ordinance §§ 4-4-41; 4-4-54 when it failed
21 to refund Plaintiff and the Class members for their public health permit fees, taxes, and/or
22 charges despite the fact that their businesses were prevented and/or limited from using said
23 permit or license and/or reduce the fees to be proportional to the decrease in services that were
24 being provided.

25 61. All Defendants violated California Government Code section 37101 when they
26 levied the public health permit fees and/or taxes and the alcohol license fees, taxes, and/or
27 charges against Plaintiff and the Class, despite the fact that their businesses were ordered to close
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1 and/or severely limited in their abilities to operate and that the services provided by the health
2 department were substantially decreased.

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

6 63. Defendants' failure to refund Plaintiffs and the Class is a substantial factor in
7 causing Plaintiffs' harm.

8 **FOURTH CAUSE OF ACTION**

9 **DECLARATORY AND INJUNCTIVE RELIEF**

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

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

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

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

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

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

3 69. By virtue of the foregoing, there exists an actual, justiciable controversy between
4 the parties. Plaintiff contends that the County's and State's imposition and collection of fees,
5 taxes, and/or charges from businesses that are prevented from operating is unlawful. Despite
6 requiring the closure and/or severely limiting the operating ability of these businesses, the
7 County and State continue to charge the businesses public health permit and licensing fees, and
8 alcohol and beverage control fees, as well as late charges. The County and State received these
9 fees, taxes, and/or charges from Plaintiffs but failed to use the money for Plaintiffs' benefit as
10 intended, since these businesses have been ordered closed and/or had their operations severely
11 limited due to the governmental orders. The County and State do not refund the money to
12 Plaintiffs.

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

- 15 a) A declaration that the County and State are unlawfully levying these fees,
16 taxes, and/or charges against businesses ordered to close down, and
17 b) an injunction preventing further collection of the public health permit and
18 licensing fees by the County and alcohol and beverage control fees and/or tax by
19 the State against Plaintiff and the Class.

20 **FIFTH CAUSE OF ACTION**

21 **MONEY HAD AND RECEIVED**

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

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

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

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

8 74. Defendants have not given the money back to Plaintiffs. Specifically, the County
9 failed to provide refunds for fees, taxes, and/or charges that were paid for the 2019-2020 and
10 2020-2021 years, despite the fact that the County's Orders specifically prevented Plaintiffs from
11 operating their businesses. Similarly, the state entities have not refunded Plaintiff and the Class
12 for their alcohol and beverage control fees.

13 75. Accordingly, Plaintiff and the members of the Class are entitled to return of all
14 monies collected under the guise of a permit or licensing fee by the County and State, along with
15 statutory interest.
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17 **SIXTH CAUSE OF ACTION**

18 **UNJUST ENRICHMENT**

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

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

22 77. Defendants received a benefit from Plaintiffs. Namely, the County charged and
23 received money from Plaintiffs for their public health permit and licensing fees and/or tax as
24 well as late charges. The state entities received money from Plaintiffs for their alcohol and
25 beverage control fees.
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1 78. The County and State have thus been unjustly enriched by the illegal exaction of
2 money from Plaintiff and Class members under the guise of a permit and/or licensing fee and/or
3 tax at the expense of Plaintiff and the Class.

4 79. The County's and State's retention of these fees, taxes, and/or charges is unjust
5 because the money was not used for Plaintiffs' benefit as intended. Plaintiff and the Class are
6 entitled to full reimbursement from the County and State in the actual amount by which the
7 County and State have been unjustly enriched at the expense of the Plaintiff and the Class.
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1 **PRAYER FOR DAMAGES**

2 WHEREFORE, Plaintiff and the Class pray for damages and other judicial relief as
3 follows:

- 4 1. Judgment in favor of Plaintiff and the proposed Class and against Defendants on all
5 causes of action alleged herein;
- 6 2. For general, special, compensatory, and incidental damages, plus prejudgment
7 interest and other damages according to proof;
- 8 3. A declaration that the County's and State's collection of fees, taxes, and other
9 charges from the proposed class members is invalid for one or more of the reasons
10 alleged herein;
- 11 4. Injunctive relief preventing the County and State from levying fees, taxes, and other
12 charges against Plaintiff and the proposed Class;
- 13 5. Any and all other equitable relief, including preliminary and permanent injunctive
14 relief, that the Court deems appropriate;
- 15 6. For attorneys' fees and costs;
- 16 7. For costs of suit herein;
- 17 8. For pre-judgment interest as provided for by applicable law; and
- 18 9. For such further relief as the Court may deem just and proper.
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21 Dated: January 7, 2021

KABATECK LLP

22
23 By: 

24 Brian S. Kabateck
25 Shant A. Karnikian
26 Marina R. Pacheco

Attorneys for Plaintiffs

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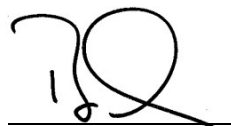
JURY DEMAND

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

Dated: January 7, 2021

KABATECK LLP

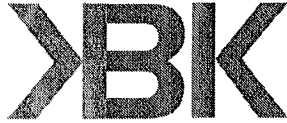
By: _____



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

Attorneys for Plaintiffs

EXHIBIT A



Kabateck LLP

October 22, 2020

VIA OVERNIGHT MAIL

CLERK OF THE BOARD OF SUPERVISORS
333 W. Santa Ana Blvd., Suite 465
Santa Ana, CA 92701

Re: Claim of Pizzeria Ortica LLC dba Pizzeria Ortica, 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 to the County of Orange, Health Care Agency, Environmental Health, while being prevented from operating

Dear Clerk of the Board of Supervisors:

Please find enclosed with this correspondence an original and copy of the properly completed and executed Claim for Money or Damages against the County of Orange form regarding Claim of Pizzeria Ortica LLC, 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 to the County of Orange Health Care Agency, 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', written over a horizontal line.

BRIAN S. KABATECK, Esq.

Enclosures



**CLAIM FOR MONEY OR DAMAGES
AGAINST THE COUNTY OF ORANGE**
(Pursuant to Govt. Code section 910 et seq.)

Received by _____ via:

- Mail
- Over the Counter
- Pony Mail
- Other *** COB USE ONLY***

Completed and signed forms must be mailed or delivered to: Clerk of the Board of Supervisors
(Unsigned claim forms cannot be processed) 333 W. Santa Ana Blvd., Suite 465
Santa Ana, CA 92701

CLAIMANT INFORMATION

1. Claimant's Name: See Attached 2. Date of Birth: _____
3. Claimant's Address: 650 Anton Blvd. Ste J Costa Mesa CA 92626-7009
Street (or P.O. Box) City State Zip Code
4. Phone Number: Home: _____ Work: _____ Other: _____
5. Name and address where correspondence should be sent (if different from above):
Brian S. Kabateck, Kabateck LLP, 633 W. Fifth Street, STE 3200, Los Angeles, CA 90071
Name Street (or P.O. Box) City State Zip Code

CLAIM INFORMATION

6. Exact date (including year) of the occurrence or transaction which gave rise to the claim asserted: See Attached
7. Exact location of the occurrence or transaction which gave rise to the claim asserted:
See Attached
8. Describe the circumstances of the occurrence or transaction which you claim caused the damage/injury/loss: See Attached
9. Jail Booking Number: N/A Police Agency/Report Number: N/A
10. Provide a description of the damage/injury/loss incurred so far as is known as of the time of this claim: See Attached
11. Name(s) of County employee(s) causing damage/injury/loss, if known: See Attached
12. License number of County vehicle (if applicable): N/A

13. Name, address and phone number of any and all witnesses known: See Attached

14. Any additional information that may assist us in evaluating your claim _____

DAMAGES CLAIMED

15. a. If the amount claimed is less than \$10,000:

Amount claimed to present: \$ _____

Estimated amount of any prospective damage/injury/loss: \$ _____

TOTAL AMOUNT CLAIMED: \$ _____

b. If the amount claimed exceeds \$10,000, would the case be a limited civil case (\$25,000 or less)?

Yes No

c. Basis of computation of the amount of damages (Please attach any estimates and/or receipts): See attached

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM

Section 72 of the Penal Code states: "Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, city, or district board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is punishable either by imprisonment in the county jail for a period of not more than one year, by a fine of not exceeding one thousand dollars (\$1,000), or by both such imprisonment or fine, or by imprisonment in the state prison, by a fine of not exceeding ten thousand dollars (\$10,000), or by both such imprisonment and fine."

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 20 day of October 2020 at LOS Angeles 2:10p

[Signature]
Signature of Claimant or Claimant's Representative

You Must Present Your Claim Within The Time Prescribed By Govt. Code Section 911.2

COUNTY OF ORANGE – 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 Orange, Health Care Agency, 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, license, and/or service from the County of Orange, Health Care Agency, 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 Orange.

Name and Address of Claimants

Pizzeria Ortica LLC dba Pizzeria Ortica, 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 to the County of Orange, Health Care Agency,

Environmental Health, while being prevented from operating. Pizzeria Ortica LLC dba Pizzeria Ortica address is 650 Anton Blvd. Ste J, Costa Mesa, CA 92626. 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 17, 2020, due to the COVID-19 pandemic, the County, by and through the Orange County Health Officer, Dr. Nichole Quick, ordered the closure of all bars and other establishments that do not serve food, and all on-site for all facilities that serve food (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.

When did the damage occur?



**COUNTY OF ORANGE
COUNTY EXECUTIVE OFFICE**

- Safety & Loss Prevention Program
- Workers' Compensation Program
- Liability Claims Management Program
- Administration & Financial Management
- Insurance/Contracts & Commercial Insurance
- ADA II Public Access Compliance

OFFICE OF RISK MANAGEMENT

Telephone: (714) 285-5500
FAX: (714) 285-5599

November 10, 2020

Brian S. Kabateck
Kabateck LLP
633 W. Fifth Street, Ste. 3200
Los Angeles, CA 90071

Re: Claimant: Pizzeria Ortica LLC
Date of Loss: 03/17/2020
Claim Number: 20200754

Dear Mr. Kabateck:

Please be advised that investigation of the above-matter has been completed. Investigation disclosed no negligence on behalf of the County of Orange. In view of the facts, we have no recourse but to disclaim any liability on behalf of the County of Orange.

Notice is hereby given that the claim you presented on behalf of Pizzeria Ortica LLC, on 10/26/2020, is rejected by operations of law.

WARNING:

"Subject to certain exceptions, you have only six months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code, Section 945.6."

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Sincerely,
Gary Stopforth
Liability Claims Manager
(714) 285-5515

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Orange County, Calif. Restaurants Seek Permit, Licensing Refunds Amid Pandemic-Related Closures](#)
