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CIVIL BUSINESS OFFICE 2
CENTRAL DIVISION

2018 APR 25 PM 1:08

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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6 Attorney for Plaintiff

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

8 CENTRAL DIVISION

9 SCOT BLAIR,

10 Plaintiff,

11 vs.

12 MONKEY PAW aka MONKEY ~~PAW~~, A
13 CALIFORNIA CORPORATION,
14 DOES 1 through 15, inclusive,
15 Defendant(s)

Case No. 37-2018-00020390-CU-BC-CTL

COMPLAINT FOR MONEY

DEMAND FOR JURY

UNLIMITED CIVIL

16 PRAYER \$33,534.00

17 COMES NOW Plaintiff and alleges of Defendant(s) as follows:

18 FIRST CAUSE OF ACTION

19 1. At all times herein mentioned, plaintiff, SCOT BLAIR
20 is an individual residing in the County of San Diego, State of
21 California.

22 2. The true names or capacities, whether individual,
23 plural, corporate, partnership, associate or otherwise, of
24 Defendants Does 1 through 15, inclusive, are unknown to
25 plaintiff who, therefore, sues said defendants by such
26 fictitious names. The full extent of the fact(s) linking said
27
28

1 fictitiously designated defendants with the cause of action
2 alleged herein is unknown to plaintiff. Plaintiff is informed
3 and believes, and thereupon alleges, that each of the defendants
4 designated herein as Does 1 through 15, inclusive, was and is,
5 negligently, carelessly, recklessly, unskillfully, tortiously,
6 wantonly, wrongfully, and legally responsible in some manner for
7 the events and happenings hereinafter referred to, and thereby,
8 negligently, carelessly, recklessly, unskillfully, tortiously,
9 wantonly, and wrongfully proximately caused injury and damages
10 to plaintiff. Plaintiff will hereafter ask leave of Court to
11 amend this complaint to show said defendants' true names and
12 capacities after the same has been ascertained.

13 3. Plaintiff is informed and believes and, upon such
14 information and belief, alleges that the defendants, and each of
15 them are residents of, or doing business in, the County of San
16 Diego, State of California. This Court is proper for the
17 reasons stated in the attached declaration.

18 4. The debt sued on is for monies due and owing to
19 Plaintiff on an obligation or an agreement in writing.
20 Specifically, on or about September 1, 2017, Defendant(s),
21 MONKEY PAW aka MONKEY PAW, a California Corporation, entered
22 into a written promissory note obligating MONKEY PAW to pay
23 plaintiff the principal sum of \$33,534.00 along with interest at
24 five (5) percent per annum. A true and correct copy of
25 promissory note is attached hereto as Exhibit A.

26 5. The terms of the promissory note provided that
27 Defendant pay Plaintiff the \$33,534.00 by making monthly
28 payments of \$1,005.04 or more on the first (1st) of each month

1 beginning on October 1, 2017. Plaintiff has not received any
2 payments from defendant due under the promissory note

3 6. The promissory note provides in paragraphs three (3) and
4 eight (8), that in the event of payment default, an additional
5 five (5) percent interest be applied above the applicable
6 interest rate (also five (5) percent) and is referred to as
7 "Default Rate". In addition, the promissory note provides that
8 in the event of default followed by acceleration of the note,
9 the entire principal amount of the note shall bear interest at
10 the Default Rate.

11 7. The promissory note in paragraph seven (7) also provides
12 that in the event Borrower fails to make any payment of
13 principal or interest with ten (10) days after the date on which
14 the same is due and payable, a late charge constituting damages
15 shall be immediately due and payable. The late charge set forth
16 in the promissory note is an amount equal to five cents for each
17 one (1) dollar which is delinquent.

18 8. To date, no payments have been made and therefore the
19 amount delinquent is subject to the charges specified in
20 paragraph 7 of the promissory note.

21 9. Within four years last past, Defendant(s) became
22 indebted to Plaintiff in the principal amount set forth in the
23 prayer of this Complaint for a balance due and owing on an open
24 book account or an agreement in writing, and although demand has
25 been made on Defendant(s), no part of the unpaid balance had
26 been paid and there is now due and owing and unpaid, the
27 principal sum set forth in the prayer of this complaint.

1 10. Pursuant to the promissory note and under California
2 Civil Code Section 3287(a), Plaintiff is entitled to interest on
3 the principal sum set forth in the prayer of this Complaint.

4 11. Pursuant to the terms of the promissory note,
5 paragraph 11.11, Plaintiff is entitled to attorney fees and any
6 and all costs and expenses incurred by the Lender (Plaintiff) to
7 enforce the terms of the note.

8 SECOND CAUSE OF ACTION

9 12. Plaintiff re-incorporates and re-alleges the
10 allegations contained in paragraphs 1 through 11 of this
11 Complaint and set forth above.

12 13. Within four years last past, monies were lent by or on
13 behalf of Plaintiff to Defendant and Defendant(s) and each of
14 them became indebted to Plaintiff in the principal sum set forth
15 in the prayer of this Complaint for the consideration expressed
16 above.

17 THIRD CAUSE OF ACTION

18 14. Plaintiff re-incorporates and re-alleges the
19 allegations contained in paragraphs 1 through 13 of this
20 Complaint and set forth above.

21 15. Within four years last past, an account was stated
22 between the Plaintiff and Defendant(s), where it was agreed that
23 Defendants were indebted to Plaintiff in an amount certain and
24 of which the amount set forth below is the balance due and
25 owing, and unpaid on that amount.

26 WHEREFORE, plaintiff prays for judgment against the
27 defendants and each of them for:

- 28 1. Principal Damages in the amount of \$33,534.00;

- 1 2. For interest thereon as set forth in the promissory
2 note;
3 3. Late fees;
4 4. Reasonable attorney fees; and
5 5. For any and all expenses, including, but not limited
6 to, court costs and any such further relief as this may
7 Court may deem proper.
8

9 Dated: 4-25-2018

LAW OFFICES OF DAVID A. COTTER

10
11 By: 
12 David A. Cotter, SB 169834
13 Attorney for Plaintiff



DECLARATION

I David A. Cotter, hereby declare under the penalty of perjury under the laws of the State of California;

I am the attorney of plaintiff herein. This Judicial District in which this action is filed is proper because:

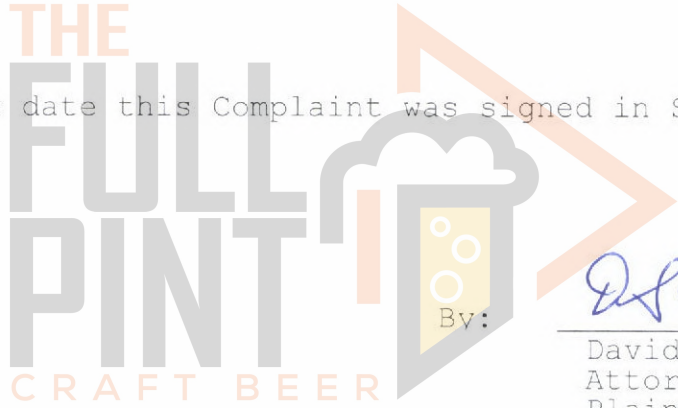
xx At least one Defendant resides or maintains a principal place of business in this Judicial District,

or

The incident herein alleged occurred or was to be performed in this Judicial District.

This action may be subject to Code of Civil Procedure Sections 1812.10.

Executed on the date this Complaint was signed in San Diego, California.



By:

David A. Cotter
Attorney for
Plaintiff



EXHIBIT A

PROMISSORY NOTE

**PROMISSORY NOTE
(UNSECURED)**

\$33,534.00

September 1, 2017
San Diego, California

1. **Promise to Pay.** FOR VALUE RECEIVED, MONKEY PAW, a California corporation, dba Monkey Paw Brewing Company ("**Borrower**"), promises to pay to the order of SCOT BLAIR ("**Lender**"), at 3620 Louisiana Street, San Diego, California 92104 , or at such other place as may be designated in writing by Lender, the principal sum of THIRTY-THREE THOUSAND FIVE HUNDRED THIRTY-FOUR AND 00/100 DOLLARS (\$33,534.00) (the "**Loan**"). All sums owing hereunder are payable in lawful money of the United States of America, in immediately available funds, without offset, deduction or counterclaim of any kind.

2. **Unsecured.** This is an unsecured Promissory Note (the "**Note**").

3. **Definitions.** For the purposes of this Note, the following terms shall have the following meanings:

"**Note**" shall mean this Note.

"**Event of Default**" shall mean (a) Borrower's failure to pay when due any sums which require payment pursuant to the terms of this Note, or (b) Borrower filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("**Bankruptcy Code**"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "**Debtor Relief Law**"); or (ii) Borrower filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Borrower or the petition's material allegations regarding Borrower or such Borrower Party's insolvency; or (iii) Borrower making a general assignment for the benefit of creditor's; or (iv) Borrower applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (v) the filing by or against Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower.

"**Maturity Date**" shall mean September 1, 2020.

"**Applicable Interest Rate**" shall mean Five percent (5%) per annum.

"**Default Rate**" shall mean Five percent (5.0%) per annum above the Applicable Interest Rate.

"**Principal Amount**" shall mean \$33,534.00.

4. **Payment of Principal and Interest.** Consecutive monthly installments of principal and interest each in the amount of \$1,005.04, shall be payable on the first day of each month beginning October 1, 2017 and continuing through the Maturity Date (each, a "**Payment Date**"), which payment amount is estimated to be sufficient to pay the unpaid principal owing in full over a thirty-six (36) month amortization period at the Applicable Interest Rate in substantially equal payments to Lender. Accrued and unpaid interest shall be compounded monthly. Interest on the outstanding principal balance of this Note shall accrue at an annual rate equal to the Interest Rate calculated on an Actual/360 Basis; that it, by applying the ratio of the interest rate over the number of days in a year, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method. Unless otherwise agreed or required by applicable law, payments will be applied first to unpaid collection costs and late charges, then to accrued unpaid interest,

and any remaining amount to principal. Principal may be prepaid at any time, in whole or in part, without penalty.

5. Personal Liability. The Loan shall be a full recourse obligation of Borrower, and Borrower shall be fully liable for the indebtedness evidenced by this Note and for the performance of any and all obligations arising under this Note.

6. Disbursement of Loan Proceeds; Limitation of Liability. Borrower hereby authorizes Lender to disburse the proceeds of the Loan, after deducting any and all fees owed by Borrower to Lender in connection with the Loan to Borrower. With respect to such disbursement, Borrower understands and agrees that Lender does not accept responsibility for errors, acts or omissions of others, including, without limitation, the escrow company, communications carriers or clearinghouses through which the transfer of Loan proceeds may be made or through which Lender receives or transmits information, and no such entity shall be deemed Lender's agent. As a consequence, Lender shall not be liable to Borrower for any actual (whether direct or indirect), consequential or punitive damages, whether or not (a) any claim for such damages is based on tort or contract; or (b) either Lender or Borrower knew or should have known of the likelihood of such damages in any situation.

7. Late Charges. If Borrower fails to make any payment of principal or interest within ten (10) days after the date on which the same is due and payable, a late charge constituting damages shall be immediately due and payable. Borrower recognizes that a default in making the payments herein agreed to be made as and when due will result in Lender's incurring additional expenses in servicing this Note, in loss to Lender of the use of the money due, and in frustration to Lender in meeting its other commitments, but that it is extremely difficult and impractical to ascertain the extent of such damages. Accordingly, Borrower agrees that the late charge for any such payment described above that is not paid within the period specified above after the date when due shall be an amount equal to five cents (\$.05) for each dollar (\$1.00) of each payment which becomes so delinquent, as a reasonable estimate of the damages to Lender, which sum shall be immediately due and payable.

8. Default Interest Rate. Commencing on the earlier of the Maturity Date or the occurrence of an Event of Default followed by the acceleration of this Note, and continuing thereafter until this Note has been paid in full, the entire principal amount of this Note shall bear interest at the Default Rate. The provisions of this paragraph shall not limit lender's right to compel prompt performance hereunder.

9. Notices. All notices and other communications that are required or permitted to be given to a party under this Note shall be in writing and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first-class mail, return receipt requested, or by facsimile transmission to the address or facsimile number below. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving thirty (30) days notice to the other parties in the manner set forth above. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission. The addresses and facsimile numbers of the parties shall be:

Lender:

Scot Blair
3620 Louisiana Street
San Diego, CA 92104

Borrower:

Monkey Paw
805 16th Street
San Diego, CA 92101

10. Assignment. This Note may be freely transferred and assigned by Lender, its successors, endorsees and assigns.

11. Miscellaneous.

11.1 Joint and Several Liability. If this Note is executed by more than one person or entity as Borrower, the obligations of each such person or entity shall be joint and several. No person or entity shall be a mere accommodation maker, but each shall be primarily and directly liable hereunder.

11.2 Waiver of Presentment. Borrower hereby waives presentment, demand, notice of dishonor, notice of default or delinquency, notice of acceleration, notice of nonpayment, notice of costs, and expenses or losses and interest thereon.

11.3 Delay In Enforcement. No previous waiver or failure or delay by Lender in acting with respect to the terms of this Note shall constitute a waiver of any breach, default or failure of condition under this Note, or the obligations evidenced or secured thereby. A waiver of any term of this Note, or of any of the obligations evidenced or secured thereby must be made in writing signed by Lender, shall be limited to the express terms of such waiver, and shall not constitute a waiver of any subsequent obligation of Borrower. The acceptance at any time by Lender of any past due amount shall not be deemed to be a waiver of the right to require prompt payment when due of any other amounts then or thereafter due and payable.

11.4 Time of the Essence. Time is of the essence with respect to every provision hereof.

11.5 Governing Law. This Note and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the State of California applicable to contracts made and performed in such state and any applicable law of the United States of America. The loan transaction which is evidenced by the Note has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of California. Except as provided in the first sentence of this paragraph, Borrower hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than California governs this Note.

11.6 Consent to Jurisdiction. Borrower irrevocably submits to the jurisdiction of: any state or federal court sitting in the State of California over any suit, action, or proceeding, brought by Borrower against Lender, or by Lender against Borrower, arising out of or relating to this Note. Borrower irrevocably waives, to the fullest extent permitted by law, any objection that Borrower may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

11.7 Heirs, Successors and Assigns. All of the terms, covenants, conditions and indemnities contained in this Note shall be binding upon the heirs, successors and assigns of Borrower and shall inure to the benefit of the successors and assigns of Lender. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted in this Note.

11.8 Severability. If any term of this Note, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Note shall be valid and enforceable to the fullest extent permitted by law.

11.9 Consents and Approvals. Wherever Lender's consent, approval, acceptance or satisfaction is required under any provision of this Note, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Lender unless such provision expressly so provides.

11.10 Further Assurances. Borrower shall, upon demand by Lender, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the provisions hereof.

11.11 Attorneys' Fees. In the event it is necessary for Lender to retain the services of an attorney or any other party to enforce or to commence any legal action to enforce the terms of this Note or the Deed of Trust, or any portion hereof or thereof, Borrower agrees to pay to Lender, in addition to damages or other relief, any and all costs and expenses, including, without limitation, expert witness fees and reasonable attorney's fees incurred by Lender as a result thereof.

12. Dispute Resolution Provision. A material inducement for Lender to make the Loan is this Dispute Resolution provision, which governs this Note, and Lender has been materially induced to make the Loan in reliance upon Borrower, its successors and assigns, if permitted, being bound by it:

(a) This Dispute Resolution Provision concerns the resolution of any controversies or claims between or among the parties, initiated by Borrower whether arising in contract, tort or by statute, including controversies or claims that arise out of or relate to: (i) this Note (including any renewals, extensions or modifications); or (ii) any other document related to this Note (collectively, a "Claim"). For the purposes of this Dispute Resolution Provision only, the term "parties" shall include any parent corporation, subsidiary or affiliate of Lender involved in the servicing, management or administration of any obligation described or evidenced by this Note; In no instance shall this Dispute Resolution be applicable to any action initiated by Lender upon Borrower's Event of Default, to collect principal and all other amounts due and owing, or Lender's enforcing the terms of this Note.

(b) Except to the extent expressly provided below, any Claim shall, upon the mutual agreement of the parties, acting in their sole and absolute discretion, be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code) (the "Federal Arbitration Act"). The Federal Arbitration Act will apply even though this Note provides that it is governed by California law.

(c) Arbitration proceedings will be determined in accordance with the Federal Arbitration Act, the then-current rules and procedures for the arbitration of financial services disputes of the American Arbitration Association or any successor thereof ("AAA") and the terms of this Dispute Resolution Provision. In the event of any inconsistency, the terms of this Dispute Resolution Provision shall control. If AAA is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, Lender may designate another arbitration organization with similar procedures to serve as the provider of arbitration.

(d) The arbitration shall be administered by AAA and conducted, unless otherwise required by law, in any U.S. state where real or tangible personal property for the Loan is located or if there is no such collateral, in the state specified in the governing law section of this Note. All Claims shall be determined by one arbitrator; however, if Claims exceed FIVE MILLION AND 00/100 DOLLARS (\$5,000,000.00), upon the request of any party, the Claims shall be decided by three arbitrators. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed and have judgment entered and enforced.

(e) The arbitrator(s) will give effect to statutes of limitation in determining any Claim and may dismiss the arbitration on the basis that the Claim is barred. For purposes of the application of any statutes of limitation, the service on AAA under applicable AAA rules of a notice of Claim is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a Claim is arbitrable shall be determined by the arbitrator(s), except as set forth at clause (j) of this Dispute Resolution Provision. The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this Note.

(f) The procedure described above will not apply if the Claim, at the time of the proposed submission to arbitration, arises from or relates to an obligation to Lender secured by real property. In this case, all of the parties to this Note, in their sole and absolute discretion, must consent to submission of the Claim to arbitration.

(g) To the extent any Claims are not arbitrated, to the extent permitted by law the Claims shall be resolved in court by a judge without a jury, except any Claims which are brought in California state court shall be determined by judicial reference as described below.

(h) Any Claim which is not arbitrated and which is brought in California state court will be resolved by a general reference to a referee (or a panel of referees) as provided in California Code of Civil Procedure ("CCP") Section 638. The referee (or presiding referee of the panel) shall be a retired Judge or Justice. The referee (or panel of referees) shall be selected by mutual written agreement of the parties. If the parties do not agree, the referee shall be selected by the Presiding Judge of the Court (or his or her representative) as provided in CCP Section 638 and the following related sections. The referee shall determine all issues in accordance with existing California law and the California rules of evidence and civil procedure. The referee shall be empowered to enter equitable as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a trial, including motions for summary judgment or summary adjudication. The award that results from the decision of the referee(s) will be entered as a judgment in the court that appointed the referee, in accordance with the provisions of CCP Sections 644(a) and 645. The parties reserve the right to seek appellate review of any judgment or order, including orders pertaining to class certification, to the same extent permitted in a court of law.

(i) Any arbitration, judicial reference or trial by a judge of any Claim will take place on an individual basis without resort to any form of class or representative action (the "Class Action Waiver"). Regardless of anything else in this Dispute Resolution Provision, the validity and effect of the Class Action Waiver may be determined only by a court or referee and not by an arbitrator. The parties to this Note acknowledge that the Class Action Waiver is material and essential to the arbitration of any disputes between the parties and is nonseverable from the agreement to arbitrate Claims. If the Class Action Waiver is limited, voided or found unenforceable, then the parties' agreement to arbitrate shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. The parties acknowledge and agree that under no circumstances will a class action be arbitrated.

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(f) By agreeing to binding arbitration or judicial reference, the parties irrevocably and voluntarily waive any right they may have to a trial by jury as permitted by law in respect of any Claim. Furthermore, without intending in any way to limit this Dispute Resolution Provision, to the extent any Claim is not arbitrated or submitted to judicial reference, the parties irrevocably and voluntarily waive any right they may have to a trial by jury to the extent permitted by law in respect of such Claim. This waiver of jury trial shall remain in effect even if the Class Action Waiver is limited, voided or found unenforceable. **WHETHER THE CLAIM IS DECIDED BY ARBITRATION, BY JUDICIAL REFERENCE, OR BY TRIAL BY A JUDGE, THE PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS NOTE IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW.**

BORROWER:

MONKEY PAW,
a California corporation

By: [Signature]
Print Name: Scott E. Smith
Title: President

