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Thelonious Sphere Monk, Jr., as Administrator of and on behalf of the
12 Estate of Thelonious Sphere Monk, deceased,

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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
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17	THELONIOUS SPHERE MONK, JR.,)	Case No.:
18	as Administrator of and on behalf of the)	
19	ESTATE OF THELONIOUS SPHERE MONK,)	COMPLAINT FOR
20	Deceased,)	
	Plaintiff,)	(1) Trademark Infringement (15 U.S.C. §
)	1125(a)
21	vs.)	
22	NORTH COAST BREWING CO., INC., a)	(2) California Civil Code § 3344.1
23	California Corporation,)	
24	Defendant.)	(3) California Common Law Right of
)	Publicity
)	(4) Unjust Enrichment
25)	DEMAND FOR JURY TRIAL

26 **COMPLAINT FOR TRADEMARK INFRINGEMENT, VIOLATIONS OF RIGHTS OF**
27 **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 and California 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 claims
11 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 York County, New York at the time of his
23 death on February 17, 1982.

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.
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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 composition "Round Midnight" is the number one most recorded
2 composition in history of Jazz.

3 15. Monk is the second most recorded composer of jazz music, behind only Duke
4 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. "Live at Carnegie Hall" with Thelonious Monk and John Coltrane is the second best-
10 selling album in Jazz history.

11 19. For his achievements throughout his illustrious career, Monk received the 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 property of the Monk
20 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.

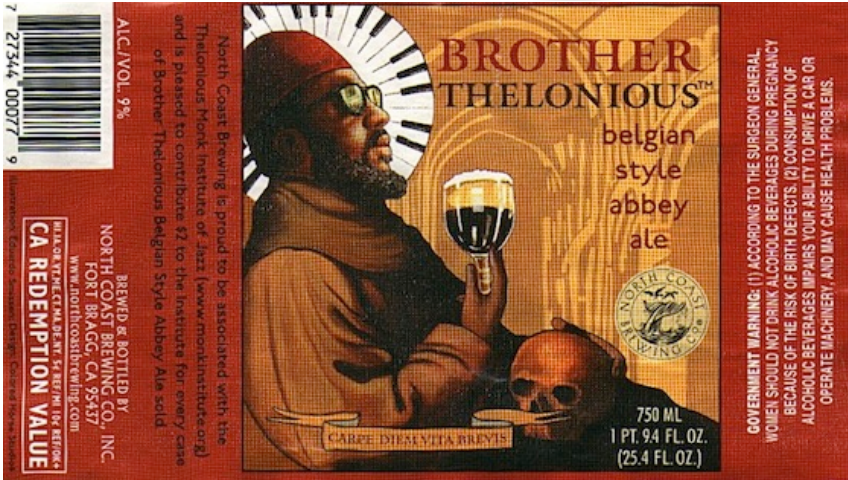
26 27. North Coast makes and sells beer and ale.

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 Belgian century 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 of the Monk name, image and likeness in connection with
17 promotional events at Jazz festivals and other locations as shown below.



27 36. North Coast's use of the THELONIOUS MONK name, image and likeness is
28 without the permission of the Monk Estate and unauthorized.

1 37. Some time prior to January 11, 2016, T.S. Monk verbally agreed to permit North
2 Coast to utilize the THELONIOUS MONK name, image and likeness for the limited purpose of
3 marketing and distributing BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE in
4 exchange for North Coast's agreement to donate a portion of the profits from the sale of BROTHER
5 THELONIOUS BELGIAN STYLE ABBEY ALE to the Thelonious Monk Institute of Jazz.

6 38. At no time prior to January 11, 2016 did either T.S. Monk or the Monk Estate
7 authorize North Coast to utilize the THELONIOUS MONK name, image or likeness for the sale of
8 merchandize such as cups, hats, hoodies, iron on patches, soap, t-shirts, tap handles, metal and neon
9 signs, pins, playing cards, mouse pads, posters, and food products.

10 39. On January 11, 2016, Monk notified North Coast that any authority previously given
11 to it for its use of the THELONIOUS MONK name, image or likeness was terminated and revoked,
12 and that North Coast could no longer use the THELONIOUS MONK name, image and likeness
13 without entering into a merchandising agreement with the Estate of Thelonious Monk, and advised
14 North Coast that all royalty payments must be made to The Monk Estate. A true and correct copy of
15 the notice to North Coast through its attorneys is attached hereto as Exhibit 1.

16 40. Despite notice, since January 11, 2016 North Coast has continued to exploit the
17 THELONIOUS MONK name, image and likeness without permission of the Monk Estate and
18 without compensating the Monk Estate, causing damage to the Monk Estate and effecting the value
19 of the THELONIOUS MONK name, image and likeness.

20 41. Plaintiff has engaged the undersigned attorneys and has agreed to pay them a
21 reasonable fee.

22 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

6 46. The name, image and likeness of THELONIOUS MONK cannot be used without the
7 permission and authority of the Estate of Thelonious Monk.

8 47. North Coast used the name, image and likeness of THELONIOUS MONK in
9 connection with the sale of BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE and other
10 products that feature the name, image and likeness of THELONIOUS MONK.

11 48. North Coast used the name, image and likeness of THELONIOUS MONK on and in
12 connection with the container of BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE that
13 North Coast sold.

14 49. North Coast used the name, image and likeness of THELONIOUS MONK on and in
15 connection with commercial advertising for BROTHER THELONIOUS BELGIAN STYLE
16 ABBEY ALE and other products that feature the name, image and likeness of THELONIOUS
17 MONK.

18 50. North Coast's use of the name, image and likeness of THELONIOUS MONK on and
19 in connection with the container of BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE
20 and other products sold by North Coast is likely to cause confusion, mistake, or deceive as to
21 whether THELONIOUS MONK or the Monk Estate is connected with, affiliated with, sponsors or
22 approves North Coast's sale of BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE and
23 other products that feature the name, image and likeness of THELONIOUS MONK.

24 51. North Coast's use of the name, image and likeness of THELONIOUS MONK on and
25 in connection with commercial advertising for BROTHER THELONIOUS BELGIAN STYLE
26 ABBEY ALE and other products sold by North Coast is likely to cause confusion, mistake, or
27 deceive as to whether THELONIOUS MONK or the Monk Estate is connected with, affiliated with,
28 sponsors or approves North Coast's sale of BROTHER THELONIOUS BELGIAN STYLE

1 ABBEY ALE and other products that feature the name, image and likeness of THELONIOUS
2 MONK.

3 52. North Coast's use of the name, image and likeness of THELONIOUS MONK on and
4 in connection with commercial advertising for BROTHER THELONIOUS BELGIAN STYLE
5 ABBEY ALE and other products sold by North Coast misrepresents the nature, characteristics, or
6 qualities of North Coast's goods and services.

7 53. The Monk Estate has been damaged.

8 54. The harm caused to the Monk Estate has been irreparable.

9 **SECOND CLAIM FOR RELIEF**

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

11 55. Plaintiff incorporates the allegations of paragraphs 1 through 41 of this Complaint as
12 if fully set forth herein.

13 56. The name, image and likeness of THELONIOUS MONK is the sole property of the
14 Estate of Thelonious Monk.

15 57. The name, image and likeness of THELONIOUS MONK is famous and valuable.

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

18 59. North Coast knowingly used the name, image and likeness of THELONIOUS
19 MONK for advertising, selling, or soliciting the sale of BROTHER THELONIOUS BELGIAN
20 STYLE ABBEY ALE and other products without the consent of the Estate of Thelonious Monk in
21 violation of California Civil Code § 3344.1.

22 60. North Coast has profited from its violations.

23 61. The Monk Estate has been damaged.

24 62. The harm caused to the Monk Estate has been irreparable.

25 **THIRD CLAIM FOR RELIEF**

26 **VIOLATION OF CALIFORNIA COMMON LAW RIGHT OF PUBLICITY**

27 63. Plaintiff incorporates the allegations of paragraphs 1 through 41 of this Complaint as
28 if fully set forth herein.

1 64. The name, image and likeness of THELONIOUS MONK is the sole property of the
2 Estate of Thelonious Monk.

3 65. The name, image and likeness of THELONIOUS MONK is famous and valuable.

4 66. The name, image and likeness of THELONIOUS MONK cannot be used without the
5 permission and authority of the Estate of Thelonious Monk.

6 67. North Coast used the name, image and likeness of THELONIOUS MONK for
7 advertising, selling, or soliciting the sale of BROTHER THELONIOUS BELGIAN STYLE
8 ABBEY ALE and other products without the consent of the Estate of Thelonious Monk.

9 68. North Coast has profited from its violations.

10 69. The Monk Estate has been damaged.

11 70. The harm caused to the Monk Estate has been irreparable.

12 **FOURTH CLAIM FOR RELIEF**

13 **UNJUST ENRICHMENT**

14 71. Plaintiff incorporates the allegations of paragraphs 1 through 41 of this Complaint as
15 if fully set forth herein.

16 72. The name, image and likeness of THELONIOUS MONK is the sole property of the
17 Estate of Thelonious Monk.

18 73. The name, image and likeness of THELONIOUS MONK is famous and valuable.

19 74. The name, image and likeness of THELONIOUS MONK cannot be used without the
20 permission and authority of the Estate of Thelonious Monk.

21 75. North Coast used the name, image and likeness of THELONIOUS MONK for
22 advertising, selling, or soliciting the sale of BROTHER THELONIOUS BELGIAN STYLE
23 ABBEY ALE and other products without the consent of the Estate of Thelonious Monk.

24 76. By reason of the foregoing, North Coast was and continues to be unjustly enriched
25 through unlicensed and unauthorized exploitation of the name, image and likeness of
26 THELONIOUS MONK.

27 77. The Monk Estate is entitled to just compensation under the common law of the State
28 of California.

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