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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

PETER MURRAY, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

HORNBLOWER YACHTS, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2020-00007070-CU-OE-CTL

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE
§ 226;
- (2) VIOLATION OF CAL. LABOR
CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

Plaintiff Peter Murray (together, "Plaintiff") hereby submits this Class Action Complaint ("Complaint") against Defendant Hornblower Yachts, LLC and Does 1 through 50 (hereinafter collectively referred to as "Defendants") on behalf of himself and the class of all other similarly situated current and former employees of Defendants, for penalties and/or damages for failure to provide accurate itemized wage statements under the California Labor Code as follows:

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1 10. Plaintiff is informed and believes and based thereon alleges Defendant
2 Hornblower Yachts, LLC was and is a California limited liability company doing business in the
3 State of California providing yacht charter and dining services.

4 11. Plaintiff is informed and believes and thereon alleges that at all times herein
5 mentioned DOES 1 through 50, are and were corporations, business entities, individuals, and
6 partnerships, licensed to do business and actually doing business in the State of California.

7 12. As such, and based upon all the facts and circumstances incident to Defendants'
8 business, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*

9 13. Plaintiff does not know the true names or capacities, whether individual, partner
10 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
11 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
12 complaint when the true names and capacities are known. Plaintiff is informed and believes and
13 based thereon alleges that each of said fictitious defendants were responsible in some way for the
14 matters alleged herein and proximately caused Plaintiff and members of the general public and
15 class to be subject to the illegal employment practices, wrongs, and injuries complained of
16 herein.

17 14. At all times herein mentioned, each of said defendants participated in the doing of
18 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, servants and employees of each of the other
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
21 acting within the course and scope of said agency and employment.

22 15. Plaintiff is informed and believes, and based thereon alleges, that at all times
23 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
24 joint venturer of, or working in concert with each of the other co-Defendants and was acting
25 within the course and scope of such agency, employment, joint venture, or concerted activity.
26 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
27 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
28 Defendants.

1 16. At all times herein mentioned, Defendants, and each of them, were members of,
2 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
3 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

4 17. At all times herein mentioned, the acts and omissions of various Defendants, and
5 each of them, concurred and contributed to the various acts and omissions of each and all of the
6 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
7 herein mentioned, Defendants, and each of them, ratified each and every act or omission
8 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
9 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
10 damages as herein alleged.

11 **CLASS ACTION ALLEGATIONS**

12 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
13 California Code of Civil Procedure § 382. Plaintiff proposes the following class: all current and
14 former non-exempt employees worked for Defendants in the State of California and were paid
15 overtime or doubletime wages at any time from February 6, 2019, to the present (the "Class").

16 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
17 that joinder of all members would be impractical, if not impossible. The identities of the
18 members of the Class are readily ascertainable by review of Defendants' records, including
19 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 failed to provide accurate, itemized wage statements.

21 20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
22 necessary steps to represent fairly and adequately the interests of the Class defined above.
23 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
24 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
25 actions in the past and currently have a number of wage-and-hour class actions pending in
26 California state and federal courts.

27 21. Defendants uniformly administered a corporate policy and practice of failing to
28 provide accurate itemized wage statements in violation of Labor Code § 226(a).

1 22. **Common Question of Law and Fact:** There are predominant common questions
2 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
3 concerning Defendants' policy and practice of failing to provide accurate itemized wage
4 statements in violation of Labor Code § 226(a).

5 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
6 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
7 as the Class Members. As with other Class Members, Plaintiff was not provided proper and
8 accurate itemized wage statements. Specifically, during Plaintiff's employment with
9 Defendants, Plaintiff earned overtime wages. Whenever overtime wages such as "Straight OT,"
10 "Straight DT," "Adjusted OT," and "Adjusted DT" wages were paid however, the wage
11 statements issued to Plaintiff failed to identify the correct rates of pay and applicable number of
12 hours worked in violation of Labor Code § 226(a)(9). For example, whenever "Straight OT" and
13 "Straight DT" wages were paid, the applicable hour rate of pay is identified as the regular hourly
14 rate of pay rather than 1.5 the regular rate of pay. Also, whenever "Adjusted OT" and "Adjusted
15 DT" wages were paid, no rate or pay or hours worked are shown on the wage statements.
16 Therefore, Plaintiff is a member of the Class and has suffered the alleged violations of California
17 Labor Code § 226.

18 24. The California Labor Code upon which Plaintiff bases these claims are broadly
19 remedial in nature. These laws and labor standards serve an important public interest in
20 establishing minimum working conditions and standards in California. These laws and labor
21 standards protect the average working employee from exploitation by employers who may seek
22 to take advantage of superior economic and bargaining power in setting onerous terms and
23 conditions of employment.

24 25. The nature of this action and the format of laws available to Plaintiff and
25 members of the Class identified herein make the class action format a particularly efficient and
26 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
27 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
28 advantage since it would be able to exploit and overwhelm the limited resources of each

1 individual plaintiff with their vastly superior financial and legal resources. Requiring each class
2 member to pursue and individual remedy would also discourage the assertion of lawful claims by
3 employees who would be disinclined to file an action against their former and/or current
4 employer for real and justifiable fear of retaliation and permanent damage to their careers at
5 subsequent employment.

6 26. The prosecution of separate actions by the individual class members, even if
7 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
8 to individual class members against the Defendants and which would establish potentially
9 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
10 individual class members which would, as a practical matter, be dispositive of the interest of the
11 other class members not parties to the adjudications or which would substantially impair or
12 impede the ability of the class members to protect their interests. Further, the claims of the
13 individual members of the class are not sufficiently large to warrant vigorous individual
14 prosecution considering all of the concomitant costs and expenses.

15 27. Such a pattern, practice and uniform administration of corporate policy regarding
16 illegal employee compensation described herein is unlawful and creates an entitlement to
17 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties,
18 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
19 § 226, 226.3, and Code of Civil Procedure § 1021.5.

20 28. Proof of a common business practice or factual pattern, which the named Plaintiff
21 experienced and is a representative of, will establish the right of each of the members of the
22 Plaintiff class to recovery on the causes of action alleged herein.

23 29. The Plaintiff class is commonly entitled to a specific fund with respect to the
24 compensation illegally and unfairly retained by Defendants. The Plaintiff class is commonly
25 entitled to restitution of those funds being improperly withheld by Defendants. This action is
26 brought for the benefit of the entire Class and will result in the creation of a common fund.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226**

3 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

4 30. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 as
5 though fully set forth herein.

6 31. Defendants failed in their affirmative obligation to provide accurate itemized
7 wage statements. Defendants, as a matter of policy and practice, did not provide accurate
8 records in violation of Labor Code § 226.

9 32. Labor Code § 226(a)(9) requires that an employer provide employees with wage
10 statements that show all applicable hourly rates and the corresponding number of hours worked
11 at each rate. The wage statements issued by Defendants to Plaintiff and Class Members did not
12 list the correct hourly rates of pay for overtime wages such as "Straight OT" and "Straight DT."
13 Moreover, the wage statements did not list any hourly rates of pay or number of hours worked
14 for overtime wages such as "Adjusted OT" and "Adjusted DT."

15 33. Such a pattern, practice and uniform administration of corporate policy as
16 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
17 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
18 including interest thereon, attorneys' fees, and costs of suit according to the mandate of
19 California Labor Code § 226.

20 **SECOND CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

22 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

23 34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33, as
24 though fully set forth herein.

25 35. Plaintiff brings this cause of action on behalf of the State of California and seeks
26 penalties on behalf of all aggrieved employees from January 27, 2019, through the present, for
27 Defendants' violation of Labor Code § 226.

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1 36. Defendants failed in their affirmative obligation to provide accurate itemized
2 wage statements. Defendants, as a matter of policy and practice, did not provide accurate
3 records in violation of Labor Code § 226. Specifically, the wage statements provided to
4 Defendants' employees did not identify the correct hourly rates of pay and/or number of hours
5 worked for overtime wages.

6 37. On or about January 27, 2020, Plaintiff sent written notice to the California Labor
7 & Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code § 226,
8 pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act ("PAGA").

9 38. As of the date of the filing of this Complaint, the LWDA has yet to provide notice
10 to Plaintiff as to whether it intends to investigate the Labor Code violations provided for in the
11 written notice.

12 39. As such, pursuant to Labor Code § 2699(a), Plaintiff and the aggrieved employees
13 may seek recovery of all applicable civil penalties on behalf of the State of California for
14 Defendants' violations of Labor Code § 226.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
17 this suit is brought against Defendants, jointly and severally, as follows:

- 18 1. For an order certifying the proposed Class;
- 19 2. For an order appointing Plaintiff as the representative of the Class as described
20 herein;
- 21 3. For an order appointing Counsel for Plaintiff as class counsel;
- 22 4. Upon the First Cause of Action, for penalties pursuant to California Labor Code
23 § 226, and for costs and attorneys' fees;
- 24 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
25 to Labor Code § 2698, *et seq.*, and for costs and attorneys' fees;

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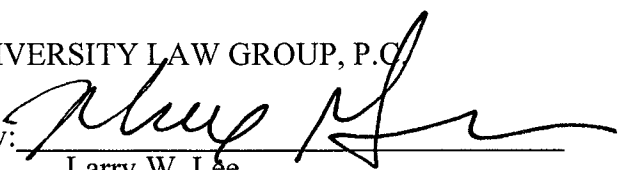
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- 1 6. On all causes of action for attorneys' fees and costs as provided by California
2 Labor Code § 226, and 2699, and Code of Civil Procedure section 1021.5; and
3 7. For such other and further relief that the Court may deem just and proper.
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5 DATED: February 6, 2020

DIVERSITY LAW GROUP, P.C.

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7 By: 

Larry W. Lee

Max W. Gavron

8 Attorneys for Plaintiff and the Class
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