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Attorneys for Plaintiffs and Aggrieved Employees

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

JAVIER MARIN, individually and on
behalf of all others similarly situated,
MARIA ELENA PACE, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

DRIFTWOOD HOSPITALITY
MANAGEMENT II, LLC, a Delaware
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2024-00010262-CU-OE-CTL

**REPRESENTATIVE ACTION COMPLAINT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

DEMAND OVER \$25,000.00

1 Plaintiffs Javier Marin (Plaintiff “Marin”) and Maria Elena Pace (Plaintiff “Pace”)
2 (together, “Plaintiffs”) hereby submit this Representative Action Complaint (“Complaint”)
3 against Defendant Driftwood Hospitality Management II, LLC (“Defendant”), and Does 1
4 through 50 (collectively, “Defendants”), individually, and on behalf of themselves and all
5 aggrieved employees of Defendant, for penalties for violations of the California Labor Code as
6 follows:

7 **INTRODUCTION**

8 1. This representative action is within the Court’s jurisdiction under California
9 Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2698, *et*
10 *seq.*, and the applicable Wage Orders of the Industrial Welfare Commission (“IWC”).

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against individuals who worked for Defendant.

13 3. Plaintiffs are informed and believes, and based thereon allege, that Defendants,
14 jointly and severally, have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees by: (1) failing to pay all overtime wages based on the
16 correct regular rate of pay in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, 1197.1;
17 (2) failing to pay meal and rest break premium wages at the regular rate of pay in violation of
18 Labor Code §§ 226.7 and 512; (3) failing to provide accurate itemized wage statements in
19 violation of Labor Code § 226; and (4) failing to pay all earned wages in a timely manner in
20 violation of Labor Code section 204.

21 **JURISDICTION AND VENUE**

22 4. The Court has jurisdiction over the violations of the California Labor Code
23 sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2698, *et seq.*, and the
24 applicable IWC Wage Orders.

25 5. Venue is proper in San Diego County because Plaintiffs worked for Defendants in
26 San Diego County, California.

27 **PARTIES**

28 6. Plaintiff Marin began employment with Defendant in or about October 2021.

1 Plaintiff Marin was terminated on or around December 19, 2023. Plaintiff Marin worked as an
2 on-call Banquet Bartender at Defendants' facility located in San Diego, California.

3 7. Plaintiff Pace began employment with Defendant in or about April 2021. Plaintiff
4 Pace was terminated on or around July 12, 2023. Plaintiff Pace worked as a Director of Human
5 Resources at Defendants' facility located in San Diego, California.

6 8. Plaintiffs were and are the victims of the policies, practices, and customs of
7 Defendant complained of in this action in ways that have deprived them of the rights guaranteed
8 by California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197,
9 1197.1, 2698, *et seq.*, and the applicable IWC Wage Orders.

10 9. Plaintiffs are informed and believe and based thereon alleges that Defendant was and is a
11 Limited Liability Company doing business in the State of California, including in this County.

12 10. Plaintiffs are informed and believe, and based thereon allege, that at all times
13 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
14 and partnerships, licensed to do business and actually doing business in the State of California.
15 As such, and based upon all the facts and circumstances incident to Defendants' business,
16 Defendants are subject to the California Labor Code and the applicable IWC Wage Orders.

17 11. Plaintiffs do not know the true names or capacities, whether individual, partner or
18 corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said
19 defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
20 complaint when the true names and capacities are known. Plaintiffs are informed and believe and
21 based thereon alleges that each of said fictitious defendants was responsible in some way for the
22 matters alleged herein and proximately caused Plaintiffs and members of the general public and
23 aggrieved employees to be subject to the illegal employment practices, wrongs and injuries
24 complained of herein.

25 12. At all times herein mentioned, each defendant participated in the doing of the acts
26 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
27 and each of them, were the agents, servants and employees of each of the other defendants, as
28 well as the agents of all Defendants, and at all times herein mentioned, were acting within the

1 course and scope of said agency and employment.

2 13. Plaintiffs are informed and believe, and based thereon allege, that at all times
3 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
4 joint venturer of, or working in concert with each of the other co-Defendants and was acting
5 within the course and scope of such agency, employment, joint venture, or concerted activity. To
6 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
7 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
8 Defendants.

9 14. At all times herein mentioned, Defendants, and each of them, were members of,
10 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
11 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

12 15. At all times herein mentioned, the acts and omissions of various Defendants, and
13 each of them, concurred and contributed to the various acts and omissions of each and all of the
14 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
15 herein mentioned, Defendants, and each of them, ratified each and every act or omission
16 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
17 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
18 damages as herein alleged.

19 **FIRST CAUSE OF ACTION**

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

21 **(BY PLAINTIFFS AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

22 16. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
23 though fully set forth herein.

24 17. Plaintiffs bring this cause of action as a proxy for the State of California and in
25 this capacity, seeks penalties on behalf of all Aggrieved Employees from December 21, 2022,
26 through the present, for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226,
27 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2698, *et seq.*, as identified above, for: (1) failing to pay
28 all overtime wages based on the correct regular rate of pay in violation of Labor Code sections

201-204, 510, 558, 1194, 1197, 1197.1; (2) failing to pay meal and rest break premium wages at the regular rate of pay in violation of Labor Code sections 226.7 and 512; (3) failing to provide accurate itemized wage statements in violation of Labor Code section 226; and (4) failing to pay all earned wages in a timely manner in violation of Labor Code section 204.

18. Specifically, Plaintiff Marin and Aggrieved Employees earned non-discretionary remuneration, including without limitation, Banquet Gratuity and Service Charges. Defendant failed to pay overtime wages based on the correct regular rate of pay. Plaintiff Marin and Aggrieved Employees earned non-discretionary remuneration, including, but not limited, Banquet Gratuity and Service Charges, in work weeks in which Plaintiff Marin and Aggrieved Employees also earned overtime wages. Defendants, however, failed to factor such non-discretionary remuneration into the regular rate of pay for purposes of paying overtime wages to Plaintiff Marin and Aggrieved Employees. Rather, Defendants paid Plaintiff Marin and Aggrieved Employees only 1.5x their base rate of pay for the overtime rate. Therefore, Defendants owe Plaintiff Marin and Aggrieved Employees additional overtime pay.

19. Similarly, Plaintiff Marin and Aggrieved Employees were paid meal and rest period premium for missed meal and rest periods at the base rate of pay as Defendants failed to include any non-discretionary remuneration earned into the calculation of the regular rate of pay. Specifically, whenever Plaintiff Marin and Aggrieved Employees received meal and rest period premium pay during workweeks in which they earned non-discretionary remuneration, the meal and rest period premium was paid at the base rate of pay. Thus, Plaintiff Marin and Aggrieved Employees are owed additional meal and rest premium pay based on the correct, higher, regular rate of pay.

20. Further, Defendants routinely paid Plaintiffs and Aggrieved Employees beyond the seven (7) days after the close of the pay period for which they worked. As an example, for the pay period of June 30, 2023, through July 13, 2023, the wages earned during such pay period were not paid until July 21, 2023, which is more than seven (7) days after the end of the pay period.

1 21. Finally, Plaintiffs and Aggrieved Employees received itemized wage statements
2 concurrent with the payment of wages. The wage statements provided to Plaintiffs and other
3 employees failed to identify the name and address of the legal entity that is the employer, as
4 required by Labor Code section 226(a)(8). In addition, as a result of Defendants' failure to pay
5 proper rates of pay for meal/rest period premiums, and overtime wages, the wage statements
6 issued to employees failed to identify the correct gross wages earned, net wages earned, and
7 correct hourly rates of pay.

8 22. On or about December 21, 2023, Plaintiff Marin sent written notice to the
9 California Labor & Workforce Development Agency ("LWDA") of Defendants' violation of
10 Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, pursuant
11 to Labor Code section 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). Plaintiff
12 Marin also sent written notice of said Labor Code violations to Defendant via certified mail
13 pursuant to Labor Code section 2699.3. As of the date of the filing of this Complaint, the
14 LWDA has not provided written notice regarding whether it intends to investigate the Labor
15 Code violations set forth in Plaintiff Marin's written notice.

16 23. On or about January 10, 2024, Plaintiff Pace sent written notice to the California
17 Labor & Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code
18 sections 204 and 226, pursuant to Labor Code section 2698, *et seq.*, the Private Attorneys
19 General Act ("PAGA"). Plaintiff Pace also sent written notice of said Labor Code violations to
20 Defendant via certified mail pursuant to Labor Code section 2699.3. As of the date of the filing
21 of this Complaint, the LWDA has not provided written notice regarding whether it intends to
22 investigate the Labor Code violations set forth in Plaintiff Pace's written notice.

23 24. As such, pursuant to Labor Code section 2699(a), Plaintiffs seeks recovery of any
24 and all applicable civil penalties for Defendants' violation of Labor Code sections 226 and 2698
25 for the time period described above, on behalf of themselves and other Aggrieved Employees.
26

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs pray for judgment individually and all others on whose behalf

1 this suit is brought against Defendants, jointly and severally, as follows:

2 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
3 the PAGA, Labor Code section 226.3, and for costs and attorneys' fees;

4 2. On all causes of action for attorneys' fees and costs as provided by Labor Code
5 section 2699 and California Code of Civil Procedure section 1021.5; and

6 3. For such other and further relief as the Court may deem just and proper.
7

8 DATED: March 4, 2024

DIVERSITY LAW GROUP, P.C.

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10 By: 

Larry W. Lee

Christine S. Lee

11 Attorneys for Plaintiffs and the Aggrieved
12 Employees
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