

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO.:

RAFAEL ORTIZ, and others
similarly situated,

Plaintiffs,

v.

DMD FLORIDA RESTAURANT GROUP A LLC,
a Florida Limited Liability Company;
DMD FLORIDA DEVELOPMENT LLC, a Florida
Limited Liability Company; DMD RESTAURANT
GROUP LLC, Florida Limited Liability Company;
DOUBLE MOUNTAIN DEVELOPMENT VENTURES
LLC, a Florida Limited Liability Company, f/k/a
JAFREJO HOLDINGS LLC; FRONT BURNER
RESTAURANTS L.P. a Delaware Limited Partnership;
TWIN RESTAURANT IP, LLC., a Delaware Limited
Liability Company; and TWIN RESTAURANT
MANAGEMENT LLC., a Texas Limited Liability Company.

Defendants,

COMPLAINT - CLASS ACTION

Rafael Ortiz, and others similarly situated, by and through his attorney of
record, hereby sues the referenced Defendants and says as follows:

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1. This action is brought to redress intentional sex discrimination in hiring by Defendants, DMD Florida Restaurant Group A LLC, a Florida Limited Liability Company; DMD Florida Development LLC, a Florida Limited Liability Company; DMD Restaurant Group LLC, a Florida Limited Liability Company; Double Mountain Development Ventures LLC, a Florida Limited Liability Company f/k/a Jafrejo Holdings LLC (collectively “the DMD Group of Companies”) and Front Burner Restaurants L.P. a Delaware Limited Partnership., Twin Restaurant IP, LLC, a Delaware Limited Liability Company; and Twin Restaurant Management LLC., a Texas Limited Liability Company (collectively “the Twin Peaks Restaurants Group of Companies”) against Plaintiff Rafael Ortiz and others similarly situated. Plaintiffs sue under Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. §2000 *et seq.*, and its remedial provisions as well as under 42 U.S.C. § 1985(3).

JURISDICTION, VENUE AND PROCEDURAL PREREQUISITES TO SUIT

2. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 42 U.S.C. §2000e-5(f)(3).

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3. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. § 2000e-5(f)(3).

4. Plaintiff Rafael Ortiz has satisfied Title VII's procedural prerequisites to suit by filing charges with the Equal Employment Opportunity Commission and by bringing this action within 90 days of his receipt from the EEOC of Notice of Right to Sue.

PARTIES

5. Plaintiff, Rafael Ortiz, is a male resident of Miami-Dade County, Florida. Due to the scope of the Defendants violative conduct, as addressed more fully below, Rafael Ortiz, intends to act as a class representative of all others similarly situated pursuant to Fed.R.Civ.P. 23.

6. Defendant DMD Florida Restaurant Group A LLC, a Florida Limited Liability Company, is a corporation authorized to do business in the State of Florida, and may be served with process through its Registered Agent, Jack Flechner, 15951 SW 41st Street, Suite 800, Davie, FL 33331.

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7. Defendant, DMD Florida Development LLC, a Florida Limited Liability Company, is a corporation authorized to do business in the State of Florida and may be served with process through its Registered Agent, DMD Restaurant Group LLC, 15951 SW 41st Street, Suite 800, Davie, FL 33331.

8. Defendant, DMD Restaurant Group LLC, a Florida Limited Liability Company, is a corporation authorized to do business in the State of Florida and may be served with process through its Registered Agent, Fred Burgess, 15951 SW 41st Street, Suite 800, Davie, FL 33331. DMD Restaurant Group LLC is the registered owner of the Fictitious Name “Twin Peaks Restaurant”.

9. Defendant, Double Mountain Development Ventures, LLC, a Florida Limited Liability Company, formerly known as Jafrejo Holdings LLC, is a corporation authorized to do business in the State of Florida and may be served with process through its Registered Agent Jack Flechner, 15951 SW 41st Street, Suite 800, Davie, FL 33331.

10. Defendant, Front Burner Restaurants L.P., a Delaware Limited Partnership, with its headquarters being located in 5151 Beltline Road, Suite 1200,

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Dallas, TX 75254 and may be served with process through its registered agent The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

11. Defendant, Twin Restaurant Management, LLC, a Texas Limited Liability Company, with its headquarters being located at 5151 Beltline Road, Suite 1200, Dallas, TX 75254 and may be served with process through its registered agent John B. Gessner, at 5151 Beltline Road, Suite 1200, Dallas, TX 75254.

12. Defendant, Twin Restaurant Management IP, LLC, a Delaware Limited Liability Company, with its headquarters being located at 801 E. Campbell Road, Suite 450, Richardson, TX 75801 and may be served with process through its registered agent The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

13. The Twin Peaks Restaurants Group of Companies are the management companies and franchisors of the “Twin Peaks Restaurant” brand sports bars in twenty-five states including Florida as well as internationally in Russia. Upon information and belief, Twin Peaks Restaurants Group of Companies has a

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franchise and management agreement with the DMD Group of Companies and does business in Florida through its contractual arrangements with DMD Group of Companies and is therefore subject to the jurisdiction of this court.

14. Plaintiff alleges that Twin Peaks Restaurants Group of Companies and the DMD Group of Companies are jointly responsible for violations of Title VII alleged herein in that they were prospective “joint employers” or alternatively that DMD Group of Companies acted as agents for the Twin Peaks Restaurants Group of Companies and that as such the Twin Peaks Restaurants Groups of Companies are “vicariously liable” for DMD Group of Companies’ violations of Title VII. Furthermore, Plaintiff alleges that the Twin Peaks Restaurants Group of Companies held itself out to be the “apparent or ostensible prospective employer” of Plaintiff and all others similarly situated.

FACTUAL BACKGROUND

15. On or about July 30, 2015, Ortiz applied for a server’s job at the Twin Peaks Restaurant operated by DMD Group of Companies located at 2000 S. University Drive in Davie within the Southern District of Florida. Ortiz was well

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qualified as a waiter and in addition was acting in his role as a private tester as outlined above.

16. Ortiz filled out an employment application and upon completion asked to speak to the manager on duty to introduce himself and hand in his application. The manager on duty introduced herself as “Karina” and advised Ortiz that although they were currently hiring servers, the positions are reserved strictly for females and that Ortiz did not qualify for the job because he was a male. Ortiz was denied a position because of his gender in violation of Title VII.

17. According to its website, Twin Peaks Restaurants Group of Companies advertises that:

“Here at Twin Peaks, we offer everything you crave and more. Hearty made-from-scratch comfort food, draft beer served at a teeth-chattering 29 degrees and all the best sports in town shown on high definition flat screens. All of this is served by our friendly and attentive Twin Peaks Girls, offering their signature “Girl Next Door” charisma and playful personalities to ensure that your adventure starts at the Peaks.”

18. The Twin Peaks Restaurant Group of Companies lists a Twin Peaks Restaurant as being located in Davie, Florida at 2000 S. University Drive. This is

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the address listed as the principal address for Defendant DMD Restaurant Group A LLC.

19. The Twin Peaks Restaurant Group of Companies' website lists four categories of job vacancies available (1) Manager (2) Home Office (3) Heart of House and (4) Twin Peak girls.

20. The Manager positions cover restaurant managers, assistant general managers, and kitchen managers only since "general managers and area directors are promoted from within. The Home Office positions are available to anyone interested in working for the Support Center Home Office in "marketing, real estate, development or other functions such as finance, accounting or recruiting." The Heart of House refer to positions for cooks, kitchen managers, bussers and bar backs. The Manager, Home Office and Heart of House positions appear to be open to applicants of both sexes. The website directs the user to job postings by franchisees including DMD Group of Companies in South Florida.

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21. The website makes it clear that server positions are reserved exclusively for females urging interested and “qualified” applicants to apply for “Twin Peaks girls” positions:

“Be a Twin Peaks Girl! The Twin Peaks Girls are the hosts of the party bringing the Twin Peaks experience to life while serving high quality eats and drinks. They have a ‘girl next door’ personality, offering a playful and energetic hospitality to our guests. Twin Peaks Girls enjoy flexible scheduling, great tips, modeling and travel opportunities. If you think you can work it, click here to find the nearest location to audition! Grab your favorite outfit, glam up your hair and make-up and visit us today.”

22. DMD Group of Companies and Twin Peaks Restaurant Group of Companies attempts to circumvent the law by referring to its servers as “Twin Peaks Girls”. DMS Group of Companies and Twin Peaks Restaurant Group of Companies contend that since their food servers are Twin Peaks Girls, males may not be employed in that role. The DMD Group of Companies and Twin Peaks Restaurant Group of Companies are incorrect since, in the restaurants, the primary function of Twin Peaks Girls is to serve food and drinks. A male or female can perform this job function and, therefore, is not entitled to the defense of bona-fide occupational qualification.

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23. Ortiz, applied to become a food server, not a Twin Peaks Girl. Ortiz is not through this suit attempting to deprive the Defendants of their right to employ Twin Peaks Girls. He is only attempting to ensure that males and females have the same opportunity to serve food and earn income therefrom.

24. The Defendants may further claim that they have “gender neutral” positions for which both males and females may apply. Those positions are cooks, kitchen managers, bar backs and bussers. It is assumed that the Defendants will argue that somehow this insulates them all from liability. The Defendants are wrong. Absent a legal excuse, a company is not permitted to choose which positions are suitable for male or female.

25. Just as Southwest Airlines attempted nearly four decades ago with stewardesses, the server’s position addressed herein is being limited to females by an employer...”...who merely wishe[s] to exploit female sexuality as a marketing tool to attract customers and insure profitability.” *See Craft v. Metromedia, Inc.*, 766 F.2D 1205, 1215 (8th Cir. 1985)(citing *Wilson v. Southwest Airlines*).

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26. So brazen are the Defendants that they actually inform male applicants orally upon application that males need not apply for the server positions. What is so insidious about this is that by preventing males from applying, the Defendants attempt to buffer themselves against litigation since there would be little or no record of males who wanted to apply for a job but were dissuaded from doing so.

CLASS ACTION ALLEGATIONS

27. In light of the foregoing factual assertions, Defendants as prospective employers, and prospective joint employers and Twin Peaks Restaurant Group of Companies as agents and apparent or ostensible prospective employers are liable to Plaintiff Ortiz and all similarly situated males for having discriminated against them on the basis of gender in violation of Title VII. In addition Defendants conspired to violate the Equal Protection Clause of the Fourteenth Amendment by coordinating policies and procedures which prevented males from working as servers at Twin Peaks restaurants.

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28. This action is suitable for prosecution as a class action in that:
- a. As required by Fed.R.Civ.P. 23(a)(1), the Plaintiff alleges that the class of Plaintiffs is so numerous and so geographically diverse that joinder of all class members is impracticable. The Defendants operate at least six separate restaurants scattered throughout the State of Florida. Presuming that on average 100 male applicants per restaurant have been turned away during the past year, due to the gender biased hiring policy, the Plaintiff class would equal or exceed 600 members just this past year alone. The exact size of the Plaintiff class will not be known until the Plaintiff has had the opportunity of attempting to provide notice, through state wide advertisements, of the pendency of this class action.
 - b. As required by Fed.R.Civ.P. 23(a)(2), the Plaintiff would allege that there are questions of law or fact common to the Plaintiff class. As was alleged above, the Plaintiff class consists of all males who have sought, or will seek in the future, positions as servers at Twin Peaks

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Restaurants located in the State of Florida. The members of the class share the common factor of ineligibility for these positions due to the adoption and enforcement of the Twin Peaks Restaurants policy of hiring women only as servers. Since male applicants are not permitted to even fill out an application, individual differences in ability or experience among potential male applicants is irrelevant, and does not impact the commonality of the factual issues, as males simply are precluded from being hired as servers due to their gender.

- c. As is required by Fed.R.Civ.P. 23(a)(3), the claims of the representative parties are typical of the claims of the Plaintiff class. As to the Plaintiffs, the class members share in common their rejection as servers at Twin Peaks Restaurants due to their gender.
- d. As is required by Fed.R.Civ.P. 23(a)(4), the representative party will adequately and fairly represent the class. The Plaintiff Ortiz was himself the victim of gender discrimination when he was denied the opportunity of applying for a server position at a Twin Peaks

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Restaurant. He resides locally and is both willing and able to serve as a representative of the members of the Plaintiff class.

29. In addition to complying with the following requirements of Fed.R.Civ.P. 23(a), the action is maintainable under the following types of class actions described in the cited subsections of Fed.R.Civ.P. 23(b):

- a. Pursuant to Fed.R.Civ.P. 23(b)(1)(A), prosecuting separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards or conduct for the party opposing the class. In this case, the legal issue before the court is the legality of gender biased hiring policies enforced throughout the State of Florida by the corporate owners of the Twin Peaks Restaurants franchise and enforced by the individual franchise owners operating Twin Peaks Restaurants throughout the State. If individual actions are brought throughout the State, inconsistent results would provide little guidance to individual restaurant operators. The applicability of the

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federal laws raised in this case do not vary from county to county throughout Florida and should be uniformly applied. Hence it is most appropriate that these issues be addressed in one proceeding with the result being applied statewide, applicable to all operators of Twin Peaks Restaurant franchise in Florida.

- b. This action also qualifies for class action treatment under Fed.R.Civ.P. 23(b)(2) in that the Party Opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. In this case the sole issue is the legality of the gender based hiring criteria adopted and enforced throughout all of the Twin Peaks Restaurants operating in Florida. Injunctive relief prohibiting this discriminatory practice of all operators of Twin Peaks Restaurants in Florida is clearly appropriate.
- c. This action also qualifies for class action treatment pursuant to Fed.R.Civ.P. 23(b)(3) in that the questions of law and fact

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predominate over factors affecting only individual class members. Differences in skill and experience as servers are irrelevant, since each member's ineligibility for employment was based exclusively on their gender.

**COUNT ONE - SEX DISCRIMINATION IN HIRING IN VIOLATION OF
TITLE VII AGAINST THE DMD GROUP OF COMPANIES.**

30. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 29 as though they were set forth at length herein.

31. Title VII of the Civil Rights Act of 1964, as amended, permits Plaintiff to sue for the unlawful employment practices of the DMD Group of Companies, including sex discrimination in their hiring practices.

32. Plaintiff, being male, is a member of a protected class on the basis of his sex.

33. Plaintiff, applied for a position as server with the Twin Peaks Restaurant owned and operated by the DMD Group of Companies located in Davie, Florida and was denied employment solely on the basis of his sex.

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34. The DMD Group of Companies policy of reserving server positions in their Twin Peaks Restaurants for females only is a violation of the prohibition against sex discrimination in hiring contained in Title VII of the Civil Rights Act as amended.

35. As a result DMD Group of Companies' failure to comply with Title VII in their hiring policies, Plaintiff was denied employment solely on the basis of his gender and was unjustly and discriminatory deprived of equal employment opportunity.

36. As a further result of DMD Group of Companies' failure to comply with Title VII in its hiring policies, Plaintiff was deprived of wages and benefits, prospective wages and benefits and opportunities of promotions.

37. As a further result, DMD Group of Companies failure to comply with Title VII in its hiring policies, Plaintiff experienced humiliation.

38. The DMD Group of Companies' actions were the direct and proximate cause of Plaintiff's harm.

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WHEREFORE Plaintiff respectfully prays for all relief to which he is entitled either at law or in equity, including actual compensatory damages, back pay, front pay, reinstatement (as appropriate), attorney's fees, costs, emotional damages, pre and post judgment interest at the maximum legal rate, and punitive damages. Plaintiff further prays that the court grant an injunction preventing DMD Group of Companies from discriminating against male applicants for the server positions. Plaintiff requests a trial by jury on all matters triable as of right by jury.

COUNT TWO - SEX DISCRIMINATION IN HIRING IN VIOLATION OF TITLE VII AGAINST TWIN PEAKS RESTAURANT GROUP OF COMPANIES AS AGENT

39. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 29 as though they were set forth at length herein.

40. As franchiser, Twin Peaks Restaurants Group of Companies exercised significant control over the operations of the DMD Group of Companies.

41. This control exercised from home office in Dallas, Texas particularly focused on the branding of Twin Peaks Restaurants as a "breastaurant" chain

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where server positions were reserved exclusively for female waitresses who would serve food and drinks in revealing outfits.

42. The revealing outfits consisting of red and black Buffalo Plaid blouse (which ties underneath and at the center of the bust line) and shorts were considered by Twin Peaks Restaurant Group of Companies to be a trade dress protected by 15U.S.C. § 1125(a)(1).

43. Twin Peaks Restaurants Group of Companies ensured that its franchisees including the DMD Group of Companies enforced a hiring policy which promoted the concept of Twin Peaks Restaurant as a “breastaurant” chain where customers were served exclusively by female servers.

44. Twin Peaks Restaurants Group of Companies therefore exercised, or maintained the right to exercise, the requisite level of control in an agency relationship to be vicariously liable for the acts of its franchisees the DMD Group of Companies.

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45. Accordingly, Twin Peaks Restaurant Group of Companies is vicariously liable to the Plaintiff for the DMD Group of Companies violation of Title VII.

WHEREFORE Plaintiff respectfully prays for all relief to which he is entitled either at law or in equity, including actual compensatory damages, back pay, front pay, reinstatement (as appropriate), attorney's fees, costs, emotional damages, pre and post judgment interest at the maximum legal rate, and punitive damages. Plaintiff further prays that the court grant an injunction preventing Twin Peaks Restaurants Group of Companies from discriminating against male applicants for the server positions. Plaintiff requests a trial by jury on all matters triable as of right by jury.

**COUNT THREE - SEX DISCRIMINATION IN HIRING IN VIOLATION
OF TITLE VII AGAINST TWIN PEAKS RESTAURANT GROUP OF
COMPANIES AS APPARENT OR OSTENSIBLE POTENTIAL
EMPLOYER**

46. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 29 as though they were set forth at length herein.

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47. When Plaintiff first applied for employment he believed that he was applying for a position with the Twin Peaks Restaurant chain owned by Twin Peaks Restaurants Group of Companies.

48. In fact the Twin Peaks Restaurants website lists the Twin Peaks Restaurant at Davie on its website and provides information about job openings at all of its restaurants nationwide including contact information for the franchisee owned restaurant in Davie where Plaintiff applied for employment as a server.

49. As the ostensible or apparent employer, Twin Peaks Restaurants Group of Companies is liable to Plaintiff for DMD Group of Companies' violations of Title VII as set forth elsewhere herein.

WHEREFORE Plaintiff respectfully prays for all relief to which he is entitled either at law or in equity, including actual compensatory damages, back pay, front pay, reinstatement (as appropriate), attorney's fees, costs, emotional damages, pre and post judgment interest at the maximum legal rate, and punitive

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damages. Plaintiff further prays that the court grant an injunction preventing Twin Peaks Restaurants Group of Companies from discriminating against male applicants for the server positions. Plaintiff requests a trial by jury on all matters triable as of right by jury.

**COUNT FOUR - SEX DISCRIMINATION IN HIRING IN VIOLATION OF
TITLE VII AGAINST TWIN PEAKS RESTAURANT GROUP OF
COMPANIES AS JOINT EMPLOYERS**

50. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 29 as though they were set forth at length herein.

51. Based on the aforementioned ability to control the method of work product of DMD Group of Companies franchise employees, including but not limited to hiring policies and trade dress codes, Twin Peaks Restaurants Groups of Companies exercised sufficient control over DMD Group of Companies employees to be a “joint employer”.

52. As a “joint employer”, Twin Peaks Restaurant Group of Companies is liable to Plaintiff for DMD Group of Companies violations of Title VII as set forth elsewhere herein.

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WHEREFORE Plaintiff respectfully prays for all relief to which he is entitled either at law or in equity, including actual compensatory damages, back pay, front pay, reinstatement (as appropriate), attorney's fees, costs, emotional damages, pre and post judgment interest at the maximum legal rate, and punitive damages. Plaintiff further prays that the court grant an injunction preventing Twin Peaks Restaurants Group Companies from discriminating against male applicants for the server positions. Plaintiff requests a trial by jury on all matters triable as of right by jury.

COUNT FIVE - CONSPIRACY TO IMPEDE OR OBSTRUCT JUSTICE IN VIOLATION OF 42 U.S.C. §1985(3) WITH INTENT TO DEPRIVE MALE JOB APPLICANTS OF THE EQUAL PROTECTION OF THE LAWS AGAINST TWIN PEAKS RESTAURANT GROUP OF COMPANIES AND THE DMD GROUP OF COMPANIES.

53. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 29 as though they were set forth at length herein.

54. Defendants the DMD Group of Companies and Twin Peaks Restaurants Group of Companies entered into a franchise agreement and other contractual arrangements whereby they conspired to reserve all server positions in

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Twin Peaks Restaurants throughout the state of Florida, for females and to exclude males from these positions. In conspiring to enter into this agreement the defendants were motivated by an insidious intent to discriminate against male applicants for server positions.

55. The Defendants agreed to advertise these positions as being reserved exclusively for females and to jointly institute hiring practices that ensured that only females were considered for server positions.

56. This conspiracy between the Defendants resulted in Plaintiff and other similarly situated persons from being denied employment as servers solely because they were males and not females in violation of the Equal Protection clause of the Fourteenth Amendment to the United State Constitution.

WHEREFORE Plaintiff respectfully prays for all relief to which he is entitled either at law or in equity, including actual compensatory damages, back pay, front pay, reinstatement (as appropriate), attorney's fees, costs, emotional damages, pre and post judgment interest at the maximum legal rate, and punitive damages. Plaintiff further prays that the court grant an injunction preventing Twin

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Peaks Restaurants Group of Companies and DMD Group of Companies from discriminating against male applicants for the server positions. Plaintiff requests a trial by jury on all matters triable as of right by jury.

Dated this 23rd day of June, 2016.

Respectfully submitted,

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