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8 *Attorneys for Plaintiff, the Plan,*
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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 LANCE BAIRD, individually,
14 And on behalf of all others similarly
15 Situated, and on behalf of the
16 HYATT CORPORATION
17 RETIREMENT SAVINGS PLAN,

18 Plaintiff(s),

19 vs.

20 HYATT CORPORATION; HYATT
21 CORPORATION BENEFITS
22 COMMITTEE and its members,

23 Defendant(s).

Case No.: 2:22-cv-01620-DSF(Ex)

**FIRST AMENDED CLASS
ACTION COMPLAINT**

Complaint Filed March 10, 2022

1 **COMPLAINT**

2 1. This case arises from the failure of Defendant, Hyatt
3 Corporation (“Defendant” or “Hyatt”), to properly defer compensation paid
4 to Plaintiff, Lance Baird (“Plaintiff” or “Mr. Baird”), and other
5 participants of the Hyatt Corporation Retirement Savings Plan, as
6 amended and restated, effective as of January 1, 2017 (the “Plan”).

7 2. The Plan is a defined contribution, individual account,
8 employee pension benefit plan under 29 U.S.C. § 1002(2)(A) and §
9 1002(34).

10 3. The Plan has more than \$2,130,777,033 in assets with almost
11 26510 active and more than 47849 total participants as of the end of 2020.
12 Defendants are the Plan’s fiduciaries: the Plan sponsor, Hyatt, and the
13 Hyatt Corporation Benefits Committee and its members (collectively,
14 “Defendants”).

15 4. Mr. Baird brings this action on behalf of himself, all other
16 similarly situated Plan participants and beneficiaries (collectively, the
17 “Class,” as defined in detail below), and the Plan, to:

- 18 a) enforce his and the Class’s rights under the terms of the Plan;
- 19 b) hold Defendants liable to the Plan for their breaches of
20 fiduciary duties;
- 21 c) obtain injunctive and declaratory relief; and
- 22 d) obtain all other appropriate relief under the Employee
23 Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001,
24 *et seq.*

25 **THE PARTIES**

26 5. Plaintiff Lance Baird is a participant of the Plan.

27 6. Mr. Baird is a resident and citizen of Long Beach, California,
28 and has been employed by Hyatt since March, 15, 2017.

1 7. Mr. Baird is currently employed by Hyatt as a server in
2 Huntington Beach, California.

3 8. Mr. Baird brings this action on behalf of himself, all other
4 similarly situated members of the Plan, and on behalf of the Plan itself.

5 9. Defendant Hyatt is a Delaware Corporation with its current
6 headquarters in Chicago, Illinois.

7 10. Hyatt is a multinational hospitality company that manages
8 luxury hotels, resorts, and vacation properties that provide lodging, food,
9 beverage, and other services.

10 11. Hyatt is the Plan sponsor, Plan administrator, and a fiduciary
11 of the Plan under ERISA pursuant to 29 U.S.C. §§ 1002, 1102.

12 12. Defendant Hyatt Corporation Benefits Committee has the full
13 and complete authority, responsibility, and control over the management,
14 administration, and operation of the Plan pursuant to the Plan
15 Document.¹

16 13. The Hyatt Corporation Benefits Committee also administers
17 the Plan and is a named fiduciary and/or a fiduciary to the Plan under
18 ERISA pursuant to 29 U.S.C. §§ 1002, 1102.

19 14. The Hyatt Corporation Benefits Committee maintains its
20 address at Hyatt's headquarters in Chicago, Illinois and its members are
21 appointed by Hyatt to administer the Plan.

22 **JURISDICTION AND VENUE**

23 15. Mr. Baird seeks relief on behalf of himself, all others similarly
24 situated persons and on behalf of the Plan, pursuant to ERISA's civil
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28 ¹ The Plan, as with other ERISA plans, is "established and maintained pursuant to a written instrument," *i.e.*, the "Plan Document." 29 U.S.C. § 1102(a)(1).

1 enforcement remedies with respect to fiduciaries and other interested
2 persons under ERISA Section 409, 29 U.S.C. § 1109 and 29 U.S.C. § 1132.

3 16. This Court has subject matter jurisdiction over this action
4 pursuant to 28 U.S.C. § 1331 because the action arises under the laws of
5 the United States.

6 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391
7 because Mr. Baird resides in this District and the breach or violation took
8 place in this District.

9 **BACKGROUND FACTS**

10 **I. RELEVANT PROVISIONS IN THE PLAN CONCERNING**
11 **PARTICIPANT COMPENSATION DEFERRALS AND**
12 **HYATT'S TIPS POLICY**

13 18. Pursuant to Section 3.3(a)(i) of the Plan, Participants “may
14 elect . . . to contribute a 401(k) Contribution in an amount equal to a
15 designated whole percentage of his Pay” with a maximum limit of 30% of
16 the Participant’s Compensation, calculated on an annual basis.

17 19. Section 1.53 of the Plan defines “Pay” as “the amount of his
18 Compensation payable to him for a Payroll Period.”

19 20. The Plan defines “Compensation” in Section 1.17 as “the
20 amount reported for a Participant on IRS Form W-2, Box 1 for the Plan
21 Year by a Participating Company.”

22 21. The Summary Plan Document of the Plan also states that
23 “your compensation for any year is generally all your pay reported in Box
24 1 of your W-2 Form.”

25 22. The Internal Revenue Code (26 U.S.C. § 3401(f)) expressly
26 provides that the term “wages” for Box 1 of form W-2 includes tips
27 received by an employee in the course of his employment.

28

1 23. Hyatt has a mandatory policy of requiring tipped employees,
2 including Mr. Baird, to be paid all charged tips in cash rather than
3 through payroll, interfering with Plaintiff's and Class members' ability to
4 defer income under the terms of the Plan.

5 24. Hyatt does not provide its employees with the option to receive
6 those tips later with their compensation paid through payroll.

7 25. When determining the taxable earnings for its employees,
8 Hyatt includes the credit card tips that it requires Plaintiff and other
9 tipped employees to report.

10 26. Hyatt calculates and applies the taxes and withholding due on
11 those earnings, as well as payroll deductions for benefits, including the
12 deferral election for the Plan, before making payments to its employees
13 through payroll for compensation.

14 27. Because Hyatt mandates that credit card tips, which make up
15 a significant portion of certain employees' compensation, be paid out to
16 employees at the end of the shift rather than through payroll, there are
17 frequently insufficient amounts paid through payroll to cover the entirety
18 of the employees' deferral election for the Plan. In these instances, the
19 affected employees are only able to make after-tax contributions to the
20 Plan to make up for the shortfall.

21 28. The Plan Document neither excludes tip income from their
22 compensation nor provides for Hyatt's mandatory Tips Policy which has
23 the effect of discriminating against employees who receive tips as part of
24 their income when compared to employees who do not receive tipped
25 income.

26 **II. MR. BAIRD'S DEFERRAL ELECTIONS**

27 29. Since 2017, Mr. Baird has elected to defer a portion of his
28 compensation under the terms of the Plan.

1 30. As a result of Hyatt's mandatory Tips Policy, Hyatt has failed
2 to defer the elected percentage of Mr. Baird's compensation to his Plan
3 account.

4 31. Mr. Baird has made a series of changes to his deferral elections
5 and none of them have been met due to Hyatt's failure in properly
6 deferring his compensation pursuant to the Plan.

7 32. On July 11, 2017, Mr. Baird made a request to change his
8 deferral election from 0% to 5% of his Compensation.

9 33. On March 4, 2019, he updated his deferral election to 10% of
10 his compensation.

11 34. On June 2, 2020, he updated his deferral percentage to 50% of
12 his compensation.

13 35. On August 14, 2020, he changed his deferral election to 8% of
14 his compensation, which is his current deferral election.

15 36. Below is a chart illustrating the actual deferral percentage of
16 Mr. Baird's compensation as calculated by dividing the "Less 401(k) (D-
17 Box 12)" value by the Gross Pay on his W-2 forms:

18	2018 W-2	
19	Gross Pay	\$30,495.37
20	Less 401(k)	\$1503.28
21	Percentage	4.93%
22	2019 W-2	
23	Gross Pay	\$21,063.77
24	Less 401(k)	\$1893.38
25	Percentage	8.99%
26	2020 W-2	
27	Gross Pay	\$41,328.19
28	Less 401(k)	\$2877.99
	Percentage	6.96%

1 37. As shown in the preceding paragraph, the actual deferral
2 percentages contributed to Mr. Baird's Plan account fall below the
3 corresponding deferral election at the time.

4 38. Hyatt has breached its fiduciary duties under ERISA by failing
5 to follow the terms of the Plan and failing to comply with Mr. Baird's
6 deferral elections pursuant to the Plan,

7 **ERISA'S FIDUCIARY STANDARDS**

8 39. ERISA Section 404 provides, in relevant part, that:

9 [A] fiduciary shall discharge his duties with respect to a plan
10 solely in the interest of the participants and beneficiaries
11 and—

12 (A) for the exclusive purpose of:

13 (i) providing benefits to participants and their
14 beneficiaries; and

15 (ii) defraying reasonable expenses of administering
16 the plan

17 (B) with the care, skill, prudence, and diligence under the
18 circumstances then prevailing that a prudent man acting
19 in a like capacity and familiar with such matters would
20 use in the conduct of an enterprise of a like character and
21 with like aims;

22 ...

23 (D) in accordance with the documents and instruments
24 governing the plan insofar as such documents and
25 instruments are consistent with the provisions of his
26 subchapter and subchapter III.

27 29 U.S.C. § 1104 (a).
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CLASS ALLEGATIONS

40. This action is brought as a class action by Mr. Baird on behalf of himself and the Class, defined as follows:

All current and former participants of the Hyatt Corporation Retirement Savings Plan who received reported tips as compensation and had a deferral election in place at the time they received the reported tips within six years of the date this action was filed.

Excluded from the Class is the judge to whom this case is assigned and any other judicial officer having responsibility for this case, and Defendants.

41. This action may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

42. Numerosity. Mr. Baird is informed and believes that there are approximately 26,510 active and more than 47,849 total Plan participants, of which a significant percentage would be members of the Class. As a result, the members of the Class are so numerous that their individual joinder in this action is impracticable.

43. Commonality. There are numerous questions of fact and/or law that are common to Plaintiff and Class members, including, but not limited to the following:

- a. Whether the Plan requires Defendants to apply the deferral elections of Plaintiff and the Class to the reported tips they received;
- b. Whether Defendants acted as fiduciaries to the Plan under ERISA when they failed to apply the deferral elections of Plaintiff and members of the Class to their reported tips as alleged herein;

1 c. Whether Defendants breached their fiduciary duties under
2 ERISA when they failed to apply the deferral elections of
3 Plaintiff and members of the Class to their reported tips as
4 alleged herein; and

5 d. Whether and what form of relief should be afforded to
6 Plaintiff and the Class.

7 44. Typicality. Mr. Baird, a member of the Class, has claims that
8 are typical of all of the members of the Class.

9 45. Mr. Baird's claims and all of the claims of the members of the
10 Class arise out of the same uniform course of conduct by Defendants and
11 arise under the same legal theories that are applicable as to all other
12 members of the Class.

13 46. Adequacy of Representation. Mr. Baird will fairly and
14 adequately represent the interests of the members of the Class.

15 47. Mr. Baird has no conflicts of interest with or interests that are
16 any different from the other members of the Class.

17 48. Mr. Baird has retained competent counsel experienced in class
18 action and other complex litigation, including class actions under ERISA.

19 49. Predominance. Common questions of law and fact
20 predominate over questions affecting only individual members of the
21 Class, and the Court, as well as the parties, will spend the vast majority
22 of their time working to resolve these common issues.

23 50. Indeed, the only individual issue of significance will be the
24 exact amount of damages recovered by each Class member, the calculation
25 of which will ultimately be a ministerial function that does not pose an
26 impediment to certification.

27 51. Superiority. A class action is superior to all other feasible
28 alternatives for the resolution of this matter.

1 52. The vast majority, if not all, of the members of the Class are
2 unaware of Defendants' breaches of fiduciary duty such that they will
3 never bring suit individually.

4 53. Furthermore, even if they were aware of the claims they have
5 against Defendants, the claims of virtually all members of the Class
6 would be too small to economically justify individual litigation.

7 54. Finally, individual litigation of multiple cases would be highly
8 inefficient, a gross waste of the resources of the courts and of the parties,
9 and potentially could lead to inconsistent results that would be contrary
10 to the interests of justice.

11 55. Manageability. This case is well suited for treatment as a
12 class action and easily can be managed as a class action since evidence of
13 both liability and damages can be adduced, and proof of liability and
14 damages can be presented, on a Class-wide basis, while the allocation and
15 distribution of damages to members of the Class would essentially be
16 ministerial.

17 56. Defendants have acted on grounds generally applicable to the
18 Class by uniformly subjecting Class members to their policy of refusing to
19 apply their deferral election to their reported tips.

20 57. Accordingly, injunctive relief, as well as legal and/or equitable
21 monetary relief (such as disgorgement and/or restitution), along with
22 corresponding declaratory relief, are appropriate with respect to the Class
23 as a whole.

24 **COUNT I**

25 **Breach of Fiduciary Duty – ERISA § 502(a)(2)**

26 58. Mr. Baird restates and re-alleges the foregoing paragraphs as
27 if fully set forth herein.

28

1 59. Defendants are fiduciaries to the Plan under ERISA § 3(21)(A),
2 29 U.S.C. 1002(21)(A), based on the discretionary authority and
3 responsibilities they assumed and/or were granted for administering the
4 Plan.

5 60. ERISA § 502(a)(2) authorizes a participant or beneficiary to
6 bring a civil action to obtain appropriate relief for breaches of fiduciary
7 duty on behalf of a plan, to hold the breaching fiduciary personally liable
8 to make good to such plan any losses to the plan resulting from each such
9 breach, and any other equitable or remedial relief as the court may deem
10 appropriate.

11 61. Defendants' administration of the Plan with respect to the
12 participants' right to defer his or her reported tips contradicts the Plan
13 Document and potentially jeopardizes the tax-qualified status of the Plan.

14 62. In doing so, Defendants have breached ERISA § 404(a)(1)(D)
15 by failing to act in accordance with the documents and instruments
16 governing the Plan.

17 63. Moreover, Defendants have breached ERISA § 404(a)(1)(B) by
18 failing to act with the care, skill, prudence, and diligence under the
19 circumstances then prevailing of a prudent man acting in a like capacity.

20 64. Upon information and belief, Defendants failed to prudently
21 consider their interpretation and administration of a Plan participant's
22 right to defer reported tips.

23 65. Instead, Defendants appear to have simply adopted an
24 arbitrary position denying Plan participants the right to defer reported
25 tips paid by credit card and demanded that participants convert the tips
26 to cash at the end of each shift, thereby avoiding the need to follow the
27 participants' election to defer a percentage of their credit card tip income.
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1 66. As a result, the Plan has suffered losses from, *inter alia*, the
2 contributions from Mr. Baird, and the Class, the matching contribution
3 from the Plan sponsor, and the profits those contributions would have
4 accrued as Plan assets.

5 67. In and denying Plan participants who are tipped employees
6 the right to defer reported tips, Defendants have violated the anti-
7 discrimination provision of ERISA § 510, 29 U.S.C. § 1140 and breached
8 their duties of loyalty and prudence by interfering with Mr. Baird's ability
9 to defer income under the terms of the Plan.

10 68. While highly-compensated and/or non-tipped employees are
11 permitted to apply their pre-tax deferral election to the entirety of their
12 reported income, Defendants interfere with Plaintiff's ability to attain
13 rights under the Plan by precluding him and other tipped employees from
14 deferring a portion of their reported income from reported credit card
15 tips.

16 69. Accordingly, Mr. Baird asserts this claim on behalf of himself
17 and the Class, and on behalf of the Plan, to hold Defendants personally
18 liable to make good to the Plan the losses resulting from their breaches of
19 fiduciary duties, as well as declaratory and injunctive relief to enjoin the
20 illegal practices of Defendants described herein, and to obtain such
21 appropriate equitable relief as may be necessary under the circumstances.

22 **COUNT II**

23 **Breach of Fiduciary Duty – ERISA § 502(a)(3)**

24 70. Mr. Baird restates and re-alleges the foregoing paragraphs as
25 if fully set forth herein.

26 71. ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a
27 civil action "by a participant, beneficiary, or fiduciary (A) to enjoin any act
28 or practice which violates any provision of this subchapter or the terms of

1 the plan, or (B) to obtain other appropriate equitable relief (i) to redress
2 such violations or (ii) to enforce any provisions of this subchapter or the
3 terms of the plan.”

4 72. Pursuant to the Plan, Mr. Baird, and the Class were entitled to
5 contribute a portion of their reported tips based on their deferral
6 elections, and receive benefits based on those contributions.

7 73. Defendants refused, and continue to refuse, to comply with the
8 terms of the Plan with respect to Mr. Baird’s and the Class’s rights to
9 contribute a portion of their reported tips to the Plan based on their
10 deferral elections, and receive benefits based on those contributions.

11 74. Upon information and belief, Defendants failed to prudently
12 consider their interpretation and administration of a Plan participant’s
13 right to defer reported tips.

14 75. Instead, Defendants appear to have simply adopted an
15 arbitrary position denying Plan participants’ rights to defer reported tips
16 based on Hyatt’s tax withholding practices, thereby risking the qualified
17 status of the Plan.

18 76. In addition, by denying Plan participants who are tipped
19 employees the right to defer reported tips, Defendants also have violated
20 and continue to violate ERISA § 510, 29 U.S.C. § 1140, by discriminating
21 against plan participants or beneficiaries and interfering with
22 participants' or beneficiaries' attainment of rights under ERISA. While
23 highly-compensated and/or non-tipped employees are permitted to apply
24 their pre-tax deferral election to the entirety of their reported income,
25 Defendants have knowingly and intentionally interfered with the rights of
26 the tipped employees through its mandatory Tips Policy precluding Mr.
27 Baird from deferring a substantial portion of their reported income, i.e.,
28

1 the income they receive from payroll, but not the income from reported
2 credit card tips.

3 77. Accordingly, Mr. Baird seeks declaratory and injunctive relief
4 on behalf of himself and the Class to enjoin the illegal practices of
5 Defendants described herein, and to obtain such other appropriate
6 equitable relief as may be necessary under the circumstances recognizing
7 their rights to those benefits.

8 WHEREFORE, Plaintiff, on behalf of himself, the Class, and the
9 Plan, demands judgment against Defendants for the following relief:

10 (a) an Order declaring this action to be maintainable as a class
11 action and appointing Mr. Baird as the representative of the Class and his
12 counsel as counsel for the Class;

13 (b) a declaratory judgment that Defendants have acted contrary to
14 the Plan by preventing Plaintiff and the Class from contributing a portion
15 of their reported tips based on their deferral elections;

16 (c) a declaratory judgment that Defendants have violated the
17 anti-discrimination provision of ERISA § 510, 29 U.S.C. § 1140, by
18 interfering with the participants' or beneficiaries' attainment of rights
19 under ERISA and preventing Mr. Baird and the Class from contributing a
20 portion of their reported tips based on their deferral elections;

21 (d) a declaratory judgment that Defendants have breached their
22 fiduciary duties to Plaintiff and the Class, in violation of 29 U.S.C. § 1104,
23 by interfering with the participants' or beneficiaries' attainment of rights
24 under ERISA and by preventing Mr. Baird and the Class from
25 contributing a portion of their reported tips based on their deferral
26 elections;

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1 (e) an Order enjoining Defendants from continuing to engage in
2 the breaches of fiduciary duty and violations of law described
3 herein;

4 (f) an accounting of the Plan of the monies that would have been
5 contributed to the Plan and the profits such monies would have generated
6 but for Defendants' breaches of their fiduciary duties;

7 (g) disgorgement, restitution, and/or restoration to the Plan of the
8 monies that would have been contributed to the Plan and the profits such
9 monies would have generated but for Defendants' breaches of their
10 fiduciary duties;

11 (h) pre-judgment and post-judgment interest at the maximum
12 permissible rates, whether at law or in equity;

13 (i) attorneys' fees, costs, and other recoverable expenses of
14 litigation; and

15 (j) such further and additional relief to which Mr. Baird, the
16 Class, and the Plan may be justly entitled and the Court deems
17 appropriate and just under all of the circumstances.

18
19 DATED: November 28, 2023

Respectfully Submitted,

20
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and as Representative for the
Proposed Class*

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NOTICE PURSUANT TO ERISA § 502(h)

To ensure compliance with the requirements of ERISA § 502(h), 29 U.S.C. § 1132(h), the undersigned hereby affirms that, on this date, a true and correct copy of this First Amended Complaint was served upon the Secretary of Labor and the Secretary of the Treasury by certified mail, return receipt requested.

Dated: November 28, 2023

Respectfully submitted,

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