Shane L. Keppner (9183)
BENNETT TUELLER JOHNSON & DEERE
Attorneys for Plaintiff
3165 East Millrock Dr., Suite 500
Salt Lake City, Utah 84121
Telephone: (801) 438-2000
skeppner@btjd.com

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

SALT LAKE CITY DEPARTMENT – STATE OF UTAH

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VESTAR GATEWAY, LLC, a Delaware limited liability company, Plaintiff, vs. SIX SAILOR CIDER, LLC, a Utah limited liability company; UTAH PANTAGES CINEMATIC THEATRE, LLC, a Utah limited liability company; and MICHAEL PATTON, aka MICHAEL VALENTINE, an individual, Defendants.	**COMPLAINT** (Eviction) Case No. 24 Judge

* * * * * *

Plaintiff Vestar Gateway, LLC ("Vestar") hereby complains against the above-named Defendants Six Sailor Cider, LLC, Utah Pantages Cinematic Theatre, LLC, and Michael Patton, also known as Michael Valentine (collectively, "Defendants"), and alleges as follows:

DESCRIPTION OF THE PARTIES

1. Vestar is a Delaware limited liability company which owns real property in the State of Utah.

2. Defendant Six Sailor Cider, LLC ("Six Sailor") is a Utah limited liability company with a principal place of business located in Salt Lake County, State of Utah.

3. Defendant Utah Pantages Cinematic Theatre, LLC ("Utah Pantages") is a Utah limited liability with a principal place of business located in Salt Lake County, State of Utah.

4. Defendant Michael Patton, also known as Michael Valentine ("Patton"), is an individual residing in Utah.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to Utah Code Ann. § 78A-5-102.

6. Venue properly lies in this Court pursuant to Utah Code Ann. §§ 78B-3-301 and 78B-3-307 in that the property at issue in this case is located in Salt Lake County, and the cause of action arises in Salt Lake County.

7. This Court has personal jurisdiction over Defendants in that they are residents of the State of Utah.

GENERAL ALLEGATIONS

8. Vestar owns real property located at 158 South Rio Grande Street, Suite 67, Salt Lake City, Utah 84101 (the "Property").

9. On or about July 13, 2022, Six Sailor and Utah Pantages (collectively, "Tenants") signed a Lease Agreement (the "Lease") whereby they rented the Property from Vestar for five years.

10. On or about July 13, 2022, in connection with the Lease, Patton signed a Guaranty of Lease (the "Guaranty") whereby he agreed to personally guaranty Tenants' obligations under the Lease.

11. Tenants are currently in possession of the Property.

12. Pursuant to the Lease, Tenants agreed to make monthly payments to Vestar in the amount of $1,238.58 in minimum annual rent, together with 6% of Tenants' gross sales, and additional rent consisting of Tenants' share of real estate taxes, assessments, promotion fees, and common area expenses (collectively, "Rent").

13. Also pursuant to the Lease, Tenants agreed to pay a late charge of 10% on any unpaid amounts after the fifth day of any month and interest on past due sums at the default rate off 24% per annum of any past-due payment, together with costs and attorneys' fees incurred by Vestar in connection with any legal action taken to enforce the Lease or evict Tenants from the Property.

14. Tenants failed to pay Rent and all other sums due through May 2024.

15. Tenants are currently in arrears in Rent, late fees, and attorneys' fees in the amount of $2,695.93 as of May 6, 2024 (collectively, the "Past Due Rent").

16. Article 16(B) of the Lease requires Tenants to be open for business daily during specified hours.

17. Tenants have not been open for business at the Property during the times required under the Lease.

18. Articles 1, 7, and 16 of the Lease requires Tenants to use the Property solely for the operation of a retail outlet selling cider and cider themed desserts and coffee.

19. Tenants have failed to use the Property solely for the uses permitted by the Lease by offering beer to customers.

20. Articles 1, 7, and 13 of the Lease require Tenants to obtain Vestar's prior written consent before changing the Tenants' trade name and signage.

21. Tenants changed their trade name and signage from Six Sailor Cider to "Weathered Waves" without first obtaining Vestar's consent.

22. On May 7, 2024, Vestar delivered a Three-Day Notice to Pay or Vacate (the "Pay Notice") to Defendants notifying them of the failure to pay Rent and providing a three-day cure period.

23. Also on May 7, 2024, Vestar delivered a Three-Day Notice to Cure or Vacate (the "Breach Notice") to Defendants notifying them of the Lease violations described above in paragraphs 16-21 and providing a three-day cure period.

24. Tenants have failed to comply with the Pay Notice or the Breach Notice (collectively, the "Notices") and are in unlawful detainer of the Property.

25. Vestar is entitled to an Order of Restitution for the Property, and for a Judgment for damages.

FIRST CAUSE OF ACTION

(Unlawful Detainer against Defendants)

26. Vestar incorporates the allegations of paragraphs 1 through 25 above as if fully set forth herein.

27. On May 6, 2024, the Notices were sent via Federal Express to the Defendants' notice address provided in the Lease and the Guaranty.

28. Tenants have failed to vacate the Property, pay the Past Due Rent, or cure the breaches of the Lease described in the Breach Notice.

29. Vestar is entitled to an order of restitution from the Court directing Tenants to vacate the Property and restore possession of the Property to Vestar pursuant to Utah Code Ann. § 78B-6-812(1).

30. Vestar is also entitled to an award of fees and three times the amount of damages suffered as a result of Tenants' unlawful detainer pursuant to Utah Code Ann. § 78B-6-811(3).

31. Vestar is therefore entitled to judgment against Tenants as set forth below in paragraph 1 of the Prayer for Relief.

SECOND CAUSE OF ACTION

(Breach of Contract against Tenants)

32. Vestar incorporates the allegations of paragraphs 1 through 31 as if fully set forth herein.

33. The Lease constitutes a valid and binding contract between Vestar and Tenants.

34. Vestar has performed its obligations pursuant to the Lease by, among other things, permitting Tenants to occupy and use the Property.

35. By failing to pay the agreed-upon monthly rental payments as described above, failing to remain open for business during required business hours, failing to obtain Vestar's consent prior to changing its trade name and signage, and offering beer to customers in violation of the permitted use of the Property, Tenants are in breach of the Lease.

36. Vestar has been damaged by Tenants' breaches of the Lease and is entitled to recover from Tenants the full amount due under the Lease as of the date of trial, including the Past Due Rent, and all other special, incidental and consequential damages.

37. Vestar is therefore entitled to judgment against Tenants as set forth below in paragraph 2 of the Prayer for Relief.

THIRD CAUSE OF ACTION

(Breach of Contract against Patton)

38. Vestar incorporates the allegations of paragraphs 1 through 37 as if fully set forth herein.

39. The Guaranty constitutes a valid and binding contract between Vestar and Patton.

40. Vestar has performed its obligations pursuant to the Guaranty by, among other things, permitting Tenants to occupy and use the Property.

41. By failing to pay Tenants' monthly rental payments as described above, and requiring Tenant to remain open for business during normal business hours, failing to obtain Vestar's consent prior to changing Tenants' trade name and signage, and allowing Tenants to offer beer to customers in violation of the permitted use of the Property, Patton is in breach of the Guaranty.

42. As a direct and proximate result of Patton's breach of the Guarantee, Vestar has incurred significant damages, together with interest, costs, and attorney fees.

43. Vestar is therefore entitled to judgment against Patton as set forth below in paragraph 3 of the Prayer for Relief.

FOURTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing against Defendants)

44. Vestar incorporates the allegations of paragraphs 1 through 43 as if fully set forth herein.

45. The Lease and Guaranty include implied covenants of good faith and fair dealing.

46. To the extent that the alleged breaches of the Lease and the Guaranty do not amount to a breach of the express terms of the Lease or the Guaranty, Defendants breached the respective implied covenant of good faith and fair dealing included in the Lease and the Guaranty by failing to provide payment to Vestar for Tenants' occupancy and use of the Property, failing to remain open during required business hours, changing the trade name and signage of their business without written consent, and offering beer to customers in violation of the permitted use of the Property.

47. As a direct and proximate result of Defendants' breaches, Vestar has incurred damages, together with additional interest, costs, and attorney fees.

48. Vestar is accordingly entitled to judgment against Defendants as set forth below in paragraph 4 of the Prayer for Relief.

FIFTH CAUSE OF ACTION

(Quasi Contract, Unjust Enrichment and/or Quantum Meruit against Defendants)

49. Vestar incorporates the allegations of paragraphs 1 through 48 as if fully set forth herein.

50. If for any reason the trier-of-fact in this case fails to identify the existence of an enforceable and binding contract between Vestar and Tenants or Patton, Vestar asserts an alternative claim for Quasi Contract, Unjust Enrichment and/or Quantum Meruit.

51. In exchange for Tenants' promise to pay monthly rent, remain open during normal business hours, use only the Six Sailor Cider trade name on signage at the Property, not offer beer for sale at the Property, and Patton's promise to guaranty that payment and

performance, Vestar allowed Tenants to operate their business at the Property, thereby conferring a benefit upon Defendants with a reasonable expectation of being compensated.

52. To permit Defendants to retain the benefit received without fully compensating Vestar would result in an unconscionable and unjust enrichment of Defendants at Vestar's expense.

53. Vestar did not act as a volunteer or intermeddler in connection with the benefits provided to Defendants.

54. Vestar is therefore entitled to judgment against Defendants as set forth below in paragraph 5 of the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Vestar prays for judgment against Defendants as follows:

1. On Vestar's First Cause of Action, for judgment in an amount not less than $2,695.93, plus fees and court costs pursuant to Utah Code Ann. § 78B-6-811 and an order of restitution from the Court directing Tenants to vacate the Property and restore possession of the Property to Vestar pursuant to Utah Code Ann. § 78B-6-812(1).

2. On Vestar's Second Cause of Action, for judgment against Tenants in an amount not less than $2,695.93, augmented by ongoing rent, fees, and costs as set forth in the Lease, together with all other special, incidental, and consequential damages, and pre-and post-judgment interest as allowed by the Lease or Utah law.

3. On Vestar's Third Cause of Action, for judgment against Patton in an amount not less than $2,695.93, augmented by ongoing rent, fees, and costs as set forth in the Lease and the Guaranty, together with all other special, incidental, and consequential damages, and pre- and post-judgment interest as allowed by the Lease or Utah law.

4. On Vestar's Fourth Cause of Action, for judgment against Defendants in an amount not less than $2,695.93, augmented by ongoing rent, fees, and costs, together with all other special, incidental, and consequential damages, and pre- and post-judgment interest as allowed by the Lease or Utah law.

5. On Vestar's Fifth Cause of Action, for judgment against Defendants in an amount not less than $2,695.93, augmented by ongoing rent, fees, and costs, together with all other special, incidental, and consequential damages, and pre-and post-judgment interest as allowed by the Lease or Utah law.

6. For such other and further relief as the Court deems just and proper.

DATED this 13th day of May, 2024.

BENNETT TUELLER JOHNSON & DEERE

/s/ Shane L. Keppner
Shane L. Keppner
Attorneys for Plaintiff