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Superior Court of California,
County of Orange

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Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF ORANGE**

13 RICHARD PEDROZA individually, and) Case No. 30-2014-00731601-CU-BT-
14 on behalf of all persons similarly situated,) CXC

15 Plaintiff,

16 vs.

17 EL DORADO INN, BRILLIANT)
18 MANAGEMENT INC., HSIAO PING)
19 WANG aka WANG HSIAO-PING)
and DOES 1 THROUGH 100 INCLUSIVE,)

20 Defendants.

) Assigned for All Purposes to:

) The Honorable Robert J. Moss

) Dept. CX 102

) **CLASS ACTION**

) **FIRST AMENDED COMPLAINT**

) **1. Violation of Civil Code § 1940.1**

) **2. Violation of Civil Code § 52.1**

) **3. Violation of Unfair Competition Law**

) (Bus. & Prof. Code §17200 et seq.)

21 Plaintiff alleges as follows:

22 **PARTIES**

23
24
25 1. Plaintiff RICHARD PEDROZA, an individual, brings this action on behalf of himself,
26 and on behalf of a class of similarly situated persons pursuant to Code of Civil
27
28

1 Procedure § 382. Plaintiff is a resident of the State of California and a competent
2 adult.

3 2. Plaintiff is informed and believes, and thereupon alleges, that defendant EL
4 DORADO INN is now, and at all times mentioned in this Complaint was, a business
5 operating as an hotel in the city of Anaheim, County of Orange, State of California.

6 3. Plaintiff is informed and believes, and thereupon alleges, that defendant BRILLIANT
7 MANAGEMENT INC. is now, and at all times mentioned in this Complaint was, a
8 corporation based in the State of California, and doing business in the County of
9 Orange, State of California.

10 4. Plaintiff is informed and believes, and thereupon alleges, that defendant HSIAO PING
11 WANG aka WANG HSIAO-PING is a resident of the State of California and the owner
12 of the EL DORADO INN doing business in the County of Orange, State of California.

13 5. Plaintiff does not know the true names or capacities of the defendants sued herein as
14 DOES 1 through 100 inclusive, and therefore sues these defendants by such fictitious
15 names. Plaintiff will amend this complaint to allege their true names and capacities
16 when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of
17 these fictitiously named defendants is responsible in some manner for the occurrences
18 herein alleged, and that plaintiff's damages as herein alleged were proximately caused
19 by those defendants. Each reference in this complaint to "defendant" or "defendants"
20 or to a specifically named defendant refers also to all defendants sued under fictitious
21 names.

22 6. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned each of the defendants, including all defendants sued under fictitious
24 names, and each of the persons who are not parties to this action but are identified by
25 name or otherwise throughout this complaint, was the alter ego of each of the
26 remaining defendants, was the successor in interest or predecessor in interest, and
27 was the agent and employee of each of the remaining defendants and in doing the
28 things herein alleged was acting within the course and scope of this agency and
employment.

CLASS ALLEGATIONS

1
2 7. Plaintiff is a member of a class of persons, the members of which are similarly situated
3 to each other member of that class. The class is defined as follows:

4 All persons who resided at the El Dorado Inn within three
5 years of the date of filing of the original complaint and were
6 required to move out or to check out and reregister before the
7 expiration of 30 consecutive days of occupancy.

8 8. Plaintiff is informed and believes, and thereupon alleges, that the class Plaintiff
9 represents includes persons who contracted to reside at the El Dorado Inn but were
10 coerced to leave prior to 30 days of occupancy. The identity of the members of the
11 class is ascertainable from Defendants' own business records, or those of its agents,
12 which reflect the dates residents commenced and ended occupancy and whether the
13 termination of occupancy was required by Defendants, such as by service of a Notice
14 of Termination of Tenancy or terms in the rental agreement and policies and
15 procedures requiring the residents to move out for 24 hours on the 28th day of
16 occupancy.

17 9. The Plaintiffs and class members' claims against Defendants involve questions of law
18 or fact common to the class that are substantially similar and predominate over
19 questions affecting individual class members in that all class members signed
20 contracts and/or invoices specifying that occupants are required to check out for 24
21 hours every 28 days and/or were told by Defendants' managers that they could not
22 stay longer than 28 days without checking out and then could reregister for another
23 28 day period, and in that Defendants' official policy was to prohibit any occupant
24 from staying more than 28 days in order to prevent them from becoming tenants.

25 10. The claims of Plaintiff are typical of the claims of the members of the class.

26 11. Plaintiff can fairly and adequately represent the interests of the class.

FIRST CAUSE OF ACTION FOR VIOLATION OF CIVIL CODE § 1940.1

AGAINST ALL DEFENDANTS (BROUGHT AS INDIVIDUAL ACTION AND

CLASS ACTION)

- 1 12. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein,
2 paragraphs 1 through 11 of this Complaint..
- 3 13. Defendants operate the El Dorado Inn located at 3360 W. Lincoln Ave. Anaheim, CA
4 which is a residential hotel within the meaning of Health and Safety Code § 50519:
5 “any building containing six or more guestrooms or efficiency units, as defined by
6 Section 17958.1, intended or designed to be used, or which are used, rented, or hired
7 out, to be occupied, or which are occupied, for sleeping purposes by guests, which is
8 also the primary residence of those guests.”
- 9 14. During the Class Period the El Dorado Inn had more than six guestrooms that were
10 designed by Defendants to be used and occupied for sleeping purposes by guests and
11 which Defendants knew were the primary residences of those guests.
- 12 15. Defendants knew from their own records that Plaintiffs and the Class members did
13 not list any other primary residence and that many of them received daily mail at the
14 El Dorado Inn and continued to reside at the El Dorado Inn for months or years at a
15 time.
- 16 16. The El Dorado Inn does not require “good credit” and will rent to persons with
17 evictions. The El Dorado Inn specifically targets “homeless” people or people who are
18 not able to own a house or rent a house or apartment under normal circumstances.
19 Defendants specifically advertised that the El Dorado Inn only offered “weekly rental”
20 units. The El Dorado Inn does not target “tourists” and virtually all or all of the
21 occupants rent on a weekly basis for a number of consecutive weeks.
- 22 17. Plaintiffs are informed and believe, and thereupon allege, that Defendants HSIAO
23 PING WANG aka WANG HSIAO-PING operates the El Dorado Inn as a fictitious
24 business name but have also named El Dorado Inn separately in the event it is a
25 separate legal entity.
- 26 18. Plaintiffs are informed and believe, and thereupon allege, that Defendant BRILLIANT
27 MANAGEMENT INC. is a corporation owed by HSIAO PING WANG aka WANG
28 HSIAO-PING and operates the El Dorado Inn and established, authorized, enforced
and ratified the tortious policies described in this Complaint.

1 19. Defendant HSIAO PING WANG aka WANG HSIAO-PING is the owner of El Dorado
2 Inn and BRILLIANT MANAGEMENT INC. During the class period, he personally
3 established, authorized, enforced and ratified the tortious policies described in this
4 Complaint. Specifically, his intent in formulating the “28 day shuffle” policy was to
5 financially benefit from having a reliable base of ongoing occupants who lived at the El
6 Dorado Inn on essentially a full time basis while at the same time avoiding the
7 financial risks involved in a conventional landlord-tenant relationship. He personally
8 had the intent to make the occupants maintain transient occupancy status. He also
9 profited from the practices describe below because the Defendants did not have to
10 respect the class members’ rights as tenants and therefore could avoid more expensive
unlawful detainer proceedings.

11 20. During the class period, Plaintiff and other persons rented rooms at the El Dorado Inn
12 pursuant to written Rules and Regulations provided by Defendants. Plaintiff intended
13 to use their rooms at the El Dorado Inn as his primary residence.

14 21. During this time frame, Defendants’ policy and practice was to require residents to
15 vacate the premises before 30 consecutive days of occupancy. This policy was stated
16 in the Rules and Regulations provided to Plaintiff and the class members: “EVERY 28
17 DAYS, GUESTS ARE REQUIRED TO CHECK OUT FOR 24 HOURS and required the
18 Plaintiff and class members to check out by 11:00 a.m. on the 28th day or forfeit their
19 security deposit.

20 22. In addition, occupants were allowed to pay their rent weekly and were required to pay
21 their rent in advance. Written on each weekly rent invoice are the words “28 Day” and
22 then a date which corresponds what would be the 28th day in the most recent cycle of
23 occupancy. Thus someone moving in on June 1st would pay for one week and the
24 invoice would say “28 Day 6-28-2014.” The same notation would be present on the
25 invoices for the second, third and fourth weeks. At the end of the fourth week, the
26 occupant would have to move out but could return the next day and start another 28
27 day cycle. The invoice for the first week of the cycle would have a new “28 Day” date
28 calculated.

1 23. Defendants' purpose for this policy and practice was to ensure that the occupants
2 would maintain "transient occupancy status" pursuant to paragraph (1) of subdivision
3 (b) of Civil Code § 1940.

4 24. Civil Code § 1940 commences Chapter 2 of Title 5, Part 4, Division 3 of the Civil Code
5 that establishes various consumer protections and tenant rights afforded to persons
6 who hire a dwelling unit including "tenants, lessees, boarders, lodgers, and others,
7 however denominated." Subdivision (b) (1) of section 1940 excludes from these
8 protections those tenants who have only "transient occupancy," which is defined
9 elsewhere to mean 30 days or less of occupancy. (Revenue & Taxation Code § 7280.)

10 25. By preventing guests from occupying a room for more than 30 days, Defendants
11 sought to exclude Plaintiff and the class members from acquiring the protections and
12 rights afforded by Chapter 2.

13 26. This tactic of moving residents out before they achieve "tenant" status is known as the
14 "28 Day Shuffle."

15 27. To prohibit the "28 Day Shuffle" tactic, the Legislature enacted Civil Code § 1940.1,
16 which provides "No person may require an occupant of a residential hotel, as defined
17 in Section 50519 of the Health and Safety Code, to move, or to check out and
18 reregister, before the expiration of 30 days occupancy if a purpose is to have that
19 occupant maintain transient occupancy status pursuant to paragraph (1) of
20 subdivision (b) of Section 1940. Evidence that an occupant was required to check out
21 and reregister shall create a rebuttable presumption, which shall affect solely the
22 burden of producing evidence, of the purpose referred to in this subdivision."

23 28. During this time frame, pursuant to its policy and practice, Defendants routinely
24 required Plaintiff and other residents to check out no later than the 28th day but then
25 permitted them to resume occupancy as long they were absent overnight and checked
26 in (reregistered) the following day.

27 29. On various dates, Plaintiff rented a room at the El Dorado Inn in Anaheim, California
28 and signed the standard aforementioned Extended Stay Agreement. He continued to
occupy the room or another at the El Dorado Inn. Approximately every 28 days he

1 was required to vacate his room before the 30th consecutive day of occupancy. He
2 complied with those demands on each occasion under threat of legal action, forfeiture
3 of his security deposit as well as fear for his personal safety and security of his
4 belongings if he did not comply.

5 30. Similarly, during the class period, the class members rented rooms at the El Dorado
6 Inn, signing the standard aforementioned Extended Stay Agreement. They continued
7 to occupy one room or another at the El Dorado Inn for extended periods of times of
8 months or years, but were required to vacate the premises before 30 consecutive days
9 of occupancy, and then were permitted to resume residence there provided they
10 “checked out” for one day and reregistered by signing a new Extended Stay
11 Agreement.

12 31. Based upon these violations of Civil Code § 1940.1, Defendants are required to pay a
13 civil penalty of \$500 per violation to Plaintiff and the class members for each
14 occurrence and owe Plaintiff and the class members civil penalties in amounts
15 according to proof.

16 **SECOND CAUSE OF ACTION FOR VIOLATION OF CIVIL CODE § 52.1**
17 **AGAINST ALL DEFENDANTS (BROUGHT AS INDIVIDUAL ACTION AND**
18 **CLASS ACTION)**

19 32. Plaintiff alleges and incorporates by reference in this cause of action the allegations
20 contained in paragraphs 1 through 31, inclusive as though fully set forth hereat.

21 33. During the class period, Defendants interfered with, or attempted to interfere with,
22 Plaintiff and class members’ exercise or enjoyment of their statutory rights secured by
23 Division 3, Part 4, Title 5, Chapter 2 of the Civil Code by threats, intimidation, or
24 coercion. The threats, intimidation and coercion included verbal harassment,
25 physically removing or threatening to physically remove residents who did not depart
26 or when demanded, physically removing or threatening to physically remove of
27 possessions, blocking or attempting to block residents from returning to their units,
28 locking out residents, physical intrusions into residents’ rooms without permission

1 and at unpredictable hours, and verbal and written threats to bring unauthorized legal
2 proceedings against the tenants.

3 34. On various occasions during the class period, Plaintiff experienced one or more form
4 of threats, intimidation or coercion to deprive him of his statutory rights.

5 35. As a direct and proximate result of the aforementioned wrongful conduct by
6 Defendants, Plaintiff and class members are entitled to recover actual damages
7 according to proof and a civil penalty of \$25,000 per each violation pursuant to Civil
8 Code § 52.1 (b) and § 52 (b).

9 **THIRD CAUSE OF ACTION FOR VIOLATION OF THE UNFAIR**
10 **COMPETITION LAW AGAINST ALL DEFENDANTS (BROUGHT AS**
11 **INDIVIDUAL ACTION AND CLASS ACTION)**

12 36. Plaintiff alleges and incorporates by reference in this cause of action the allegations
13 contained in paragraphs 1 through 35, inclusive as though fully set forth hereat.

14 37. The Unfair Competition Law prohibits any person from engaging in unfair
15 competition as that term is defined in Business and Professions Code § 17200, which
16 includes any “unlawful, unfair or fraudulent business act or practice,” “unfair,
17 deceptive, untrue or misleading advertising,” and any act prohibited by Chapter 1
18 (commencing with section 17500) of Part 3 of Division 7 of the Business and
19 Professions Code.

20 38. During the relevant time frame, Defendants violated the Civil Code provisions alleged
21 above and therefore engaged in unfair competition.

22 39. As a proximate result of the violation of the UCL as set forth above, Plaintiff suffered
23 injury in fact and sustained monetary or property loss in that he lost use of his rooms
24 and had to incur expenses to arrange alternative lodging. Plaintiff lost at least \$100 in
25 that he had to pay expenses for alternative lodging because he had to check out for one
26 night on several occasions as set forth above. These expenses are above and beyond
27 what the Plaintiff would have paid to rent the El Dorado Inn room that night.

28 40. The conduct of Defendants will continue to harm the general public unless it is
enjoined. Defendants continue to operate the El Dorado Inn in the same prohibited

manner as of the filing of this lawsuit and have made no effort to comply with the law.

WHEREFORE, Plaintiff prays for judgment on all causes of action against defendant as follows:

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment on all causes of action against Defendants as follows:

1. For an order certifying this matter as a class action;
2. For a declaration of the rights and liabilities of the parties including a declaration that policy is contrary to the legal requirements;
3. For preliminary and permanent injunctive relief pursuant to Business and Professions Code § 17203 restraining and enjoining Defendants from continuing the acts of unlawful competition set forth above, requiring Defendants to take any acts needed to prevent further violations, and requiring Defendants to take affirmative measures to redress past wrongdoings;
4. For an order requiring Defendants to provide an accounting of all moneys which they may have received as a result of the acts and practices found to constitute unfair competition under Business and Professions Code § 17200;
5. For distribution of any moneys recovered on behalf of members of the Class, via fluid recovery or cy pres recovery where necessary to prevent Defendant from retaining the benefits of their wrongful conduct as provided in California v. Levi Strauss & Co. (1986) 41 Cal.3d 460 and People v. Thomas Shelton Powers, M.D. Inc. (1992) 2 Cal.App.4th 330;
6. For a civil penalty of \$500 on the first cause of action for each violation suffered by Plaintiffs and the Class Members;
7. For statutory damages of \$25,000 on the second cause of action for each violation suffered by Plaintiffs and the Class Members;
8. For interest on the sum of money awarded as damages or restitution;
9. For reasonable attorney's fees pursuant to Civil Code § 1940.1 and Civil Code § 52.1 (h), pursuant to the Private Attorney General doctrine in Code of Civil Procedure §

1021.5, pursuant to the “common fund” doctrine, and pursuant to the “substantial benefit” doctrine.

10. For costs of suit incurred herein; and

11. For such other and further relief as the court may deem proper.

Dated: October 20, 2014

SPENCER LAW FIRM

/S/

JEFFREY P. SPENCER
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues in this action.

Dated: October 20, 2014

SPENCER LAW FIRM

/s/
JEFFREY P. SPENCER
Attorneys for Plaintiffs