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15 **Attorneys for Plaintiffs**

16 **ORANGE COUNTY SUPERIOR COURT, STATE OF CALIFORNIA**
17 **(Unlimited Civil), Civil Complex Center**
18 **751 West Santa Ana Blvd, Santa Ana, California 92701**

19 MICHAEL R. MCINTYRE and
20 THEO PHILLIPS-POWERS, on
21 behalf of themselves and all persons
22 similarly situated,

23 v.

24 VALENCIA INN,
25 WING HANE GROUP, INC.,
26 WANG CHI CHUNG,
27 and Does 1 through 100 inclusive,
28 Defendants.

) Case No. 30-2014-00732772-CU-BT-CXC
) Assigned for All Purposes to:
) Hon. Gail A. Andler
) Dept. CX101
) Complaint Filed: July 7, 2014
) CLASS ACTION
)
) **FIRST AMENDED COMPLAINT FOR**
) **1. Violation of Civil Code § 1940.1**
) **2. Violation of Civil Code § 52.1**
) **3. Violation of Unfair Competition Law**
) (Business & Professions Code § 17200 et. seq.)
)

Plaintiffs allege as follows:

PARTIES

1. Plaintiffs MICHAEL R. MCINTYRE and THEO PHILLIPS-POWER, individuals,
brings this action on behalf of themselves, and on behalf of a class of similarly

1 situated persons pursuant to Code of Civil Procedure § 382. Plaintiffs are residents
2 of the County of Orange and State of California and are competent adults.

3 2. Plaintiffs are informed and believe, and thereupon allege, that Defendant VALENCIA
4 INN is now, and at all times mentioned in this Complaint was, a business of
5 unknown form based in Anaheim, California. Defendant has not designated a
6 principal place of business in the State of California.

7 3. Plaintiffs are informed and believe, and thereupon allege, that Defendant WING
8 HANE GROUP, INC. is now, and at all times mentioned in this Complaint was, a
9 corporation based in San Gabriel, California and doing business in Anaheim,
10 California. Defendant has not designated a principal place of business in the State of
11 California.

12 4. Plaintiffs are informed and believe, and thereupon allege, that Defendant WANG
13 CHI CHUNG is now, and at all times mentioned in this Complaint was, an individual
14 residing in San Marino, California and the Owner of the Valencia Inn during the
15 Class Period.

16 5. Plaintiffs do not know the true names or capacities of the Defendants sued herein as
17 DOES 1 through 100 inclusive, and therefore sue these Defendants by such fictitious
18 names. Plaintiffs will amend this complaint to allege their true names and capacities
19 when ascertained. Plaintiffs are informed and believe, and thereon allege, that each
20 of these fictitiously named Defendants is responsible in some manner for the
21 occurrences herein alleged, and that Plaintiffs' damages as herein alleged were
22 proximately caused by those defendants. Each reference in this complaint to
23 "Defendant" or "Defendants" or to a specifically named defendant refers also to all
24 defendants sued under fictitious names.

25 6. Plaintiffs are informed and believe, and thereon allege, that at all times herein
26 mentioned each of the Defendants, including all Defendants sued under fictitious
27 names, and each of the persons who are not parties to this action but are identified
28 by name or otherwise throughout this complaint, was the alter ego of each of the

1 remaining defendants, was the successor in interest or predecessor in interest, and
2 was the agent and employee of each of the remaining defendants and in doing the
3 things herein alleged was acting within the course and scope of this agency and
4 employment.

5 **CLASS ALLEGATIONS**

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

8 All persons who resided at the Valencia Inn for at least 15
9 consecutive days within three years of the date of filing of the
10 original complaint and were required to move out or to check
11 out and reregister before the expiration of 30 consecutive
12 days of occupancy.

13 8. Plaintiffs are informed and believe, and thereupon allege, that the class Plaintiffs
14 represent includes at least 100 persons who paid a membership fee to Defendants
15 during the Class Period.

16 9. The identity of the members of the class is ascertainable from Defendants' own
17 business records or those of its agents.

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

26 11. The claims of Plaintiffs are typical of the claims of the members of the class.

27 12. Plaintiffs can fairly and adequately represent the interests of the class.

28 **FIRST CAUSE OF ACTION FOR VIOLATION OF CIVIL CODE § 1940.1**

(BROUGHT AS INDIVIDUAL ACTION AND CLASS ACTION)

- 1 13. Plaintiffs incorporate in this cause of action the allegations contained in paragraphs 1
2 through 12, inclusive.
- 3 14. Defendants operate the Valencia Inn located at 2630 West Lincoln Avenue,
4 Anaheim, California which is a residential hotel within the meaning of Health and
5 Safety Code § 50519: “any building containing six or more guestrooms or efficiency
6 units, as defined by Section 17958.1, intended or designed to be used, or which are
7 used, rented, or hired out, to be occupied, or which are occupied, for sleeping
8 purposes by guests, which is also the primary residence of those guests.”
- 9 15. During the Class Period the Valencia 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 16. 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 Valencia Inn.
- 15 17. The Valencia Inn does not require “good credit” and will rent to persons with
16 evictions. The Valencia Inn specifically targets “homeless” people or people who are
17 not able to own a house or rent a house or apartment under normal circumstances.
18 Defendants specifically advertised that the Valencia Inn only offered “weekly rental”
19 units. The Valencia Inn does not target “tourists” and virtually all or all of the
20 occupants rent on a weekly basis for a number of consecutive weeks. The Class
21 excludes any guest who stayed less than 15 consecutive days.
- 22 18. Plaintiffs are informed and believe, and thereupon allege, that WING HANE
23 GROUP, INC. operates Valencia Inn as a fictitious business name but have also
24 named Valencia Inn separately in the event it is a separate legal entity.
- 25 19. Defendant WANG CHI CHUNG is the President of WING HANE GROUP, INC. and
26 the owner of Valencia Inn. During the class period, he personally established,
27 authorized, enforced and ratified the tortious policy described below. Specifically,
28 his intent in formulating the “28 day shuffle” policy was to financially benefit from

1 having a reliable base of ongoing occupants who lived at Valencia Inn on essentially a
2 full time basis while at the same time avoiding the financial risks involved in a
3 conventional landlord-tenant relationship. He personally had the intent to make the
4 occupants maintain transient occupancy status. He also profited from the practices
5 describe below because the Defendants did not have to respect the class members'
6 rights as tenants and therefore could avoid more expensive unlawful detainer
7 proceedings.

8 20. During the class period, Plaintiffs and other persons rented rooms at the Valencia
9 Inn pursuant to written Rule and Regulations provided by Defendants. Each of the
10 Plaintiffs intended to use their rooms at the Valencia Inn as their primary residence.

11 21. During this time frame, Defendants' policy and practice was to require residents to
12 vacate the premises before 30 consecutive days of occupancy. This policy was stated
13 in the Rules and Regulations provided to Plaintiffs and the class members: "EVERY
14 28 DAYS...GUESTS ARE REQUIRED TO CHECK OUT FOR 24 HOURS. GUEST
15 MUST BE OUT OF THEIR UNIT BY 11:00 AM - NO EXCEPTIONS! YOU MUST
16 SIGN OUT ON YOUR 28 DAY ... CALLING IN WILL NOT."

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

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

28 24. Civil Code § 1940 commences Chapter 2 of Title 5, Part 4, Division 3 of the Civil Code

1 establishes various consumer protections and tenant rights afforded to persons who
2 hire a dwelling unit including “tenants, lessees, boarders, lodgers, and others,
3 however denominated.” Subdivision (b) (1) of section 1940 excludes from these
4 protections those tenants who have only “transient occupancy,” which is defined
5 elsewhere to mean 30 days or less of occupancy. (Revenue & Taxation Code § 7280.)

6 25. By preventing guests from occupying a room for more than 30 days, Defendants
7 sought to exclude Plaintiffs and the class members from acquiring the protections
8 and rights afforded by Chapter 2.

9 26. This tactic of moving occupants out before they achieve “tenant” status is known as
10 the “28 Day Shuffle.”

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

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

23 29. On various dates, Plaintiffs rented rooms at the Valencia Inn after signing the
24 aforementioned Rules and Regulations and the weekly rental invoices.
25 Approximately every 28 days they were required to move out, but were permitted to
26 return the next day and reregister to resume their occupancy in the same unit. They
27 complied with these requirements under threat of legal action as well as fear for their
28 personal safety and security of their belongings. Moreover, they were locked out of

1 the rooms.

2 30. For example, on May 18, 2014, Plaintiff rented room 236 and on the receipt
3 Defendants wrote "28 day 6-14-14." That meant McIntyre had to leave on June 14,
4 2014 and could not return until June 15, 2014. Subsequently the 28th day was
5 changed to June 13, 2014 by Defendants. Plaintiff left as ordered on June 13, 2014.
6 On June 14, 2014, he checked back in and rented the same room. On that receipt
7 Defendants wrote "28 day 7-13-14." That meant McIntyre had to leave on July 13,
8 2014 and could not return until July 14, 2014. Plaintiff McIntyre occupied Room
9 236 in this fashion since before early November 2013 (and continuing through the
10 present date). This 28 day cycle continued throughout his occupancy at the Valencia
11 Inn.

12 31. Similarly, Plaintiff Phillips-Powers rented room 326 from before March 2013
13 through June 2014 (and continuing through the present date). For example, his
14 March 2, 2014 receipt shows the 28th day was March 30th. On March 30, 2014 he
15 checked out as required and checked back in to the same room on March 31, 2014.
16 The receipt for March 31st showed his new 28th day was April 28, 2014. As required
17 he checked out by that date and checked back in the following day to commence a
18 new 28 day period. This 28 day shuffle occurred throughout his occupancy at
19 Valencia Inn.

20 32. Similarly, during the class period, the class members rented rooms at the Valencia
21 Inn, signing the standard aforementioned Rules and Regulations and weekly
22 invoices. They continued to occupy a room or another at the Valencia Inn for
23 extended periods of times of months or years, but were required to vacate the
24 premises every 28 days of occupancy, and then were permitted to resume occupancy
25 by checking in the next day.

26 33. Based upon these violations of Civil Code § 1940.1, Defendants are required to pay a
27 civil penalty of \$500 per violation to Plaintiffs and the class members for each
28 occurrence and owe Plaintiffs and the class members civil penalties in amounts

1 according to proof.

2 **SECOND CAUSE OF ACTION FOR VIOLATION OF CIVIL CODE § 52.1**
3 **AGAINST ALL DEFENDANTS (BROUGHT AS INDIVIDUAL ACTION AND**
4 **CLASS ACTION)**

5 34. Plaintiffs incorporate in this cause of action the allegations contained in paragraphs 1
6 through 33, inclusive.

7 35. During the class period, Defendants interfered with, or attempted to interfere with,
8 Plaintiffs and class members' exercise or enjoyment of their statutory rights secured
9 by Division 3, Part 4, Title 5, Chapter 2 of the Civil Code by threats, intimidation, or
10 coercion. The threats, intimidation and coercion included verbal harassment,
11 physically removing or threatening to physically remove residents who did not
12 depart when demanded, physically removing or threatening to physically remove
13 possessions, blocking or attempting to block residents from returning to their units,
14 locking out residents, physical intrusions into residents' rooms without permission
15 and at unpredictable hours, and verbal and written threats to bring unauthorized
16 legal proceedings against the tenants.

17 36. On various occasions during the class period, Plaintiffs experienced one or more
18 form of threats, intimidation or coercion to deprive him of his statutory rights.

19 37. As a direct and proximate result of the aforementioned wrongful conduct by
20 Defendants, Plaintiffs and class members are entitled to recover actual damages
21 according to proof and statutory damages of \$25,000 per each violation pursuant to
22 Civil Code § 52.1 (b) and § 52 (b).

23 **THIRD CAUSE OF ACTION FOR VIOLATION OF THE UNFAIR**
24 **COMPETITION LAW AGAINST ALL DEFENDANTS (BROUGHT AS**
25 **INDIVIDUAL ACTION AND CLASS ACTION)**

26 38. Plaintiffs incorporates in this cause of action the allegations contained in paragraphs
27 1 through 32, inclusive.
28

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

7 40. During the relevant time frame, Defendants violated the Civil Code provisions
8 alleged above and therefore engaged in unfair competition.

9 41. As a proximate result of the violation of the UCL as set forth above, Plaintiffs
10 suffered injury in fact and sustained monetary or property loss in that they lost use
11 of their rooms and had to incur expenses to arrange alternative lodging. Each
12 Plaintiff lost at least \$100 in that he had to pay expenses for alternative lodging
13 because he had to check out for one night on several occasions as set forth above.
14 These expenses are above and beyond what the Plaintiff would have paid to rent the
15 Valencia Inn room that night.

16 42. The conduct of Defendants will continue to harm the general public unless it is
17 enjoined. Defendants continue to operate the Valencia Inn in the same prohibited
18 manner as of the filing of this lawsuit and have made no effort to comply with the
19 law.

20 **REQUEST FOR JURY TRIAL**

21 WHEREFORE, Plaintiffs request trial by jury.

22 **PRAYER FOR RELIEF**

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

- 25 1. For an order certifying this matter as a class action;
26 2. For a declaration of the rights and liabilities of the parties including a declaration
27 that policy is contrary to the legal requirements;

28

- 1 3. For preliminary and permanent injunctive relief pursuant to Business and
2 Professions Code § 17203 restraining and enjoining Defendants from continuing the
3 acts of unlawful competition set forth above, requiring Defendants to take any acts
4 needed to prevent further violations, and requiring Defendants to take affirmative
5 measures to redress past wrongdoings;
- 6 4. For an order requiring Defendants to provide an accounting of all moneys which
7 they may have received as a result of the acts and practices found to constitute unfair
8 competition under Business and Professions Code § 17200;
- 9 5. For distribution of any moneys recovered on behalf of members of the Class, via fluid
10 recovery or cy pres recovery where necessary to prevent Defendant from retaining
11 the benefits of their wrongful conduct as provided in California v. Levi Strauss & Co.
12 (1986) 41 Cal.3d 460 and People v. Thomas Shelton Powers, M.D. Inc. (1992) 2
13 Cal.App.4th 330;
- 14 6. For a civil penalty of \$500 on the first cause of action for each violation suffered by
15 Plaintiffs and the Class Members;
- 16 7. For statutory damages of \$25,000 on the second cause of action for each violation
17 suffered by Plaintiffs and the Class Members;
- 18 8. For interest on the sum of money awarded as damages or restitution;
- 19 9. For reasonable attorney's fees pursuant to Civil Code § 1940.1 and Civil Code § 52.1
20 (h), pursuant to the Private Attorney General doctrine in Code of Civil Procedure §
21 1021.5, pursuant to the “common fund” doctrine, and pursuant to the “substantial
22 benefit” doctrine.
- 23 10. For costs of suit incurred herein; and
- 24 11. For such other and further relief as the court may deem proper.

25 DATED: October 2, 2014

26 Respectfully submitted,

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By Jeffrey Wilens
JEFFREY WILENS
Attorney for Plaintiff

PARTY SERVED: Wing Hane Group, Inc. dba Valencia Inn and Wang Chi Chung through their attorney of record, Durringer Law Group, Mr. Stephen C. Durringer, Esq., Mr. Edward L. Laird, Esq., 160 South Old Springs Road, Suite 135, Anaheim, CA 92808. SERVED ON EMAIL ADDRESSES:

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DOCUMENT SERVED: Plaintiff's First Amended Complaint—Plaintiff Michael R. McIntyre, et. al., v. Valencia Inn, et. al., Orange County Superior Court Case 30-2014-00732772.

DECLARATION OF ELECTRONIC SERVICE

I am a citizen of the United States and a resident of Orange County, State of California. I am over the age of 18 years and not a party to this action within. My business address is 18340 Yorba Linda Blvd., Suite 107-610, Yorba Linda, CA 92886. My email address is jeff@lakeshorelaw.org.

On October 2, 2014, I served the foregoing document described by emailing it to each of the aforementioned electronic mail addresses and the transmission was reported as complete and without error.

I declare under penalty of perjury and under the laws of the State of California, that the foregoing is true and correct. Executed this 2nd day of October 2014 at Yorba Linda, California.

_____/s/____Jeffrey Wilens_____

Jeffrey Wilens