

Case No. 218400

**IN THE SUPREME COURT OF CALIFORNIA**

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In Re TRANSIENT OCCUPANCY TAX CASES

CITY OF SAN DIEGO, CALIFORNIA

*Petitioner,*

v.

HOTELS.COM, L.P., et al.

*Respondents.*

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After an Opinion by the Court of Appeal, Second Appellate District,  
Division Two, Case No. B243800

On Appeal from the Superior Court of  
the State of California for the County of Los Angeles  
The Hon. Elihu M. Berle, Judge of the Superior Court, Department 323  
Los Angeles County Superior Court Case No. JCCP 4472

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**RESPONDENTS' REQUEST TO TAKE JUDICIAL NOTICE;  
MEMORANDUM OF POINTS AND AUTHORITIES;  
DECLARATION OF STACY HORTH-NEUBERT IN SUPPORT  
THEREOF; [PROPOSED] ORDER**

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Darrel J. Hieber (SBN 100857)  
Stacy R. Horth-Neubert (SBN 214565)  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
300 South Grand Ave., 34<sup>th</sup> Fl.  
Los Angeles, CA 90071  
Telephone: (213) 687-5000  
Facsimile: (213) 687-5600  
*Attorneys for Respondents priceline.com*  
Incorporated (n/k/a The Priceline Group Inc.),  
and Travelweb LLC

Elwood Lui (SBN 45538)  
Brian D. Hershman (SBN 168175)  
Erica L. Reilley (SBN 211615)  
JONES DAY  
555 South Flower Street, 50th Floor  
Los Angeles, CA 90071  
Telephone: (213) 243-2445  
Facsimile: (213) 243-2539  
*Attorneys for Respondents Expedia, Inc.,  
Hotwire, Inc.; Travelnow.com, Hotels.com,  
L.P., and Hotels.com GP, LLC*

Nathaniel S. Currall (SBN 210802)  
K&L GATES LLP  
1 Park Plaza, Twelfth Floor  
Irvine, California 92614  
Telephone: (949) 623-3534  
Facsimile: (949) 253-0902  
*Attorney for Respondents Travelocity.com,  
L.P. and Site59.com, LLC*

Jeffrey A. Rossman (SBN 189865)  
McDERMOTT WILL & EMERY LLP  
227 West Monroe Street  
Chicago, IL 60606  
Telephone: (312) 372-2000  
Facsimile: (312) 984-7700  
*Attorneys for Respondents*  
Orbitz, LLC, Trip Network, Inc. (d/b/a  
Cheaptickets.com), incorrectly named as  
Cheap tickets, Inc., and Internetwork  
Publishing Corp. (d/b/a Lodging.com)

*[additional counsel listed on  
next page]*

Case No. 218400

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SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
300 South Grand Ave., 34<sup>th</sup> Fl.  
Los Angeles, CA 90071  
Telephone: (213) 687-5000  
Facsimile: (213) 687-5600  
*Attorneys for Respondents priceline.com*  
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*[additional counsel listed on  
next page]*

Brian S. Stagner (admitted *pro hac vice*  
below)

Chad Arnette (admitted *pro hac vice*  
below)

KELLY HART & HALLMAN LLP

201 Main Street, Suite 2500

Fort Worth, TX 76102

Telephone: (817) 878-3567

Facsimile: (817) 878-9280

*Attorneys for Respondents,*

TRAVELOCITY.COM LP and

SITE59.COM, LLC

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that, pursuant to California Rules of Court 8.252(a)(2), California Evidence Code sections 452 and 453, Respondents hereby respectfully request that, in considering The Online Travel Companies' (the "OTCs") Answer to Petitioner the City of San Diego's Petition for Review, this Court take judicial notice of the following exhibits attached to the Declaration of Stacy R. Horth-Neubert submitted concurrently herewith:

- Exhibit 1: City of Los Angeles' Class Action Complaint, Case No. BC 326693 (Los Angeles Superior Court), filed December 30, 2004.
- Exhibit 2: City of San Diego's Complaint, Case No. GIC 861117 (San Diego Superior Court), filed February 8, 2006.
- Exhibit 3: Recommendations Regarding Coordination and Order on Stay Request (coordinating the Los Angeles and San Diego cases), JCCP No. 4472 (Los Angeles Superior Court), filed July 3, 2006.
- Exhibit 4: Opinion and Order on Defendants': (1) Demurrer to Plaintiff City of Los Angeles' Third Amended Complaint; And (2) Motion to Strike Class Allegations from Third Amended Complaint, JCCP No. 4472 (Los Angeles Superior Court), filed July 27, 2007.
- Exhibit 5: Opinion and Order on Defendants' Demurrer to Plaintiff City of San Diego's First Amended Complaint, JCCP No. 4472 (Los Angeles Superior Court), filed July 27, 2007.

- Exhibit 6: Stipulation and Order To Coordinate Add-On Cases and Stay Actions, JCCP No. 4472 (Los Angeles Superior Court), dated July 27, 2009 (adding additional San Francisco cases).
- Exhibit 7: Opinion and Order on the Online Travel Companies' Motion for Judgment Granting Writ of Mandate and the City of Anaheim's Motion to Deny Online Travel Companies' Writs of Administrative Mandamus, JCCP No. 4472 (Los Angeles Superior Court), dated Feb. 1, 2010.
- Exhibit 8: Opinion and Order On the Joint Demurrer of Defendant Online Travel Companies To The City Of Santa Monica's First Amended Complaint, JCCP No. 4472 (Los Angeles Superior Court), dated March 16, 2011.
- Exhibit 9: Opinion of The California Court of Appeal, Second Appellate District, Division Two, Case No. B230457, JCCP No. 4472, filed November 1, 2012 (Anaheim decision).
- Exhibit 10: Opinion of The California Court of Appeal, Second Appellate District, Division Two, Case No. B236166, JCCP No. 4472, filed November 1, 2012 (Santa Monica decision).
- Exhibit 11: Notice of California Supreme Court's Denial of Review in Anaheim and Santa Monica Actions, JCCP No. 4472 (Los Angeles Superior Court), filed Jan. 23, 2013.

Exhibit 12: Appellant's Opening Brief, Case No. B243800, JCCP No. 4472 (California Court of Appeal, Second Appellate District, Division Two), dated March 15, 2013.

Exhibit 13: Appellant's Reply Brief, Case No. B3243800, JCCP No. 4472 (California Court of Appeal, Second Appellate District, Division Two), filed August 6, 2013.

Exhibit 14: Appellant's Petition for Rehearing and Request for Publication, Case No. B243800, JCCP No. 4472 (California Court of Appeal, Second Appellate District, Division Two), filed March 20, 2014.

These materials are relevant to the issues raised in the OTCs' Answer to Petitioner City of San Diego's Petition for Review. This Request is made based on this Notice, the Accompanying Memorandum of Points and Authorities, the Declaration of Stacy R. Horth-Neubert and Exhibits 1 through 14 attached.

DATED: May 27, 2014

Respectfully submitted,

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By:

  
Stacy R. Horth-Neubert

Attorneys for Respondents,  
PRICELINE.COM INC., n/k/a The  
Priceline Group Inc. and TRAVELWEB  
LLC

DATED: May 27, 2014

JONES DAY

By: Brian D. Hershman /SKHW  
Brian D. Hershman *with permission*  
Attorneys for Respondents, EXPEDIA,  
INC., HOTWIRE, INC.,  
TRAVELNOW.COM, HOTELS.COM,  
L.P., and HOTELS.COM GP, LLC

DATED: May 27, 2014

McDERMOTT WILL & EMERY LLP  
By: Jeffrey Rossman /SKHW  
Jeffrey Rossman *with permission*  
Attorneys for Respondents, ORBITZ,  
LLC, TRIP NETWORK, INC. (d/b/a  
CHEAPTICKETS.COM), and  
INTERNETWORK PUBLISHING  
CORP. (d/b/a LODGING.COM)

DATED: May 27, 2014

K&L GATES LLP  
By: Nathaniel S. Currall /SKHW  
Nathaniel S. Currall *with permission*  
Attorney for Respondents,  
Travelocity.com, L.P. and Site59.com,  
LLC

## MEMORANDUM OF POINTS AND AUTHORITIES

Evidence Code Section 452 authorizes this Court to take judicial notice of “[r]ecords of [] any court of this state” and “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Cal. Evid. Code §§ 452(d)(1); 452(h). Under these provisions, this Court may take judicial notice of Exhibits 1 through 14 in considering the OTCs’ Answer to Plaintiff’s Petition for Review.

Evidence Code § 459 provides that a reviewing court may take judicial notice of those matters specified in § 452. State court orders, pleadings and other documents are properly noticed since they comprise the “[r]ecords of [] any court of this state.” Cal. Evid. Code §§ 452(d)(1). Exhibits 1 through 14 are orders, motions and pleadings from the proceedings below in this action and in related actions in these coordinated proceedings, *In re Transient Occupancy Tax Cases*, JCCP 4472. Because these documents are all part of the records of a court in this State, they may be noticed upon review.

Exhibits 1 through 14 are relevant to establish why the City of San Diego’s Petition for Review should be denied. First, Exhibits 1 through 11 are relevant to provide this Court with the history of the coordinated proceedings. Exhibits 9 and 10 show the consistent analysis used in the coordinated proceedings and why here, as below, the plain meaning of the San Diego transient occupancy tax ordinance does not impose any obligations or liability on the OTCs. They also establish relevant context for the Court of Appeal’s citation to two of its own prior decisions, demonstrating why citation to those decisions is consistent with the coordination of the proceedings and not an error of law, and does not



warrant review by this Court. Exhibits 12 through 14 are relevant to show that the City also cited to the same two previous Court of Appeal decisions and asked the Court of Appeal in this action to rely on those previous decisions.

**CONCLUSION**

For the foregoing reasons, upon proper notice, the Court is required to take judicial notice of the documents listed above. *See* Cal. Evid. Code § 453 (the Court “shall take judicial notice of any matter specified in Section 452 if a party requests it” and (i) gives each adverse party sufficient notice of the request to enable the party to prepare to meet the request, and (ii) furnishes the court with sufficient information to enable it to take judicial notice). The OTCs respectfully request that this Court take judicial notice of Exhibits 1 through 14.

DATED: May 27, 2014

Respectfully Submitted,

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: Stacy R. Horth-Neubert  
Stacy R. Horth-Neubert  
Attorneys for Respondents,  
PRICELINE.COM INC. (n/k/a The  
Priceline Group Inc.) and TRAVELWEB  
LLC

JONES DAY

By: Brian D. Hershman *with permission*  
Brian D. Hershman  
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TRAVELNOW.COM, HOTELS.COM,  
L.P., and HOTELS.COM GP, LLC

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By: Jeffrey Rossman /SNTHN  
Jeffrey Rossman *with permission*  
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LLC, TRIP NETWORK, INC. (d/b/a  
CHEAPTICKETS.COM), and  
INTERNETWORK PUBLISHING  
CORP. (d/b/a LODGING.COM)

K&L GATES LLP

By: Nathaniel S. Currall /SNTHN  
Nathaniel S. Currall *with permission*  
Attorney for Respondents,  
Travelocity.com, L.P. and Site59.com,  
LLC

**DECLARATION OF STACY R. HORTH-NEUBERT**

I, Stacy R. Horth-Neubert, declare:

1. I am an attorney licensed to practice law in the State of California and Counsel in the law firm of Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), counsel of record for priceline.com Inc. (n/k/a The Priceline Group Inc.) and Travelweb LLC in the above-captioned matter. I submit this Declaration in support of The Online Travel Companies' (i) Answer to Petition for Review; and (ii) OTC's Request To Take Judicial Notice. I make this declaration on personal knowledge and, if called as a witness, I could and would testify competently to such facts under oath.

2. As counsel of record in the *Transient Occupancy Tax Cases*, JCCP 4472, I am familiar with the record in these actions. The exhibits below are true and correct copies of records filed in these actions.

3. Attached as Exhibit 1 is a true and correct copy of the City of Los Angeles' Class Action Complaint, Case No. BC 326693 (Los Angeles Superior Court), filed December 30, 2004.

4. Attached as Exhibit 2 is a true and correct copy of the City of San Diego's Complaint, Case No. GIC 861117 (San Diego Superior Court), filed February 8, 2006.

5. Attached as Exhibit 3 is a true and correct copy of the Recommendations Regarding Coordination and Order on Stay Request (coordinating the Los Angeles and San Diego cases), JCCP No. 4472 (Los Angeles Superior Court) filed July 3, 2006.

6. Attached as Exhibit 4 is a true and correct copy of the Opinion and Order on Defendants': (1) Demurrer to Plaintiff City of Los Angeles' Third Amended Complaint; And (2) Motion to Strike Class

Allegations from Third Amended Complaint, JCCP No. 4472 (Los Angeles Superior Court), filed July 27, 2007.

7. Attached as Exhibit 5 is a true and correct copy of the Opinion and Order on Defendants' Demurrer to Plaintiff City of San Diego's First Amended Complaint, JCCP No. 4472 (Los Angeles Superior Court) filed July 27, 2007.

8. Attached as Exhibit 6 is a true and correct copy of the Stipulation and Order To Coordinate Add-On Cases and Stay Actions, JCCP No. 4472 (Los Angeles Superior Court), July 27, 2009.

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11. Attached as Exhibit 9 is a true and correct copy of the Opinion of The California Court of Appeal, Second Appellate District, Division Two, Case No. B230457, JCCP No. 4472 filed November 1, 2012 (Anaheim decision).

12. Attached as Exhibit 10 is a true and correct copy of the Opinion of The California Court of Appeal, Second Appellate District, Division Two, Case No. B236166, JCCP No. 4472, filed November 1, 2012 (Santa Monica decision).

13. Attached as Exhibit 11 is a true and correct copy of the Notice of California Supreme Court's Denial of Review in Anaheim and Santa Monica Actions, JCCP No. 4472 (Los Angeles Superior Court), filed Jan. 23, 2013.

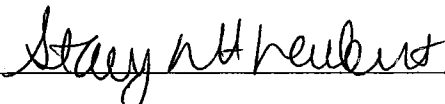
14. Attached as Exhibit 12 is a true and correct copy of the Appellant's Opening Brief, Case No. B243800, JCCP No. 4472 (California Court of Appeal, Second Appellate District, Division Two), dated March 15, 2013.

15. Attached as Exhibit 13 is a true and correct copy of the Appellant's Reply Brief, Case No. B243800, JCCP No. 4472 (California Court of Appeal, Second Appellate District, Division Two), filed August 5, 2013.

16. Attached as Exhibit 14 is a true and correct copy of the Appellant's Petition for Rehearing and Request for Publication, Case No. B243800, JCCP No. 4472 (California Court of Appeal, Second Appellate District, Division Two), filed March 20, 2014.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 27, 2014, in Los Angeles, California

  
\_\_\_\_\_  
Stacy R. Horth-Neubert

Case No. 218400

**IN THE SUPREME COURT OF CALIFORNIA**

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In Re TRANSIENT OCCUPANCY TAX CASES

CITY OF SAN DIEGO, CALIFORNIA

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Los Angeles County Superior Court Case No. JCCP 4472

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**[PROPOSED] ORDER**

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FOR GOOD CAUSE SHOWN, Respondents the Online Travel  
Companies' Request to Take Judicial Notice is GRANTED as to the  
following documents:

- Exhibit 1: City of Los Angeles' Class Action Complaint, Case  
No. BC 326693 (Los Angeles Superior Court), filed  
December 30, 2004.
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Exhibit 14: Appellant's Petition for Rehearing and Request for Publication, Case No. B243800, JCCP No. 4472 (California Court of Appeal, Second Appellate District, Division Two), filed March 20, 2014.

DATED: \_\_\_\_\_

, Justice





1 Paul R. Kiesel, Esq. (SBN 119854)  
 Patrick DeBlase, Esq. (SBN 167138)  
 2 Michael C. Eyerly, Esq. (SBN 178693)  
 KIESEL, BOUCHER & LARSON, LLP  
 3 8648 Wilshire Boulevard  
 Beverly Hills, California 90211  
 4 (310) 854-4444

5 Steven D. Wolens, Esq. (Texas Bar No. 21847600)  
 Frank E. Goodrich, Esq. (Texas Bar No. 08162050)  
 6 BARON & BUDD, P.C.  
 3102 Oak Lawn Avenue, Suite 1100  
 7 Dallas, Texas 75219  
 (214) 521-3605

8 Attorneys for Plaintiff, the City of Los Angeles, California.  
 9 on behalf of itself and all others similarly situated

**FILED**  
 LOS ANGELES SUPERIOR COURT

DEC 30 2004

JOHN A. CLARKE, CLERK  
 BY JENNY RHEA DEPHY

Case assigned to  
 Judge Charles W. McCoy

10  
 11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 12 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

14 CITY OF LOS ANGELES, CALIFORNIA, )  
 on behalf of itself and all others similarly )  
 15 situated, )  
 16 Plaintiff, )  
 17 v. )  
 18 HOTELS.COM, L.P.; HOTELS.COM GP. )  
 LLC; HOTWIRE, INC.; CHEAP TICKETS, )  
 19 INC.; CENDANT TRAVEL )  
 DISTRIBUTION SERVICES GROUP. )  
 20 INC.; EXPEDIA, INC.; INTERNETWORK )  
 PUBLISHING CORP. (d/b/a )  
 21 LODGING.COM); LOWEST FARE.COM. )  
 INC.; MAUPINTOUR HOLDING, LLC; )  
 22 ORBITZ, INC.; ORBITZ, LLC; )  
 PRICELINE.COM, INC.; SITE 59.COM. )  
 23 LLC; TRAVELCITY.COM, INC.; )  
 TRAVELCITY.COM, LP; )  
 24 TRAVELWEB, LLC; )  
 TRAVELNOW.COM, INC.; and DOES 1 )  
 25 through 1000, inclusive, )  
 26 Defendants. )

CASE NUMBER: BC 326693  
 CLASS ACTION COMPLAINT FOR:  
 (1) VIOLATIONS OF UNIFORM  
 TRANSIENT OCCUPANCY TAX  
 ORDINANCES  
 (2) UNFAIR BUSINESS  
 PRACTICES IN VIOLATION OF  
 CALIFORNIA BUSINESS &  
 PROFESSIONS CODE, § 17200 et  
 seq  
 (3) CONVERSION  
 (4) IMPOSITION OF A  
 CONSTRUCTIVE TRUST  
 JURY TRIAL DEMANDED

1 Plaintiff City of Los Angeles, California, on behalf of itself and all others similarly  
2 situated (i.e., the "Plaintiff Class" or "Class" described and defined, *infra*), complains of  
3 Defendants and alleges as follows:

4 **I. PARTIES**

- 5 1. Plaintiff is the City of Los Angeles, California.
- 6 2. Defendant HOTELS.COM, L.P. is a Delaware limited partnership with its  
7 principal place of business in Dallas, Texas.
- 8 3. Defendant HOTELS.COM GP, LLC is a Texas corporation with its principal  
9 place of business in Dallas, Texas.
- 10 4. Defendant HOTWIRE, INC. is a Delaware corporation with its principal  
11 place of business in San Francisco, California.
- 12 5. Defendant CHEAP TICKETS, INC. is a Delaware corporation with its  
13 principal place of business in Honolulu, Hawaii.
- 14 6. Defendant CENDANT TRAVEL DISTRIBUTION SERVICES GROUP,  
15 INC. is a Delaware corporation with its principal place of business in Parsippany, New  
16 Jersey.
- 17 7. Defendant EXPEDIA, INC. is a Washington corporation with its principal  
18 place of business in Bellevue, Washington.
- 19 8. Defendant INTERNETWORK PUBLISHING CORP. d/b/a  
20 LODGING.COM), a Florida corporation with its principal place of business in Boca  
21 Raton, Florida.
- 22 9. Defendant LOWEST FARE.COM, INC. is a Delaware corporation with  
23 its principal place of business in Norwalk, Connecticut.
- 24 10. Defendant MAUPINTOUR HOLDING, LLC is a Nevada corporation with  
25 its principal place of business in Las Vegas, Nevada.
- 26 11. Defendant ORBITZ, INC. is a Delaware corporation with  
27 its principal place of business in Chicago, Illinois.
- 28 12. Defendant ORBITZ, LLC is a Delaware corporation with its principal place

1 of business in Chicago, Illinois.

2 13. Defendant PRICELINE.COM, INC. is a Delaware corporation with its  
3 principal place of business in Norwalk, Connecticut.

4 14. Defendant SITE59.COM, LLC is a Delaware corporation with its  
5 principal place of business in New York, New York.

6 15. Defendant TRAVELOCITY.COM, INC. is a Delaware corporation with its  
7 principal place of business in Texas.

8 16. Defendant TRAVELOCITY.COM, LP is a Delaware partnership  
9 with its principal place of business in Texas.

10 17. Defendant TRAVELWEB, LLC is a Delaware corporation with its principal  
11 place of business in Dallas, Texas.

12 18. Defendant TRAVELNOW.COM, INC. is a Delaware corporation with its  
13 principal place of business in Springfield, Missouri.

14 19. The true names and capacities, whether individual, corporate, associate or  
15 otherwise, of each of the Defendants designated herein as a DOE are unknown to Plaintiff  
16 at this time and therefore said Defendants are sued by such fictitious names. Plaintiff will  
17 ask leave of Court to amend this Complaint to show their true names and capacities when  
18 the same have been ascertained. Plaintiff is informed and believes and thereon alleges that  
19 each of the Defendants designated herein as a DOE is legally responsible in some manner  
20 and liable for the events and happenings herein alleged and in such manner, proximately  
21 caused damages to Plaintiff as hereinafter further alleged.

22 20. Plaintiff is informed and believes and thereon alleges that each of the  
23 Defendants, including all DOE defendants, at all times herein mentioned, was acting as the  
24 agent, servant and employee of each of the other Defendants and within the scope of said  
25 agency and employment. Plaintiff is further informed and believes and thereon alleges  
26 that at the time and place of the incident described, each of the Defendants, their agents,  
27 servants and/or employees became liable to Plaintiff for one or more of the reasons  
28 described herein.

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**2. JURISDICTION AND VENUE**

21. This action is brought to remedy violations of state law in connection with Defendants' misconduct in the failure to remit taxes to the City of Los Angeles, California and others similarly situated. Defendants have failed to remit taxes owed under similar uniform transient occupancy taxes to the Plaintiff Class.

22. This Court has jurisdiction over this action pursuant to California Business and Professions Code § § 17202 and 17203 and California Code of Civil Procedure § 410.10.

23. Venue is proper in this Court pursuant to California Code of Civil Procedure § 395.5.

**3. COMMON ALLEGATIONS**

24. Defendants, and each of them, are on-line sellers and/or on-line resellers of hotel rooms to the general public. Defendants have sold hotel rooms to the public and collected taxes on those rooms, but have failed to pay the taxes due and owing to the Plaintiff and Plaintiff Class members on these transactions.

25. Plaintiff Los Angeles's Uniform Transient Occupancy Tax requires Defendants to remit transient occupancy taxes collected (currently 14%) to the city. See Uniform Transient Occupancy Tax Ordinance of the City of Los Angeles § 21.7.1, et seq. Class members have similar uniform transient occupancy taxes requiring Defendants to collect taxes on the sale of hotel rooms and to remit same to the Plaintiff Class members.

26. Defendants are charging and collecting "taxes" from consumers that are not being remitted to the appropriate municipal class members. In addition to the rental price of the hotel rooms, all occupants are also required to pay a transient occupancy tax. The tax is paid by the consumer occupants and collected on behalf of Plaintiff Class members by the Defendants, who are the operators of the hotels at the time the rent is paid. The amount of the transient occupancy tax is correctly calculated as a percentage of the price each consumer occupant pays each Defendant operator for a hotel room. That is the

*Post  
Amendment  
of  
Ordinance*

1 amount each Defendant is required to remit to Plaintiff Class members.

2 27. The Defendants, however, have failed to remit the proper tax amounts,  
3 underpaying each Plaintiff Class member for the taxes due and owing. Defendants  
4 contract with hotels for rooms at negotiated discounted room rates. Defendants then mark  
5 up their inventory of rooms and sell the rooms to the members of the public, who actually  
6 occupy the rooms. Defendants charge and collect taxes from occupants based on the  
7 marked up room rates, but only remit to Plaintiff Class members tax amounts based on the  
8 lower, negotiated room rates. Defendants, and each of them, then pocket the difference.

9 28. For example, if a consumer pays Hotels.com \$100.00 for a room in a hotel  
10 located in Los Angeles, Hotels.com calculates the tax rate the consumer pays on that  
11 "gross" amount (\$100.00). Hotels.com, however, obtains that room at a lower "net" rate,  
12 for instance, \$70.00. Because Hotels.com and other Defendants act as retailers rather than  
13 agents, the amount due to Plaintiff City of Los Angeles is \$14. However, the amount the  
14 Defendants have remitted to the City has been based on the lower "net" rate. In this  
15 illustration, Hotels.com would remit \$9.80 (14% of \$70.00), instead of the \$14.00 it  
16 actually owed to the City (14% of \$100.00).

17 29. Not only are Defendants charging consumers for transient occupancy  
18 taxes that are not being remitted to the municipality, in most instances Defendants are  
19 charging more money in "fees and taxes" than required by the statutory occupancy tax  
20 rate. These "fees and taxes" often exceed the appropriate statutory occupancy tax rate by  
21 1-3%.

22 30. Thus, in the above illustration, the consumer will often pay closer to  
23 \$16.00 in fees and taxes for a \$100.00 room, in a location like Los Angeles where the tax  
24 rate is 14%. The tax remitted will be based on the \$70.00 net cost of the room to the  
25 online retailer, in this case \$9.80. The difference between the \$16 collected and the \$9.80  
26 remitted is an additional, hidden and unlawfully retained profit of \$6.20.

27 31. Defendants have failed to remit the transient occupancy taxes due and  
28 owed to the Plaintiff and putative Class members.

4. PLAINTIFF CLASS ALLEGATIONS

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32. The City of Los Angeles, California, requests the Court certify its claims as a class action. It seeks relief for (1) Violations of Uniform Transient Occupancy Tax Ordinances; (2) Unfair Business Practices in Violation of California Business & Professions Code § 17200 et seq.; and (3) Conversion. Further, Plaintiff seeks the imposition of a Constructive Trust.

33. Plaintiff seeks to certify a state-wide class of all California cities and counties who have enacted uniform transient occupancy taxes with an effective date on or after December 30, 1990.

34. Plaintiff brings this action pursuant to California Code of Civil Procedure § 382.<sup>1</sup> The Class meets the prerequisites for the maintenance of a class action in that:

- (a) The Class is so numerous that joinder of all Class members is impracticable. Plaintiff is informed and believes that the practices complained of herein affected over a hundred cities and counties, although the exact number and identities of the members of the Class are currently unknown to Plaintiff.
- (b) Nearly all factual, legal, and statutory relief issues that are raised in this Demand are common to each of the members of the Class and will apply uniformly to every member of the Class;
- (c) The claims of the representative Plaintiff are typical of the claims of each member of the Class. It, like all other members of the Class, sustained damages arising from Defendants' violations of law, including (1) Violations of Uniform Transient Occupancy Tax Ordinances; (2) Unfair Business Practices in Violation of California Business & Professions Code § 17200 et seq.; and (3) Conversion. The representative Plaintiff and the members of the Class were and

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<sup>1</sup>The California courts have found that Fed. R. Civ. P. 23 outlines procedures that are useful in all class actions prosecuted in California.

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are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct:

- (d) The representative Plaintiff will fairly and adequately represent and protect the interests of the Class. There are no material conflicts between the claims of the representative Plaintiff and the members of the Class that would make class certification inappropriate;
- (e) The counsel selected to represent the Class will fairly and adequately protect the interests of the Class. They are experienced trial lawyers who have experience in complex litigation and are competent counsel for this class action litigation. Counsel for the Class will vigorously assert the claims of all members of the Class;

35. This action is properly maintained as a class action in that common questions of law and fact exist as to the members of the Class and predominate over any questions affecting only individual members, and a class action is superior to other available methods of the fair and efficient adjudication of the controversy, including consideration of:

- (a) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- (b) The extent and nature of any other proceedings concerning the controversy already commenced by or against members of the Class;
- (c) The desirability or undesirability of concentrating the claims in a single forum; and
- (d) The difficulties likely to be encountered in the management of a class action.

36. The members of the Class contemplate the eventual issuance of notice to the proposed Class members which would set forth the subject and nature of the instant action. The Defendants' own business records and electronic media can be utilized for the



1 contemplated notices. To the extent that any further notices may be required, Plaintiff  
2 would contemplate the use of additional media and/or mailings.

3 37. Among the numerous questions of law and fact common to the Class are:

- 4 (a) Whether Defendants have committed violations of California  
5 Business & Professions Code, § 17200 et seq.
- 6 (b) Whether Plaintiff and the Plaintiff Class are entitled to the imposition  
7 of a constructive trust;
- 8 (c) Whether Defendants have committed acts of conversion;
- 9 (d) The appropriate remedy for the Plaintiff Class;
- 10 (e) Whether, and in what amount, the Plaintiff Class members are  
11 entitled to recover court costs and attorneys' fees.

12  
13 **5: CAUSES OF ACTION**

14  
15 **COUNT I: VIOLATIONS OF UNIFORM**  
16 **TRANSIENT OCCUPANCY TAX ORDINANCES**

17 (As against all Defendants)

18 38. Plaintiff incorporates each of the above allegations by reference as if set  
19 forth herein at length.

20 39. Plaintiff and Class members are cities and counties granted the  
21 authority to collect transient occupancy taxes pursuant to the California Revenue and  
22 Taxation Code § 7280 and the authority to pursue taxes owed under California Revenue  
23 and Taxation Code § 7284.

24 40. Defendants have failed to collect and remit to Plaintiff and the Class the  
25 amounts due and owing to them pursuant to the Uniform Transient Occupancy Tax  
26 Ordinance of the City of Los Angeles, §§ 21.7.2(f) and § 21.7.3 and similar ordinances.  
27 Plaintiff and the Class are entitled to penalties and interest to be determined by Uniform  
28 Transient Occupancy Tax Ordinance of the City of Los Angeles § 21.7.8 and similar