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7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10 SAN DIEGO DIVISION

11 Kathleen Holt, individually and on behalf ) Civil No. '17CV2246 MMABLM  
12 of all others similarly situated, )  
13 Plaintiff, ) **NOTICE OF REMOVAL TO**  
14 v. ) **FEDERAL COURT**  
15 Noble House Hotels & Resort, LTD. d/b/a )  
16 Noble House Hotels & Resort, LTD. LP; )  
17 and Does 1 to 25, inclusive, )  
Defendant. )

18 **INTRODUCTION**

19 Defendant Noble House Hotels & Resorts, LTD. d/b/a Noble House Hotels &  
20 Resorts, LTD. L.P. ("**Noble House**"), by and through its undersigned counsel, hereby  
21 removes the above-captioned action, which is currently pending in the Superior Court  
22 of San Diego County, California, captioned *Kathleen Holt v. Noble House Hotels &*  
23 *Resort, LTD., et al.*, to the United States District Court for the Southern District of  
24 California. Removal is based on 28 U.S.C. § 1332 (diversity jurisdiction) and is  
25 authorized by 28 U.S.C. §§ 1441 and 1446. As grounds for removal, Noble House  
26 states as follows:

27 **BACKGROUND**

28 1. Plaintiff Kathleen Holt ("**Plaintiff**") commenced this action on or about

1 September 20, 2017 by filing a copy of her *Class Action Complaint for Damages,*  
2 *Restitution and Injunctive Relief for Violations of: 1) California Bus. & Prof. §§*  
3 *17500 et seq. 2) California Bus. & Prof. §§ 17200 et seq. 3) California Civil Code §*  
4 *1750 et seq.* (the “**Complaint**”) with the clerk of the Superior Court of San Diego  
5 County, California (the “**State Court Action**”). The State Court Action has been  
6 assigned cause number 37-2017-00035217-CU-MC-CTL.

7 2. This action is a putative class action in which Plaintiff asserts claims for  
8 alleged violations of Cal. Bus. & Prof. Code §§ 17500 *et seq.* and 17200 *et seq.* and  
9 Cal. Civ. Code §§ 1750 *et seq.* Complaint ¶¶ 35-84. Plaintiff’s claims are generally  
10 based a 3.5% surcharge (the “**Surcharge**”) added to all bills at Noble House’s Acqua  
11 California Bistro restaurant (the “**Restaurant**”) located at the Hilton San Diego  
12 Resort and Spa. *See* Complaint ¶¶ 17-34; *see also* Declaration of Thomas Haas  
13 (“**Haas Decl.**”) Ex. C (menu disclosing in red text that the Surcharge will be added  
14 to each bill and providing an explanation of the Surcharge), Ex. D (bill indicating the  
15 Surcharge was added to the subtotal and providing an explanation of the Surcharge).

16 3. Plaintiff asserts these claims on behalf of a putative class of “[a]ll  
17 consumers who ate or drank at a restaurant in California, owned by Noble House  
18 Hotels & Resort, LTD. d/b/a Noble House Hotels & Resort, LTD. LP, who were  
19 charged a surcharge on their bill in addition to the costs of the food and drinks, since  
20 four years prior to the filing of this Complaint.” Complaint ¶ 87. On behalf of the  
21 putative class, Plaintiff seeks injunctive relief as well as damages. Complaint, *Prayer*  
22 *for Relief.*

### 23 STATUTORY REQUIREMENTS

24 4. Diversity jurisdiction under 28 U.S.C. § 1332 exists because this action  
25 is between citizens of different states and the amount in controversy exceeds \$75,000.

26 5. Complete diversity exists, as Plaintiff is not a citizen of the same state  
27 as any defendant that must be considered for diversity purposes.

28 a. Plaintiff is a citizen of California. *See* Complaint ¶¶ 14-15.

1           b. No defendant that must be considered for diversity purposes is a  
2 citizen of California.

3           i. Defendant Noble House is a Texas corporation with its  
4 principal place of business in Washington State. Haas Decl. Ex. A, Ex. B; *see also*  
5 Complaint ¶¶ 7, 16.

6           ii. Defendants “Does 1 to 25” are sued under fictitious names.  
7 In determining whether a civil action is removable on grounds of diversity  
8 jurisdiction, the citizenship of defendants sued under fictitious names is disregarded.  
9 28 U.S.C. § 1441(b)(1).

10          6. The amount in controversy exceeds \$75,000. “In actions seeking  
11 declaratory or injunctive relief, it is well established that the amount in controversy  
12 is measured by the value of the object of the litigation.” *Hunt v. Washington State*  
13 *Apple Advert. Comm’n*, 432 U.S. 333, 347, 97 S. Ct. 2434, 2443, 53 L. Ed. 2d 383  
14 (U.S. 1977) (relying on defendant’s past revenue to project defendant’s losses “over  
15 time” if certain business practices were to be prohibited); *see also Cohn v. Petsmart,*  
16 *Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (amount in controversy requirement met  
17 where action sought to enjoin defendant’s trademark use and defendant valued his  
18 trademark rights in excess of \$75,000).

19          Here, Plaintiff seeks to enjoin Noble House from adding the Surcharge to all  
20 bills at its restaurants located in the Hilton San Diego Resort & Spa, including the  
21 Restaurant, and in the Kona Kai Resort. *See* Complaint, *Prayer for Relief*. Noble  
22 House’s aggregate food and beverage revenue at its restaurants located in the Hilton  
23 San Diego Resort & Spa and in the Kona Kai Resort annually exceeds \$5,000,000.  
24 Haas Decl. ¶ 6. The Surcharge is calculated as 3.5% of the subtotal of each bill.  
25 Haas Decl. ¶¶ 3-5, Ex. C, Ex. D; *see also* Complaint ¶ 23. Therefore, if Noble House  
26 were to be enjoined from adding the Surcharge to all bills at its restaurants located in  
27 the Hilton San Diego Resort & Spa and in the Kona Kai Resort, the injunction would  
28 prevent Noble House from collecting more than \$100,000 per year. Haas Decl. ¶ 7.





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**CERTIFICATE OF SERVICE**

I, Jennifer L. Endres, hereby certify under penalty of perjury of the laws of the States of Washington and California that on November 3, 2017, I caused to be served a copy of the attached document to the following person(s) in the manner indicated below at the following address(es):

Kevin Lemieux  
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- by **CM/ECF**
- by **Electronic Mail**
- by **Facsimile Transmission**
- by **First Class Mail**
- by **Hand Delivery**
- by **Overnight Delivery**

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- by **CM/ECF**
- by **Electronic Mail**
- by **Facsimile Transmission**
- by **First Class Mail**
- by **Hand Delivery**
- by **Overnight Delivery**

Executed on the 3rd day of November, 2017, at Seattle, Washington.

  
\_\_\_\_\_  
Jennifer L. Endres