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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY ELDER, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

HILTON WORLDWIDE HOLDINGS, INC.,
HILTON GRAND VACATIONS COMPANY,
INC., PREMIER GETAWAY, INC., and
BLACKHAWK ENGAGEMENT SOLUTIONS,
INC.

Defendants.

Case No. 3:16-cv-00278 TEH

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Timothy Elder (“Mr. Elder” or “Plaintiff”) brings this action on behalf of himself
2 and all others similarly situated against Defendants Hilton Worldwide Holdings, Inc. (“Hilton”),
3 Hilton Grand Vacations Company, LLC (“Hilton Vacations”), Premier Getaway, Inc. (“Premier”),
4 and Blackhawk Engagement Solutions, Inc. (“Blackhawk”) (collectively “Defendants”). Plaintiff
5 makes the following allegations pursuant to the investigation of his counsel and based upon
6 information and belief, except as to the allegations specifically pertaining to himself, which are
7 based on personal knowledge.

8 NATURE OF ACTION

9 1. Hilton promised to give Plaintiff Timothy Elder a \$100 discount on a stay at “any
10 Hilton Hotel ... anywhere in the U.S.” in exchange for his participation in one of Hilton’s
11 timeshare presentations. Mr. Elder attended a timeshare presentation and was given a \$100 rebate
12 certificate. After Mr. Elder booked and paid for a stay at a Hilton hotel in Sacramento, California,
13 he tendered the rebate certificate for the refund that was owed to him, however, Hilton refused to
14 honor the \$100 rebate certificate when Mr. Elder attempted to use it. Hilton wrongfully refused to
15 honor Mr. Elder’s rebate certificate and wrongfully denied rebates to thousands of other Hilton
16 customers who participated in timeshare presentations with the reasonable expectation that Hilton
17 would be true to its word. This class action lawsuit is brought on behalf of Mr. Elder and the other
18 consumers across the United States that have been victimized by Hilton’s sham rebate program. In
19 conjunction with the other Defendants identified herein, Hilton perpetrated a scheme to defraud
20 thousands of its customers by enticing them to spend money on Hilton hotel stays - with the
21 promise that they would receive significant rebates to offset the expense of those hotel stays – and
22 then refusing to honor the certificates (the “Certificates”).

23 2. Plaintiff asserts claims on behalf of himself, a nationwide class of consumers, and a
24 California subclass of consumers who received a Certificate for a discounted stay at any Hilton
25 hotel in the United States that Hilton refused to honor. Plaintiff asserts claims for fraud, breach of
26 express warranty, breach of the implied warranty of merchantability, breach of contract, unjust
27 enrichment, violation of California’s Consumers Legal Remedies Act (“CLRA”), violation of
28

1 California's Unfair Competition Law ("UCL"), violation of California's False Advertising Law
2 ("FAL"), negligent misrepresentation, aiding and abetting and civil conspiracy.

3 **PARTIES**

4 3. Plaintiff Timothy Elder is a California citizen residing in Fremont, California.
5 While making hotel reservations with Hilton over the phone for a family vacation, Mr. Elder was
6 presented with an opportunity to participate in a promotional pitch about Hilton Vacations'
7 timeshare program in exchange for a Certificate good for up to \$100 at a Hilton hotel. Hilton
8 informed him that the only limitation to the Certificate was that he could not use it on the Orlando
9 trip he was booking over the phone. Accordingly, Plaintiff booked his stay at the Hilton Grand
10 Vacations Tuscany Suites on International Drive in Orlando, Florida with the understanding that in
11 exchange for his participation in the program, he would receive a Certificate valid for a subsequent
12 discounted stay at any Hilton property in the United States. After accepting payment for his hotel
13 stay, Hilton sent Mr. Elder a letter confirming his trip and stating that, in exchange for his
14 attendance at a sales presentation, he would receive a Certificate for up to \$100 off his next stay at
15 a Hilton Hotel.

16 4. Mr. Elder and his family went on the vacation in Orlando from June 29, 2013 to
17 July 2, 2013. While there, Mr. Elder held up his end of the bargain and participated in the Hilton
18 Vacations' timeshare presentation of Parc Soleil. At the conclusion of the presentation, Hilton
19 presented Mr. Elder with the Certificate "good for up to \$100 at a Hilton Hotel anywhere in the
20 U.S." The Certificate noted that he had a six-month timeframe to redeem it. No other substantive
21 conditions were disclosed on the Certificate.

22 5. On or about October 11, 2013, Mr. Elder stayed at a DoubleTree by Hilton in
23 Sacramento. Including taxes, room service, and a tourism assessment, the bill came to \$115.54,
24 with a room rate of \$89. Mr. Elder completed the Certificate and provided all required information
25 and documentation for its redemption. He mailed the original Certificate and supporting
26 documents to Hilton as directed on the Certificate. In early November 2013, however, instead of
27 receiving his check for \$89, Mr. Elder received a form letter stating his application to redeem his
28 Certificate was invalid because the "offer is valid for one night stay at the Hilton Hotel or Hilton

1 Club only.” The letter went on to say, “We regret we cannot honor your rebate application.” In
2 addition to their refusal to honor his Certificate, Hilton did not return the Certificate or offer him a
3 replacement so he could redeem the promised value at another location. As a result, he paid full-
4 price for his stay at the Hilton Doubletree in Sacramento and was unable to redeem the benefit
5 promised on the Certificate.

6 6. Defendant Hilton Worldwide Holdings, Inc. is a Delaware corporation with its
7 principal place of business at 7930 Jones Branch Drive, Suite 1100, Mclean, Virginia 22102.
8 Hilton Worldwide is one of the largest and fastest growing hospitality companies in the world, with
9 more than 4,500 hotels, resorts, and timeshare properties in 97 countries and territories. *See*
10 “About Us,” Hilton Worldwide, <http://www.hiltonworldwide.com/about/> (last visited Nov. 10,
11 2015).

12 7. Defendant Hilton Grand Vacations Company, LLC is a subsidiary of Defendant
13 Hilton Worldwide and is based in Orlando, Florida. Hilton Vacations develops, manages, and
14 operates a system of brand-name timeshare resorts, which are jointly owned by members who use
15 the property for limited periods. According to the Certificate, the “Certificate [is] provided
16 exclusively by Hilton Grand Vacations, who is responsible for the fulfillment.” Further, completed
17 Certificates must be sent directly to Hilton Vacations for redemption.

18 8. Defendant Premier Getaway, Inc. d/b/a Expedia Local Expert (“Premier”) is a
19 Florida corporation with its principal place of business in Orlando, Florida. Premier is a third-party
20 sales servicer that Hilton has contracted with to meet with Hilton guests at the conclusion of their
21 Hilton Vacations’ timeshare presentations. Premier presents the Certificates to guests like Plaintiff
22 Elder.

23 9. Blackhawk Engagement Solutions, Inc. f/k/a Parago Promotional Services, Inc. and
24 f/k/a Hegelson Enterprises, Inc. (“Blackhawk”) is a Texas corporation with its principal place of
25 business in Lewisville, Texas. Blackhawk serves as the rebate processor for Hilton, including
26 processing and rejecting the Certificates of guests like Plaintiff Elder.

27 10. Whenever reference is made in this Complaint to any representation, act, omission,
28 or transaction of Defendants, that allegation shall mean that Defendants performed the act,

1 omission, or transaction through their officers, directors, employees, agents, and/or representatives
2 while they were acting within the actual or ostensible scope of their authority.

3 **JURISDICTION AND VENUE**

4 11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A)
5 because this case is a class action where the aggregate claims of all members of the proposed class
6 are in excess of \$5,000,000.00, exclusive of interest and costs, and most members of the proposed
7 class are citizens of states different from Defendants. This Court also has supplemental jurisdiction
8 over state law claims pursuant to 28 U.S.C. § 1367.

9 12. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because
10 a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this
11 District. Plaintiff is a citizen of California, resides in this District, and was injured by Defendants’
12 failure to honor his Certificate while in this District. Moreover, each of the Defendants conduct
13 business in this District and the Defendants distributed, advertised, and marketed the Certificates
14 that are the subject of this complaint in this District.

15 **FACTS COMMON TO ALL CAUSES OF ACTION**

16 **A. Hilton Grand Vacations**

17 13. Hilton Vacations is a timeshare program operated by Hilton Worldwide
18 (collectively Hilton Vacations and Hilton Worldwide are referred to herein as “Hilton”) that boasts
19 a collection of “more than 60 Club affiliated resorts worldwide,” including “17 Hilton developed
20 and managed resorts” in locations like Hawaii, New York, Las Vegas, and Orlando. *See* “Brand
21 Fact Sheet,” HiltonGrandVacationsMediaCenter.com,
22 <http://www.hiltongrandvacationsmediacenter.com/index.cfm/page/11001> (last visited Nov. 17,
23 2015).

24 14. According to the pitch, Hilton Vacations “are committed to the idea that life is
25 incomplete without vacations. With an ever-growing collection of resorts in spectacular settings
26 around the world, Hilton Grand Vacations invites you to experience a lifetime of vacations in
27 spacious, comfortable elegance with our innovative vacation ownership program. Guests enjoy
28 accommodations offering the comforts of home, amenities tailored to each destination, and the

1 legendary service synonymous with the Hilton name.” *See* “Brand Portfolio,”
2 HiltonWorldwide.com, <http://www.hiltonworldwide.com/portfolio/hilton-grand-vacations/> (last
3 visited Nov. 16, 2015).

4 15. Further, Hilton explains that “[e]xperts and recent studies agree that investing in a
5 vacation means investing in your personal health and overall well-being.” *See* “Learn About
6 Vacation Ownership,” HiltonGrandVacations.com, <http://www.hiltongrandvacations.com/learn/>
7 (last visited Nov. 16, 2015). Hilton continues: “Once you experience Vacation Ownership, you’ll
8 wonder why you ever vacationed any other way.” Benefits purportedly include the following:

9 WHY VACATION OWNERSHIP?

10
11 Vacation Ownership means that every year you have an opportunity to leave the stress of
12 everyday life behind, to reconnect with your family, your friends and yourself.

13 Once you experience Vacation Ownership, you’ll wonder why you ever vacationed any
14 other way. Benefits include:

- 15 • **Savings:** Vacations for a lifetime at today’s price, and without the hassles of
16 second home ownership
- 17 • **Comfort:** Spacious home-like accommodations with full kitchens, extra bedrooms,
18 and plenty of living space
- 19 • **Amenities:** Most destinations include an array of spectacular resort amenities
- 20 • **Flexibility:** Vacation on your schedule, wherever and whenever
- 21 • **Variety:** Exchange opportunities provide access to destinations throughout the
22 world

23 *See id.*

24 16. To promote their timeshare program, Hilton continuously offers timeshare
25 presentations to prospective purchasers. In exchange for participating in the presentation, Hilton
26 purports to present consumers with certain benefits, including the Certificates at issue. Other
27 promised benefits might include points redeemable through the Hilton Honors Rewards Program,
28 free dinner at the hotel, or a free stage show.

B. Hilton's False and Misleading Certificates Do Not Provide the Promised Benefit

17. The Certificates can range in value from 100 or 200 dollars off a consumer's stay at any Hilton hotel to a free weekend at any Hilton hotel. Importantly, the Certificates appear to clearly delineate any restrictions on their use:



18. At the very top of the Certificate is the Hilton Grand Vacations logo and the Hilton Hotels & Resorts logo:



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10 For context, a simple search for “Hilton Hotels & Resorts” in a search engine like Google leads
11 consumers to a website that allows consumers to book reservations at all the Hilton hotels in their
12 portfolio, such as Embassy Suites by Hilton, Hilton Garden Inn, and DoubleTree by Hilton Hotel.
13 See Hilton.com, <http://www3.hilton.com/en/index.html> (last visited Nov. 20, 2015). At the very
14 bottom of the Hilton website, there are descriptions and links to the following hotels: Hilton
15 Hotels & Resorts, canopy by Hilton, DoubleTree by Hilton Hotels, Embassy Suites by Hilton,
16 Hilton Garden Inn, Hampton by Hilton, Homewood Suites by Hilton, and Hilton Grand Vacations,
in addition to others.

17 19. The Certificates also plainly state that they are valid for a rebate “**for a completed**
18 **stay at a Hilton Hotel anywhere in the U.S.**”:

Spend A Night On Us

This Certificate is presented to

Full Name

Certificate valid for a rebate of up to \$100 for a completed stay at a Hilton Hotel anywhere in the U.S.

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26 20. The Certificate in this example is valid for a maximum value of \$100. As
27 demonstrated below, the Certificate is “not valid for use at the hotel itself and must be mailed, it
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1 cannot be used in conjunction with the current hotel stay, and is not valid towards a rebate on your
2 initial vacation package.” These are the only limitations to the Certificate.

3 **Thank you** for visiting with us and learning
4 more about Hilton Grand Vacations. We are
5 pleased to present to you a rebate for one
6 night’s stay at any Hilton Hotel in the U.S.–
7 maximum value is \$100 USD

8 **\$100**

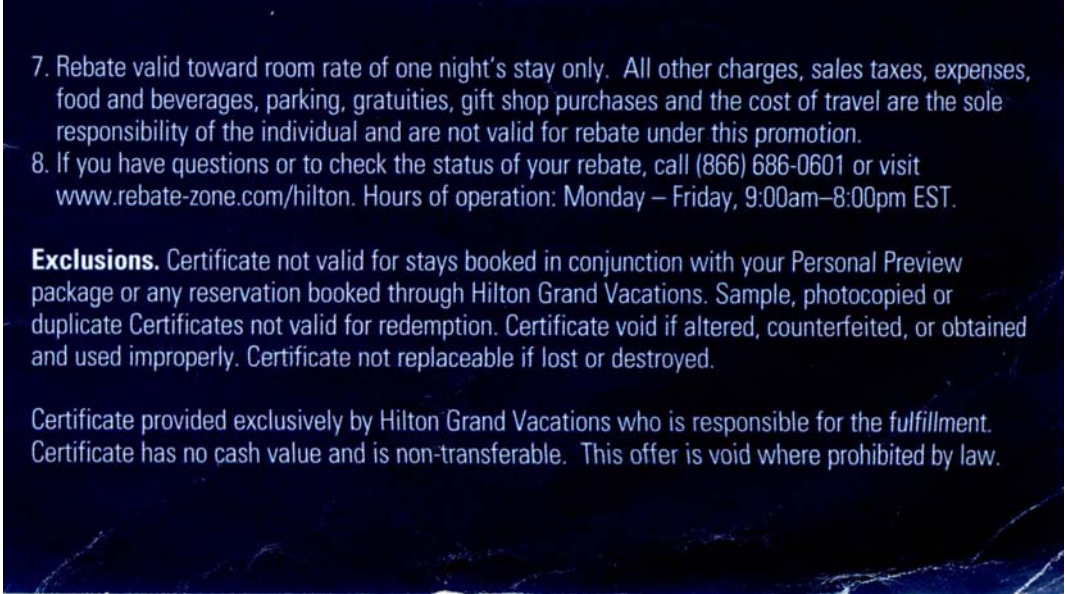
9
10 **REBATE CERTIFICATE IS NOT VALID FOR USE AT
11 THE HOTEL, CANNOT BE USED IN CONJUNCTION
12 WITH THE CURRENT HOTEL STAY AND IS NOT
13 VALID TOWARDS A REBATE ON YOUR INITIAL
14 VACATION PACKAGE.**

15 MKTG-VCHR-5000-H100-OAHU SD

16 21. Additionally, the Certificate contains fine print that instructs the consumer “How To
17 Redeem [the] Certificate for Rebate” by mail:

18 **How To Redeem Certificate for Rebate.**

- 19 1. Ensure Certificate is completed in its entirety after completion of Personal Preview.
20 2. Hilton Hotel stay must occur in the U.S. within six months of completed Personal Preview.
21 3. Certificate is not redeemable at the Hilton Hotel and must be submitted as described below
22 after completed stay for rebate.
23 4. After completed stay, mail original completed Certificate and copy of your Hilton hotel-stay paid
24 folio receipt within 30 days of your completed hotel stay, to:
25 Hilton Grand Vacations, Dept. H431454-31104, P.O. Box 15129, White Bear Lake, MN 55115-5129.
26 5. Requests exceeding the 30 day period or requests submitted without original completed
27 Certificate and Hilton Hotel receipt will not be returned and the request for redemption will not
28 be fulfilled or acknowledged.
Rebate will be issued to named recipient(s) via check. Please allow 6-8 weeks for rebate to
be issued.



11 22. The Certificate plainly describes when it must be used, how it must be filled out,
12 and where it should be sent for the consumer to redeem its value. It specifies that the original
13 Certificate must be provided for redemption, and Hilton will not replace the Certificate if “lost or
14 destroyed.”

15 **1. The Certificates Are False and Misleading On Their Face**

16 23. On its face, a reasonable consumer would understand the Certificate to mean that it
17 is redeemable for any stay at a hotel within the Hilton family of hotels. Hilton’s decision to market
18 and promote their Certificates as applicable to a stay at any Hilton property in the United States is
19 therefore false and misleading, given that Hilton refuses to honor the certificates for any such stay.

20 24. The Certificate clearly conveys that “any Hilton Hotel” or “a Hilton Hotel anywhere
21 in the U.S.” includes any hotel in the Hilton family of hotels. This is especially true because there
22 is no hotel expressly called the “Hilton Hotel.” Taken literally, the Certificate can never be
23 redeemed.

24 25. At present, Hilton has eleven hotel chains, and seven of those chains contain the
25 word “Hilton” in the title. None contains the name “Hilton Club.” Although there is a chain of
26 hotels entitled “Hilton Hotels & Resorts,” hotels under that brand are actually called by a different
27 title. For example, the Hilton in Sacramento is entitled “Hilton Sacramento Arden West.” *See*
28

1 <http://www.hilton.com/search/hi/us/ca/sacramento/0/00000000000/0/0/0/30?800=866-265->
2 1201&WT.srch=1. Moreover, the Doubletree brand of hotels that Plaintiff stayed at and attempted
3 to redeem his Certificate at also contains the phrase “Hilton Hotel” within the name of the
4 property. See <http://doubletree3.hilton.com/en/index.html> (using the terms “DoubleTree by
5 Hilton” and “DoubleTree by Hilton Hotels” to describe the hotel chain). Hilton’s other chains that
6 mention the name “Hilton” or “Hilton Hotel” include Hilton Garden Inn, Embassy Suites by Hilton
7 Hotels, and Canopy By Hilton. Furthermore, Hilton’s own website identifies Doubletree properties,
8 among other Hilton hotels when a search is performed for a “Hilton Hotel.”

9 26. Further, because Hilton lays out specific limitations on the Certificate, including
10 when, where, and how to redeem the Certificate, a reasonable consumer would conclude that any
11 limitations to its redemption are expressly contained on the Certificate. Hilton was obliged to
12 comply with the terms disclosed on the Certificates.

13 2. The Certificates Are False and Misleading By Omission

14 27. Likewise, the Certificates are false and misleading because Hilton fails to specify
15 certain limitations to their redemption, but they later impose these undisclosed limitations on
16 Plaintiff and the putative class. Nowhere on the Certificate is there any clear indication that it is
17 redeemable at specific Hilton locations or that is not redeemable at specific Hilton chains. Instead,
18 the Certificate states that it applies to “*any*” Hilton Hotel “*anywhere*” in the United States. Those
19 statements are both false and misleading because they omit the limitation that Hilton claimed was
20 applicable when Defendants denied Mr. Elder’s rebate, and when Defendants denied the rebates
21 owed to thousands of other class members.

22 28. Contrary to Hilton’s promises, the Certificates do not provide the advertised
23 discount at “any Hilton Hotel” in the United States. Instead, after a consumer mails in the
24 Certificate pursuant to the directions on the Certificate, Hilton rejects the claim and refuses to issue
25 the refund because the consumer did not stay at what Hilton terms a “participating” Hilton location,
26 which includes most if not all hotels under the Hilton brand, including Doubletree properties. On
27 information and belief, Hilton’s refusal to honor the Certificates based upon their express terms is a
28 scheme that was intentionally created by Hilton and the other Defendants in order to minimize their

1 expenses, and maximize profits, related to Hilton's timeshare promotions. By refusing to honor
 2 thousands of valid Certificates, Defendants received the benefits that they were seeking – the
 3 ability to present timeshare opportunities directly to tens of thousands of potential customers –
 4 without incurring the expenses associated with honoring the promises that had been made. The
 5 Defendants intentionally enticed customers to plan a hotel stay with the expectation that the cost
 6 would be reimbursed, or at least defrayed, all the while intending to reject these rebate requests
 7 based upon additional conditions that were never disclosed. By working together to design, market,
 8 promote and manage the sham Certificate process, each Defendant approved, authorized and/or
 9 tacitly directed, ratified and/or participated in the illegal acts complained of herein.

10 **C. Customer Reports Demonstrate That Hilton's Certificates Are**
 11 **False and Misleading**

12 29. Mr. Elder is not alone in his experience. In fact, a remarkable number of people
 13 have taken to the Internet to describe similar or identical experiences when trying to redeem their
 14 Certificates. The following¹ are just a few examples from consumers describing their experiences
 15 with Hilton's Certificates:

16 On March 31, 2013, Steve of Russell, PA posted on Consumer Affairs:

17 I was offered a Hilton Grand Vacations sales pitch when I booked a room at a Hilton brand
 18 hotel and went for the \$149 4-day/3-night stay in Orlando as long as I attended the 90-
 19 minute presentation. ... we got a "\$100 Spend a Night on Us" certificate since we attended
 20 the sales presentation. We used it a few weeks ago and got a post card today saying that it
 was invalid since it was only good for a stay at a Hilton Hotel or Hilton Club only. We
 stayed at a Homewood Suites by Hilton. They are very misleading on their wording so
 look out.

21 On October 19, 2013, L from Las Vegas, NV posted on Consumer Affairs:

22 I just want to say that I used to work at HGVC [Hilton Grand Vacation Club], and it's all a
 23 scam. Don't buy from them! When we give a SANU [Spend A Night on Us] certificate
 24 you think it's for a future stay... when in fact it doesn't work! I mean you do get one but
 25 they don't work. When an agent selects a Sanu for you, we just put it for any Hilton
 26 property... not a specific hotel. And because we don't select a specific hotel, they don't
 27 work so you end up paying for a room and you never get your refund check. Also the
 packages you buy seem like good deals but they aren't. There are lots of hidden fees.

28 ¹ http://www.consumeraffairs.com/travel/hilton_grand_vacations.html

1 On January 4, 2014, Crystal of Ogden, UT posted on Consumer Affairs:

2 After going to the presentation and saying no multiple times, We were given a "Night on Us
3 certificate". I have added the images. I asked them if we can stay at any Hilton Property
4 anywhere in the world. They said no, just in the US. So we booked a night in California at
5 the Embassy Suites, which is [] a Hilton Property, however it does not count. Only a
6 Hilton, full service hotel qualifies for the stay. This is fraudulent and misleading
advertising and many people have been duped by this. I previously have found Hilton to be
a reputable company who has very excellent hotels but the whole timeshare debacle needs
to be removed before they ruin their entire reputation.

7 On September 10, 2012, Dana of Stillwater, MN posted on Consumer Affairs:

8 We were solicited via phone to participate (you know the drill) on a tour of the Hilton
9 Vacation Club properties. Since we go to Orlando to visit grandchildren, we thought this
10 might be a neat place to entertain for a few days. And we were ready for the strong sales
11 pitch. Part of the deal is a rebate of \$100 valid for redemption in "any" Hilton hotel. In
12 summary, we stayed at a Hampton Inn in Madison, WI on our return to Minnesota and
13 submitted the rebate. Rebate was denied as an invalid claim because "This offer is valid for
14 one-night stay at the Hilton Hotel or Hilton Club only." (Read the post card sent from a PO
15 Box in White Bear Lake, MN.) That is not the language on the "Spend a Night on Us"
certificate we received or what was communicated in person. If they would provide an
address and not a box number in White Bear Lake, I would go over and ask for the original
certificate and receipt, and try using it at a "Hilton Hotel"! Yeah right, ha, ha. Like another
reviewer, "This is a waste of time and Hilton is counting on 'breakage' for those that do not
either submit the rebate form and those that do not follow up." This is clear
misrepresentation. I have submitted a complaint to the Minnesota Attorney General's
Office.

16 On September 8, 2012, Carrie of Northwood, OH posted on Consumer Affairs:

17 I got the certificate for "Spend a Night on Us" and stayed at a Homewood Suites for \$175
18 for one night. I was told twice that the certificate was good for any Hilton brand hotel. I got
19 the postcard back saying my claim was invalid because it wasn't a Hilton. I am beyond
angry. I would not spend that kind of money on a hotel. I only did it because it was going
to be refunded to me

20 On August 28, 2012, Michelle of Mason OH posted on Consumer Affairs:

21 My husband and I went on to hear a timeshare sales presentation for Hilton Grand
22 Vacations in Myrtle Beach, SC. We received a certificate for "any" Hilton Hotel for \$200.
23 My husband and I stayed at a Hilton Garden Inn and sent in our certificate. We just
24 received a postcard in the mail that our request was denied because the offer is valid at a
Hilton hotel only. The certificate specifically stated "any Hilton hotel." What a scam! I
will never stay at a Hilton hotel again!

25 On July 24, 2012, Corina of Copperton, UT posted on Consumer Affairs:

26 False Advertising - After attending a presentation of timeshare with Hilton, we were given
27 a certificate for a free night at any Hilton hotel. We go to a local Hilton almost every month
28 and thought we'd go to a different one, to mix things up a bit. The certificate showed
several different logos on the certificate, showing various Hilton names, which included the
Waldorf. We thought we'd give it a try, as it is normally pretty pricey. The certificate was

1 good for one night, up to \$200. After submitting my receipts and certificate, I received a
2 postcard, apologizing that the offer was only good at Hilton Hotels. So why the heck was
3 the Waldorf listed on the certificate? Also, no apology or offer to still honor my certificate,
too bad it is expired now, conveniently! I'm done with Hilton.

4 On July 5, 2012, Brenda of Dunn, NC posted on Consumer Affairs:

5 As with most everyone else, I fell for the Orlando vacation package, went to the
6 presentation and walked out with my certificate. I completed my certificate, submitted the
7 required documentation which included my invoice for my stay at a Hilton Club property.
8 Sure enough, I received the auto-generated postcard denying my claim because this offer is
valid for a one-night stay at the Hilton Hotel or Hilton Club only. Such a shame that I
stayed at two other Hilton establishments over the course of this one vacation and stay at
Hilton's with my work travel.

9 On May 29, 2012, Walid of Miami, FL posted on Consumer Affairs:

10 We booked a Hilton Grand Vacations over the phone (our first mistake) and then we were
11 given a \$100 certificate for a one-night stay at any Hilton hotel after hearing their timeshare
12 sales pitch. We stayed at the Hilton Garden Inn in Houston, and like many others, the
certificate was rejected. They said only the Hilton hotel qualifies. What a scam!

13 On April 17, 2012, Gary of Salem, OR posted on Consumer Affairs:

14 I'm afraid this is more of the same! We received a \$200 hotel voucher as part of a high
15 pressure presentation in Hawaii. I am an attorney and specifically asked if this voucher
16 could be used at Hampton Inn Portland where we stayed and was told it was good at any
Hilton or any hotel owned by Hilton, including the Hampton! I submitted voucher last trip
and received rejection ("Hilton only") and they did not return the certificate! Outright face
to face lie.

17 On April 1, 2012, Anne of Aliso Viejo, CA posted on Consumer Affairs:

18 Based on the many other similar complaints listed here, it seems Hilton got us all for
19 suckers. What a scam! We also had to go through a very pressured sales presentation at
20 the Hilton Vacation Club in Las Vegas in January and got a \$200 voucher for use at any
21 Hilton hotel for a one night stay. We stayed at the Hilton Garden Inn for one night in
22 February and our claim for the voucher refund was also denied subsequently for same
reason stated by the others that it should have been at a Hilton Hotel. What is the Hilton
Garden Inn then? What a scam to deny the claim without giving proper instructions or
return of the voucher so we could use at another "proper" Hilton. They show no goodwill.
This surely asks for a class action.

23 On February 12, 2012, Karen of Louisville, KY posted on Consumer Affairs:

24 We accepted a Hilton offer to visit the Hilton Grand Vacation Club in Orlando in October
25 2011. As part of the experience we were given a "Spend The Night On Us" certificate
26 which would rebate \$100 to me for a stay at "Any Hilton Hotel"! We went out of our way
27 while driving to Rhode Island to stay at a Hilton Hampton Inn. I sent the required
28 paperwork in a timely manner to obtain my rebate but received a postcard saying I was not
eligible because I did not stay at a Hilton Hotel or Hilton Club. The offer states any Hilton
Hotel! This is truly a bait and switch offer. At no time did anyone say or offer in writing
anything that said you could not stay at any Hilton Hotel property and be eligible! This
would have been simple enough to state in the certificate if they were trying to be honest,

1 but that wasn't the case. I would like my rebate that was promised. I do have a choice
2 where I stay both on business or for leisure travel and I do not think this was handled in an
honest way!

3 On February 4, 2012, Cathi of Collierville, TN posted on Consumer Affairs:

4 I accepted a Hilton Grand Vacations special to Las Vegas in November 2011. We did not
5 purchase the timeshare. I received a "Spend a Night on us" certificate for a \$100 rebate at
any Hilton hotel, as was promised. I stayed at the Hilton Homewood Suites in Bel Air, MD,
6 on 12/29/11, and turned in the correct paperwork and certificate to receive my rebate. It was
denied because, "This offer is valid for one night stay at the Hilton Hotel or Hilton Club
7 only."

8 The "How to redeem" information clearly states, "We are pleased to present to you a rebate
for one night's stay at any Hilton Hotel in the U.S." A Google search of Hilton Hotels lists
9 the entire brand of Hilton hotels, which a reasonable person would expect to mean that "any
Hilton Hotel" meant any Hilton Hotel brand. I would like my \$100 rebate, as was promised
at every stage of the Hilton Grand Vacations trip, from the first call to the day of check-out.

10 30. Although the above list is not exhaustive, it demonstrates that reasonable consumers
11 would be and have been deceived by the Defendants' illegal actions. Defendants deliberately
12 misled Mr. Elder and the putative class by providing Certificates that promise rebates that were in
13 fact not being offered. Specifically, Defendants spelled out express limitations on the Certificates,
14 like the Certificates must be redeemed in a 6-month period, could not be used in conjunction with
15 the current vacation, had to be physically mailed to Hilton for processing, and were good at any
16 Hilton hotel anywhere in the United States. Defendants made these representations while knowing
17 that the rebates being offered contained further restrictions that were not explained.

18 **D. Hilton Knew or Should Have Known That Their Certificates Are
19 False and Misleading**

20 31. At some point, it appears that Hilton became aware that the Certificates were false
21 and misleading. The Certificates now contain the following disclaimer or something similar:
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How To Redeem Certificate for Rebate.

1. Certificate is not valid for stays at any of the following properties: Waldorf Astoria Hotels & Resorts, Conrad Hotels & Resorts, DoubleTree by Hilton, Embassy Suites Hotels, Hilton Garden Inn, Hampton Hotels, Homewood Suites by Hilton, Home2 Suites by Hilton and Hilton Grand Vacations.
2. Ensure Certificate is completed in its entirety after completion of Personal Preview.
3. Hilton Hotel stay must occur in the U.S. within six months of completed Personal Preview.
4. Certificate is not redeemable at the Hilton Hotel and must be submitted as described below after completed stay for rebate.
5. After completed stay, mail original completed Certificate and copy of your Hilton hotel-stay paid folio receipt within 30 days of your completed hotel stay, to:
Hilton Grand Vacations, Dept. H231452-32102, P.O. Box 15129, White Bear Lake, MN 55115-5129
6. Requests exceeding the 30 day period or requests submitted without original completed Certificate and Hilton Hotel receipt will not be returned and the request for redemption will not be fulfilled or acknowledged.
7. Rebate will be issued to named recipient(s) via check. Please allow 6-8 weeks for rebate to be issued.

In the above example, it states: “Certificate is not valid for stays at any of the following properties: Waldorf Astoria Hotels & Resorts, Conrad Hotels & Resorts, Doubletree by Hilton, Embassy Suites Hotels, Hilton Garden Inn, Hampton Hotels, Homewood Suites by Hilton, Home2 Suites by Hilton and Hilton Grand Vacations.”

32. Importantly, Hilton now also offers consumers who participate in the timeshare presentation a choice of Certificates from six of its hotel chains, and each kind of Certificate is limited differently. This allows consumers to choose the specific Hilton hotel they would like to stay at when they redeem their Certificates.

33. Hilton used misleading and deceptive language to deprive Mr. Elder and the putative class of the benefits and value of their Certificates. Hilton’s voluntary cessation of these deceptive practices does not cure the past harm to Mr. Elder and the putative class, nor does it prevent Hilton and the other Defendants from again resuming these illegal practices. Mr. Elder and the putative class deserve to be made whole.

CLASS REPRESENTATION ALLEGATIONS

34. Mr. Elder seeks to represent a class defined as all persons in the United States who received a Certificate from Hilton that Hilton refused to honor (the “Class”) during the applicable statute of limitation period for each cause of action alleged.

1 35. Plaintiff also seeks to represent a subclass of all California residents who received a
2 Certificate that Hilton refused to honor (the “Subclass”) during the applicable statute of limitation
3 period for each cause of action alleged.

4 36. Members of the Class and Subclass are so numerous that their individual joinder
5 herein is impracticable. On information and belief, members of the Class and Subclass number in
6 the thousands or tens of thousands. The precise number of Class members and their identities are
7 unknown to Plaintiff at this time but may be determined through discovery. Class members may
8 be notified of the pendency of this action by mail and/or publication. Defendants’ records and
9 third-party records will supply this contact information.

10 37. Common questions of law and fact exist as to all Class members and predominate
11 over questions affecting only individual Class members. Common legal and factual questions
12 include, but are not limited to:

- 13 (a) Whether Hilton breached an express warranty made to Plaintiff and the
14 Class and/or Subclass;
- 15 (b) Whether Hilton breached an implied warranty made to Plaintiff and the
16 Class and/or Subclass;
- 17 (c) Whether Defendants’ advertising and marketing of the Certificates was false
18 or misleading;
- 19 (d) Whether Defendants’ conduct was false, misleading, or reasonably likely to
20 deceive ordinary consumers;
- 21 (e) Whether Class members and/or Subclass members have been injured by
22 Defendants’ conduct;
- 23 (f) Whether Class members and/or Subclass members suffered an ascertainable
24 loss as a result of Defendants’ misrepresentations;
- 25 (g) Whether Class members are entitled to damages, restitution, injunctive
26 relief, and/or monetary relief and, if so, the amount and nature of such relief;
- 27 (h) Whether Hilton violated California Civil Code §§ 1750, *et seq.*;
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1 (i) Whether Hilton violated California Business & Professions Code §§ 17200,
2 *et seq.*; and

3 (j) Whether Hilton violated California Business & Professions Code §§ 17500,
4 *et seq.*

5 38. The claims of the named Plaintiff are typical of the claims of the Class in that Mr.
6 Elder participated in Hilton Vacations' timeshare presentation in exchange for the promised benefit
7 of the Certificate, and he relied on the representations and warranties described above and suffered
8 a loss as a result of Defendants' misrepresentations.

9 39. Plaintiff is an adequate representative of the Class and Subclass because his interests
10 do not conflict with the interests of the Class members he seeks to represent, he has retained
11 competent counsel experienced in prosecuting class actions, and he intends to prosecute this action
12 vigorously. The interests of Class and Subclass will be fairly and adequately protected by Plaintiff
13 and his counsel.

14 40. The class mechanism is superior to other available means for the fair and efficient
15 adjudication of the claims of Class and Subclass members. Each individual Class member may
16 lack the resources to undergo the burden and expense of individual prosecution of the complex and
17 extensive litigation necessary to establish Defendants' liability. Individualized litigation would
18 increase the delay and expense to all parties and would multiply the burden on the judicial system
19 presented by the complex legal and factual issues of this case. Individualized litigation would also
20 present the potential for inconsistent or contradictory judgments. In contrast, the class action
21 device would present far fewer management difficulties and would provide the benefits of single
22 adjudication, economy of scale, and comprehensive supervision by a single court on the issue of
23 Defendants' liability. Class treatment of the liability issues will ensure that all claims and
24 claimants are before this Court for consistent adjudication of the liability issues.

25 **COUNT I**

26 **Breach of Express Warranty**

27 41. Plaintiff hereby incorporates by reference the allegations contained in all preceding
28 paragraphs of this complaint.

1 42. Plaintiff brings this claim individually and on behalf of the proposed Class against
2 Hilton.

3 43. Plaintiff and each Class member formed a contract with Hilton by attending Hilton
4 Vacations' timeshare presentation in exchange for the Certificates. The terms of the contract
5 include the promises and affirmations of fact contained on the Certificate relating to the value of
6 the Certificate, the timeframe during which it had to be redeemed, the locations at which it could
7 be redeemed, and how it could be redeemed by mail, as described above. These representations
8 became part of the basis of the bargain and are part of a contract between Plaintiff and the members
9 of the Class on the one hand, and Hilton on the other, and thus constituted express warranties.

10 44. Hilton, as the creator, marketer, and/or seller, expressly warranted that the
11 Certificates were good for a deep discount at any Hilton hotel anywhere in the United States.
12 Hilton warranted that the Certificates were good for six months. Hilton described in detail how
13 Plaintiff and the Class should go about redeeming the promised benefit. In fact, the Certificates are
14 not fit for such purposes because each of the express warranties described above are false.

15 45. Hilton promised the Certificates to Plaintiff and the other Class members in
16 exchange for their participation in Hilton's timeshare presentation. Plaintiff and the Class
17 members are ordinary consumers who acted reasonably based on Hilton's representations on the
18 Certificates, as described herein.

19 46. Hilton breached the terms of the contract, including express warranties described
20 above, because the Certificates are not redeemable at "any" Hilton hotel in the United States and
21 are subject to hidden limitations that render the Certificates useless and/or non-redeemable. Hilton
22 is also in the practice of denying the Certificates without issuing a replacement or returning the
23 original, thereby denying Plaintiff and the class the opportunity to take advantage of the benefits
24 promised in exchange for participating in Hilton's timeshare presentations.

25 47. As a direct and proximate cause of Hilton's breach of express warranty, Plaintiff
26 and Class members have been injured and harmed because they paid full price for a subsequent
27 stay at a Hilton brand hotel after their Certificates were rejected.

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COUNT II

Breach of the Implied Warranty of Merchantability

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3 48. Plaintiff hereby incorporates by reference the allegations contained in all preceding
4 paragraphs of this complaint.

5 49. Plaintiff brings this claim individually and on behalf of the proposed Class against
6 Hilton.

7 50. Hilton was at all relevant times “merchants” within the meaning of the Uniform
8 Commercial Code (“UCC”). Hilton, as the creator, marketer, and/or seller, impliedly warranted
9 that the Certificates were good for a deep discount at any Hilton hotel anywhere in the United
10 States. The Certificates are “goods” within the meaning of the UCC.

11 51. Hilton impliedly warranted that the Certificates were subject only to the limitations
12 included on the face of the Certificate. Accordingly, Hilton impliedly warranted that the
13 Certificates were merchantable, including that they could pass without objection in the trade under
14 the contract description, that they were fit for the ordinary purposes for which such goods are used,
15 that they were of fair average quality within the description, and that they would conform to the
16 promises or affirmations of fact made on the Certificate. Hilton’s implied warranties were false
17 and misleading to Plaintiff and members of the Class. Hilton’s Certificates are not fit for the
18 ordinary purposes that refund Certificates are used for - namely, to obtain a significant refund for
19 Plaintiff and the Class. As a result, Plaintiff and Class members did not receive the goods as
20 impliedly warranted by Hilton to be merchantable.

21 52. Plaintiff and the Class participated in Hilton Vacations’ timeshare presentation to
22 obtain a Certificate and paid for another stay at a Hilton hotel in reliance on the Certificate, and
23 Plaintiff and Class members relied upon Hilton’s skill and judgment and its implied warranties of
24 fitness.

25 53. The Certificates were not altered by Plaintiff or Class members.

26 54. The Certificates were false and misleading and/or defective when they left the
27 exclusive control of Hilton.

1 55. Hilton knew that the Certificates would be given to Plaintiff and the Class in
2 exchange for participation in Hilton’s timeshare presentation without additional investigation by
3 Plaintiff and Class members. The Certificates were unfit for their ordinary or intended purpose,
4 and Plaintiff and the Class members did not receive the goods warranted.

5 56. Specifically, Hilton breached their implied warranty of merchantability to Plaintiff
6 and the Class because the Certificates were incapable of performing the functions that refund
7 Certificates are intended to perform. Namely, they do not provide the promised benefit of a
8 discounted stay at any Hilton hotel in the United States. Instead, Plaintiff and the Class were
9 forced to pay full price for a subsequent hotel visit for which they intended to redeem their
10 Certificates.

11 57. As a direct and proximate cause of Hilton’s breach of the implied warranty, Plaintiff
12 and Class members have been injured and harmed because they paid full price for a subsequent
13 stay at a Hilton brand hotel after their Certificates were rejected.

14 **COUNT III**

15 **Breach of the Implied Warranty of Fitness for a Particular Purpose**

16 58. Plaintiff hereby incorporates by reference the allegations contained in all preceding
17 paragraphs of this complaint.

18 59. Plaintiff brings this claim individually and on behalf of the proposed Class against
19 Hilton.

20 60. At the time of purchasing, Plaintiff and the Class members intended to use the
21 Certificates to obtain a refund amounting to a deep discount for a future stay toward any Hilton
22 hotel in the United States.

23 61. Hilton extensively marketed and described the Certificates as a means to obtain a
24 refund amounting to a deep discount for a future stay at any Hilton hotel in the United States.

25 62. Hilton knew or had reason to know that Plaintiff and the Class members were
26 relying on Hilton’s skill and judgment to select or furnish a product capable of delivering the
27 promised discounted stay at any Hilton hotel in the United States.
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1 63. Plaintiff and Class members participated in Hilton Vacations' timeshare
2 presentation and purchased a subsequent hotel stay in reliance upon Hilton's implied warranties on
3 the Certificates.

4 64. The Certificates were not altered by Plaintiff or Class members.

5 65. As a direct and proximate result of Hilton's breach of the implied warranty, Plaintiff
6 and Class members have been injured and harmed because they paid full price for a subsequent
7 stay at a Hilton brand hotel after their Certificates were rejected.

8 **COUNT IV**

9 **Breach of Contract**

10 66. Plaintiff hereby incorporates by reference the allegations contained in all preceding
11 paragraphs of this complaint.

12 67. Plaintiff and Class members, on the one hand, and Hilton, on the other hand, formed
13 a contract when Plaintiff and Class members agreed to participate in Defendants' offered timeshare
14 presentation in exchange for a Certificate valid for a significantly discounted stay at any Hilton
15 hotel anywhere in the United States.

16 68. Plaintiff and the Class members have performed all their obligations under the
17 agreement with Hilton.

18 69. Hilton breached its obligations under the contract by refusing to honor the
19 Certificates on their terms. Specifically, the Certificates are not redeemable at "any" Hilton hotel
20 "anywhere" the United States and are subject to hidden limitations that render the Certificates
21 useless and/or unredeemable.

22 70. As a direct and proximate result of Hilton's breach of contract, Plaintiff and Class
23 members have been injured and harmed because they paid full price for a subsequent stay at a
24 Hilton brand hotel after Hilton rejected their Certificates on the bargained terms.

25 **COUNT V**

26 **Unjust Enrichment**

27 71. Plaintiff hereby incorporates by reference the allegations contained in all preceding
28 paragraphs of this complaint.

1 72. Plaintiff brings this claim individually and on behalf of the proposed Class against
2 Hilton.

3 73. Plaintiff and Class members conferred benefits on Hilton by participating in the
4 timeshare program and subsequently purchasing at least one night at a Hilton hotel in the United
5 States.

6 74. Hilton has been unjustly enriched in retaining the refund promised to Plaintiff and
7 the Class. Retention of those moneys under these circumstances is unjust and inequitable because
8 Hilton misrepresented that Plaintiff and the Class members would be entitled to a deeply-
9 discounted stay at any Hilton hotel in the United States by redeeming their Certificates. These
10 misrepresentations caused injury to Plaintiff and Class members.

11 75. Because Hilton’s retention of the non-gratuitous benefits conferred on them by
12 Plaintiff and Class members is unjust and inequitable, Hilton must pay restitution to Plaintiff and
13 Class members for their unjust enrichment, as ordered by the Court.

14 **COUNT VI**

15 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**
16 **California Civil Code §§ 1750, et seq.**

17 76. Plaintiff hereby incorporates by reference the allegations contained in all preceding
18 paragraphs of this complaint.

19 77. Plaintiff brings this claim individually and on behalf of the proposed Subclass
20 against Hilton.

21 78. CLRA, Cal. Civ. Code § 1770(a)(5), prohibits “[r]epresenting that goods or services
22 have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do
23 not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or
24 she does not have.”

25 79. CLRA, Cal. Civ. Code § 1770(a)(9), prohibits “[a]dvertising goods or services with
26 intent not to sell them as advertised.”
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1 80. Hilton violated this provision by misrepresenting that the Certificates were valid for
2 a deeply-discounted stay at any Hilton hotel anywhere in the United States, without limitation to
3 any specific Hilton hotel chain.

4 81. Plaintiff and the Subclass suffered injuries caused by Hilton because Plaintiff and
5 Class members: (a) paid full price for a subsequent stay at a Hilton brand hotel after their
6 Certificates were rejected; and (b) the Certificates did not have the characteristics, ingredients,
7 uses, benefits, or quantities as promised.

8 82. On or about November 16, 2015, prior to filing this action, a CLRA notice letter
9 was served on Defendant Hilton Worldwide which complies in all respects with California Civil
10 Code § 1782(a). Plaintiff sent Hilton Worldwide a letter via certified mail, return receipt
11 requested, advising Hilton that it and its subsidiaries were in violation of the CLRA and demanding
12 that it cease and desist from such violations and make full restitution by refunding the monies
13 received therefrom.

14 83. On or about December 6, 2015, Plaintiff also sent a copy of a CLRA demand letter
15 to Defendant Hilton Vacations which complies in all respects with California Civil Code § 1782(a).
16 The letter was sent via certified mail, return receipt requested, advising Hilton Vacations that it was
17 in violation of the CLRA and demanding that it cease and desist from such violations and make full
18 restitution by refunding the monies received therefrom.

19 84. Wherefore, Plaintiff and the Subclass seeks damages, restitution, and injunctive
20 relief for this violation of the CLRA.

21 **COUNT VII**

22 **Violation of California’s Unfair Competition Law (“UCL”),**
23 **California Business & Professions Code §§ 17200, *et seq.***

24 85. Plaintiff hereby incorporates by reference the allegations contained in all preceding
25 paragraphs of this complaint.

26 86. Plaintiff brings this claim individually and on behalf of the proposed Subclass
27 against Defendants.

1 87. Defendants are subject to California’s Unfair Competition Law, Cal. Bus. & Prof.
2 Code §§ 17200, *et seq.* The UCL provides, in pertinent part: “Unfair competition shall mean and
3 include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or
4 misleading advertising”

5 88. Defendants’ misrepresentations and other conduct, described herein, violated the
6 “unlawful” prong of the UCL by violating the CLRA as described herein; the FAL as described
7 herein; and Cal. Com. Code § 2607.

8 89. Defendants’ misrepresentations and other conduct, described herein, violated the
9 “unfair” prong of the UCL in that its conduct is substantially injurious to consumers, offends public
10 policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct
11 outweighs any alleged benefits.

12 90. Defendants violated the “fraudulent” prong of the UCL by making
13 misrepresentations about the Certificates, as described herein.

14 91. Defendant Premier aided and abetted Hilton and Hilton Vacations in violating the
15 UCL by knowingly misrepresenting that the Certificates were valid for a deeply-discounted stay at
16 any Hilton hotel anywhere in the United States, without limitation to any specific Hilton hotel
17 chain.

18 92. Defendant Blackhawk aided and abetted Hilton and Hilton Vacations in violating
19 the UCL by knowingly and improperly rejecting the Certificates.

20 93. Plaintiff and the Subclass lost money or property as a result of Defendants’ UCL
21 violations because (a) they paid full price for a subsequent stay at a Hilton brand hotel after their
22 Certificates were; and (b) the Certificates did not have the characteristics, ingredients, uses,
23 benefits, or quantities as promised.

24 **COUNT VIII**

25 **Violation of California’s False Advertising Law (“FAL”),**
26 **California Business & Professions Code §§ 17500, *et seq.***

27 94. Plaintiff hereby incorporates by reference the allegations contained in all preceding
28 paragraphs of this complaint.

1 95. Plaintiff brings this claim individually and on behalf of the proposed Subclass
2 against Defendants.

3 96. California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*,
4 makes it “unlawful for any person to make or disseminate or cause to be made or disseminated
5 before the public in this state, ... in any advertising device ... or in any other manner or means
6 whatever, including over the Internet, any statement, concerning ... personal property or services,
7 professional or otherwise, or performance or disposition thereof, which is untrue or misleading and
8 which is known, or which by the exercise of reasonable care should be known, to be untrue or
9 misleading.”

10 97. Hilton committed acts of false advertising, as defined by §17500, by
11 misrepresenting that the Certificates were valid for a deeply-discounted stay at any Hilton hotel in
12 the United States, without limitation to any specific Hilton hotel chain.

13 98. Hilton knew or should have known, through the exercise of reasonable care that its
14 representations about the Certificates were untrue and misleading.

15 99. Defendant Premier aided and abetted Hilton and Hilton Vacations in violating this
16 provision by knowingly misrepresenting that the Certificates were valid for a deeply-discounted
17 stay at any Hilton hotel anywhere in the United States, without limitation to any specific Hilton
18 hotel chain.

19 100. Defendant Blackhawk aided and abetted Hilton and Hilton Vacations in violating
20 this provision by knowingly and improperly rejecting the Certificates.

21 101. Defendants’ actions in violation of § 17500 were false and misleading such that the
22 general public is and was likely to be deceived.

23 102. Plaintiff and the Subclass lost money or property as a result of Defendants’ FAL
24 violations because (a) they paid full price for a subsequent stay at a Hilton brand hotel after their
25 Certificates were; and (b) the Certificates did not have the characteristics, ingredients, uses,
26 benefits, or quantities as promised.

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COUNT IX

Negligent Misrepresentation

103. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

104. Plaintiff brings this claim individually and on behalf of the proposed Class against Hilton.

105. As discussed above, Hilton misrepresented that the Certificates were valid for a deeply-discounted stay at any Hilton hotel in the United States, without limitation to any specific Hilton hotel chain. Hilton had a duty to disclose this information and any information to the contrary.

106. At the time Hilton made these representations, Hilton knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

107. At an absolute minimum, Hilton negligently misrepresented and/or negligently omitted material facts about the Certificates.

108. The negligent misrepresentations and omissions made by Hilton, upon which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class members to participate in Hilton’s timeshare program and subsequently purchase at least a one night stay at a Hilton hotel at full price.

109. Plaintiff and Class members would not have participated in Hilton’s timeshare program or paid full price for a subsequent stay at a Hilton hotel in the United States on the same terms if the true facts had been known.

110. Hilton’s negligent actions caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

COUNT X

Fraud

111. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

1 112. Plaintiff brings this claim individually and on behalf of the proposed Class against
2 Defendants

3 113. As discussed above, the Defendants provided Plaintiff and Class members with false
4 or misleading material information and failed to disclose material facts about the Certificates,
5 including but not limited to the representation that the Certificates were valid for a deeply-
6 discounted stay at any Hilton hotel anywhere in the United States. These misrepresentations and
7 omissions were made with knowledge of their falsehood.

8 114. The misrepresentations and omissions made by Hilton, upon which Plaintiff and
9 Class members reasonably and justifiably relied, were intended to induce and actually induced
10 Plaintiff and Class members to participate in Hilton’s timeshare program and to subsequently stay
11 at a Hilton hotel in the United States under the assumption the stay would be deeply discounted.

12 115. Defendant Premier aided and abetted Hilton and Hilton Vacations in defrauding
13 Plaintiff and the Class by knowingly presenting Certificates which purported to be valid for a
14 deeply-discounted stay at any Hilton hotel anywhere in the United States. Premier knew or should
15 have known that the Certificates would not be honored, but continued to distribute them and
16 thereby encourage their use.

17 116. Defendant Blackhawk aided and abetted Hilton and Hilton Vacations in defrauding
18 Plaintiff and the Class by knowingly and improperly rejecting the Certificates.

19 117. Defendants’ violations caused damage to Plaintiff and Class members, who are
20 entitled to damages and other legal and equitable relief as a result.

21 **COUNT XI**

22 **Aiding and Abetting**

23 118. Plaintiff hereby incorporates by reference the allegations contained in all preceding
24 paragraphs of this complaint.

25 119. Plaintiff brings this claim individually and on behalf of the proposed Class against
26 Premier and Blackhawk.

27 120. Defendant Premier aided and abetted Hilton and Hilton Vacations by providing
28 Hilton and Hilton Vacations with substantial assistance by knowingly misrepresenting that the

1 Certificates were valid for a deeply-discounted stay at any Hilton hotel anywhere in the United
2 States, without limitation to any specific Hilton hotel chain. Defendants Premier made these
3 misrepresentations while having actual knowledge that Hilton and Hilton Vacations were engaged
4 in a deceptive scheme designed to cheat Plaintiff Elder and the other Class members.

5 121. Defendant Blackhawk aided and abetted Hilton and Hilton Vacations by providing
6 Hilton and Hilton Vacations with substantial assistance by knowingly and improperly rejecting the
7 Certificates. Defendants Blackhawk made these misrepresentations while having actual knowledge
8 that Hilton and Hilton Vacations were engaged in a deceptive scheme designed to cheat Plaintiff
9 Elder and the other class members

10 122. As a direct and proximate result of the acts of Premier and Blackhawk described
11 above, Plaintiff and Class members have been injured and harmed because they paid full price for a
12 subsequent stay at a Hilton brand hotel after their Certificates were rejected.

13 **COUNT XII**

14 **Civil Conspiracy**

15 123. Plaintiff hereby incorporates by reference the allegations contained in all preceding
16 paragraphs of this complaint.

17 124. Plaintiff brings this claim individually and on behalf of the proposed Class against
18 Defendants.

19 125. Defendants agreed and conspired to knowingly and willfully misrepresent that the
20 Certificates were valid for a deeply-discounted stay at any Hilton hotel anywhere in the United
21 States, without limitation to any specific Hilton hotel chain.

22 126. Defendants intended for Plaintiffs and the Class to rely on Defendants'
23 misrepresentations and omissions regarding the Certificates.

24 127. Plaintiff and Class members would not have participated in Hilton's timeshare
25 program or paid full price for a subsequent stay at a Hilton hotel in the United States on the same
26 terms if the true facts had been known.

1 128. Defendants knowingly and willfully rejected the Certificates submitted by Plaintiff
2 and the Class despite their knowledge that the Certificates were valid and should have been
3 honored.

4 129. As a direct and proximate result of Defendants' conspiracy, Plaintiff and Class
5 members have been injured and harmed because they paid full price for a subsequent stay at a
6 Hilton brand hotel after their Certificates were rejected.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks
9 judgment against Defendants, as follows:

- 10 a. For an order certifying the nationwide Class and the Subclass under Rule 23 of the
11 Federal Rules of Civil Procedure and naming Plaintiff as the representative of the
12 Class and Subclass and Plaintiff's attorneys as Class Counsel to represent members
13 of the Class and Subclass;
- 14 b. For an order declaring that Hilton's conduct violates the statutes referenced herein;
- 15 c. For an order finding in favor of Plaintiff, the nationwide Class, and the Subclass on
16 all counts asserted herein;
- 17 d. For compensatory and punitive damages in amounts to be determined by the Court
18 and/or jury;
- 19 e. For prejudgment interest on all amounts awarded;
- 20 f. For an order of restitution and all other forms of equitable monetary relief;
- 21 g. For injunctive relief enjoining Defendants from falsely marketing, advertising
22 and/or concealing material information from the public and committing unfair and
23 unlawful business practices; and
- 24 h. For an order awarding Plaintiff, the Class, and the Subclass their reasonable
25 attorneys' fees and expenses and costs of suit.

26 **DEMAND FOR TRIAL BY JURY**

27 Plaintiff demands a trial by jury of all issues so triable.
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Dated: March 22, 2017

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ L. Timothy Fisher
L. Timothy Fisher

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Attorneys for Plaintiff and all others similarly situated

CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, Timothy Elder, declare as follows:

1. I am a plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently thereto.

2. The complaint in this action is filed in the proper place because I resided in this District when seeking redemption of the rebate Certificate valid for up to \$100 off a stay at any Hilton property anywhere in the United States. Defendants also sent a letter to me in this District rejecting my request that they honor the Certificate. Further, Defendants conduct a substantial amount of business in this District.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on January 15, 2016 at Fremont, California.



Timothy Elder

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