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Attorneys for Plaintiff

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

Kathleen Holt, individually and on
behalf of all others similarly
situated,

Plaintiff,

v.

Noble House Hotels & Resort, LTD.
d/b/a Noble House Hotels & Resort,
LTD. LP; and Does 1 to 25,
inclusive

Defendants.

Case No: 37-2017-00035217-CU-MC-CTL

Class Action

**Class Action Complaint for
Damages, Restitution and
Injunctive Relief for Violations of:**

- 1) California Bus. & Prof. §§
17500 et seq.**
- 2) California Bus. & Prof. §§
17200 et seq.**
- 3) California Civil Code § 1750 et
seq.**

Jury Trial Demanded

HYDE & SWIGART
Consumer Protection Attorneys



Introduction

1. Kathleen Holt ("Plaintiff") bring this statewide Class Action to enjoin the deceptive business practices of Noble House Hotels & Resort, LTD. d/b/a Noble House Hotels & Resort, LTD. LP. (Referred to as "Noble House") with regard to Noble House's deceptive and misleading billing practices at their restaurants.
2. The deceptive and misleading billing practices of Noble House causes consumers to suffer monetary damages.
3. The deceptive and misleading billing practices of Noble House also causes Noble House's competitors to suffer a competitive disadvantage because these misleading billing practices force Noble House's competition to choose between engaging in the same deceptive business practices as Noble House or suffer a financial and competitive disadvantage by not engaging in this same deceptive behavior.
4. While violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.
5. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain directly to a plaintiff with direct knowledge, which Plaintiff alleges on personal knowledge.
6. Unless otherwise stated, the conduct engaged in by Noble House took place in California.
7. Noble House is a corporation registered in Texas and Washington that owns at least one restaurant in San Diego County.
8. Noble House restaurant represents to the general public certain prices for food and drinks in its in-restaurant and advertised menus, but then, after the food and/or drink is consumed, Noble House adds what it calls a "surcharge," which is actually a false, deceptive, and misleading charge, to the balance of

1 the final bill total which consumers thereafter pay, either knowingly or
 2 unknowingly.

- 3 9. By not raising their menu prices, and instead adding a surcharge onto a
 4 customer's bill, Noble House is misleading the public as to the actual prices
 5 of their food and drinks.

6 **Jurisdiction and Venue**

- 7 10. This court has jurisdiction over this matter as the events giving rise to this
 8 cause of action took place in the County of San Diego, State of California.

- 9 11. The court has personal jurisdiction over Noble House because Noble House
 10 conducts business in the County of San Diego, State of California.

- 11 12. Noble House's corporate offices are located within the state of Washington,
 12 and it owns at least one restaurant in San Diego, California.

- 13 13. Noble House otherwise purposely avails itself of the markets in this state, and
 14 San Diego county, through the promotion and marketing of its restaurant in
 15 this state, to render the exercise of jurisdiction by this Court permissible under
 16 traditional notions of fair play and substantial justice.

- 17 14. Venue is proper in the County of San Diego for the following reasons:

- 18 • Plaintiff resides in the County of San Diego;
- 19 • The conduct complained of herein occurred within the Court's judicial
- 20 district;
- 21 • Noble House conducted and does substantial business in the County of
- 22 San Diego; and
- 23 • Noble House is subject to personal jurisdiction in this district.

24 **Parties**

- 25
 26 15. Plaintiff is a natural person who resides in the County of San Diego, State of
 27 California, who unknowingly had a deceptive "surcharge" added to her bill
 28

1 after eating at Noble House's "Acqua California Bistro" restaurant, which is
2 located inside of the Hilton San Diego Resort and Spa.

- 3 16. Noble House is a corporation that is incorporated under the laws of the State
4 of Washington, and does business within the State of California and within
5 this district.

6 **Factual Allegations**

- 7 17. Noble House misleads the general public by advertising certain prices for
8 food and drinks in its menus, which give consumers the impression that this
9 price is the actually price they are being charged, but then surreptitiously adds
10 a "surcharge" to the balance of the bill total at check out time.

- 11 18. After any food or beverage is consumed, this "surcharge" is added to the
12 bottom of the check, hidden among the subtotal, and tax.

- 13 19. This "surcharge" is not reflected in the prices listed in the restaurants' menus.

- 14 20. It is hard to find this "surcharge" on the final check and this "surcharge"
15 blends in with the other numbers that one would expect on a restaurant check
16 like a subtotal and tax.

- 17 21. On August 6, 2017 Plaintiff ate at Acqua California Bistro, located inside the
18 Hilton San Diego Resort and Spa.

- 19 22. The Hilton and the restaurant inside are owned by Noble House, and they are
20 located at 1775 East Mission Bay Drive, San Diego, California.

- 21 23. After eating, Plaintiff was billed a "SURCHARGE" of \$1.38, which was
22 hidden, without explanation, between the "Subtotal" and "Tax" portions of the
23 bill. Plaintiff's bill sub-totaled \$39.50, so the surcharge amount is roughly
24 3.5% of the total.

- 25 24. The surcharge was added in such a way that a consumer could easily miss it
26 on their bill.



- 1 25. Noble House purposely added this “surcharge” instead of raising the prices on
2 its menu in order to mislead consumers into thinking that their meal would
3 cost less than it actually does.
- 4 26. The surcharge was added *after* the consumer is finished eating and drinking at
5 Noble House restaurants, when it is too late to make an informed decision
6 about the increased total bill.
- 7 27. This surcharge is not a gratuity for the server or bartender, but is, instead, a
8 charge that goes directly to Noble House.
- 9 28. During the “Class Period,” as defined below, Plaintiff and those similarly
10 situated were deprived of moneys, which they paid for food and drinks at
11 Noble House many restaurants by the actions described above.
- 12 29. If Noble House were not misleading the public, and wanted to increase its
13 profit, it could simply raise its menu prices instead of adding a hidden charge
14 onto their customers’ bills.
- 15 30. Had Noble House simply raised its menu prices, the consumers would know
16 how much each item actually costs.
- 17 31. By utilizing the deceptive “surcharge”, consumers are deceived into thinking
18 their meal will cost less at the time they order it.
- 19 32. Noble House knew, or in the exercise of reasonable care should have known,
20 that the addition of this surcharge is false, deceptive, and misleading.
- 21 33. Noble House could have easily raised its menu prices. Instead, Noble House
22 deliberately chose to add the charge to customers’ bills at the end, when
23 people are less likely to notice or object.
- 24 34. Through its deceptions, Noble House made an intentional strategic and
25 tactical decision to deceive consumers with the intent of reaping the financial
26 benefit of the false, misleading, and deceptive surcharge that is added to each
27 and every customer’s bill in their restaurants.
- 28

First Cause of Action
for Violations of Cal. Bus. & Prof. Code §§ 17500 et seq.
[California's False Advertising Law]

35. Plaintiff repeats, re-alleges and incorporates by reference the above allegations as if fully stated herein.

36. Plaintiff brings this cause of action on behalf of herself and on behalf of the putative Class.

37. Plaintiff and Noble House are "person[s]" as defined by California Business & Professions Code § 17506. California Business & Professions Code § 17535 authorizes a private right of action on both an individual and representative basis.

38. The misrepresentations, acts, and non-disclosures by Noble House of the material facts detailed above constitute false and misleading advertising and therefore violate Business & Professions Code §§ 17500 *et seq.*

39. At all times relevant, Noble House's advertising and the listing of prices for food and drinks in their menus, was false, misleading, and likely to deceive the reasonable consumer and the public, by representing that menu items cost a certain amount, when in reality each menu item cost four percent more than advertised.

40. Noble House engaged in the false and/or misleading advertising and marketing as alleged herein with the intent to directly or indirectly mislead consumers as the cost of their food and drinks.

41. In making and publicly disseminating the statements and/or omissions alleged herein, Noble House knew or should have known that the statements and/or omissions were untrue or misleading, and acted in violation of California Business & Professions Code §§ 17500 *et seq.*

42. Plaintiff and members of the putative Class have suffered injury in fact and have lost money and/or property as a result of Noble House's false



1 advertising, as more fully set forth herein. Plaintiff and members of the
2 putative Class have been injured because they paid 3.5 percent more money to
3 Noble House than was advertised in their menu, and Noble House took the
4 benefit of that marketing and advertising.

5 43. At a date presently unknown to Plaintiff, and as set forth above, Noble House
6 began committing acts of false and misleading advertising of the prices of its
7 food and drinks, as defined by Business & Professions Code §§ 17500 et seq.,
8 by adding a “surcharge” onto consumer’s bill instead of raising menu prices.

9 44. The false and misleading advertising of Noble House, as described above,
10 presents a continuing threat to consumers, as Noble House continues to add
11 the “surcharge”. This will continue to mislead consumers as to the real price
12 of food and drinks at Noble House’s restaurants.

13 45. As a direct and proximate result of Noble House’s aforementioned conduct
14 and representations, Noble House received and continues to hold monies
15 rightfully belonging to Plaintiff and other similarly situated consumers who
16 had deceptive “surcharge”s added to their bills, as a result of the unlawful acts
17 of Noble House, during the Class Period.

18 **Second Cause of Action**

19 **for Violations of Cal. Bus. & Prof. Code §§ 17200 et seq.**

20 **[California’s Unfair Competition Law]**

21 46. Plaintiff repeats, re-alleges and incorporates by reference the above
22 allegations as if fully stated herein.

23 47. Plaintiff and Noble House are each “person[s]” as defined by California
24 Business & Professions Code § 17201. California Business & Professions
25 Code § 17204 authorizes a private right of action on both an individual and
26 representative basis.

27 48. “Unfair competition” is defined by Business and Professions Code Section §
28 17200 as encompassing several types of business “wrongs,” four of which are

1 at issue here: (1) an “unlawful” business act or practice, (2) an “unfair”
 2 business act or practice, (3) a “fraudulent” business act or practice, and (4)
 3 “unfair, deceptive, untrue or misleading advertising.” The definitions in
 4 §17200 are drafted in the disjunctive, meaning that each of these “wrongs”
 5 operates independently from the others.

6 **A. “Unlawful” Prong**

7 49. Because Noble House has violated California’s False Advertising Law,
 8 Business & Professions Code §§17500 *et seq.*, Noble House has violated
 9 California’s Unfair Competition Law, Business & Professions Code §§17200
 10 *et seq.*, which provides a cause of action for an “unlawful” business act or
 11 practice perpetrated on members of the California public.

12 50. Noble House had other reasonably available alternatives to further its
 13 legitimate business interest, other than the conduct described herein, such as
 14 raising their menu prices.

15 51. Plaintiff and the putative class members reserve the right to allege other
 16 violations of law, which constitute other unlawful business practices or acts,
 17 as such conduct is ongoing and continues to this date.

18 **B. “Unfair” Prong**

19 52. Noble House's actions and representations constitute an “unfair” business act
 20 or practice under § 17200 in that Noble House conduct is substantially
 21 injurious to consumers, offends public policy, and is immoral, unethical,
 22 oppressive, and unscrupulous as the gravity of the conduct outweighs any
 23 alleged benefits attributable to such conduct. Without limitation, it is an
 24 unfair business act or practice for Noble House to knowingly or negligently
 25 represent to the consuming public, that its menu prices are three percent lower
 26 than the consumer will actually be charged. Such conduct by Noble House is
 27 “unfair” because it offends established public policy and/or is immoral,
 28 unethical, oppressive, unscrupulous and/or substantially injurious to

1 consumers in that consumers are led to believe that Noble House's prices are
 2 lower than they actually are once the "surcharge" is added to the consumer's
 3 bill.

4 53. At a date presently unknown to Plaintiff, and as set forth above, Noble House
 5 has committed acts of false and misleading advertising and promotion of the
 6 prices of its food and drinks, as defined by Business & Professions Code §§
 7 17500 et seq., by adding a "surcharge" onto consumer's bill instead of raising
 8 menu prices.

9 54. Noble House could and should have furthered its legitimate business interests
 10 by raising the prices published in its menus. Noble House had other
 11 reasonably available alternatives to further its legitimate business interest,
 12 other than the conduct described herein.

13 55. Plaintiff and other members of the Class could not have reasonably avoided
 14 the injury suffered by each of them. Plaintiff reserves the right to allege
 15 further conduct that constitutes other unfair business acts or practices. Such
 16 conduct is ongoing and continues to this date, as Noble House continues to
 17 mislead the public add "surcharge"s on consumers' bills.

18 ***C. "Fraudulent" Prong***

19 56. Noble House claims and misleading statements were false, misleading and/or
 20 likely to deceive the consuming public within the meaning of Business &
 21 Professions Code §§ 17200 et seq. Noble House engaged in fraudulent acts
 22 and business practices by knowingly or negligently representing to Plaintiff,
 23 and other similarly situated consumers, whether by conduct, orally, or in
 24 writing by intentionally advertising their menu prices to be three percent less
 25 than Noble House actually intends to charge the consumer.

26 57. Plaintiff reserves the right to allege further conduct that constitutes other
 27 fraudulent business acts or practices. Such conduct is ongoing and continues
 28 to this date.

1 58. The fraudulent, unlawful and unfair business practices and false and
2 misleading advertising of Noble House, as described above, presents an
3 ongoing threat to consumers in that they will continue to be misled by the
4 prices on Noble House menus and Noble House conduct of adding three
5 percent to every bill after the consumer has finishing eating and drinking.

6 **D. “Unfair, Deceptive, Untrue or Misleading Advertising” Prong**

7 59. Noble House’s advertising is unfair, deceptive, untrue or misleading in that
8 consumers are led to believe that food and drinks in Noble House restaurants
9 is two to three percent less than Noble House actually charges.

10 60. Reasonable consumers, and members of the public would be likely to be
11 deceived and mislead by Noble House’s advertising scheme. The scheme
12 involves setting a price for each menu item and then adding three percent to
13 the bill at the end of the meal.

14 61. As a direct and proximate result of the aforementioned acts and
15 representations of Noble House, Noble House received and continues to hold
16 monies rightfully belonging to Plaintiff and other similarly situated
17 consumers who were led to believe their bills would be two to three percent
18 less.

19 62. Noble House has engaged in unlawful, unfair and fraudulent business acts or
20 practices, entitling Plaintiff, and putative class members, to a judgment and
21 equitable relief against Noble House, as set forth in the Prayer for Relief.
22 Pursuant to Business & Professions Code § 17203, as result of each and every
23 violation of the UCL, which are continuing, Plaintiff is entitled to restitution
24 and injunctive relief against Noble House, as set forth in the Prayer for Relief.

25 63. Plaintiff and members of the putative class have suffered injury in fact and
26 have lost money or property as a result of Noble House’s unfair competition,
27 as more fully set forth herein. Plaintiff and members of the putative class have
28 been injured as they relied on Noble House intentional misrepresentations.

64. Noble House, through its acts of unfair competition, has unfairly acquired monies from Plaintiff and members of the putative Class. It is impossible for Plaintiff to determine the exact amount of money that Noble House has obtained without a detailed review of the Noble House's books and records. Plaintiff requests that this Court restore these monies and enjoin Noble House from continuing to violate California Business & Professions Code §§ 17200 *et seq.*, as discussed herein.

65. Plaintiff and other similarly situated consumers residing within California, will continue to be exposed to and harmed by Noble House's unfair business practices unless Noble House is enjoined from continuing to engage in the unlawful, unfair, fraudulent, untrue, and deceptive business acts and practices as described herein.

66. Plaintiff further seeks an order requiring Noble House to make full restitution of all moneys wrongfully obtained and disgorge all ill-gotten revenues and/or profits, together with interest thereupon.

67. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*, California Civil Code Section 1021.5.

Third Cause of Action
for Violation of California Consumers Legal Remedies Act
Cal. Civ. Code Section 1750, et seq.

68. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this First Amended Complaint as though fully stated herein.

69. California Civil Code Section 1750 et seq., entitled the Consumers Legal Remedies Act (hereinafter "CLRA"), provides a list of "unfair or deceptive" practices in a "transaction" relating to the sale of "goods" or "services" to a "consumer." The Legislature's intent in promulgating the CLRA is expressed in Civil Code Section 1760, which provides, *inter alia*, that its terms are to be:



“Construed liberally and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.”

70. Defendant’s products and menu items constitute “goods” as defined pursuant to Civil Code Section 1761(a).

71. Plaintiff, and the Class members, are each “consumer[s]” as defined pursuant to Civil Code Section 1761(d).

72. Each of Plaintiff’s and the Class members’ purchases of Defendant’s products constituted a “Transaction” as defined pursuant to Civil Code Section 1761(e).

73. Civil Code Section 1770(a)(9) states that:

“(a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(9) Advertising goods or services with intent not to sell them as advertised.”

74. Civil Code Section 1770(a)(20) states that:

“(a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(20) Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (A) the total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (B) the specific

1 price plus a specific percentage of that price represents a
2 markup from the seller's costs or from the wholesale price
3 of the product. This subdivision shall not apply to in-
4 store advertising by businesses that are open only to
5 members or cooperative organizations organized pursuant
6 to Division 3 (commencing with Section 12000) of Title 1
7 of the Corporations Code where more than 50 percent of
8 purchases are made at the specific price set forth in the
9 advertisement.”

- 10
- 11 75. Defendants violated Civil Code Section 1770(a)(9) and (20) by marketing and
12 representing, in its in-store menus and online, that its food and drink items are
13 a certain price, when in fact the restaurant adds a surcharge to that price after
14 the meal.
- 15 76. Defendant never intended to sell the menu items for the prices listed next to
16 each menu item, in violation of Civil Code Section 1770(a)(9).
- 17 77. Defendant advertised that each menu item was being offered for a specific
18 price, plus a specific percentage of that price, without setting forth in the
19 menu, the total of the price in a size larger than the original price. This was
20 done in violation of Civil Code Section 1770(a)(20).
- 21 78. On information and belief, Defendant's violations of the CLRA set forth
22 herein were done with awareness of the fact that the conduct alleged was
23 wrongful and was motivated solely for Defendant's self-interest, monetary
24 gain and increased profit.
- 25 79. On information and belief, Defendant committed these acts knowing the harm
26 that would result to Plaintiff and all consumers, and Defendant engaged in
27 such unfair and deceptive conduct notwithstanding such knowledge.
- 28 80. Plaintiff suffered an “injury in fact” because Plaintiff's money was taken by
Defendant as a result of Defendant's false representations set forth on
Defendant's advertisements.

1 81. As a direct and proximate result of Defendant's violations of the CLRA,
2 Plaintiff and members of the Class are entitled to a declaration that
3 Defendants violated the Consumer Legal Remedies Act.

4 82. Plaintiff and the Class are also entitled to and seek injunctive relief
5 prohibiting such conduct in the future.

6 83. Plaintiff served a certified letter pursuant to the Consumers Legal Remedies
7 Act ("CLRA"), California Civil Code § 1782 on Defendant and their agent for
8 service, on or about August 24, 2017.

9 84. As of the date of the filing of this Complaint, Defendant has not complied
10 with Plaintiff's demands outlined in the letter to Defendant.

11 **Class Action Allegations**

12 85. Plaintiff and the members of the Class have all suffered injury in fact as a
13 result of the Noble House unlawful and misleading conduct.

14 86. The "Class Period" means four years prior to filing of the Complaint in this
15 action.

16 87. Plaintiff brings this lawsuit on behalf of himself and other California
17 consumers similarly situated under California Code of Civil Procedure §382.
18 Subject to additional information obtained through further investigation and/
19 or discovery, the proposed "Class" consists of:

20
21 All consumers who ate or drank at a restaurant in California,
22 owned by Noble House Hotels & Resort, LTD. d/b/a Noble
23 House Hotels & Resort, LTD. LP, who were charged a
24 surcharge on their bill in addition to the costs of the food and
25 drinks, since four years prior to the filing of this Complaint.

26 Excluded from the Class are Noble House and any of its officers, directors, and
27 employees. Plaintiff reserves the right to modify or amend the Class definition
28 before the Court determines whether certification is appropriate.

- 1 88. **Ascertainability.** The members of the Class are readily ascertainable from
2 Noble House records, as well as through public notice.
- 3 89. **Numerosity.** The members of the Class are so numerous that their individual
4 joinder is impracticable. Plaintiff is informed and believe, and on that basis
5 alleges, that the proposed class consists of thousands of members.
- 6 90. ***Existence and Predominance of Common Questions of Law and Fact.***
7 Common questions of law and fact exist as to all members of the Class , and
8 predominate over any questions affecting only individual Class members. All
9 members of the Class have been subject to the same conduct and their claims
10 are based on the standardized marketing, advertisements and promotions of
11 Noble House. The common legal and factual questions include, but are not
12 limited to, the following:
- 13 • Whether Noble House’s menus, and the prices for food and drinks
14 contained therein are untrue, or are misleading, or reasonably likely to
15 deceive;
 - 16 • Whether Noble House’s conduct in adding a “surcharge” to every
17 customer’s bill is misleading or unlawful within the meaning of California
18 Business & Professions Code §§ 17200 *et seq.*
 - 19 • Whether Noble House’s conduct is a fraudulent act or practice within the
20 meaning of California Business & Professions Code §§ 17200 *et seq.*;
 - 21 • Whether Noble House’s conduct is an unfair act or practice within the
22 meaning of California Business & Professions Code §§ 17200 *et seq.*;
 - 23 • Whether Noble House’s advertising is unfair, deceptive, untrue or
24 misleading within the meaning of California Business & Professions Code
25 §§ 17200 *et seq.*;
 - 26 • Whether Noble House’s advertising is false, untrue, or misleading within
27 the meaning of California Business & Professions Code §§ 17500 *et seq.*;
- 28

- Whether Noble House acted intentionally in making it appear with its menu pricing, that food and drinks would cost three percent less than they actually cost;
- Whether Noble House, through its conduct, received money that, in equity and good conscience, belongs to Plaintiff and members of the Class;
- Whether Plaintiff and proposed members of the Class are entitled to equitable relief, including but not limited to restitution and/or disgorgement; and
- Whether Plaintiff and proposed members of the Class are entitled to injunctive relief sought herein.

91. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class in that Plaintiff is a member of the Class that Plaintiff seeks to represent. Plaintiff, like members of the proposed Class, ate and drank at Noble House restaurant and was charged an unlawful "surcharge" on his bill. Plaintiff is advancing the same claims and legal theories on behalf of himself and all absent members of the Class. Noble House has no defenses unique to Plaintiff.

92. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel experienced in consumer protection law, including class actions. Plaintiff has no adverse or antagonistic interest to those in the Class, and will fairly and adequately protect the interests of the Class. Plaintiff's attorneys are aware of no interests adverse or antagonistic to those of Plaintiff and proposed Class.

93. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. Individualized litigation would create the danger of inconsistent and/or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and court system and the issues raised by this

1 action. The damages or other financial detriment suffered by individual Class
 2 members may be relatively small compared to the burden and expense that
 3 would be entailed by individual litigation of the claims against the Noble
 4 House. The injury suffered by each individual member of the proposed class
 5 is relatively small in comparison to the burden and expense of individual
 6 prosecution of the complex and extensive litigation necessitated by Noble
 7 House conduct. It would be impractical for members of the proposed Class to
 8 individually redress effectively the wrongs to them. Even if the members of
 9 the proposed Class could afford such litigation, the court system could not.
 10 Individualized litigation increases the delay and expense to all parties, and to
 11 the court system, presented by the complex legal and factual issues of the
 12 case. By contrast, the class action device presents far fewer management
 13 difficulties, and provides the benefits of single adjudication, economy of
 14 scale, and comprehensive supervision by a single court. Therefore, a class
 15 action is maintainable pursuant to California Code of Civil Procedure §382.

16 94. Unless the Class is certified, Noble House will retain monies received as a
 17 result of Noble House's unlawful and deceptive conduct alleged herein.
 18 Unless a class-wide injunction is issued, Noble House will also likely
 19 continue to add hidden "surcharges" to consumers' bills, and members of the
 20 public will continue to be misled, while members of the Class will continue to
 21 be harmed, and denied their rights under California law.

22 95. Further, Noble House has acted or refused to act on grounds that are generally
 23 applicable to the class so that declaratory and injunctive relief is appropriate
 24 to the Class as a whole, making class certification appropriate pursuant to
 25 California Code of Civil Procedure §382.

26 PRAYER FOR RELIEF

27 WHEREFORE, Plaintiff prays that judgment be entered against Noble
 28 House, and that Plaintiff and Class members be awarded damages from Noble

1 House as follows:

- 2 • That this action be certified as a Class Action, Plaintiff be appointed as the
- 3 representative of the Class, and Plaintiff's attorneys be appointed Class
- 4 counsel;
- 5 • A temporary, preliminary and/or permanent order for injunctive relief
- 6 requiring Noble House to cease adding a "surcharge" to consumers' bills;
- 7 • An order requiring imposition of a constructive trust and and/or
- 8 disgorgement of Noble House's ill-gotten gains and to pay restitution to
- 9 Plaintiff and all members of the Class and to restore to Plaintiff and
- 10 members of the Class all funds acquired by means of any act or practice
- 11 declared by this court to be an unlawful, fraudulent, or unfair business act
- 12 or practice, in violation of laws, statutes or regulations, or constituting
- 13 unfair competition;
- 14 • Distribution of any monies recovered on behalf of members of the Class
- 15 via fluid recovery or *cy pres* recovery where necessary and as applicable, to
- 16 prevent Noble House from retaining the benefits of their wrongful conduct;
- 17 • Prejudgment and post judgment interest;
- 18 • Costs of this suit;
- 19 • Reasonable attorneys' fees pursuant to, *inter alia*, California Code of Civil
- 20 Procedure § 1021.5;
- 21 • Plaintiff requests only injunctive relief under the CLRA at this time.
- 22 However, Plaintiff reserves the right to amend her complaint without
- 23 leave of the Court to include a request for damages pursuant to Cal. Civil
- 24 Code § 1782(d) if Defendant does not cure the CLRA claims within thirty
- 25 days of receipt of the CLRA letter;
- 26 • Fees under § 1780(e); and
- 27 • Any and all other relief that this Court deems necessary or appropriate.

28 **TRIAL BY JURY**

1 96. Pursuant to the Seventh Amendment to the Constitution of the United States
2 of America, Plaintiff is entitled to, and demands, a trial by jury.

3 **Respectfully submitted,**

4
5 Dated: September 18, 2017

Hyde & Swigart

6 By: 
7 Kevin Lemieux

Attorneys for Plaintiff

8
9 **Other Attorneys of Record:**

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