

**NICHOLAS & TOMASEVIC, LLP**

Craig M. Nicholas (SBN 178444)  
 Alex M. Tomasevic (SBN 245598)  
 225 Broadway, 19th Floor  
 San Diego, California 92101  
 Telephone: (619) 325-0492  
 Facsimile: (619) 325-0496  
 Email: [craig@nicholaslaw.org](mailto:craig@nicholaslaw.org)  
 Email: [alex@nicholaslaw.org](mailto:alex@nicholaslaw.org)

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**PHELPS LAW GROUP**

Marc Phelps (SBN 237036)  
 23 Corporate Plaza Drive, Suite 150  
 Newport Beach, CA 92660  
 Telephone: (949) 629-2533  
 Facsimile: (949) 629-2501

**THE CARTER LAW FIRM**

Roger R. Carter (SBN 140196)  
 Bianca A. Sofonio (SBN 179520)  
 23 Corporate Plaza Drive, Suite 150  
 Newport Beach, CA 92660  
 Telephone: (949) 245-7500

Attorneys for Plaintiff David Martinez  
 and all others similarly situated

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

DAVID E. MARTINEZ on behalf of himself  
 and all others similarly situated,

Plaintiffs,

v.

BOOKING HOLDINGS, INC.; and Does 1  
 through 10, inclusive,

Defendants.

Case No.: 37-2020-00018413-CU-BT-CTL

**COMPLAINT FOR DAMAGES AND  
 EQUITABLE, DECLARATORY AND  
 INJUNCTIVE RELIEF**

- 1. VIOLATION OF THE UNFAIR  
 COMPETITION LAW, BUSINESS AND  
 PROFESSIONS CODE § 17200, ET. SEQ.**
- 2. VIOLATION OF THE CALIFORNIA  
 FALSE ADVERTISING LAW, BUSINESS  
 AND PROFESSIONS CODE § 17500, ET.  
 SEQ.**
- 3. VIOLATION OF BUSINESS AND  
 PROFESSIONS CODE § 17501;**
- 4. BREACH OF CONTRACT**
- 5. BREACH OF EXPRESS WARRANTY**
- 6. UNJUST ENRICHMENT/QUASI  
 CONTRACT**

**DEMAND FOR JURY TRIAL**

COMPLAINT

1 Plaintiff Edward Martinez brings this action on behalf of himself and all others similarly  
2 situated against Defendant Booking Holdings, Inc. and states as follows:

### 3 **NATURE OF ACTION**

4 1. This is a consumer protection class action arising from Defendant's false  
5 advertising, through its "Agoda" branded travel website and app, of (1) phantom "discounts" on  
6 rates for hotel rooms and (2) a false urgency through fake deadlines by which the fake discounts  
7 will allegedly expire, as well as faked scarcity of those discounted rooms. "Agoda," including the  
8 agoda.com website and the Agoda smart device app, are wholly owned, managed, and controlled  
9 by Defendant Booking Holdings, Inc. (formerly The Priceline Group) which owns and operates  
10 several popular travel fare aggregators and search engines and which is responsible for the  
11 deceptive conduct described in this complaint.

12 2. With respect to rates, Defendant has a uniform policy and practice of claiming fake  
13 discounts. It does this by, among other ways, expressly claiming that rooms are "discounted" and  
14 by listing an arbitrary and fake base price (which it calls the "original price"), which purports to be  
15 the price at which the room is ordinarily rented to consumers. The fake original prices are in fact  
16 significantly higher than the true prices at which the rooms are ordinarily rented. Based on this  
17 fake original price, Defendant then lists a discount or sometimes "percentage off" that the current  
18 price of the room represents. This creates the misleading impression in the mind of the consumer  
19 that they are getting a good deal on the room. In fact, the overwhelming majority of rooms offered  
20 are never, or almost never, rented at anything but Agoda's stated (final) price. Any reference to a  
21 different "original" price, furthermore, is fake. Defendant omits this detail.

22 3. With respect to urgency, Defendant, first, falsely states that the "discounted" rate is  
23 only available for a very limited time, such as "TODAY," when in fact such rates are available  
24 longer. Defendant also routinely claims that there are only a limited number of rooms left. These  
25 statements—totally made up by Defendant—are made with great specificity to increase their  
26 believability. For example, Defendant frequently states not just "one room left," but also makes  
27 notations such as "three rooms left" or "five rooms left." In fact, Defendant's representations of  
28 the number of rooms left are demonstrably false in almost all instances. Defendant knows but fails

1 to disclose that Agoda is just one of many platforms on which these hotel rooms are sold, so it  
 2 cannot possibly ascertain exactly how many rooms are left in real time. Moreover, the number of  
 3 rooms actually left is constantly in a state of flux based on reservation volume, room block/group  
 4 rate reservations, projections, cancellations, and the amount of rooms held back by the hotel – data  
 5 points that are not accessible to Defendant, a third party. Finally, Defendant’s claims that there are  
 6 just a handful of rooms left at gargantuan properties with 1000 rooms or more debunked by a quick  
 7 visit to the hotel and inquiry at the reservations desk.

8         4. All the above described statements and omissions are false, misleading, and/or  
 9 likely to deceive the reasonable consumer. Because the discount is fabricated and any purported  
 10 original prices is much higher than the actual price at which the room is normally sold, the  
 11 allegedly valuable discount is wholly illusory and is simply a sales tactic deployed by Defendant to  
 12 induce a sale. Meanwhile, by listing an arbitrary low number of rooms left and indicating that the  
 13 discounted rate is valid only “TODAY,” Defendant also creates false senses of urgency as an  
 14 added sales tactic.

15         5. These deceptive policies and practices were, and continue to be, consistently and  
 16 uniformly deployed by Defendant on its agoda.com website and Agoda mobile app and serve as  
 17 Defendant’s primary method of selling hotel rooms to consumers and gaining a foothold for  
 18 competitive success versus its rivals.

19         6. Consumers suffer harm and lose money due to Defendant’s misrepresentations.  
 20 Consumers pay more than they should or would have for the rooms and for the service including  
 21 because Defendant charges a fee for the use of its platform that consumers would not have to pay  
 22 should they book their room via a different source, such as directly through the hotel.

23         7. By advertising these fake discounts, including fake original prices and percentages  
 24 off, and falsely listing the number of rooms available and that the deals are only valid for a limited  
 25 time, Defendant has violated numerous consumer protection laws, common laws, and equitable  
 26 principles as detailed herein. In fact, federal regulations, as well as the consumer protection laws of  
 27 California, expressly prohibit the advertising of fake former prices, “phantom” price reductions,  
 28 and deceptive claims of percentage-off discounts which are based on inflated, fictitious “regular”

1 prices. *See, e.g.*, 16 C.F.R. Section 233.1; *Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1101 (9th Cir.  
 2 2013) ("Because such practices are misleading – and effective – the California legislature has  
 3 prohibited them").

4 8. Plaintiff is one of Defendant's victims. He brings this action on behalf of himself  
 5 and all other similarly situated consumers to halt Defendant's dissemination of false and  
 6 misleading advertising messages, correct the false and misleading perception those messages have  
 7 created in the minds of consumers, and to obtain redress for those who have reserved hotel rooms  
 8 from or through Defendant in reliance on these messages.

### 9 JURISDICTION AND VENUE

10 9. This Court has jurisdiction over this action pursuant to the California Constitution,  
 11 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
 12 given by statutes to other courts. The statutes under which this action is brought do not specify any  
 13 other basis for jurisdiction.

14 10. This Court has jurisdiction over all Defendants because, upon information and  
 15 belief, they are either citizens of California, have sufficient minimum contacts in California or  
 16 otherwise intentionally avail themselves of the California market so as to render the exercise of  
 17 jurisdiction over them by the California courts consistent with traditional notions of fair play and  
 18 substantial justice.

19 11. Venue as to each Defendant is proper in this judicial district, pursuant to California  
 20 Code of Civil Procedure section 395.5. On information and belief, the Agoda website and mobile  
 21 app operates in San Diego County and throughout California, and each Defendant is therefore  
 22 within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged  
 23 herein have a direct effect on Plaintiff, who reserved a hotel room on Agoda's mobile app that was  
 24 located in San Diego County, and those similarly situated within the State of California.

25 12. No agreement to arbitrate claims existed under the terms and conditions of the  
 26 transaction applicable to Plaintiff on Defendant's platform.

**PARTIES**

13. Plaintiff David E. Martinez is and was at all relevant times during the Class Period defined herein, an individual residing in California who was lured in by Defendant's false advertising and reserved a hotel room in reliance on it, during the Class Period. Due to Defendant's false and misleading messages, Plaintiff was misled into believing that he was getting a bargain on a hotel that was available only for a limited time and he reserved the room with Defendant in reliance thereon. Defendant's marketing and advertising tactics were a significant inducement for Plaintiff's purchase. Had Plaintiff known the truth about Defendant's misrepresentations and omissions, he would have paid less money, searched for a different platform charging a lower fee, and/or saved money by making his reservation directly through the hotel. As a result of reserving a room through Defendant's Agoda platform, Plaintiff suffered injury in fact and lost money. Plaintiff is not claiming physical harm or seeking recovery of personal injury damages.

14. Defendant Booking Holdings, Inc. is a large for-profit publicly traded corporation incorporated in Delaware and headquartered in Norwalk, Connecticut (NASDAQ: BKNG). Defendant claims to be "The World Leader in Online Travel & Related Services." It is the owner and operator of several travel fare aggregators and travel fare search or metasearch engines including booking.com, priceline.com, kayak.com, and – most relevant to this lawsuit – agoda.com. Defendant also provides the same products or services – and using the same advertising tactics - through its smart apps, like the Agoda app widely available through the Apple App Store, the Google Play store, and other popular platforms. Upon information and belief, Defendant acquires accommodations at a wholesale price from partner properties and resells them to consumers via its websites and mobile apps at a mark-up.

15. Throughout the Class period, Defendant has owned, operated, and managed the Agoda brand and the related agoda.com website and mobile app. Defendant, either itself or with the help of various sister companies, subsidiaries, or joint venturers, created and disseminated the advertising messages, policies, and procedures described herein and, at all times during the

1 relevant class period, participated in, endorsed, implemented, and performed the conduct alleged  
2 herein.

3 16. Defendant's tactics have been very successful and lucrative. In the third quarter of  
4 2019 alone, consumers booked \$25.3 billion worth of gross travel bookings through Defendant's  
5 properties such as agoda.com and the Agoda app. Of that, Defendant recognized \$5.0 billion in  
6 revenue for the quarter and \$2.0 billion in net income.

7 17. The true names and capacities, whether individual, corporate, associate, or  
8 otherwise, of defendants sued herein as Does 1 to 10, inclusive, are currently unknown to Plaintiff,  
9 who therefore sues these defendants by such fictitious names under California Code of Civil  
10 Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the  
11 defendants designated herein as a Doe is legally responsible in some manner for the unlawful acts  
12 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true  
13 names and capacities of the defendants designated hereinafter as Does when such identities  
14 become known. Throughout this Complaint, the term "Defendants" shall include defendants Does  
15 1 to 10, inclusive.

16 18. At all relevant times, each Defendant, including each Doe defendant, acted as an  
17 agent, servant, employee, co-conspirator, alter-ego and/or joint venturer of the other Defendants  
18 and in doing the things alleged herein acted within the course and scope of such agency,  
19 employment, alter-ego, and/or in furtherance of the joint venture. Each of the Defendant's acts  
20 alleged here was done with the permission and consent of each of the other Defendants.

### 21 **FACTUAL ALLEGATIONS**

22 19. For as long as humans have been trying to sell things to each other, some have been  
23 using sharp and slimy tactics to do so. The internet did not really change this, it just made it easier.

24 20. One of the most effective techniques has always been for a seller to offer customers  
25 a purported discount for an item, creating the impression of a "bargain." Numerous studies agree.  
26 For example, Dhruv Grewal and Larry D. Compeau's "Comparative Price Advertising:  
27 Informative or Deceptive?", 11 J. of Pub. Pol'y & Mktg. 52, 55 (Spring 1992) concludes that "[b]y  
28 creating an impression of savings, the presence of a higher reference price enhances [consumers']

perceived value and willingness to buy [a] product.” See also, Compeau & Grewal, “Comparative Price Advertising: Believe It Or Not”, J. of Consumer Affairs, Vol. 36, No. 2, at 287 (Winter 2002) (“decades of research support the conclusion that advertised reference prices do indeed enhance consumers’ perceptions of the value of the deal” ... “[c]onsumers are influenced by comparison prices even when the stated reference prices are implausibly high.”); Joan Lindsey-Mullikin, “The Impact of External Reference Price On Consumer Price Expectations,” 79 J. of Retailing 225 (2003), (“research has shown that retailer-supplied reference prices clearly enhance buyers’ perceptions of value” and “have a significant impact on consumer purchasing decisions.”); Dr. Jerry B. Gottleib & Dr. Cyndy Thomas Fitzgerald, “An Investigation Into the Effects of Advertised Reference Prices on the Price Consumers Are Willing To Pay For the Product,” 6. J. of App’d Bus. Res. 1 (1990) (“consumers are likely to be misled into a willingness to pay a higher price for a product simply because the product has a higher reference price.”).

21. When the discounts listed by the seller are genuine – where the buyer really is getting an item for a lower price than the one at which it is ordinarily sold – then the “bargain” promised in a seller’s advertising and perceived by the consumer may be real. This, however, is not such a case.

22. Instead, this case involves, in part, a tactic designed to trick consumers into thinking they are getting a bargain. One way Defendant did this is by using fake former prices which do not reflect the real price at which the rooms in question are or were rented.

23. More specifically, Defendant routinely publishes fake discounts including by showing fake original prices, which it then slashes through with a red-line before, and directly adjacent to, listing the supposedly discounted price. For example, here is a representative screenshot of what a visitor to the agoda.com website or app would typically see prominently displayed before purchasing:



1  
2  
3  
4  
5  
6  
7

75% OFF TODAY  
MEGA SALE  
Price per night as low as  
~~221~~  
\$55  
FREE CANCELLATION

8 24. The \$221 alleged original price, though, is completely fake and is intentionally used  
9 to create a false sense of discounting in the mind of the reasonable consumer. That room was  
10 never actually offered or sold for \$221 on that date and never was going to be sold for \$221 on that  
11 date. No one actually paid \$221.

12 25. One way we know that the \$221 “original price” is completely made up is because  
13 the same Defendant will sometimes publish the same offer for the same date, using the *same*  
14 agoda.com website, at the *same* time, but using a *different* or slightly different fake “original  
15 price.” For example, below is another offer for the same exact property (Mandalay Bay Resort in  
16 Las Vegas, NV), for the same dates, that was searched using the same computer at the same time,  
17 by the same person, but just using two different browsers open at the same time (Chrome versus  
18 Internet Explorer):

19  
20  
21  
22  
23  
24

45% OFF TODAY  
Price per night as low as  
~~100~~  
\$55  
FREE CANCELLATION

25 26. This is Defendant’s common practice across agoda.com and the Agoda app for all  
26 its offerings. Defendant routinely publishes fictitious former or original prices and fake claims of  
27 “discounts” based on such prices in order to induce a sale. The former or original prices are never  
28 or almost never the price at which the rooms were truly offered or sold. In other words, the former



1 or regular prices were not used in the regular course of business, or were not used in the recent  
 2 past, and/or they were not openly offered to the public or maintained for a reasonable length of  
 3 time. The former prices are not honest or in good faith.

4 27. In actuality, the “original” prices listed are much higher than the prices at which the  
 5 rooms are ordinarily rented by Defendant in the regular course of business. In fact, the lower,  
 6 purportedly discount prices are actually the true prices at which Defendant consistently and  
 7 regularly rents the rooms. Therefore, the purported discount price is actually the real price. In  
 8 short, there is no discount and there never was.

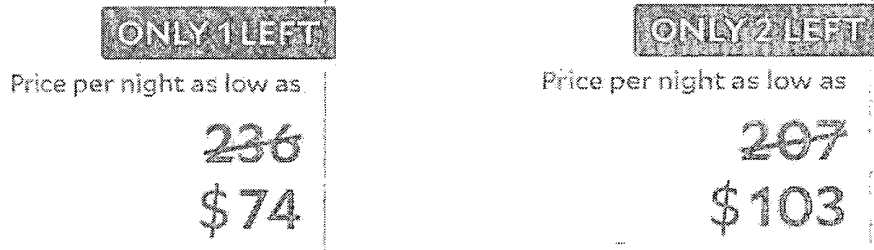
9 28. California law recognizes the abuses which can flow from claiming fake discounts.  
 10 See, e.g., *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1101 (9<sup>th</sup> Cir. 2013):

11 “Most consumers have, at some point, purchased merchandise that was marketed  
 12 as being ‘on sale’ because the proffered discount seemed too good to pass up. Retailers, well aware of consumers’ susceptibility to a bargain, therefore have an  
 13 incentive to lie to their customers by falsely claiming that their products have  
 14 previously sold at a far higher ‘original’ price in order to induce customers to  
 15 purchase merchandise at a purportedly marked-down ‘sale’ price. Because such  
 practices are misleading – and effective – the California legislature has prohibited  
 them.”

16 29. Federal regulators agree. 16 C.F.R. Section 233.1 specifically prohibits the  
 17 advertising of false, “phantom” price reductions and discounts off of inflated, fictitious “regular”  
 18 prices that never actually existed.

19 30. Moreover, Defendant routinely packages its fake discounts with an equally fake  
 20 sense of urgency to further induce the sale. For example, and as we can see with the typical  
 21 example above, Defendant routinely misrepresents that the (fake) discount is only available for a  
 22 short time, or even only for “TODAY” (emphasis by Defendant). That is false and deceptive and  
 23 the true facts – which Defendant omits – are that the final price (\$55 in the example above) is the  
 24 real price and it will be available in the future as well, not just “TODAY.”

31. Finally, and as a matter of standard policy and procedure, Defendant further establishes the fake sense of urgency by mispresenting that only a specific number of rooms are left. Here are typical examples of this urgency tactic, combined with a phony discount:



32. This representation of urgency or scarcity is also false and deceptive and the true facts – which Defendant omits – are that there are many more rooms available, at comparable prices, than Defendant is claiming.

33. To summarize, Defendant here does two things wrong: (1) its represents a false discount without disclosing that the advertised price is and was the *only* price; and (2) it creates a false sense of urgency by claiming that the (fake) discount is only available for a limited amount of time (typically “TODAY” only), or only in limited quantities. All methods, either by themselves or together, are false and/or likely to deceive the reasonable consumer.

34. Plaintiff and the Class Members have been and will continue to be deceived by Defendant’s false and deceptive practices regarding advertising of rooms. Plaintiff read and considered these representations and based his decision to book through Defendant’s Agoda brand – and incur its fees – on these representations during the class period.

35. Plaintiff, specifically, engaged with Defendant via the Agoda app. There, he encountered Defendant’s routine practice of publishing fake or phantom discounts packaged with a false claim of urgency. Defendant claimed that the room was discounted. Defendant also listed the room’s (fake) original price, but slashed through it per its typical practice, offering a misleading percentage “off” for a limited time only.

36. Plaintiff was exposed to and saw Defendant’s false advertising of discounts and urgency and in reliance thereon he completed his booking.

37. Defendant's advertising and marketing claims were a material factor in influencing Plaintiff and the Class Members' decisions to purchase. This reliance was not only reasonable but was entirely intended by Defendants.

38. These deceptive advertising, marketing, and sales practices were kept secret, and were affirmatively and fraudulently concealed from customers by Defendant throughout the Class Period. As a result of this unlawful, deceptive conduct, Plaintiff and the Class Members have suffered damages as set forth herein.

### **CLASS DEFINITION AND ALLEGATIONS**

39. Pursuant to California Code of Civil Procedure 382, Plaintiff brings this action on behalf of himself and on behalf of all members of the following class and subclass of similarly situated individuals:

#### Nationwide Class:

All U.S. citizens who used agoda.com or the Agoda smart app for hotel bookings, along with all other persons who used agoda.com or the Agoda smart app to book hotel rooms located in the United States.

#### California Subclass:

All California citizens who used agoda.com or the Agoda smart app for hotel bookings, along with all other persons who used agoda.com or the Agoda smart app to book hotel rooms located in California.

40. Plaintiff reserves the right to supplement or modify the above class and subclass definitions as discovery and investigation continue, including at the time of moving for class certification.

41. Numerosity. On information and belief, the Nationwide Class and California Subclass (collectively, the "Class" or "Class Members") are each so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains hundreds of thousands of consumers who have been damaged by Defendants' conduct as alleged herein. The precise number of Class Members is unknown to Plaintiffs. Class Members are readily ascertainable via credit and debit card transactions and Defendants' own records.

42. Existence and Predominance of Common Questions of Law and Fact. This action involves common questions of law and fact, which predominate over any questions affecting

1 individual Class Members. These common legal and factual questions include, but are not limited  
 2 to, the following:

- 3 a. what the uniform advertising, marketing and sales materials said;
- 4 b. whether and when Defendant ever sold items or offered items for a real discount;
- 5 c. the standardized formula and criteria by which Defendant created fake original
- 6 prices;
- 7 d. whether Defendant's purported percentage-off discounts reflected actual savings or
- 8 reductions;
- 9 e. whether Defendant deceptively advertised regular prices of hotel rooms as
- 10 "discount" or "sale" prices;
- 11 f. the length of time Defendant engaged in the practices alleged herein;
- 12 g. whether the claims discussed above are true, or are misleading, or objectively
- 13 reasonably likely to deceive;
- 14 h. whether Defendant's alleged conduct violates public policy;
- 15 i. whether the alleged conduct constitutes violations of the laws asserted;
- 16 j. whether Plaintiff and the Class Members have sustained monetary loss and the
- 17 proper measure of that loss; and
- 18 k. whether Plaintiff and the Class Members are entitled to other appropriate remedies,
- 19 including corrective advertising and injunctive relief.

20 43. Typicality. Plaintiff's claims are typical of the claims of the members of the Class  
 21 because, *inter alia*, all Class Members were injured through the uniform misconduct described  
 22 above and were subject to Defendant's deceptive advertising. Plaintiff is advancing the same  
 23 claims and legal theories on behalf of himself and all members of the Class.

24 44. Adequacy of Representation. Plaintiff will fairly and adequately protect the interests  
 25 of the members of the Class. Plaintiff has retained counsel experienced in complex consumer class  
 26 action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse  
 27 or antagonistic interests to those of the Class.

1           45.     Superiority. A class action is superior to all other available means for the fair and  
 2 efficient adjudication of this controversy. The damages or other financial detriment suffered by  
 3 individual Class Members is relatively small compared to the burden and expense that would be  
 4 entailed by individual litigation of their claims against Defendant. It would thus be virtually  
 5 impossible for Plaintiff and Class Members, on an individual basis, to obtain effective redress for  
 6 the wrongs done to them. Furthermore, even if Class Members could afford such individualized  
 7 litigation, the court system could not. Individualized litigation would create the danger of  
 8 inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation  
 9 would also increase the delay and expense to all parties and the court system from the issues raised  
 10 by this action. By contrast, the class action device provides the benefits of adjudication of these  
 11 issues in a single proceeding, economies of scale, and comprehensive supervision by a single  
 12 court, and presents no unusual management difficulties under the circumstances here.

13           46.     The Class also may be certified because Defendant has acted or refused to act on  
 14 grounds generally applicable to the Class, thereby making appropriate final declaratory and/or  
 15 injunctive relief with respect to the members of the Class as a whole.

16           47.     Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf  
 17 of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent  
 18 Defendant from engaging in the acts described, and requiring Defendant to provide full restitution  
 19 to Plaintiff and the Class Members.

20           48.     Unless a Class is certified, Defendant will retain monies received as a result of their  
 21 conduct that were taken from Plaintiff and the Class Members. Unless an injunction is issued,  
 22 Defendant will continue to commit the violations alleged, and the members of the Class and the  
 23 general public will continue to be misled.

#### 24                               **FIRST CAUSE OF ACTION**

#### 25                               **Violation of the Unfair Competition Law (“UCL”)**

#### 26                               **(Business & Professions Code § 17200, *et seq.*)**

27           49.     Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above, as  
 28 if fully set forth herein.

1           50. Plaintiff brings this claim individually and on behalf of the California Subclass.

2           51. Business & Professions Code § 17200 prohibits any “unlawful, unfair or fraudulent  
3 business act or practice and unfair, deceptive, untrue or misleading advertising.” For the reasons  
4 discussed above, Defendant has violated Business & Professions Code § 17200.

5           52. In the course of conducting business, Defendant committed unlawful business  
6 practices by, *inter alia*, making the representations (which also constitute advertising within the  
7 meaning of § 17200), as set forth more fully herein and/or omitting the true facts that were  
8 necessary to avoid deceiving consumers. Defendant has violated California Civil Code §§ 1572,  
9 1573, 1709, 1711, 1770(a)(9), (13), (14) and (16); California Business & Professions Code §§  
10 17200 *et seq.*; and the common law. Furthermore, Defendant’s above-described wrongful acts and  
11 practices are also “unlawful,” as that term is used in the California Business and Profession Code,  
12 because they constitute actual and constructive fraud within the meaning of Civil Code §§ 1572  
13 and 1573, as well as deceit, which is prohibited under Civil Code §§ 1709 and 1711.

14           53. Plaintiff and the Class reserve the right to allege other violations of law, which  
15 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this  
16 date.

17           54. Defendant’s actions also constitute “unfair” business acts or practices because, as  
18 alleged above, *inter alia*, Defendant engaged in false advertising, misrepresented and omitted  
19 material facts regarding normal room rates, the amount of rooms left, and the available time of the  
20 offer, and thereby offended an established public policy, and engaged in unethical, oppressive, and  
21 unscrupulous activities that are substantially injurious to consumers.

22           55. As stated in this complaint, Plaintiff alleges violations of consumer protection,  
23 unfair competition and truth in advertising laws in California, resulting in harm to consumers  
24 throughout the United States. Defendant’s acts and omissions also violate and offend the public  
25 policy against engaging in false and misleading advertising, unfair competition and deceptive  
26 conduct towards consumers. This conduct constitutes violations of the unfair prong of Business &  
27 Professions Code § 17200, *et seq.*

28

1           56. There were reasonably available alternatives to further Defendant's legitimate  
2 business interests, other than the conduct described herein.

3           57. Business & Professions Code § 17200 *et seq.*, also prohibits any "fraudulent  
4 business act or practice."

5           58. Defendant's actions, claims, nondisclosures and misleading statements, as more  
6 fully set forth above, were also false, misleading and/or likely to deceive the consuming public  
7 within the meaning of Business & Professions Code § 17200 *et seq.*

8           59. Defendant's advertising as described herein also constitutes unfair, deceptive,  
9 untrue and misleading advertising.

10          60. Defendant's conduct caused and continues to cause substantial injury to Plaintiff  
11 and the other Class Members. Plaintiff and Class Members have suffered injury in fact and have  
12 lost money as a result of Defendant's unfair conduct.

13          61. As a result of its deception, Defendants has been able to reap unjust revenue and  
14 profit.

15          62. Unless restrained and enjoined, Defendant will continue to engage in the above-  
16 described conduct. Accordingly, injunctive relief, including public injunctive relief, is appropriate.

17          63. Plaintiff, on behalf of himself, all others similarly situated, and the general public,  
18 seeks restitution and disgorgement of all money obtained from Plaintiff and the members of the  
19 Class as a result of unfair competition, an injunction prohibiting Defendant from continuing such  
20 practices, corrective advertising, and all other relief this Court deems appropriate, as allowed under  
21 the UCL.

## 22                                   **SECOND CAUSE OF ACTION**

### 23           **Violation of the False Advertising Law (Business & Professions Code § 17500, *et seq.*)**

24          64. Plaintiff re-alleges and incorporates by reference all previous paragraphs of the  
25 Complaint as if set forth fully herein.

26          65. Plaintiff brings this claim individually and on behalf of the California Subclass.  
27  
28



1           66. By the acts alleged herein, Defendant has publically disseminated untrue or  
2 misleading advertising and have intended not to sell the items as advertised, in violation of the  
3 FAL. Specifically, Defendant:

- 4           a. Falsely claimed that rooms were being offered or sold for a “discount,” “sale” price,  
5 or words to similar effect;
- 6           b. Set and advertised an arbitrary base price for rooms, which price was represented to  
7 be the rooms’ former, original, and/or regular price despite the fact that such rooms  
8 were not rented or offered for rent at those prices for any substantial period of time;
- 9           c. Failed to disclose that the “discounted” sale prices did not actually represent the  
10 advertised savings since the rooms were not offered for sale at their purported base  
11 prices for any substantial period of time;
- 12           d. Failed to disclose that the rooms were actually being offered for sale at the  
13 everyday, regular prices at which Defendants routinely rented the rooms;
- 14           e. Charged their customers the full, regular price for the rooms rather than at the  
15 advertised discount;
- 16           f. Represented that an arbitrary, limited number of rooms were available;
- 17           g. Represented that the offers presented were only available for a limited period of  
18 time.

19           67. Defendant committed such violations of the FAL with actual knowledge that their  
20 advertising was untrue or misleading, or in the exercise of reasonable care should have known that  
21 their advertising was untrue or misleading.

22           68. Plaintiff and the Class Members reasonably relied on Defendant’s representations  
23 or omissions made in violation of the FAL.

24           69. As a direct and proximate result of these violations, Plaintiff and the Class  
25 Members suffered injury in fact and lost money.

26           70. Plaintiff, individually and on behalf of the Class Members, seeks equitable relief in  
27 the form of an order requiring Defendant to refund Plaintiff and all Class Members all monies they  
28 paid for the purported discounted rooms they purchased from Agoda’s website and mobile app,

1 and injunctive relief in the form of an order prohibiting Defendants from engaging in the alleged  
2 misconduct.

### 3 **THIRD CAUSE OF ACTION**

#### 4 **Violation of Business & Professions Code § 17501**

5 71. Plaintiff realleges and incorporates by reference all previous paragraphs of this  
6 Complaint as if set forth fully herein.

7 72. Plaintiff brings this claim individually and on behalf of the California Subclass.

8 73. Under Business & Professions Code Section 17501, “No price shall be advertised as  
9 a former price of any advertised thing, unless the alleged former price was the prevailing market  
10 price ... within three months next immediately preceding the publication of the advertisement or  
11 unless the date when the alleged former price did prevail is clearly, exactly and conspicuously  
12 stated in the advertisement.”

13 74. Violations of the UCL and the FCL constitute occurrences where a seller employs a  
14 reference price with regard to a specific product on any given day in an amount higher than that  
15 which it actually offered and sold the product for a majority of the days on which it was offered  
16 during the preceding 90 days.

17 75. Pursuant to 4 California Code of Regulations Section 1301, “The term ‘former  
18 price’ as used in Section 17501 ... includes but is not limited to the following words and phrases  
19 when used in connection with advertised prices: ‘formerly,’ ‘regularly,’ ‘usually,’ ‘originally,’  
20 ‘reduced from \_\_,’ ‘was \_\_ now \_\_,’ ‘\_\_% off.’”

21 76. Section 17501 provides that when advertising a product with a representation of a  
22 former price, the seller is compelled to either use a reference price representing the “prevailing  
23 market price ... within three months next immediately preceding the publication of the  
24 advertisement,” or alternatively make a disclosure that identifies “clearly, exactly and  
25 conspicuously,” when the former price prevailed, and in this way is narrowly tailored to ensure  
26 that the information communicated by the seller to the consumer is truthful and not misleading or  
27 deceptive. Defendant has previously violated Section 17501 by failing to satisfy either option  
28 provided for complying with the statute.

1           77. As alleged herein, Defendant have advertised purported former prices that were not  
 2 the prevailing market prices for the rooms within the three months immediately preceding such  
 3 advertisements. Similarly, Defendant failed to “clearly, exactly and conspicuously” identify to  
 4 consumers when, if ever, the advertised reference prices did prevail. In fact, Defendant provided  
 5 no indication at all to consumers regarding whether and to what extent the advertised reference  
 6 prices were offered.

7           78. Defendant committed such violations of Section 17501 with actual knowledge that  
 8 their advertising was untrue or misleading, or in the exercise of reasonable care should have  
 9 known that their advertising was untrue or misleading.

10          79. Plaintiff and the Class Members reasonably relied on Defendant’s representations  
 11 and omissions made in violation of Section 17501.

12          80. As a direct and proximate result of these violations, Plaintiff and the Class  
 13 Members suffered injury in fact and lost money.

14          81. Unless restrained by this Court, Defendant will continue to engage in violations of  
 15 Section 17501.

16          82. Plaintiff, individually and on behalf of the Class Members, seeks equitable relief in  
 17 the form of an order requiring Defendant to refund Plaintiff and all Class Members all monies they  
 18 paid for the purported discounted rooms they rented on Defendant’s website and mobile app, and  
 19 injunctive relief in the form of an order prohibiting Defendants from engaging in the alleged  
 20 misconduct.

#### 21                                   **FOURTH CAUSE OF ACTION**

##### 22                                   **Breach of Contract**

23          83. Plaintiff realleges and incorporates by reference all previous paragraphs of this  
 24 Complaint as if fully set forth herein.

25          84. Plaintiff brings this claim individually and on behalf of all classes and subclasses.

26          85. Plaintiff and the Class Members entered into contracts with Defendant.

27          86. The contracts provided that Plaintiff and the Class Members would pay Defendant  
 28 for hotel rooms.

1           87. The contracts further provided that Defendant would provide Plaintiff and the Class  
2 Members a discount on the price of their purchases, or on “sale.” This discount was a specific and  
3 material term of each contract.

4           88. Plaintiff and the Class Members paid Defendant for the rooms that they purchased,  
5 and satisfied all other conditions of the contracts.

6           89. Defendant breached the contracts with Plaintiff and the Class Members by failing to  
7 comply with the material term of providing the promised discount, and instead charged Plaintiff  
8 and the Class Members the full price of the rooms that they purchased. Defendant further breached  
9 the covenant of good faith and fair dealing implied in all the contracts it had with Plaintiff and his  
10 fellow consumers.

11           90. As a direct and proximate result of Defendant’s breaches, Plaintiff and the Class  
12 Members have been injured and have suffered actual damages in an amount to be established at  
13 trial.

#### 14                                   **FIFTH CAUSE OF ACTION**

##### 15                                   **Breach of Express Warranty**

16           91. Plaintiff realleges and incorporates by reference all previous paragraphs of this  
17 Complaint as if fully set forth herein.

18           92. Plaintiff brings this claim individually and on behalf of all classes and subclasses.

19           93. Plaintiff and the Class Members formed contracts with Defendants at the time they  
20 rented rooms on Defendant’s website and mobile app. The terms of such contracts included the  
21 promises and affirmations of fact made by Defendants through their marketing campaign, as  
22 alleged herein, including, but not limited to, representing that the rooms for sale on Defendants’  
23 website and mobile app were discounted, limited in number, and only available for a limited  
24 amount of time.

25           94. This advertising campaign constitutes express warranties, and became part of the  
26 basis of the bargain, and was part of the contract between Defendant and Plaintiff and Defendant  
27 and the Class Members.  
28



1 should not have had to pay those monies and they would not have paid those monies if they had  
2 known it was illegal to charge them.

3 104. Because Defendant's retention of the non-gratuitous benefits conferred on it by  
4 Plaintiff his fellow consumers is unjust and inequitable, Defendant must pay restitution to Plaintiff  
5 and all class and subclass members for Defendant's unjust enrichment, as ordered by the Court.

6 **PRAYER**

7 WHEREFORE, Plaintiff, on behalf of himself and on behalf of the other members of the  
8 Class, request award and relief as follows:

- 9 1. Certifying the Class and Subclass as requested herein;
- 10 2. Awarding Plaintiff and the proposed Class Members damages;
- 11 3. Awarding restitution and disgorgement of Defendant's revenues to Plaintiffs and  
12 the proposed Class Members;
- 13 4. Awarding declaratory and injunctive relief as permitted by law or equity, including:  
14 enjoining Defendant from continuing the unlawful practices as set forth herein and directing  
15 Defendant to identify, with Court supervision, victims of its conduct and pay them all money it is  
16 required to pay;
- 17 5. Ordering Defendant to engage in a corrective advertising campaign;
- 18 6. Awarding attorneys' fees including under the public benefit doctrine and/or the  
19 common fund doctrine;
- 20 7. Award costs of suit; and
- 21 8. Providing such further relief as may be just and proper.

22 Dated: June 3, 2020

**NICHOLAS & TOMSEVIC, LLP**

23  
24  
25 By: 

Alex Tomasevic (SBN 254498)

26 Attorney for Plaintiff  
27  
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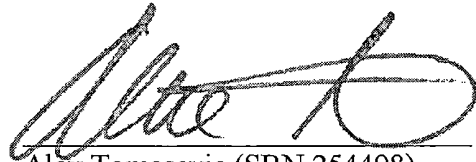
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all causes of action and/or issues so triable.

Dated: June 3, 2020

**NICHOLAS & TOMSEVIC, LLP**

By:

  
Alex Tomasevic (SBN 254498)

Attorney for Plaintiff