

1 Teresa H. Michaud (296329)
teresa.michaud@bakermckenzie.com
2 Sara Victoria M. Pitt (317611)
sara.pitt@bakermckenzie.com
3 **BAKER & MCKENZIE LLP**
1901 Avenue of the Stars, Suite 950
4 Los Angeles, CA 90067
Telephone: +1 310 201 4728
5 Facsimile: +1 310 201 4721

6 Alexander G. Davis (287840)
alexander.davis@bakermckenzie.com
7 Anne K. Assayag (298710)
anne.assayag@bakermckenzie.com
8 **BAKER & MCKENZIE LLP**
600 Hansen Way
9 Palo Alto, CA 94304
Telephone: +1 650 856 2400
10 Facsimile: +1 650 856 9299

11 Attorneys for Defendant
BOOKING HOLDINGS, INC.

12
13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA
15

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

17 Plaintiffs,

18 v.

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

20 Defendants.
21

Case No. '20CV1289 JAH MSB

**DEFENDANT BOOKING
HOLDINGS, INC.'S NOTICE OF
REMOVAL OF ACTION FROM
STATE COURT**

[28 U.S.C. §§ 1332, 1441 (Diversity),
1446 and Fed. R. Civ. P. 81(c)]

Removal Action Filed: July 9, 2020

**Date of Filing of Action in the
Superior Court: June 3, 2020**

*State Court Action filed in the
California Superior Court, County of
San Diego Case No. 37-2020-00018413-
CU-BT-CTL*

1 **TO THE CLERK OF THE ABOVE-TITLED COURT AND TO PLAINTIFF**
2 **AND HIS COUNSEL OF RECORD:**

3 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and
4 Fed. R. Civ. P. 81(c), Defendant BOOKING HOLDINGS, INC. (“BHI”) hereby files
5 its Notice of Removal to the United States District Court for the Southern District of
6 California the above-captioned state court action, originally filed as Case No. 37-
7 2020-00018413-CU-BT-CTL in the Superior Court of the State of California for the
8 County of San Diego. As set forth below, removal is proper pursuant to 28 U.S.C. §
9 1441(a) because this is a civil action and this Court has original jurisdiction under 28
10 U.S.C. § 1332 since the amount in controversy exceeds the sum or value of \$75,000,
11 exclusive of interest and costs, and is an action between citizens of different States.
12 The Court also has original jurisdiction for the additional reason that this is a putative
13 class action in which (1) any member of a class of plaintiffs is a citizen of a State
14 different from any defendant and (2) the matter in controversy exceeds the sum or
15 value of \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2)(A).

16 **I. TIMELINESS OF REMOVAL**

17 1. Plaintiff DAVID E. MARTINEZ (“Martinez” and/or “Plaintiff”) filed a
18 Class-Action Complaint in the Superior Court of the State of California for the County
19 of San Diego, Case No. 37-2020-00018413-CU-BT-CTL on June 3, 2020 (the
20 “Complaint”).

21 2. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Summons,
22 Complaint, Civil Case Cover Sheet, Notice of Case Assignment - Unlimited Civil
23 Action, Notice of Eligibility to E-File and Assignment to Imaging Dept., Alternative
24 Dispute Resolution, Proof of Service of Summons and Complaint are attached as
25 **Exhibits A through H** to the accompanying Declaration of Teresa H. Michaud
26 (“Michaud Decl.”) filed concurrently herewith.

27 3. Plaintiff served BHI with the Summons and Complaint on June 8, 2020.
28 Michaud Decl. ¶ 4, **Exhibits A-G**. BHI’s timely filed its Notice of Removal on July

1 9, 2020, within 30 days after completion of service. *See* 28 U.S.C. § 1446(b). As
2 explained below, BHI’s Notice of Removal is procedurally proper.

3 **II. GROUNDS FOR REMOVAL**

4 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
5 § 1332(a)(1) because the amount in controversy exceeds the sum or value of \$75,000,
6 exclusive of interest and costs, and this is a civil action between citizens of different
7 states.

8 5. Further, the Court has subject-matter jurisdiction over this action
9 pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005,
10 in that this is a putative class action in which (1) there is minimal diversity because
11 Plaintiff is a citizen of a state different from BHI, and (2) the aggregate claims of
12 Plaintiff and the proposed class members exceed the sum or value of \$5,000,000,
13 exclusive of interest and costs. 28 U.S.C. § 1332(d)(2)(A).

14 **A. Plaintiff and Defendant Are Citizens of Different States**

15 6. Plaintiff is a natural person who is a citizen of California. Compl. ¶ 13.

16 7. A corporation has citizenship in (1) the state or states where it is
17 incorporated and (2) the single state where it has its principal place of business. 28
18 U.S.C. § 1332(c)(1). Defendant Booking Holdings, Inc. is a Delaware corporation
19 with its principal place of business in Connecticut. *Id.* ¶ 14.

20 8. Thus, Plaintiff and BHI are citizens of different States, California on the
21 one hand, and Connecticut and Delaware on the other hand, pursuant to 28
22 U.S.C. § 1332(a)(1) and 28 U.S.C. § 1332(d)(2)(A).

23 **B. The Citizenship of Doe Defendants Is Irrelevant For Removal**

24 9. The citizenship of Defendants DOES 1-10 is disregarded under 28 U.S.C.
25 § 1441(b)(1) (“In determining whether a civil action is removable on the basis of the
26 jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under
27 fictitious names shall be disregarded.”).

1 **C. The Amount In Controversy Exceeds \$5,000,000**

2 10. A sum demanded by the plaintiff “in the initial pleading shall be deemed
3 the amount in controversy” for removal on the basis of 28 U.S.C. § 1332(a). 28
4 U.S.C. § 1446(c)(2).

5 11. Plaintiff alleges that “[i]n the third quarter of 2019 alone, consumers
6 booked \$25.3 billion worth of gross travel bookings through Defendant’s properties
7 such as agoda.com and the Agoda app. Of that, Defendant recognized \$5.0 billion in
8 revenue for the quarter and \$2.0 billion in net income.” Compl. ¶ 16.

9 12. Plaintiff claims that the alleged wrongful practices are “Defendant’s
10 common practice across agoda.com and the Agoda app for all its offerings.” Compl. ¶
11 26.

12 13. Plaintiff purports to sue on behalf of “[a]ll U.S. citizens who used
13 agoda.com or the Agoda smart app for hotel bookings, along with all other persons
14 who used agoda.com or the Agoda smart app to book hotel rooms located in the
15 United States,” unrestricted by any date range. Compl. ¶ 39.

16 14. Plaintiff alleges that “the proposed Class contains hundreds of thousands
17 of consumers who have been damaged by Defendants’ conduct” Compl. ¶ 41.

18 15. “[O]n behalf of himself, all others similarly situated, and the general
19 public,” Plaintiff seeks “restitution and disgorgement of all money obtained from
20 Plaintiff and the members of the Class as a result of” the alleged conduct, among other
21 relief. Compl. ¶ 63.

22 16. Plaintiff further seeks “equitable relief in the form of an order requiring
23 Defendant to refund Plaintiff and all Class Members all monies they paid for the
24 purported discounted rooms they purchased from Agoda’s website and mobile app
25” Compl. ¶¶ 70, 82.

26 17. On behalf of himself and all putative class members, Plaintiff seeks
27 damages as well as “restitution and disgorgement of Defendant’s revenues to
28 Plaintiffs and the proposed Class Members,” among other relief. Compl. Prayer at ¶¶

1 2-3.

2 18. Based on Plaintiff’s allegations that BHI earns billions in revenue and net
 3 income and the putative class contains “hundreds of thousands of consumers,”
 4 coupled with the allegations that Plaintiff and the putative class of all U.S. citizens
 5 who booked with Agoda in the United States are entitled to restitution and
 6 disgorgement of BHI’s revenue and/or refunds of “all monies they paid for the
 7 purported discounted rooms,” both traditional diversity and CAFA jurisdiction are
 8 met. Accepting as true for the purpose of this Notice Plaintiff’s allegation that the
 9 putative class includes “hundreds of thousands of consumers,” if Plaintiff sought \$100
 10 in damages per putative class member for hotel bookings made with Agoda, the
 11 amount in controversy for a putative class of 100,000 consumers would be
 12 \$10,000,000, or double the amount in controversy required for the Court to exercise
 13 jurisdiction under CAFA. Thus, it is apparent from the face of the Complaint that
 14 Plaintiff seeks recovery of amounts in excess of both \$5,000,000 and \$75,000,
 15 exclusive of interest and costs. *See* 28 U.S.C. §§ 1332(a), (d)(2); 28 U.S.C. § 1446(a)
 16 (a notice of removal must contain “a short and plain statement of the grounds for
 17 removal”); *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014);
 18 *Arias v. Residence Inn*, 936 F.3d 920, 925 (9th Cir. 2019); *Ibarra v. Manheim Invs.,*
 19 *Inc.*, 775 F.3d 1193, 1197 (9th Cir 2015).¹

20 **D. Jury Demand by Plaintiff**

21 19. Plaintiff has made a Jury Demand in the Complaint filed with the San
 22 Diego Superior Court.

23 **III. PROCEDURAL PREREQUISITES SATISFIED**

24 20. Venue is proper in the United States District Court for the Southern
 25 District of California, under 28 U.S.C. §§ 1441(a), 1446(a) because this District Court

26 ¹ BHI accepts Plaintiff’s allegations in the Complaint as true solely for the purpose of
 27 pleading the jurisdictional requirement of the amount in controversy. *See* 28 U.S.C. §
 28 1446(c)(2) (“[T]he sum demanded in good faith in the initial pleading shall be deemed
 to be the amount in controversy.”). Plaintiff bears the burden of proving liability and
 damages, and BHI reserves all rights to contest the claims asserted in the Complaint.

1 and Division embraces the place in which the removed action has been pending, that
2 is, the San Diego County Superior Court.

3 21. As is required by 28 U.S.C. § 1446(a), true and correct copies of all the
4 process, pleadings and orders served upon Priceline are hereby attached as follows:

5 a) **Exhibit A** – Summons;

6 b) **Exhibit B** - Complaint;

7 c) **Exhibit C** - Civil Case Cover Sheet;

8 d) **Exhibit D** – Notice of Case Assignment - Unlimited Civil Case;

9 e) **Exhibit E** - Notice of Eligibility to E-File and Assignment to Imaging
10 Dept.; and

11 f) **Exhibit F** – Alternative Dispute Resolution (ADR) Information Sheet.

12 14. BHI will promptly serve Plaintiff with this Notice of Removal and
13 will promptly file a copy of this Notice of Removal with the clerk of the Superior
14 Court, as required under 28 U.S.C. § 1446(d).

15 **IV. CONCLUSION**

16 **WHEREFORE**, BHI respectfully requests that this action be removed from the
17 Superior Court of the State of California in and for the County of San Diego to the
18 United States District Court for the Southern District of California, and that all future
19 proceedings in this matter take place in the United States District Court for the
20 Southern District of California.

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Dated: July 9, 2020

Respectfully submitted,

BAKER & MCKENZIE LLP
Teresa H. Michaud
Alexander G. Davis
Anne K. Assayag
Sara Victoria M. Pitt

By: /s/ Teresa H. Michaud
Teresa H. Michaud
Attorneys for Defendant
BOOKING HOLDINGS, INC.

Email:
teresa.michaud@bakermckenzie.com

CIVIL COVER SHEET

JS 44 (Rev. 09/19)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 David E. Martinez, individually, and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff _____
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 SEE ATTACHMENT

DEFENDANTS
 Booking Holdings, Inc. **'20CV1289 JAH MSB**

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
 Teresa H. Michaud (SBN 296329)
 Baker & McKenzie LLP
 1901 Avenue of the Stars, Suite 950, LA, CA 90067 (310) 201-4728

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) [Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		<input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. 1332

Brief description of cause:
 Unfair Competition; False Advertising; Breach of Contract; Breach of Express Warranty; Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 10,000,000.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE July 9, 2020 SIGNATURE OF ATTORNEY OF RECORD /s/Teresa H. Michaud

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT
CIVIL CASE COVER SHEET ATTACHMENT

PLAINTIFF'S COUNSEL:

<p>Marc Hannan Phelps #237036 The Phelps Law Group 23 Corporate Plaza Dr Ste 150 Newport Beach, CA 92660 Phone Number: (949) 629-2533 Fax Number: (949) 629-2501 Email: marchannanphelps@gmail.com</p>	<p>Roger Richard Carter #140196 The Carter Law Firm 23 Corporate Plaza Dr, Ste 150 Newport Beach, CA 92660-7908 Phone Number: (949) 245-7500 Fax Number: (949) 629-2501 Email: roger@carterlawfirm.net</p>
<p>Bianca Alexandra Sofonio #179520 The Carter Law Firm 23 Corporate Plaza Dr Ste 150 Newport Beach, CA 92660-7908 Phone Number: (949) 629-2565 Email: bianca@carterlawfirm.net</p>	