

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)

DDA Stephen Spinella, SBN 144732

Office of District Attorney 330 W. Broadway, Suite 750
San Diego, CA 92102

TELEPHONE NO. (619) 515-8160

FAX NO. (Optional)

ATTORNEY FOR (Name) The People of the State of California

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS 330 West Broadway

MAILING ADDRESS

CITY AND ZIP CODE: San Diego, California 92102

BRANCH NAME Central Division

CASE NAME:

The People of the State of California v. Welk Resort Group, Inc.

CIVIL CASE COVER SHEET

☒ **Unlimited**
(Amount
demanded
exceeds \$25,000)

☐ **Limited**
(Amount
demanded is
\$25,000)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

**Other PI/PD/WD (Personal Injury/Property
Damage/Wrongful Death) Tort**

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)

☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☒ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse
condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

**Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)**

☒ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the
above listed provisionally complex case
types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☐ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify):

5. This case ☐ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 2, 2020

Stephen Spinella

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

1 XAVIER BECERRA
Attorney General of California
2 NICKLAS A. AKERS (SBN 211222)
Senior Assistant Attorney General
3 JUDITH A. FIORENTINI (SBN 201747)
JON F. WORM (SBN 248260)
4 Supervising Deputy Attorneys General
ANGELA K. ROSENAU (SBN 182175)
5 Deputy Attorney General
600 West Broadway, Suite 1800
6 San Diego, CA 92101
Telephone: (619) 738-9349
7 Fax: (619) 645-2271
E-mail: Angela.Rosenau@doj.ca.gov
8 *Attorneys for Plaintiff*
People of the State of California

9 SUMMER STEPHAN
10 District Attorney, County of San Diego
STEPHEN M. SPINELLA (SBN 144732)
11 COLLEEN E. HUSCHKE (SBN 191402)
Deputy District Attorneys
12 330 West Broadway, Suite 750
San Diego, CA 92186-5266
13 Telephone: (619) 515-8160
E-mail: Colleen.Huschke@sdcdca.org
14 *Attorneys for Plaintiff*
People of the State of California

**NO FEE PURSUANT TO
GOVERNMENT CODE § 6103**

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SAN DIEGO

21 **PEOPLE OF THE STATE OF**
22 **CALIFORNIA,**

23 Plaintiff,

24 v.

25 **WELK RESORT GROUP, INC.,**

26 Defendant.
27

Case No.

**COMPLAINT FOR INJUNCTION, CIVIL
PENALTIES AND OTHER EQUITABLE
RELIEF**

1 Plaintiff, the PEOPLE OF THE STATE OF CALIFORNIA ("People"), bring this action by
2 and through Xavier Becerra, Attorney General of the State of California, by Judith A. Fiorentini
3 and Jon F. Worm, Supervising Deputy Attorneys General, and Angela K. Rosenau, Deputy
4 Attorney General; and Summer Stephan, District Attorney of San Diego County, by Stephen M.
5 Spinella and Colleen E. Huschke, Deputy District Attorneys, and allege the following:

6 **PLAINTIFF'S AUTHORITY**

7 1. The allegations set forth in paragraphs 4 through 18 of this Complaint are alleged on
8 information and belief and cover the period beginning on January 1, 2011.

9 2. The authority of the California Attorney General and the District Attorney of the
10 County of San Diego to bring a civil action in the name of the People of the State of California to
11 enjoin any person or entity who makes or proposes to make untrue or misleading statements, or
12 omissions, as defined in California Business and Professions Code section 17500 and obtain
13 mandatory civil penalties for such violations is derived from Business and Professions Code
14 sections 17535 and 17536.

15 3. The authority of the California Attorney General and the District Attorney of the
16 County of San Diego to bring a civil action in the name of the People of the State of California to
17 enjoin any person or entity who engages, has engaged, or proposes to engage in unfair
18 competition, as defined in California Business and Professions Code section 17200, and obtain
19 mandatory civil penalties for such violations is derived from Business and Professions Code
20 sections 17203, 17204 and 17206.

21 **JURISDICTION AND VENUE**

22 4. At all relevant times, Defendant has transacted business in the State of California,
23 including, but not limited to, San Diego County.

24 5. The San Diego County Superior Court has jurisdiction over the subject matter of this
25 lawsuit and over the parties.

26 6. Venue for this action is proper because the wrongful acts herein alleged occurred in
27 the County of San Diego and elsewhere in California.
28

1 **DEFENDANT**

2 7. Defendant Welk Resorts Group, Inc. is a California corporation with its principal
3 place of business listed as 300 Rancheros Drive #450, San Marcos, California 92069.

4 8. Whenever in this Complaint reference is made to any act or omission of the corporate
5 defendant, that allegation shall mean that the corporation did the acts alleged in this Complaint
6 through its officers, directors, employees, agents, and/or representatives while they were acting
7 within the actual or ostensible scope of their authority.

8 **DEFENDANT'S BUSINESS ACTS AND PRACTICES**

9 9. Defendant is the developer of Welk Resorts Platinum Program (the Platinum
10 Program"). As the developer of the Platinum Program, Defendant: (a) offers, sells, develops and
11 promotes Timeshare Interests and/or Timeshare Plans in the State of California as those terms are
12 defined in California Business and Professions Code section 11212 subdivisions (x) and (z),
13 respectively; (b) owns, manages, operates, facilitates and promotes an Exchange Program as that
14 term is defined in California Business and Professions Code section 11212 subdivision (l); and (c)
15 offers, sells and promotes Incidental Benefits as that term is defined in California Business and
16 Professions Code section 11212 subdivision (m).

17 10. In advertising, promoting, and offering for sale the Platinum Program, Defendant
18 made or caused to be made untrue and/or misleading statements and omissions to consumers in
19 California, including statements and omissions that violated the Vacation Ownership and Time-
20 Share Act of 2004, codified at California Business and Professions Code section 11210 *et seq.*
21 ("VOTA"). Consumers throughout the State of California relied on Defendant's untrue and/or
22 misleading statements and omissions when deciding to purchase the Platinum Program. These
23 Timeshare Interests cost thousands of dollars and further obligated consumers to pay annual
24 maintenance fees.

25 11. Defendant's untrue and/or misleading statements and omissions included, but are not
26 limited to, the following:

27 a. Misrepresentations about the nature and quality of the Timeshare Interests being
28

1 marketed by Defendant, including, for example, statements that the Timeshare
2 Interests were real property and that the transactions were real estate transactions;

3 b. Misrepresentations regarding the current or future availability of buy-back programs
4 through which a purchaser of a Timeshare Interest could sell the Timeshare Interest
5 back to Defendant;

6 c. Misrepresentations regarding the availability of a program through which purchasers
7 could earn money by renting their Timeshare Interests;

8 d. Misrepresentations regarding the resale value of Timeshare Interests;

9 e. Misrepresentations regarding potential tax benefits associated with Timeshare Interest
10 ownership;

11 f. Misrepresentations about the existence of multiple levels of Timeshare Interest
12 ownership (e.g., Standard vs. Platinum ownership); and

13 g. Misrepresentations regarding the availability and pricing of refinancing options
14 available to purchasers.

15 12. Defendant also committed or caused to be committed other violations of VOTA,
16 including, for example, failing to inform certain prospective purchasers of their right to request
17 cancellation of a Timeshare Interest purchase within the rescission period provided by California
18 Business and Professions Code section 11238, as well as all of the procedures necessary to
19 effectively cancel a purchase.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATIONS OF BUSINESS & PROFESSIONS CODE § 17500**

22 **(False or Misleading Advertising)**

23 13. Plaintiff realleges and incorporates by reference Paragraphs 1 through 12 of this
24 Complaint as though fully set forth herein.

25 14. Defendant, with the intent, directly or indirectly, to induce members of the public to
26 purchase the Platinum Program, has made or caused to be made statements to the public in
27 California that were untrue or misleading, or omitted material facts in violation of California
28

1 Business and Professions Code section 17500. These untrue or misleading statements include, but
2 are not limited to, those set forth in paragraph 11 above.

3 15. Defendant knew, or by the exercise of reasonable care should have known, that the
4 statements set forth above were untrue or misleading, or omitted material facts, when made.

5 16. Unless enjoined by the Court, Defendant may continue to make such untrue or
6 misleading statements, or omissions as alleged above.

7 **SECOND CAUSE OF ACTION**

8 **VIOLATIONS OF BUSINESS & PROFESSIONS CODE § 17200**

9 **(Unfair Competition)**

10 17. Plaintiff realleges and incorporates by reference Paragraphs 1 through 16 of this
11 Complaint as though fully set forth herein.

12 18. Defendant has engaged in unfair competition in violation of California Business and
13 Professions Code section 17200 by committing one or more unlawful, unfair or fraudulent
14 business practices. These unlawful, unfair or fraudulent practices include, but are not limited to,
15 the violations of VOTA and California Business and Professions Code section 17500, as set forth
16 in paragraphs 9-16 above.

17 **PRAYER**

18 WHEREFORE, Plaintiff prays for judgment as follows:

19 1. Pursuant to California Business and Professions Code sections 17203 and 17535, and
20 the Court's inherent equity powers, that Defendant and its officers, directors, employees, agents,
21 representatives, successors, assigns, and all natural persons, corporations, or other entities acting
22 under, by and through or on behalf of or in concert with Defendant, with actual or constructive
23 knowledge of this injunction, be permanently enjoined and restrained from (a) violating VOTA;
24 (b) committing any acts of false advertising or unfair competition, as defined in California
25 Business and Professions Code sections 17500 and 17200, respectively, including, but not limited
26 to, the acts and practices alleged in this Complaint;

27 2. Pursuant to California Business and Professions Code section 17536, and the Court's
28 inherent equity powers, that Defendant shall be assessed a civil penalty of two thousand five

1 hundred dollars (\$2,500) for each and every untrue or misleading statement or omission made by
2 it to each potential or actual consumer, as proven at trial;

3 3. Pursuant to California Business and Professions Code sections 17206, and the Court's
4 inherent equity powers, that Defendant shall be assessed a civil penalty of two thousand five
5 hundred dollars (\$2,500) for each and every violation of California Business and Professions
6 Code section 17200, as proven at trial;

7 4. Pursuant to California Business and Professions Code section 17206.1, that, in
8 addition to any civil penalties assessed under California Business and Professions Code sections
9 17536 and 17206, that Defendant shall be assessed a civil penalty of two thousand five hundred
10 dollars (\$2,500) for each violation of California Business and Professions Code section 17200
11 perpetrated against a senior citizen or disabled person, as proven at trial;

12 5. Pursuant to California Business and Professions Code sections 17203 and
13 17535, and the Court's inherent equity powers, that this Court order Defendant to restore to any
14 person any money or property which has been acquired by means of Defendant's violations, as
15 proven at trial;

16 6. Plaintiff recover its costs, including costs of investigation and prosecution, and those
17 of other law enforcement or regulatory agencies, as appropriate; and

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

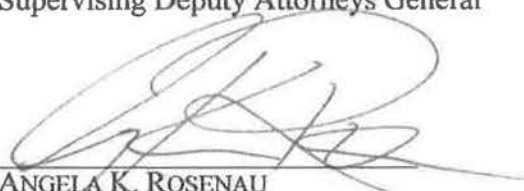
28 ///

1 7. Plaintiff have such other and further relief as the nature of the case may require and
2 the Court deems appropriate.

3
4
5 Dated: 05-27-2020

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
JUDITH A. FIORENTINI
JON F. WORM
Supervising Deputy Attorneys General

6
7
8
9
10 
11 ANGELA K. ROSENAU
12 Deputy Attorney General
13 *Attorneys for Plaintiff*
14 *People of the State of California*

15 Dated: _____

Respectfully Submitted,

16 SUMMER STEPHAN
17 District Attorney for the County of San
18 Diego

19
20 COLLEEN E. HUSCHKE
21 Deputy District Attorney
22 *Attorneys for Plaintiff*
23 *People of the State of California*
24
25
26
27
28

1 7. Plaintiff have such other and further relief as the nature of the case may require and
2 the Court deems appropriate.

3
4
5 Dated: _____

Respectfully Submitted,

6 XAVIER BECERRA
7 Attorney General of California
8 JUDITH A. FIORENTINI
9 JON F. WORM
10 Supervising Deputy Attorneys General

11 _____
12 ANGELA K. ROSENAU
13 Deputy Attorney General
14 *Attorneys for Plaintiff*
15 *People of the State of California*

16 Dated: May 27, 2020

Respectfully Submitted,

17 SUMMER STEPHAN
18 District Attorney for the County of San
19 Diego

20 _____
21 COLLEEN E. HUSCHKE
22 Deputy District Attorney
23 *Attorneys for Plaintiff*
24 *People of the State of California*