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12 Thomas E. Perez, Secretary of Labor,
13 United States Department of Labor

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 THOMAS E. PEREZ, Secretary of Labor,) Case No.: 2:16-cv-09262
17 UNITED STATES DEPARTMENT OF)
18 LABOR,)
19) COMPLAINT FOR VIOLATIONS OF
20 Plaintiff,) ERISA
21 vs.)
22)
23 URBAN HOTELS INC. dba LAX Plaza)
24 HOTEL, a California corporation, and)
25 URBAN HOTEL 401(k) PLAN AND TRUST,))
26 an employee benefit plan,)
27)
28 Defendants.)

29 Plaintiff THOMAS E. PEREZ, Secretary of Labor, UNITED STATES DEPARTMENT
30 OF LABOR (the “Secretary”), alleges:

31 1. This cause of action arises under the Employee Retirement Income Security Act of
32 1974 (“ERISA”), 29 U.S.C. §§ 1001-1191c, and is brought to enjoin acts and practices that
33 violate the provisions of Title I of ERISA, and to obtain other appropriate equitable relief to
34 redress violations and enforce the provisions of that Title pursuant to Section 502(a)(5), 29
35 U.S.C. § 1132(a)(5).

1 **Jurisdiction, Parties, and Venue**

2 2. Jurisdiction over this action is conferred upon the Court by ERISA § 502(e)(1), 29
3 U.S.C. § 1132(e)(1).

4 3. The URBAN HOTEL 401(k) PLAN AND TRUST (“401(k) Plan” or “Plan”) is an
5 employee pension benefit plan as defined under ERISA § 3(3), 29 U.S.C. § 1002(3).

6 4. The Plan was sponsored by URBAN HOTELS INCORPORATED dba LAX
7 PLAZA HOTEL (“Urban Hotels” or “Company”), a California corporation engaged in the
8 business of hotel management. Urban Hotels’ principal place of business was in Culver City,
9 California.

10 5. Urban Hotels was incorporated in the state of California on October 12, 1990.

11 **Intra-District Assignment**

12 6. Pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), venue for this action lies in
13 the Central District of California because the 401(k) Plan was administered in Los Angeles
14 County, California.

15 **Factual Allegations**

16 7. Pursuant to the Plan’s governing documents, Hidebumi Minagawa was the Plan
17 Administrator of the 401(k) Plan, and Hidebumi Minagawa and Hailu Solomon were the named
18 Plan Trustees.

19 8. Voya Financial Inc. (“Voya”, formerly ING U.S. Inc.) is the 401(k) Plan’s asset
20 custodian, and it can act only at the direction of the Plan Administrator or a properly appointed
21 discretionary Trustee or fiduciary.

22 9. On January 31, 2007, Hidebumi Minagawa advised Voya that the Plan was
23 terminated. He has since left the United States and is no longer recognized as the Plan
24 Administrator.

25 10. Hailu Solomon is recognized by Voya as a trustee to the Plan. On January 23, 2015,
26 the Employment Benefits Security Administration (“EBSA”) contacted him and he executed the
27 necessary forms to authorize distribution of assets from the Plan for one participant. Since then,
28

1 despite multiple efforts, EBSA has not been able to relocate Mr. Solomon. His whereabouts are
2 unknown. Defendant Urban Hotels ceased operating on or about February 1, 2007.

3 11. At sometime prior to today's date, the Company's powers, rights, and privileges
4 were suspended by the California Franchise Tax Board. Kenneth Chu resigned as Agent for
5 Service of Process on February 25, 2010.

6 12. Prior to and at the time of the Company's cessation of operations, Defendant Urban
7 Hotels failed to take sufficient steps to provide for the prudent and complete termination of the
8 Plan.

9 13. The 401(k) Plan's asset custodian, Voya, Inc., will not authorize distributions of the
10 remaining 401(k) Plan assets to the Plan's participants and beneficiaries without direction from a
11 properly appointed fiduciary or a court-appointed independent fiduciary.

12 14. The 401(k) Plan was funded solely through employee contributions and
13 discretionary employer contributions, and, as of January 13, 2016, the 401(k) Plan had 14
14 participants and \$57,414.15 in Plan assets.

15 **Violations of ERISA**

16 15. Because of the facts and circumstances set forth in Paragraphs 7-14, above:

17 a. the 401(k) Plan does not have named fiduciaries or trustees with exclusive
18 authority and discretion to manage and control its assets as required by ERISA §§ 402(a) and
19 403(a), 29 U.S.C. §§ 1102(a) and 1103(a); and there is no one other than this Court with the
20 authority to appoint a new discretionary trustee or plan administrator;

21 b. Defendant Urban Hotels, acting in its fiduciary capacity, failed to act solely in the
22 interest of the participants and beneficiaries of the Plan and for the exclusive purpose of
23 providing benefits to participants and their beneficiaries and defraying reasonable expenses of
24 Plan administration, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A); and

25 c. Defendant Urban Hotels, acting in its fiduciary capacity, failed to act with the
26 care, skill prudence, and diligence under the circumstances then prevailing that a prudent man
27 acting in a like capacity and familiar with such matters would use in the conduct of an enterprise
28

1 of a like character and with like aims as required by ERISA § 404(a)(1)(B), 29 U.S.C. §
2 1104(a)(1)(B).

3 16. Because of the facts and circumstances set forth in Paragraphs 7-14 above, the
4 401(k) Plan participants are unable to access their account balances to reinvest them in other tax-
5 qualified retirement savings vehicles before retirement, to draw them down upon retirement, or
6 for any other purpose. Because the basis upon which payments are made from the 401(k) Plan
7 are not and cannot be specified without a properly appointed discretionary trustee, the 401(k)
8 Plan exists in violation of ERISA § 402(b)(4), 29 U.S.C. § 1102(b)(4).

9 17. As a direct and proximate result of the breaches and violations set forth in
10 Paragraphs 7-16 above, the Secretary is entitled to such equitable or remedial relief as the Court
11 may deem appropriate, including removal of such fiduciary, pursuant to ERISA § 409, 29 U.S.C.
12 § 1109.

13 **WHEREFORE**, pursuant to ERISA § 502(a)(5), 29 U.S.C. § 1132(a)(5), Plaintiff prays
14 that the Court:

- 15 a. remove Hidebumi Minagawa from his position as the Plan Administrator and
16 named trustee of the 401(k) Plan;
- 17 b. remove Hailu Solomon from his position as the named trustee of the 401(k) Plan;
- 18 c. appoint an independent or successor fiduciary with discretionary authority to
19 administer the 401(k) Plan in order to effectuate its termination and the distribution of 401(k)
20 Plan assets to the participants and beneficiaries; and
- 21 d. Provide such other relief as may be just and equitable.

22 Dated: December 15, 2016

23 M. PATRICIA SMITH
24 Solicitor of Labor

25 JANET HEROLD
26 Regional Solicitor

27 /s/Danielle L. Jaberg
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