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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91227369
Party	Plaintiff SBE Hotel Licensing, LLC
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Attachments	Response to Board Inquiry Regarding Motion to Suspend_.pdf(9078 bytes) Luxe Hospitality v SBE Entertainment et al_Part1.pdf(201143 bytes) Luxe Hospitality v SBE Entertainment et al_Part2.pdf(91257 bytes) Luxe Hospitality v SBE Entertainment et al_Part3.pdf(71232 bytes) Luxe Hospitality v SBE Entertainment et al_Part4.pdf(71750 bytes) Luxe Hospitality v SBE Entertainment et al_Part5.pdf(322092 bytes) Luxe Hospitality v SBE Entertainment et al_Part6.pdf(1096251 bytes) Luxe Hospitality v SBE Entertainment et al_Part7.pdf(3317806 bytes) Luxe Hospitality v SBE Entertainment et al_Part8.pdf(2891488 bytes) Luxe Hospitality v SBE Entertainment et al_Part9.pdf(62735 bytes) Luxe Hospitality v SBE Entertainment et al_Part10.pdf(46547 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SBE HOTEL LICENSING, LLC)	
)	
Opposer,)	
v.)	Opposition No. 91227369
)	
LUXE HOSPITALITY COMPANY, LLC)	
)	
Applicant.)	

RESPONSE TO BOARD INQUIRY REGARDING MOTION TO SUSPEND

In its order dated April 28, 2016, the Board ordered Opposer SBE Hotel Licensing, LLC to provide a copy of the operative pleadings in *Luxe Hospitality Company, LLC v. SBE Entertainment Group, LLC*, et al., Case No. 2:15-cv-07115, which are attached hereto. Specifically, attached hereto are (1) sbe’s counterclaims against Luxe Hospitality, (2) Luxe Hospitality’s answer to the counterclaims, (3) Luxe Hospitality’s second amended complaint against sbe, and (4) sbe’s answer to the second amended complaint. Opposer contacted Applicant to obtain consent to the suspension, but to date, has received no response.

Respectfully submitted,

Date: May 5, 2016

By: /Lee J. Eulgen/
One of the Attorneys for Opposer,
SBE Hotel Licensing, LLC

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CERTIFICATE OF SERVICE

I, Katherine Dennis Nye, an attorney, state that, pursuant to 37 CFR §§ 2.101 and 2.119, I caused a copy of the foregoing Response to Board Inquiry Regarding Motion to Suspend to be served upon:

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8 Attorneys for Defendants
 SBE Entertainment Group, LLC, SBE Hotel
 9 Licensing, LLC, SBE Hotel Group, LLC, and
 SBEEG Holdings, LLC
 10

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**
 13

14 Luxe Hospitality Company, LLC,
 15 Plaintiff,

16 v.

17 SBE Entertainment Group, LLC, SBE
 Hotel Licensing, LLC, SBE Hotel
 18 Group, LLC, and SBEEG Holdings,
 LLC,

19 Defendants.
 20

Case No. 2:15-cv-07115-JAK (JPRx)

**SBE ENTERTAINMENT
 GROUP, LLC, SBE HOTEL
 LICENSING, LLC, SBE HOTEL
 GROUP, LLC, AND SBEEG
 HOLDING, LLC'S
 COUNTERCLAIMS AGAINST
 LUXE HOSPITALITY
 COMPANY, LLC**

Judge: Hon. John A. Kronstadt

21 SBE Entertainment Group, LLC, SBE
 Hotel Licensing, LLC, SBE Hotel
 22 Group, LLC, and SBEEG Holdings,
 LLC,

23 Counterclaimants,
 24

25 v.

26 Luxe Hospitality Company, LLC,

27 Counterdefendant.
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1 For their Counterclaims against Luxe Hospitality Company, LLC (“Luxe”),
2 SBE Entertainment Group, LLC, SBE Hotel Licensing, LLC, SBE Hotel Group,
3 LLC, and SBEEG Holdings, LLC (together, “sbe”), allege on knowledge as to their
4 own conduct and on information and belief as to all other matters, as follows:

5 **JURISDICTION AND VENUE**

6 1. These Counterclaims arise out of the Complaint which alleges
7 purported violations of and seeks remedies and relief under the Lanham Act,
8 15 U.S.C. §§ 1114, 1119, and 1125(a); California Business and Professions Code
9 §§ 17200 *et seq.*; and California common law. These Counterclaims further arise
10 under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 *et seq.*

11 2. This Court has original jurisdiction over these Counterclaims pursuant
12 to 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121.

13 3. This Court further has jurisdiction over these Counterclaims pursuant
14 to 15 U.S.C. § 1119 because they seek the cancellation of trademark registrations
15 in an action involving those registrations.

16 4. This Court has personal jurisdiction over Luxe, and by filing its
17 Complaint in this Court, Luxe has consented to personal jurisdiction in this district.

18 5. Venue is proper in this district under 28 U.S.C. § 1391.

19 **FACTS COMMON TO ALL COUNTS**

20 6. sbe is a global hospitality and entertainment company which owns,
21 manages, and operates a collection of award-winning hotels, residences,
22 restaurants, and nightlife destinations. sbe has achieved tremendous notoriety and
23 success in its field, including in the hotel industry with its brand SLS Hotels.

24 7. As part of its business, sbe has developed trademarks and design
25 marks to identify it as the source of its products and services. The family of
26 trademarks owned by sbe in the international goods class for hotels and residential
27 services under the SLS Hotels brand include “SLS,” “SLS Hotels,” “SLS HOTEL
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1 AT BEVERLY HILLS,” and two marks depicting the distinctive SLS Hotel
2 chandelier design mark, “SLS HOTELS” and “SLS LUX,” pictured below.



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SLS HOTELS



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SLS LUX

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8. Certain of sbe’s advertising and promotional materials, website, and certain of its hotel and residential properties prominently display one or more of the trademarks listed above, clearly designating sbe and its SLS Hotels brand as the source of the products and services.

9. On March 12, 2014, sbe submitted an application and drawing of the “SLS LUX” mark to the United States Patent and Trademark Office (“USPTO”) for review. The USPTO published the SLS LUX mark for opposition on August 5, 2014. On September 30, 2014, the USPTO issued a Notice of Allowance for the SLS LUX mark, noting that no opposition to the mark was filed. The mark was registered on July 21, 2015 in Classes 035, 036, and 037. A child application for the mark’s registration in Class 043 is pending, awaiting the filing of a statement of actual use.

10. Luxe has claimed trademark rights in the word “LUX” and has alleged that sbe’s registered mark, “SLS LUX,” infringes upon Luxe’s rights in its purported marks for the word “LUXE.”

1 11. The USPTO previously rejected Luxe’s application for registration on
 2 the Principal Register for its purported mark “LUXE,” a predecessor to
 3 Registration No. 3,458,611, in the class of goods for hotel services, however,
 4 because it concluded that the mark was merely descriptive and generic as to the
 5 hotel service industry. As the USPTO explained, “Luxe is defined as ‘1. The
 6 condition of being elegantly sumptuous. 2. Something luxurious; a
 7 luxury.’ . . . Luxury in return is defined as “sumptuous living or surroundings.’ As
 8 the dictionary definition states, it is “often used to modify another noun: a luxury
 9 condominium; luxury accommodations.” Accordingly, Luxe’s purported mark,
 10 “Luxe, which is defined as luxury, is descriptive of hotels because it indicates a
 11 type or class of hotels. If applicant offers ‘hotel services’ for luxury hotels or luxe
 12 hotels then the mark is descriptive of the services. Specifically, without
 13 imagination, thought, or conjecture, when applicant’s mark is viewed in relation to
 14 its services, it immediately indicates that the applicant offers ‘hotel services’ in
 15 luxury hotels or luxe hotels.”

16 12. Upon information and belief, Luxe has filed additional trademark
 17 applications since the filing of this lawsuit, including for such marks as “LUXE,”
 18 “LUXE COLLECTION,” “LUXE CLUB,” “EXCLUSIVELY LUXE,” and
 19 “LUXE HOTELS AND RESORTS.”

20 **FIRST COUNTERCLAIM**

21 (Cancellation of U.S. Trademark Reg. No. 4,177,255 – Mere Descriptiveness)

22 (15 U.S.C. §§ 1052(e), 1064, 1115(a), 1119)

23 13. sbe incorporates herein by reference Paragraphs 86 through 97 hereof.

24 14. On July 17, 2012, Luxe obtained U.S. Trademark Registration No.
 25 4,177,255 for its purported mark “LUXE HOTELS” in Class 044 for “health spa
 26 services.”

27 15. “Luxe” is a commonly used descriptive term, and is defined as
 28 meaning “luxurious,” “deluxe,” “elegance,” “sumptuousness,” and “luxury.”

1 (15 U.S.C. §§ 1052(e), 1064, 1115(a), 1119)

2 33. sbe incorporates herein by reference Paragraphs 86 through 117
3 hereof.

4 34. On September 25, 2012, Luxe obtained U.S. Trademark Registration
5 No. 4,212,421 for its purported mark “LUXE” in Class 043 for “hotel, bar and
6 restaurant services.”

7 35. “Luxe” is a commonly used descriptive term, and is defined as
8 meaning “luxurious,” “deluxe,” “elegance,” “sumptuousness,” and “luxury.”

9 36. Luxe’s alleged mark LUXE merely describes purported qualities or
10 characteristics of the hotel products and services offered by Luxe.

11 37. The alleged mark LUXE does not require any exercise of the
12 imagination to be understood as describing purported qualities or characteristics of
13 Luxe’s hotel products and services.

14 38. The USPTO has acknowledged that Luxe’s purported “LUXE” mark is
15 merely descriptive of the services offered by Luxe.

16 39. The alleged mark LUXE has not acquired secondary meaning and is
17 not inherently distinctive.

18 40. When used in connection with Luxe’s hotel products and services, the
19 alleged mark LUXE is merely descriptive of the products and services, and U.S.
20 Trademark Registration 4,212,421 for the mark is thus invalid, unenforceable, and
21 should be cancelled.

22 41. In light of Luxe’s reliance on its purported rights in U.S. Trademark
23 Registration No. 4,212,421 to support its claims against sbe in this action, sbe
24 reasonably believes that it has been or will be damaged by the continued
25 registration of the alleged mark LUXE, U.S. Trademark Registration No.
26 4,212,421.

27 42. sbe is thus entitled to cancellation of U.S. Trademark Registration No.
28 4,212,421.

FOURTH COUNTERCLAIM

(Cancellation of U.S. Trademark Reg. No. 3,458,611 – Generic)

(15 U.S.C. §§ 1064, 1119)

43. sbe incorporates herein by reference Paragraphs 86 through 127 hereof.

44. On December 23, 2008, Luxe obtained U.S. Trademark Registration No. 3,458,611 for its purported mark “LUXE” in International Class 043 for “hotel services.”

45. As applied to the goods and services described in U.S. Trademark Registration No. 3,458,611, “LUXE” is a generic adjective used to describe a type of product—hotels and the goods and services offered therein—and not to identify Luxe Hospitality Company, LLC as the producer.

46. The word “Luxe” has been used by the relevant public and third parties for decades to describe high-end hotel brands and the services that they offer.

47. The USPTO has acknowledged that Luxe’s purported “LUXE” mark is widely used as a mark to describe a type or class of hotels.

48. The relevant public understands that LUXE is a generic term for a luxurious hotel brand and its services.

49. The relevant public associates LUXE with an entire class of products and does not associate Luxe Hospitality Company, LLC or any other entity as the source of LUXE.

50. LUXE has become a generic term for luxurious hotels, the class of goods or services identified in U.S. Trademark Registration No. 3,458,611, and therefore the registration is subject to cancellation pursuant to 15 U.S.C. §§ 1064(3) and 1064(5).

51. In light of Luxe’s reliance on its purported rights in U.S. Trademark Registration No. 3,458,611 to support its claims against sbe in this action, sbe

1 reasonably believes that it has been or will be damaged by the continued
2 registration of the alleged mark LUXE, U.S. Trademark Registration No.
3 3,458,611.

4 52. sbe is thus entitled to cancellation of U.S. Trademark Registration No.
5 3,458,611.

6 **FIFTH COUNTERCLAIM**

7 (Cancellation of U.S. Trademark Reg. No. 4,177,255 – Generic)

8 (15 U.S.C. §§ 1064, 1119)

9 53. sbe incorporates herein by reference Paragraphs 86 through 137
10 hereof.

11 54. On July 17, 2012, Luxe obtained U.S. Trademark Registration No.
12 4,177,255 for its purported mark “LUXE HOTELS” in International Class 044 for
13 “health spa services.”

14 55. As applied to the goods and services described in U.S. Trademark
15 Registration No. 4,177,255, “LUXE HOTELS” is a generic phrase used to describe
16 a type of product—hotels and the goods and services offered therein—and not to
17 identify Luxe Hospitality Company, LLC as the producer.

18 56. The word “Luxe” has been used by the relevant public and third
19 parties for decades to describe high-end hotel brands and the services that they
20 offer.

21 57. The USPTO has acknowledged that Luxe’s purported “LUXE” mark is
22 widely used as a mark to describe a type or class of hotels.

23 58. The relevant public understands that LUXE HOTELS is a generic term
24 for a luxurious hotel brand and the services offered therein, including health spa
25 services.

26 59. The relevant public associates LUXE HOTELS with an entire class of
27 products and does not associate Luxe Hospitality Company, LLC or any other
28 entity as the source of LUXE HOTELS.

1 instances, sbe’s famous registered trademarks, including the SLS mark and/or the
2 distinctive SLS Hotels chandelier design mark, have also been prominently
3 featured, clearly designating and identifying sbe as the source of its hotel products
4 and services.

5 85. In its Complaint, Luxe has alleged, and sbe denies, that sbe’s
6 descriptive use of the word “LUX” in its registered trademark “SLS LUX”
7 constitutes trademark infringement, false designation of origin, and/or unfair
8 competition under the Lanham Act, California’s Unfair Competition law, and/or
9 the common law.

10 86. Based on the foregoing allegations, there exists between the parties a
11 substantial controversy of sufficient immediacy and reality to warrant declaratory
12 relief.

13 87. sbe’s use of the mark “SLS LUX” does not infringe upon any valid
14 trademark held by Luxe.

15 88. sbe is therefore entitled to a declaratory judgment that its use of the
16 mark “SLS LUX” does not infringe on any purported trademark rights of the Luxe,
17 including but not limited to Trademark Registration Nos. 3,458,611, 4,177,255,
18 4,212,420, and 4,212,421, as well as Luxe’s pending trademark applications, U.S.
19 Trademark Serial Nos. 8675088, 86839754, 86839748, 86839736, and 86839726.

20 **sbe’s PRAYER FOR RELIEF**

21 WHEREFORE, sbe respectfully requests that the Court enter judgment in its
22 favor as follows:

- 23 a) That the Complaint and each and every purported claim for
24 relief therein be dismissed with prejudice;
- 25 b) That the Court issue an order to the USPTO cancelling U.S.
26 Trademark Registration No. 3,458,611;
- 27 c) That the Court issue an order to the USPTO cancelling U.S.
28 Trademark Registration No. 4,212,420;

1 d) That the Court issue an order to the USPTO cancelling U.S.
2 Trademark Registration No. 4,212,421;

3 e) That the Court issue an order to the USPTO cancelling U.S.
4 Trademark Registration No. 4,177,255;

5 f) That the Court issue an order to the USPTO cancelling Luxe’s
6 pending trademark applications, including U.S. Trademark Serial Nos.
7 8675088, 86839754, 86839748, 86839736, and 86839726;

8 g) That the Court deny Luxe’s request for cancellation of sbe’s
9 registered mark “SLS LUX,” U.S. Trademark Registration No. 4,779,096;

10 h) That the Court issue a declaration that sbe’s use of the mark
11 “SLS LUX” does not:

12 i) infringe on any trademark rights of Luxe or on any
13 common law rights it might have accrued;

14 ii) violate Section 32 of the Lanham Act, 15 U.S.C. § 1114;

15 iii) violate Section 43(a) of the Lanham Act, 15 U.S.C.
16 § 1125(a);

17 iv) constitute trademark infringement under California
18 common law;

19 v) constitute unfair competition under California common
20 law or Cal. Bus. and Prof. Code §§ 17200 *et seq.*;

21 vi) constitute unjust enrichment; or

22 vii) violate any other federal, state, or common law.

23 i) That the Court determine that this is an exceptional case under
24 15 U.S.C. § 1117(a) and award sbe its attorneys’ fees, costs, and
25 disbursements; and

26 j) That the Court award sbe such other and further relief as the
27 Court deems just and proper.
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Dated: March 21, 2016

DANIEL M. PETROCELLI
DAVID MARROSO
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By: /s/ David Marroso
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DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, sbe hereby demands a jury trial on all issues so triable.

Dated: March 21, 2016

DANIEL M. PETROCELLI
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DREW E. BREUDER
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By: /s/ David Marroso
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13 Luxe Hospitality Company, LLC

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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 Luxe Hospitality Company, LLC,
18 Plaintiff,

19 v.

20 SBE Entertainment Group, LLC, SBE
21 Hotel Licensing, LLC, SBE Hotel
22 Group, LLC, and SBEEG Holdings,
23 LLC,

24 Defendants.

25 SBE Entertainment Group, LLC, SBE
26 Hotel Licensing, LLC, SBE Hotel
27 Group, LLC, and SBEEG Holdings,
28 LLC,

Counterclaimants,

v.

Luxe Hospitality Company, LLC,
Counterdefendant.

Case No. 2:15-cv-07115-JAK (JPRx)

**LUXE HOSPITALITY
COMPANY, LLC'S ANSWER
AND AFFIRMATIVE DEFENSES
TO SBE ENTERTAINMENT
GROUP, LLC, SBE HOTEL
GROUP LLC, AND SBEEG
HOLDINGS, LLC'S
COUNTERCLAIMS**

Judge: Hon. John A. Kronstadt

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**LUXE’S ANSWER AND AFFIRMATIVE DEFENSES TO SBE’S
COUNTERCLAIMS**

Plaintiff and Counterclaim Defendant Luxe Hospitality Company, LLC (“Luxe”) hereby answers Defendants and Counterclaim Plaintiffs SBE Entertainment Group, LLC, SBE Hotel Licensing, LLC, SBE Hotel Group, LLC, and SBEEG Holdings, LLC (collectively “SBE”) counterclaims as follows:

JURISDICTION AND VENUE

1. Luxe admits that SBE’s claims arise under the Lanham Act and the Declaratory Judgment Act. Luxe denies the allegations of Paragraph 1 to the extent that Luxe has committed any violations of the Lanham Act and/or the Declaratory Judgment Act. Luxe denies the remaining allegations of paragraph 1.

2. Defendant admits that the Court has jurisdiction over SBE’s counterclaims, but denies that jurisdiction is present as to Luxe’s Federal trademark applications. Luxe denies it has committed any violations of the Lanham Act and/or the Declaratory Judgment Act. Luxe denies the remaining allegations of paragraph 2

3. Defendant admits that the Court has jurisdiction over the trademark registrations pursuant to 15 U.S.C. § 1119, but denies said registrations can be cancelled. Luxe denies the remaining allegations of paragraph 3.

- 4. Admit.
- 5. Admit.

FACTS COMMON TO ALL COUNTS

6. Luxe is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and factual statements of Paragraph 6 of the Complaint and therefore, denies them.

- 1 25. Deny.
- 2 26. Deny.
- 3 27. Deny.
- 4 28. Deny.
- 5 29. Deny.
- 6 30. Deny.
- 7 31. Deny.
- 8 32. Deny.

THIRD COUNTERCLAIM

- 10 33. Deny.
- 11 34. Admit.
- 12 35. Deny.
- 13 36. Deny.
- 14 37. Deny.
- 15 38. Deny.
- 16 39. Deny.
- 17 40. Deny.
- 18 41. Deny.
- 19 42. Deny.

FOURTH COUNTERCLAIM

- 21 43. Deny.
- 22 44. Admit.
- 23 45. Deny.
- 24 46. Deny.
- 25 47. Deny.
- 26 48. Deny.
- 27 49. Deny.

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1 50. Deny.

2 51. Deny.

3 52. Deny.

FIFTH COUNTERCLAIM

5 53. Deny.

6 54. Admit.

7 55. Deny.

8 56. Deny.

9 57. Deny.

10 58. Deny.

11 59. Deny.

12 60. Deny.

13 61. Deny.

14 62. Deny.

SIXTH COUNTERCLAIM

16 63. Deny.

17 64. Admit.

18 65. Deny.

19 66. Deny.

20 67. Deny.

21 68. Deny.

22 69. Deny.

23 70. Deny.

24 71. Deny.

25 72. Deny.

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SEVENTH COUNTERCLAIM

- 73. Deny.
- 74. Admit.
- 75. Deny.
- 76. Deny.
- 77. Deny.
- 78. Deny.
- 79. Deny.
- 80. Deny.
- 81. Deny.
- 82. Deny.

EIGHTH COUNTERCLAIM

- 83. Deny.
- 84. Deny.
- 85. Deny.
- 86. Luxe admits that there exists a substantial controversy between the parties. Luxe denies the remaining allegations of paragraph 86.
- 87. Deny.
- 88. Deny.

RELIEF REQUESTED

The remainder of the allegations in the Complaint being prayers for relief require no response from Luxe. Notwithstanding, Luxe denies that SBE is entitled to the relief requested in its Prayer for Relief, Letters (a) – (j), or any other form of relief.

Defendant denies each and every allegation contained in the Complaint that is not specifically admitted or otherwise addressed above.

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AFFIRMATIVE DEFENSES

AFFIRMATIVE DEFENSE NO. 1 – UNCLEAN HANDS

SBE’s counterclaims are barred by the doctrine of unclean hands.

AFFIRMATIVE DEFENSE NO. 2 – LACHES

SBE’s counterclaims are barred by the doctrine of laches.

AFFIRMATIVE DEFENSE NO. 3 - ESTOPPEL

SBE’s counterclaims are barred by the doctrine of estoppel.

AFFIRMATIVE DEFENSE NO. 4 – FAILURE TO STATE A CLAIM FOR RELIEF

SBE’s counterclaims claims are barred because it has failed to state a claim upon which relief can be granted.

AFFIRMATIVE DEFENSE NO. 5 – INCONTESTABLITY

SBE’s first, second, and third counterclaims are barred by the incontestability of U.S. Registration No. 3,458,611.

AFFIRMATIVE DEFENSE NO. 6 – LACK OF JURISDICTION OVER REQUESTED RELIEF

This Court lacks jurisdiction to provide the requested relief of cancellation of pending trademark applications.

AFFIRMATIVE DEFENSE NO. 7 – FAILURE TO MITIGATE

To the extent that SBE has suffered damages, which Luxe expressly denies, Plaintiff has failed to take the steps necessary to mitigate the damages sustained.

AFFIRMATIVE DEFENSE NO. 8 – ADDITIONAL DEFENSES

Luxe deserves the right to Amend this Answer to assert additional affirmative defenses and to supplement, alter, or change the Answer and Affirmative Defenses as deemed appropriate upon revelation of more definitive facts or upon the undertaking of additional discovery and investigation.

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Dated: April 11, 2016

Respectfully submitted,

BRETON BOCCHIERI
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CERTIFICATE OF SERVICE

The undersigned certifies that on April 11, 2016, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court’s Electronic Case Filing (ECF) system. The ECF system routinely sends a “Notice of Electronic Filing” to all attorneys of record who have consented to accept this notice of this document by electronic means.

Dated: April 11, 2016

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 **LUXE HOSPITALITY COMPANY,**
11 **LLC a Delaware LLC,**

12 Plaintiff,

13 v.

14 **SBE ENTERTAINMENT GROUP,**
15 **LLC, a Nevada LLC, SBE HOTEL**
16 **LICENSING, LLC, a Nevada LLC, SBE**
17 **HOTEL GROUP, LLC, a Delaware**
18 **LLC, SBEEG HOLDINGS, LLC, a**
19 **Delaware LLC, LAS VEGAS RESORT**
20 **HOLDINGS, LLC, a Delaware LLC,**
21 **and SAM NAZARIAN, an individual**

22 Defendants.

Case No. 2:15-cv-07115-JAK (JPRx)

SECOND AMENDED COMPLAINT FOR:

1. Trademark Infringement and False Designation of Origin Under 15 U.S.C. §1125(a)
2. Trademark Infringement Under 15 U.S.C. §1114
3. Cancellation of Trademark Registration Under 15 U.S.C. §1119
4. California Common Law Unfair Competition
5. California Common Law Trademark Infringement
6. California Statutory Unfair Competition

JURY TRIAL DEMANDED

Complaint Filed : September 9, 2015

23 Luxe Hospitality Company (“Luxe”) hereby alleges for its second amended complaint
24 against defendants SBE Entertainment Group, LLC, SBE Hotel Licensing, LLC, SBE Hotel
25 Group, LLC, SBEEG Holdings, LLC (collectively “SBE”), Las Vegas Holdings, LLC, fka
26 Stockbridge/SBE Holdings, LLC and Sam Nazarian as follows:
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1 **NATURE OF THIS ACTION**

2 This is an action for (1) trademark infringement and false designation of origin under 15
3 U.S.C. § 1125(a), (2) trademark infringement under 15 U.S.C. § 1114, (3) cancellation of U.S.
4 Trademark Registration No. 4,779,096 under 15 U.S.C. § 1119, (4) California common law unfair
5 competition, (5) California common law trademark infringement and (6) California statutory
6 unfair competition.

7
8 **PARTIES**

9 1. Luxe is a limited liability company with a principal place of business at 11461
10 Sunset Boulevard, Los Angeles, California, 90049, and owns the exclusive right to use the term
11 LUXE[®], including variants of LUXE, for goods and services related to hotels and hotel
12 accommodations.

13 2. Based on information and belief, SBE Entertainment Group, LLC (“SBE
14 Entertainment”), is a limited liability company having a principal place of business at 5900
15 Wilshire Blvd., 31st floor, Los Angeles, CA 90036.

16 3. Based on information and belief, SBE Hotel Licensing, LLC (“SBE Licensing”), is
17 a limited liability company having a mailing address at 5900 Wilshire Blvd., Suite 3100, Los
18 Angeles, California, 90036 and the managing member is SBE Hotel Group, LLC.

19 4. Based on information and belief, SBE Hotel Group, LLC (“SBE Hotel Group”), is
20 a limited liability company having a principal place of business at 5900 Wilshire Blvd., 31st floor,
21 Los Angeles, CA 90036 and the managing member is SBEEG Holdings, LLC.

22 5. Based on information and belief, SBEEG Holdings, LLC (“SBEEG Holdings”), is
23 a limited liability company having a principal place of business at 5900 Wilshire Blvd., 31st floor,
24 Los Angeles, CA 90036 and the managing members are Sam Nazarian and David Nazarian.

25 6. Based on information and belief, Sam Nazarian (“Nazarian”) is an individual
26 residing in Los Angeles, California and having a principal place of business at 5900 Wilshire
27 Blvd., 31st floor, Los Angeles, CA 90036 and is a managing member of SBEEG Holdings.
28

1 13. The Court has personal jurisdiction over Sam Nazarian. He works in the
2 jurisdiction of this Court, he does business in the state of California, including within this District,
3 and he has had continuous and systematic contacts with the state of California and has committed
4 the acts complained of herein.

5 14. The Court has personal jurisdiction over Las Vegas Resort Holdings—formerly
6 Stockbridge/SBE Holdings. At relevant times hereto, it maintained a business office in the
7 jurisdiction of this Court, does business in the state of California, including within this District,
8 has had continuous and systematic contacts with the state of California and has committed the
9 acts complained of herein.

10 15. This Court has jurisdiction over the subject matter of this action pursuant to 15
11 U.S.C. §§ 1116 and 1121 and 28 U.S.C. §§ 1331 and 1338, and has supplemental jurisdiction
12 pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

13 16. Venue for this action is proper under 28 U.S.C. § 1391(b) in the United States
14 District Court for the Central District of California because SBE Entertainment’s, SBE Hotel
15 Group’s, SBEEG Holdings’, Las Vegas Resort Holdings and Sam Nazarian’s principal places of
16 business are located therein and the events giving rise to the claims alleged herein occurred and
17 are occurring within this district.

18 **BACKGROUND ON DEFENDANTS’ LANHAM ACT VIOLATIONS,**
19 **TRADEMARK INFRINGEMENT, AND UNFAIR COMPETITION**

20
21 17. Plaintiff is a highly recognized leader in providing high quality hotel and
22 accommodation services (the “LUXE® goods and services”).

23 18. Prior to Defendants’ acts described herein, Plaintiff continuously and exclusively
24 used the LUXE® Mark in commerce in connection with the LUXE® goods and services.

25 19. Plaintiff’s hotels are renowned for their world-class goods and services, and are
26 promoted and marketed throughout the world.

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1 20. As shown below, Plaintiff is the owner of several United States federal trademark
2 registrations which gives it exclusive priority over all later users of these marks and marks
3 confusingly similar thereto.

Mark	SN or Registration No.	Goods and Services
LUXE	Reg. 3,548,611 Filing Date: Feb. 9, 2007 Reg. Date: Dec. 23, 2008	<u>Class 43</u> : Hotel Services
LUXE HOTELS	Reg. 4,177,255 Filing Date: June 1, 2011 Supp. Reg. Date: Jul. 17, 2011	<u>Class 44</u> : Health spa services for health and wellness of the body and spirit, namely, providing massage, facial and body treatment services, cosmetic body care services
LUXE WORLDWIDE HOTELS	Reg. 4,212,420 Filing Date: Jun. 13, 2011 Reg. Date: Sep. 25, 2012	<u>Class 43</u> : Hotel accommodation services; Hotel, restaurant and bar services
	Reg. 4,212,421 Filing Date: Jun. 13, 2011 Reg. Date: Sep. 25, 2012	<u>Class 43</u> : Hotel, bar and restaurant services

20
21 21. Attached as Exhibits A-D hereto are true and correct copies of Luxe's trademark
22 registrations identified in paragraph 20 of this Complaint, which are incorporated herein by
23 reference.

24 22. A Combined Declaration of Use and Incontestability under Sections 8 & 15 of the
25 United States Code regarding LUXE[®] mark Registration No. 3,548,611 was filed on January 13,
26 2015 and accepted by the United States Patent and Trademark Office on January 25, 2015,
27 thereby establishing, as a matter of statutory law, pursuant to 15 U.S.C. § 1065, the
28 incontestability of the LUXE[®] mark.

1 23. As a result of Luxe’s substantial and continuous use of the LUXE[®] Marks for the
2 LUXE[®] goods and services, Luxe is also the owner of all common law rights to those marks.

3 24. The LUXE[®] Marks are, and have been since 1999, the subject of substantial and
4 continuous marketing and promotion by Luxe in connection with its LUXE[®] goods and services
5 and enjoy a reputation of high quality hotel and accommodation services.

6 25. SBE is engaged in the business of marketing and selling hotel and
7 accommodations services.

8 26. Upon information and belief, beginning in 2014, SBE decided to expand its market
9 by using the well known LUXE[®] trademark for its hotels and residential properties (“SBE’s
10 goods and services”) to exploit and acquire the goodwill associated with the long term use of the
11 LUXE[®] Mark and to deliberately confuse and deceive the purchasing public into believing that
12 SBE’s goods and services are the same as, associated with, licensed or sponsored by Plaintiff
13 when, in fact, they are not.

14 27. Without permission or consent from Luxe, SBE has offered and is offering goods
15 and services using marks confusingly similar to the LUXE[®] Marks and have thereby deliberately
16 created confusion among the purchasing public by committing the acts complained of herein.

17 28. Upon information and belief, SBE is rapidly expanding and intends expanding its
18 infringement of Plaintiff’s LUXE[®] mark through, inter alia, joint venture and/or licensing
19 agreements involving multiple luxury hotel properties that are either presently operational or in
20 some phase of construction, marketing and development, to wit:

21 (a) SLS LUX Tower Las Vegas

22 (b) SLS LUX Brickell (Miami)

23 (c) SLS LUX Philadelphia

24 (d) SLS LUX Washington DC

25 (e) SLS LUX Baha Mar

26 **The SLS LUX Tower Las Vegas Property**

27 29. Upon information and belief, the SLS LUX Las Vegas property appears to have
28 been operated, until on or about October 12, 2015, under a joint venture relationship between one

1 or more of the SBE Defendants and Defendant Stockbridge/SBE Holdings, LLC (the “SBE /
2 Stockbridge Joint Venture Relationship”).

3 30. Upon information and belief the SBE/Stockbridge Joint Venture Relationship has
4 materially changed upon the sale by Defendants of one or more of its interest in
5 Stockbridge/SBE Investment Company, LLC and adoption of a new brand license agreement.
6 Plaintiff’s LUXE® mark continues to be infringed through the activities of Stockbridge/SBE
7 Investment Company, LLC³¹.

8 31. Upon information and belief Stockbridge/SBE Investment Company, LLC
9 formally changed its name to, and is now known as, Las Vegas Resort Investment Company,
10 LLC and has continued its infringing activities.

11 32. Upon information and belief, a new SLS LUX luxury hotel is presently under
12 construction in Miami, Florida at Brickell Avenue (“the SLS LUX Brickell Property”), pursuant
13 to joint venture and/or or licensing agreements between one or more of the SBE Defendants and
14 one or more of the following legal entities:

- 15 (a) Amco PRH 801 South Miami Avenue, LLC;
- 16 (b) 801 SMA Lessee, LLC;
- 17 (c) 801 SMA Residences Condominium Association, Inc.;
- 18 (d) 801 South Miami Avenue, Ltd. Is a Florida limited partnership;
- 19 (e) Brickell City Venture, Inc. is a Florida corporation;
- 20 (f) The Allen Morris Development Company, LLC a Florida limited liability
21 company dba The Allan Morris Company;
- 22 (g) PRH Investments, LLC, a Florida limited liability company;
- 23 (h) PRH Related Holdings, LLC, a Florida limited liability company;
- 24 (i) Perez Ross Holdings, LLC is a Florida limited liability company;
- 25 (j) Jorge M. Perez Holdings, Ltd., a Florida limited liability partnership;
- 26 (k) JMP Holdings GP, LLC, a Florida limited liability company;
- 27 (l) The Related Group, Inc., a Florida corporation;
- 28 (m) 801 SMA Master Association, Inc., a Florida non-profit corporation;

1 (n) Rockpoint Group, LLC, a Delaware limited liability company.

2 33. Upon information and belief, Plaintiff's LUXE® mark has been, and continues to
3 be, infringed with respect to the SLS LUX Brickell Property by using the LUXE® in connection
4 with the provision of infringing services advertising and marketing activities of one or more of
5 the legal entities identified in paragraph 32, above, pursuant to joint venture and/or brand
6 licensing agreements with one or more of the SBE Defendants; however, because of the highly-
7 obfuscated ownership and control structure involved in the SLS LUX Brickell Property, plaintiff
8 requires discovery to further determine (a) which additional legal entities are involved in
9 infringing activities with respect to Plaintiff's LUXE® mark and (b) which additional legal
10 entities are subject to jurisdiction in the Central District of California with respect to said
11 infringing activities.

12 **The SLS LUX Philadelphia Property**

13 34. Upon information and belief, a new SLS LUX luxury hotel is presently under
14 construction and development in Philadelphia, PA at 311 South Broad Street ("the SLS LUX
15 Philadelphia Property"), pursuant to joint venture and/or or licensing agreements between one or
16 more of the SBE Defendants and one or more of the following legal entities:

- 17 (a) Broad and Spruce Associates, LP (the property owner);
18 (b) Broad and Spruce JV, LLC;
19 (c) Broad and Spruce GP Member, LLC;
20 (d) Broad and Spruce GP Corp;
21 (e) Broad and Spruce Limited Partner, LLC;
22 (f) Dranoff Properties, Inc.; and
23 (g) Dranoff Properties Realty, Inc.

24 35. Upon information and belief, Plaintiff's LUXE® mark has been, and continues to
25 be, infringed with respect to the SLS LUX Philadelphia Property by using the LUXE® in
26 connection with the provision of infringing services, advertising and marketing activities of one
27 or more of the legal entities identified in paragraph 34, above, pursuant to a joint venture and/or
28 brand licensing agreements with one or more of the SBE Defendants; however, because of the

1 obfuscated ownership and control structure involved in the SLS LUX Philadelphia Property,
2 plaintiff is unable to ascertain without discovery as to (a) whether additional legal entities are
3 liable for infringing activities with respect to Plaintiff's LUXE® mark and (b) whether any such
4 additional legal entities are subject to jurisdiction in the Central District of California with respect
5 to said infringing activities.

6 **The SLS LUX Washington, D.C. Property**

7 36. Upon information and belief, a new SLS LUX luxury hotel is presently under
8 construction and development in Philadelphia, PA at 311 South Broad Street (the "SLS LUX
9 Philadelphia Property"), pursuant to joint venture and/or licensing agreements between one or
10 more of the SBE Defendants and one or more of the following legal entities:

- 11 (a) TCP 5th and I, LLC
- 12 (b) TCP 5th and I Holdings, LLC
- 13 (c) TCP 5th and I Partners, LLC
- 14 (d) The Peebles Corporation
- 15 (e) Broad and Spruce Limited partner LLC
- 16 (f) Dranoff Properties, Inc.; and
- 17 (g) Dranoff Properties Realty, Inc.

18 37. Upon information and belief, Plaintiff's LUXE® mark has been, and continues to
19 be, infringed with respect to the SLS LUX Washington DC Property by using the LUXE® in
20 connection with the provision of infringing services, advertising and marketing activities of one
21 or more of the legal entities identified in paragraph 34, above, pursuant to a joint venture and/or
22 brand licensing agreements with one or more of the SBE Defendants; however, because of the
23 obfuscated ownership and control structure involved in the SLS LUX Washington DC Property,
24 plaintiff is unable to ascertain without discovery as to (a) whether additional legal entities are
25 liable for infringing activities with respect to Plaintiff's LUXE® mark and (b) whether any such
26 additional legal entities are subject to jurisdiction in the Central District of California with
27 respect to said infringing activities.

28 **The SLS Lux Baha Mar Property**

1 38. Upon information and belief, a new SLS LUX luxury hotel is presently under
2 construction and development in Nassau Bahamas (the “SLS LUX Baha Mar Property”), pursuant
3 to a joint venture and/or licensing agreement between one or more of the SBE Defendants and
4 one or more of the following legal entities:

5 (a) Northshore Mainland Services, Inc., a Delaware corporation

6 (b) Baha Mar Entertainment, Ltd.

7 (c) Baha Mar Land Holdings, Ltd.

8 (d) Baha Mar Leasing Company, Ltd.

9 (e) Baha Mar Ltd.

10 (f) Baha Mar Operating Company, Ltd.

11 (g) Baha Mar Properties, Ltd.

12 (h) Baha Mar\ Sales Company, Ltd.

13 (i) Baha Mar Support Services, Ltd.

14 (j) BML Properties, Ltd.

15 (k) BMP Three, Ltd.

16 (l) Cable Beach Resorts, Ltd.

17 39. On information and belief, on or about June 29, 2015 each of the legal entities
18 named in paragraph 34 filed a Voluntary Petition for Chapter 11 Bankruptcy in the United States
19 Bankruptcy Court, District of Delaware, Case No. bk-15-11402-KJC, in which a US address was
20 given for each entity. Each Debtor was dismissed from this action on January 12, 2016.

21 40. Upon information and belief, Plaintiff’s LUXE[®] mark has been and continues to
22 be infringed with respect to the SLS LUX Baha Mar Property by one or more of the legal entities
23 identified in paragraph 36 above using the LUXE[®] in connection with the provision of infringing
24 services, advertising and marketing activities of one or more of the legal entities identified in
25 paragraph 36, above, pursuant to joint venture and/or brand licensing agreements with one or
26 more of the SBE Defendants; however, because of the obfuscated ownership and control structure
27 involved in the SLS LUX Washington DC property, plaintiff is unable to ascertain without
28 discovery as to (a) whether additional legal entities are liable for infringing activities with respect

1 to Plaintiff's LUXE® mark and (b) whether any such additional legal entities are subject to
2 jurisdiction in the Central District of California with respect to said infringing activities.

3 41. Upon information and belief, SBE willfully and deliberately changed its brand to
4 falsely associate its goods and services with those of Luxe's and to trade upon Luxe's valuable
5 reputation and customer goodwill in order to cause confusion with the LUXE® goods and services
6 and to confuse the purchasing public into believing that its goods and services are those of
7 Plaintiff when, in fact, they are not.

8 **Sam Nazarian**

9 42. Upon information and belief, Nazarian has been a guiding hand and moving spirit
10 in the decision to willfully change the SBE brand to falsely associates SBE's goods and services
11 with those of Luxe's and to trade upon Luxe's valuable reputation and customer goodwill in order
12 to confuse the purchasing public into believing that its goods and services are those of Plaintiff or
13 otherwise affiliated with Plaintiff, when, in fact, they are not.

14 43. SBE's goods and services travel in the identical or similar channels of trade, and
15 are sold to identical or similar customers as Luxe's LUXE® branded goods and services. Upon
16 information and belief, LUXE® customers are likely to be confused and are confused between
17 LUXE®'s goods and services and the goods and services offered by SBE.

18 44. SBE is currently using, advertising, and marketing "LUX" to promote its accused
19 goods and services.

20 45. Upon information and belief, SBE is rapidly expanding and intends expanding its
21 infringement of Plaintiff's LUXE® mark.

22 46. Each of the SBE hotels and residential properties are advertised, marketed and
23 directed to purchases of SBE's goods and services within the State of California.

24 **FIRST CLAIM FOR RELIEF**

25 (Trademark Infringement and False Designation of Origin Under 15 U.S.C. § 1125(a))

26 47. Luxe hereby repeats, realleges, and incorporates by reference paragraphs 1-46 of
27 this Complaint as though fully set forth herein.
28

1 48. SBE, Las Vegas Resort Holdings and Nazarian (collectively “Defendants”) use
2 “LUX” in interstate commerce in marketing their accused goods and services.

3 49. This is an action for trademark infringement and false designation of origin arising
4 under 15 U.S.C. § 1125(a).

5 50. As a result of the widespread use and promotion of the LUXE[®] Marks, the LUXE[®]
6 Marks have acquired secondary meaning to consumers and potential customers because
7 consumers and potential customers have come to associate the LUXE[®] Marks with its goods and
8 services.

9 51. Defendants have infringed the LUXE[®] Marks, and created a false designation of
10 origin, by using in commerce, without Luxe’s permission, trademarks confusingly similar to the
11 LUXE[®] Marks, in connection with the advertisement offering for sale, and or sale of the accused
12 goods and services.

13 52. Defendants’ actions are likely to cause confusion and mistake, or to deceive as to
14 the affiliation, connection, or association of Luxe with SBE and/or as to the origin, sponsorship,
15 or approval of SBE’s goods, services, or commercial activities, in violation of 15 U.S.C. §
16 1125(a).

17 53. Upon information and belief, Defendants have infringed the LUXE[®] Marks with
18 the intent to trade upon Luxe’s reputation and goodwill by causing confusion and mistake among
19 customers and the public and to deceive the public into believing SBE’s accused goods and
20 services are associated with, sponsored by, endorsed by, or approved by Luxe, when they are not.

21 54. Upon information and belief, SBE had actual knowledge of Luxe’s ownership and
22 prior use of the LUXE[®] Marks, and without consent of Luxe, have willfully violated 15 U.S.C. §
23 1125(a).

24 55. Upon information and belief, Nazarian had actual knowledge of Luxe’s ownership
25 and prior use of the LUXE[®] Marks, and without consent of Luxe, has willfully violated 15 U.S.C.
26 § 1125(a).

27 56. Defendants’ aforementioned acts have damaged Luxe in an amount to be
28 determined at trial.

1 enjoined by this Court from further violation of Luxe's rights, for which Luxe has no adequate
2 remedy at law.

3 **THIRD CLAIM FOR RELIEF**

4 (Cancellation of U.S. Trademark Registration under 15 U.S.C. § 1119)

5 67. Luxe hereby repeats, realleges, and incorporates by reference paragraphs 1-66 of
6 this Complaint as though fully set forth herein.

7 68. This is a claim for cancellation of U.S. Trademark Registration No. 4,779,096
8 under 15 U.S.C. § 1119.

9 69. U.S. Trademark Registration No. 4,779,096 for SLS LUX (Design) has a
10 registration date of July 21, 2015 and a filing date of March 12, 2014. See Attached Exhibit E.

11 70. The filing dates and registration dates of Luxe's above-referenced registrations all
12 pre-date the filing and registration of U.S. Trademark Registration No. 4,779,096.

13 71. Upon information and belief, Defendant SBE filed the application that led to U.S.
14 Trademark Registration No. 4,779,096 with full knowledge of Luxe's prior rights in its LUXE[®]
15 Mark.

16 72. Luxe is being damaged by SBE's registration for the mark SLS LUX (Design)
17 which so resembles the LUXE[®] Marks registered in the United States Patent and Trademark
18 Office, and in which Luxe owns common law trademark rights, as to be likely, when used on or
19 in connection with the goods identified in the registration to cause confusion, or to cause mistake
20 or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

21 73. In view of Luxe's prior rights in the LUXE[®] Marks, SBE is not entitled to
22 continued registration of the SLS LUX (Design) mark, and U.S. Registration No. 4,779,096
23 should be cancelled pursuant to 15 U.S.C. § 1119.

24 **FOURTH CLAIM FOR RELIEF**

25 (California Common Law Unfair Competition)

26 74. Luxe hereby repeats, realleges, and incorporates by reference paragraphs 1-73 of
27 this Complaint as though fully set forth herein.

28 75. This is a claim for unfair competition arising under California common law.

1 85. SBE's and Nazarian's aforementioned acts have damaged Luxe in an amount to be
2 determined at trial.

3 86. SBE and Nazarian have irreparably injured Luxe. Such irreparable injury will
4 continue unless SBE is preliminarily and permanently enjoined by this Court from further
5 violation of Luxe's rights, for which Luxe has no adequate remedy at law.

6 **SIXTH CLAIM FOR RELIEF**

7 (California Statutory Unfair Competition)

8 87. Luxe hereby repeats, realleges, and incorporates by reference paragraphs 1-86 of
9 this Complaint as though fully set forth herein.

10 88. This is a claim for unfair competition, arising under California Business and
11 Professions Code § 17200, *et seq.* and California common law.

12 89. SBE's and Nazarian's acts complained of herein, constitute unfair competition
13 with Luxe under California Business and Professions Code § 17200, *et seq.* SBE's acts constitute
14 unlawful, unfair, malicious or fraudulent business practices.

15 90. By its actions, SBE and Nazarian have irreparably injured Luxe. Such irreparable
16 injury will continue unless SBE is preliminarily and permanently enjoined by this Court from
17 further violation of Luxe's rights, for which Luxe has no adequate remedy at law.

18 **PRAYER FOR RELIEF**

19
20 **WHEREFORE**, Luxe prays for judgment against the SBE as follows:

21 A. That the Court render a final judgment in favor of Luxe and against SBE and
22 Nazarian on all claims for relief alleged herein;

23 B. That the Court render a final judgment that SBE, Las Vegas Resorts Holdings,
24 LLC and Nazarian have violated the provisions of 15 U.S.C. § 1125(a) by willfully infringing the
25 LUXE® Marks and by using a false designation of origin, false description or false representation
26 through the marketing, same and promotion of SBE's accused goods and services;

27 C. That the Court render a final judgment that SBE, Las Vegas Resorts Holdings,
28 LLC and Nazarian have willfully violated the provisions of 15 U.S. C. § 1114 by infringing

1 Luxe's trademark rights in at least the marks that are the subject of U.S. Trademark Registration
2 Nos. 3,548,611, 4,177,255, 4,212,420, and 4,212,421;

3 D. That the Court render a final judgment that SBE has unfairly competed with Luxe
4 in violation of California law;

5 E. That the Court render a final judgment that SBE has infringed Luxe's trademarks
6 under the common law.

7 F. That the Court render a final judgment that SBE has unfairly competed with Luxe
8 in violation of California and Professions Code § 17200, *et seq.*;

9 G. That the Court render a final judgment that the SLS LUX (Design) trademark and
10 Trademark Registration No. 4,779,096 is invalid;

11 H. That the Court direct the United States Patent and Trademark Office to cancel U.S.
12 Trademark Registration No. 4,779,096;

13 I. That SBE, its agent, servants, employees, attorneys, successors, licensees, and
14 assigns, including Las Vegas Resorts Holdings, LLC and Nazarian, and all other persons in active
15 concert or participation with any of them who receive actual notice of the injunction by personal
16 service or otherwise, be forthwith preliminarily and permanently enjoined in any jurisdiction
17 lawfully regulated by Congress from:

18 a. Using the mark shown in U.S. Trademark Registration No. 4,779,096 and/or
19 the LUXE[®] Marks, in connection with SBE's goods and services, using the
20 LUXE[®] Marks in advertising or promoting SBE's goods and services, and/or
21 using confusingly similar variations of the LUXE[®] Marks in any manner that is
22 likely to create the impression that SBE's goods and/or services originate from
23 Luxe, are endorsed by Luxe, or are connected in any way with Luxe;

24 b. Manufacturing, distributing, shipping, importing, reproducing, displaying,
25 advertising, marketing, promoting, transferring, selling, and/or offering to sell
26 and goods or services bearing the mark shown in U.S. Trademark Registration
27 No. 4,779,096, and/or the LUXE[®] Marks, and/or any confusingly similar
28 marks;

- 1 c. Otherwise infringing the LUXE[®] Marks;
- 2 d. Falsely designating the origin of SBE's goods and services;
- 3 e. Unfairly competing with Luxe in any manner whatsoever; and
- 4 f. Causing a likelihood of confusion or injury to Luxe's business reputation;

5 J. That SBE be directed to file with this Court and serve on Luxe within thirty (30)
6 days after the service of the injunction, a report, in writing, under oath, setting forth in detail the
7 manner and form in which it has complied with the injunction pursuant to 15 U.S.C. § 1116;

8 K. That SBE, Las Vegas Resorts Holdings, LLC and Nazarian be required to account
9 to Luxe for any and all profits derived by SBE and all damages sustained by Luxe by virtue of
10 SBE's acts complained of herein;

11 L. That SBE, Las Vegas Resorts Holdings, LLC and Nazarian be ordered to pay over
12 to Luxe all damages which Luxe has sustained as a consequence of the acts complained of herein,
13 subject to proof at trial, together with prejudgment and post-judgment interest;

14 M. That Luxe be awarded treble damages pursuant to 15 U.S. C. § 1117;

15 N. That Luxe be awarded exemplary damages from SBE pursuant to Cal. Civ. Code.
16 § 3294;

17 O. That SBE and Nazarian's actions be deemed willful;

18 P. That an award of reasonable costs, expenses, and attorneys' fees be awarded to
19 Luxe pursuant to at least 15 U.S.C. § 1117;

20 Q. That SBE be required to deliver and destroy all devices, literature, advertising,
21 goods and other materials bearing the infringing marks pursuant to 15 U.S.C. § 1118;

22 R. That Luxe be awarded such other and further relief as this Court may deem just
23 and proper.

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Dated: April 11, 2016

POLSINELLI, PC

By: /s/Breton Bocchieri

Breton Bocchieri, Esq.
Attorneys for Plaintiff Luxe Hospitality Company

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues asserted herein as may be triable to a jury.

Dated: April 11, 2016

POLSINELLI, PC

By: /s/Breton Bocchieri

Breton Bocchieri, Esq.
Attorneys for Plaintiff Luxe Hospitality Company

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CERTIFICATE OF SERVICE

The undersigned certifies that on April 11, 2016, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court’s Electronic Case Filing (ECF) system. The ECF system routinely sends a “Notice of Electronic Filing” to all attorneys of record who have consented to accept this notice of this document by electronic means.

Dated: April 11, 2016

POLSINELLI, PC

By: /s/AJ Cruickshank
AJ Cruickshank

EXHIBIT A

9/4/2015

Trademark Electronic Search System (TESS)



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TSDR	ASSIGN Status	TTAB Status	(Use the "Back" button of the Internet Browser to return to TESS)
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LUXE

Word Mark	LUXE
Goods and Services	IC 043, US 100 101. G & S: hotel services. FIRST USE: 19990200. FIRST USE IN COMMERCE: 19990200
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Trademark Search Facility Classification Code	SHAPES-MISC Miscellaneous shaped designs
Serial Number	76672491
Filing Date	February 9, 2007
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	October 7, 2008
Registration Number	3548611
Registration Date	December 23, 2008

9/4/2015

Trademark Electronic Search System (TESS)

Owner (REGISTRANT) LUXE HOSPITALITY COMPANY LIMITED LIABILITY COMPANY DELAWARE
11461 Sunset Boulevard Los Angeles CALIFORNIA 90049

Attorney of Record Foster Tepper

Prior Registrations 2425916

Type of Mark SERVICE MARK

Register PRINCIPAL-2(F)

Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead Indicator LIVE

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EXHIBIT C

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TSDR	ASSIGN Status	TTAB Status	(Use the "Back" button of the Internet Browser to return to TESS)
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LUXE WORLDWIDE HOTELS

Word Mark	LUXE WORLDWIDE HOTELS
Goods and Services	IC 043. US 100 101. G & S: Hotel accommodation services; Hotel, restaurant and bar services. FIRST USE: 20000400. FIRST USE IN COMMERCE: 20000400
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85344198
Filing Date	June 13, 2011
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	July 10, 2012
Registration Number	4212420
Registration Date	September 25, 2012
Owner	(REGISTRANT) LUXE HOSPITALITY COMPANY LIMITED LIABILITY COMPANY DELAWARE 11461 Sunset Boulevard Los Angeles CALIFORNIA 90049
Attorney of Record	Michael A. Painter, Esq.
Prior	3548611

9/4/2015

Trademark Electronic Search System (TESS)

Registrations

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WORLDWIDE HOTELS" APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK

Register PRINCIPAL-2(F)

Live/Dead Indicator LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE Dict	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
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EXHIBIT B

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LUXE HOTELS

Word Mark LUXE HOTELS**Goods and Services** IC 044. US 100 101. G & S: Health spa services for health and wellness of the body and spirit, namely, providing massage, facial and body treatment services, cosmetic body care services. FIRST USE: 20110215. FIRST USE IN COMMERCE: 20110215**Standard Characters Claimed****Mark Drawing Code** (4) STANDARD CHARACTER MARK**Serial Number** 85334841**Filing Date** June 1, 2011**Current Basis** 1A**Original Filing Basis** 1A**Date Amended to Current Register** January 31, 2012**Registration Number** 4177255**Registration Date** July 17, 2012

9/4/2015

Trademark Electronic Search System (TESS)

Owner (REGISTRANT) LUXE HOSPITALITY COMPANY LIMITED LIABILITY COMPANY DELAWARE 11461
Sunset Boulevard Los Angeles CALIFORNIA 90049

Attorney of Record Michael A. Painter,

Prior Registrations 3548611

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HOTELS" APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK

Register SUPPLEMENTAL

Live/Dead Indicator LIVE

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Word Mark	LUXE
Goods and Services	IC 043. US 100 101. G & S: Hotel, bar and restaurant services. FIRST USE: 20080500. FIRST USE IN COMMERCE: 20080500
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.11.01 - Rectangles as carriers or rectangles as single or multiple line borders
Serial Number	85344211
Filing Date	June 13, 2011
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	July 10, 2012
Registration Number	4212421
Registration Date	September 25, 2012
Owner	(REGISTRANT) LUXE HOSPITALITY COMPANY LIMITED LIABILITY COMPANY DELAWARE 11461 Sunset Boulevard Los Angeles CALIFORNIA 90049
Attorney of Record	Michael A. Painter, Esq.
Prior Registrations	3548611
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of the word "LUXE" with a stylized "X".
Type of Mark	SERVICE MARK
Register	PRINCIPAL-2(F)-IN PART
Live/Dead Indicator	LIVE

9/4/2015

Trademark Electronic Search System (TESS)

**Distinctiveness
Limitation Statement** as to "LUXE"

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Exhibit E

1 Breton Bocchieri (SBN: 119459)
Breton.bocchieri@novakdruce.com
2 NOVAK DRUCE CONNOLLY BOVE + QUIGG LLP
3 333 Grand Ave., Suite 2300
Los Angeles, CA 90071
4 (213) 787-2500

5 Attorneys for Plaintiff Luxe Hospitality Company

6
7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9

10 **LUXE HOSPITALITY COMPANY,**
11 **LLC a Delaware LLC,**

12 Plaintiff,

13 v.

14 **SBE ENTERTAINMENT GROUP,**
15 **LLC, a Nevada LLC, SBE HOTEL**
16 **LICENSING, LLC, a Nevada LLC, SBE**
17 **HOTEL GROUP, LLC, a Delaware**
18 **LLC, SBEEG HOLDINGS, LLC, a**
19 **Delaware LLC, LAS VEGAS RESORT**
20 **HOLDINGS, LLC, a Delaware LLC,**
21 **and SAM NAZARIAN, an individual**

22 Defendants.

Case No.

FIRST AMENDMEDESECOND AMENDED
COMPLAINT FOR:

1. Trademark Infringement and False Designation of Origin Under 15 U.S.C. §1125(a)
2. Trademark Infringement Under 15 U.S.C. §1114
3. Cancellation of Trademark Registration Under 15 U.S.C. §1119
4. California Common Law Unfair Competition
5. California Common Law Trademark Infringement
6. California Statutory Unfair Competition

JURY TRIAL DEMANDED

Complaint Filed : September 9, 2015

22 Luxe Hospitality Company (“Luxe”) hereby alleges for its ~~first~~second amended complaint
23 against defendants SBE Entertainment Group, LLC, SBE Hotel Licensing, LLC, SBE Hotel
24 Group, LLC, SBEEG Holdings, LLC (collectively “SBE”), ~~as follows:~~Las Vegas Holdings, LLC,
25 fka Stockbridge/SBE Holdings, LLC and Sam Nazarian as follows:

26 ///
27
28

1 9-12. The Court has personal jurisdiction over SBEEG Holdings. Its principal place of
2 business is in the jurisdiction of this Court, SBEEG Holdings does business in the state of
3 California, including within this District, and SBEEG Holdings has had continuous and
4 systematic contacts with the state of California and has committed the acts complained of herein.

5 13. The Court has personal jurisdiction over Sam Nazarian. He works in the
6 jurisdiction of this Court, he does business in the state of California, including within this District,
7 and he has had continuous and systematic contacts with the state of California and has committed
8 the acts complained of herein.

9 14. The Court has personal jurisdiction over Las Vegas Resort Holdings—formerly
10 Stockbridge/SBE Holdings. At relevant times hereto, it maintained a business office in the
11 jurisdiction of this Court, does business in the state of California, including within this District,
12 has had continuous and systematic contacts with the state of California and has committed the
13 acts complained of herein.

14 10-15. This Court has jurisdiction over the subject matter of this action pursuant to 15
15 U.S.C. §§ 1116 and 1121 and 28 U.S.C. §§ 1331 and 1338, and has supplemental jurisdiction
16 pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

17 11-16. Venue for this action is proper under 28 U.S.C. § 1391(b) in the United States
18 District Court for the Central District of California because SBE Entertainment’s, SBE Hotel
19 Group’s, ~~and SBEEH~~SBEEG Holdings’, Las Vegas Resort Holdings and Sam Nazarian’s
20 principal places of business are located therein and the events giving rise to the claims alleged
21 herein occurred and are occurring within this district.

22 **BACKGROUND ON DEFENDANTS’ LANHAM ACT VIOLATIONS,**
23 **TRADEMARK INFRINGEMENT, AND UNFAIR COMPETITION**
24

25 12-17. Plaintiff is a highly recognized leader in providing high quality hotel and
26 accommodation services (the “LUXE® goods and services”).

27 13-18. Prior to Defendants’ acts described herein, Plaintiff continuously and exclusively
28 used the LUXE® Mark in commerce in connection with the LUXE® goods and services.

14.19. Plaintiff's hotels are renowned for their world-class goods and services, and are promoted and marketed throughout the world.

15.20. As shown below, Plaintiff is the owner of several United States federal trademark registrations which gives it exclusive priority over all later users of these marks and marks confusingly similar thereto.

Mark	SN or Registration No.	Goods and Services
LUXE	Reg. 3,548,611 Filing Date: Feb. 9, 2007 Reg. Date: Dec. 23, 2008	<u>Class 43</u> : Hotel Services
LUXE HOTELS	Reg. 4,177,255 Filing Date: June 1, 2011 Supp. Reg. Date: Jul. 17, 2011	<u>Class 44</u> : Health spa services for health and wellness of the body and spirit, namely, providing massage, facial and body treatment services, cosmetic body care services
LUXE WORLDWIDE HOTELS	Reg. 4,212,420 Filing Date: Jun. 13, 2011 Reg. Date: Sep. 25, 2012	<u>Class 43</u> : Hotel accommodation services; Hotel, restaurant and bar services
	Reg. 4,212,421 Filing Date: Jun. 13, 2011 Reg. Date: Sep. 25, 2012	<u>Class 43</u> : Hotel, bar and restaurant services

16.21. Attached as Exhibits A-D hereto are true and correct copies of Luxe's trademark registrations identified in paragraph 14.20 of this Complaint, which are incorporated herein by reference.

17.22. A Combined Declaration of Use and Incontestability under Sections 8 & 15 of the United States Code regarding LUXE[®] mark Registration No. 3,548,611 was filed on January 13, 2015 and accepted by the United States Patent and Trademark Office on January 25, 2015,

1 thereby establishing, as a matter of statutory law, pursuant to 15 U.S.C. § 1065, the
2 incontestability of the LUXE® mark.

3 ~~18.23.~~ As a result of Luxe’s substantial and continuous use of the LUXE® Marks for the
4 LUXE® goods and services, Luxe is also the owner of all common law rights to those marks.

5 ~~19.24.~~ The LUXE® Marks are, and have been since 1999, the subject of substantial and
6 continuous marketing and promotion by Luxe in connection with its LUXE® goods and services
7 and enjoy a reputation of high quality hotel and accommodation services.

8 ~~20.25.~~ SBE is engaged in the business of marketing and selling hotel and
9 accommodations services.

10 ~~21.26.~~ Upon information and belief, beginning in 2014, SBE decided to expand its market
11 by using the well known LUXE® trademark for its hotels and residential properties (“SBE’s
12 goods and services”) to exploit and acquire the goodwill associated with the long term use of the
13 LUXE® Mark and to deliberately confuse and deceive the purchasing public into believing that
14 SBE’s goods and services are the same as, associated with, licensed or sponsored by Plaintiff
15 when, in fact, they are not.

16 ~~22.27.~~ Without permission or consent from Luxe, SBE has offered and is offering goods
17 and services using marks confusingly similar to the LUXE® Marks and have thereby deliberately
18 created confusion among the purchasing public by committing the acts complained of herein.

19 28. Upon information and belief, SBE is rapidly expanding and intends expanding its
20 infringement of Plaintiff’s LUXE® mark through, inter alia, joint venture and/or licensing
21 agreements involving multiple luxury hotel properties that are either presently operational or in
22 some phase of construction, marketing and development, to wit:

23 (a) SLS LUX Tower Las Vegas

24 (b) SLS LUX Brickell (Miami)

25 (c) SLS LUX Philadelphia

26 (d) SLS LUX Washington DC

27 (e) SLS LUX Baha Mar

28 The SLS LUX Tower Las Vegas Property

1 29. Upon information and belief, the SLS LUX Las Vegas property appears to have
2 been operated, until on or about October 12, 2015, under a joint venture relationship between one
3 or more of the SBE Defendants and Defendant Stockbridge/SBE Holdings, LLC (the “SBE /
4 Stockbridge Joint Venture Relationship”).

5 30. Upon information and belief the SBE/Stockbridge Joint Venture Relationship has
6 materially changed upon the sale by Defendants of one or more of its interest in
7 Stockbridge/SBE Investment Company, LLC and adoption of a new brand license agreement.
8 Plaintiff’s LUXE® mark continues to be infringed through the activities of Stockbridge/SBE
9 Investment Company, LLC³¹.

10 31. Upon information and belief Stockbridge/SBE Investment Company, LLC
11 formally changed its name to, and is now known as, Las Vegas Resort Investment Company,
12 LLC and has continued its infringing activities.

13 32. Upon information and belief, a new SLS LUX luxury hotel is presently under
14 construction in Miami, Florida at Brickell Avenue (“the SLS LUX Brickell Property”), pursuant
15 to joint venture and/or or licensing agreements between one or more of the SBE Defendants and
16 one or more of the following legal entities:

17 (a) Amco PRH 801 South Miami Avenue, LLC;

18 (b) 801 SMA Lessee, LLC;

19 (c) 801 SMA Residences Condominium Association, Inc.;

20 (d) 801 South Miami Avenue, Ltd. Is a Florida limited partnership;

21 (e) Brickell City Venture, Inc. is a Florida corporation;

22 (f) The Allen Morris Development Company, LLC a Florida limited liability
23 company dba The Allan Morris Company;

24 (g) PRH Investments, LLC, a Florida limited liability company;

25 (h) PRH Related Holdings, LLC, a Florida limited liability company;

26 (i) Perez Ross Holdings, LLC is a Florida limited liability company;

27 (j) Jorge M. Perez Holdings, Ltd., a Florida limited liability partnership;

28 (k) JMP Holdings GP, LLC, a Florida limited liability company;

1 (l) The Related Group, Inc., a Florida corporation;

2 (m) 801 SMA Master Association, Inc., a Florida non-profit corporation;

3 (n) Rockpoint Group, LLC, a Delaware limited liability company.

4 33. Upon information and belief, Plaintiff's LUXE® mark has been, and continues to
5 be, infringed with respect to the SLS LUX Brickell Property by using the LUXE® in connection
6 with the provision of infringing services advertising and marketing activities of one or more of
7 the legal entities identified in paragraph 32, above, pursuant to joint venture and/or brand
8 licensing agreements with one or more of the SBE Defendants; however, because of the highly-
9 obfuscated ownership and control structure involved in the SLS LUX Brickell Property, plaintiff
10 requires discovery to further determine (a) which additional legal entities are involved in
11 infringing activities with respect to Plaintiff's LUXE® mark and (b) which additional legal
12 entities are subject to jurisdiction in the Central District of California with respect to said
13 infringing activities.

14 **The SLS LUX Philadelphia Property**

15 34. Upon information and belief, a new SLS LUX luxury hotel is presently under
16 construction and development in Philadelphia, PA at 311 South Broad Street ("the SLS LUX
17 Philadelphia Property"), pursuant to joint venture and/or or licensing agreements between one or
18 more of the SBE Defendants and one or more of the following legal entities:

19 (a) Broad and Spruce Associates, LP (the property owner);

20 (b) Broad and Spruce JV, LLC;

21 (c) Broad and Spruce GP Member, LLC;

22 (d) Broad and Spruce GP Corp;

23 (e) Broad and Spruce Limited Partner, LLC;

24 (f) Dranoff Properties, Inc.; and

25 (g) Dranoff Properties Realty, Inc.

26 35. Upon information and belief, Plaintiff's LUXE® mark has been, and continues to
27 be, infringed with respect to the SLS LUX Philadelphia Property by using the LUXE® in
28 connection with the provision of infringing services, advertising and marketing activities of one

1 or more of the legal entities identified in paragraph 34, above, pursuant to a joint venture and/or
2 brand licensing agreements with one or more of the SBE Defendants; however, because of the
3 obfuscated ownership and control structure involved in the SLS LUX Philadelphia Property,
4 plaintiff is unable to ascertain without discovery as to (a) whether additional legal entities are
5 liable for infringing activities with respect to Plaintiff's LUXE® mark and (b) whether any such
6 additional legal entities are subject to jurisdiction in the Central District of California with respect
7 to said infringing activities.

8 **The SLS LUX Washington, D.C. Property**

9 36. Upon information and belief, a new SLS LUX luxury hotel is presently under
10 construction and development in Philadelphia, PA at 311 South Broad Street (the "SLS LUX
11 Philadelphia Property"), pursuant to joint venture and/or licensing agreements between one or
12 more of the SBE Defendants and one or more of the following legal entities:

- 13 (a) TCP 5th and I, LLC
- 14 (b) TCP 5th and I Holdings, LLC
- 15 (c) TCP 5th and I Partners, LLC
- 16 (d) The Peebles Corporation
- 17 (e) Broad and Spruce Limited partner LLC
- 18 (f) Dranoff Properties, Inc.; and
- 19 (g) Dranoff Properties Realty, Inc.

20 37. Upon information and belief, Plaintiff's LUXE® mark has been, and continues to
21 be, infringed with respect to the SLS LUX Washington DC Property by using the LUXE® in
22 connection with the provision of infringing services, advertising and marketing activities of one
23 or more of the legal entities identified in paragraph 34, above, pursuant to a joint venture and/or
24 brand licensing agreements with one or more of the SBE Defendants; however, because of the
25 obfuscated ownership and control structure involved in the SLS LUX Washington DC Property,
26 plaintiff is unable to ascertain without discovery as to (a) whether additional legal entities are
27 liable for infringing activities with respect to Plaintiff's LUXE® mark and (b) whether any such
28

1 additional legal entities are subject to jurisdiction in the Central District of California with
2 respect to said infringing activities.

3 **The SLS Lux Baha Mar Property**

4 38. Upon information and belief, a new SLS LUX luxury hotel is presently under
5 construction and development in Nassau Bahamas (the “SLS LUX Baha Mar Property”), pursuant
6 to a joint venture and/or licensing agreement between one or more of the SBE Defendants and
7 one or more of the following legal entities:

8 (a) Northshore Mainland Services, Inc., a Delaware corporation

9 (b) Baha Mar Entertainment, Ltd.

10 (c) Baha Mar Land Holdings, Ltd.

11 (d) Baha Mar Leasing Company, Ltd.

12 (e) Baha Mar Ltd.

13 (f) Baha Mar Operating Company, Ltd.

14 (g) Baha Mar Properties, Ltd.

15 (h) Baha Mar\ Sales Company, Ltd.

16 (i) Baha Mar Support Services, Ltd.

17 (j) BML Properties, Ltd.

18 (k) BMP Three, Ltd.

19 (l) Cable Beach Resorts, Ltd.

20 39. On information and belief, on or about June 29, 2015 each of the legal entities
21 named in paragraph 34 filed a Voluntary Petition for Chapter 11 Bankruptcy in the United States
22 Bankruptcy Court, District of Delaware, Case No. bk-15-11402-KJC, in which a US address was
23 given for each entity. Each Debtor was dismissed from this action on January 12, 2016.

24 40. Upon information and belief, Plaintiff’s LUXE[®] mark has been and continues to
25 be infringed with respect to the SLS LUX Baha Mar Property by one or more of the legal entities
26 identified in paragraph 36 above using the LUXE[®] in connection with the provision of infringing
27 services, advertising and marketing activities of one or more of the legal entities identified in
28 paragraph 36, above, pursuant to joint venture and/or brand licensing agreements with one or

1 more of the SBE Defendants; however, because of the obfuscated ownership and control structure
2 involved in the SLS LUX Washington DC property, plaintiff is unable to ascertain without
3 discovery as to (a) whether additional legal entities are liable for infringing activities with respect
4 to Plaintiff's LUXE® mark and (b) whether any such additional legal entities are subject to
5 jurisdiction in the Central District of California with respect to said infringing activities.

6 23. 41. Upon information and belief, SBE willfully and deliberately changed its
7 brand to falsely associate its goods and services with those of Luxe's and to trade upon Luxe's
8 valuable reputation and customer goodwill in order to cause confusion with the LUXE® goods
9 and services and to confuse the purchasing public into believing that its goods and services are
10 those of Plaintiff when, in fact, they are not.

11 **Sam Nazarian**

12 42. Upon information and belief, Nazarian has been a guiding hand and moving spirit
13 in the decision to willfully change the SBE brand to falsely associates SBE's goods and services
14 with those of Luxe's and to trade upon Luxe's valuable reputation and customer goodwill in order
15 to confuse the purchasing public into believing that its goods and services are those of Plaintiff or
16 otherwise affiliated with Plaintiff, when, in fact, they are not.

17 24.43. SBE's goods and services travel in the identical or similar channels of trade, and
18 are sold to identical or similar customers as Luxe's LUXE® branded goods and services. Upon
19 information and belief, LUXE® customers are likely to be confused and are confused between
20 LUXE®'s goods and services and the goods and services offered by SBE.

21 25.44. SBE is currently using, advertising, and marketing "LUX" to promote its accused
22 goods and services.

23 26.45. Upon information and belief, SBE is rapidly expanding and intends expanding its
24 infringement of Plaintiff's LUXE® mark.

25 27.46. Each of the SBE hotels and residential properties are advertised, marketed and
26 directed to purchases of SBE's goods and services within the State of California.

27 **FIRST CLAIM FOR RELIEF**

28 (Trademark Infringement and False Designation of Origin Under 15 U.S.C. § 1125(a))

1 ~~28.47.~~ Luxe hereby repeats, realleges, and incorporates by reference paragraphs 1-~~2746~~
2 of this Complaint as though fully set forth herein.

3 ~~29.48.~~ SBE uses, Las Vegas Resort Holdings and Nazarian (collectively "Defendants")
4 use "LUX" in interstate commerce in marketing ~~itstheir~~ accused goods and services.

5 ~~30.49.~~ This is an action for trademark infringement and false designation of origin arising
6 under 15 U.S.C. § 1125(a).

7 ~~31.50.~~ As a result of the widespread use and promotion of the LUXE[®] Marks, the LUXE[®]
8 Marks have acquired secondary meaning to consumers and potential customers because
9 consumers and potential customers have come to associate the LUXE[®] Marks with its goods and
10 services.

11 ~~32.51.~~ SBE has Defendants have infringed the LUXE[®] Marks, and created a false
12 designation of origin, by using in commerce, without Luxe's permission, trademarks confusingly
13 similar to the LUXE[®] Marks, in connection with the advertisement offering for sale, and or sale
14 of the accused goods and services.

15 ~~33.52.~~ SBE's Defendants' actions are likely to cause confusion and mistake, or to deceive
16 as to the affiliation, connection, or association of Luxe with SBE and/or as to the origin,
17 sponsorship, or approval of SBE's goods, services, or commercial activities, in violation of 15
18 U.S.C. § 1125(a).

19 ~~34.53.~~ Upon information and belief, SBE has Defendants have infringed the LUXE[®]
20 Marks with the intent to trade upon Luxe's reputation and goodwill by causing confusion and
21 mistake among customers and the public and to deceive the public into believing SBE's accused
22 goods and services are associated with, sponsored by, endorsed by, or approved by Luxe, when
23 they are not.

24 ~~35.54.~~ Upon information and belief, SBE had actual knowledge of Luxe's ownership and
25 prior use of the LUXE[®] Marks, and without consent of Luxe, have willfully violated 15 U.S.C. §
26 1125(a).

1 43-63. SBE Upon information and belief, Defendants had actual knowledge of Luxe's
2 ownership and prior use of Luxe's registered marks, and has willfully violated 15 U.S.C. § 1114.

3 64. SBE's Upon information and belief, Defendants had actual knowledge of Luxe's
4 ownership and prior use of Luxe's registered marks, and has willfully violated 15 U.S.C. § 1114.

5 44-65. Upon information and belief, Defendants' aforementioned acts have damaged
6 Luxe in an amount to be determined at trial.

7 45-66. SBE's Upon information and belief, Defendants' aforementioned acts have
8 irreparably injured Luxe. Such irreparable injury will continue unless SBE is preliminarily and
9 permanently enjoined by this Court from further violation of Luxe's rights, for which Luxe has no
10 adequate remedy at law.

11 **THIRD CLAIM FOR RELIEF**

12 (Cancellation of U.S. Trademark Registration under 15 U.S.C. § 1119)

13 46-67. Luxe hereby repeats, realleges, and incorporates by reference paragraphs 1-~~45~~66
14 of this Complaint as though fully set forth herein.

15 47-68. This is a claim for cancellation of U.S. Trademark Registration No. 4,779,096
16 under 15 U.S.C. § 1119.

17 48-69. U.S. Trademark Registration No. 4,779,096 for SLS LUX (Design) has a
18 registration date of July 21, 2015 and a filing date of March 12, 2014. See Attached Exhibit E.

19 49-70. The filing dates and registration dates of Luxe's above-referenced registrations all
20 pre-date the filing and registration of U.S. Trademark Registration No. 4,779,096.

21 ~~50-71.~~ Upon information and belief, Defendant SBE filed the application that led to U.S.
22 Trademark Registration No. 4,779,096 with full knowledge of Luxe's prior rights in its LUXE[®]
23 Mark.

24 ~~51-72.~~ Luxe is being damaged by SBE's registration for the mark SLS LUX (Design)
25 which so resembles the LUXE[®] Marks registered in the United States Patent and Trademark
26 Office, and in which Luxe owns common law trademark rights, as to be likely, when used on or
27 in connection with the goods identified in the registration to cause confusion, or to cause mistake
28 or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

1 ~~52-73.~~ In view of Luxe's prior rights in the LUXE® Marks, SBE is not entitled to
2 continued registration of the SLS LUX (Design) mark, and U.S. Registration No. 4,779,096
3 should be cancelled pursuant to 15 U.S.C. § 1119.

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6 **FOURTH CLAIM FOR RELIEF**

7 (California Common Law Unfair Competition)

8 ~~53-74.~~ Luxe hereby repeats, realleges, and incorporates by reference paragraphs 1-~~5273~~
9 of this Complaint as though fully set forth herein.

10 ~~54-75.~~ This is a claim for unfair competition arising under California common law.

11 ~~55-76.~~ SBE's and Nazarian's acts complained of herein constitute unfair competition
12 under California common law.

13 ~~56-77.~~ By virtue of the acts complained of herein, SBE hasand Nazarian have willfully
14 and intentionally caused a likelihood of confusion among the purchasing public in this Judicial
15 District and elsewhere, thereby unfairly competing with Luxe in violation of the common law of
16 the state of California.

17 ~~57-78.~~ SBE's and Nazarian's aforementioned acts have damaged Luxe in an amount to be
18 determined at trial.

19 ~~58-79.~~ SBE hasand Nazarian have irreparably injured Luxe. Such irreparable injury will
20 continue unless SBE is preliminarily and permanently enjoined by this Court from further
21 violation of Luxe's rights, for which Luxe has no adequate remedy at law.

22 ~~59-80.~~ SBE's and Nazarian's willful acts of unfair competition under California common
23 law constitute fraud, oppression and malice. Accordingly, Luxe is entitled to exemplary damages
24 pursuant to Cal. Civ. Code Section § 3294(a).

25 **FIFTH CLAIM FOR RELIEF**

26 (California Common Law – Trademark Infringement)

27 ~~60-81.~~ Luxe hereby repeats, realleges, and incorporates by reference paragraphs 1—~~59~~
28 80 of this Complaint as though fully set forth herein.

1 ~~61-82.~~ This is a claim for California common law trademark infringement.

2 ~~62-83.~~ Luxe's use of the LUXE Mark constitutes common law trademark, which is owned
3 by Luxe, and has been extensively advertised and promoted. Luxe's common law trademark is
4 recognized throughout worldwide trading areas and channels of trade as distinctive and is
5 identified by the purchasing public with Luxe.

6 ~~63-84.~~ By virtue of the acts complained of herein, SBE ~~hasand Nazarian have~~ willfully
7 and intentionally caused a likelihood of confusion among the purchasing public in this Judicial
8 District and elsewhere, thereby unfairly competing with Luxe in violation of the common law of
9 the state of California.

10 ~~64-85.~~ SBE's ~~and Nazarian's~~ aforementioned acts have damaged Luxe in an amount to be
11 determined at trial.

12 ~~65-86.~~ SBE ~~hasand Nazarian have~~ irreparably injured Luxe. Such irreparable injury will
13 continue unless SBE is preliminarily and permanently enjoined by this Court from further
14 violation of Luxe's rights, for which Luxe has no adequate remedy at law.

15 **SIXTH CLAIM FOR RELIEF**

16 (California Statutory Unfair Competition)

17 ~~66-87.~~ Luxe hereby repeats, realleges, and incorporates by reference paragraphs 1-~~6586~~
18 of this Complaint as though fully set forth herein.

19 ~~67-88.~~ This is a claim for unfair competition, arising under California Business and
20 Professions Code § 17200, *et seq.* and California common law.

21 ~~68-89.~~ SBE's ~~and Nazarian's~~ acts complained of herein, constitute unfair competition
22 with Luxe under California Business and Professions Code § 17200, *et seq.* SBE's acts constitute
23 unlawful, unfair, malicious or fraudulent business practices.

24 ~~69-90.~~ By its actions, SBE ~~hasand Nazarian have~~ irreparably injured Luxe. Such
25 irreparable injury will continue unless SBE is preliminarily and permanently enjoined by this
26 Court from further violation of Luxe's rights, for which Luxe has no adequate remedy at law.

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PRAYER FOR RELIEF

WHEREFORE, Luxe prays for judgment against the SBE as follows:

- A. That the Court render a final judgment in favor of Luxe and against SBE and Nazarian on all claims for relief alleged herein;
- B. That the Court render a final judgment that SBE ~~has~~, Las Vegas Resorts Holdings, LLC and Nazarian have violated the provisions of 15 U.S.C. § 1125(a) by willfully infringing the LUXE® Marks and by using a false designation of origin, false description or false representation through the marketing, same and promotion of SBE’s accused goods and services;
- C. That the Court render a final judgment that SBE ~~has~~, Las Vegas Resorts Holdings, LLC and Nazarian have willfully violated the provisions of 15 U.S. C. § 1114 by infringing Luxe’s trademark rights in at least the marks that are the subject of U.S. Trademark Registration Nos. 3,548,611, 4,177,255, 4,212,420, and 4,212,421;
- D. That the Court render a final judgment that SBE has unfairly competed with Luxe in violation of California law;
- E. That the Court render a final judgment that SBE has infringed Luxe’s trademarks under the common law.
- F. That the Court render a final judgment that SBE has unfairly competed with Luxe in violation of California and Professions Code § 17200, *et seq.*;
- G. That the Court render a final judgment that the SLS LUX (Design) trademark and Trademark Registration No. 4,779,096 is invalid;
- H. That the Court direct the United States Patent and Trademark Office to cancel U.S. Trademark Registration No. 4,779,096;
- I. That SBE, its agent, servants, employees, attorneys, successors, licensees, and assigns, including Las Vegas Resorts Holdings, LLC and Nazarian, and all other persons in active concert or participation with any of them who receive actual notice of the injunction by personal service or otherwise, be forthwith preliminarily and permanently enjoined in any jurisdiction lawfully regulated by Congress from:

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- a. Using the mark shown in U.S. Trademark Registration No. 4,779,096 and/or the LUXE[®] Marks, in connection with SBE's goods and services, using the LUXE[®] Marks in advertising or promoting SBE's goods and services, and/or using confusingly similar variations of the LUXE[®] Marks in any manner that is likely to create the impression that SBE's goods and/or services originate from Luxe, are endorsed by Luxe, or are connected in any way with Luxe;
- b. Manufacturing, distributing, shipping, importing, reproducing, displaying, advertising, marketing, promoting, transferring, selling, and/or offering to sell and goods or services bearing the mark shown in U.S. Trademark Registration No. 4,779,096, and/or the LUXE[®] Marks, and/or any confusingly similar marks;
- c. Otherwise infringing the LUXE[®] Marks;
- d. Falsely designating the origin of SBE's goods and services;
- e. Unfairly competing with Luxe in any manner whatsoever; and
- f. Causing a likelihood of confusion or injury to Luxe's business reputation;

J. That SBE be directed to file with this Court and serve on Luxe within thirty (30) days after the service of the injunction, a report, in writing, under oath, setting forth in detail the manner and form in which it has complied with the injunction pursuant to 15 U.S.C. § 1116;

K. That SBE, Las Vegas Resorts Holdings, LLC and Nazarian be required to account to Luxe for any and all profits derived by SBE and all damages sustained by Luxe by virtue of SBE's acts complained of herein;

L. That SBE, Las Vegas Resorts Holdings, LLC and Nazarian be ordered to pay over to Luxe all damages which Luxe has sustained as a consequence of the acts complained of herein, subject to proof at trial, together with prejudgment and post-judgment interest;

M. That Luxe be awarded treble damages pursuant to 15 U.S. C. § 1117;

N. That Luxe be awarded exemplary damages from SBE pursuant to Cal. Civ. Code. § 3294;

O. That SBE's SBE and Nazarian's actions be deemed willful;

1 P. That an award of reasonable costs, expenses, and attorneys' fees be awarded to
2 Luxe pursuant to at least 15 U.S.C. § 1117;

3 Q. That SBE be required to deliver and destroy all devices, literature, advertising,
4 goods and other materials bearing the infringing marks pursuant to 15 U.S.C. § 1118;

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10 R. That Luxe be awarded such other and further relief as this Court may deem just
11 and proper.

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14 Dated: ~~April 8~~ March 25, 2016 NOVAK DRUCE CONNOLLY BOVE + QUIGG LLP

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17 By: /s/Breton Bocchieri

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19 Breton Bocchieri, Esq.
20 Attorneys for Plaintiff Luxe Hospitality Company

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues asserted herein as may be triable to a jury.

Dated: ~~April 8~~ March 25, 2016 NOVAK DRUCE CONNOLLY BOVE + QUIGG LLP

By: /s/Breton Bocchieri

Breton Bocchieri, Esq.
Attorneys for Plaintiff Luxe Hospitality Company

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CERTIFICATE OF SERVICE

The undersigned certifies that on April 8, 2016, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court's Electronic Case Filing (ECF) system. The ECF system routinely sends a "Notice of Electronic Filing" to all attorneys of record who have consented to accept this notice of this document by electronic means.

Dated: April 8, 2016 _____ NOVAK DRUCE COLONNLY BOVE +QUIGG

By: /s/AJ Cruickshank

AJ Cruickshank

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8 Attorneys for SBE Entertainment Group, LLC,
 SBE Hotel Licensing, LLC, SBE Hotel Group,
 9 LLC, SBEEG Holdings, LLC, and
 Sam Nazarian

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 Luxe Hospitality Company, LLC,
 14 Plaintiff,

15 v.

16 SBE Entertainment Group, LLC, SBE
 17 Hotel Licensing, LLC, SBE Hotel
 Group, LLC, SBEEG Holdings, LLC,
 18 Las Vegas Resort Holdings, LLC, and
 Sam Nazarian,

19 Defendants.

Case No. 2:15-cv-07115-JAK (JPRx)

**SBE ENTERTAINMENT
 GROUP, LLC, SBE HOTEL
 LICENSING, LLC, SBE HOTEL
 GROUP, LLC, SBEEG
 HOLDINGS, LLC, AND SAM
 NAZARIAN'S ANSWER AND
 AFFIRMATIVE DEFENSES TO
 LUXE HOSPITALITY
 COMPANY, LLC'S SECOND
 AMENDED COMPLAINT**

Judge: Hon. John A. Kronstadt

21 SBE Entertainment Group, LLC, SBE
 22 Hotel Licensing, LLC, SBE Hotel
 Group, LLC, and SBEEG Holdings,
 23 LLC,

24 Counterclaimants,

25 v.

26 Luxe Hospitality Company, LLC,

27 Counterdefendant.

1 SBE Entertainment Group, LLC, SBE Hotel Licensing, LLC, SBE Hotel
2 Group, LLC, SBEEG Holdings, LLC, and Sam Nazarian (together, “the sbe
3 Defendants”), by and through their attorneys, O’Melveny & Myers LLP, answer the
4 Second Amended Complaint (“Complaint”) of Luxe Hospitality Company, LLC
5 (“Luxe”) in this action as follows:

6 **NATURE OF THE ACTION**

7 The introductory paragraph of the Complaint is a statement of the legal
8 claims alleged in the Complaint and therefore requires no response by the sbe
9 Defendants, except the sbe Defendants deny having violated any of the statutes or
10 laws identified in this paragraph or infringed any of Luxe’s rights.

11 **PARTIES**

12 1. The sbe Defendants lack knowledge or information sufficient to form a
13 belief as to the allegations of Paragraph 1 of the Complaint and, therefore, deny the
14 same.

15 2. The sbe Defendants admit the allegations of Paragraph 2 of the
16 Complaint.

17 3. The sbe Defendants admit the allegations of Paragraph 3 of the
18 Complaint.

19 4. The sbe Defendants admit the allegations of Paragraph 4 of the
20 Complaint.

21 5. The sbe Defendants admit that SBEEG Holdings, LLC is a limited
22 liability company having a principal place of business at 5900 Wilshire Blvd., 31st
23 floor, Los Angeles, CA 90036, and that Sam and David Nazarian are members of
24 the board of that company.

25 6. The sbe Defendants admit that Sam Nazarian resides in Los Angeles
26 and is a member of the board of SBEEG Holdings, LLC.

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1 14. The sbe Defendants lack knowledge or information sufficient to form a
2 belief as to the allegations of Paragraph 14 of the Complaint and, therefore, deny
3 the same.

4 15. The allegations of Paragraph 15 state legal conclusions to which no
5 responsive pleading is required. To the extent a responsive pleading is required,
6 the sbe Defendants admit that this Court has subject matter jurisdiction over this
7 action.

8 16. The allegations of Paragraph 16 state legal conclusions to which no
9 responsive pleading is required. To the extent a responsive pleading is required,
10 the sbe Defendants admit that the Complaint purports to assert that venue is proper
11 in this judicial district, but otherwise deny the allegations of Paragraph 16 of the
12 Complaint.

13 **BACKGROUND ON DEFENDANTS' LANHAM ACT VIOLATIONS,**
14 **TRADEMARK INFRINGEMENT, AND UNFAIR COMPETITION**

15 17. The sbe Defendants lack knowledge or information sufficient to form a
16 belief as to the allegations of Paragraph 17 of the Complaint and, therefore, deny
17 the same.

18 18. The sbe Defendants lack knowledge or information sufficient to form a
19 belief as to the allegations of Paragraph 18 of the Complaint and, therefore, deny
20 the same.

21 19. The sbe Defendants lack knowledge or information sufficient to form a
22 belief as to the allegations of Paragraph 19 of the Complaint and, therefore, deny
23 the same.

24 20. The sbe Defendants deny the allegations of Paragraph 20 of the
25 Complaint, except admit that the trademarks cited therein appear to be registered
26 on the Principal Register (Registration Nos. 3,548,611, 4,212,420, and 4,212,421)

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1 and Supplemental Register (Registration No. 4,177,255) of the United States
2 Patent and Trademark Office.

3 21. The sbe Defendants admit that copies of the trademark registrations
4 cited in Paragraph 21 appear to be attached as Exhibits A-D to the Complaint.

5 22. The sbe Defendants deny the allegations of Paragraph 22 of the
6 Complaint, except admit that it appears that the Combined Declaration of Use and
7 Incontestability for Registration No. 3,548,611 was filed and accepted on the dates
8 specified therein.

9 23. The sbe Defendants lack knowledge or information sufficient to form a
10 belief as to the allegations of Paragraph 23 of the Complaint and, therefore, deny
11 the same, and further deny that Luxe has any common law rights to the LUXE
12 marks.

13 24. The sbe Defendants lack knowledge or information sufficient to form a
14 belief as to the allegations of Paragraph 24 of the Complaint and, therefore, deny
15 the same.

16 25. The sbe Defendants deny the characterization of sbe's business as
17 alleged in Paragraph 25 of the Complaint.

18 26. The sbe Defendants deny the allegations of Paragraph 26 of the
19 Complaint.

20 27. The sbe Defendants deny the allegations of Paragraph 27 of the
21 Complaint.

22 28. The sbe Defendants admit that sbe is involved in the planning and
23 development of various hotel properties in Miami, Philadelphia, Washington DC,
24 and the Bahamas, but otherwise deny the allegations of Paragraph 28 of the
25 Complaint.

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The SLS LUX Tower Las Vegas Property

29. The sbe Defendants admit that an sbe entity previously managed the SLS Las Vegas, but otherwise deny the allegations of Paragraph 29 of the Complaint.

30. The sbe Defendants admit that sbe has sold its interest in the SLS Las Vegas, but otherwise deny the allegations of Paragraph 30 of the Complaint.

31. The sbe Defendants lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 31 of the Complaint and, therefore, deny the same.

32. The sbe Defendants admit that sbe is involved in the planning and development of an SLS-branded property in Miami, Florida, but otherwise deny the allegations of Paragraph 32 of the Complaint.

33. The sbe Defendants deny the allegations of Paragraph 33 of the Complaint.

The SLS LUX Philadelphia Property

34. The sbe Defendants admit that sbe is involved in the planning and development of an SLS-branded property in Philadelphia, Pennsylvania, but otherwise deny the allegations of Paragraph 34 of the Complaint.

35. The sbe Defendants deny the allegations of Paragraph 35 of the Complaint.

The SLS LUX Washington, D.C. Property

36. The sbe Defendants admit that sbe is involved in the planning and development of an SLS-branded property in Washington, D.C., but otherwise deny the allegations of Paragraph 36 of the Complaint.

37. The sbe Defendants deny the allegations of Paragraph 37 of the Complaint.

1 **The SLS LUX Baha Mar Property**

2 38. The sbe Defendants admit that sbe is involved in the planning and
3 development of an SLS-branded property in Nassau, Bahamas, but otherwise deny
4 the allegations of Paragraph 38 of the Complaint.

5 39. The sbe Defendants deny the allegations of Paragraph 39 of the
6 Complaint.

7 40. The sbe Defendants deny the allegations of Paragraph 40 of the
8 Complaint.

9 41. The sbe Defendants deny the allegations of Paragraph 41 of the
10 Complaint.

11 **Sam Nazarian**

12 42. The sbe Defendants deny the allegations of Paragraph 42 of the
13 Complaint.

14 43. The sbe Defendants lack knowledge or information sufficient to form a
15 belief as to the allegations of Paragraph 43 of the Complaint and, therefore, deny
16 the same.

17 44. The sbe Defendants deny that they are currently using the mark
18 “LUX,” as defined and described by Plaintiff.

19 45. The sbe Defendants deny the allegations of Paragraph 45 of the
20 Complaint.

21 46. The allegations of Paragraph 46 of the Complaint are unintelligible,
22 and the sbe Defendants therefore deny those allegations on that basis.

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1 **FIRST CLAIM FOR RELIEF**
2 **TRADEMARK INFRINGEMENT AND FALSE DESIGNATION OF**
3 **ORIGIN UNDER 15 U.S.C. § 1125(a)**

4 47. The sbe Defendants incorporate by this reference each and every
5 admission, denial, and allegation set forth in Paragraphs 1-46, inclusive, of this
6 Answer.

7 48. The sbe Defendants deny that they are using in interstate commerce in
8 marketing goods and services “LUX,” as defined and described by Luxe in
9 Paragraph 48 of the Complaint.

10 49. Paragraph 49 is a statement of the legal claims alleged in the
11 Complaint and therefore requires no response by the sbe Defendants. To the extent
12 a responsive pleading is required, the sbe Defendants deny that they have violated
13 any of the statutes or laws identified in this Complaint or infringed any of Luxe’s
14 rights.

15 50. The sbe Defendants lack knowledge or information sufficient to form a
16 belief as to the allegations of Paragraph 50 of the Complaint and, therefore, deny
17 the same.

18 51. The sbe Defendants deny the allegations of Paragraph 51 of the
19 Complaint.

20 52. The sbe Defendants deny the allegations of Paragraph 52 of the
21 Complaint.

22 53. The sbe Defendants deny the allegations of Paragraph 53 of the
23 Complaint.

24 54. The sbe Defendants deny the allegations of Paragraph 54 of the
25 Complaint.

26 55. The sbe Defendants deny the allegations of Paragraph 55 of the
27 Complaint.

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FOURTH CLAIM FOR RELIEF
CALIFORNIA COMMON LAW UNFAIR COMPETITION

74. The sbe Defendants incorporate by this reference each and every admission, denial, and allegation set forth in Paragraphs 1-73, inclusive, of this Answer.

75. Paragraph 75 is a statement of the legal claims alleged in the Complaint and therefore requires no response by the sbe Defendants. To the extent a responsive pleading is required, the sbe Defendants deny that they have violated any of the statutes or laws identified in this Complaint or infringed any of Luxe’s rights.

76. The sbe Defendants deny the allegations of Paragraph 76 of the Complaint.

77. The sbe Defendants deny the allegations of Paragraph 77 of the Complaint.

78. The sbe Defendants deny the allegations of Paragraph 78 of the Complaint.

79. The sbe Defendants deny the allegations of Paragraph 79 of the Complaint.

80. The sbe Defendants deny the allegations of Paragraph 80 of the Complaint.

FIFTH CLAIM FOR RELIEF
CALIFORNIA COMMON LAW - TRADEMARK INFRINGEMENT

81. The sbe Defendants incorporate by this reference each and every admission, denial, and allegation set forth in Paragraphs 1-80, inclusive, of this Answer.

82. Paragraph 82 is a statement of the legal claims alleged in the Complaint and therefore requires no response by the sbe Defendants. To the extent

1 a responsive pleading is required, the sbe Defendants deny that they have violated
2 any of the statutes or laws identified in this Complaint or infringed any of Luxe’s
3 rights.

4 83. The sbe Defendants lack knowledge or information sufficient to form a
5 belief as to the allegations of Paragraph 83 of the Complaint and, therefore, deny
6 the same, and further deny that Luxe has any common law rights to the LUXE
7 marks.

8 84. The sbe Defendants deny the allegations of Paragraph 84 of the
9 Complaint.

10 85. The sbe Defendants deny the allegations of Paragraph 85 of the
11 Complaint.

12 86. The sbe Defendants deny the allegations of Paragraph 86 of the
13 Complaint.

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15 **SIXTH CLAIM FOR RELIEF**
CALIFORNIA STATUTORY UNFAIR COMPETITION

16 87. The sbe Defendants incorporate by this reference each and every
17 admission, denial, and allegation set forth in Paragraphs 1-86, inclusive, of this
18 Answer.

19 88. Paragraph 88 is a statement of the legal claims alleged in the
20 Complaint and therefore requires no response by the sbe Defendants. To the extent
21 a responsive pleading is required, the sbe Defendants deny that they have violated
22 any of the statutes or laws identified in this Complaint or infringed any of Luxe’s
23 rights.

24 89. The sbe Defendants deny the allegations of Paragraph 89 of the
25 Complaint.

26 90. The sbe Defendants deny the allegations of Paragraph 90 of the
27 Complaint.

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1 As for their separate and affirmative defenses to the Complaint, and without
2 suggesting or conceding that they have the burden of proof on any such defenses,
3 the sbe Defendants allege as follows:

4 **FIRST AFFIRMATIVE DEFENSE**

5 91. The Complaint fails to state a claim upon which relief may be granted.

6 **SECOND AFFIRMATIVE DEFENSE**

7 92. There is no likelihood of confusion, mistake, or deception based on the
8 sbe Defendants' use of the common, descriptive word "LUX" in conjunction with
9 their SLS LUX-branded hotel services and residential properties.

10 **THIRD AFFIRMATIVE DEFENSE**

11 93. Luxe's claims are barred in whole or in part by the doctrine of waiver.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 94. Luxe's claims are barred in whole or in part by the doctrine of
14 estoppel.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 95. Luxe's claims are barred in whole or in part by the doctrine of
17 acquiescence.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 96. Luxe's claims are barred in whole or in part by the doctrine of unclean
20 hands.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 97. Luxe's claims are barred in whole or in part by the doctrine of laches.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 98. Luxe is engaged in trademark misuse by attempting to monopolize the
25 market beyond the boundaries of its purported trademark.

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NINTH AFFIRMATIVE DEFENSE

99. Luxe’s claims are barred in whole or in part by the doctrine of innocent use.

TENTH AFFIRMATIVE DEFENSE

100. Luxe’s claims are barred in whole or in part by the doctrine of prior use.

ELEVENTH AFFIRMATIVE DEFENSE

101. Luxe’s claims are barred in whole or in part by the applicable statutes of limitations.

TWELFTH AFFIRMATIVE DEFENSE

102. Luxe has suffered no damages and/or has failed to mitigate its damages, if any.

THIRTEENTH AFFIRMATIVE DEFENSE

103. Luxe’s claims are barred in whole or in part because Luxe’s purported marks are merely descriptive and therefore unregistrable, invalid, and unprotectable.

FOURTEENTH AFFIRMATIVE DEFENSE

104. Luxe’s claims are barred in whole or in part because Luxe’s purported marks are generic and therefore unregistrable, invalid, and unprotectable.

FIFTEENTH AFFIRMATIVE DEFENSE

105. Luxe’s claims are barred in whole or in part by the doctrine of fair use.

SIXTEENTH AFFIRMATIVE DEFENSE

106. The sbe Defendants are informed and believe and on such basis allege that they may have additional defenses available to them, which are not fully known and of which they are not presently aware. The sbe Defendants reserve the right to raise and assert further additional defenses after such defenses have been ascertained.

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Dated: April 25, 2016

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