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CLEMENS COURT
SAN DIEGO COUNTY, CA

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Attorneys for Plaintiff,
YVES CLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

YVES CLEMENT, an individual,

Plaintiff,

v.

U.S. GRANT HOTEL VENTURES, LLC, a
California limited liability company; and DOES
1-10, inclusive,

Defendants.

Case No. **37-2017-00039180-CU-BC-CTL**

COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
3. NEGLIGENCE;
4. DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

Plaintiff YVES CLEMENT alleges as follows:

THE PARTIES

1. Plaintiff Yves Clement ("Mr. Clement") is an individual who, at all relevant times to this action, has been a resident of Paris, France.
2. Plaintiff is informed and believes, and on that basis alleges, that Defendant U.S. Grant Hotel Ventures, LLC ("U.S. Grant" or "Defendant") is a California limited liability company with its principal place of business in San Diego, California.

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1 Exhibit A and is incorporated herein by reference. The Lease was originally for a ten year term.
2 However, effective November 20, 2015, the parties extended its terms for an additional ten years
3 pursuant to a written "First Extension Agreement for Lease of Art Work" ("Extension")
4 (together with Lease, the "Agreement") a true and correct copy of which is attached hereto as
5 Exhibit B and incorporated herein by reference. The ten year extension commenced on January
6 1, 2016 pursuant to the Extension.

7 9. Pursuant to the Agreement, Mr. Clement spent more than five months on site at
8 the U.S. Grant Hotel creating over 665 pieces of artwork, which consist of drawings, drippings
9 on canvas, and giclées. An independent fair market value appraisal of the work in June 2005
10 placed the collection's value at nearly \$3.8 million. The collection was later added to for a total
11 of 766 pieces of artwork.

12 10. In or about April 2016, another independent fair market value appraisal set the
13 collection's value at \$17 million. This appraisal did not include values for pieces that the
14 appraiser considered damaged or destroyed. Additionally, the U.S. Grant Hotel's website
15 (www.usgrant.net) touts the value of Mr. Clement's artwork at \$10,000 to \$15,000 per piece,
16 which places U.S. Grant Hotel's estimate of the collection's value somewhere between \$6.6
17 million and \$10 million.

18 11. Since 2005, Mr. Clement's artwork has featured prominently in the U.S. Grant
19 Hotel in downtown San Diego, which designed its guestrooms, meeting areas and foyer around
20 Mr. Clement's artwork. In fact, the guestrooms are envisioned around a theme of Sleeping with
21 Art, which is heavily promoted on the U.S. Grant Hotel's website. A central feature of the
22 Sleeping With Art concept involves the use of Mr. Clement's original artwork to decorate the
23 walls and also original artwork is mounted as headboards for the beds. The pieces created by Mr.
24 Clement pursuant to the Agreement range in size from smaller pieces to 7' x 17' for the biggest
25 paintings installed inside the U.S. Grant Hotel's restaurant, the Grant Grill.

26 12. The U.S. Grant Hotel is a Four Diamond, Four Star hotel that also received the
27 Platinum Choice Award for its design, which relies mainly on Mr. Clement's work. In 2008, the
28 U.S. Grant Hotel received the coveted Best Luxury Guestroom Design award at the Hotel World

1 Global Hospitality & Design competition in Las Vegas. There, the U.S. Grant Hotel competed
2 against 3000 of the finest luxury hotels from all over the world. The award was attributed in
3 large part to Mr. Clement's artwork, as the award was for excellence in the use of original
4 artwork in the guestrooms.

5 13. Per the terms of the Agreement, ownership of all artwork remained with Mr.
6 Clement. Damaged artwork is to be returned to Mr. Clement. In addition, U.S. Grant was to
7 obtain and keep in force an insurance policy protecting Mr. Clement against liabilities and loss of
8 any work whether by fire, damage, or destruction in a combined single limit amount which is
9 equal to the appraised value of the work and as subject to any deductible requirements. The
10 insurance coverage was to be adjusted equal to the value of the work, which the Agreement
11 states is to be based on periodic appraisals obtained every two years by Mr. Clement.

12 14. Eventually, Mr. Clement learned that the U.S. Grant Hotel was treating some of
13 his artwork for bed bugs. Mr. Clement learned of this by chance while visiting Jag Art In
14 Framing. Mr. Clement was aware that U.S. Grant Hotel uses Jag Art in Framing to mount and
15 frame Mr. Clement's art. While there, Mr. Clement observed some of his canvasses from the
16 U.S. Grant Hotel covered in plastic. Mr. Clement was informed by the owner that the plastic was
17 on canvasses that had been treated for bedbugs. Jag Art In Framing would be replacing the
18 batting and then re-stretching the art. Mr. Clement observed small dark spots on the canvas
19 underneath the plastic. Aside from the physical evidence of what appeared to be bedbugs and/or
20 bedbug droppings, which ruins the visual look of Mr. Clement's art, a bedbug infestation renders
21 the artwork unsalable. Mr. Clement's clientele would be unwilling to purchase work that had
22 been exposed to bedbugs. Therefore, all affected pieces must be considered a total loss.

23 15. In or about December 2015, Mr. Clement visited the U.S. Grant Hotel to inspect
24 and inventory his art. At that time, he observed that a total of ninety (90) pieces had been
25 damaged or destroyed. He made a subsequent inspection in 2015 and discovered that at that
26 point, more than 120 pieces had been damaged or destroyed. The damage to various pieces of
27 artwork includes, but is not limited to, graffiti written in pen, cuts in the canvas, and splatters
28 from unknown substances on the canvas.

1 16. In addition to the physical harm to his artwork, the display of Mr. Clement's
2 artwork while it is in a condition of disrepair, has been mutilated, or otherwise has not been
3 properly maintained, is extremely harmful and prejudicial to Mr. Clement's honor and reputation
4 as an artist. As a world renowned artist, Mr. Clement is held to a very high standard by his fans.
5 Mutilations such as stains, graffiti or bedbug droppings on Mr. Clement's artwork are not
6 consistent with Mr. Clement's signature means of visual expression which has taken him a
7 lifetime to perfect. U.S. Grant is causing immeasurable harm to Mr. Clement's reputation and
8 interfering with his moral rights as an artist by displaying his artwork in this unauthorized
9 manner. Mr. Clement has requested that U.S. Grant return the damaged pieces to him, but to date
10 U.S. Grant has refused. U.S. Grant has also refused to repair or restore the art. In addition,
11 despite multiple demands from Mr. Clement's representatives, U.S. Grant has not provided Mr.
12 Clement with copies of the insurance policies that it is required to maintain pursuant to the
13 Agreement.

14 17. In light of the foregoing, on or about September 19, 2016, the parties attempted to
15 resolve their differences through a private mediation session in accordance with Paragraph 19 of
16 the Lease. The mediation was unsuccessful.

17 18. Mr. Clement has additionally learned that his artwork, which is very distinctive
18 and therefore easily identifiable as Mr. Clement's work, has been prominently featured in
19 commercial pornographic films, which are currently widely distributed, including through the
20 website www.girlsdoporn.com. The www.girlsdoporn.com website is part of a San Diego-based
21 pornography business which films pornographic videos at high end hotels in downtown San
22 Diego. The films featuring Mr. Clement's artwork were clearly shot at the U.S. Grant Hotel in
23 numerous different rooms. However, the hotel has not taken appropriate and effective measures
24 to prevent this practice.

25 19. In or about June 2017, Mr. Clement received notice from the U.S. Grant Hotel
26 that it had assigned its interest in the Agreement to US Grant Hotel San Diego, LLC, a Delaware
27 Limited Liability Company.

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1 FIRST CAUSE OF ACTION

2 (Breach of Contract Against All Defendants)

3 20. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1
4 through 19 set forth above.

5 21. Plaintiff has performed all conditions, covenants and promises in accordance with
6 the terms of the Agreement, except for those excused by Defendants' non-performance.

7 22. On information and belief, Defendants breached the terms of the Agreement by
8 failing to return damaged artwork to Plaintiffs and by failing to maintain insurance coverage in
9 compliance with the express terms set forth in the Agreement.

10 23. As a result of Defendants' breaches of the Agreement, Plaintiffs have sustained
11 damages in an amount in excess of the jurisdictional minimum of this court, which amount shall
12 be determined according to proof at trial.

13 SECOND CAUSE OF ACTION

14 (Breach of Implied Covenant of Good Faith and Fair Dealing Against All Defendants)

15 24. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1
16 through 23 set forth above.

17 25. The Agreement, like all other contracts entered into in the State of California,
18 contains an implied covenant of good faith and fair dealing. This covenant requires that the
19 parties refrain from doing anything that would deprive the other party of the benefits of the
20 Agreement and to deal fairly and honestly with each other concerning the Agreement.

21 26. Defendants, and each of them, have breached the implied covenant of good faith
22 and fair dealing by failing to properly maintain and care for Plaintiff's artwork and by failing to
23 inform Plaintiff of damage to the artwork including, but not limited to, in the form of bedbug
24 infestations.

25 27. As a result of Defendants' breaches of the implied covenant of good faith and fair
26 dealing, Plaintiff has sustained damages in an amount in excess of the jurisdictional minimum of
27 this court, which amount shall be determined according to proof at trial.

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1 **THIRD CAUSE OF ACTION**

2 **(Negligence Against All Defendants)**

3 28. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1
4 through 27 set forth above.

5 29. Defendants, as lessee of Plaintiff's artwork, owed a duty to Plaintiff to use
6 reasonable care to maintain and protect Plaintiff's artwork.

7 30. Defendants, and each of them, breached their duty by failing to properly maintain
8 Plaintiff's artwork or to take reasonable steps to prevent undue damage to the artwork.
9 Defendants, and each of them, further breached their duty by failing to take reasonable steps to
10 prevent the unauthorized filming and display of Mr. Clement's work for commercial purposes in
11 connection with pornographic films.

12 31. As a direct and proximate result of Defendants' negligence, Plaintiff has been
13 damaged in an amount in excess of the jurisdictional minimum of this court, which amount shall
14 be determined according to proof at trial.

15 **FOURTH CAUSE OF ACTION**

16 **(Declaratory Relief Against All Defendants)**

17 32. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1
18 through 31 set forth above.

19 33. An actual controversy has arisen and now exists between Plaintiff, on the one
20 hand, and Defendants, on the other hand, regarding the interpretation of the meaning of
21 "damaged art" pursuant to Section 1(d) of the Lease.

22 34. Plaintiff therefore seeks a declaration of the parties' rights and obligations under
23 the Agreement concerning art that has been damaged.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 26 1. For compensatory damages in an amount to be proven at trial;
27 2. For a declaration of the parties' rights and obligations pursuant to the Agreement;

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JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable that are raised or which hereinafter may be raised in this action.

VEATCH CARLSON, LLP

DATED: October 18, 2017

BY: *Kim Ashley*
KEVIN R. LUSSIER
KIM D. ASHLEY
Attorneys for Plaintiff, YVES CLEMENT