

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Laura Seigle

1 JONATHAN C. SANDLER (State Bar No. 227532)  
2 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
3 2049 Century Park East  
4 Suite 3550  
5 Los Angeles, CA 90067  
6 Telephone: 310.500.4600  
7 Facsimile: 310.500.4602

8 Attorneys for Plaintiff  
9 EVOLUTION HOSPITALITY, LLC

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

13 **EVOLUTION HOSPITALITY, LLC, a**  
14 **California limited liability company,**

15 **Plaintiff,**

16 **v.**

17 **URBAN COMMONS, LLC, a Delaware**  
18 **limited liability company; EHT QMLB,**  
19 **LLC, a Delaware limited liability**  
20 **company; and DOES 1-20, inclusive,**

21 **Defendants.**

22 **Case No. 20STCV34795**

23 **EVOLUTION HOSPITALITY, LLC’S**  
24 **COMPLAINT FOR:**

- 25 **1. BREACH OF GUARANTY;**
- 26 **2. BREACH OF ORAL CONTRACT; and**
- 27 **3. UNJUST ENRICHMENT**

28 COMES NOW Plaintiff EVOLUTION HOSPITALITY, LLC, a California limited liability company (“Evolution” or “Plaintiff”), and for itself alone, hereby alleges and complains as follows:

**PARTIES**

1. Plaintiff at all times herein mentioned was and is authorized to do and doing business in the State of California.

2. Defendant URBAN COMMONS, LLC, a Delaware limited liability company (“Urban Commons”), at all relevant times has availed itself of the benefits of the laws of California and has done business in the County of Los Angeles, California.

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
2049 Century Park East, Suite 3550  
Los Angeles, CA 90067

1           3.       Defendant EHT QMLB, LLC (“EHT”) is a Delaware limited liability company  
2 that at all times herein mentioned has availed itself of the benefits of the laws of California and  
3 has done business and managed a principal place of business in the County of Los Angeles,  
4 California.

5           4.       The true names and capacities, whether individual, corporate, associate or  
6 otherwise, of defendants are unknown to Plaintiff who therefore sues defendants by such  
7 fictitious names and asks leave of Court to amend this Complaint to show defendants’ true names  
8 and capacities when the same have been ascertained.

9           5.       Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously  
10 named defendants are responsible in some manner for the occurrences herein alleged, and that  
11 Plaintiff’s damages as herein alleged were proximately caused by defendants’ acts. Each  
12 reference in this Complaint to “Defendant,” or “Defendants,” or a specifically named Defendant  
13 refers also to all defendants sued under fictitious names. At this stage, Plaintiff is informed and  
14 believes that these fictitiously named defendants may be acting as agents and/or in concert with  
15 one another or other Defendants.

## **GENERAL ALLEGATIONS**

### **Urban Commons Guaranteed Obligations under the Hotel and Property Management Agreement**

16  
17  
18  
19           6.       Evolution currently manages the property commonly known as The Queen Mary  
20 Long Beach located at 1126 Queens Highway, Long Beach, CA 90802 (the “Queen Mary Hotel”)  
21 on behalf of EHT QMLB, LLC (“EHT”), an affiliate of Urban Commons. Evolution’s  
22 management of the Queen Mary Hotel is pursuant to that certain Hotel and Property Management  
23 Agreement, dated September 23, 2011 (the “Management Agreement”), originally between  
24 Evolution and Save the Queen, LLC (“STQ”). STQ sold the Queen Mary Hotel to Urban  
25 Commons Queensway, LLC (“UCQ”), also an affiliate of Defendant, and in connection with such  
26 sale, STQ assigned its interest in the Management Agreement to UCQ pursuant to that certain  
27 Assignment and Assumption of Hotel Management Agreement, dated April 19, 2016, between  
28 STQ, as assignor, and UCQ, as assignee. In connection with a restructuring of entities relating to

1 an initial public offering sponsored by Defendant, UCQ subsequently leased the Queen Mary  
2 Hotel to its affiliate EHT, and in connection with such lease, UCQ assigned its interest in the  
3 Management Agreement to EHT pursuant to that certain Assignment and Assumption  
4 Agreement, dated May 24, 2019, by and between UCQ, as assignor, and EHT, as assignee (the  
5 “Assignment”).

6 7. Under the terms of the Management Agreement, UCQ was required to obtain  
7 Evolution’s written consent to the lease of the Queen Mary Hotel and assignment by UCQ of its  
8 interest in the Management Agreement to EHT. Evolution granted such written consent pursuant  
9 to a letter agreement, dated April 3, 2019, among Plaintiff and Urban Commons, among others, a  
10 copy of which is attached to the Assignment (the “Letter Agreement”). In consideration for  
11 receiving Evolution’s consent, Urban Commons guaranteed the timely payment and performance  
12 of EHT’s (referred to as the Lessee) obligations under the Management Agreement (the  
13 “Guaranty”) in paragraph four of the Letter Agreement. Specifically, paragraph four of the Letter  
14 Agreement provides in relevant part:

15 (a) In connection with the Assignment, and as consideration for your  
16 acknowledgment and agreement to the foregoing, **Urban Commons, LLC (the**  
17 **“Guarantor”) hereby agrees to guarantee the timely payment and**  
18 **performance obligations of the Lessee as “Owner” under the HMA from and**  
19 **after consummation of the IPO Transactions (the “Guarantee”).** The  
20 obligations of the Guarantor under this Guarantee shall remain in full force and  
21 effect notwithstanding any amendments to or modifications of the HMA or this  
22 letter agreement and shall apply thereto as amended or modified. The Guarantor  
23 hereby waives notice of demand, dishonor or presentment, and all suretyship  
24 defenses generally. Action may be taken hereunder against the Guarantor with or  
25 without prior resort to any other legal, equitable or contractual remedy. The  
26 Guarantee shall be governed by and construed in accordance with the laws of the  
27 state of California, without regard to any conflict-of-law rules, and any litigation  
28 under or related to the Guarantee brought by any party shall be brought  
exclusively in the Superior Court of the State of California for the County of Los  
Angeles, California and in no other venue. The parties irrevocably consent to the  
jurisdiction of and venue in the courts located in the County of Los Angeles,  
California (whether federal or state) for all disputes related to the Guarantee.

(Emphasis added.)

**EHT Defaults under the Management Agreement; Evolution Demands Payment from  
Urban Commons**

8. Pursuant to Section 7.1 of the Management Agreement, EHT is required to fund the related Queen Mary Hotel bank account with sufficient working capital to allow Evolution to pay the Operating Expenses<sup>1</sup> of the Queen Mary Hotel, including Evolution’s management fee, insurance, benefits and reimbursable expenses.

9. EHT/Urban Commons repeatedly withdrew funds from the Queen Mary Hotel bank account, leaving the Queen Mary Hotel with insufficient funds to pay the Operating Expenses, and repeatedly failed to adequately fund the Queen Mary Hotel bank account with funds sufficient to pay the Operating Expenses.

10. On December 2, 2019, Evolution sent EHT a written notice of the deficiencies in the amount of working capital available to pay Operating Expenses (“Notice of Deficiencies”). The Notice of Deficiencies included a formal demand by Evolution that EHT fund the applicable aggregate working capital deficiency as required under Section 7.1 of the Management Agreement and pay amounts due to Evolution for its management fee, insurance, benefits and reimbursable expenses.

11. EHT failed to fund the working capital deficiency and failed to remit payment to Evolution as demanded pursuant to the Notice of Deficiencies and as required under Section 7.1 of the Management Agreement.

<sup>1</sup> The term “Operating Expenses” is defined broadly in the Management Agreement to include, among other recoupable expenses: “all costs and expenses of operating, managing, and maintaining the Facilities, including without limitation (a) cost of sales, salaries, wages, fringe benefits, payroll taxes, employee claims, and other cash payroll costs related to the Employees; (c) departmental expenses, administrative and general expenses, and the cost of Facilities advertising and business promotion, heat, light and power, and the non-capitalized cost of routine repairs, maintenance and alterations...; (i) payments to Management Company pursuant to Section 6.1.4 hereof [Additional Services Compensation]; (j) the Base Management Fee; (k) the cost of insurance required pursuant to Sections 11.1.1(a), 11.1.1(b), and 11.1.2 hereof (and any deductibles relating thereto), other than the insurance required pursuant to Sections 11.1.2(e) and (f) hereof (and any deductibles relating thereto) ...; and (p) such other non-capitalized costs and expenses incurred by Management Company as are specifically provided for elsewhere in this Agreement or are otherwise reasonably necessary for the proper and efficient operation of the Facilities unless any such costs and expenses are specifically stated not to be Operating Expenses under any provision of this Agreement.”

1           12.     On March 27, 2020, Evolution sent EHT a default notice pursuant to Section 14.1  
2 of the Management Agreement (the “Default Letter”) due to EHT’s continued failure to fund the  
3 working capital deficiency as required under Section 7.1 of the Management Agreement and to  
4 pay amounts due to Evolution for its management fee, insurance, benefits and reimbursable  
5 expenses.

6           13.     As outlined in the Default Letter, under Section 14.1 of the Management  
7 Agreement, the following constitutes an Event of Default: “(a) The failure of Management  
8 Company or Owner, as the case may be, to make any payment or contribution to be made in  
9 accordance with the terms hereof (including, without limitation, a failure by Owner to contribute  
10 or provide cash pursuant and subject to Section 7.1(b) hereof) within ten (10) days after receipt by  
11 such party of Notice from the other party hereto, when such payment is due and payable.”

12           14.     In the Default Letter, Evolution reiterated its “substantial concerns about (i) the  
13 considerable current past due accounts payable at the Hotel, and (ii) EHT’s persistent withdrawal  
14 of funds from the Bank Accounts resulting in Working Capital falling below the level required to  
15 pay Operating Expenses, Ownership Expenses and Secondary Expenses as set forth in the  
16 Operating Budget and required under Section 7.1 of the Hotel Management Agreement.”

17           15.     EHT failed to cure any of the defaults set forth in the Default Letter, including  
18 failing to fund the working capital deficiency and to remit payment to Evolution as demanded and  
19 required under the terms of the Management Agreement.

20           16.     On May 29, 2020, Evolution sent Urban Commons a formal demand pursuant to  
21 the Guaranty to cure the defaults set forth in the Default Letter by funding the working capital  
22 deficiency and remitting payment of amounts owed to Evolution as demanded and required under  
23 the terms of the Management Agreement (“Guaranty Demand”).

24           17.     Urban Commons failed to satisfy its obligations under the Guaranty by failing to  
25 fund the working capital deficiency and failing to remit payment to Evolution as demanded and  
26 required under the terms of the Guaranty Demand.

**Damages Owed to Evolution under the Management Agreement**

18. As of September 10, 2020, the necessary amount of working capital needed to pay outstanding Operating Expenses for the Queen Mary Hotel is approximately \$17.1 million and Evolution is owed at least \$2,599,184.61, which is accruing interest.

19. As of September 10, 2020, the amounts owed and due to Evolution under the Management Agreement are as follows:

Management Fees	Insurance	Benefits	Reimbursable	Total
\$727,383.95	\$283,989.62	\$638,564.12	\$949,246.92	\$2,599,184.61

**Oral Agreement between Evolution and Urban Commons**

20. In or about December 2018, Urban Commons informed Evolution that it needed at least \$2 million to satisfy certain liabilities at the Queen Mary Hotel and other obligations unrelated to the Queen Mary Hotel. At the time, Evolution was managing the Queen Mary Hotel on behalf of UCQ, an affiliate of Urban Commons, but Evolution was not then managing any other hotels on behalf of Urban Commons or its affiliates.

21. In or about December, 2018, the parties entered into an oral agreement that:

a. Evolution would provide \$2 million to Urban Commons to satisfy certain liabilities at the Queen Mary Hotel and other obligations unrelated to the Queen Mary Hotel (the “Payment”).

b. In exchange for the Payment, Evolution would receive management agreements for four additional properties owned by Urban Commons through its wholly owned and controlled affiliated entities: (1) Holiday Inn Resort Orland Suites – Waterpark; (2) Sheraton Pasadena Hotel; (3) Embassy Suites Anaheim North; (4) Holiday Inn & Suites Anaheim; (5) UC would give Evolution control of the bank accounts for the additional hotels; and (6) UC would not breach the management agreement by failing to pay Evolution (collectively, the “Subsequent Management Agreements”). Evolution would then receive management fees over the duration of the Subsequent Management Agreements that, in time, would result in a recoupment of and a

1 return on the Payment made to Urban Commons. The email correspondence between Evolution  
2 and Urban Commons relating to the Payment and Subsequent Management Agreements clearly  
3 indicates that Evolution entered into the oral agreement to make the Payment, and made the  
4 Payment to Urban Commons, in reliance on receiving the management fees under the Subsequent  
5 Management Agreements.

6 22. Evolution deposited the Payment into Urban Commons' bank account.

7 23. Urban Commons acknowledged receipt of the Payment in a signed correspondence  
8 dated December 31, 2018 (the "Payment Confirmation").

9 24. The Subsequent Management Agreements were executed by Evolution and  
10 affiliates of Urban Commons as follows: (1) that certain Hotel Management Agreement, dated as  
11 of December 31, 2018, between Evolution, as Operator, and UCCONT1, LLC, a Delaware  
12 limited liability company, as Owner, with respect to the hotel commonly known as the "Holiday  
13 Inn Resort Orlando Suites – Waterpark"; (2) that certain Hotel Management Agreement, dated as  
14 of December 31, 2018, between Evolution, as Operator, and Urban Commons Cordova A, LLC, a  
15 Delaware limited liability company, as Owner, with respect to the hotel commonly known as the  
16 "Sheraton Pasadena Hotel"; (3) that certain Hotel Management Agreement, dated as of December  
17 31, 2018, between Evolution, as Operator, and UCF 1, LLC, a Delaware limited liability  
18 company, as Owner, with respect to the hotel commonly known as the "Embassy Suites Anaheim  
19 North"; and (4) that certain Hotel Management Agreement, dated as of July 30, 2019, between  
20 Evolution, as Operator, and EHT HIA, LLC, a Delaware limited liability company, as Owner,  
21 with respect to the hotel commonly known as the "Holiday Inn & Suites Anaheim". However,  
22 Urban Commons did not give Evolution the benefits of these contracts.

23 25. On December 10, 2019, Evolution notified the Owners under the Subsequent  
24 Management Agreements and Urban Commons (i) that there existed considerable current past  
25 due accounts payable at each hotel, including management fees and other amounts payable to  
26 Evolution, (ii) of each Owner's failure to comply with its obligation under Section 5.2 of each  
27 Subsequent Management Agreement to maintain the required minimum amount of operating  
28 funds at each hotel, and (iii) of each Owner's failure to comply with its obligation under Section

1 5.1 of each Subsequent Management Agreement to permit all operating funds from the hotels to  
2 be deposited in a hotel-specific operating account in each Owner’s name, with Evolution  
3 retaining exclusive signing authority for the distribution of funds in each operating account (the  
4 “Non-Compliance Notice”).

5 26. On March 27, 2020, Evolution delivered a written notice of default to the Owners  
6 under the Subsequent Management Agreements and Urban Commons (the “Default Notice”) for  
7 the continuing failures and non-compliance outlined in the Non-Compliance Notice and the  
8 Default Notice. The defaults have not been cured by such Owners or Urban Commons.

9 27. The result of the failures set forth in the Non-Compliance Notice and the Default  
10 Notice is that Evolution has not received the management fees and other amounts required under  
11 the Subsequent Management Agreements, resulting in a breach of the parties’ oral agreement and  
12 unjust enrichment of Urban Commons at the expense of and damage to Evolution.

13 **FIRST CAUSE OF ACTION**

14 **BREACH OF GUARANTY**

15 **(As Against Urban Commons, LLC and EHT)**

16 28. Evolution incorporates each and every allegation contained in paragraphs 1  
17 through 27 above as if fully set forth herein.

18 29. Evolution and EHT are parties to a valid and enforceable agreement, the  
19 Management Agreement.

20 30. Evolution has fully performed all obligations, covenants, conditions and promises  
21 required of it under the Management Agreement, except those obligations, covenants, conditions  
22 and promises which have been waived, prevented or otherwise excused by EHT.

23 31. EHT breached its obligations under the Management Agreement by failing to cure  
24 the defaults set forth in the Default Letter by not funding the working capital deficiency and by  
25 not remitting payment to Evolution as demanded and required under the terms of the  
26 Management Agreement.

27 32. Pursuant to the Guaranty, Urban Commons agreed to “guarantee the timely  
28 payment and performance obligations of” EHT.










1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**On its Third Cause of action for Unjust Enrichment**

- a. For \$2,000,000;
- b. For its costs of suit, including reasonable attorneys' fees and expenses;
- c. For pre-judgment interest as permitted by California law; and,
- d. For such other relief as the Court deems proper

Dated: September 11, 2020

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

By:   
\_\_\_\_\_  
JONATHAN C. SANDLER  
Attorney for Plaintiff  
EVOLUTION HOSPITALITY, LLC