

1 PILLSBURY WINTHROP SHAW PITTMAN LLP
2 BREANN E. ROBOWSKI (267851)
3 breann.robowski@pillsburylaw.com
4 CRAIG A. BECKER (130900)
5 craig.becker@pillsburylaw.com
6 2550 Hanover Street
7 Palo Alto, CA 94304-1115
8 Telephone: 650.233.4500
9 Facsimile: 650.233.4545

10 Attorneys for Plaintiffs
11 PARK HOTELS & RESORTS INC.,
12 PARK INTERMEDIATE HOLDINGS LLC, and
13 CHSP FISHERMAN WHARF LLC

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN FRANCISCO
17 UNLIMITED CIVIL JURISDICTION

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
06/27/2023
Clerk of the Court
BY: MARK UDAN
Deputy Clerk

CGC-23-607311

18 PARK HOTELS & RESORTS INC.,
19 a Delaware Corporation,
20 PARK INTERMEDIATE HOLDINGS LLC,
21 a Delaware Limited Liability Company, and
22 CHSP FISHERMAN WHARF LLC,
23 a Delaware Limited Liability Company,

24 Plaintiffs,

25 vs.

26 CITY AND COUNTY OF SAN FRANCISCO,
27 SAN FRANCISCO ASSESSOR-RECORDER,
28 SAN FRANCISCO CONTROLLER, SAN
FRANCISCO BOARD OF SUPERVISORS,
SAN FRANCISCO TREASURER,
SAN FRANCISCO TAX COLLECTOR, and
DOES 1-10,

Defendants.

Case No.

**VERIFIED COMPLAINT FOR REFUND
OF REAL PROPERTY TRANSFER
TAXES**

1 Plaintiffs Park Hotels & Resorts Inc. (“Park”), Park Intermediate Holdings LLC (“PIH”), and
2 CHSP Fisherman Wharf LLC (“CHSP FW”) (collectively, “Plaintiffs”) hereby seek an order from
3 the Court directing Defendants City and County of San Francisco (“CCSF”), San Francisco
4 Assessor-Recorder (“Assessor-Recorder”), San Francisco Controller (“Controller”), San Francisco
5 Board of Supervisors (“Board of Supervisors”), San Francisco Treasurer (“Treasurer”), San
6 Francisco Tax Collector (“Tax Collector”), and DOES 1 through 10 (collectively, “Defendants”) to
7 refund real property transfer taxes that Defendants illegally and erroneously imposed and collected
8 from Plaintiffs, and allege the following:

9 **PARTIES**

- 10 1. Plaintiff Park is, and at all times relevant hereto was, a corporation duly organized
11 and existing under the laws of Delaware and registered to do business in the State of California.
- 12 2. Plaintiff PIH is, and at all times relevant hereto was, a limited liability company duly
13 organized and existing under the laws of Delaware and registered to do business in the State of
14 California.
- 15 3. Plaintiff CHSP FW is, and at all times relevant hereto was, a limited liability
16 company duly organized and existing under the laws of Delaware and registered to do business in
17 the State of California.
- 18 4. Defendant CCSF is, and at all times relevant hereto was, a combined political
19 subdivision of the State of California consisting of both a city and county.
- 20 5. Defendant Assessor-Recorder is, and at all times relevant hereto was, an officer of
21 CCSF.
- 22 6. Defendant Controller is, and at all times relevant hereto was, an officer of CCSF.
- 23 7. Defendant Board of Supervisors is, and at all times relevant hereto was, a legislative
24 body of CCSF authorized by the CCSF Charter.
- 25 8. Defendant Treasurer is, and at all times relevant hereto was, an officer of CCSF.
- 26 9. Defendant Tax Collector is, and at all times relevant hereto was, an officer of CCSF.
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1 15. California’s Documentary Transfer Tax Act (R&TC section 11901 *et seq.*) authorizes
2 the board of supervisors of a county or city and county to impose real property transfer taxes on
3 realty sold within the county. R&TC section 11911(a) states:

4 The board of supervisors of any county or city and county, by an ordinance adopted
5 pursuant to this part, may impose, on each deed, instrument, or writing by which
6 any lands, tenements, or other realty sold within the county shall be granted,
7 assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or
8 purchasers, or any other person or persons, by his or their direction, when the
9 consideration or value of the interest or property conveyed (exclusive of the value
of any lien or encumbrance remaining thereon at the time of sale) exceeds one
hundred dollars (\$100) a tax at the rate of fifty–five cents (\$0.55) for each five
hundred dollars (\$500) or fractional part thereof.

10 16. CCSF adopted SFBTRC, Article 12-C (the “SF Transfer Tax Ordinance”) pursuant to
11 the authority contained in R&TC section 11901 *et seq.* SFBTRC, Article 12-C, section 1101.¹

12 17. Section 1102 imposes tax on “each deed, instrument or writing by which any lands,
13 tenements, or other realty sold within the City and County of San Francisco shall be granted,
14 assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any
15 other person or persons . . .”

16 18. Section 1114 states:

17 “[R]ealty sold” includes any acquisition or transfer of ownership interests in a legal
18 entity that would be a change of ownership of real property under California
19 Revenue and Taxation Code Section 64. In such cases, there shall be deemed to
20 have been an instrument executed whereby there was conveyed, for fair market
value, all real property that experience a change in ownership under California
Revenue and Taxation Code Section 64.

21 19. As of the date of transfer relevant herein, when the consideration or value of realty
22 sold was at least \$25,000,000, Section 1102(f) imposed real property transfer tax at the rate of \$15
23 for each \$500 or fractional part thereof for the entire value or consideration.

24 20. Section 1110 states the Assessor-Recorder shall administer the SF Transfer Tax
25 Ordinance.

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28 ¹ All future Section references are to the SF Transfer Tax Ordinance unless stated otherwise.

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21. Section 1113(a) states:

[T]he Controller shall refund or cause to be refunded the amount of any tax, interest, or penalty imposed under this Article 12-C that has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City, provided the person that paid such amount files a claim in writing with the Controller.

THE TRANSACTION

22. Park is, and at all times relevant hereto was, a publicly traded real estate investment trust (“REIT”).

23. PIH is, and at all times relevant hereto was, effectively a wholly owned subsidiary of Park.

24. Prior to September 17, 2019, Chesapeake Lodging Trust (“Chesapeake”), a Maryland REIT, owned the subject of this action—Hyatt Centric Fisherman’s Wharf San Francisco, located in CCSF at 555 North Point (Assessor Parcel No. (“APN”) 0029-007) (the “Real Property”). The Real Property was directly owned by CHSP FW, which at the time was a wholly owned subsidiary of Chesapeake Lodging, L.P., which was a Delaware limited liability partnership in which Chesapeake owned a 99% interest.

25. On September 17, 2019, as part of an Internal Revenue Code section 1031 like-kind exchange, PIH acquired all the membership interests in CHSP FW (the “Exchange”). As a result of the Exchange, PIH became the direct owner of CHSP FW and acquired all the property then owned by CHSP FW, including the Real Property, together with intangible assets and personal property related to the use, ownership, and operation of Hyatt Centric Fisherman’s Wharf San Francisco.

26. The Exchange constituted a change in ownership under R&TC section 64, subjecting the Real Property to real property transfer tax pursuant to Section 1114 and triggering a reassessment of the Real Property for property tax purposes.

27. On the day after the Exchange (September 18, 2019), a wholly owned subsidiary of PK Domestic Property LLC, which was effectively a wholly owned subsidiary of Park, merged with Chesapeake in a forward subsidiary triangular merger (the “Merger”). Through the Merger, Park acquired all of Chesapeake’s assets and liabilities, including the property and intangible assets

1 related to two hotels located in San Francisco—Le Meridien San Francisco (APN 0229-020 located
2 at 375 Battery Street) and Hotel Adagio (APNs 0305-008 and 0305-009 located at 542-550 Geary
3 Street)— both of which are the subjects of related transfer tax refund actions that are being filed
4 contemporaneously with the instant action.

5 **ORIGINAL PAYMENT OF REAL PROPERTY TRANSFER TAX**

6 28. On or around September 17, 2019, PIH on behalf of Plaintiffs timely filed a Transfer
7 Tax Affidavit (the “Transfer Tax Affidavit”) with CCSF declaring \$109,000,000 as both the
8 consideration they paid for the Real Property and the value of the Real Property as of the date of the
9 Exchange (“Plaintiffs’ Declared Real Property Value”).

10 29. Along with the Transfer Tax Affidavit, on or about September 17, 2019, PIH, on
11 behalf of Plaintiffs, paid \$3,270,000 in real property transfer tax to CCSF based on the declared
12 value of \$109,000,000 (the “Original Payment”). Park and CHSP FW facilitated such payment.

13 30. Plaintiffs do not contest the Original Payment.

14 **PROPERTY TAX REASSESSMENT AND ASSESSMENT APPEAL APPLICATION**

15 31. On or around December 6, 2019, CHSP FW on behalf of Plaintiffs duly reported the
16 Exchange as a change in ownership to the California State Board of Equalization (“BOE”) by timely
17 filing the required BOE Form 100-B.

18 32. On or around April 27, 2020, the Assessor-Recorder issued a Notice of Supplemental
19 Assessment, notifying CHSP FW that it had determined the fair market value of the Real Property as
20 of the September 17, 2019 change in ownership (*i.e.*, the Exchange) was \$162,100,000 (the
21 “Assessor’s Real Property Value”).

22 33. On or around July 26, 2020, CHSP FW on behalf of Plaintiffs filed an assessment
23 appeal application (the “Assessment Appeal”) with the San Francisco County Assessment Appeals
24 Board (the “AAB”) to contest the Assessor’s Real Property Value. The AAB clerk designated the
25 Assessment Appeal number 2020-0183.

26 34. On November 10, 2022, the AAB heard the Assessment Appeal and took evidence
27 from both the applicant and the Assessor-Recorder.

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1 35. On or around February 14, 2023, the AAB issued its notice of action on the
2 Assessment Appeal, rejecting the Assessor’s Real Property Value and reducing the Real Property’s
3 fair market value as of the date of the Exchange by \$16,400,000, from \$162,100,000 to
4 \$145,700,000 (the “AAB’s Decision”).

5 36. Plaintiffs’ Assessment Appeal included a request that the AAB issue written findings
6 of fact to support its decision. The AAB has not yet issued its written findings of fact and therefore,
7 Plaintiffs do not know the basis of the AAB’s Decision.

8 **ADDITIONAL PAYMENT OF REAL PROPERTY TRANSFER TAX**

9 37. On or around June 22, 2020, about two months after issuing its property tax Notice of
10 Supplemental Assessment and during the height of COVID, the Assessor-Recorder issued a letter to
11 CHSP FW and Chesapeake entitled “Notice of Deficiency Determination and Demand for
12 Immediate Payment of San Francisco County Transfer Tax” that included an enclosure entitled
13 “Notice of Delinquent Real Property Transfer Taxes and Deficiency Determination” (collectively,
14 the “Deficiency Determination”).

15 38. The Assessor-Recorder stated in the Deficiency Determination: “During our review
16 of [the September 17, 2019] transaction, our office has determined that insufficient transfer taxes
17 were paid.”

18 39. The Assessor-Recorder acknowledged the Original Payment in the Deficiency
19 Determination as follows: “The declared value of the real property reported on the transfer tax
20 affidavit accompanying the September 17, 2019 payment was \$109,000,000 (exclusive of non-
21 realty), and transfer tax of \$3,270,000 was paid . . .”

22 40. According to the Deficiency Determination, the Assessor-Recorder “determined that
23 the market value of the real property as of the date of transfer was \$162,100,000, indicating a
24 transfer tax liability of \$4,863,000.”

25 41. Accordingly, the Deficiency Determination imposed additional real property transfer
26 tax in the amount of \$1,593,000 (the “Additional Transfer Tax”).

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1 42. It appears the Assessor-Recorder calculated the Additional Transfer Tax by applying
 2 the CCSF transfer tax rate as determined by Section 1102(f) (as applicable on September 17, 2019)
 3 to the difference between the Assessor’s Real Property Value and the fair market value of the Real
 4 Property as declared by Plaintiffs on the Transfer Tax Affidavit, as shown below.

Assessor’s Real Property Value	Plaintiffs’ Declared Real Property Value	Difference	Applicable CCSF Transfer Tax Rate	Additional Transfer Tax
\$162,100,000	\$109,000,000	\$53,100,000	\$15 per \$500	\$1,593,000

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 8 43. The Assessor’s Real Property Value used to calculate the Additional Transfer Tax
 9 exceeds both the consideration paid for the Real Property as well as the Real Property’s fair market
 10 value as of the date of the Exchange in violation of Section 1102 and R&TC section 11911(a). The
 11 Assessor’s Real Property Value is based on an inaccurate and unlawful valuation methodology and
 12 is, therefore, erroneous. For example, the Assessor’s Real Property Value improperly includes the
 13 value of non-taxable assets such as intangible assets as well as non-real property assets such as
 14 personal property.

15 44. The notice of Deficiency Determination also included the penalties and interest
 16 shown below.

Additional Transfer Tax	25% Penalty	10% Penalty	Interim Interest	Total
\$1,593,000	\$398,250	\$159,300	\$143,370	\$2,293,920

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 19 45. The Deficiency Determination stated the \$143,370 interest amount was calculated on
 20 the Additional Transfer Tax at a rate of 1% per month “from the date the tax became delinquent to
 21 the date of payment.” The Deficiency Determination applies a 9% interest rate, suggesting that the
 22 Assessor-Recorder calculated the nine months of delinquency as October 17, 2019 (30 days after the
 23 September 17, 2019 Exchange) to July 22, 2020.

24 46. On September 30, 2020, the Assessor-Recorder emailed Plaintiffs’ agent with an
 25 updated interest amount of \$191,160, which appears to be based on twelve months of delinquency
 26 from October 17, 2019 (30 days from the September 17, 2019 Exchange) to October 10, 2020.
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1 56. The manner in which the Assessor-Recorder applied the 10% Penalty to the
2 Deficiency Determination was erroneous, illegal, and violated, inter alia, R&TC section 11901 *et*
3 *seq.* and Sections 1115 and 1115.2(a)(1), by, for example, calculating the 10% Penalty on the full
4 amount of the county and city portion of the real property transfer tax and treating the Deficiency
5 Determination as if it was immediately 90 days past the delinquency date and thereby subject to the
6 additional 10% Penalty, rather than delinquent and subject to the additional 10% Penalty only after
7 remaining delinquent 90 days past the delinquency date.

8 57. The manner in which the Assessor-Recorder applied interest to the Deficiency
9 Determination was also erroneous, illegal, and violated, inter alia, R&TC section 11901 *et seq.* and
10 Section 1115.2(b), by, for example, calculating interest on the full amount of the county and city
11 portion of the real property transfer tax and by doing so from 30 days after the date of the Exchange
12 rather than from the date the Deficiency Determination became delinquent (*i.e.*, 30 days after the
13 Deficiency Determination).

14 58. The 25% Penalty and 10% Penalty are unconscionable, excessive, illegal, and
15 unconstitutional as they are punitive in nature and bear no reasonable relationship to the offense of
16 Plaintiffs' alleged underpayment of real property transfer tax. Plaintiffs dutifully reported and
17 timely made the Original Payment on the very day of the Exchange (September 17, 2019) in accord
18 with Section 1103(b). Such payment was made based on the consideration paid for and value of the
19 Real Property as required by Section 1102. Plaintiffs' compliance satisfied the requirements of the
20 SF Transfer Tax Ordinance and R&TC section 11901 *et seq.* It was not until seven months later
21 (April 27, 2020) that Plaintiffs were notified of the overstated Assessor's Real Property Value.
22 Plaintiffs had no way of knowing the Assessor's Real Property Value at the time the tax was first
23 due and had no obligation to pay real property transfer tax based on an overstated value.

24 59. Given that Plaintiffs could not have known the Assessor's Real Property Value at the
25 time the tax was first due and the Deficiency Determination was issued at the height of COVID, even
26 if Plaintiffs' Original Payment was later determined to be deficient, any such deficiency was due to
27 reasonable cause and not willful neglect and as such, any related penalties should be fully abated.

FIRST CAUSE OF ACTION

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2 68. Plaintiffs incorporate each of the preceding paragraphs as though set forth fully
3 herein.

4 69. Plaintiffs have exhausted all available and applicable administrative remedies.

5 70. No refund of the real property transfer taxes, interest, or penalties paid by Plaintiffs to
6 CCSF, or any part thereof, has previously been made to Plaintiffs or anyone acting on their behalf.

7 71. Plaintiffs have timely filed this action.

8 72. The Court has jurisdiction over Plaintiffs’ real property transfer tax refund action.

9 73. For the reasons stated above, Plaintiffs’ Additional Payment (\$2,341,710) was
10 erroneously, illegally, and arbitrarily calculated and was imposed and collected by one or more
11 Defendants in excess of Defendants’ authority and in violation of the standards prescribed by law.

12 74. For the reasons stated above, the Deficiency Determination was erroneously,
13 illegally, and arbitrarily determined, calculated, noticed, imposed, and collected by one or more
14 Defendants in excess of Defendants’ authority and in violation of standards prescribed by law.


15 75. For the reasons stated above, the Assessor’s Real Property Value exceeds the
16 consideration paid for the Real Property as part of the Exchange, the taxable value of the Real
17 Property as of the date of the Exchange, and Plaintiffs’ Declared Real Property Value, each of which
18 violate Section 1102 and R&TC section 11911(a), rendering the Deficiency Determination and the
19 resulting Additional Payment erroneously, illegally, and arbitrarily determined, calculated, imposed,
20 and collected by one or more Defendants in excess of Defendants’ authority and in violation of the
21 standards prescribed by law.

22 76. For the reasons stated above, the Assessor’s Real Property Value exceeds the fair
23 market value of the Real Property as determined by the AAB following a full administrative hearing,
24 which violates Section 1102 and R&TC section 11911(a), is inconsistent with Section 1113(c), and
25 renders the Deficiency Determination and the Additional Payment erroneously, illegally, and
26 arbitrarily determined, calculated, imposed, and collected by one or more Defendants in excess of
27 Defendants’ authority and in violation of the standards prescribed by law.

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Dated June 27, 2023.

PILLSBURY WINTHROP SHAW PITTMAN LLP
BREANN E. ROBOWSKI
CRAIG A. BECKER
2550 Hanover Street
Palo Alto, CA 94304-1115

By: 
BREANN E. ROBOWSKI

Attorneys for Plaintiffs
PARK HOTELS & RESORTS INC.,
PARK INTERMEDIATE HOLDINGS LLC, and
CHSP FISHERMAN WHARF LLC

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VERIFICATION


I, SCOTT WINER, declare:

1. I am Senior Vice President, Tax for Park Hotels & Resorts Inc., which is a Plaintiff in the above-entitled action. I am authorized to make this verification on behalf of Park Hotels & Resorts Inc., Park Intermediate Holdings LLC, and CHSP Fisherman Wharf LLC.

2. I have read the foregoing VERIFIED COMPLAINT FOR REFUND OF REAL PROPERTY TRANSFER TAXES, and I am familiar with its contents. I am informed and believe, and on that ground allege, that the facts stated in the foregoing document are true and correct.

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This verification is made this 26th day of June 2023, in Ponte Vedra Beach, Florida.



Scott Winer
Senior Vice President, Tax
Park Hotels & Resorts Inc.