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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

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11
12 JAMES SOROKA, individually and NO. CIV. 2:10-2883 WBS CMK
13 on behalf of all others
similarly situated,

14 Plaintiff,

MEMORANDUM AND ORDER RE:
MOTION TO DISMISS

15 v.

16 EXTENDED STAY, INC., a
17 Delaware corporation; HVM
L.L.C. d/b/a EXTENDED STAY
18 HOTELS, a Delaware
corporation,

19 Defendants.

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23 Plaintiff James Soroka, individually and on behalf of
24 all others similarly situated, brought this action against
25 Extended Stay, Inc. ("Extended Stay"), and HVM L.L.C. d/b/a
26 Extended Stay Hotels ("HVM") arising from Long-Term Lodging
27 Agreements. Plaintiff voluntarily dismissed Extended Stay. HVM
28 moves to dismiss the First Amended Class Action Complaint ("FAC")

1 pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure
2 to state a claim upon which relief can be granted.

3 I. Factual and Procedural Background

4 The FAC alleges that Extended Stay's hotels offer
5 occupants "home-like" accommodations for five days or more
6 without the additional services of a "traditional" hotel. (FAC ¶
7 16 (Docket No. 9).) Plaintiff alleges that the hotels "may offer
8 only daytime reception," "have limited on-site staff," and
9 "usually have no public areas," such as lounges and breakfast
10 rooms. (Id.) The hotels allegedly offer rooms with kitchens or
11 kitchenettes and do not have bars, restaurants,¹ room service, or
12 daily housekeeping services.² (Id. ¶ 17.)

13 HVM, which manages Extended Stay's hotels, allegedly
14 requires occupants who "rent and/or occupy Extended Stay units as
15 their primary residence" to sign a Long-Term Lodging Agreement
16 ("Agreement"). (Id. ¶ 18.) The term of the Agreement starts at

17 ¹ HVM L.L.C. d/b/a Extended Stay Hotels ("HVM") requests
18 that the court take judicial notice of the content of Extended
Stay's web site, which lists coffee bars as an offered amenity.
19 (Def. HVM'S Reply to Pl.'s Opp'n to Def.'s Mot. to Dismiss Pl.'s
20 First Amend. Class Action Compl. at 2 n.2 (Docket No. 25).) A
court may take judicial notice of facts "not subject to
21 reasonable dispute" because they are either "(1) generally known
within the territorial jurisdiction of the trial court or (2)
22 capable of accurate and ready determination by resort to sources
whose accuracy cannot reasonably be questioned." Fed. R. Evid.
23 201. The court denies the request for judicial notice because
the content of HVM's web site is not "capable of accurate and
24 ready determination by resort to sources whose accuracy cannot
reasonably be questioned." Id.

25 ² The Long-Term Lodging Agreement ("Agreement") states:
26 "Lodger acknowledges that no Housekeeping service will be
provided for the Room during the Term of this Lodging Agreement.
27 If Housekeeping services are desired, a \$25 fee per service
request will be charged to Lodger." (Gonzales Decl. in Supp. of
28 Def. HVM's Mot. to Dismiss Pl.'s First Amend. Class Action Compl.
("Gonzales Decl.") Ex. A at 3 (Docket No. 12).)

1 3:00 p.m. on the "Commencement Date" and terminates 30 days after
2 that date at 11:00 a.m. (Gonzales Decl. in Supp. of Def. HVM's
3 Mot. to Dismiss Pl.'s First Amend. Class Action Compl. ("Gonzales
4 Decl.") Ex. A at 1-2 (Docket No. 12).) Thus, the exact term of
5 the Agreement is twenty-nine days and twenty hours. The
6 Agreement provides for a renewal for the same term. (*Id.* Ex. A
7 at 1.) HVM allows a resident to either sign a new Agreement or
8 an addendum to an existing Agreement. (FAC ¶ 21.)

9 The Agreement provides that the "[l]odger" will "occupy
10 and use" the room as a "dwelling unit" and that HVM reserves the
11 right to transfer the lodger to another room on 48 hours notice
12 and to enter the room once per week to make inspections and
13 provide necessary repairs. (Gonzales Decl. Ex. A at 1-2.) The
14 Agreement describes the legal relationship of the parties as
15 hotel manager-guest and states that it is not the intention of
16 the parties to create a lease or enter into a landlord-tenant
17 relationship and that it is their intention to create a transient
18 occupancy:

19 TRANSIENT OCCUPANCY: Unless otherwise superseded by the
20 laws of this State, the Lodger acknowledges that he/she
21 is not a tenant but merely a lodger occupying the Room on
22 a transient basis. The parties specifically acknowledge
23 and agree that their relationship is that of hotel
24 manager and guest and that it is not the intention of the
25 parties to create a lease within the meaning of the laws
26 of this State.

27 NO LANDLORD/TENANT RELATIONSHIP: Unless otherwise
28 superseded by the laws of this State, the parties
acknowledge and agree that the legal relationship between
HVM and the Lodger is that of a hotel manager and guest
and that it is not the intention of the parties to create
a lease within the meaning of the laws of this State. No
landlord-tenant relationship is intended to be created by
this Agreement.

(*Id.*) The FAC alleges that HVM informs its long-term residents

1 that it offers them an "affordable alternative to apartment
2 living" and has referenced the Agreement as a "lease" in its
3 "Long-Term Lodging program." (FAC ¶ 24 (internal quotation marks
4 omitted in first two quotations).)

5 The Agreement places numerous obligations on the lodger
6 with respect to the condition of the room, including maintaining
7 the condition of the room that existed when the lodger took
8 occupancy, using and operating electrical and plumbing fixtures
9 properly, and disposing of trash. (Gonzales Decl. Ex. A at 2.)
10 The "lodging fee" must be paid every 30 days and HVM reserves the
11 right to increase the lodging fee upon expiration of the term, if
12 permitted by the laws of "this State." (Id. Ex. A at 1.)

13 The Agreement may be terminated with 30 days of written
14 notice, unless superseded by the laws of "this State." (Id. Ex.
15 A at 2.) With respect to holdovers, the Agreement provides that
16 the lodger will pay the lodging fee during the holdover period
17 and HVM reserves the right to deny access to the room at any
18 time, unless superseded by the laws of "this State." (Id.) The
19 Agreement defines a lodger's default under the Agreement as
20 including the failure to pay the lodging fee when due. (Id. Ex.
21 A at 4.) In the event of default, HVM reserves the right to take
22 all actions permitted or required "by law," including utilizing
23 self-help measures or issuing notices to the lodger, such as a
24 Notice to Pay Rent or Quit or a Notice of Termination of Tenancy.
25 (Id.)

26 Plaintiff has allegedly lived at an Extended Stay hotel
27 in Sacramento for over five years and the hotel allegedly has not
28 charged him a room tax. (FAC ¶¶ 28-29.) The hotel is allegedly

1 his primacy residence. (*Id.* ¶ 28) Plaintiff alleges that "[t]o
2 remain in his room, Extended Stay requires [him]" to sign a new
3 Agreement or addendum every 30 days. (*Id.* ¶ 30.) In the past
4 five years, plaintiff has "experienced numerous changes in rent
5 and the date on which his rent is due has rotated with each" new
6 Agreement or addendum. (*Id.* ¶ 31.) Plaintiff allegedly "has
7 been threatened with removal from the Extended Stay and has been
8 locked out of his room with his belongings inside without notice
9 or the benefit of an unlawful detainer process" over 95 times in
10 the past five years, most recently three weeks after he initiated
11 this action. (*Id.* ¶ 32.) The FAC implies that HVM allegedly
12 locked plaintiff out of his room following plaintiff's failure to
13 timely pay his "lodging fee" or to sign a new Agreement or
14 addendum prior to the expiration of the term. The FAC makes
15 similar allegations about threats and lockouts following failure
16 to timely pay or renew with respect to other long-term residents.
17 (*Id.* ¶ 27.)

18 On October 26, 2010, plaintiff filed this action
19 against Extended Stay and HVM. The FAC alleges violations of
20 California Civil Code section 1940.1, California Civil Code
21 section 789.3, and California's Unfair Competition Law ("UCL"),
22 Cal. Bus. & Prof. Code §§ 17200-17210. HVM now moves to dismiss
23 the FAC pursuant to Rule 12(b)(6) for failure to state a claim
24 upon which relief can be granted. (Docket No. 11.)

25 **II. Discussion**

26 To survive a motion to dismiss, a plaintiff must plead
27 "only enough facts to state a claim to relief that is plausible
28 on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570

1 (2007). This "plausibility standard," however, "asks for more
2 than a sheer possibility that a defendant has acted unlawfully,"
3 Ashcroft v. Iqbal, --- U.S. ----, ----, 129 S. Ct. 1937, 1949
4 (2009), and where a complaint pleads facts that are "'merely
5 consistent with' a defendant's liability, it 'stops short of the
6 line between possibility and plausibility of entitlement to
7 relief.'" Id. (quoting Twombly, 550 U.S. at 557). In deciding
8 whether a plaintiff has stated a claim, the court must assume
9 that the plaintiff's allegations are true and draw all reasonable
10 inferences in the plaintiff's favor. Usher v. City of L.A., 828
11 F.2d 556, 561 (9th Cir. 1987). However, the court is not
12 required to accept as true "allegations that are merely
13 conclusory, unwarranted deductions of fact, or unreasonable
14 inferences." In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055
15 (9th Cir. 2008) (internal quotation mark omitted).

16 "When ruling on a Rule 12(b)(6) motion to dismiss, if a
17 district court considers evidence outside the pleadings, it must
18 normally convert the 12(b)(6) motion into a Rule 56 motion for
19 summary judgment, and it must give the nonmoving party an
20 opportunity to respond." United States v. Ritchie, 342 F.3d 903,
21 908 (9th Cir. 2003). The Ninth Circuit has held, however, that a
22 court may "consider certain materials--documents attached to the
23 complaint, documents incorporated by reference in the complaint,
24 or matters of judicial notice--without converting the motion to
25 dismiss into a motion for summary judgment." Id. at 909. Even
26 if the plaintiff has not attached a document to the complaint,
27 the document "may be incorporated by reference into a complaint
28 if the plaintiff refers extensively to the document or the

1 document forms the basis of the plaintiff's claim." Id. at 909.

2 Here, HVM has attached to the declaration of the
3 general manager of the Extended Stay America Sacramento-Elk Grove
4 hotel plaintiff's Long-Term Lodging Agreement providing for a
5 term starting on October 30, 2009, Amendment to Lodging Agreement
6 providing for a term starting on July 22, 2010, and Amendment to
7 Lodging Agreement providing for a term starting on August 21,
8 2010. (Gonzales Decl. Ex. A.) In the FAC, plaintiff refers to,
9 describes, and quotes from the Agreement and addendum. (See FAC
10 ¶¶ 1, 3-4, 6, 10, 18, 20-21, 23-27, 30, 46-47.) HVM in its
11 motion and plaintiff in its opposition cite and quote from the
12 declaration's exhibit. However, neither party takes the position
13 that the exhibit is representative of every Agreement and
14 addendum signed by plaintiff in the past five years every 30
15 days. The exhibit even contains language in a footer indicating
16 that it was revised in 2009, at least three years after plaintiff
17 first signed an Agreement or addendum. (See Gonzales Decl. Ex. A
18 1-7.) The court will consider the exhibit, while recognizing
19 that neither party stipulates that it is representative of every
20 Agreement and addendum signed by plaintiff.³

21 A. Claim for Violation of California Civil Code Section

22 1940.1

23 California Civil Code sections 1940 through 1956
24 provide numerous statutory rights to "all persons who hire

25 _____
26 ³ Because the parties have not stipulated that the
27 exhibit is representative, the court declines to apply the
28 Agreement's choice-of-law provision, which prescribes South
Carolina law for the construction of the Agreement. (Gonzales
Decl. Ex. A at 4.)

1 dwelling units located within this state including tenants,
2 lessees, boarders, lodgers, and others, however denominated."⁴
3 Cal. Civ. Code § 1940(a). However, section 1940 provides for
4 three exceptions to the definition of "persons who hire." First,
5 "persons who hire" does not include a person who maintains
6 "[t]ransient occupancy in a hotel, motel, residence club, or
7 other facility when the transient occupancy is or would be
8 subject to tax under Section 7280 of the Revenue and Taxation
9 Code [because the occupancy is 30 days or less]." Id. §
10 1940(b)(1); Cal. Rev. & T. Code § 7280. Second, the definition
11 does not include a person who maintains a transient occupancy of
12 30 days or less when the person fails to pay room or related
13 charges. Cal. Civ. Code § 1940(b)(1). Third, the definition
14 does not include a person who maintains an occupancy at a hotel
15 or motel where an innkeeper "retains a right of access to and
16 control of the dwelling unit" and the hotel or motel "provides or
17 offers all of the following services to all of the residents,"
18 Cal. Civ. Code § 1940(b)(2) (emphases added):

19 (A) Facilities for the safeguarding of personal property
20 pursuant to Section 1860.

21 ⁴ Plaintiff requests that the court take judicial notice
22 of a guide, available online, published by California Department
23 of Consumer Affairs entitled "California Tenants: A Guide to
24 Residential Tenants' and Landlords' Right and Responsibilities,"
25 which states that "generally" lodgers and residents of hotels
26 have the same rights as tenants. (Req. for Judicial Notice in
27 Supp. of Pl.'s Opp'n to Def. HVM Mot. to Dismiss Ex. A (Docket
28 No. 21).) Plaintiff also requests that the court take judicial
notice of a webpage within the Santa Cruz County District
Attorney's Office official web site, under the Consumer Affairs-
Tenant Landlord link, which advises landlords not to forcibly
remove someone from a hotel or motel unless they are certain that
he is a lodger, not a tenant. (Id. Ex. B.) Without more
information from plaintiff, the court denies the requests because
the guide and webpage do not appear to be factually relevant.

1 (B) Central telephone service subject to tariffs covering
2 the same filed with the California Public Utilities
3 Commission.

4 (C) Maid, mail, and room services.

5 (D) Occupancy for periods of less than seven days.

6 (E) Food service provided by a food establishment, as
7 defined in Section 113780 of the Health and Safety Code,
8 located on or adjacent to the premises of the hotel or
9 motel and owned or operated by the innkeeper or owned or
10 operated by a person or entity pursuant to a lease or
11 similar relationship with the innkeeper or person or
12 entity affiliated with the innkeeper.

13 Id. § 1940(b)(2)(A)-(E).

14 Plaintiff has alleged sufficient facts from which to
15 plausibly infer that he does not fall within any of the three
16 exceptions to the definition of "persons who hire." First, while
17 he has signed a new Agreement or addendum every 30 days and the
18 Agreement states the parties' intention to create a transient
19 occupancy, plaintiff allegedly has lived at the hotel for over
20 five years and it is his primary residence. HVM allegedly has
21 not charged him a room tax. It is plausible that plaintiff was
22 not a transient occupant subject to tax under section 7280 of the
23 Revenue and Taxation. See id. § 1940(b)(1); Cal. Rev. & T. Code
24 § 7280. Second, for the same reasons, it is plausible that
25 plaintiff did not maintain a transient occupancy and fail to pay
26 room or related charges. See Cal. Civ. Code § 1940(b)(1).
27 Third, at this stage, it appears plausible that HVM does not
28 offer or provide "all of the following services to all of the
 residents": facilities for safeguarding property, central
 telephone service, maid service, mail service, room service,
 occupancy of periods for seven days or less, and food service
 provided by a food establishment. See Cal. Civ. Code §
 1940(b)(2)(A)-(E).

1 Section 1940.1 prohibits certain conduct by a
2 "residential hotel" with respect to section 1940's definition of
3 "persons who hire." Section 1940.1 provides:

4 (a) No person may require an occupant of a residential
5 hotel, as defined in Section 50519 of the Health and
6 Safety Code, to move, or to check out and reregister,
7 before the expiration of 30 days occupancy if a purpose
is to have that occupant maintain transient occupancy
status pursuant to paragraph (1) of subdivision (b) of
Section 1940.

8 Id. § 1940.1(a). A "residential hotel" is "any building
9 containing six or more guestrooms or efficiency units, as defined
10 by Section 17958.1, intended or designed to be used, or which are
11 used, rented, or hired out, to be occupied, or which are
12 occupied, for sleeping purposes by guests, which is also the
13 primary residence of those guests." Cal. Health & Safety Code §
14 50519. Evidence that an occupant was required to check out and
15 reregister creates a rebuttable presumption, affecting the burden
16 of producing evidence, of the prohibited purpose. Cal. Civ. Code
17 § 1940.1(a). Section 1940.1 provides for a civil penalty of \$500
18 and attorney's fees to the prevailing party if a residential
19 hotel violates the statute. Id. § 1940.1(b).

20 The Agreement here expires four hours short of the
21 thirtieth day, and plaintiff was allegedly required to sign a new
22 Agreement or addendum to remain at the hotel, which has been his
23 primary residence for over five years. Even if plaintiff's
24 belongings remained in his room, plaintiff has alleged sufficient
25 facts from which to reasonably infer that HVM required him to
26 "move" or "to check out and reregister" before the expiration of
27 30 days of occupancy with a "purpose" of "maintain[ing] transient
28 occupancy status pursuant to paragraph (1) of subdivision (b) of

1 Section 1940." *Id.* § 1940.1(a). Accordingly, the court will
2 deny HVM's motion to dismiss this claim. The court makes no
3 determination as to whether plaintiff's remedy for a violation of
4 section 1940.1 is limited to a \$500 civil penalty or includes
5 other statutory rights in California Civil Code sections 1940
6 through 1956.

7 B. Claim for Violation of California Civil Code Section
8 789.3

9 Plaintiff has also brought a claim for unlawful self-
10 help. This claim is based on a statutory right that is separate
11 from the numerous statutory rights under California Civil Code
12 sections 1940 through 1956 afforded to "all persons who hire
13 dwelling units located within this state including tenants,
14 lessees, boarders, lodgers, and others, however denominated."
15 Cal. Civ. Code § 1940(a). California Civil Code section 789.3
16 provides in relevant part:

17 (b) In addition, a landlord shall not, with intent to
18 terminate the occupancy under any lease or other tenancy
or estate at will, however created, of property used by
a tenant as his or her residence, willfully:
19 (1) Prevent the tenant from gaining reasonable
access to the property by changing the locks or using a
bootlock or by any other similar method or device;
20

22 Cal. Civ. Code § 789.3(b)(1).

23 In addition to only applying to "persons who hire," *id.*
24 § 789.3(b)(3), which plaintiff has sufficiently alleged, this
25 section only applies to landlord-tenant relationships. Even if a
26 plaintiff falls within the definition of "persons who hire" and
27 is entitled to numerous statutory rights under California Civil
28 Code sections 1940 through 1956, a plaintiff may not bring a

1 private cause of action to collect a \$100 civil penalty for
2 unlawful self-help under section 789.3 unless a landlord-tenant
3 relationship exists. Accordingly, the court must determine
4 whether plaintiff has sufficiently alleged a landlord-tenant
5 relationship.

6 The distinguishing characteristic of a landlord-tenant
7 relationship is an exclusive possessory interest.

8 A "tenant" has exclusive legal possession of premises and
9 is responsible for their care and condition. A "lodger"
10 has only the right to use the premises, subject to the
11 landlord's retention of control and right of access to
12 them. . . . When premises are under the direct control
13 and supervision of the owner and rooms are furnished and
14 attended to by him, he or his servants retaining the keys
15 to them, a person renting such a room is a lodger and not
16 a tenant.⁵

17 Stowe v. Fritzie Hotels, 44 Cal. 2d 416, 421 (1955); see, e.g.,
18 Erwin v. City of San Diego, 112 Cal. App. 2d 213, 217 (4th Dist.
19 1952) ("Where, as here, the evidence shows that the building was
20 known as the 'Leland Hotel'; that it was under the control and
supervision of the plaintiffs; that the rooms were furnished and
attended to by plaintiffs and that they retained the keys
thereto, renters of such rooms were and are lodgers and not
tenants.").

21 The interpretation of an agreement "to determine
22 whether it is a lease, a license or another form of interest is
23 often a subtle pursuit." Qualls v. Lake Berryessa Enterps.,
24 Inc., 76 Cal. App. 4th 1277, 1283 (1st Dist. 1999). "At the most
25 rudimentary level, '[w]hether an agreement for the use of
26 property constitutes a license or a lease generally is determined

27
28 ⁵ To the extent that guests and lodgers are different,
the difference is not relevant here.

1 by the nature of the possession granted.'" Id. (quoting 6 Miller
2 & Starr, California Real Estate § 18:5, at 14 (2d ed. 1989))
3 (alteration in original). "If the contract gives exclusive
4 possession of the premises against all the world, including the
5 owner, it is a lease; if it merely confers a privilege to occupy
6 the premises under the owner, it is a license." Id. (internal
7 quotation marks omitted).

8 The meaning of a contract depends on the parties'
9 expressed intent, using an objective standard. Golden W. Baseball Co. v. City of Anaheim, 25 Cal. App. 4th 11, 21 (4th
10 Dist. 1994); see, e.g., Qualls, 76 Cal. App. at 1284-85 (holding
11 that county gave mere license to mobile home owners); Golden W. Baseball, 25 Cal. App. 4th at 34 (holding that city conveyed less
12 than leasehold in stadium to baseball team owner). When the
13 agreement is reduced to writing, the court should determine the
14 intent of the parties, if possible, based on the writing alone.
15 Cal. Civ. Code § 1639. Nonetheless, "[e]ven if the written
16 agreement is clear and unambiguous on its face, the trial judge
17 must receive relevant extrinsic evidence that can prove a meaning
18 to which the contract is 'reasonably susceptible.'" Brobeck, Phleger & Harrison v. Telex Corp., 602 F.2d 866, 871 (9th Cir.
19 1979) (discussing California law); see, e.g., Golden W. Baseball,
20 25 Cal. App. 4th at 21 (considering extensive extrinsic evidence
21 to determine intent). If the court finds that "the language of
22 the contract is not reasonably susceptible of interpretation and
23 is unambiguous" after considering preliminary evidence,
24 "extrinsic evidence cannot be received for the purpose of varying
25 the terms of the contract." Brobeck, 602 F.2d at 871.

1 Here, the Agreement describes the relationship as hotel
2 manager-guest and states their intent that the Agreement should
3 not constitute a lease and their intent not to enter into a
4 landlord-tenant relationship. The Agreement also only expressly
5 grants the right to "use" the room and reserves HVM's right to
6 access the room once per week and transfer plaintiff to another
7 room with 48 hours notice. It is certainly not obvious that it
8 was the objective intent of the parties to enter into a lease.
9 See Golden W. Baseball, 25 Cal. App. at 21.

10 Nonetheless, the FAC alleges sufficient facts from
11 which to plausibly infer that the parties objectively intended
12 that the Agreement constitute a lease. The FAC alleges that HVM
13 informs its long-term residents that its rooms are an "affordable
14 alternative to apartment living" and has referenced the Agreement
15 as a "lease" in its "Long-Term Lodging program." With respect to
16 HVM's rights when a lodger defaults, the Agreement itself uses
17 terms found in a lease. The Agreement states that HVM reserves
18 the right to take all actions permitted or required by law,
19 including utilizing self-help measures or issuing notices to the
20 lodger, such as a Notice to Pay "Rent" or Quit or Notice of
21 Termination of "Tenancy." Moreover, plaintiff has lived at the
22 hotel for over five years. While HVM may ultimately prove that
23 the parties did not intend that the Agreement constitute a lease,
24 the Agreement is "reasonably susceptible" to interpretation.
25 Brobeck, 602 F.2d at 871; see also In re Yahoo! Litiq., 251
26 F.R.D. 459, 472 n.8 (C.D. Cal. 2008) (stating that parties are
27 not "required to set forth extrinsic evidence in support of their
28 alternative interpretation of contract terms prior to the

1 commencement of discovery").

2 Plaintiff's claim for violation of section 789.3
3 depends only in part on sufficiently pleading a landlord-tenant
4 relationship. HVM must have "[p]revented [him] from gaining
5 reasonable access to the property by changing the locks or using
6 a bootlock or by any other similar method or device," and this
7 conduct must have been done willfully and with "intent to
8 terminate the occupancy under any lease or other tenancy or
9 estate at will, however created, of property used by a tenant as
10 his or her residence." Cal. Civ. Code § 789.3(b)(1). Plaintiff
11 alleges that he has been threatened with removal and locked out
12 of his room with his belongings inside over 95 times in the past
13 five years and the FAC implies that HVM locked plaintiff out of
14 his room following plaintiff's failure to timely pay his fee or
15 renew. These factual allegations are sufficient to plausibly
16 suggest unlawful self-help. Accordingly, the court will deny
17 HVM's motion to dismiss this claim.

18 C. Claim for Violation of UCL

19 The UCL prohibits "any unlawful, unfair, or fraudulent
20 business act or practice." Cal-Tech Commc'ns, Inc. v. L.A.
21 Cellular Tel. Co., 20 Cal. 4th 163, 180 (1999). A plaintiff must
22 state with "reasonable particularity" the facts supporting the
23 statutory elements of the violation. Khoury v. Maly's of Cal.,
24 Inc., 14 Cal. App. 4th 612, 619 (2d Dist. 1993). By proscribing
25 "any unlawful" business practice, "section 17200 borrows
26 violations of other laws and treats them as unlawful practices
27 that the unfair competition law makes independently actionable."
28 Cal-Tech Commc'ns, 20 Cal. 4th at 180 (internal quotation marks

1 omitted). In Cel-Tech Communications, the California Supreme
2 Court held that the UCL "require[s] that any finding of
3 unfairness to competitors under section 17200 be tethered to some
4 legislatively declared policy or proof of some actual or
5 threatened impact on competition."⁶ Id., 20 Cal. 4th at 186-87.

6 Here, plaintiff brings only one UCL claim and rests it
7 on the unlawful and unfair prongs. The court has already found
8 that plaintiff has sufficiently pled violations of California's
9 Civil Code. Accordingly, plaintiff has sufficiently pled a
10 violation of the UCL. The court will deny HVM's motion to
11 dismiss this claim.

12 IT IS THEREFORE ORDERED that HVM's motion to dismiss
13 the First Amended Class Action Complaint be, and the same hereby
14 is, DENIED.

15 DATED: February 7, 2011

16 
17 WILLIAM B. SHUBB
18 UNITED STATES DISTRICT JUDGE

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28 ⁶ The law is unsettled as to what constitutes "unfair" as
between parties that are not direct competitors.