

CAUSE NO. _____

Z RESORTS MANAGEMENT, L.L.C. § **IN THE DISTRICT COURT**
f/k/a Z Resorts, L.L.C., §

Plaintiff, §

v. §

RAY SHACKELFORD & CHARLENE § **_____ JUDICIAL DISTRICT**
SHACKELFORD, f/k/a Charlene Howard §
Daniels, each individually and d/b/a POMP §
& CIRCUMSTANCE §

Defendants. §

HARRIS COUNTY, TEXAS

PLAINTIFF'S VERIFIED ORIGINAL PETITION

Plaintiff Z Resorts Management, L.L.C., f/k/a Z Resorts, L.L.C. ("Plaintiff"), as agent for the owner, Transformation 5701, LLC and solely in its manager capacity for the Hotel ZaZa, files this Verified Original Petition complaining about the actions of Defendants Ray Shackelford and Charlene Shackelford, f/k/a Charlene Howard Daniels, each individually and d/b/a Pomp & Circumstance, and, in support thereof, respectfully shows the Court the following:

I.

PLAINTIFF'S RULE 47 STATEMENT AND DISCOVERY LEVEL

1. Pursuant to TEX. R. CIV. P. 47(c)(3), Plaintiff states that it seeks monetary relief over \$100,000 but not more than \$200,000.

2. Plaintiff pleads that discovery should be governed by a Level 2 Discovery Control Plan pursuant to TEX. R. CIV. P. 190.3.

II. PARTIES

3. Plaintiff Z Resorts Management, L.L.C. is a Texas limited liability company with a principal place of business in Houston, Texas (“Plaintiff”). Plaintiff is formerly known as Z Resorts, L.L.C. Plaintiff manages the hotel commonly known as Hotel ZaZa Houston Museum District (the “Hotel”), located at 5701 Main Street, Houston, Texas 77005. At the times relevant to this lawsuit, Plaintiff was acting as the agent for the owner of the Hotel, Transformation 5701, LLC.

4. Defendant Ray Shackelford (“Mr. Shackelford”) is an individual citizen and resident of the State of Texas. Upon information and belief, Mr. Shackelford co-owns an unincorporated Texas business known as “Pomp & Circumstance.” Mr. Shackelford/Pomp & Circumstance can be served with process at Mr. Shackelford’s residence at 4743 Ivanhoe St., Houston, Texas 77027, or anywhere else he may be found within the State of Texas.

5. Defendant Charlene Shackelford (“Ms. Shackelford”) is an individual citizen and resident of the State of Texas. Upon information and belief, (1) Ms. Shackelford co-owns Pomp & Circumstance with Mr. Shackelford and (2) is formerly known as Charlene Howard Daniels. Ms. Shackelford/Pomp & Circumstance can be served with process at Ms. Shackelford’s residence at 4743 Ivanhoe St., Houston, Texas 77027, or anywhere else she may be found within the State of Texas.

III. JURISDICTION & VENUE

6. Jurisdiction is proper because the value of the relief sought is within the jurisdictional limits of the Court.

7. Venue is proper in Harris County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE §15.002(1)-(2) because Harris County is the county in which all or a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred and, alternatively, is the county of defendants’—who are natural persons—residence at the time Plaintiff’s causes of action accrued.

8. Alternatively, venue is also proper in Harris County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE §15.0035 because the agreement made the basis of this lawsuit was formed by the parties in Harris County, Texas; the agreement was fully performable in Harris County, Texas (specifically, the underlying event was to be held in Harris County, Texas); and all payments upon which the claims in this litigation are based were required to be made in Harris County, Texas.

IV. FACTUAL BACKGROUND

9. On or about December 5, 2016, the unincorporated entity Pump & Circumstance entered into a valid, written agreement with Plaintiff (the “Agreement”) for the Hotel to host an event entitled “Just the Truth” (the “Event”). The Event was to occur on February 3, 2017.

10. Mr. Shackelford signed the Agreement on behalf of Pump & Circumstance as its “Main Contact.” The Agreement lists Ms. Shackelford as an additional contact for Pump & Circumstance. It also lists “Charlene H. Daniels”—who, upon information and belief, is the same person as Ms. Shackelford—as the “Coordinator” of the Event and authorizes her to sign for charges to the group’s Master Account with the Hotel.

11. The Agreement required Pump & Circumstance to spend a minimum of \$85,000.00 on banquet food and beverages for the Event. In connection therewith, the Agreement required Pump & Circumstance to make a series of payments to the Hotel, including, without limitation, (1) a non-refundable deposit of \$42,500.00 by December 7, 2017; (2) an additional \$21,250.00

thirty days before the Event; and (3) as final payment for the Event, another \$21,250.00, plus a 22% service charge, 8.25% tax, and any additional amounts spent above the food and beverage minimum.

12. The Agreement further provides that “in the event any payment is not timely received by the Hotel . . . Group shall be in breach . . . and Group shall remain liable for any cancellation and other similar charges provided in this Agreement.” Further, the Agreement states that Plaintiff may charge Pomp & Circumstance monthly interest, plus its reasonable collection costs, including reasonable attorneys’ fees and costs, for any charges that remain unpaid thirty (30) days after becoming due.

13. Plaintiff performed all of its obligations under the Agreement; however, Defendants failed to timely pay the Hotel all sums due and owing under the Agreement and in connection with the Event, and Plaintiff’s subsequent collection efforts for same have been ineffective. As of the date of this Petition, Defendants owe Plaintiff the principal sum of \$50,849.61, after all lawful offsets, payments, and credits have been applied. Defendants also owe Plaintiff interest on such amount, plus Plaintiff’s reasonable collection costs, including reasonable attorneys’ fees and costs.

V. CONDITIONS PRECEDENT

14. All conditions precedent for Plaintiff’s claims have been performed or have occurred.

VI.
CAUSES OF ACTION

Count 1 – Breach of Contract (All Defendants)

15. Plaintiff hereby incorporates for all purposes all foregoing Paragraphs into this Count as if they were fully set forth herein.

16. The Agreement is a valid, written contract between Plaintiff and Defendants, d/b/a Pomp & Circumstance.

17. The Agreement was executed by Mr. Shackelford on behalf of Pomp & Circumstance and for the benefit of Ms. Shackelford. Mr. Shackelford and Ms. Shackelford co-own Pomp & Circumstance, an unincorporated entity.

18. Plaintiff performed all of its obligations under the Agreement. Defendants, on the other hand, failed to timely pay Plaintiff all sums due and owing under the Agreement. Defendants therefore are in breach of the Agreement.

19. Plaintiff has been damaged as a direct result of Defendants' breach. Defendants are indebted to Plaintiff in the principal sum of \$50,849.61, after all lawful offsets, payments, and credits have been applied. Pursuant to the terms of the Agreement, Defendants also owe Plaintiff interest on such amount, at the lesser of 1-1/2% per month or the highest rate permitted by law, beginning from April 3, 2017, plus Plaintiff's reasonable collection costs, including reasonable attorneys' fees and costs.

Count 2 – Alternative Plea for Suit on Sworn Account (All Defendants)

20. Alternatively, and without waiving the foregoing, Plaintiff hereby incorporates for all purposes all foregoing Paragraphs into this Count as if they were fully set forth herein, to the extent they are not inconsistent herewith.

21. Plaintiff sold to Defendants event space at the Hotel and furnished Defendants with food, beverage, event related services, and staff services for the Event.

22. The prices charged to Defendants were just and true because they were according to the terms of the parties' Agreement and/or they were usual, customary, and reasonable prices.

23. The accounting records of the amounts due and owing to the Hotel by Defendants for the Event and pursuant to the Agreement are attached hereto as Exhibit A. These records evidence a verified accounting representing liquidated money demand for the goods and services sold by Plaintiff to Defendants. The sale of the products and services represented by Exhibit A was made at the special insistence and request of Defendants, and such products and services were sold by Plaintiff to Defendants in the regular course of Plaintiff's business. In consideration of such sales, on which a systematic record has been kept, the Defendants promised and became bound and liable to pay Plaintiff the prices charges for such products and services in the principal amount of \$50,849.61, after all offsets, payments, and credits have been allowed, which is a reasonable charge for the products and services as further shown on Exhibit A.

24. Despite Plaintiff's demands upon Defendants for payment, Defendants have failed and refused, and continue to fail and refuse, to pay the account owed to Plaintiff. Plaintiff's damages, as a result of Defendants' failure to pay the account due and owing, is the principal sum of \$50,849.61, after all lawful offsets, payments, and credits have been allowed.

Count 3 – Attorneys' Fees (All Defendants)

25. Plaintiff hereby incorporates for all purposes all foregoing Paragraphs into this Count as if they were fully set forth herein.

26. As a direct and proximate result of Defendants' conduct, Plaintiff was required to retain the services of the undersigned attorneys to represent it in connection with this matter and

has agreed to pay the attorneys a reasonable fee for their services. Plaintiff presented its claim to Defendants, but they have failed and refused, and continue to fail and refuse, to pay the claim.

27. Pursuant to Texas Civil Practice & Remedies Code Section 38.001, Plaintiff is entitled to recover its reasonable attorneys' fees and costs for the prosecution of the claims in this litigation.

28. In addition, Plaintiff is entitled to recover its reasonable attorneys' fees and costs for the prosecution of the claims in this litigation and for its prior efforts to collect payment from Defendants because the Agreement between the parties provides for same.

Count 4 – Pre-judgment and Post-Judgment Interest (All Defendants)

29. Plaintiff hereby incorporates for all purposes all foregoing Paragraphs into this Count as if they were fully set forth at this point.

30. Plaintiff is entitled to recover, and hereby requests, an award of pre-judgment interest at the highest rate permitted by law on all money damages, or the rate agreed to between the parties, whichever is lower, from the date on which the damages accrued to the date of judgment, in accordance with applicable law.

31. Plaintiff is also entitled, and hereby requests, an award of post-judgment interest at the highest rate permitted by law on all money damages, or the rate agreed to by the parties, whichever is lower, from the date on which judgment is awarded until the judgment is paid in accordance with applicable law.

**VII.
REQUEST FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Z Resorts Management, L.L.C., f/k/a Z Resorts, L.L.C., prays that Defendants Ray Shackelford and Charlene Shackelford, f/k/a Charlene Howard Daniels, each individually and d/b/a Pomp & Circumstance, jointly and

severally, be cited to appear herein and answer, and that upon final hearing, Plaintiff have judgment as follows:

1. Judgment against Defendants, joint and severally, in the principal amount of \$50,849.61, for Defendants' failure to pay the sums due Plaintiff under the breach of contract claim set forth in this Petition;
2. Alternatively, judgment against Defendants, joint and severally, in the principal amount of \$50,849.61, for Defendants' failure to pay the sums due Plaintiff under the suit on sworn account claim set forth in this Petition;
3. Cost of Court;
4. Judgment against Defendants, jointly and severally, for reasonable and necessary attorneys' fees incurred as a result of Defendants' failure to pay the sum owed as alleged in this Petition and in accordance with the provisions of the Agreement and §38.001 of the Texas Civil Practices and Remedies Code, plus a conditional award of attorneys' fees in the event any appeal or Writ of Error;
5. Pre-judgment interest at the highest rate permitted by law on all money damages, or the rate agreed to by the parties, whichever is lower;
6. Post-judgment interest at the highest rate permitted by law on all money damages, or the rate agreed to by the parties, whichever is lower; and
7. Such other and further relief, in law and/or in equity, to which Plaintiff is justly entitled.

Date: August 15, 2017

Respectfully submitted,

/s/ Kelly Franklin Bagnall

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ATTORNEYS FOR PLAINTIFF

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority on this date personally appeared Vince Mennella, who after being by me first duly sworn, deposed and said as follows:

“My name is Vince Mennella and I am the Chief Financial Officer for Z Resorts Management, L.L.C., the Plaintiff in the above styled cause (“Plaintiff”). I am over 21 years of age, and I am fully competent to make this Verification. I am a resident of Montgomery County, Texas. I have never been convicted of a felony or crime of moral turpitude. I am competent in all respects to make this Verification.

“I have read the foregoing Plaintiff’s Verified Original Petition and the claims contained therein are just and true, and within my personal knowledge as Plaintiff’s Chief Financial Officer, which is based upon my personal review of the information, files and documents in my possession as custodian of records for Plaintiff for the matter regarding Ray Shackelford and Charlene Shackelford, f/k/a Charlene Howard Daniels, each individually and d/b/a Pomp & Circumstance (hereinafter collectively referred to as “Defendants”).


“The sale of the products and services represented by Exhibit A, attached to Plaintiff’s Verified Original Petition, was made at the special insistence and request of Defendants in the regular course of its business. The prices charged were just and true because they were the usually, customary, and reasonable prices for the goods and services provided. The invoices, attached hereto as Exhibit A, evidence a verified accounting on which a systematic record has been kept, representing liquidated money demand for the products and services sold by Plaintiff to the Defendants. As of the date of the filing of Plaintiff’s Verified Original Petition, and after all just and lawful offsets have been allowed, there remains due and owing by Defendants to Plaintiff the principal sum of \$50,849.61, which is a reasonable charge for the products and services provided by Plaintiff, as further shown on Exhibit A.”

Further Affiant sayeth not.



Vince Mennella

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 17th day of July, 2017, to certify which witness my hand and official seal.



Notary Public in and for the State of Texas

