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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ARMANDO SAMANIEGO on Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

vs.

OMNI HOTELS MANAGEMENT
CORPORATION, OMNI HOTELS
CORPORATION, and TRT
DEVELOPMENT COMPANY,

Defendants.

Case No. '18CV1372L **BGS**

**PLAINTIFF'S CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF FALSE
ADVERTISING LAW, Business and
Professions Code §17500, *et seq.*;
2. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.*;
3. VIOLATION OF THE CONSUMERS
LEGAL REMEDIES ACT,
Civil Code §1750, *et seq.*; and

JUDGE: HON.
COURTROOM:

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff Armando Samaniego by and through his undersigned
counsel, individually and on behalf of all others similarly situated, and hereby files this
Class Action Complaint against Omni Hotels Management Corporation, Omni Hotels
Corporation and TRT Development Company ("Omni" or "Defendants"). In support
thereof, Plaintiff states and alleges as follows:

NATURE OF THE ACTION

1
2 1. Defendants operate hotels in the United States, Mexico and Canada.

3 2. Defendants induce and mislead customers into booking rooms at Defendants’
4 hotels by advertising room rates at low prices and adding a mandatory and undisclosed
5 “resort fee” to the advertised rate during the booking process. The inclusion of the “resort
6 fee” allows Defendants to advertise a lower price for their hotel rooms, although the
7 “resort fee” is a mandatory fee that is automatically included as part of a customer’s hotel
8 stay. Because these fees are mandatory, there is no reason to omit them from the base
9 room rate, other than to deceive customers. Just as a hotel could not tout a low room rate,
10 then charge extra for the use of a bed after the guest arrived, it cannot exclude a
11 mandatory fee for the use of a room from the room rate.

12 3. By advertising their rooms at artificially low prices, Defendants deceive
13 consumers into believing that their rooms are comparably better-priced than rooms at
14 hotels that fairly and accurately quote their room prices from the beginning of the booking
15 process.

16 4. Indeed, it is well established that consumers latch-on to the initial price quote
17 of a product or service and make final decisions based on what is believed to be the total
18 price. Once an initial price is established in a reasonable consumer’s mind, it is difficult
19 for that consumer to make objective decisions based on subsequent changes to price. As
20 such, consumers are unable to effectively and accurately evaluate products or services that
21 are initially quoted at incorrect and deceptively low prices.

22 5. Research has confirmed that quoting artificially lower prices, but charging
23 higher prices through the purchasing process deceives consumers and hurts competition,
24 because consumers tend to over-value artificially low priced products/services.

25 6. The FTC has taken this research into consideration and upon conducting its
26 own investigation has determined that initially quoting low prices for room rates and then
27 charging resort fees after quoting a low price is deceptive and harmful to competition.
28

1 7. Defendants engage in behavior that is deceptive and that the FTC has deemed
 2 as harmful because they quote initial room rates without including a resort fee. After
 3 deceiving reasonable consumers, including Plaintiff and the Class, and inducing them to
 4 seek Defendants’ rooms and services, Defendants disclose the additional resort fee.
 5 However, this disclosure is meaningless as reasonable consumers, including Plaintiff and
 6 the Class, have already valued Defendants’ rooms at the originally quoted rate.

7 8. As a result of Defendants’ false advertising and deceptive misrepresentations
 8 regarding the true price of their hotel rooms, Plaintiff and the members of the proposed
 9 class have been harmed because they purchased rooms that they otherwise would not have
 10 purchased. Plaintiff and the Class have also been harmed because Defendants’ conduct
 11 has made Plaintiff and the Class unable to effectively and accurately compare hotel room
 12 rates. As a result of Defendants’ conduct, Plaintiff and the Class have been injured by
 13 having to pay more than the advertised rate by the inclusion of the mandatory “resort fee”
 14 and thus have been harmed by Defendant’s unfair and deceptive acts and practices.

15 9. Plaintiff brings this action on behalf of himself and other similarly situated
 16 consumers who have booked rooms at Defendants’ hotels to halt the dissemination of
 17 Defendants’ false, misleading and deceptive advertising, correct the deceiving perception
 18 it has created in the minds of consumers and obtain redress for those who have booked
 19 rooms at Defendants’ hotels. Based on violations of state unfair completion laws,
 20 Plaintiff seeks injunctive and monetary relief for consumers who have booked rooms at
 21 Defendants’ hotels.

22 **THE PARTIES**

23 10. Plaintiff, Armando Samaniego is an adult individual residing in San Diego.
 24 Plaintiff is a citizen of the State of California. During the Class Period Plaintiff booked a
 25 hotel room from Defendants and has been injured by paying Defendants’ “resort fee” in
 26 addition to the quoted room rate. Plaintiff specifically relied on Defendants’ misleading
 27 price quotes in booking the room. Defendants quoted the rate from the hotel room at \$269
 28 per night. During the booking process, a \$30 fee was added.

1 11. Defendant Omni Hotels Management Corporation is a privately held
2 Delaware corporation, headquartered in Irving, Texas at 420 Decker Drive, 75062. Omni
3 Hotels Management Corporation is wholly-owned by Omni Hotels Corporation.

4 12. Defendant Omni Hotels Corporation is a privately held Delaware
5 corporation, headquartered in Dallas, Texas at 4001 Maple Avenue, 75219. Omni Hotels
6 Corporation is wholly-owned by TRT Development Company.

7 13. Defendant TRT Development Company is a privately held Delaware
8 corporation, headquartered in Dallas, Texas at 4001 Maple Avenue, 75219.

9 14. The Defendants can be served through Corporation Service Company, 211 E.
10 7th St., Suite 620, Austin, Texas 78701.

11 15. According to the Defendants' website, the Defendants operate 60 hotels in
12 the United States, Mexico and Canada.¹

13 **JURISDICTION AND VENUE**

14 16. This Court has jurisdiction pursuant to the Class Action Fairness Act, 28
15 U.S.C. §1332(d)(2), because: (i) the Class (as defined below) has more than 100 Class
16 members; (ii) the amount at issue exceeds five million dollars, exclusive of interest and
17 costs; and (iii) minimal diversity exists as Plaintiff and Defendants are citizens of different
18 states.

19 17. This Court has personal jurisdiction over Defendants because Defendants
20 have advertised, marketed, promoted, and booked hotel rooms in California and
21 Defendants have sufficient minimum contacts with this State and/or sufficiently availed
22 themselves of the markets in this State through their advertisement, marketing, promotion
23 and/or booking of hotel rooms within this State to render the exercise of jurisdiction by
24 this Court permissible.

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28 ¹ OMNI HOTELS, <https://www.linkedin.com/company/omni-hotels> (last visited June 19, 2018).

1 18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a
2 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this
3 District and Defendants transact substantial business in this District.

4 **FACTUAL BACKGROUND AND ALLEGATIONS**

5 **A. Resort Fees**

6 19. Since the late 1990s and earlier 2000s resort fees have been on the rise.

7 20. Indeed, in 2013, U.S. hotels collected an estimated \$2.1 billion dollars in
8 resort fees alone, about double the amount from a decade ago.²

9 21. A resort fee is a mandatory fee that hotels add on to the actual room rate.
10 The fee supposedly covers a host of services, but are mandatory and are charged whether
11 or not a consumer chooses to use the services the resort fee supposedly covers.

12 22. Defendants charge resort fees at some of their California hotels and purport
13 this fee for amenities that are provided but, the consumer may elect not to use or may
14 otherwise expect to be provided as part of the price of the hotel purchase, *i.e.* the use of a
15 towel at the resort pool.

16 23. The Defendants, as well as other hotel operators, disclose resort fees at
17 certain times after they disclose room rates for hotels. As such, the practice of charging
18 resort fees is a form of “drip pricing,” which is “a pricing technique in which firms
19 advertise only part of a product’s price and reveal other charges later as the customer goes
20 through the buying process.”³

21 **B. Resort Fees and Drip Pricing Hurt Consumers and are Harmful to**
22 **Competition**

23
24
25 ² Christopher Elliott, *Travelers want ‘resort’ fees to check out – permanently*, USA
26 TODAY (Jan. 13, 2014), <http://www.usatoday.com/story/travel/hotels/2014/01/12/hotel-resort-fee-service-charge/4441287/>.

27 ³ Warning Letter, Federal Trade Commission (November 2012) (hereinafter “Warning
28 Letter”), available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-warns-hotel-operators-price-quotes-exclude-resort-fees-other-mandatory-surcharges-may-be/121128hoteloperatorsletter.pdf>.

1 24. Research has shown that the “drip pricing” model has a powerful ability to
2 influence and mislead consumers to spend more than they otherwise intend to or buy a
3 product or service that they do not need or want.

4 25. Such research demonstrates that the “base,” or originally disclosed price,
5 detrimentally influences consumers, rather than the ancillary fees that ultimately increase
6 the total price for the relevant product or service.

7 26. For example, research from the Stern School of Business has shown that
8 consumers were more likely to buy products or choose services when those products and
9 services were advertised using the “drip pricing” model and that disclosure of mandatory
10 fees reduced buying intentions.⁴

11 27. This shows that “drip pricing” confuses consumers and deceptively
12 influences them into believing that the price they are paying is not as high as it actually is.
13 The lower “base” price leads to lower price perception and in turn leads to higher demand
14 for the drip priced product/service over comparable products/services that have all fees
15 and costs disclosed from the beginning.

16 28. Other research has shown that the use of “drip pricing” in advertisement and
17 sales leads to inefficient market outcomes because consumers tend to overvalue the
18 original advertised price and become misled once additional mandatory fees are disclosed
19 later in the transaction.⁵

20 29. Again, this shows the deceptive nature of “drip pricing” and demonstrates its
21 harmful consequences on both consumers and honest business entities.

22 30. “Drip pricing” effectively “anchors” consumers to the initial numeric
23 information they are presented, often misleading them and preventing them from
24

25 ⁴ Vicki Morwitz & Shelle Santana, *How consumers react to partitioned and drip pricing: Evidence from the lab*, available at,
26 https://www.ftc.gov/sites/default/files/documents/public_events/economics-drip-pricing/vmorwitz.pdf.

27 ⁵ Federal Trade Commission, *A Conference On The Economics Of Drip Pricing*, 22-28
28 (May 21, 2012), available at,
https://www.ftc.gov/sites/default/files/documents/public_events/economics-drip-pricing/transcript.pdf.

1 adjusting to additional information regarding increases in price.⁶ In other words, it is
2 know that reasonable consumers grasp on to the “headline” advertised price, then fail to
3 adjust their perception of this price.

4 31. “Drip pricing” also takes advantage of the fact that consumers “endow”
5 themselves to the “headline” price. Once reasonable consumers see the initial advertised
6 priced, they get used to buying the product, service, room, etc. at that initial price. This
7 creates a type of loss aversion because consumers feel differently about the product,
8 service, room then they did before they started and thus, mistakenly value it over other
9 products, services, rooms which are of equal or greater value.⁷

10 32. Finally, “drip pricing” lures consumers into transactions with artificially low
11 prices and thus, misleads yet another behavioral process; commitment.⁸ Once a consumer
12 is invested in a transaction, the consumer is less likely to walk away.

13 33. In short, “drip pricing” creates expectations about value and by advertising a
14 price without a resort fee, and then disclosing that fee at or after payment, it deceives
15 consumers about the actual value of the rooms they are booking. This deception hurts
16 consumers in multiple ways, including inducing them to buy a product they do not need or
17 want and preventing them from operating efficiently and properly evaluating competitive
18 markets.

19 34. Drip pricing also hurts competition because consumer purchasing decisions
20 are effectively driven by the cheapest headline price. So, companies that include all prices
21 up-front are disadvantaged because the deceiving “drip priced” headline prices of
22 competitors mislead consumers into believing that companies that include all costs up
23 front are not as good as their competitors.⁹ Exemplary of this fact is a United Kingdom
24 law that required all airlines to include all taxes and charges in the headline price. The
25

26 ⁶ *Id.* at 62-63.

27 ⁷ *Id.* at 63.

28 ⁸ *Id.*

⁹ *Id.* at 63-64

1 first airline to comply with this law lost 5% of consumer traffic to its website while it
2 waited for its competitors to comply.¹⁰

3 35. When reasonable consumers are shopping for a hotel and initially see a low
4 “drip priced” room rate they will value that hotel room based on the initially disclosed,
5 artificially low rate. Even if the additional fees are disclosed later in the booking process
6 a reasonable consumer is still likely to believe that the “drip priced” room is
7 comparatively better than another hotel room with all fees originally disclosed. To be
8 sure, a survey of 3,000 consumers showed that 75% of consumers objected to “drip
9 pricing” generally, and 44% said they would have bought elsewhere had they known the
10 total cost up-front.¹¹

11 **C. The FTC Has Stated That Drip Pricing and Resort Fees Are Deceptive and**
12 **Urged Hotels to Display All Mandatory Charges in the Base Room Rate**
13 **Advertised To Customers**

14 36. In May of 2012, the FTC held a conference on “drip pricing.”¹²

15 37. A common complaint raised by consumers during this conference involved
16 the mandatory charge of hotel resort fees in addition to the quoted room price.¹³

17 38. The FTC reviewed a number of online hotel reservation sites and found:
18 [S]ome hotels exclude resort fees from the quoted reservation price. Instead,
19 the “total price” or “estimated price” quoted to consumers includes only the
20 room rate and applicable taxes. At some of these sites, the applicable resort
21 fee is listed nearby, but separate from, the quoted price. In others, the quoted
22 price is accompanied by an asterisk that leads consumers to another location
23 at the site – sometimes on the same page, sometimes not – where the
24 applicable resort fee is disclosed, typically in fine print. A few sites fail to
25

26 ¹⁰ *Id.* at 64.

27 ¹¹ *Id.* at 69.

28 ¹² Warning Letter, *supra*, note 3.

¹³ *Id.*

1 identify applicable resort fees anywhere, and instead inform consumers that
2 other undefined fees may apply.¹⁴

3 39. The FTC concluded that these practices were deceptive because they
4 misrepresented the price consumers could expect to pay for their hotel rooms. In a
5 warning letter the FTC explicitly stated “[w]e believe that online hotel reservation sites
6 should include in the quoted total price any unavoidable and mandatory fees, such as
7 resort fees, that consumers will be charged to stay at the hotel. While a hotel reservation
8 site may breakdown the components of the reservation estimate . . . the most prominent
9 figure for consumers should be the total inclusive estimate.”¹⁵

10 40. In a press release announcing the warning letters, Jon Leibowitz, the FTC
11 Chairman, condemned the practice of drip pricing and stated “[c]onsumers are entitled to
12 know in advance the total cost of their hotel stays. So-called ‘drip pricing’ charges,
13 sometimes portrayed as ‘convenience’ or ‘service’ fees, are anything but convenient, and
14 businesses that hide them are doing a huge disservice to American consumers.”¹⁶

15 **D. Defendants’ Use Drip Pricing and Resort Fees to Deceive Consumers into**
16 **Booking Rooms at Defendants’ Hotels**

17 41. Defendants routinely and uniformly misrepresent the total cost of their hotel
18 stays.

19 42. Plaintiff and the members of the Class booked a hotel reservation by
20 telephone, either by calling the general contact phone line for Defendants 1-888-444-
21 OMNI or by calling Defendants’ dedicated reservation phone lines at 1-800-THE-OMNI,
22 at the following of Defendants’ properties: 1) Omni San Diego Hotel, 675 L Street, San
23 Diego, CA 92101; 2) Omni Rancho Las Palmas Resort & Spa, 41000 Bob Hope Drive,
24

25 ¹⁴ *Id.*

26 ¹⁵ *Id.*

27 ¹⁶ Press Release, Federal Trade Commission, FTC Warns Hotel Operators that Price
28 Quotes that Exclude ‘Resort Fees’ and Other Mandatory Surcharges May Be Deceptive
(Nov. 28, 2012), available at, <https://www.ftc.gov/news-events/press-releases/2012/11/ftc-warns-hotel-operators-price-quotes-exclude-resort-fees-other>.

1 Rancho Mirage, CA 92270; 3) Omni La Costa Resort & Spa, 2100 Costa Del Mar Road,
2 Carlsbad, CA 92009; 4) Omni San Francisco Hotel, 500 California Street, San Francisco,
3 CA 94104; 5) Omni Los Angeles at California Plaza, 251 South Olive Street, Los
4 Angeles, CA 90012 (“Subject Properties”).

5 43. Plaintiff and the members of the Class were charged resort fees during the
6 booking process. Defendants charge these resort fees at the Subject Properties for
7 “amenities,” including in-room Wifi, access to the hotel gym, free local and 800 access
8 calls, and in-room coffee and tea, that are offered for free at other of Defendants’ hotel
9 locations.

10 44. Upon information and belief, Defendants use a uniform system for
11 reservations at each of the Subject Properties.

12 45. During the week of May 13, 2018, Plaintiff made a reservation by phone for
13 a one night stay at the Omni Resorts La Costa Resort & Spa, (hereafter, “La Costa”).

14 46. Plaintiff was quoted a room rate of approximately two hundred sixty nine
15 dollars (\$269.00) per night. Although the quote stated, “excludes taxes and other
16 charges,” it was not disclosed that “other charges” included mandatory fees, namely and
17 exclusively a thirty dollar (\$30.00) resort fee. Plaintiff relied on this initial quote in
18 making his decision to choose La Costa and proceed with the booking process.

19 47. The purpose and effect of Defendants’ booking process is to deceive and
20 mislead consumers in regards to Defendants’ true room rates. Indeed, at no time prior to
21 or during actual payment do Defendants present to consumers a straightforward estimate
22 and/or itemization of Defendants’ true room rate: 1) Defendants advertise to consumers
23 room rates that are substantially lower than the true room rates because the resort fees are
24 not included.

25 48. This booking process, along with the language and information provided
26 therein, all led Plaintiff, the Class, and similarly situated reasonable consumers to believe
27 that the amount they would be billed would not include a mandatory resort fee.
28

1 49. Defendants fail to advertise the true room rates because Defendants seek to
2 gain a competitive advantage by advertising rooms at lower rates than the competition and
3 because Defendants know that consumers will rely on the advertised rate in making
4 decisions in selecting Defendants hotels for stays.

5 50. Given this deception a reasonable consumer would likely be unaware of the
6 resort fee charge, especially given the fact that the advertised rate only states that “tax and
7 other charges” are not included, but does not specify that the “other charges” language
8 includes and exclusively stands for a mandatory resort fee charge.

9 51. Defendants’ practice of advertising rooms at prices lower than their true rate
10 understates the true price of booking a room at the Defendants’ hotels and as a result is
11 misleading and deceptive.

12 52. By recovering an additional, baseless fee in the form of a resort fee
13 Defendants are able to reduce their advertised room rates by the amount of the resort fee
14 without any negative impact when price-conscious consumers compare rates across
15 hotels. Defendants essentially have devised a mechanism through use of resort fees,
16 whereby they advertise what appear to be low room rates, but in actuality are not.

17 53. Defendants’ conduct has harmed Plaintiff and the Class by misleading them
18 into purchasing rooms at Defendants’ hotels. Defendants’ conduct has also harmed
19 Plaintiff and the Class by preventing them from accurately analyzing the market for hotel
20 rooms. By initially quoting room rates without mandatory resort fees, Defendants have
21 created a misleading perception in the mind of Plaintiff and the Class. This deception led
22 Plaintiff and the Class to over-value Defendants’ hotel rooms. As such, Plaintiff and the
23 Class purchased hotel rooms they otherwise would not have purchased and have been
24 harmed as a result.

25 54. Defendants’ conduct has also harmed competition generally. Because
26 Defendants’ conduct has created a false perception in relation to its hotel rooms,
27 consumers have undervalued comparable hotel operators that include all fees and costs in
28 the initial price quote. Thus, Defendants’ conduct has deceived consumers to the false

1 belief that Defendants' hotel rooms are superior to comparable competitors. This of
2 course is not the case. The only difference between Defendants hotel rooms and the hotel
3 rooms of their honest competitors is the initially quoted price advertised to the consuming
4 public, including Plaintiff and the Class.

5 **CLASS ACTION ALLEGATIONS**

6 55. Plaintiff brings this action on his own behalf and on behalf all other persons
7 similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8 56. The Class is defined as follows:

9 All persons who, within the statute of limitations, were charged one or
10 more resort fees at one of Defendants' properties within the United
11 States and its territories (the "Class").

12 Excluded from the Class are Defendants; officers and directors of
13 Defendants; any entity in which Defendants have a controlling interest;
14 the affiliates, legal representatives, attorneys, heirs, and assigns of the
15 Defendants.

16 57. This action satisfies the procedural requirements set forth in Rule 23 of the
17 Federal Rules of Civil Procedure.

18 58. The conduct of Defendants has caused injury to members of the Class.

19 59. The Class is so numerous that joinder of all members is impracticable.
20 Plaintiff is informed and believes that the proposed class contains thousands of persons
21 who have been damaged by Defendants' conduct as alleged herein. The precise number
22 of Class members is unknown to Plaintiff.

23 60. The members of the Class are readily ascertainable, as records maintained by
24 Defendants can identify them. Notice can be provided by means permissible under the
25 Federal Rules of Civil Procedure.

26 61. There are substantial questions of law and fact common to the Class, which
27 predominate over any questions affecting individual Class members. These questions
28 include, but are not limited to, the following:

- 1 a. Whether the representations discussed above are misleading or
- 2 objectively likely to deceive a reasonable consumer;
- 3 b. Whether Defendants falsely or deceptively represented that their room
- 4 rates were lower than their true price;
- 5 c. Whether Defendants' conduct violates public policy;
- 6 d. Whether Defendants' conduct constitutes violations of the asserted
- 7 laws;
- 8 e. Whether Defendants engaged in false and misleading advertising;
- 9 f. Whether Plaintiff and the class have sustained monetary loss and the
- 10 proper measure of that loss, as well as the amount of revenues and profits
- 11 received by Defendants;
- 12 g. Whether Plaintiff and the class are entitled to remedies other than
- 13 monetary damages, such as corrective advertising or injunctive relief;

14 62. Plaintiff's claims are typical of the claims of all members of the Class.

15 Plaintiff, like the members of the Class, booked a room with the Defendants, was quoted a

16 room rate that did not include a mandatory resort fee and thereafter was charged and paid

17 a higher price that included a resort fee. As a result, both Plaintiff and the members of the

18 Class have been harmed by the same conduct. Additionally, Plaintiff is advancing the

19 same claims and legal theories on behalf of himself and the members of the Class to

20 redress the injuries and recoup the damages caused by Defendants' illegal conduct.

21 63. Plaintiff is a member of the putative Class, possesses the same interests as the

22 Class, and suffered the same injuries as Class members, making his interests coextensive

23 with those of the Class. The interests of Plaintiff and the Class are aligned so that the

24 motive and inducement to protect and preserve these interests are the same for each.

25 Plaintiff also has retained counsel experienced in complex consumer class action

26 litigation, who intend to prosecute this action vigorously.

27 64. A class action is superior to all other available methods for a fair and

28 efficient adjudication of this controversy since joinder of all members of the Class is

1 impracticable. Furthermore, the damages and other financial detriment suffered by
2 individual class members is relatively small in comparison with the burden and expense
3 associated with individual litigation, which make it impossible for them to individually
4 redress the harm done to them. Proceeding as a class action will permit an orderly and
5 expeditious administration of the claims of Class members, will foster economies of time,
6 effort and expense and will ensure uniformity of decision, preventing inconsistent or
7 varying adjudications that would establish incompatible standards of conduct for
8 Defendants. There will be no difficulty in the management of this litigation as a class
9 action.

10 65. Because Defendants have acted and refused to act on grounds generally
11 applicable to the Class described herein, injunctive relief is appropriate. Plaintiff seeks
12 preliminary and permanent injunctive and equitable relief on behalf of the entire class,
13 preventing Defendants from further engaging in the acts and conduct described herein and
14 requiring Defendants to provide full restitution to Plaintiff and the Class members.

15 66. Unless a Class is certified, Defendants will retain monies that were taken and
16 received from Plaintiff and the Class members as a result of Defendants' conduct. Unless
17 a Class-wide injunction is issued, Defendants will continue to commit the violations
18 alleged and the members of the Class and the general public will continue to be harmed
19 and deceived as a result.

20 **FIRST CAUSE OF ACTION**

21 **(California False Advertising Law – Cal. Bus. & Prof. Code § 17500, et seq.)**

22 67. Plaintiff incorporates and re-alleges each and every allegation contained
23 above as if fully set forth herein.

24 68. Plaintiff brings this claim individually and on behalf of the class.

25 69. Defendants engaged in unlawful conduct under § 17500, et seq., by
26 advertising its room rates at prices that understate their true cost and by misrepresenting
27 and concealing mandatory resort fees.

1 70. Defendants specifically advertised and quoted that their room rates were
2 lower than they actually were by initially quoting Plaintiff and members of the Class a
3 room rate that did not include a mandatory resort fee.

4 71. Defendants knew, or reasonably should have known that their
5 advertisements, representations and/or omissions were false, deceptive, untrue and/or
6 misleading.

7 72. Defendants' illegal conduct also constitutes as unlawful and Defendants were
8 provided an unlawful and unfair advantage by representing that their room rates were
9 lower than they actually were. Had Defendants accurately and honestly represented the
10 true price of booking a room at Defendants' hotels, Defendants would not have booked
11 rooms at their hotels or Defendants would have booked a substantially less number of
12 rooms.

13 73. Plaintiff and the Class reasonably relied upon Defendants' representations
14 and/or omissions made in violation of § 17500, et seq. But for Defendants' unlawful
15 conduct, Plaintiff and the Class would not have booked rooms at Defendants' hotels.
16 Defendant's artificial room rates induced Plaintiff and the Class to book rooms at
17 Defendants' hotels and but for Defendants' deceptively low price quotes, Plaintiff and the
18 Class would have book hotel rooms at other comparable hotel properties.

19 74. On information and belief Plaintiff also alleges that Defendants' unlawful
20 conduct is likely to and has deceived the general public.

21 75. Plaintiff is informed and believes, and thereupon alleges, that as a further
22 direct and proximate result of Defendants' illegal conduct, Defendants have received
23 money from Plaintiff, the Class and the general public. Defendants continue to hold the
24 money obtained through this violation of § 17500, et seq. for its sole benefit.

25 76. As Defendants continue to engage in the unlawful conduct described herein,
26 Plaintiff, the Class Members and other members of the general public are in current and
27 ongoing need of protection from Defendants' false and deceptive marketing and
28 advertisement.

1 77. Accordingly, Plaintiff, on behalf of himself and all others similarly situated,
2 seeks equitable relief, in the form of an order requiring Defendants to refund to Plaintiffs
3 and the Class all monies paid concerning the misleading resort fees and, in addition, an
4 order requiring Defendants to inform the consuming public the true and full price of
5 booking a room at Defendants' hotels.

6 **SECOND CAUSE OF ACTION**

7 **(California Unfair Competition Law – Cal. Bus. & Prof. Code § 17200, et seq.)**

8 78. Plaintiff incorporates and re-alleges each and every allegation contained
9 above as if fully set forth herein.

10 79. Plaintiff brings this claim individually and on behalf of the class.

11 80. Defendants engaged in fraudulent conduct under § 17200, et seq., by
12 advertising their room rates at prices that understate their true cost and misrepresenting
13 and concealing mandatory resort fees.

14 81. Defendants' conduct is unlawful under § 17200, et seq., in that it violates the
15 False Advertising Law, California Business & Professions Code § 17500, et seq.
16 Defendants' conduct is unlawful under the Federal Trade Commission Action, Section 5,
17 15 U.S. Code § 45, which is designed to prevent unfair methods of competition.

18 82. Defendants' conduct is unfair under § 17200, et seq., in that it offends
19 established public policy or is immoral, unethical, oppressive, unscrupulous,
20 unconscionable or substantially injurious to Plaintiffs and the Class members. The harm
21 to Plaintiffs and the Class arising from Defendants' conduct outweighs any legitimate
22 benefit Defendants have derived from the conduct.

23 83. Indeed, Defendants engaged in false and misleading advertising and also
24 engaged in unfair competition by securing an illegal competitive advantage by falsely
25 representing the true price of booking its rooms.

26 84. By quoting room rates without resort fees included in the quoted price,
27 Defendant created a false perception in the minds of Plaintiff and the Class. This
28

1 deception led Plaintiff and the Class to over-value Defendants' hotel rooms and, at the
2 same time, under-value the hotel rooms of Defendants' honest competitors.

3 85. Although there were reasonably available alternatives to Defendants' conduct
4 described herein, Defendants chose to deceptively quote their hotel prices and thus take
5 advantage of a false benefit; Defendants signaled that their room rates were lower and
6 thus more desirable than the hotel rooms of competitors, but the hotel rooms were the
7 same and similarly priced.

8 86. Defendants' conduct, misrepresentations and omissions were likely to
9 mislead a reasonable consumer.

10 87. Plaintiff and the Class relied on Defendants' misrepresentations and
11 omissions and but for Defendants' violations, would not have booked a room at
12 Defendants' hotels. Therefore, Plaintiff and the Class have suffered injury in fact and lost
13 money as a direct and proximate result of Defendants' conduct.

14 88. Accordingly, Plaintiff, on behalf of himself and all others similarly situated,
15 seeks equitable relief, in the form of an order requiring Defendants to refund to Plaintiffs
16 and the Class all monies in relation to Defendants' assessment of resort fees and, in
17 addition, an order requiring Defendants to inform the consuming public of the true price
18 of booking a room at Defendants' hotels.

19 **THIRD CAUSE OF ACTION**

20 **(Violation of California Consumer Legal Remedies Act,**

21 **California Civil Code § 1750, et seq.)**

22 89. Plaintiff incorporates and re-alleges each and every allegation contained
23 above as if fully set forth herein.

24 90. Plaintiff brings this claim individually and on behalf of the class.

25 91. This action is brought pursuant to the Consumer Legal Remedies Act (the
26 "Act").

27 92. Defendants are "persons" as defined by California Civil Code § 1761(c).

28 93. Plaintiff and members of the Class are "consumers" within the meaning of

1 California Civil Code § 1761(d).

2 94. The hotel rooms and their booking are “goods” within the meaning of the
3 Act.

4 95. Defendants violated and continue to violate the Act by engaging in the
5 following practices proscribed by California Civil Code § 1770(a) in transactions with
6 Plaintiff and the Class, which were intended to result in, and did result in, the booking of
7 hotel rooms at Defendants’ hotels:

8 (5) Representing that goods or services have . . . characteristics . . . [or]
9 benefits . . ., which they do not have;

10 (7) Representing that goods or services are of a particular standard [or]
11 quality . . . if they are not;

12 (8) Disparaging the goods, services, or business of another by false or
13 misleading representation of fact;

14 (9) Advertising goods or services with intent not to sell them as
15 advertised;

16 96. Plaintiff requests that this Court enjoin Defendants from continuing to
17 employ the illegal methods and practices alleged herein and grant restitution and
18 disgorgement pursuant to California Civil Code § 1782(d).

19 97. Pursuant to § 1782 of the Act, Plaintiff notified Defendants in writing by
20 certified mail of the particular violations of § 1770 and demanded that it correct the
21 problems associated with the actions detailed above and give notice to all affected
22 consumers of Defendants’ intent to so act. Defendants failed to respond to Plaintiff’s
23 letter or agree to rectify the problems identified and give notice to all affected consumers
24 within 30 days of the date of written notice pursuant to § 1782 of the Act. Therefore,
25 Plaintiff further seeks claims for actual, punitive and statutory damages, as appropriate
26 against Defendants.

27 98. Pursuant to § 1780(d) of the Act, attached hereto as Exhibit A is the affidavit
28 showing that this action has been commenced in the proper forum.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

1. Certifying the Class as requested herein;
2. Awarding Plaintiff and the proposed Class members damages;
3. Awarding restitution and disgorgement of Defendants’ revenues to Plaintiff and the proposed Class members;
 - a. Enjoining Defendants from continuing the unlawful practices as set forth herein and directing Defendants to identify, with Court supervision, victims of its conduct and pay them all money it is required to pay; and
 - b. Ordering Defendants to engage in a corrective advertising campaign;
4. Awarding injunctive relief as permitted by law or equity, including enjoining;
5. Awarding statutory and punitive damages, as appropriate;
6. Awarding attorneys’ fees and costs; and
7. Providing such further relief as may be proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury of all issues so triable.

DATED: June 21, 2018

Respectfully submitted,

/s/ Todd Carpenter
**CARLSON LYNCH SWEET
KILPELA & CARPENTER,
LLP**
Todd D. Carpenter (CA 234464)
1350 Columbia Street, Suite 603
San Diego, California 92101
Telephone: (619) 756-6994
Facsimile: (619) 756-6991
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Armando Samaneigo, on behalf of himself and all others similarly situated
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
Todd D. Carpenter, Carlson Lynch Sweet Kilpela & Carpenter LLP
1350 Columbia Street, Ste. 603
San Diego, CA 92101

DEFENDANTS
Omni Hotels Management Corporation, Omni Hotels Corporation, and TRT Development Company
County of Residence of First Listed Defendant Delaware
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
'18CV1372 L BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
25 USC section 1332(d)(2); 28 USC section 1391
Brief description of cause:
Violation of false advertising, violation of the unfair competition law, violation of the consumers legal remedies act

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 06/21/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Todd Carpenter

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT A

**CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP**

Todd D. Carpenter (CA 234464)
1350 Columbia St., Ste. 603
San Diego, California 92101
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Facsimile: (619) 756-6991
tcarpenter@carlsonlynch.com

*Attorneys for Plaintiff
and Proposed Class Counsel*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ARMANDO SAMANIEGO, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

OMNI HOTELS MANAGEMENT
CORPORATION, OMNI HOTELS
CORPORATION, and TRT
DEVELOPMENT COMPANY,

Defendants.

Case No: '18CV1372 L BGS

**DECLARATION IN SUPPORT OF
JURISDICTION**

I, Todd D. Carpenter, declare under penalty of perjury the following:

1. I am an attorney duly licensed to practice before all of the courts in the State of California. I am a partner at Carlson Lynch Sweet Kilpela & Carpenter, LLP, and the counsel of record for Plaintiff in the above-entitled action.

2. Defendants Omni Hotels Management Corporation, Omni Hotels Corporation, and TRT Development Company have done and are doing business in the County of San Diego. Such business includes advertising, marketing, promoting, and booking of hotel rooms at their Omni Resorts and/or Hotels.

1 3. Plaintiff Armando Samaniego booked a hotel reservation for a one-night stay
2 at the Omni Resorts La Costa Resort & Spa located in San Diego, California.

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

5 Executed this 21st day of June 2018 in San Diego, California.

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/s/ Todd D. Carpenter
Todd D. Carpenter