

1 Adam Rose (210880)  
adam@frontierlawcenter.com  
2 FRONTIER LAW CENTER  
23901 Calabasas Rd., #2074  
3 Calabasas, California 91302  
Telephone: (818) 914-3433  
4 Facsimile: (818) 914-3433

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**07/31/2020** at 01:37:29 PM  
Clerk of the Superior Court  
By Taylor Crandall, Deputy Clerk

5 Attorney for Plaintiff  
Nantille Charbonnet  
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8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10  
11 NANTILLE CHARBONNET, on behalf of  
herself and all similarly situated individuals,

12 Plaintiff,

13 v.

14 OMNI HOTELS AND RESORTS, OMNI  
15 HOTELS MANAGEMENT CORPORATION,  
and DOES 1 to 10,

16 Defendants.  
17

) Case No. 37-2020-00026981-CU-BT-CTL  
) CLASS ACTION  
)  
) COMPLAINT  
)  
) 1. VIOLATION OF CONSUMER LEGAL  
) REMEDIES ACT  
) 2. VIOLATION OF UNFAIR  
) COMPETITION LAW  
) 3. VIOLATION OF FALSE ADVERTISING  
) LAW  
)  
)

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21 PRELIMINARY ALLEGATIONS

- 22 1. Plaintiff Nantille Charbonnet is a resident of Los Angeles County.  
23 2. Defendant Omni Hotels and Resorts is a business entity form unknown that transacts  
24 business in California.  
25 3. Defendant Omni Hotels Management Corporation is a Delaware corporation that is  
26 authorized to transact business in California.  
27 4. Plaintiff does not know the true names and capacities of Does 1 to 10 and uses fictitious  
28 names. Plaintiff will amend the complaint to insert their true names and capacities pursuant to Code

1 of Civil Procedure section 474 when known.

2 5. Venue is proper in San Diego since the hotel Plaintiff stayed at that led to this action was  
3 the Omni San Diego.

4 6. This case relates to an unlawful trade practice called drip pricing.

5 7. The FTC defines drop pricing as a technique where companies advertise only part of a  
6 product's or service's price but then reveal other charges later as the consumer goes through the  
7 buying process.

8 8. The additional charges can be mandatory charges or fees; here the additional charge was a  
9 resort fee / destination charge that was added to the hotel bills after the nightly price was already  
10 advertised.

11 9. Thus, drip pricing is where the seller (Omni) first appears to describe the full price of a  
12 defined or expected rate, leaving the consumer to discover later the nature of the resort fee /  
13 destination charge.

14 10. Omni charges consumers undisclosed resort fees in addition to the posted rates. Consumers  
15 see a lower advertised base rate for their rooms but end up paying a higher price and are compelled  
16 to pay a higher rate that was not disclosed at the outset.

17 11. By waiting for hotel guests to check in and/or reserve before levying the resort fees, Omni  
18 constrains consumer options and consumers are prevented from obtaining the offer they expected at  
19 the advertised price.

20 12. Regarding Plaintiff, she stayed at Omni San Diego from Sept. 1, 2019 to Sept. 4, 2019.  
21 When Plaintiff checked out of the hotel, she saw that a resort fee was appended to the bill.

22 13. In November 2012, the FTC warned the hotel industry that the advertised price for hotel  
23 rooms should include the resort fees and should be provided to consumers at the outset and not  
24 during the checkout process.

25 14. Omni operates hotels in the following cities in California: San Diego, Los Angeles, Rancho  
26 Mirage, Carlsbad, and San Francisco.

27 15. A CLRA letter was sent to Omni on June 8, 2020 that explained the above violations, but  
28 Omni has not responded to the CLRA letter.

CLASS ACTION ALLEGATIONS

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2 16. The class is defined as the following: “All consumers who paid for rooms at an Omni hotel  
3 in California from four years before filing the case until preliminary approval or judgment,  
4 whichever is earlier.”

5 17. There is a well-defined community of interest in the litigation and the proposed class is  
6 ascertainable from Defendants’ records.

7 a. Numerosity: The potential members of the class are so numerous that joinder of all class  
8 members is impracticable. While the precise number of class members has not been determined at  
9 this time, Plaintiff is informed and believes that the number of class members is in the thousands.

10 b. Commonality: This action involves common questions of law and fact to the class because  
11 the action focuses on the propriety of not disclosing the resort fee / destination charge in the  
12 advertised rate.

13 c. Typicality: Plaintiff’s claims are typical of the claims of the class. Plaintiff was subjected to  
14 the same violations and seeks the same types of damages, restitution, and other relief on the same  
15 theories and legal grounds as those of the members of the class she seeks to represent.

16 d. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the  
17 interests of all members of the class. Plaintiff understands the obligations as class representative  
18 and is willing and able to fulfill them faithfully. Class Representative’s counsel are competent and  
19 experienced in litigating class actions and other complex litigation matters.

20 e. Superiority of Class Action: Class certification is appropriate because a class action is  
21 superior to other available means for the fair and efficient adjudication of this controversy. Each  
22 class member has been damaged and is entitled to recovery. Class action treatment will allow  
23 similarly situated persons to litigate their claims in the manner that is most efficient and  
24 economical for the parties and the judicial system.

25 18. There are common questions of law and fact as to the class that predominate over questions  
26 affecting only individuals, including but not limited to whether the undisclosed resort fee /  
27 destination charges violate the Consumer Legal Remedies Act, the Unfair Competition Law, and  
28 the False Advertising Law.

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FIRST CAUSE OF ACTION  
VIOLATION OF CONSUMER LEGAL REMEDIES ACT  
Against All Defendants

- 19. Plaintiff incorporates by reference paragraphs 1 to 18 of the complaint.
- 20. The resort fee / destination charge imposed by Omni on the class members violates the following provisions of the CLRA:
  - a. (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have.
  - b. (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.
  - c. (9) Advertising goods or services with intent not to sell them as advertised.
- 21. Pursuant to Civil Code section 1781, Plaintiff may maintain this case as a class action.
- 22. Pursuant to Civil Code sections 1780 and 1782, Plaintiff and the class are entitled to actual damages, restitution, injunctive relief, and attorney fees.

SECOND CAUSE OF ACTION  
VIOLATION OF UNFAIR COMPETITION LAW  
Against All Defendants

- 23. Plaintiff incorporates by reference paragraphs 1 to 18 of the complaint.
- 24. Defendants violated the fraudulent prong of the Unfair Competition Law since members of the public are likely to be deceived by drip pricing. (See *Committee on Children’s Television v. General Foods Corp.* (1983) 35 Cal.3d 197, 211.)
- 25. Deception is measured by a reasonable person standard. (*Clemens v. DaimlerChrysler Corp.* (9<sup>th</sup> Cir. 2008) 534 F.3d 1017, 1025.) Plaintiff and the class members were deceived by Omni’s drip pricing as suggested by the FTC.
- 26. Plaintiff and the class are entitled to restitution and injunctive relief under Business and Professions Code section 17203, and attorney fees under Code of Civil Procedure section 1021.5.

1 THIRD CAUSE OF ACTION

2 VIOLATION OF FALSE ADVERTISING LAW

3 Against All Defendants

4 27. Plaintiff incorporates by reference paragraphs 1 to 18 of the complaint.

5 28. Business and Professions Code section 17500 prevents false advertising.

6 29. Defendants intended to perform services, namely their hotels, and publicly disseminated  
7 advertising that contained untrue statements about the room rates.

8 30. Defendants knew the room rate statements were misleading since the advertised room rates  
9 did not disclose the resort fee / destination charge.

10 31. Defendants publicly disseminated the misleading room rates with the intent not to sell the  
11 room rates as advertised since the resort fee / destination charge was not disclosed.

12 32. Pursuant to Business and Profession Code section 17535, Plaintiff and the class are entitled  
13 to injunctive relief and attorney fees under Code of Civil Procedure section 1021.5.

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15 PRAYER

16 All Causes of Action

17 1. Plaintiff is appointed class representative

18 2. Plaintiff's attorneys are appointed class counsel

19 3. Class certification

20 4. Other relief the court deems proper

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22 First Cause of Action

23 1. Actual damages

24 2. Restitution

25 3. Injunctive relief

26 4. Class certification

27 5. Attorney fees

28 6. Other relief the court deems proper

1 Second Cause of Action

2 1. Restitution

3 2. Injunctive relief

4 3. Attorney fees

5 4. Other relief the court deems proper

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7 Third Cause of Action

8 1. Injunctive relief

9 2. Attorney fees

10 3. Other relief the court deems proper


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12 Date: July 29, 2020

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Adam Rose  
Attorney for Plaintiff  
Nantille Charbonnet

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