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5 Attorneys for Defendant
OMNI HOTELS MANAGEMENT CORPORATION
6 and erroneously named Defendant OMNI HOTELS
AND RESORTS
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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

13 Plaintiff,

14 v.

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

17 Defendants.

Case No. '20CV1777 CAB DEB

(San Diego County Superior Court Case
No. 37-2020-00026981-CU-BT-CLT)

**NOTICE OF REMOVAL TO
UNITED STATES DISTRICT
COURT**

18
19 TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
20 DISTRICT OF CALIFORNIA, AND TO PLAINTIFFS AND THEIR ATTORNEY
21 OF RECORD:

22 PLEASE TAKE NOTICE THAT Defendant OMNI HOTELS
23 MANAGEMENT CORPORATION (“OMNI”) and erroneously named Defendant
24 OMNI HOTELS AND RESORTS¹ hereby remove to this Court the state-court
25 action described below, and in support thereof state as follows:

26 Pursuant to 28 U.S.C. Sections 1332, 1441, and 1446, Omni removes the

27 _____
28 ¹ Omni Hotels and Resorts is not a distinct legal entity from Omni Hotels Management
Corporation and has been erroneously named as a party to this lawsuit.

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1 above-referenced action from the Superior Court of the State of California, for the
2 County of San Diego, Case No. 37-2020-00026981-CU-BT-CTL, to the United
3 States District Court, for the Southern District of California. Federal jurisdiction of
4 this action is proper on the basis of diversity jurisdiction. Removal is based on the
5 following grounds:

6 **Timeliness of Removal**

7 1. On July 31, 2020, Plaintiff NANTILLE CHARBONNET (“Plaintiff”),
8 on behalf of herself and all similarly situated individuals, filed a Complaint in the
9 County of San Diego, Superior Court of the State of California, styled *Nantille*
10 *Charbonnet, on behalf of herself and all similarly situated individuals v. Omni*
11 *Hotels and Resorts, Omni Hotels Management Corporation, and Does 1 to 10,*
12 which was assigned Case Number 37-2020-00026981-CU-BT-CJC (“State
13 Action”). A true and correct copy of the Complaint is attached hereto as Exhibit A.

14 2. Omni Hotels and Resorts, which is not a distinct legal entity, was
15 served with a copy of the Summons and First Amended Complaint on August 11,
16 2020. Omni Hotels Management Corporation was served with a copy of the
17 Summons and First Amended Complaint on September 4, 2020. True and correct
18 copies of the Proofs of Service filed in the State Action are attached hereto as
19 Exhibit B.

20 3. Because fewer than thirty (30) days have passed since Omni received
21 notice of or was served with Plaintiff's Complaint, this notice is timely under 28
22 U.S.C. § 1446(b).

23 **Parties**

24 4. Plaintiff is an individual residing in Los Angeles County, California.
25 (Ex. A, ¶ 1). For the purpose of diversity of citizenship, an individual is domiciled
26 where she is a resident. *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088,
27 1090 (9th Cir. 1983). Accordingly, Plaintiff is a resident of California for the
28 purpose of diversity.

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1 5. Omni Hotels Management Corporation is a Delaware Corporation with
2 its principal place of business in Texas. Omni Hotels and Resorts is an
3 erroneously-named defendant and is not a distinct legal entity. Pursuant to 28
4 U.S.C. § 1332(c)(1), “a corporation shall be deemed to be a citizen of every State
5 and foreign state by which it has been incorporated and of the State or foreign state
6 where it has its principal place of business.” Thus, Omni is a citizen of Delaware
7 and Texas for the purpose of diversity.

8 6. The citizenship of the fictitious defendants listed in paragraph four of
9 the Complaint, Does 1 through 10, does not affect removal. Indeed, “[t]he
10 citizenship of fictitious defendants is disregarded for removal purposes and
11 becomes relevant only if and when the plaintiff seeks leave to substitute a named
12 defendant.” *Soliman v. Philip Morris Inc.*, 311 F.3d 966, 971 (9th Cir. 2002) (citing
13 28 U.S.C. § 1441(b)).

14 7. The citizenship of unnamed putative class members is also disregarded
15 for the purposes of diversity. *Holt v. Noble House Hotels & Resort, Ltd.*, No.
16 17CV2246-MMA (BLM), 2018 WL 539176, at *3 (S.D. Cal. Jan. 23, 2018).

17 8. Because Plaintiff is a citizen of California, and because Omni is a
18 citizen of Delaware and Texas, complete diversity of citizenship exists for purposes
19 of 28 U.S.C. § 1332(a).

20 9. When, as here, the plaintiff fails to specify in her complaint the total
21 amount of the monetary relief sought, the defendant is required to provide only a
22 plausible basis that the amount in controversy exceeds the jurisdictional limit set
23 forth in 28 U.S.C. § 1332. *Park v. Jaguar Land Rover N. Am., LLC*, No. 20-CV-
24 00242-BAS-MSB, 2020 WL 3567275, at *2 (S.D. Cal. July 1, 2020). Importantly,
25 “[t]he amount in controversy is simply an estimate of the total amount in dispute,
26 not a prospective assessment of defendant's liability.” *Lewis v. Verizon Commc'ns,*
27 *Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). In other words, “the amount in controversy
28

1 reflects *the maximum recovery the plaintiff could reasonably recover.*” *Arias v.*
2 *Residence Inn by Marriott*, 936 F.3d 920, 927 (9th Cir. 2019) (emphasis added).

3 10. Further, “a court *must* include future attorneys’ fees recoverable by
4 statute or contract when assessing whether the amount-in-controversy requirement
5 is met.” *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 794
6 (9th Cir. 2018) (emphasis added). While a court may not attribute all of the
7 attorneys’ fees incurred in a putative class action to the named-plaintiff, the court
8 must nevertheless include all attorneys’ fees incurred prospectively to determine if
9 the amount in controversy is satisfied, and apportion a pro-rata share of those fees
10 to prosecuting the named-plaintiff’s claims. *See, e.g., Goldberg v. CPC Int’l, Inc.*,
11 678 F.2d 1365, 1366–67 (9th Cir. 1982).

12 11. Here, it is almost certain that, if Plaintiff prevails on her three claims
13 and recovers the relief she seeks, including restitution, actual damages, an award for
14 serving as a class representative, and attorneys’ fees, her recovery is going to
15 exceed the \$75,000 jurisdictional threshold. Significantly, if successful, Plaintiff
16 would be entitled to her attorneys’ fees under Cal. Civ. Code § 1780(e) and Code of
17 Civ. P. 1021.5. As an estimate of the amount of Plaintiff’s attorneys’ fees, in a
18 recently-settled class action for wage and hour violations that did not go to trial or
19 even reach the summary-judgment phase, counsel for Plaintiff, in seeking
20 attorneys’ fees, declared that he spent over 200 hours working on the matter and
21 that his hourly rate was \$894 pursuant to the Laffey Matrix. *See Emma Hart V.*
22 *Marriott International, Inc. et al.*, 8:17-cv-2021-JVS-KES (C.D. Cal. June 17,
23 2019) (Dkt. No.’s 44 and 45). It is reasonable to infer that Plaintiff’s counsel here
24 will, in all likelihood, charge a similar fee. However, because that matter settled
25 relatively early, it is likely that Plaintiff’s counsel will expend more than 200 hours
26 working on this matter. Conservatively, that means that the total attorneys’ fees in
27 this matter will exceed \$200,000. Further, in *Hart*, the individually-named plaintiff
28 sought an award of \$7,500 to serve as the class representative. *Id.* (Dkt. No. 44).

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1 Here, again, it is reasonable to infer that Plaintiff will seek a comparable award if
2 she is named class representative. Viewed in their totality, Plaintiff’s restitution,
3 actual damages, award for serving as class representative, and share of attorneys’
4 fees likely will exceed \$75,000.

5 12. Although Omni denies that it engages in the “drip pricing” scheme
6 alleged by Plaintiff and avers that it will prevail on the merits, it is at the very least
7 plausible that Plaintiff will recover more than \$75,000. Indeed, Plaintiff’s actual
8 damages, restitution, and class award alone may exceed \$75,000. Moreover, when
9 considered in light of Plaintiff’s counsel’s recent declaration that his rate is nearly
10 \$900 and that he spent over 200 hours working on a class action that did not make
11 it to the dispositive motion phase or to trial, it is plausible that fees in this matter
12 will exceed those fees by a wide margin. Plaintiff’s share of those fees will not be
13 insignificant.

14 13. For these reasons, removal of the State Action to this Court under 28
15 U.S.C. §§ 1332, 1441, and 1446 is proper.

16 **Additional Pleadings and Hearings**

17 14. True and correct copies of the Summons, Civil Action Cover Sheet,
18 Notice of Case Assignment and Case Management Conference on Mandatory eFile
19 Cases, and Notice of Confirmation of Electronic Filing are attached as Exhibit C.

20 15. Judge Timothy Taylor has set a Case Management Conference for
21 April 2, 2021 at 9:30 a.m. in Department C-72. See Ex. C. No other hearings or
22 proceedings have been scheduled and no further orders have been entered by the
23 State Court.

24 **Proper Court**

25 16. Removal to this Court is proper under 28 U.S.C. Section 1441(a)
26 because the Superior Court of California, in and for the County of San Diego, is
27 geographically located within this Court’s district and division.
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Notice

17. Omni is serving a copy of this Notice of Removal on all adverse parties (*i.e.* Plaintiff via its counsel) and is filing a copy with the clerk of the state court pursuant to 28 U.S.C. Section 1446(d). A true and correct copy of the Notice to Plaintiff of Removal (without exhibits) is attached to this Notice as Exhibit D.

Signature

18. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. See 28 U.S.C. Section 1446(a).

19. By removing on the basis of diversity jurisdiction, Omni does not concede or make any admissions relating to the merit and/or value of Plaintiff’s allegations, claims or damages, or that they have a valid cause of action. Omni denies many of the material allegations contained in the Complaint.

WHEREFORE, Omni respectfully removes the State Action from the state court in which it was filed to the United States District Court, in and for the Southern District of California, and further request that this Honorable Court issue all necessary orders and process and grant such other and further relief as in law and justice that Omni may be entitled to receive.

Dated: September 10, 2020

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

By: /s/ Jonathan C. Sandler
Jonathan C. Sandler
Attorneys for Defendant
OMNI HOTELS MANAGEMENT
CORPORATION and erroneously
named Defendant OMNI HOTELS
AND RESORTS

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PROOF OF SERVICE

I, Patricia Cormier Herron, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Brownstein Hyatt Farber Schreck, LLP, 2049 Century Park East, Suite 3550, Los Angeles, California 90067. On September 10, 2020, I served a copy of the within document(s):

NOTICE OF REMOVAL TO UNITED STATES
DISTRICT COURT

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- based on a court order or an agreement by the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification listed below.

Adam Rose
FRONTIER LAW CENTER
23901 Calabasas Rd., #2074
Calabasas, CA 91302
Phone: 818.914.3433
Fax: 818.914.3433
Email: adam@frontierlawcenter.com

Attorneys for Plaintiffs
NANTILLE CHARBONNET, on behalf
of herself and all similarly situated
individuals

I am readily familiar with the firm's practice of collection and processing

1 correspondence for mailing. Under that practice it would be deposited with the
2 U.S. Postal Service on that same day with postage thereon fully prepaid in the
3 ordinary course of business. I am aware that on motion of the party served, service
4 is presumed invalid if postal cancellation date or postage meter date is more than
5 one day after date of deposit for mailing in affidavit.

6 I declare under penalty of perjury under the laws of the State of California
7 that the above is true and correct.

8 Executed on September 10 2020, at Los Angeles, California.

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11 Patricia Cormier Herron
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