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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

<p>11 NANTILLE CHARBONNET, on behalf 12 of herself and all similarly situated 13 individuals, 14 15 Plaintiff, 16 17 v. 18 19 OMNI HOTELS AND RESORTS, OMNI 20 HOTELS MANAGEMENT 21 CORPORATION, and DOES 1 to 10, 22 23 Defendants.</p>	<p>) Case No. 3:20-cv-01777-CAB-DEB) CLASS ACTION)) FIRST AMENDED COMPLAINT)) 1. VIOLATION OF CONSUMER) LEGAL REMEDIES ACT) 2. VIOLATION OF UNFAIR) COMPETITION LAW) 3. VIOLATION OF FALSE) ADVERTISING LAW)))</p>
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24 PRELIMINARY ALLEGATIONS

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

1 5. Venue is proper in the Southern District pursuant to Cal. Civ. Code § 1780(d)
2 since the hotel Plaintiff stayed at that led to this action was the Omni San Diego.

3 6. This case relates to a disputed trade practice called drip pricing.

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

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

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

13 10. Omni charges consumers the destination charges in addition to the posted
14 rates. However, the destination charges are not disclosed when the rates are initially
15 disclosed. Instead the consumers see a lower advertised base rate for their rooms but
16 only after further clicking and investigation are the destination charges disclosed.

17 11. The property fees are always arbitrary in their amounts, and they can be
18 arbitrary because they are not based on any objective criteria.

19 12. When hotels like Omni set nightly rates, the rates are usually based what the
20 demand is in the area. Then after the rate is set, then Omni adds any amount it wants
21 as destination charges but deceptively includes the charges with the added taxes.

22 13. The destination charges are set just low enough to that most people would not
23 make the effort to contest them, and Omni knows or should know that.

24 14. Holistically, the destination charges have garnered Omni millions in "ill-gotten
25 gains" since the destination charges never should have been levied.

26 15. If the destination charges had any possible validity, they would have been part
27 of the **entire rate** pursuant to taxes that are appended to invoices, including: 1) City
28 Occupancy Tax, 2) California Tourism Tax, and 3) San Diego Tourism Assessment.

1 16. However, Omni goes a step further and adds the same taxes to the destination
2 charge, yet the destination charges are not taxable under any of the regulations.

3 17. For example, the City Occupancy Tax applies only to “renting” a room and not
4 to amorphous services that are the imaginary components of the destination charges.
5 According to San Diego Municipal Code § 35.0103, the city occupancy tax applies to
6 the “privilege of Occupancy in any Hotel.” Occupancy means the use or possession
7 of a hotel room – it does not mean a collection of vague superfluities.

8 18. Likewise, the San Diego Tourism Assessment relates to hotel occupancy, not
9 unnecessary services as set forth in San Diego Municipal Code § 61.2504.

10 19. For the California Tourism Assessment, it also only applies to occupancy and
11 not to essentially valueless add-ons pursuant to 10 Cal. Code Regs. § 5350.

12 20. The other localities where Omni hotels and resorts are located have similar
13 taxes, and Omni applies that assortment of taxes to the destination charges.

14 According to Omni’s website, the destination charges relate to the following:

15 DESTINATION CHARGE

16 A \$25 per room daily fee will be added to the daily room rate. This fee allows guests to enjoy many services and
17 amenities without having to incur miscellaneous charges. The Omni San Diego Hotel destination charge includes the
18 following (exclusive of taxes):

- 19 • Complimentary Deluxe Wi-Fi
- 20 • Complimentary local and domestic phone calls
- 21 • Complimentary water upon check-in
- 22 • Press reader
- 23 • Welcome beverage at Zumbido
- 24 • Discounted Zoo & Safari Park tickets
- Access to thousands of worldwide digital publications

25 21. None of the above items relate to occupancy in any way, thus they were not
26 subject to the tourism taxes and were not properly charged to consumers.

27 22. Further, each of the items listed as part of the destination charge should have
28 been included in the “base” rate as they do not provide any real added services.

1 23. For example, “complimentary deluxe wi-fi” and “complimentary water”
 2 should not have been charged at all if they were complimentary.

3 24. The destination charges are a vehicle for Omni to charge excessive amounts,
 4 and the only way to discover the nature of the destination charges is to hunt for it.

5 25. For Plaintiff, she wanted to spend the weekend in San Diego with her family
 6 from September 1, 2019 to September 4, 2019.

7 26. Plaintiff looked for hotels on Expedia since the hotel where her family was
 8 staying was booked and was impressed with Omni.

9 27. The prices listed on Expedia are supplied by Omni, as presumably Expedia
 10 does not set Omni’s rates.

11 28. The advertised rate does not include the destination charge. Only after clicking
 12 “price details” would Plaintiff have seen something like the following:

13 **Price details**

14 1 room x 1 night	\$152
15 Taxes	\$23
16 Property fee	\$25
Total	\$200

17 29. Plaintiff, like all similarly situated consumers, was lured into the artificially
 18 lowered rate. As part of the drip pricing fait accompli, the destination charge was not
 19 revealed until after the false price was first represented.

20 30. Essentially, the misrepresentation was Omni’s advertised rate which did not
 21 disclose the destination charge due to drip pricing.

22 31. Omni knew that not disclosing the destination charge until Plaintiff was ready
 23 to buy was a fraudulent omission, since the actual rate was not posted for Plaintiff.

24 32. Omni intended to defraud Plaintiff and the class members since the destination
 25 charges since Omni knew or should have known that withholding the destination
 26 charges until further investigation was made would draw Plaintiff and the class
 27 members in to the lower, false rate.

28 33. Plaintiff justifiably relied on the fraudulent omission since she decided to stay

1 at Omni based on the false advertised rate.

2 34. Plaintiff was damaged by paying a higher price than the initial advertisement.

3 35. In November 2012, the FTC warned the hotel industry that the advertised price
4 for hotel rooms should include the resort fees and should be provided to consumers
5 at the outset and not during the checkout process.

6 36. Omni operates hotels in the following cities in California: San Diego, Los
7 Angeles, Rancho Mirage, Carlsbad, and San Francisco.

8 37. A CLRA letter was sent to Omni on June 8, 2020.

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CLASS ACTION ALLEGATIONS

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

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

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

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

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

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d. Adequacy of Representation: Plaintiff will fairly and adequately represent and
protect the interests of all members of the class. Plaintiff understands the obligations

1 as class representative. Plaintiff’s counsel is competent and experienced in litigating
2 class actions and other complex matters.

3 e. Superiority of Class Action: A class action is superior to other available means
4 for the fair and efficient adjudication of this controversy. Each class member has
5 been damaged and is entitled to recovery. Class action treatment will allow similarly
6 situated persons to litigate their claims in the manner that is most efficient and
7 economical for the parties and the judicial system.

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

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FIRST CAUSE OF ACTION

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VIOLATION OF CONSUMER LEGAL REMEDIES ACT

15

Against All Defendants

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41. Plaintiff incorporates by reference paragraphs 1 to 40 of the complaint.

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42. The resort fee / destination charge imposed by Omni on the class members
18 violates the following provisions of Cal. Civ. Code § 1770(a):

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a. (5) Representing that goods or services have sponsorship, approval,
20 characteristics, ingredients, benefits, or quantities that they do not have or that a
21 person has a sponsorship, approval, status, affiliation, or connection that he or she
22 does not have.

23

b. (7) Representing that goods or services are of a particular standard,
24 quality, or grade, or that goods are of a particular style or model if they are of
25 another.

26

c. (9) Advertising goods or services with intent not to sell them as
27 advertised.

28

43. Pursuant to Cal. Civ. Code §1781, a class action is appropriate.

1 44. Pursuant to Cal. Civ. Code §§ 1780 and 1782, Plaintiff and the class are
2 entitled to actual damages, restitution, injunctive relief, and attorney fees.

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4 SECOND CAUSE OF ACTION
5 VIOLATION OF UNFAIR COMPETITION LAW
6 Against All Defendants

7 45. Plaintiff incorporates by reference paragraphs 1 to 40 of the complaint.

8 46. Defendants violated the unfair, deceptive, untrue, or misleading advertising
9 prong of the Unfair Competition Law since members of the public are likely to be
10 deceived by drip pricing.

11 47. If the advertising is likely to deceive members of the public, the UCL prohibits
12 it even though (a) no member of the public is shown to have actually been deceived,
13 (b) no member of the public detrimentally and reasonably relied upon the
14 advertising, (c) no one sustained any damages, (d) the defendant did not intend to
15 deceive anyone, and (e) the advertising is literally true. *Committee on Children's*
16 *Television v. General Foods Corp.* (1983) 35 Cal.3d 197, 211 (1983).

17 48. The drip pricing stratagem is highly likely to deceive members of the public.

18 49. Plaintiff and the class are entitled to restitution and injunctive relief under Cal.
19 Bus. & Prof. Code § 17203, and attorney fees under Cal. Code Civ. Proc. § 1021.

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21 THIRD CAUSE OF ACTION
22 VIOLATION OF FALSE ADVERTISING LAW
23 Against All Defendants

24 50. Plaintiff incorporates by reference paragraphs 1 to 40 of the complaint.

25 51. Cal. Bus. & Prof. Code § 17500 prohibits false advertising.

26 52. Defendants engaged in drip pricing as part of a plan or scheme with the intent
27 not to sell the hotel services at the price stated therein or as so advertised; this is
28 specifically prohibited under the False Advertising Law.

1 53. Defendants knew the room rate statements were misleading since the
2 advertised room rates did not disclose the resort fee / destination charge; thus, the
3 advertisements are misleading and violate the FAL.

4 54. By initially quoting room rates without the resort fee, Omni deceived
5 consumers about the actual rates.

6 55. Omni misled consumers about the full room rates, but then has claimed that
7 subsequent disclosure after stating the incorrect, lower rate somehow addresses the
8 deceptive advertising.

9 56. However, any subsequent disclosure is inadequate since Omni does not
10 forthrightly explain what the destination charge is – only after significant hunting on
11 the Omni website would a consumer discover the nonessential fiction of what Omni
12 believes comprise destination charges.

13 57. Additionally, Cal. Civ. Code § 1863 requires conspicuous posting of room
14 rates in the hotel rooms, but the destination charges are not posted.

15 58. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff and the class are entitled
16 to injunctive relief and attorney fees under Cal. Code Civ. Proc. § 1021.5.

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18 PRAYER

19 All Causes of Action

- 20 1. Plaintiff is appointed class representative
- 21 2. Plaintiff's attorneys are appointed class counsel
- 22 3. Class certification

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24 First Cause of Action

- 25 1. Actual damages
- 26 2. Restitution
- 27 3. Injunctive relief
- 28 4. Class certification

- 1 5. Attorney fees
- 2 6. Other relief the court deems proper

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4 Second Cause of Action

- 5 1. Restitution
- 6 2. Injunctive relief
- 7 3. Attorney fees
- 8 4. Other relief the court deems proper

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10 Third Cause of Action

- 11 1. Actual damages
- 12 2. Injunctive relief
- 13 3. Corrective advertising
- 14 4. Attorney fees
- 15 5. Other relief the court deems proper

16
17 Date: October 15, 2020

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18
19 /s/ Adam Rose
20 Attorney for Plaintiff
21 Nantille Charbonnet

22 JURY TRIAL DEMANDED

23 Plaintiff demands a jury trial pursuant to Fed. R. Civ. Pro. 38.

24
25 Date: October 15, 2020

FRONTIER LAW CENTER

26 /s/ Adam Rose
27 Attorney for Plaintiff
28 Nantille Charbonnet