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David W. Slayton,
Executive Officer/Clerk of Court,
By G. Cordon, Deputy Clerk

8 Attorneys for Plaintiff,
9 BARBARA GERL, on behalf of herself and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12 **STANLEY MOSK COURTHOUSE—CENTRAL DISTRICT**

13 BARBARA GERL, on behalf of herself and all
14 others similarly situated,

CASE NO. **25STCV09923**

15 Plaintiffs,

CLASS ACTION COMPLAINT FOR:

16 vs.

- 17 1. **UNFAIR BUSINESS PRACTICES, CAL. BUS. & PROF. CODE, § 17200, ET SEQ.**
- 18 2. **VIOLATION OF FALSE ADVERTISING LAW (BUS. & PROF. CODE § 17500, ET SEQ.)**
- 19 3. **BREACH OF CONTRACT**
- 20 4. **FRAUDULENT MISREPRESENTATION (INTENTIONAL MISREPRESENTATION)**
- 21 5. **NEGLIGENT MISREPRESENTATION; AND**
- 22 6. **UNJUST ENRICHMENT / RESTITUTION (QUASI-CONTRACT)**

23 SHERATON OPERATING, LLC, a Delaware
24 limited liability company; MARRIOT
25 INTERNATIONAL, INC., a Delaware
26 corporation; and DOES 1 through 100,
27 inclusive,

28 Defendants.

DEMAND FOR JURY TRIAL

1 Plaintiff BARBARA GERL, on behalf of herself and all others similarly situated
2 (hereinafter referred to as “Plaintiff”) hereby complain and allege as follows based on personal
3 knowledge as to herself, on the investigation of her counsel, and on information and belief as to all
4 other matters. Plaintiff believes that substantial evidentiary support will exist for the allegations
5 set forth in this complaint, after a reasonable opportunity for discovery.

6 **INTRODUCTION AND SUMMARY OF CLAIMS**

7 1. Plaintiff BARBARA GERL, was and is an individual, residing in County of Los
8 Angeles, State of California.

9 2. Plaintiff is informed and believes that, at all times mentioned herein, defendant
10 SHERATON OPERATING, LLC (“Sheraton”) was and is a Delaware limited liability company
11 doing business in the County of Orange, State of California.

12 3. Plaintiff is informed and believes that, at all times mentioned herein, defendant
13 MARRIOT INTERNATIONAL INC. (“Marriot”) was and is a Delaware corporation doing
14 business in the County of Orange, State of California.

15 4. This is a consumer class action on behalf of hotel guests who were deceived and
16 overcharged by a bait-and-switch pricing scheme at the Resort at Pelican Hill (“Pelican Hill”),
17 located at 22701 S Pelican Hill Rd South, Newport Coast, CA 9265, a luxury hotel in Orange
18 County, California. Plaintiff, a recent guest at Pelican Hill, ordered in-room dining based on prices
19 displayed on her hotel room’s television menu. Unbeknownst to her, Pelican Hill (owned by **PH**
20 **Finance LLC** and operated by **Marriott International, Inc.** and **Sheraton Operating LLC**,
21 collectively “Defendants”) was actually charging higher prices than those advertised on the TV
22 menu.

23 5. On or about March 30, 2025, and April 1, 2025, Plaintiff ordered meals through
24 room service after viewing the menu and prices shown on her in-room TV. However, when the
25 charges appeared on her hotel bill, she discovered that the prices charged for the items were
26 **greater** than the prices shown on the TV menu. Pelican Hill had provided a QR code in the room
27 linking to a digital menu with higher prices, but **no clear disclosure** was ever made to guests that
28 the prices on the TV menu were outdated or lower than the actual prices being charged. In other

1 words, Defendants advertised one price to guests but secretly charged another, higher price—only
2 revealing the discrepancy on the final bill.

3 6. Plaintiff brings this lawsuit to hold Defendants accountable for this deceptive and
4 unfair practice. The Complaint seeks relief for Plaintiff and all similarly situated guests who,
5 during the relevant period, relied on Defendants’ in-room menu pricing and were **overcharged**.
6 Plaintiff alleges that Defendants’ conduct violates California’s consumer protection statutes,
7 breaches their contractual obligations, and constitutes fraud and unjust enrichment. Plaintiff seeks
8 injunctive relief to stop the misleading pricing scheme (and require price parity or clear disclosure
9 of any price differences), restitution of all overcharges, actual damages, punitive damages for the
10 fraud-based claims, and attorneys’ fees as allowed by law.

11 7. Defendants Marriott International, Inc. and Sheraton Operating LLC are Delaware
12 entities with their principal places of business in Bethesda, Maryland. Marriott is one of the
13 world’s largest hotel companies and, at all relevant times, was doing substantial business in
14 California. Sheraton Operating LLC is a wholly owned subsidiary of Marriott that also operated
15 the Resort at Pelican Hill. Together, these entities managed Pelican Hill and were responsible for
16 its policies and practices, including the in-room dining services and pricing at issue in this case.

17 8. Plaintiff is ignorant of the true names and capacities of defendants sued as DOES 1
18 through 100, inclusive, and therefore sues these defendants by fictitious names. DOES 1-100 are
19 individuals, subsidiaries, affiliates, or other entities who participated in, directed, or are
20 responsible for the wrongful conduct alleged. Plaintiff will amend this Complaint to allege their
21 true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis
22 alleges, that at all relevant times each Defendant (including Does) was the agent, servant,
23 employee, or representative of each other Defendant, and was acting in the course and scope of
24 such agency or employment, and that all acts alleged herein were duly authorized or ratified by
25 each remaining Defendant.

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1 **JURISDICTION AND VENUE**

2 9. This Court has subject matter jurisdiction over this action. Plaintiff’s claims arise
3 under California law (including the Business & Professions Code and Civil Code) and seek relief
4 well within the jurisdiction of the Superior Court. The amount in controversy for Plaintiff and the
5 Class exceeds the jurisdictional minimum of this Court, and Plaintiff seeks public injunctive relief
6 and other remedies that this Court is empowered to grant. This is an unlimited civil case under
7 California Code of Civil Procedure § 88, as the amount in controversy for the Class, in the
8 aggregate, exceeds \$35,000.

9 10. Venue is proper in the Superior Court of California, County of Los Angeles
10 pursuant to Code of Civil Procedure §§ 395(a) and 395.5 because Defendants Marriott
11 International, Inc. and Sheraton Operating LLC operate multiple hotels in Los Angeles County,
12 transact substantial business within Los Angeles County.

13 11. This Court has personal jurisdiction over Defendant Marriott International, Inc.
14 because Marriott conducts extensive business operations in California, operates multiple hotels in
15 California (including Pelican Hill), and committed the unlawful acts at issue in California.
16 Defendant has purposefully availed itself of the privileges of conducting business in California
17 and has sufficient minimum contacts such that the exercise of jurisdiction is fair and reasonable.
18 Moreover, Defendant has registered with the California Secretary of State to do business in
19 California and can be found in this State.

20 12. The claims asserted in this Complaint arise from conduct that occurred in
21 California and affected consumers in California. The wrongful acts and practices were
22 orchestrated at a California hotel. California has a strong interest in applying its consumer
23 protection and contract laws to deter such misconduct and protect consumers within the state. To
24 the extent any choice-of-law analysis is required, California law governs the claims of all Class
25 members, because the relevant transactions occurred in California or were subject to uniform
26 policies devised by Defendant for its California operations.

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1 FACTUAL BACKGROUND

2 13. Pelican Hill is a luxury resort where guests expect honesty and transparency in the
3 services provided. In each guest room, Pelican Hill provides information about its amenities,
4 including the availability of in-room dining (room service). At the time of Plaintiff's stay, the
5 room's television offered an interactive menu or on-screen listing of food and beverage items
6 available for order, along with their prices. This **TV menu** is a form of advertisement and
7 communication by the hotel to guests, meant to inform them of their dining options and prices.
8 Many guests, including Plaintiff, reasonably rely on the posted in-room menu prices when
9 deciding whether to order room service and what items to order.

10 14. On March 30, 2025 and April 1, 2025, while staying as a guest at Pelican Hill,
11 Plaintiff Barbara Gerl decided to order dinner via room service. Using the in-room television
12 interface, Plaintiff browsed the menu and selected certain items (for example, an appetizer,
13 breakfast, entrée and a dessert). The TV menu displayed specific prices for each selected item.
14 Relying on those displayed prices, Plaintiff placed her order through the hotel's in-room dining
15 system. At no point during the ordering process was Plaintiff alerted that the actual price she
16 would be charged might be higher than what was shown on the TV menu.

17 15. Plaintiff noticed that the prices charged for her room service items were **higher**
18 than the prices she had seen on the TV menu. For instance, the TV menu showed the entrée priced
19 at \$20, the bill showed she was charged \$28 for that entrée. Moreover, for numerous items that
20 Plaintiff ordered, the price on the TV Menu was less than the price that Plaintiff was charged.
21 Apparently the **QR code** card in the room or on the bill that, when scanned with a smartphone, led
22 to a **digital menu**. This digital menu listed the room service items at the higher prices (matching
23 the amounts on her bill). In other words, Pelican Hill had updated its menu prices on the digital
24 platform, but **failed to update the in-room TV menu or clearly warn guests** that the TV menu
25 prices were no longer accurate.

26 16. At no time before or during Plaintiff's order did Defendant provide a clear and
27 conspicuous disclosure that the prices on the TV menu were outdated or differed from current
28 prices. There was no pop-up or on-screen notice on the TV menu indicating that guests should

1 check the QR code for current prices. The existence of a QR code link to a digital menu was not
2 accompanied by any warning that the prices might differ. Plaintiff (and most guests) would have
3 no reason to suspect that the hotel's own in-room menu was misleading or incorrect. By
4 displaying one price to guests on the TV and then charging a higher price, Defendant effectively
5 tricked guests into ordering under false pretenses.

6 17. Upon information and belief, Defendants **knew or should have known** that the
7 prices displayed on the in-room TV menus were lower than the actual prices being charged. The
8 fact that a QR code was provided linking to updated prices indicates Defendant was aware of the
9 price changes. Rather than synchronizing the TV menu with the current prices or otherwise clearly
10 notifying guests of the difference, Defendant allowed the inconsistent pricing to persist. This
11 inconsistency was likely not an isolated mistake; it appears to be a deliberate or negligent practice
12 to quietly charge more than the advertised in-room price. By doing so, Defendant stood to profit
13 from each unsuspecting guest who relied on the lower displayed price. The difference in price
14 represents extra revenue (an undisclosed markup or fee) pocketed by Defendant at the expense of
15 guests.

16 18. On information and belief, Plaintiff alleges that Defendants were informed of these
17 issues by other guests previously, yet Defendants failed to take appropriate action.

18 19. Plaintiff and Class members were harmed by this practice. Had Plaintiff known the
19 true prices of the room service items (as listed only on the digital menu or otherwise hidden until
20 billing), she would not have ordered as she did, or might have ordered different items, or perhaps
21 chosen to dine elsewhere. Plaintiff was effectively overcharged compared to what she agreed to
22 pay, in that she was charged a total amount exceeding the sum of the prices she saw and relied
23 upon. This overcharge constitutes an economic injury. Even if the price difference for one item
24 might seem modest (for example, a few dollars more per dish), the practice is unlawful and
25 violates consumers' rights to honest information. Moreover, for a hotel of Pelican Hill's caliber,
26 even small markups can add up given the volume of room service orders. Many guests likely
27 never realized they were overcharged, or if they did, they may have thought it was an isolated
28 mistake not worth pursuing. Defendant has thus profited from many such transactions, reaping

1 unjust gains.

2 20. The misconduct described is not unique to Plaintiff. On information and belief,
3 during the applicable time period, numerous of Defendants’ guests who ordered room service were
4 similarly charged higher prices than those displayed on their in-room TV menus. The problem
5 stems from a common course of conduct: Defendant’s failure to update or correct the in-room
6 advertised prices, and its failure to inform guests about the price discrepancy. All such guests were
7 subjected to the same deceptive practice and incurred overcharges as a result. Defendant’s records
8 (such as menu versions, price change logs, billing statements, or customer complaints) will show
9 that this was a systematic issue affecting a class of consumers, not a one-time error.

10 21. Defendant’s actions in maintaining one set of prices on the TV menu and charging
11 another set of higher prices amount to false advertising, unfair competition, and fraud. It is a form
12 of bait-and-switch: the hotel “baits” guests with a lower advertised price to induce them to order,
13 then “switches” to a higher price when it’s time to pay. This practice violates California’s strong
14 public policy against deceptive pricing. California statutes (such as the Consumers Legal
15 Remedies Act, Unfair Competition Law, and False Advertising Law) specifically prohibit
16 advertising goods or services without the intent to sell them as advertised, or advertising prices
17 that do not reflect the true total cost. By charging more than the posted price, Defendant also
18 breached its contracts with guests and obtained money under unfair circumstances. Plaintiff brings
19 the following causes of action to address these violations and to recover relief for herself and the
20 Class.

21 22. Defendants also had exclusive knowledge of the true pricing scheme (i.e., that the
22 actual cost would be higher than the menu prices) and withheld or concealed that information from
23 consumers at the point of sale. Guests like Plaintiff had no ability to know, in the absence of an
24 adequate disclosure, that they would be paying more than the prices shown. Therefore, consumers
25 could not reasonably avoid the harm of being overcharged, and they suffered losses of money as a
26 direct result of Defendants’ misleading conduct.

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CLASS ACTION ALLEGATIONS

23. Plaintiff seeks to represent a class of similarly situated consumers (the “Class”), defined as follows:

*All hotel guests or occupants of **any and all hotels operated by Marriot International Inc. or Sheraton Operating, LLC in California**, during the applicable statute of limitations period, who ordered in-room dining (room service) and were charged more for one or more menu items than the price for those items that was displayed on the in-room television menu.*

24. This period is intended to include all such transactions within the longest applicable limitations period (including four years prior to the filing of this action for certain claims, and three years for certain other claims), up to the date of judgment in this action. **Excluded from the Class** are Defendant and its officers, directors, and employees; any entity in which Defendant has a controlling interest; and any judges presiding over this action (and their immediate family members).

25. **Ascertainability:** The Class members are ascertainable through Defendants’ records and billing data for in-room dining transactions. The identities of Class members and the details of their in-room dining purchases, including the amounts of fees charged, can be determined from Defendants’ databases of guest charges and receipts. Notice can be provided to Class members through these records and through publication.

26. **Numerosity:** While the precise number of Class members is currently unknown to Plaintiff, it is far greater than can be feasibly joined in one action. **Marriot International Inc. or Sheraton Operating, LLC**, have thousands of guest rooms and villas, and over the Class Period, likely thousands of guests have ordered in-room dining and been charged the fees at issue. The Class is therefore sufficiently numerous that joinder of all members is impracticable.

27. **Commonality:** There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. Common questions include, but are not limited to: (a) whether Defendants engaged in a systematic practice of charging undisclosed or insufficiently disclosed fees for in-room dining; (b) whether Defendants’ conduct misled or was likely to mislead reasonable consumers; (c) whether Defendants’

1 imposition of these fees violates California consumer protection statutes such as the Unfair
2 Competition Law and False Advertising Law; (d) whether Defendants' conduct constitutes fraud,
3 negligent misrepresentation, breach of contract, and/or unjust enrichment; (e) whether Class
4 members sustained monetary losses as a result of Defendants' practices, and the proper measure of
5 restitution or damages; and (f) whether injunctive relief is appropriate to enjoin Defendants from
6 continuing the challenged practices.

7 28. **Typicality:** Plaintiff's claims are typical of the claims of the Class she seeks to
8 represent. Plaintiff, like other Class members, was subjected to the same uniform policy of being
9 charged an in-room dining delivery fee and service charge that were not included in the advertised
10 prices of her purchases. Plaintiff suffered economic injury in the form of paying these
11 overcharges, just as all Class members did. Defendants' conduct had similar impacts on Plaintiff
12 and the Class, and Plaintiff's legal claims arise from the same course of conduct (the deceptive fee
13 practice) that gives rise to the claims of the other Class members.

14 29. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Class.
15 Plaintiff has no interests that are antagonistic to or in conflict with the interests of the Class.
16 Plaintiff has retained attorneys experienced in class action litigation and consumer protection law,
17 and they intend to prosecute this action vigorously on behalf of the Class. Plaintiff and her counsel
18 have the financial resources to do so. Plaintiff is committed to seeking a recovery for the Class and
19 pursuing this action to a successful conclusion for the benefit of all Class members.

20 30. **Superiority and Predominance:** A class action is superior to other available
21 methods for the fair and efficient adjudication of this controversy. The harm suffered by each
22 individual Class member (i.e. the overcharge for one or a few room service orders) is relatively
23 small in amount—likely on the order of a few dollars to perhaps tens of dollars per guest. This
24 makes it economically impractical for most individuals to pursue separate legal actions to recover
25 their losses. Absent a class action, Defendant's deceptive practice would likely go unchallenged,
26 and Defendant would be allowed to retain the proceeds of its wrongdoing. Class treatment will
27 permit a large number of similarly situated persons to prosecute their common claims in a single
28 forum simultaneously, efficiently, and without unnecessary duplication of evidence and effort. The

1 class mechanism also avoids the risk of inconsistent judgments that could result from multiple
2 individual suits. Moreover, resolving this dispute through a class action will advance the public
3 interest by deterring deceptive pricing practices on a broad scale. There are no significant
4 difficulties anticipated in managing this case as a class action.

5 31. **Manageability:** There are no significant difficulties likely to be encountered in the
6 management of this class action. The legal and factual issues are straightforward, arising from a
7 standard practice applied uniformly to all Class members. By resolving the common issues in a
8 single class proceeding, the need for duplicate litigation that could result in inconsistent judgments
9 will be avoided. Overall, proceeding as a class action will be an appropriate and efficient means to
10 achieve justice in this case.

11 32. **Common Questions of Law and Fact:** This action involves common questions of
12 law and fact that predominate over any questions affecting only individual class members. These
13 common questions include, but are not limited to, the following:

- 14 • Whether Defendant represented to guests (via the in-room TV menu or other means)
15 that room service menu items were available at certain prices, and then charged higher
16 prices for those items;
- 17 • Whether failing to disclose the price discrepancy or higher actual prices constitutes a
18 misleading or deceptive practice likely to mislead reasonable consumers;
- 19 • Whether Defendant's conduct described herein violated the California Unfair
20 Competition Law (Business & Professions Code § 17200, **et seq.**), the False
21 Advertising Law (Business & Professions Code § 17500, **et seq.**);
- 22 • Whether Defendant's conduct breached its contracts with guests who ordered room
23 service based on the advertised prices;
- 24 • Whether Defendant's conduct constitutes fraudulent misrepresentation, and/or
25 negligent misrepresentation under California law;
- 26 • Whether Defendant was unjustly enriched by charging more than the advertised prices,
27 and whether equity requires restitution of the amounts overcharged;
- 28 • The appropriate measure of damages or restitution owed to Plaintiff and the Class as a

1 result of Defendant’s conduct;

- 2 • Whether Defendant should be enjoined from continuing the alleged deceptive pricing
3 practices, and what specific injunctive relief is appropriate to ensure honest pricing and
4 disclosure;
- 5 • Whether Plaintiff and Class members are entitled to punitive damages due to the
6 fraudulent or malicious nature of Defendant’s conduct.

7 **FIRST CAUSE OF ACTION**

8 **(For Unfair Competition (Bus. & Prof. Code Section 17200) Against Defendants on behalf of**
9 **the Class and DOES 1-100)**

10 33. Plaintiff hereby incorporates paragraphs 1 through 32, as if set forth fully herein
11 and re-alleges each paragraph by reference.

12 34. Defendants’ conduct as described above constitutes unlawful, unfair, and
13 fraudulent business acts or practices within the meaning of California’s Unfair Competition Law
14 (“UCL”), Business & Professions Code § 17200, et seq. The UCL prohibits any business act or
15 practice that is unlawful, unfair, or fraudulent. In this case, Defendant’s practice of displaying one
16 price for room service on the in-room TV menu but charging a higher price on the bill is unlawful,
17 unfair, and fraudulent for multiple reasons:

- 18 • **Unlawful Prong:** Defendant’s acts violate other California laws and regulations, including
19 but not limited to the False Advertising Law (Business & Professions Code § 17500, as
20 detailed in the second cause of action). Each of these violations of separate statutes
21 constitutes an independent unlawful practice under §17200. Additionally, charging more
22 than the advertised price without disclosure may violate California regulatory laws or
23 common law principles against bait-and-switch tactics. By engaging in conduct forbidden
24 by statute, Defendant has committed an “unlawful” business practice.
- 25 • **Unfair Prong:** Defendant’s conduct is “unfair” because it offends established public
26 policy and/or is immoral, unethical, oppressive, and unscrupulous, and it causes injury to
27 consumers that outweighs any purported benefit. California has a strong public policy
28 favoring transparency in pricing and prohibiting hidden charges. Guests were not given

1 any meaningful choice or warning – they were presented with a low price and then forced
2 to pay a higher price after consumption, which is patently unfair. The injury to Plaintiff
3 and Class members (monetary loss and being misled) is substantial, and there is no
4 legitimate justification for Defendant’s practice (other than increasing profits). Consumers
5 could not reasonably avoid the injury because they were not aware of it until after they had
6 been charged. Defendant had far less burdensome alternatives available, such as simply
7 charging the price it advertised or clearly disclosing any price differences upfront. Thus,
8 Defendant’s practice was unfair under the UCL.

- 9 • **Fraudulent Prong:** Defendant’s practice is “fraudulent” in that it is likely to deceive
10 members of the public. A reasonable hotel guest would be deceived into believing that the
11 price shown on the in-room menu is the price they will pay for the service. Defendant’s
12 failure to disclose that actual prices were higher (or to adequately alert guests to consult
13 another source for current prices) was a material omission. Guests relied on the in-room
14 advertised prices, and a reasonable person would have been misled by the discrepancy, as
15 Plaintiff was. The fraudulent nature of this scheme is evidenced by the fact that the truth
16 was only revealed after the purchase was complete and the charge posted. Such post-
17 purchase revelation indicates an intent to deceive or at least a conscious decision not to
18 inform customers beforehand.

19 35. As a direct and proximate result of Defendant’s unlawful, unfair, and fraudulent
20 conduct, Plaintiff and the Class have suffered injury in fact and lost money or property.
21 Specifically, they paid more for the room service items than they should have paid (more than the
22 advertised price). The difference between the charged amount and the advertised amount
23 constitutes economic damage to each Class member. Had the prices been as advertised, or had the
24 truth been disclosed, Plaintiff and Class members either would not have made the purchase or
25 would have paid the advertised price (and no more). They were thus denied the benefit of the
26 bargain and were financially harmed by Defendant’s practices.

27 36. Pursuant to Business & Professions Code § 17203, Plaintiff, on behalf of herself
28 and the Class, seeks equitable relief in the form of restitution and injunctive relief. Plaintiff seeks

1 it unlawful for any business to disseminate any statement concerning goods or services that is
2 untrue or misleading, and which is known, or by the exercise of reasonable care should be known,
3 to be untrue or misleading.

4 41. Defendants violated Business & Professions Code § 17500 by advertising and
5 presenting the prices of their in-room dining services in a manner that was false, misleading, and
6 likely to deceive the public. Specifically, Defendants, through their in-room dining menus and
7 ordering system, represented that the cost of food and beverage items was a certain price (e.g., as
8 listed on the menu), while failing to disclose adequately that additional mandatory fees (the
9 service charge and delivery fee) would be added on top of those prices. These representations gave
10 consumers the false impression that the listed prices were the full prices they would pay, aside
11 from tax.

12 42. Defendants' price representations and omissions were material and likely to
13 deceive a reasonable consumer. A reasonable consumer cares about the total price he or she will
14 have to pay for a service, and would consider it important to know about any mandatory fees
15 upfront. By hiding the service charge and delivery fee from the initial price presentation,
16 Defendants misled consumers about the true cost of the in-room dining services.

17 43. At the time of making or disseminating these advertisements and statements,
18 Defendants knew or reasonably should have known that they were false or misleading. Defendants
19 had full knowledge of their pricing structure and knew that customers would be charged the extra
20 fees. The failure to clearly disclose these fees was at least negligent, if not intentional, and in
21 violation of Defendants' duty to refrain from misleading advertising.

22 44. As a result of the misleading and false advertising, Plaintiff and the Class have
23 suffered injury in fact and lost money. They paid charges they otherwise would not have paid, or
24 paid more than they otherwise would have, due to Defendants' deceptive advertising practices.

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THIRD CAUSE OF ACTION

(For Fraud/Intentional Misrepresentation Against Defendants on behalf of the Class and DOES 1-100)

45. Plaintiff hereby incorporates paragraphs 1 through 44, as if set forth fully herein and re-alleges each paragraph by reference.

46. Defendants intentionally deceived Plaintiff and the Class by misrepresenting and concealing material facts about the true cost of in-room dining services. Defendants made false representations, in the form of incomplete pricing information, leading consumers to believe that the price of the in-room dining items was only the amount listed on the menu. In other words, Defendants represented to customers that the cost of an in-room dining order was a certain dollar amount when, in fact, Defendants knew that they would charge a significantly higher amount by adding fees.

47. The misrepresentations and omissions by Defendants were material. A reasonable person would consider the existence and amount of additional fees to be an important factor in deciding whether to purchase in-room dining or how much to purchase. By providing a partial disclosure of price (the menu item prices) Defendants materially misled consumers about the true price.

48. Defendants knew, or at the very least recklessly disregarded, that their representations were false and misleading.

49. Plaintiff and Class members reasonably and justifiably relied on Defendant's representations. There was no reason for an ordinary consumer to doubt the truth of the price shown on the official hotel menu provided in-room. Pelican Hill is a reputable resort, and guests trusted that the information it provided was accurate. Plaintiff, in seeing a price on the TV menu, believed that to be the actual price she would be charged. This belief was justified because businesses generally honor their posted prices (and indeed, failing to do so is unusual and unlawful). Plaintiff had no knowledge of the discrepancy nor any easy way to find out the true price prior to ordering (short of scanning a QR code that was not clearly presented as a price update, which she had no reason to do since she already saw a price). Plaintiff's reliance is

1 evidenced by the fact that she proceeded to order the food, incurring an obligation to pay,
2 specifically because she thought the price was acceptable as shown. If she had known the price
3 was higher, her decision might have been different. Therefore, she relied on the false information
4 to her detriment.

5 50. Plaintiff and Class members were harmed by their reliance on Defendant's
6 misrepresentations. The harm is the financial loss of the overcharges and any additional amounts
7 paid. If Plaintiff had known the truth, she either would not have ordered (thus saving the entire
8 cost of the meal), or she could have confronted the issue and insisted on being charged the correct
9 price upfront. By being misled, she lost the opportunity to avoid the overcharge. The difference
10 between what she thought she would pay (advertised price) and what she actually paid (inflated
11 price) is an out-of-pocket loss directly caused by the fraud. Additionally, being cheated in this
12 manner caused annoyance, frustration, and a sense of betrayal, though the primary damage sought
13 is economic.

14 51. Defendant's actions constitute fraud and also imply malice or oppression in that
15 Defendant willfully deceived consumers for profit. Such conduct is despicable and done with a
16 conscious disregard of consumers' rights. Under California Civil Code § 3294, Plaintiff and the
17 Class seek punitive damages against Defendant in an amount sufficient to punish and make an
18 example of it. The fraudulent scheme here was not an honest mistake; it appears to be a calculated
19 decision to boost revenue by misleading guests. Considering Defendant Marriott is a large
20 corporation, the punitive damages should be set at a level that will deter Defendant and others
21 from engaging in similar conduct in the future and will punish Defendant for its wrongdoing.

22 52. To the extent Defendant might argue that this fraud claim is barred by the economic
23 loss rule (because the dispute involves a contract and monetary loss), Plaintiff notes that the
24 economic loss rule does not apply to fraud claims where the fraud is independent of the contract
25 breach. Here, Defendant's fraudulent misrepresentations induced Plaintiff to enter the contract on
26 particular terms. This fraudulent inducement and deceptive conduct is a tort independent of any
27 contract. Therefore, Plaintiff is entitled to pursue fraud remedies (including punitive damages) in
28 addition to contract remedies. In the alternative, if needed, Plaintiff pleads this cause of action as

1 fraud in the inducement of the contract.

2 53. Accordingly, Plaintiff and the Class seek compensatory damages for the fraud
3 (which may overlap with the contract damages, essentially the overcharges), and punitive damages
4 as appropriate. They also seek any other relief allowable for fraud, such as rescission if desired
5 (for example, voiding the transaction and refunding all money paid, which in effect is similar to
6 restitution). Plaintiff further seeks any incidental or consequential damages caused by the fraud.
7 Additionally, Plaintiff may seek attorneys' fees and costs associated with the fraud claim if
8 applicable law or an agreement allows (for instance, under the tort of another doctrine or if a
9 private attorney general theory is invoked for the public harm of fraud).

10 54. Defendants acted with malice, oppression, or fraud, in that their conduct was
11 willful and done with the intent to mislead and defraud consumers for financial gain. Defendants'
12 acts were despicable and conducted in conscious disregard of the rights of consumers.
13 Accordingly, Plaintiff and the Class seek an award of punitive and exemplary damages against
14 Defendants in an amount sufficient to punish and deter such conduct, according to proof at trial.

15 **FOURTH CAUSE OF ACTION**

16 **(For Negligent Misrepresentation Against Defendants on behalf of the Class and DOES 1-**
17 **100)**

18 55. Plaintiff hereby incorporates paragraphs 1 through 54, as if set forth fully herein
19 and re-alleges each paragraph by reference.

20 56. Defendants owed a duty to provide truthful and non-misleading information to their
21 guests regarding the prices of services offered, especially when those guests are making
22 purchasing decisions based on the information provided by Defendants. Defendants breached this
23 duty by negligently misrepresenting the prices of their in-room dining services.

24 57. Defendants, in their communications of in-room dining prices (such as menus and
25 representations to guests), made misrepresentations of material fact by stating or indicating that
26 the cost of the in-room dining items was the listed menu price. These representations were not
27 accurate or complete, and they gave a false impression of the actual cost.

28 58. As described, Defendant provided false price information to Plaintiff and Class

1 members via the in-room TV menu. These were representations of existing fact (the current price
2 of the menu items). The representations were false because the actual price being charged was
3 higher.

4 59. If Defendant did not intentionally deceive (which Plaintiff does allege it did), then
5 at minimum Defendant lacked reasonable grounds for believing the price representations were true
6 at the time they were made. A company operating a hotel should exercise reasonable care to
7 ensure that the prices it advertises to guests are accurate. Failing to update the in-room menu after
8 raising prices, or failing to warn guests of the discrepancy, constitutes a lack of reasonable care. It
9 was negligent to allow guests to rely on outdated pricing information. Marriott, as a sophisticated
10 hotel operator, either knew or should have known of the need to keep all pricing displays
11 consistent. Its failure to do so—if not willful—was due to negligence in oversight,
12 communication, or management of its pricing systems. Even if the misrepresentation arose from a
13 mistake or corporate miscommunication (and not deliberate fraud), that mistake breached the duty
14 of care Marriott owed to its guests to provide truthful information about charges.

15 60. In a negligent misrepresentation claim, the defendant must intend to induce reliance
16 or at least know that the plaintiff would likely rely on the information. Here, Defendant provided
17 the price info to guests precisely because it expected them to rely on it when making purchase
18 decisions. Even if Marriott’s corporate intent was not to defraud, Marriott certainly intended that
19 guests see the menus and use that information. The hotel could reasonably foresee that customers
20 would rely on the displayed prices (indeed, that’s the purpose of a menu). Thus, Defendant, in the
21 course of its business, supplied false information for the guidance of others (guests) in their
22 transactions, and intended or knew that guests would rely on it.

23 61. Plaintiff and Class members actually and justifiably relied on the price information,
24 as already explained. Whether the misrepresentation was intentional or negligent does not change
25 the fact that reliance occurred and was reasonable. Plaintiff believed the price to be true and had
26 no reason to suspect negligence on Defendant’s part.

27 62. Defendant’s negligent misrepresentation was a substantial factor in causing harm to
28 Plaintiff and the Class. But for the false price info, Plaintiff would not have been overcharged. The

1 causal link is direct: negligent misinformation about price led to an underestimation of cost and an
2 overpayment.

3 63. Plaintiff and the Class have been damaged in an amount to be proven, consisting at
4 least of the excess charges paid due to the misinformation. Essentially, they paid money that, had
5 accurate information been provided, they would not have paid. This monetary loss is recoverable
6 as damages for negligent misrepresentation. Additionally, any consequential losses or expenses
7 (for example, costs incurred in seeking refunds or contesting charges) can be claimed if applicable,
8 though the primary damages are the overcharge amounts.

9 64. Unlike intentional fraud, negligent misrepresentation does not typically warrant
10 punitive damages; however, Plaintiff reserves the right to argue for any form of relief allowed by
11 law if Defendant's conduct, though deemed negligent in this cause, borders on gross negligence or
12 was accompanied by reckless disregard for consumers' rights. In any case, Plaintiff seeks
13 compensatory damages for the Class under this claim.

14 65. Furthermore, Plaintiff may seek interest on the sums wrongfully obtained and any
15 equitable relief as the court sees fit (though legal damages are the focus here). Attorneys' fees are
16 not generally available for negligent misrepresentation unless a statute or contract provides for
17 them; however, if this claim overlaps with work that enforces an important public right (for
18 example, stopping widespread misinformation to consumers), a case might be made under CCP §
19 1021.5, but primarily the UCL claims cover fee-shifting. Thus, the main goal in this cause is to
20 ensure a remedy lies for the misrepresentations even if they were not intentional.

21 66. As a direct and proximate result of Defendants' negligent misrepresentations,
22 Plaintiff and the Class have been damaged in that they paid more for the in-room dining services
23 than they would have if truthful information had been provided. Plaintiff and Class members are
24 entitled to recover damages in an amount to be determined, which represents the difference
25 between the amount they paid and the amount they should have been charged had no
26 misrepresentation occurred.

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FIFTH CAUSE OF ACTION

(For Unjust Enrichment / Restitution Against Defendants on behalf of the Class and DOES 1-100)

67. Plaintiff hereby incorporates paragraphs 1 through 66, as if set forth fully herein and re-alleges each paragraph by reference.

68. By engaging in the conduct described above, Defendants have unjustly received and retained benefits at the expense of Plaintiff and the Class. Defendants have collected substantial monies from Plaintiff and Class members by charging the undisclosed in-room dining fees and surcharges, thereby profiting from their misleading conduct.

69. Defendant has obtained a benefit from Plaintiff and Class members in the form of monies paid that, in equity and good conscience, Defendant should not be allowed to keep. Specifically, Defendant received the additional amounts charged over and above the advertised prices — the overcharge portion of each transaction. For example, if Plaintiff paid \$60 for food that was advertised as \$50, Defendant received a \$10 benefit unjustly. Across the Class, Defendant has collected a substantial sum of money through this practice of overcharging beyond the represented price.

70. Under principles of equity and good conscience, Defendants should not be permitted to retain the benefits they obtained through wrongful and deceptive means. It would be unjust and inequitable for Defendants to keep the money obtained from Plaintiff and the Class as a result of their hidden fee practices, because those fees were obtained by misleading consumers and violating California law and public policy.

71. Plaintiff and the Class seek restitution and disgorgement of the ill-gotten gains Defendants have obtained as a result of their unjust enrichment. This includes restitution for the full amount of the service charges, delivery fees, or other overcharges that Defendants collected from Plaintiff and each Class member. Plaintiff, on behalf of the Class, seeks an order requiring Defendants to disgorge these wrongful profits and return them to the affected Class members.

72. In the alternative, Plaintiff and the Class seek the imposition of a constructive trust upon and/or an order of restitution from Defendants in an amount equal to the unjust benefits

1 obtained by Defendants. The monies wrongfully obtained by Defendants should be held in a
2 constructive trust for the benefit of Plaintiff and Class members, or otherwise returned to Plaintiff
3 and Class members, to avoid unjust enrichment and to achieve restitutionary disgorgement.

4 **SIXTH CAUSE OF ACTION**

5 **(For Breach of Contract Against Defendants on behalf of the Class and DOES 1-100)**

6 73. Plaintiff hereby incorporates paragraphs 1 through 72, as if set forth fully herein
7 and re-alleges each paragraph by reference.

8 74. Defendants entered into contractual agreements with Plaintiff and Class members
9 regarding the provision of in-room dining services. The contract was formed at the time Plaintiff
10 and Class members requested and agreed to purchase food and beverage items from the in-room
11 dining menu, and Defendants accepted that offer by agreeing to provide the ordered items in
12 exchange for payment. The terms of the contract included the prices of the menu items (as listed)
13 plus applicable sales tax, and any additional charges that were properly disclosed and agreed upon
14 at the time of the transaction.

15 75. Plaintiff and Class members did all, or substantially all, of the significant things
16 that the contract required of them. They requested the food and/or beverage items and paid the
17 amounts they were billed by Defendants, even including the extra fees that were added.

18 76. Defendants breached the contract by charging and collecting amounts in excess of
19 the agreed-upon price for the in-room dining items, without proper disclosure or consent.
20 Defendants failed to deliver the service at the price that was promised (i.e., the listed price),
21 instead unilaterally increasing the price after the contract was formed.

22 77. Neither Plaintiff nor Class members consented to the imposition of the additional
23 service charges and fees as part of the contract. Any purported disclosure of these fees was not
24 conspicuous or clear enough to become part of the basis of the bargain. Therefore, Plaintiff and the
25 Class had a reasonable expectation that the price they agreed to (the sum of the listed item prices
26 and tax) was the price they would pay, and Defendants violated that expectation by adding
27 charges.

28 78. As a direct and proximate result of Defendants' breach of contract, Plaintiff and

1 Class members sustained damages. They paid more money than they should have under the
2 contract—specifically, the amount paid for the in-room dining service. Plaintiff and the Class are
3 entitled to recover compensatory damages in an amount to be proven at trial, which would put
4 them in the position they would have been in had Defendants performed the contract as promised
5 (i.e., had Defendants charged only the advertised).

6 **WHEREFORE**, Plaintiff prays for relief and judgment in favor of herself and the Class as
7 follows:

- 8 1. For an order certifying that the action be maintained as a class action, that Plaintiff
9 be designated the class representative, and that undersigned counsel be designated as class
10 counsel.
- 11 2. For a declaration that Defendants’ acts and practices as alleged herein are unlawful
12 and deceptive, and that Defendants have engaged in the wrongful conduct alleged;
- 13 3. For injunctive relief prohibiting Defendants from continuing the unlawful, unfair,
14 and/or fraudulent business acts or practices described herein; specifically, an order enjoining
15 Defendants from advertising or charging for in-room dining in a manner that does not include all
16 mandatory fees in the advertised price or that fails to adequately disclose such fees to consumers
17 prior to purchase;
- 18 4. For an award of restitution and disgorgement of all amounts unlawfully obtained by
19 Defendants from Plaintiff and Class members, specifically overcharges paid by Class members as
20 a result of Defendants’ misconduct, according to proof;
- 21 5. For an award of actual and compensatory damages suffered by Plaintiff and the
22 Class as a result of Defendants’ misconduct, in an amount to be determined at trial (including, at
23 minimum, the amounts of the overcharges paid by each Class member);
- 24 6. For an award of punitive and exemplary damages, in an amount sufficient to punish
25 Defendants and deter similar conduct, to the extent allowed by law, based on Defendants’ willful,
26 malicious, and fraudulent conduct as proven at trial;
- 27 7. For pre-judgment and post-judgment interest at the maximum rate permitted by law
28 on any amounts awarded;

1 8. For an award of reasonable attorneys’ fees and costs of suit incurred herein, as
2 permitted by law (including under Code of Civil Procedure § 1021.5 and any other applicable
3 legal theory for fee shifting);

4 9. For such other and further relief as the Court deems just and proper.
5

6 DATED: April 3, 2025

META LAW GROUP, APC

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8
9 By: /s/ Michael A. Shakouri
10 Michael A. Shakouri, Esq.
11 Attorneys for Plaintiffs,
12 BARBARA GERL, on behalf of herself and all
13 others similarly situated
14

15 **JURY DEMAND**

16 Plaintiff hereby demands trial by jury of all claims against Defendant alleged herein.
17

18
19 DATED: April 3, 2025

META LAW GROUP, APC

20
21
22 By: /s/ Michael A. Shakouri
23 Michael A. Shakouri, Esq.
24 Attorneys for Plaintiffs,
25 BARBARA GERL, on behalf of herself and all
26 others similarly situated
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