

1 Amy B. Alderfer (SBN 205482)
aalderfer@cozen.com
2 COZEN O'CONNOR
1299 Ocean Avenue, Suite 900
3 Santa Monica, CA 90401
Telephone: (310) 393-4000
4 Facsimile: (310) 394-4700

5 Brett N. Taylor (SBN 274400)
btaylor@cozen.com
6 COZEN O'CONNOR
601 S. Figueroa Street, Suite 3700
7 Los Angeles, CA 90017
Telephone: 213.892.7900
8 Facsimile: 213.892.7999

9 Attorneys for Defendant
MARRIOTT INTERNATIONAL, INC.

10
11 **UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13
14 BARBARA SCHAEFER, individually,
and on behalf of all others similarly
15 situated,
16 Plaintiff,
17 vs.
18 MARRIOTT INTERNATIONAL, INC.,
and DOES 1 through 100, inclusive,
19 Defendants.
20

) Case No.
)
) **DEFENDANT MARRIOTT**
) **INTERNATIONAL, INC.'S**
) **NOTICE OF REMOVAL**
)
) [28 U.S.C. § 1332, 1446, AND 1453]

21
22
23
24
25
26
27
28

1 **TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT**
2 **COURT AND COUNSEL OF RECORD FOR ALL PARTIES:**

3 PLEASE TAKE NOTICE that Defendant Marriott International, Inc.
4 (“Defendant” or “Marriott”) hereby removes this action filed in the California
5 Superior Court for the County of Los Angeles (“State Court”) to the United States
6 District Court for the Central District of California (“District Court”) pursuant to 28
7 U.S.C. §§ 1332, 1446, and 1453. Defendant’s removal of this matter is based on the
8 grounds set forth below.

9 **I. BACKGROUND**

10 1. Plaintiff Barbara Schaefer (“Plaintiff” or “Schaefer”) filed suit against
11 Defendant on November 27, 2019 in the Los Angeles Superior Court, case number
12 19STCV42577 (hereinafter the “State Action”). Styled as a class action, the State
13 Action pleads claims against Defendant for Negligence, Battery, Negligent Infliction
14 of Emotional Distress, Intentional Infliction of Emotional Distress, violation of the
15 Americans with Disabilities Act, violation of the Unruh Civil Rights Act, violation of
16 California Health and Safety Code section 19955(a), and violation of Unfair Business
17 Practices (California Business and Professions Code sections 17200-17208). (Exh. A
18 [Complaint] *passim*.) A true and correct copy of Plaintiff’s Complaint is attached as
19 **Exhibit A** to the Declaration of Amy B. Alderfer filed concurrently herewith (the
20 “Alderfer Declaration”). The State Action seeks a nationwide class. (Exh. A ¶ 25.)

21 2. Attached as **Exhibit B** to the Alderfer Declaration is a true and correct
22 copy of the docket and all process, pleadings, and orders in the State Court Action,
23 other than the Complaint which is attached as Exhibit A.

24 3. The State Action asserts claims against Marriott relating to its Courtyard
25 Los Angeles Westside Hotel (the “Courtyard”). The State Action alleges that Plaintiff
26 and others who visited the Courtyard from November 27, 2019 through trial are/were
27

1 exposed to and damaged by chemical substances, including toxic, carcinogenic and/or
2 hazardous air pollutants and particulate matter. (Exh. A, *passim*.)

3 4. Plaintiff seeks damages, injunctive relief, restitution, attorneys' fees,
4 and punitive damages. (Exh. A, ¶ 1-10 *Relief Sought*.)

5 5. Plaintiff served the summons for the State Action on Marriott by mail
6 service on December 3, 2019.¹ (Exh. B.) The Complaint was received by mail on
7 December 5, 2019. As this Notice of Removal is filed within 30 days of the purported
8 service of the State Action Complaint on Defendant, it is timely under 28 U.S.C. §§
9 1446(b) and 1453. *See Murphy Bros. v. Michetti Pipe Stringing, Inc.* 526 U.S. 344,
10 354 (1999).

11 **II. THE COURT HAS SUBJECT MATTER JURISDICTON UNDER CAFA**

12 6. The Court has original jurisdiction over this action under the Class
13 Action Fairness Act ("CAFA"), codified in relevant part in 28 U.S.C. § 1332(d)(2),
14 for the following reasons: (i) any member of a class of plaintiffs is a citizen of a State
15 different from any defendant, (ii) the amount in controversy exceeds \$5,000,000,
16 exclusive of interest and costs, and (iii) the number of members of all proposed
17 plaintiff classes in the aggregate is more than 100. 28 U.S.C. § 1332(d)(5)(B).

18 **A. Diversity of Citizenship Exits.**

19 7. The diversity of citizenship for removal under CAFA is proper when
20 "any member of a class of plaintiffs is a citizen of a State different from any
21 defendant." 28 U.S.C. § 1332(d)(2)(A). Thus, in order to satisfy CAFA's diversity
22 requirement, the party seeking removal need only show that minimal diversity exists,
23 that is, one putative class member is a citizen of a different state than one defendant.
24 *Id.*; see also *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. &*
25 *Serv. Workers Int'l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d 1087, 1090-1091

26
27 ¹ Defendant does not concede that this was proper service.

1 (9th Cir. 2010) (noting that CAFA provides expanded original diversity jurisdiction
2 for class actions meeting the amount in controversy and minimal diversity and
3 numerosity requirements pursuant to 28 U.S.C. § 1332(d)(2)); *Bush v. Cheaptickets,*
4 *Inc.*, 425 F.3d 683, 684 (9th Cir. 2005).

5 8. To establish citizenship for diversity purposes, a natural person must be
6 both (1) a citizen of the United States, and (2) domiciled in the state. *Kantor v.*
7 *Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). “A natural person is
8 deemed to be a citizen of the state where he or she is domiciled, which is where he or
9 she resides with the intention to remain.” *Zavala v. Deutsche Bank Trust Co. Ams.*,
10 2013 U.S. Dist. LEXIS 96719 (N.D. Cal. July 10, 2013) (citing *Kantor*, 704 F.2d at
11 1090 and *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). For
12 purposes of diversity of citizenship, citizenship is determined by the individual's
13 domicile at the time the lawsuit is filed. *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir.
14 1986) (citing *Hill v. Roller*, 615 F.2d 886, 889 (9th Cir. 1980)).

15 9. Plaintiff's Complaint alleges that she “is a natural person who visited
16 and/or patronized the Courtyard. . (Exh. A, ¶ 14.) Plaintiff fails to state the exact
17 location of her citizenship and domicile. Moreover, based on information and belief,
18 Marriott has no record of Plaintiff staying at the Courtyard. (Alderfer Decl. ¶ 4.)

19 10. The Complaint alleges the class to be all persons who visited or visit the
20 Courtyard between November 27, 2019 and the trial date in the matter. (Exh. A, ¶
21 25.)

22 11. A corporation is a citizen of the state where (i) it has been incorporated;
23 and (ii) its principal place of business is located. 28 U.S.C. § 1332(c). The principal
24 place of business for a corporation is determined by the location of its “nerve center,”
25 which includes the location of its headquarters and the location where its “officers
26 direct, control, and coordinate the corporation's activities.” *Hertz Corp. v. Friend*, 559
27 U.S. 77, 78 (2010).

1 12. At all relevant times, Marriott was and is a Delaware corporation with its
2 principle place of business located at 10400 Fernwood Road in Bethesda, Maryland
3 20817.

4 13. Therefore, for diversity of citizenship purposes, Marriott is a citizen of
5 the states of Delaware and Maryland. Defendant is not now, nor ever has been, a
6 citizen and/or resident of the state of California within the meaning citizenship and/or
7 residency relating to the removal of class actions. 28 U.S.C. § 1332(c)(1); *Hertz*, 559
8 U.S. at 97. Defendant is not considered to be a citizen of California for the purposes
9 of determining diversity.

10 14. Based on information and belief, for the month of November 2019, over
11 300 guests were served per day on average at the Courtyard. (Alderfer Decl. ¶ 5.)
12 Based on information and belief, numerous guests have stayed at the Courtyard since
13 November 27, 2019 who are not citizens of or domiciled in Maryland and Delaware
14 (Marriott's states of citizenship). (*Id.*) For example, based on information and belief,
15 guests from numerous states including Arizona, Nevada, and Virginia have stayed at
16 the Courtyard since November 27, 2019. (*Id.*)

17 15. Accordingly, based on information and belief, numerous members of the
18 putative class are a citizen of a different state than Defendant and the minimal
19 diversity requirement is satisfied. 28 U.S.C. § 1332(d)(2)(A).

20 16. For diversity of citizenship purposes, this Court is required to disregard
21 the citizenship of the John Doe(s) and Jane Doe(s) Defendants sued here under
22 fictitious names. 28 U.S.C. § 1441(b)(1).

23 **B. The Size of the Proposed Class Exceeds One Hundred (100)**
24 **Members.**

25 17. According to the Complaint, the proposed class for the personal injury
26 class, the injunctive relief class, and the punitive damages class includes all persons
27 who visited the Courtyard between November 27, 2019 and the trial of this matter.
28

1 (Exh. A, ¶ 25.) Plaintiff also refers to the class as being “so numerous” that individual
2 joinder is impractical. (Exh. A, ¶ 27a.)

3 18. Based on Plaintiff’s own allegations, there is no doubt that the number of
4 persons who visited the Courtyard from November 27, 2019 to the time of trial will
5 far exceed 100 persons. Moreover, as noted above, for the month of November 2019
6 alone, over 300 guests were served per day on average at the Courtyard, and therefore,
7 based on Plaintiff’s alleged class definition, the class would thus exceed 100 persons.
8 (Alderfer Decl. ¶ 5.)

9 19. Accordingly, the putative class is well in excess of one hundred (100)
10 persons in the aggregate as required under CAFA. 28 U.S.C. § 1332(d)(5)(B).

11 **C. The Amount-In-Controversy Requirement Is Satisfied.**

12 20. The U.S. Supreme Court held that, as specified in 28 U.S.C. § 1446(a), a
13 defendant’s notice of removal need include only a plausible allegation that the amount
14 in controversy exceeds the jurisdictional threshold; the notice need not contain
15 evidentiary submissions. *Dart Cherokee Basin Operating Co. LLC. v. Owens*, 135 S.
16 Ct. 547, 554 (U.S. 2014).

17 21. Plaintiff defines the class period as beginning November 27, 2019 and
18 going forward through trial and alleges a nationwide class which will include a large
19 number of persons. (Exh. A, ¶ 25.)

20 22. Plaintiff alleges potential serious injuries to many people, claiming that
21 fragrance is a known respiratory irritant and neurological toxin and that one in five
22 people in the United States experience adverse health events from synthetic fragrance
23 exposure. (Exh. A, ¶ 35.)

24 23. Plaintiff alleges that Defendant intentionally released “dangerous
25 quantities of toxic chemical compounds known to cause severe health effects to
26 humans.” (Exh. A, ¶ 56.)

1 24. Plaintiff alleges that “over 95% of chemicals found in most fragrances
2 derive from petrochemicals including benzene derivatives, aldehydes and phthalates—
3 all of which are highly toxic” and some are known endocrine disruptors and others are
4 potentially carcinogenic. (Exh. A. ¶ 3.)

5 25. Plaintiff alleges that she and class members have sustained damages
6 including severe emotional distress, medical expenses, hospital expenses, and
7 psychological expenses. (Exh. A. ¶ 65.)

8 26. Given the cost of medical care, including hospitalization, in the United
9 States, the number of persons in the alleged class, and the nature of the allegations,
10 (which Marriott vigorously denies) there is a plausible allegation that the amount in
11 controversy exceeds the jurisdictional threshold.

12 27. Additionally, Plaintiff is seeking statutory violations of \$4,000 per
13 offense. (Exh. A, ¶ 91.)

14 28. Based on the statutory damages alone and the number of alleged class
15 members (based solely only the timeframe from November 27, 2019 to the present
16 and not even including up to trial), the alleged damages well exceed \$5,000,0000,
17 even without taking into account the alleged medical expenses and emotional distress
18 claims.

19 **D. Plaintiff's Complaint Also Seeks the Recovery of Attorneys' Fees and**
20 **Punitive Damages.**

21 29. Attorneys’ fees are properly included in determining the amount in
22 controversy. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007)
23 (holding that “the amount-in-controversy requirement excludes only ‘interest and
24 costs’ and therefore includes attorneys’ fees”).

25 30. Plaintiff includes requests for attorneys’ fees in its Complaint. (Exh. A.
26 *Relief Sought* ¶ 8.)

1 31. The Ninth Circuit has recognized a “25% [] benchmark award for
2 attorney fees.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).

3 32. Further, Plaintiff seeks punitive damages, which are to be included in
4 calculating the amount in controversy. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945
5 (9th Cir. 2001) (“It is well established that punitive damages are part of the amount in
6 controversy in a civil action.”); *accord Romo v. FFG Ins. Co.*, 397 F. Supp. 2d 1237,
7 1240 (C.D. Cal. 2005) (“In an amount in controversy inquiry for diversity purposes,
8 punitive damages, where authorized, are counted toward the requirement.”)

9 33. Here Plaintiff seeks punitive damages for a nationwide class. (Exh. A.
10 *Relief Sought* ¶ 7.)

11 34. The inclusion of attorneys’ fees and punitive damages is unnecessary for
12 purposes of determining the amount in controversy in this action, because, as
13 discussed above, Plaintiff’s alleged causes of action alone, without the inclusion of
14 attorneys’ fees, exceeds the CAFA removal requirements. However, in any event, any
15 calculation of attorneys’ fees and punitive damages on a putative nationwide class add
16 to the amount in controversy.

17 **III. THE COURT SEPARATELY HAS ORIGINAL JURISDICTION OVER**
18 **THE STATE COURT ACTION BASED ON PLAINTIFF’S CLAIMS FOR**
19 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT**

20 Separate from jurisdiction under CAFA, this Court has original jurisdiction over
21 the State Court Action under 28 U.S.C. § 1331.

22 In the Complaint, Plaintiff’s fifth cause of action alleges violations of the
23 Americans With Disabilities Act, 42. U.S.C. § 12182. (*see* Exhibit A, Compl., p. 21,
24 line 7-p. 23 line 7, ¶¶ 72-84.)

25 Because this Court has original jurisdiction, Defendant may remove the State
26 Court Action pursuant to 28 U.S.C. § 1441(a) and (b).

1 This Court also has supplemental jurisdiction over Plaintiff’s state law claims
2 because they “are so related to the [federal] claims . . . that they form part of the same
3 case or controversy” 28 U.S.C. § 1367.

4 **IV. THE OTHER PREREQUISITES FOR REMOVAL ARE SATISFIED**

5 35. Consent of other parties is not required for removal under CAFA’s mass
6 action jurisdiction. *See* 28 U.S.C. § 1453(b). Additionally, there are no parties other
7 than Plaintiff and removing Defendant.

8 36. This Court is a proper venue for this action pursuant to 28 U.S.C. §
9 1441(a). The United States District Court for the Central District of California
10 embraces the County of Los Angeles, in which the State Action is now pending. *See*
11 28 U.S.C. § 84(c)(2).

12 37. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and
13 orders served upon Defendant, including the summons and Complaint, is attached
14 hereto as Exhibits A-B. (Alderfer Decl.)

15 38. Pursuant to 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal,
16 attached hereto as **Exhibit C**, together with the Notice of Removal, will be served
17 upon counsel for Plaintiff and will be filed with the clerk of the Superior Court for the
18 County of Los Angeles. (Alderfer Declaration ¶ 6.)

19 Dated: January 3, 2020

COZEN O'CONNOR

21 By: /s/ Amy B. Alderfer
22 Amy B. Alderfer
23 Brett N. Taylor
24 Attorneys for Defendant
25 Marriott International, Inc.

ORIGINAL

FILED
Superior Court of California
County of Los Angeles

NOV 27 2019

Sherri R. Carter, Executive Officer/Clerk



STEVEN OREW

1 Scott Edward Cole, Esq. (S.B. #160744)
2 Laura Grace Van Note, Esq. (S.B. #310160)
3 **SCOTT COLE & ASSOCIATES, APC**
4 555 12th Street, Suite 1725
5 Oakland, California 94607
6 Telephone: (510) 891-9800
7 Facsimile: (510) 891-7030
8 Email: scole@scalaw.com
9 Email: lvannote@scalaw.com
10 Web: www.scalaw.com

11 Attorneys for Representative Plaintiff
12 and the Plaintiff Classes

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 BARBARA SCHAEFER, individually, and
16 on behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 MARRIOTT INTERNATIONAL, INC.,
20 and DOES 1 through 100, inclusive,

21 Defendants.

22 Case No. **19STCV42577**

23 CLASS ACTION

24 **COMPLAINT FOR DAMAGES,
25 INJUNCTIVE RELIEF AND RESTITUTION**

26 **[JURY TRIAL DEMANDED]**

27 Representative Plaintiff alleges as follows:

28 INTRODUCTION

1. Even beyond the 26.0% of adults who already suffer from asthma, or the 21.2% of adults who suffer from chemical sensitivity/multiple chemical sensitivity, there is rapidly-growing concern of the harmful—often disabling—effects of exposure to fragranced products. For particularly susceptible segments of the population (e.g., persons with autism), the disabling effects have been *found in over three out of four persons*. Regardless of susceptibility, 53.1% of Americans support fragrance-free policies for workplaces, 60.7% would choose a hotel without

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

1 | fragranced air and nearly everyone is aware of the health problems and annoyance associated with
2 | unwelcome fragrances in eating establishments, on airplanes, in hotel rooms and in other places of
3 | public accommodation.

4 | 2. During the class period, and despite knowledge of these realities, Courtyard Los
5 | Angeles Westside hotel, located in Culver City, California (“Marriott”) offered
6 | lodging, restaurants and bar service, and pool and exercise facilities to the general public but
7 | then flooded its lobby and guest rooms with dangerous fragrance, showering unsuspecting
8 | guests/patrons with substances known to cause respiratory problems, headaches, skin irritation,
9 | and gastrointestinal, cardiovascular and cognitive problems.

10 | 3. Indeed, 34.7% of Americans report adverse health effects when exposed to
11 | fragranced consumer products¹ such as those piped in through Marriott’s HVAC system, and it
12 | should come as no surprise: studies show that over 95% of chemicals found in most fragrances
13 | derive from petrochemicals including benzene derivatives, aldehydes and phthalates—all of which
14 | are highly toxic—the latter being a known endocrine disruptor² and the others potential
15 | carcinogens. Studies also teach that fragranced products can emit hundreds of different volatile
16 | organic compounds (VOCs), some as primary pollutants, and others that react with the ambient air
17 | to generate secondary pollutants such as formaldehyde and acetaldehyde³ (both compounds
18 | considered potentially toxic or hazardous under federal law as well as California’s “Proposition
19 | 65” (the Safe Drinking Water and Toxic Enforcement Act of 1986; California Health & Safety
20 | Code §§ 25249.5, et seq.).

21 | 4. According to one survey, roughly a dozen compounds commonly found in
22 | fragrances appear on The Office of Environmental Health Hazard Assessment’s Proposition 65

23 |
24 | _____
25 | ¹ While beyond the scope of damages sought herein, it’s worthy to note that numerous sources link fragrances to
26 | the onset of asthma symptoms (see, [https://www.ewg.org/news-and-analysis/2017/12/avoiding-common-](https://www.ewg.org/news-and-analysis/2017/12/avoiding-common-household-asthma-triggers)
27 | household-asthma-triggers).
28 | ² According to one environmental organization, about 75% of all products containing ‘fragrance’ contain
phthalates, which are particularly dangerous for women of childbearing age, with endocrine disruption leading to
birth defects or developmental disorders.
³ Acetaldehyde, which can be both a primary and secondary emission from air fresheners and air dispersion units,
is associated with both acute and chronic hazards to the respiratory system and is classified as a carcinogenic
hazardous air pollutant in this nation.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

1 Carcinogens and Reproductive Toxicants list.⁴ Another survey revealed that 54 compounds
2 commonly found in fragrances appeared on the California Department of Toxic
3 Substances Control Candidate Chemical List.⁵ The United States Environmental Protection
4 Agency has further concluded that some compounds commonly found in fragrances (e.g., synthetic
5 musks) were “toxicologically significant.” Synthetic fragrance compounds, in particular, are
6 extremely pervasive, lodging themselves not only in the bloodstream but also in breast milk and
7 fat-storing tissue. When fragrances hit the air, they break down, mix with other pollutants and form
8 new compounds—ones often more irritating and allergenic than the original fragrance.

9 5. For branding and/or other business purposes calculated to maximize revenue and
10 profitability, Marriott International, Inc. exposed tens of thousands of individuals to these
11 pollutants during the class period, without warning, and without regard to the short term, long term
12 and/or discriminatory impact upon disabled persons of its reckless conduct.

13 6. This action is brought to redress and end this prolonged pattern of unlawful conduct
14 once and for all. Representative Plaintiff, therefore, brings this action on behalf of herself as well
15 as on behalf of California classes of all persons harmed by the toxic doses of fragrance at Courtyard
16 Los Angeles Westside hotel, (through its owner/operator, defendant Marriott International, Inc. at
17 any time during, at least, the “limitations period,” as identified below.

18 7. Representative Plaintiff, on behalf of herself and members of the respective classes
19 (hereinafter “class members” in one or more of the classes identified herein) seeks damages,
20 interest thereon, restitution, injunctive and other equitable relief, reasonable attorneys’ fees and
21 costs and disgorgement of all benefits Defendant enjoyed from its numerous unfair, unlawful and
22 deceptive business practices, as detailed herein, which run afoul of a multitude of California state
23 laws, including unfair competition laws.

24 8. Representative Plaintiff asserts that, during the limitations period defined below,
25 Marriott had, and continues to have, a consistent policy of releasing fragrance compounds upon
26 individuals as they enter the Marriott and throughout the building and guest rooms. Indeed, by the
27

28 ⁴ <https://oehha.ca.gov/proposition-65/proposition-65-list>

⁵ <http://www.womensvoices.org/2015/12/10/toxic-chemicals-found-in-fragrance/>

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 time these unsuspecting guests/patrons are aware of the pervasive scents/toxins, it's simply too
2 late; for those with recognized disabilities such as fragrance/chemical/multiple chemical
3 sensitivities, autism, etc., the fear, apprehension and emotional distress can be intense, not to
4 mention the physiological manifestations predictably attendant to the exposure. Even for those
5 persons lucky enough to not share this level of susceptibility, the exposure remains, at best, an
6 annoyance, an unwanted touching (battery) and/or a disruption to their culinary and other hoped-
7 for experiences at the Marriott. Indeed, the scents/toxins with which Defendants pollute the
8 Marriott entry-way can be detected far across the hotel.

9 9. For the class allegations, the "limitations" period is designated as the time from
10 November 27, 2019 through trial, based upon the allegation that the violations, as described more
11 fully below, have been ongoing throughout that time.

12 10. Despite actual knowledge of these facts and legal mandates, Defendant has and
13 continues to enjoy an advantage over its competition and a resultant disadvantage to class
14 members.

15 11. Representative Plaintiff is informed and believes and, based thereon, alleges that
16 Defendant's officers knew of these facts and legal mandates yet, nonetheless, repeatedly
17 authorized and/or ratified the violation of the laws cited herein.

18
19 **JURISDICTION AND VENUE**

20 12. This Court has jurisdiction over the Representative Plaintiff's and class members'
21 claims for damages and penalties, and for attorneys' fees (under, *inter alia*, California Code of
22 Civil Procedure § 1021.5), and for claims for injunctive relief and restitution of ill-gotten benefits
23 arising from Defendant's unfair, unlawful and deceptive practices (under California Business &
24 Professions Code § 17200, et seq.).

25 13. Venue as to Defendant is proper in this judicial district pursuant to California Code
26 of Civil Procedure § 395(a). Defendant owned and operated a hotel within the County of Los
27 Angeles (where Representative Plaintiff and numerous class members visited), transacted
28 business, had agents, and was otherwise within this Court's jurisdiction for purposes of service of

12/02/2019

1 process. The unlawful acts alleged herein have and have had a direct effect on Representative
2 Plaintiff and those similarly situated within the State of California and within the County of Los
3 Angeles.

4
5 **REPRESENTATIVE PLAINTIFF**

6 14. Representative Plaintiff Barbara Schaefer is a natural person who visited and/or
7 patronized Courtyard by Marriott Los Angeles Westside hotel and was exposed to and damaged
8 by chemical substances (including carcinogenic and/or other hazardous air pollutants, and
9 particulate matter) as a result of the exposure during the class period.

10 15. Representative Plaintiff suffers from fragrance and chemical sensitivities and, when
11 exposed to fragrances, is substantially limited in her ability to breathe. Consequently,
12 Representative Plaintiff is “physically disabled,” as defined by all applicable California and United
13 States laws, and a member of the public whose rights are protected by these laws.

14 16. Generally, when Representative Plaintiff (and her fellow class members) are
15 exposed to fragrances, she/they experience symptoms such as respiratory problems, headaches,
16 skin irritation, and gastrointestinal, cardiovascular and cognitive problems. As a result,
17 Representative Plaintiff and many class members seek to avoid certain public areas with
18 fragrances. Representative Plaintiff and many class members will also avoid, in most instances,
19 business establishments where fragrances are used.

20 17. As used throughout this Complaint, the terms “Plaintiff classes” and/or “class
21 members” refers to the named Plaintiff as well as each and every person eligible for membership
22 in one or more of the sub-classes, as described and defined below.

23 18. The Plaintiff classes consist of all members who have visited and/or patronized
24 Courtyard Los Angeles Westside hotel and been exposed, in some way, to chemical substances
25 (including carcinogenic and/or other hazardous air pollutants, and particulate matter) as a result of
26 the release of said chemical substances by Defendant.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

1 19. The degree, if any, to which class members were affected by the conduct of
2 Defendant and/or were eligible to recover damages and penalties therefor is subject to further proof
3 and or statistical analysis to be performed at a later stage in the litigation.

4 20. At all times herein relevant, the Representative Plaintiff was and now is a person
5 within each of the classes of persons described and defined herein. The Representative Plaintiff
6 brings this action on behalf of herself and as a class action pursuant to California Code of Civil
7 Procedure §382, on behalf of all persons or entities similarly situated and proximately damaged
8 by the toxic chemical compounds and/or particulate matter discharge described herein.

9
10 **DEFENDANTS**
11

12 21. The Marriott is a facility open to the public, intended for non-residential use, and
13 its operation affects commerce. The Marriott is therefore a public accommodation as defined by
14 applicable state and federal laws.

15 22. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
16 relevant times herein mentioned, officers, directors, supervisors, agents and/or employees of
17 some/each of the remaining defendants and/or other business entities organized for the purpose of
18 providing lodging, restaurant and other services to the public.

19 23. Representative Plaintiff is unaware of the true names and capacities of those
20 defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by
21 such fictitious names. Representative Plaintiff will seek leave of court to amend this Complaint
22 when such names are ascertained. Representative Plaintiff is informed and believes and, on that
23 basis, alleges that each of the fictitiously-named defendants was responsible in some manner for,
24 gave consent to, ratified, and/or authorized the conduct herein alleged and that the Representative
25 Plaintiff's and class members' damages, as herein alleged, were proximately caused thereby.

26 24. Representative Plaintiff is informed and believes and, on that basis, alleges that, at
27 all relevant times herein mentioned, each of the defendants was the agent and/or employee of each
28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

1 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and
2 scope of such agency and/or employment.

3
4 **CLASS ACTION ALLEGATIONS**

5 25. Representative Plaintiff brings this action on behalf of herself and as a class action
6 on behalf of all persons similarly situated and proximately damaged by Defendant's conduct
7 including, but not necessarily limited to, the following Plaintiff classes:

8 **The Personal Injury Class:**

9 All persons who visited the Courtyard Los Angeles Westside hotel between November 27, 2019
10 and the trial of this matter.

11 **The Injunctive Relief Class:**

12 All persons who visited the Courtyard Los Angeles Westside hotel between November 27, 2019
13 and the trial of this matter and seek an order enjoining Defendant, and each of them, from releasing
14 fragrances into the air at the Marriott hotel.

15 **The Punitive Damages Class:**

16 All persons entitled to compensatory damages as a result of the misconduct of Defendant, and each
17 of them, with respect to the release of toxic fragrance compounds and/or harmful particulate matter
18 at the Courtyard Los Angeles Westside hotel between November 27, 2019 and the trial of this
19 matter.

20 26. Defendant, its officers, directors, employees and subsidiaries are excluded from each
21 of the Classes.

22 27. This action has been brought and may properly be maintained as a class action
23 under California Code of Civil Procedure § 382 because there is a well-defined community of
24 interest in the litigation and the proposed classes are easily ascertainable.

25 a. Numerosity: A class action is the only available method for the fair
26 and efficient adjudication of this controversy. The members of the
27 Plaintiff Class are so numerous that joinder of all members is
impractical, if not impossible, insofar as Representative Plaintiff is
informed and believes and, on that basis, alleges that there are
sufficient class members to meet the numerosity requirement.
Membership in the classes will be determined upon analysis of hotel
lodging, restaurant, spa, club, conference room reservation, among
other records maintained by Defendant.

28 b. Commonality: The Representative Plaintiff and class members
share a community of interests in that there are numerous common

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

questions and issues of fact and law which predominate over any questions and issues solely affecting individual class members, including, but not necessarily limited to:

- 1) Whether Defendant breached duties of care;
- 2) Whether Defendant acted recklessly and/or willfully;
- 3) Whether Defendant, by their misuse of hazardous substances in commercial quantities, are liable for damages and losses arising from the toxic releases;
- 4) Whether Defendant's conduct constitutes a battery and, if so, was it welcomed;
- 5) Whether Representative Plaintiff and/or class members are entitled to damages for economic injury, property losses, bodily injury, emotional distress, annoyance and/or inconvenience, among other damages and, if so, what is the appropriate means of calculating such monetary damages;
- 6) What are the approximate concentrations of those toxic chemicals and amounts of particulate matter to which Representative Plaintiff and/or class members were exposed;
- 7) What are the toxicological properties of the various chemical substances described herein and/or of their breakdown products;
- 8) Whether Defendant, or any of them, violated California Business and Professions Code §§17200, *et seq.* by engaging in unfair, unlawful and/or fraudulent business practices;
- 9) Whether Defendant, or any of them, were unjustly enriched by, *inter alia*, allowing/permitting use of toxic substances in their hotel facilities and/or engaging in practices which engender unfair competition and/or other practices which threaten interstate commerce;
- 10) Whether injunctive, corrective and/or declaratory relief and/or an accounting is appropriate;
- 11) Whether Defendant's conduct rises to the level sufficient to warrant an award of punitive damages.

c. Typicality: The Representative Plaintiff's claims are typical of the claims of class members. The Representative Plaintiff and class members sustained damages arising out of and caused by Defendant's common course of conduct in violation of law, as alleged herein.

d. Adequacy of Representation: The Representative Plaintiff is an adequate representative of the plaintiff classes in that the Representative Plaintiff's claims are typical of those of class members and the Representative Plaintiff has the same interest in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the litigation of this case as other class members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to class members as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

e. Superiority of Class Action: Since the damages suffered by individual class members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for class members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual class member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other class members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

TOLLING OF THE STATUTE OF LIMITATIONS

Fraudulent Concealment Tolling

28. All applicable statutes of limitations have also been tolled by Defendant's knowing and active fraudulent concealment and denial of the facts alleged herein throughout the time period relevant to this action.

29. Instead of disclosing the toxic character of its hotel's common areas, or of its disregard in various other respects of federal and state law, Defendant falsely represented that its practices complied with federal and state standards governing the hotel and restaurant industry and fair competition within interstate commerce, generally, and that it was a reputable business whose representations could be trusted.

30. For all these reasons, all applicable statutes of limitations have been tolled by operation of the Fraudulent Concealment rule.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

COMMON FACTUAL ALLEGATIONS

The Nature and Harm of Fragrances

31. Contrary to popular belief, most exposure to hazardous pollutants that affect human health and well-being occurs indoors. A primary source of these indoor pollutants and exposures is fragranced consumer products.

32. A “fragranced consumer product” (or “fragranced product”) is a product that contains an added fragrance or that is largely comprised of fragrance. A single “fragrance” in a product may be a complex mixture of dozens of volatile compounds, most of which being derived from petrochemicals.

33. Although waning in popularity in many contexts/environments, fragrances are still oft-used in hotels to mask odors such as mold smells (occasionally, even the mold buildup in the HVAC ductwork itself) and to promote a signature scent.

34. However, fragranced products emit hundreds of volatile organic compounds (VOCs) including asthmagens and hazardous air pollutants. Indeed, in analyses of fragranced products, using gas chromatography/mass spectrometry, the most commonly emitted compounds were toxic chiral terpenes (e.g., limonene, alpha-pinene, and beta-pinene). Comparing emissions from fragranced and fragrance-free versions of the same products proves this; chiral terpenes are detected in fragranced versions but not in fragrance-free versions. In addition to being primary pollutants, these terpenes react with ozone in the ambient air to generate secondary hazardous pollutants such as formaldehyde.

35. Fragrance is a known respiratory irritant and neurological toxin and one in five people in the United States experience adverse health effects from synthetic fragrance exposure. The problem with fragrance products is not the scent itself but the properties of synthetic chemicals from which they are derived such as petroleum or coal tar. Almost one-third of the chemical additives used in perfume are known to be toxic—not a surprise since, over the past 50 years, 80-90% of fragrances have been synthesized from petroleum.

///

///

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL. (510) 891-9800

12/02/2019

1 **Everyone is Susceptible to Harm from Unwelcome Fragrances**

2 36. Various multi-nation studies have examined the prevalence of fragrance sensitivity
3 and the results are staggering:

4 • 26.0% of adults are asthmatic and, according to at least one study, 57.8% of
5 them reported adverse health effects from exposure to fragranced products, and 24.1% reported
6 being further disabled (e.g., lost workdays and/or a job) thereby.⁶ 31.6% of this sub-population
7 report that they want to leave a business as quickly as possible after entering it if they smell air
8 fresheners or a fragranced product, and 32.9% of them have been prevented from going someplace
9 because they predict they would be exposed to a fragranced product that would make them sick;

10 • 21.2% of adults suffer from Chemical Sensitivity⁷ and/or Multiple Chemical
11 Sensitivity (“MSC”). According to at least one study, 81.3% of this vulnerable sub-population
12 reported adverse health effects from exposure to fragranced products. Results also found that
13 28.6% of individuals with Chemical Sensitivity have lost workdays or a job, in the past year,
14 due to exposure to fragranced products in the workplace;⁸

15 • 32.2% of adults suffer from Fragrance Sensitivity⁹ with or without an asthma
16 diagnosis;

17 • 4.5% of the population suffer from Autism/ASDs, of which 60.6% also report
18 suffering from Chemical Sensitivity and 75.8% from Fragrance Sensitivity;

19 • Asthma, Chemical Sensitivity, and Multiple Chemical Sensitivity are
20 considered disabilities for purposes of the Americans with Disabilities Act.¹⁰

21 37. Exposure to fragrances can cause such symptoms as (a) migraine headaches, (b)
22 asthma attacks, (c) neurological problems (e.g., dizziness, seizures, head pain, fainting, loss of
23 coordination), (d) respiratory problems (e.g., difficulty breathing, coughing, shortness of breath),
24

25 ⁶ <https://www.law.cornell.edu/uscode/text/42/12102><https://doi.org/10.1007/s11869-019-00693-w>

26 ⁷ Chemical sensitivity is a medical condition characterized by adverse health effects from exposure to common
27 chemical pollutants and products.

28 ⁸ <https://link.springer.com/article/10.1007/s11869-019-00672-1>

⁹ “Fragrance sensitivity” is a health condition characterized by adverse effects from exposure to fragranced
consumer products.

¹⁰ 42 U.S. Code § 12102 (<https://www.law.cornell.edu/uscode/text/42/12102>)

SCOTT COLE & ASSOCIATES, APC
 ATTORNEYS AT LAW
 555 18TH STREET, SUITE 1725
 OAKLAND, CA 94607
 TEL: (510) 891-9800

12/02/2019

1 (e) skin problems (e.g., rashes, hives, red skin, tingling skin, dermatitis),¹¹ (f) cognitive problems
 2 (e.g., difficulties thinking, concentrating, confusion or remembering), (g) mucosal symptoms
 3 (e.g., watery or red eyes, nasal congestion, sneezing), (h) immune system problems (e.g., swollen
 4 lymph glands, fever, fatigue), (i) gastrointestinal problems (e.g., nausea, bloating, cramping,
 5 diarrhea), (j) cardiovascular problems (e.g., fast or irregular heartbeat, jitteriness, chest
 6 discomfort), and (k) musculoskeletal problems (e.g., muscle or joint pain, cramps, weakness).¹²

7 38. Even for persons not experiencing noticeable physical reactions to fragrance
 8 inhalation/contact, Marriott’s guests/patrons experience an annoyance and an unwanted touching
 9 (a.k.a., a battery) from Defendants’ fragranced compounds/particulates, emotional distress, and
 10 loss of smell and taste (these latter effects being particularly frustrating for those class members
 11 visiting and hoping to enjoy Defendant’s restaurant facilities).

12

13 **Organizational Reactions to Fragrances**

14 39. While still prevalent in some workplaces, restaurants, hotels and other public
 15 accommodations, many organizations and governmental agencies are and have taken bold steps
 16 toward eradicating toxic fragrances in their own workplaces, some even offering guidance to other
 17 entities regarding how to follow suit.

18 40. For example, the United States Department of Health & Human Services issued an
 19 Indoor Environmental Quality Policy prohibiting fragranced products and fragrance-emitting
 20 devices in all interior space owned, rented, or leased by the Centers for Disease Control and
 21 Prevention nationwide. As that policy explains,

22 “[v]olatile organic compounds (VOCs) are certain organic chemicals that are
 23 emitted as gases, often having short- and long-term adverse health effects (see
 24 definition in 40 C.F.R. 51.100 (s)). To the fullest extent feasible, products (such as
 25 fragrances) emitting VOCs are prohibited at all times in all interior space owned,
 rented, or leased by CDC. Moreover, fragranced products and fragrance-emitting
 devices of any kind are prohibited at all times in all interior space owned, rented,

26 ¹¹ According to the American Academy of Dermatology (AAD), fragrances are considered the leading cause of
 27 cosmetic contact dermatitis (<https://www.webmd.com/allergies/features/fragrance-allergies-a-sensory-assault#1>). As a health problem, fragrance sensitivity affects millions of people, and studies suggest that
 28 sensitivity is on the rise. Moreover, fragrances were named “allergen of the year” for 2007 by the American Contact Dermatitis Society.

¹² <https://link.springer.com/article/10.1007%2Fs11869-017-0536-2>

1 or leased by CDC. Fragrance is not appropriate for a professional work
2 environment, and the use of some products with fragrance may be detrimental to
3 the health of workers with chemical sensitivities, allergies, asthma, and chronic
4 headaches/migraines.”¹³

5 41. Similarly, other governmental¹⁴ and private entities, both within the United States
6 and abroad, with high subject matter expertise on the topic have increasing condemned fragrance
7 use in the workplace and/or strongly advocated against it, recognizing the need to adopt clean,
8 fragrance-free environments for citizens and workers.¹⁵

9 **Defendants’ Knowing Operation of an Unsafe Facility**

10 42. Defendant’s release of harmful compounds upon the unsuspecting public was
11 hardly an accident. Hotels like that operated by Defendant generally maintain elaborate HVAC
12 systems, designed to maintain optimal environmental conditions for guests/patrons. For those
13 facilities wanting to integrate fragrance into those systems, a number of commercial scent
14 dispersion machines (“SDMs”) are available to produce a particular (sometimes even “signature”)
15 scent— which promise to enhance the guest experience. Some of these devices are depicted here:

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

16
17
18
19
20 ¹³ <https://www.chemicalsensitivityfoundation.org/pdf/CDC-2009-Indoor-Environmental-Quality-internal-policy542.pdf>

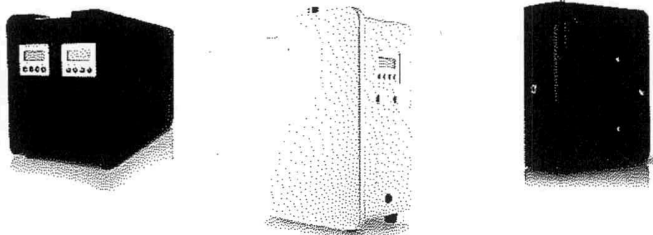
21 ¹⁴ Representative Plaintiff reserves the right to amend this Complaint to allege a violation of California Health &
22 Safety Code §§10895, et seq. (a.k.a., the Cleaning Product Right to Know Act of 2017), to the extent that further
23 discovery reveals the fragranced products released by Defendants constitute “Air care product(s)” (§108952(a)).
24 Representative Plaintiff further reserves the right to amend this Complaint to allege a violation of the Safe
25 Drinking Water and Toxic Enforcement Act of 1986 (California Health & Safety Code §§ 25249.5, et seq.), a.k.a.,
26 “Proposition 65.”

27 ¹⁵ American Lung Association (Sample Fragrance Free Policy for employers at
28 <http://action.lung.org/site/DocServer/fragrance-free-workplace.pdf>); a keyword search for “fragrance” on the Job
Accommodation Network (JAN) of the Office of Disability Employment Policy yields no fewer than 130 articles
on the topic, most of which discussing how to eradicate fragrances from the workplace and using fragrance-free
policies as a disability accommodation; see also, discussion of problems with fragrance exposures in the
workplace (National Institute of Occupational Safety and Health (NIOSH, at
<https://www.cdc.gov/niosh/topics/indoorenv/ChemicalsOdors.html>); Canadian Centre for Occupational Health &
Safety statement re: fragrance-free workplaces (https://www.ccohs.ca/oshanswers/hsprograms/scent_free.html);
Massachusetts Nurses Association fragrance free policy sheet (<https://www.massnurses.org/health-and-safety/articles/chemical-exposures/p/openItem/1346>); see, generally, Environmental Health Network
(<http://ehnca.org/>) for references to other fragrance free workplace policies.

12/02/2019

THE ART of
COMMERCIAL
SCENTING

Our line of Commercial Scent Machines is flexible and can be used to scent spaces of any size, from a small room to an entire building. With state of the art technology and low-maintenance features this allows our clients the benefits of scenting their commercial spaces without having to worry about the upkeep.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

43. The manufacturers of SDMs and/or their partner organizations produce air supply tubes (depicted below) containing concentrated fragrance for use with SDMs. Assisted by the particular facility's HVAC system, SDMs and air supply tubes deliver a steady stream of toxic compound to pre-selected zones within the facility.

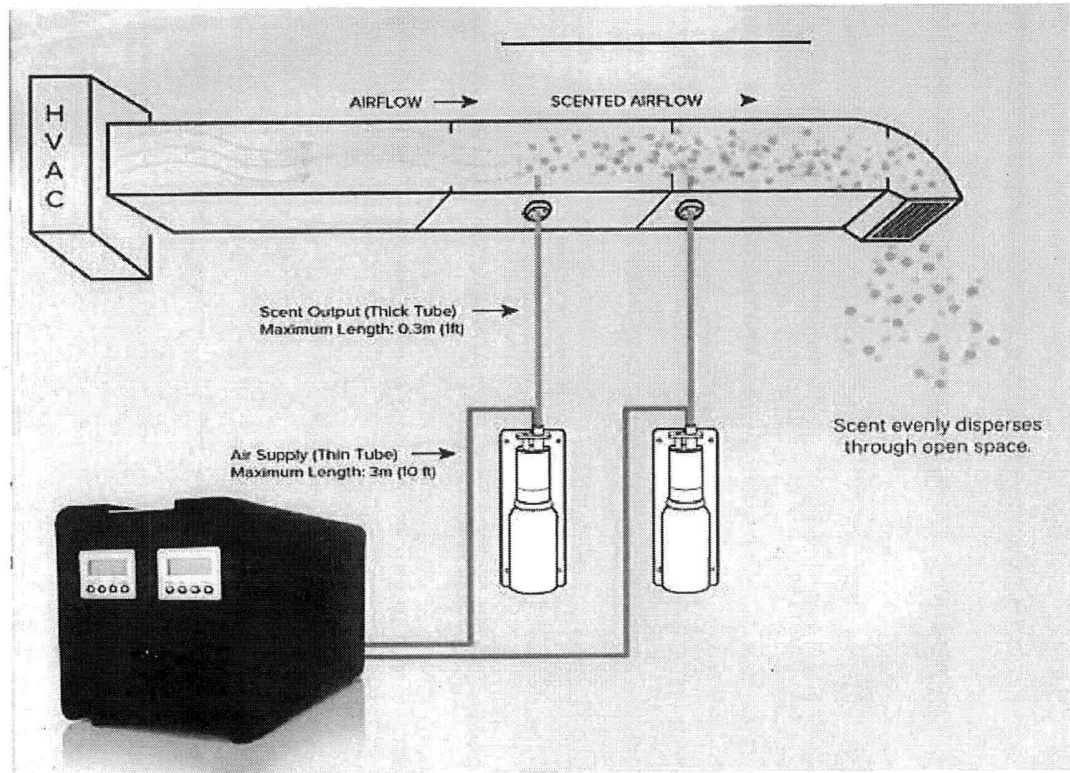
///

///

///

12/02/2019

1 44. At the Marriott, the Defendant aims these toxic compounds directly at
2 guests/patrons as they walk through the Marriott's front door, and in the guest rooms. A
3 rudimentary depiction of the process is shown here:



19 45. Vis-à-vis this equipment and process, guests/patrons can be assured a dose of toxins
20 marketed (albeit, ironically) to enhance their hotel experience, but likely to cause skin, respiratory,
21 gastrointestinal, cognitive and other harm.

22 46. When used in hotels like the Courtyard Los Angeles Westside hotel, the above-
23 depicted equipment and process is often utilized to mask odors such as mold smells (occasionally,
24 even the mold buildup in the HVAC ductwork itself) and to promote a signature scent.

26 ///

27 ///

28 ///

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

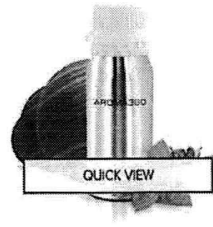
1 47. Although there is available a multitude of pre-designed/generic scents offered in
 2 the form of fragrances, many of the scents are customized for specific clients to enhance their
 3 branding, a few of these commissioned aromas being depicted here:



10 **24K Magic**

11 Inspired by: The W Hotel
 This fragrance has a citrus beginning of bergamot, lemon and lemongrass. The fragrance develops into a floral bouquet of magnol...

12 **BUY NOW**



15 **Across The Universe**

Step into a crisp, clean world as the therapeutic scent of eucalyptus clears your mind and awakens your space while you bask in...

16 **BUY NOW**



19 **Adore**

This alluring scent comprised of luxurious white tea which is complemented by delicate white flower notes of jasmine, peony wt...

20 **BUY NOW**

21 48. And yet, while fragrances like these are widely-touted as tools for enhancing guest
 22 experience and maximizing corporate profitability, the public—largely—does not want fragrances
 23 in its workplaces, in hotels, on airplanes and in other closed areas.¹⁶ As a result, the injunctive
 24 relief sought herein, while primarily sought to protect class members and future guests/patrons of
 25 Defendant's business establishment, it satisfies a desire that most people already possess.

26 49. Indeed, during the class period, Defendant has received complaints from class
 27 members regarding Defendant's use of fragrance, including their health effects on class members.
 28 Thus, throughout the limitations period, Defendant knew or had reason to know of the dangerous
 conditions they were creating and foisting upon class members—and of the heightened risks
 naturally attendant to such a condition, including the foreseeable risk of emotional and physical
 harm to class members.

¹⁶ 53.1% of Americans supportive of fragrance-free policies for workplaces, a number that rises to over 70% for persons with chemical sensitivity. Among the general population (groups studied in the United States, Australia, United Kingdom and Sweden), if given a choice between staying in a hotel with or without fragranced air, 60.7% would choose a hotel without fragranced air.
 (<https://www.sciencedirect.com/science/article/pii/S0360132319302148?via%3Dihub#sec7>)

SCOTT COLE & ASSOCIATES, APC
 ATTORNEYS AT LAW
 555 12TH STREET, SUITE 1725
 OAKLAND, CA 94607
 TEL: (510) 891-9800

12/02/2019

FIRST CAUSE OF ACTION
NEGLIGENCE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

50. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

51. At all times herein relevant, Defendant owed a duty of care to Representative Plaintiff and class members to act with reasonable care so as not to put their health and safety in jeopardy, and not cause them fear, apprehension, emotional distress and/or annoyance.

52. Defendant did breach its general duty of care to Representative Plaintiff and class members in, but not necessarily limited to, the following ways:

- a. in failing to adequately warn Representative Plaintiff and class members of the dangers of releasing compounds known to cause annoyance, emotional distress and/or short- or long-term physical damage;
- b. in intentionally releasing dangerous quantities of toxic chemical compounds known to cause severe health effects to humans and animals from their facility(ies), for profit;
- c. in failing to exercise reasonable care following complaints made by members of the general public about these noxious compounds and/or their detrimental effects; and/or
- d. in failing to comply with applicable industry standards, internal safety rules, and state and federal safety laws, rules, regulations and standards.

53. Representative Plaintiff is informed and believes and, based thereon, alleges that each Defendant's breaches of their respective duties of care were substantial factors, as set forth above, in causing Representative Plaintiff's and class members' harm.

54. As a direct and proximate result of the above-described willful and unlawful conduct of Defendant Representative Plaintiff and class members sustained damages, as set forth in this Complaint.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

SECOND CAUSE OF ACTION
BATTERY

1
2
3 55. Representative Plaintiff incorporates in this cause of action each and every
4 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
5 herein.

6 56. Defendant acted intentionally, maliciously, oppressively and with conscious
7 disregard for the rights and safety of Representative Plaintiff and class members, and each of them,
8 with respect to the events alleged in this Complaint, including, but not limited to the following:

- 9 a. in failing to adequately warn Representative Plaintiff and class members of
10 the dangers of releasing compounds known to cause annoyance, emotional
11 distress and/or short- or long-term physical damage;
- 12 b. in intentionally releasing dangerous quantities of toxic chemical compounds
13 known to cause severe health effects to humans and animals from their
14 facility(ies), for profit;
- 15 c. in failing to exercise reasonable care following complaints made by members
16 of the general public about these noxious compounds and/or their detrimental
17 effects; and/or
- 18 d. in failing to comply with applicable industry standards, internal safety rules,
19 and state and federal safety laws, rules, regulations and standards.

20 57. Defendant committed a battery upon Representative Plaintiff and class members by
21 willfully and unlawfully engaging in the course of conduct described above, which forced
22 Representative Plaintiff and class members to be exposed to the toxic chemicals described herein
23 during the class period.

24 58. As a direct and proximate result of the above-described willful and unlawful
25 conduct of Defendant, Representative Plaintiff and class members sustained damages, as set forth
26 in this Complaint.

27 59. Moreover, in that, at all times herein mentioned, Defendant intended to cause or
28 acted with reckless disregard of the probability of causing injury to Representative Plaintiff and
class members, and because this Defendant was guilty of oppressive, fraudulent and/or malicious
conduct, Representative Plaintiff and class members are entitled to an award of exemplary or
punitive damages in an amount adequate to deter such conduct in the future.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

THIRD CAUSE OF ACTION
NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

1
2
3 60. Representative Plaintiff incorporates in this cause of action each and every
4 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
5 herein.

6 61. Defendant permitted the release of toxic and otherwise harmful chemicals and
7 particulates, with full knowledge of the dangerous nature of said compounds, have permitted same
8 to continue unabated for years (as of the date of the filing of this Complaint) and has failed to
9 otherwise control the release herein-described in a timely manner, with full knowledge of the likely
10 consequences thereof.

11 62. Defendant permitted the release of toxic and otherwise harmful chemicals and
12 particulates onto and around Representative Plaintiff and class members.

13 63. Defendant knew or should have known that the result of the above-described acts
14 would cause Representative Plaintiff and class members' severe emotional distress, yet performed
15 said acts nonetheless.

16 64. Moreover, Defendant knew or had reason to know of the toxic quality and condition
17 of their facility, prior to the date(s) of said release(s), and of the heightened risks naturally attendant
18 to such a condition (including the foreseeable risk of harm from toxic chemical and particulate
19 releases as did, in fact, occur in this instance). Despite said actual and/or constructive knowledge,
20 Defendant failed to take adequate preventative or corrective measures to reduce the likelihood of
21 chemical release(s), as occurred in these instances or the harm attendant thereto.

22 65. As a direct and proximate result of the unlawful conduct of Defendant,
23 Representative Plaintiff and class members sustained damages including, but not limited to, severe
24 emotional distress and mental suffering and/or medical, hospital, psychological and related
25 expenses.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

**FOURTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

66. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

67. Defendant engaged in extreme and outrageous conduct in permitting the unabated release of toxic and otherwise harmful chemicals and particulates in the vicinity of class members with full knowledge of the dangerous nature of said compounds. Defendant further engaged in extreme and outrageous conduct in knowing of said release and permitting same to continue for continue unabated for years (as of the date of the filing of this Complaint) and/or in failing to otherwise control the release herein-described in a timely manner, all for the sake of profits to Defendant and in blatant disregard of the health and welfare of its guests/patrons and the public at large and the likely health effects to these persons.

68. Defendant's conduct in failing to maintain safe premises free of injurious hazards was outrageous conduct. A reasonable person would regard the presence of these toxic substances that injured Representative Plaintiff and class members as intolerable, particularly in a facility that serves food and beverages.

69. Defendant knew of the sub-standard condition of its facility at all relevant times, and of the heightened risks naturally attendant to such a condition (including the foreseeable risk of harm to Representative Plaintiff and class members from the exposure to such compounds, as did, in fact, occur). Despite said actual knowledge, Defendant failed and/or refused to take adequate preventative or corrective measures to reduce the likelihood of such chemical and/or particulate matter releases, and/or of the harm naturally attendant thereto.

70. As a direct and proximate result of the unlawful conduct of Defendant Representative Plaintiff and class members sustained damages including, but not limited to, severe emotional distress and mental suffering and/or medical, hospital, psychological and related expenses.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
565 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

1 71. Moreover, in that, at all times herein mentioned, Defendant intended to cause or
2 acted with reckless disregard of the probability of causing injury to Representative Plaintiff and
3 class members, and because Defendant is guilty of oppressive, fraudulent and/or malicious
4 conduct, Representative Plaintiff and class members are entitled to an award of exemplary or
5 punitive damages in an amount adequate to deter such conduct in the future.

6
7 **FIFTH CAUSE OF ACTION**
8 **AMERICANS WITH DISABILITIES ACT**
9 **(42 U.S.C. §12182)**

10 72. Representative Plaintiff incorporates in this cause of action each and every
11 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
12 herein.

13 73. Title III of the Americans with Disabilities Act (“ADA”) holds, as a “general rule,”
14 that no individual shall be discriminated against on the basis of disability in the full and equal
15 enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any
16 person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

17 74. As detailed above, the sensitivities of Representative Plaintiff and class members
18 to fragrances substantially limits one or more major life activities (e.g., breathing, concentration),
19 as listed in 29 C.F.R. § 1630.2(i). When Representative Plaintiff and class members are exposed
20 to fragrances, she/they experience symptoms such as migraine headaches, nausea, chest tightness,
21 coughing, loss of voice, a scratchy throat, rhinitis and trouble concentrating. Representative
22 Plaintiff and class members, as a result, avoid certain public areas and cannot sit in proximity to
23 others wearing fragrances.

24 75. 42 U.S. Code § 12102(4)(D) provides that “[a]n impairment that is episodic or in
25 remission is a disability if it would substantially limit a major life activity when active.”
26 Furthermore, 42 U.S. Code § 12102(3)(i) provides that: “[t]he determination of whether an
27 impairment substantially limits a major life activity shall be made without regard to the
28 ameliorative effects of mitigating measures such as— (I) medication, medical supplies... .”

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

1 76. Defendant discriminated against Representative Plaintiff and class members by
2 denying them “full and equal enjoyment” and use of the goods, services, facilities, privileges and
3 accommodations of the Marriott during each visit and each incident of deterrence.

4 Failure to Make an Altered Facility Accessible

5 77. Representative Plaintiff alleges on information and belief that the Marriott was
6 modified after January 26, 1993, independently triggering access requirements under the ADA.

7 78. The ADA also requires that facilities altered in a manner that affects (or could
8 affect) its usability must be made readily accessible to individuals with disabilities to the maximum
9 extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility’s primary function
10 also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving
11 that area accessible to the maximum extent feasible.

12 79. Here, Defendant altered the Marriott in a manner that violated the ADA and was
13 not readily accessible to the physically disabled public—including Representative Plaintiff and
14 class members—to the maximum extent feasible.

15 Failure to Modify Existing Policies and Procedures

16 80. The ADA also requires reasonable modifications in policies, practices, or
17 procedures, when necessary to afford such goods, services, facilities, or accommodations to
18 individuals with disabilities, unless the entity can demonstrate that making such modifications
19 would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

20 81. Here, Defendant violated the ADA by failing to make reasonable modifications in
21 policies, practices, or procedures at the Marriott, when these modifications were necessary to
22 afford (and would not fundamentally alter the nature of) these goods, services, facilities, or
23 accommodations.

24 Failure to Maintain Accessible Features

25 82. Defendant additionally violated the ADA by failing to maintain in operable
26 working condition those features of the Marriott that are required to be readily accessible to and
27 usable by persons with disabilities.

28

1 83. Such failure by Defendant to maintain the Marriott in an accessible condition was
2 not an isolated or temporary interruption in service or access due to maintenance or repairs.

3 84. As a direct and proximate result of the above-described willful and unlawful
4 conduct of Defendant, Representative Plaintiff and class members sustained damages, as set forth
5 in this Complaint. Representative Plaintiff and class members thus seek all relief available under
6 the ADA (i.e., injunctive relief, attorneys' fees and costs) for these aforementioned violations. 42
7 U.S.C. § 12205.

8
9 **SIXTH CAUSE OF ACTION**
10 **UNRUH CIVIC RIGHTS ACT**
11 **(CIV. CODE §§ 51, 52)**

12 85. Representative Plaintiff incorporates in this cause of action each and every
13 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
14 herein.

15 86. California Civil Code § 51 states, in part, that “[a]ll persons within the jurisdiction
16 of this state are free and equal, and no matter what their [disability, medical condition, et al.] are
17 entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all
18 business establishments of every kind whatsoever.”

19 87. Furthermore, California Civil Code § 51.5 states, in part, that “[n]o business
20 establishment of any kind whatsoever shall discriminate against... any person in this state on
21 account of any [disability, medical condition, et al.]”

22 88. California Civil Code § 51(f) specifically incorporates (by reference) an
23 individual’s rights under the ADA into the Unruh Act.

24 89. Defendant’s aforementioned acts and omissions denied the physically disabled
25 public—including Representative Plaintiff and class members—full and equal accommodations,
26 advantages, facilities, privileges and services in a business establishment (because of their physical
27 disability).

28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

1 90. These acts and omissions (including the ones that violate the ADA) denied, aided
2 or incited a denial, or discriminated against Representative Plaintiff and class members in violation
3 of the Unruh Act.

4 91. Representative Plaintiff and class members were damaged by Defendant's
5 wrongful conduct and seek statutory minimum damages of \$4,000 for each offense.

6 92. Representative Plaintiff and class members also seek to enjoin Defendant from
7 violating the Unruh Act (and ADA), and to recover reasonable attorneys' fees and costs, pursuant
8 to California Civil Code § 52(a).

9
10 **SEVENTH CAUSE OF ACTION**
11 **DENIAL OF FULL AND EQUAL ACCESS TO PUBLIC FACILITIES**
12 **(HEALTH AND SAFETY CODE § 19955(A))**

13 93. Representative Plaintiff incorporates in this cause of action each and every
14 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
15 herein.

16 94. The express purpose of California Health and Safety Code § 19955(a) is to: "insure
17 that public accommodations or facilities constructed in this state with private funds adhere to the
18 provisions of [Government Code § 4450, et seq.]" As § 19955(a) further explains, the definition
19 of "public accommodation or facilities" includes hotels like the Courtyard Los Angeles Westside
20 hotel.

21 95. Government Code § 4450 explains that "[buildings constructed with public funds]
22 be accessible to and usable by persons with disabilities." California Health and Safety Code §
23 19955(a), therefore, extends that mandate to privately-funded building projects.

24 96. Moreover, California Health and Safety Code § 19959 states, in part, that "[e]very
25 existing (nonexempt) public accommodation constructed prior to July 1, 1970, which is altered or
26 structurally repaired, is required to comply with this chapter."

27 97. Representative Plaintiff alleges the Marriott is a public accommodation
28 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

1 or Government Code § 4450 (or both). Marriott was, at no time, exempt under Health and Safety
2 Code § 19956.

3 98. Defendant's non-compliance with these requirements at the Marriott aggrieved (or
4 potentially aggrieved) Representative Plaintiff and class members with physical disabilities.
5 Accordingly, Representative Plaintiff and class members seek injunctive relief and attorneys' fees,
6 pursuant to Health and Safety Code § 19953.

7
8 **EIGHTH CAUSE OF ACTION**
9 **UNFAIR BUSINESS PRACTICES**
10 **(BUS. & PROF CODE §§ 17200-17208)**

11 99. Representative Plaintiff incorporates in this cause of action each and every
12 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
13 herein.

14 100. Representative Plaintiff brings this cause of action on her own behalf and on behalf
15 of class members as well as the general public seeking equitable and statutory relief to stop the
16 misconduct and halt and/or minimize any future toxic chemical and/or particulate matter releases
17 by Defendants, and compel restitution and/or disgorgement of all profits obtained by Defendant
18 through the unfair, unlawful and deceptive business practices described herein.

19 101. The knowing conduct of Marriott, as alleged herein, constitutes an unlawful and/or
20 fraudulent business practice, as set forth in California Business & Professions Code §§17200-
21 17208. Specifically, Marriott conducted business activities while failing to comply with the legal
22 mandates cited herein. Such violations include, but are not necessarily limited to, releasing toxic
23 compounds for the purpose of enhancing Marriott's branding and perceived guest/patron
24 satisfaction, but without sufficient regard for these individuals' health and welfare.

25 102. Moreover, in engaging in these unlawful business practices, Marriott has enjoyed
26 an advantage over its competition and a resultant disadvantage to the public and class members.

27 103. Marriott's knowing failure to adopt policies in accordance with and/or adhere to
28 these laws, all of which are binding upon and burdensome to Marriott's competitors, engenders an

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

1 unfair competitive advantage for Marriott, thereby constituting an unfair business practice, as set
2 forth in California Business & Professions Code §§17200-17208.

3 104. Representative Plaintiff and class members request that this Court enter such orders
4 or judgments as may be necessary to enjoin Marriott from continuing its unfair, unlawful, and/or
5 deceptive practices and to restore to Representative Plaintiff and class members any money
6 Marriott acquired by unfair competition, including restitution and/or restitutionary disgorgement
7 (as provided in Cal. Bus. & Prof. Code §17200, *et seq.*) and for such other relief set forth below.

8 105. Beginning at an exact date unknown to Representative Plaintiff, Defendant
9 committed the acts set forth herein and proscribed by Business and Professions Code § 17200, *et*
10 *seq.*, by engaging in unfair, unlawful and deceptive business practices which have resulted in the
11 release of various unhealthful chemical substances into the air onto and/or in close proximity to
12 Representative Plaintiff and class members.

13 106. In light of such incidents, Representative Plaintiff is informed and believes, and
14 thereon alleges, that Defendant has repeatedly released toxic chemicals at the Marriott—
15 substances that have subsequently impacted members of the public to their detriment.
16 Representative Plaintiff is informed and believes, and thereon alleges, that these releases are
17 directly attributable to Defendant’s pattern and practice of noncompliance with the various
18 applicable health and safety laws, regulations, rules, and safety standards governing Defendant’s
19 handling and control of such chemical substances. Representative Plaintiff is informed and
20 believes, and thereon alleges, that Defendant has obtained profits from this business pattern and
21 practice which they should be ordered to disgorge, and that Defendant has obtained an unfair
22 advantage by failing to incur the costs of compliance that are, or should be, incurred by
23 Defendant’s competitors.

24 107. Defendant’s violations of 42 U.S.C. §§ 12182 and 12183, California Civil Code §§
25 51 and 51.5, California Health and Safety Code § 19955, 25249.6, *et seq.* constitute unlawful
26 and/or fraudulent business practices, as set forth in California Business & Professions Code
27 Sections 17200, *et seq.*

28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

1 108. Public policy mandates that a certain level of corrective/preventative actions must
2 be adopted by handlers of hazardous materials/chemicals in order to protect the health and safety
3 of the public and the environment.

4 109. Defendant has clearly established a policy of accepting a certain amount of
5 collateral damage, as represented by the injuries to Representative Plaintiff and class members
6 herein alleged, as incidental to their business operations, rather than accept the alternative costs of
7 full compliance with fair, lawful and honest business practices ordinarily borne by responsible
8 competitors of Defendant and as set forth in legislation and the judicial record.

9 110. As a direct and proximate result of the above-described willful and unlawful
10 conduct of Defendant, Representative Plaintiff and class members request (a) a judicial
11 determination and declaration of the rights of Representative Plaintiff and class members, and the
12 responsibilities of Defendant, with respect to the damages and injuries caused by the release of
13 chemicals described above; (b) a court order requiring Defendant to remove and forever
14 discontinue use of toxic fragrances at the Marriott and all related facilities so as to prevent future
15 toxic releases.

16 **RELIEF SOUGHT**

17 **WHEREFORE, the Representative Plaintiff**, on behalf of herself and the proposed
18 Plaintiff classes, prays for judgment and the following specific relief against Defendant as follows:

19 1. That the Court declare, adjudge, and decree that this action is a proper class action
20 and certify the proposed Classes and/or any other appropriate subclasses under California Code of
21 Civil Procedure § 382;

22 2. For compensatory and other damages, including, without limitation, damages for
23 medical and related expenses, lost wages, emotional distress, and/or special damages according to
24 proof of each cause action for which such damages are available;

25 3. Statutory minimum damages under section 52(a) of the California Civil Code
26 according to proof.

27
28

1 4. That the Court Order Defendant to pay restitution to the Representative Plaintiff
2 and the class members due to Defendant's unlawful activities, pursuant to California Business and
3 Professions Code §§ 17200-17208;

4 5. For injunctive relief, including but not necessarily limited to, an Order (a) requiring
5 Defendant to implement appropriate and sufficient safety procedures, to halt release of toxic
6 substances from its Marriott hotel facility and (b) enjoining Defendant, ordering it to cease and
7 desist from unlawful activities in violation of California Business and Professions Code § 17200,
8 *et seq.*;

9 6. Penalties, disgorged profits and attorneys' fees pursuant to Business and
10 Professions Code §17200, *et seq.*;

11 7. For punitive and exemplary damages in an amount to be proven at trial;

12 8. For reasonable attorneys' fees, pursuant to California Civil Code §1021.5,
13 California Government Code § 12965(b), on each cause of action for which such attorneys' fees
14 are available.

15 9. For Interest on the amount of any and all economic losses, at the prevailing legal
16 rate;

17 10. For Costs of suit and any and all such other relief as the Court deems just and
18 proper.

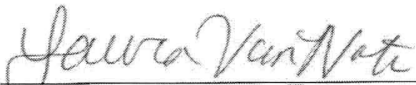
19 **JURY DEMAND**

20 Representative Plaintiff and class members hereby demand trial by jury on all issues triable
21 of right by jury.

22
23 Dated: November 27, 2019

SCOTT COLE & ASSOCIATES, APC

24
25 By:



Laura Grace Van Note, Esq.
Attorneys for Representative Plaintiff
and the Plaintiff Classes

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

12/02/2019

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Marriott Hit with Class Action Over Alleged Use of 'Dangerous Fragrances' at Culver City Courtyard Hotel](#)
