

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

5 Paul K. Leary (Pro Hac Vice to Be Filed)
Nicholas A. Karwacki (Pro Hac Vice to be Filed)
6 pleary@cozen.com
nkarwacki@cozen.com
7 COZEN O'CONNOR
One Liberty Place
8 1650 Market Street, Suite 2800
Philadelphia, PA 19103
9 Tel: 215.665.6911
Facsimile: 215.665.2103

10 Attorneys for Defendants
11 MARRIOTT INTERNATIONAL, INC.
(INCORRECTLY NAMED) AND SLS HOTEL
12 BEVERLY HILLS (INCORRECTLY NAMED)

13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
16

17 NOAH TANNENBAUM, individually,
and on behalf of all others similarly
18 situated,

19 Plaintiffs,

20 vs.

21 MARRIOTT INTERNATIONAL, INC.,
SLS HOTEL BEVERLY HILLS and
22 DOES 1-50,

23 Defendants.
24
25
26
27
28

) Case No.

) **DEFENDANTS MARRIOTT**
) **INTERNATIONAL, INC. AND SLS**
) **HOTEL BEVERLY HILLS'**
) **NOTICE OF REMOVAL**

) [28 U.S.C. § 1332, 1446, AND 1453]

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

3 PLEASE TAKE NOTICE that Defendants Marriott International, Inc.¹
4 (“Marriott”) and SLS Hotel Beverly Hills² (individually, “SLS Hotel” and
5 collectively, “Defendants”) hereby remove this action filed in the California Superior
6 Court for the County of Los Angeles (“State Court”) to the United States District
7 Court for the Central District of California (“District Court”) pursuant to 28 U.S.C. §§
8 1332, 1446, and 1453. Defendants’ removal of this matter is based on the grounds set
9 forth below.

10 **I. BACKGROUND**

11 1. Plaintiff Noah Tannenbaum (“Plaintiff” or “Tannenbaum”) filed suit
12 against Defendants on January 4, 2022 in the Los Angeles Superior Court, case
13 number 22STCV00316 (hereinafter the “State Action”). Styled as a class action, the
14 State Action pleads claims against Defendants for alleged Breach of Contract,
15 Violations of the Consumers Legal Remedies Act (Civil Code §§1770 *et seq.*), and
16 Unfair Competition (California Business and Professions Code sections §§17200-
17 17204). (Exh. A [Complaint] *passim.*) A true and correct copy of Plaintiff’s
18 Complaint is attached as **Exhibit A** to the Declaration of Brett N. Taylor, Esq. filed
19

20 ¹ Marriott International, Inc. was incorrectly named in this matter. Counsel for
21 Marriott intends to submit a stipulation to Plaintiff to substitute the name of the proper
22 entity: The Sheraton LLC. The Sheraton LLC shares the same citizenship as Marriott
23 International, Inc. and will not negatively impact diversity, as its sole member,
24 Townhouse Management Realty, LLC, carries the citizenship of its sole member,
Starwood Checkmate Holdings, Inc., which is a Delaware corporation with a principal
place of business in Maryland.

25 ² Plaintiff incorrectly names “SLS Hotel Beverly Hills” as a defendant. “SLS Hotel
26 Beverly Hills” is not a legally-existing entity. It does not own, operate, control, or
27 manage the hotel in question. Rather, it is merely the name of the subject hotel. As
such, it is a “fictitious entity” that should not be considered by the Court for purposes
of diversity of citizenship. See 28 U.S.C. § 1441(b)(1).

1 concurrently herewith (the “Taylor Declaration”). The State Action seeks the
2 certification of nationwide classes. (Exh. A ¶ 22.)

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

6 3. The State Action asserts claims against Marriott and the SLS Hotel
7 relating to the “incidentals” policy at the property. The State Action incorrectly
8 alleges that, when the SLS Hotel ran the debit card of an arriving guest and
9 temporarily authorized the guest’s card to cover possible “incidentals” pursuant to its
10 longstanding written policy, the SLS Hotel received payment from financial
11 institutions and earned interest on that amount. (Exh. A, *passim*.)

12 4. Plaintiff’s fundamental assumption, however, is incorrect, as financial
13 institutions merely place a “hard hold” on the funds of their customer, rendering the
14 funds temporarily inaccessible to the guest without ever transferring any funds to SLS
15 Hotel or its management entity. The authorization is then reversed upon departure
16 absent incurred “incidentals” and no money changes hands. This process is standard
17 in hotels throughout the United States.

18 5. Plaintiff proposes three classes of guests who stayed at the hotel from
19 January 4, 2018 to the date of trial and used debit cards to satisfy the “incidentals”
20 requirement, seeking interest on the funds that they mistakenly believe were *actually*
21 transferred to the hotel. (Exh. A, at ¶ 22.)

22 6. Plaintiff seeks damages, injunctive relief, restitution, disgorgement,
23 declaratory relief, attorneys’ fees, and punitive damages. (Exh. A, ¶ 41 and *Prayer for*
24 *Relief*.)

25 7. Plaintiff served the summons for the State Action on Marriott by personal
26 service on February 8, 2022 and purportedly on SLS Hotels via substitute service on
27

1 February 8, 2022.³ (Exh. B.) As this Notice of Removal is filed within 30 days of the
2 purported service of the State Action Complaint on Defendants, it is timely under 28
3 U.S.C. §§ 1446(b) and 1453. *See Murphy Bros. v. Michetti Pipe Stringing, Inc.* 526
4 U.S. 344, 354 (1999).

5 **II. THE COURT HAS SUBJECT MATTER JURISDICITON UNDER CAFA**

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

12 **A. Diversity of Citizenship Exits.**

13 9. The diversity of citizenship for removal under the CAFA is proper when
14 “any member of a class of plaintiffs is a citizen of a State different from any
15 defendant.” 28 U.S.C. § 1332(d)(2)(A). Thus, in order to satisfy the CAFA’s
16 diversity requirement, the party seeking removal need only show that minimal
17 diversity exists, that is, one putative class member is a citizen of a different state than
18 one defendant. *Id.*; see also *United Steel, Paper & Forestry, Rubber, Mfg., Energy,*
19 *Allied Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d
20 1087, 1090-1091 (9th Cir. 2010) (noting that the CAFA provides expanded original
21 diversity jurisdiction for class actions meeting the amount in controversy and minimal
22 diversity and numerosity requirements pursuant to 28 U.S.C. § 1332(d)(2)); *Bush v.*
23 *Cheaptickets, Inc.*, 425 F.3d 683, 684 (9th Cir. 2005).

24 10. To establish citizenship for diversity purposes, a natural person must be
25 both (1) a citizen of the United States, and (2) domiciled in the state. *Kantor v.*

26
27 ³ Defendants do not concede that service was proper.

1 *Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A natural person is
2 deemed to be a citizen of the state where he or she is domiciled, which is where he or
3 she resides with the intention to remain. *Kanter v. Warner-Lambert Co.*, 265 F.3d
4 853, 857 (9th Cir. 2001)). For purposes of diversity of citizenship, citizenship is
5 determined by the individual’s domicile at the time the lawsuit is filed. *Lew v. Moss*,
6 797 F.2d 747, 750 (9th Cir. 1986) (citing *Hill v. Roller*, 615 F.2d 886, 889 (9th Cir.
7 1980)).

8 11. Plaintiff’s Complaint alleges that he “is and at all relevant times was, a
9 California resident.” (Exh. A, ¶ 6.)

10 12. The classes set forth by Plaintiff are comprised of a variety of individuals
11 who visited the SLS Hotel from January 4, 2018 to present day and used a debit card.
12 (Exh. A, ¶ 22.)

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

19 14. At all relevant times, Marriott was and is a Delaware corporation with its
20 principle place of business located at 10400 Fernwood Road in Bethesda, Maryland
21 20817.⁴

22 _____
23 ⁴ The eventual substitution of The Sheraton LLC will not impact the analysis before
24 the Court as the Sheraton LLC shares the same citizenship as Marriott International,
25 Inc. A limited liability corporation is “a citizen of every state in which its
26 owners/members are citizens.” *Johnson v. Columbia Properties Anchorage, LP*, 437
27 F.3d 894, 899 (9th Cir. 2006). Here, the sole member of The Sheraton LLC is
28 Townhouse Management Realty, LLC, which carries the citizenship of its sole
member, Starwood Checkmate Holdings, Inc. Starwood Checkmate Holdings, Inc. is
a Delaware corporation with a principal place of business in Maryland. As such, the
eventual inclusion of The Sheraton LLC will not impact or destroy diversity as it is
also a citizen of the states of Delaware and Maryland.

1 22. Accordingly, the classes exceed one hundred (100) persons as required
2 under the CAFA. 28 U.S.C. § 1332(d)(5)(B).

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

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

9 24. Plaintiff defines the class period as beginning on January 4, 2018 going
10 forward through trial and alleges a nationwide class which will include a large number
11 of persons. (Exh. A, ¶ 22.)

12 25. Plaintiff alleges monetary harm to “no less than 1,000 persons in the
13 [three] identified Classes.” (Exh. A. ¶ 24.)

14 26. Given the number of guests who stayed at the SLS Hotel from January
15 2018 to the eventual date of trial, there is a plausible allegation that the amount in
16 controversy exceeds the jurisdictional threshold.

17 27. Based on the alleged statutory damages alone and the number of alleged
18 class members (based solely only the timeframe from January 4, 2018 up to trial), the
19 alleged damages well exceed \$5,000,0000.

20 28. Moreover, Plaintiff’s complaint also seeks the recovery of attorneys’ fees
21 and punitive damages, which must be considered when determining the amount in
22 controversy. (Exh. A. ¶ 41 and *Prayer for Relief*.)

23 29. Attorneys’ fees are properly included in determining the amount in
24 controversy. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007)
25 (holding that “the amount-in-controversy requirement excludes only ‘interest and
26 costs’ and therefore includes attorneys’ fees”).
27
28

1 30. 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 31. Further, Plaintiff seeks punitive damages for a nationwide class, which
4 are to be included in calculating the amount in controversy. *Gibson v. Chrysler Corp.*,
5 261 F.3d 927, 945 (9th Cir. 2001) (“It is well established that punitive damages are
6 part of the amount in controversy in a civil action.”); *accord Romo v. FFG Ins. Co.*,
7 397 F. Supp. 2d 1237, 1240 (C.D. Cal. 2005) (“In an amount in controversy inquiry
8 for diversity purposes, punitive damages, where authorized, are counted toward the
9 requirement.”) (Exh. A. ¶ 41.)

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

16 **III. THE OTHER PREREQUISITES FOR REMOVAL ARE SATISFIED**

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

20 34. This Court is a proper venue for this action pursuant to 28 U.S.C. §
21 1441(a). The United States District Court for the Central District of California
22 embraces the County of Los Angeles, in which the State Action is now pending. *See*
23 28 U.S.C. § 84(c)(2).

24 35. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and
25 orders served upon Defendant, including the summons and Complaint, is attached
26 hereto as Exhibits A-B. (Taylor Decl.)

1 36. Pursuant to 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal,
2 attached to the Taylor Declaration as **Exhibit C**, together with the Notice of Removal,
3 will be served upon counsel for Plaintiff and will be filed with the clerk of the
4 Superior Court for the County of Los Angeles. (Taylor Decl. at ¶ 4.)
5

6 Dated: March 10, 2022

COZEN O'CONNOR

7
8
9 By: /s/ Brett N. Taylor
Brett N. Taylor
10 Paul K. Leary (*Pro Hac Vice* to Be Filed)
11 Nicholas A. Karwacki (*Pro Hac Vice* to be
Filed)

12 *Attorneys for Defendants Marriott*
13 *International, Inc. (incorrectly named)*
14 *and SLS Hotel Beverly Hills (incorrectly*
named)
15
16
17

18 56721324\1
19
20
21
22
23
24
25
26
27
28

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

5 Paul K. Leary (*Pro Hac Vice* to Be Filed)
Nicholas A. Karwacki (*Pro Hac Vice* to be Filed)
6 pleary@cozen.com
7 nkarwacki@cozen.com
8 COZEN O'CONNOR
One Liberty Place
9 1650 Market Street, Suite 2800
Philadelphia, PA 19103
10 Tel: 215.665.6911
11 Facsimile: 215.665.2103

12 Attorneys for Defendant
13 MARRIOTT INTERNATIONAL, INC.
(INCORRECTLY NAMED) AND SLS HOTEL
14 BEVERLY HILLS (INCORRECTLY NAMED)

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 NOAH TANNENBAUM, individually, and on
19 behalf of all others similarly situated,

20 Plaintiff,

21 vs.

22 MARRIOTT INTERNATIONAL, INC., SLS
HOTEL BEVERLY HILLS, and DOES 1-50,
23 inclusive,

24 Defendants.

) Case No.

) **DECLARATION OF BRETT**
) **N. TAYLOR, ESQ. IN**
) **SUPPORT OF DEFENDANTS**
) **MARRIOTT**
) **INTERNATIONAL, INC. AND**
) **SLS HOTEL BEVERLY**
) **HILLS' NOTICE OF**
) **REMOVAL**

) [28 U.S.C. § 1332, 1441, 1446,
) AND 1453]

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

DECLARATION OF BRETT N. TAYLOR

I, Brett N. Taylor, declare as follows:

1. I am an attorney duly licensed to practice in the State of California and in the United States District Court, Central District of California. I am an attorney of Cozen O’Connor, attorneys of record for Defendants Marriott International, Inc. (“Marriott”) and SLS Hotel Beverly Hills (collectively, “Defendants”).¹ I have personal knowledge of the matters stated below or base my knowledge on my review of the case file. As to those matters stated on information and belief, I believe them to be true. If called as a witness, I could and would testify competently thereto.

2. Attached as **Exhibit A** is a true and correct copy of the Complaint filed in the putative class action against Defendants in the Superior Court of the State of California, County of Los Angeles, case number 22STCV00316 against Defendants (the “State Court Action”).

3. Attached as **Exhibit B** is a true and correct copy of all process, pleadings and orders in the State Court Action and a copy of the State Court Action docket *other than the Complaint*, which is attached as Exhibit A.

4. Attached as **Exhibit C** is a true and correct copy of the notice of removal served on all parties and to be filed in the state court (without exhibits).

I declare under penalty of perjury under the laws of the State of California and of the United States that the foregoing is true and correct.

¹Both Defendants are incorrectly named and reserve their rights in that regard. Defendant Marriott International, Inc. will submit a stipulation to Counsel to substitute the name of the correct party: The Sheraton LLC. As described more fully in Defendants’ Notice of Removal, The Sheraton LLC is a citizen of the states of Delaware and Maryland and its inclusion will not impact diversity as it mirrors that of Marriott International, Inc. Moreover, “SLS Hotel Beverly Hills” is not a legally-existing entity. It does not own, operate, control, or manage the hotel in question. Rather, it is merely the name of the subject hotel.

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

Executed on March 10, 2022 at Los Angeles, California.

/s/ Brett N. Taylor

Brett N. Taylor, Esq.

Exhibit A

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Kenneth Freeman

1 Evan Selik (SBN 251039)
Christine Zaouk (SBN 251355)
2 McCATHERN, LLP
523 West Sixth Street, Suite 830
3 Los Angeles, California 90014
4 (213) 225-6150 / Fax (213) 225-6151
eselik@mccathernlaw.com
5 czaouk@mccathernlaw.com

6 Attorneys for Plaintiff,
7 NOAH TANNENBAUM

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10
11 NOAH TANNENBAUM, individually and on)
behalf of other persons similarly situated,)

12 Plaintiffs,)

13 vs.)

14 MARRIOT INTERNATIONAL, INC.; SLS)
15 HOTEL BEVERLY HILLS and DOES 1-50)

16 Defendants.)

CASE NO.

) **CLASS ACTION**

) **COMPLAINT**

) **1. VIOLATION OF CONSUMERS**
) **LEGAL REMEDIES ACT (Cal.**
) **Civil Code §§1750 et seq.)**

) **2. UNFAIR COMPETITION (Bus. &**
) **Prof Code. §§17200 et seq.)**

) **3. BREACH OF CONTRACT**

) **DEMAND FOR JURY TRIAL**

17
18
19
20
21
22 Plaintiff, NOAH TANNENBAUM (“Plaintiff”) on behalf of himself, and all others
23 similarly situated, complains and alleges as follows:

24 **INTRODUCTION**

25 1. This is a class action lawsuit under California Code of Civil Procedure §382,
26 seeking, restitution under the Business & Professions Code §§17200 et seq. and under the
27 Consumer Legal Remedies Act, (Civ. Code §§1750 et seq.) for deceptive acts or practices by
28

McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
(213) 225-6150

1 Defendants, injunctive relief and other equitable relief, breach of contract damages, reasonable
2 attorneys’ fees and costs, brought on behalf of Plaintiff and others similarly situated.

3 **JURISDICTION AND VENUE**

4 2. This Court has jurisdiction over this action under Article 6 of the California
5 Constitution and California Code of Civil Procedure §410.10.

6 3. This Court has jurisdiction over Plaintiff’s and Class Members’ claims for
7 declaratory relief under California Code of Civil Procedure §1060.

8 4. This Court has jurisdiction over Plaintiff’s and the Class Members’ claims for
9 injunctive relief, and from Defendant’s unlawful and/or unfair business practices under Business &
10 Professions Code §§17200 *et seq.*

11 5. Venue is proper in this judicial district, pursuant to California Code of Civil
12 Procedure §395.5 because it is where Defendant, SLS Hotel of Beverly Hills, is located.

13 **PARTIES**

14 6. Plaintiff is, and at all relevant times was, a California resident. Within the statute of
15 limitations for the claims made herein, Plaintiff experienced Defendant’s unlawful and deceptive
16 acts and practices.

17 7. Plaintiff appears in this action on behalf of himself and on behalf of all others
18 similarly situated.

19 8. Defendant, Marriot International, Inc., (hereinafter “Marriot”) owns hotels
20 throughout California, the United States and the world.

21 9. Defendant, SLS Hotel of Beverly Hills (hereinafter “SLS Hotel”) operates a hotel
22 located at 465 South La Cienega Boulevard in Los Angeles California 90048.

23 10. Plaintiff is informed and believes that DOES 1 through 50 are corporations,
24 individuals, limited liability partnerships, limited liability companies, general partnerships, sole
25
26
27
28

McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
(213) 225-6150

McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
(213) 225-6150

1 proprietorships or are other business entities or organizations of a nature not currently known to
2 Plaintiff.

3 11. Plaintiff is unaware of the true names of Defendants DOES 1 through 50. Plaintiff
4 sues said defendants by said fictitious name, and will amend this complaint when the true names
5 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
6 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
7 named Defendants is in some manner responsible for the events and allegations set forth in this
8 Complaint.
9

10 12. Plaintiff is informed and believes, and based thereon alleges that at all relevant
11 times, each Defendant was an employer, was the principal, agent, partner, joint venture, officer,
12 director, controlling shareholder, subsidiary affiliate, parent corporation, successor in interest
13 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or
14 all of the other Defendants in a joint enterprise for profit and bore such other relationships to some
15 or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged
16 in this complaint. Plaintiffs are further informed and believe and thereon allege that each Defendant
17 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
18 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
19 controlled, aided and abetted the conduct of all other Defendants. As used in this Complaint
20 “Defendant” means “Defendants and each of them,” and refers to the Defendants named in the
21 particular cause of action and DOES 1 through 50.
22

23 13. At all times mentioned herein, each Defendant was the co-conspirator, agent,
24 servant, employee, and/or joint venture of each of the other Defendants and was acting within the
25 course and scope of said conspiracy, agency, employment, and/or joint venture and with the
26 permission and consent and knowledge of each of the other Defendants.
27
28

FACTS COMMON TO ALL CAUSES OF ACTION

1
2 14. On December 31, 2020, Mr. Tannenbaum checked into the SLS Hotel. The SLS
3 Hotel required a debit or credit card for incidentals for his stay. The SLS Hotel attendant advised
4 Mr. Tannenbaum that the SLS Hotel would be placing a hold on the card. Based on this
5 representation, Mr. Tannenbaum used a debit card. The SLS Hotel did not place a hold on his debit
6 card; rather the SLS Hotel deducted \$300.00 from Mr. Tannenbaum’s checking account directly
7 tied to his debit card.
8

9 15. During his stay at the SLS Hotel, Mr. Tannenbaum spent \$23.00 on miscellaneous
10 items and \$55.00 on parking at the SLS Hotel, totaling \$78.00 in incidentals.

11 16. On January 4, 2021, Mr. Tannenbaum checked out of the SLS Hotel.

12 17. On January 5, 2021, the SLS Hotel charged Mr. Tannenbaum’s debit card on file
13 \$78.00 in incidentals including parking, and returned back to him the \$300.00 withdrawn from his
14 debit card account. The SLS Hotel did not, however, return to Mr. Tannenbaum the interest that
15 accrued from December 31, 2021 through January 4, 2021. The SLS Hotel kept that accrued
16 interest.
17

18 18. Defendants and Plaintiff entered into a Digital Entry Terms of Use contract which
19 stated:

20
21 “[U]pon check-in, your card issuing bank will place a hold on your debit or credit
22 card for room & tax charges, any applicable resort fees, plus an amount for
23 incidentals per day for the entire stay (may vary by location). This hold will not be
24 released by the issuing bank for up to five (5) business days. You authorize us to
25 place this hold against your credit or debit card to guarantee any and all charges
26 and, in the event that you do not settle your account subsequent to your departure,
27 you hereby authorize us to charge your credit or debit card or apply funds you have
28 on deposit with us against what you owe.”

19 This contract does not authorize or allow Defendants to withdraw money from
20 Plaintiff, or any similarly situated consumers’ debit card. Nor does this contract authorize or allow
21 Defendants to withdraw money from Plaintiff, or any similarly situated consumers’ debit card, and

McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
(213) 225-6150

1 retain the interest accrued on that money withdrawn upon return of the funds.

2 20. Furthermore, Mr. Tannenbaum relied on the representations made by the SLS Hotel
3 attendant who advised that a hold would be placed on the debit card. Evidence that Mr.
4 Tannenbaum reasonably relied on said representation was that he provided a debit card instead of a
5 credit card for the purported “hold” for incidentals. Since the SLS Hotel did not place a “hold” as
6 represented, but actually withdrew money from Mr. Tannenbaum’s account, he was unable to use
7 the \$300.00.
8

9 21. As a result of this conduct, Defendants have profited from retaining the interest on
10 the money withdrawn by Defendants.

11 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

12 22. Plaintiff brings this action on behalf of himself and on behalf of all other similarly
13 situated persons as a class action pursuant to Code Civ. Proc. §382. The members of the Class are
14 defined as follows:
15

16 **CLASS ONE** – All people from January 4, 2018 through present day who: (1) paid
17 for a hotel room at the SLS Hotel; (2) used a debit card for incidentals; (3) had
18 money actually withdrawn from their debit card account for incidentals; and (4) were
not returned the interest accrued on the debited amount.

19 **CLASS TWO** – All people from January 4, 2018 through present day who: (1) were
20 told by the SLS Hotel that it would be placing a hold on their card for incidentals; (2)
21 paid for a hotel room at the SLS Hotel; (3) used a debit card for incidentals; (4) had
money actually withdrawn from their debit card account for incidentals; and (4) were
not returned the interest accrued on the debited amount.

22 **CLASS THREE** – All people from January 4, 2022 until this lawsuit is resolved
23 who: (1) paid for a hotel room at the SLS Hotel; (2) used a debit card for incidentals;
24 (3) had money actually withdrawn from their debit card account for incidentals; and
(4) were not returned the interest accrued on the debited amount.

25 23. This action has been brought and may be properly maintained as a class action
26 pursuant to the provisions of Code of Civ. Pro. §382 and other applicable law.

27 ///

28
McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
— (213) 225-6150

McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
(213) 225-6150

1 24. **Numerosity of the Classes:** Members of the Classes are so numerous that their
2 individual joinder is impracticable. Plaintiff estimates that there are no less than 1,000 persons in
3 the identified Classes. The precise number of Class members and their addresses are unknown to
4 Plaintiff. However, Plaintiff is informed and believes that the number can be obtained from
5 Defendants’ hotel records that identify the names of class members. Class members may be
6 notified of the pendency of this action by conventional mail, electronic mail, the Internet, or
7 published notice.

9 25. **Existence of Predominance of Common Questions of Fact and Law:** Common
10 questions of law and fact exist as to all members of the Classes. These questions predominate over
11 any questions effecting only individual members of the Classes. These common factual and legal
12 questions include:

13 (a) Whether it is Defendants’ policy and procedure to advise consumers that the
14 SLS Hotel will be place a hold on the consumer’s debit card for incidentals, but actually withdraw
15 the money from the debit card account;

16 (b) Whether it is Defendants’ policy and procedure to withdraw money for
17 incidentals from a consumers’ debit card account;

18 (c) Whether it is Defendants’ policy and procedure to retain the interest accrued
19 on the money it withdrew from a consumers’ debit card account;

20 (d) Whether Defendants committed unlawful, unfair, or fraudulent business
21 practices or acts within the meaning of Business & Professions Code §§17200 *et seq.*;

22 (e) Whether Defendants’ conduct as alleged herein violated Civil Code §§1750
23 *et seq.*

24 (f) Whether Defendants’ conduct as alleged herein breached the Digital Entry
25 Terms of Use contract;

26
27
28

1 (g) Whether Defendants’ raise any affirmative defenses that are universal in
2 application.

3 26. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the Classes
4 because Plaintiff, as a person who stayed at the SLS Hotel, relied on the statement made by the SLS
5 Hotel attendant, used a debit card for incidentals, had money withdrawn from his debit card
6 account, and upon return of that money did not received the accrued interest, was entitled to have
7 Defendants return to him the interest that accrued on the \$300.00 it withdrew from his debit
8 account. Plaintiff sustained the same types of injuries and losses that the Class members sustained.
9 Plaintiff is subject to the same affirmative defenses as the members of the class.
10

11 27. **Adequacy:** Plaintiff will adequately and fairly protect the interests of the members
12 each of the Classes. Plaintiff has no interest adverse to the interests of absent Class members.
13 Plaintiff is represented by legal counsel who has substantial class action experience in civil
14 litigation.
15

16 28. **Superiority:** A class action is superior to other available means for fair and efficient
17 adjudication of the claims of the Classes and would be beneficial for the parties and the court.
18 Class action treatment will allow a large number of similarly situated persons to prosecute their
19 common claims in a single forum, simultaneously, efficiently, and without the unnecessary
20 duplication of effort and expense that numerous individual actions would require. The monetary
21 amounts due to many individual class members are likely to be relatively small, and the burden and
22 expense of individual litigation would make it difficult or impossible for individual members of
23 each Class to seek and obtain relief. A class action will serve an important public interest by
24 permitting such individuals to effectively pursue recovery of the sums owed to them. Further, class
25 litigation prevents the potential for inconsistent or contradictory judgments raised by individual
26 litigation.
27
28

McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
(213) 225-6150

FIRST CAUSE OF ACTION
BREACH OF CONTRACT
(By Plaintiff and all Classes against all Defendants)

1
2
3 29. Plaintiff incorporates paragraphs 1 through 28 of this complaint as though fully
4 alleged herein.

5
6 30. Plaintiff, and those similarly situated, entered into a written contract (with implied
7 provisions) with Defendants. The Digital Entry Terms of Use contract stated:

8 “[U]pon check-in, your card issuing bank will place a hold on your debit or credit
9 card for room & tax charges, any applicable resort fees, plus an amount for
10 incidentals per day for the entire stay (may vary by location). This hold will not be
11 released by the issuing bank for up to five (5) business days. You authorize us to
12 place this hold against your credit or debit card to guarantee any and all charges and,
in the event that you do not settle your account subsequent to your departure, you
hereby authorize us to charge your credit or debit card or apply funds you have on
deposit with us against what you owe.”

13 Attached hereto and incorporated herein as **Exhibit 1** is a true and correct copy of the
14 contract.

15 31. As more fully set forth in the paragraphs incorporated herein, Defendants breached
16 the contract by failing to provide Plaintiff and the putative classes’ interest accrued on money
17 Defendants’ withdrew from their debit card accounts.

18
19 32. Plaintiff and the putative classes have performed all covenants and conditions
20 required under the contract or have been excused from doing so due to Defendants’ breach.

21 33. As a proximate result of Defendants’ breach, Plaintiff and the putative classes
22 suffered economic loss.

SECOND CAUSE OF ACTION
VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT
(By Plaintiff and Class Two against all Defendants)

23
24
25
26 34. Plaintiff incorporates paragraphs 1 through 33 of this complaint as though fully
27 alleged herein.

28 ///

McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
(213) 225-6150

McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
(213) 225-6150

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

35. At all relevant times, Plaintiff and the putative class were consumers of Defendants covered by Civil Code §§1750 *et seq.*

36. Civil Code §1770(a)(14) prohibits Defendants from “[R]epresenting that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law”

37. Civil Code §1770(a)(16) prohibits Defendants from “[R]epresenting that the subject of a transaction has been supplied in accordance with a previous representation when it has not.”

38. Civil Code §1770(a)(17) prohibits Defendants from [R]epresenting that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.”

39. As a result of Defendants’ conduct as alleged herein, Defendant violated the above provisions.

40. On June 29, 2021, prior to the filing of this Complaint, a Consumer Legal Remedies Act (“CLRA”) notice letter was served on both Defendants that complies in all respects with Civil Code §1782(a). Plaintiff sent Defendants these letters via certified mail, return receipt requested. A true and correct copy of Plaintiff’s CLRA letters are attached hereto as **Exhibit 2**. On July 29, 2021, Plaintiff received a response letter from Defendants that failed to remedy these violations.

41. Pursuant to Cal. Civil Code §1780(a), Plaintiff and the putative class seek actual damages, an order of this Court enjoining Defendants from engaging in the methods, act or practices alleged herein, restitution of property and punitive damages.

THIRD CAUSE OF ACTION
UNFAIR COMPETITION
(By Plaintiff and all Classes against all Defendants)

42. Plaintiff incorporates paragraphs 1 through 41 of this complaint as though fully alleged herein.

McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
(213) 225-6150

1 43. This cause of action is brought pursuant to the Unfair Competition Law of the
2 Business & Professions Code §§17200 *et seq.* Defendants’ conduct constitutes unfair, unlawful or
3 fraudulent business practices within the meaning of Business & Professions Code §17200.

4 44. Plaintiff brings this cause of action on behalf of the general public solely in their
5 capacities as private attorneys general pursuant to Business & Professions Code §17204.

6 45. Plaintiff is informed and believes and based thereon alleges that Defendants own and
7 operate a hotel located in Los Angeles, California. At all times during the liability period,
8 Defendants rented hotel rooms to the general public.

9 46. At all times during the liability period when Defendants’ patrons suffered injury as a
10 result of Defendants policy and procedure of withdrawing money from SLS Hotel patron’s debit
11 card accounts for incidentals and upon return of said monies did not return their accrued interest.

12 47. Some of these patrons were advised by Defendants’ employee(s) that a hold would
13 be placed on the patrons debit card when, in fact, Defendants would be withdrawing the funds.

14 48. Plaintiff is informed and believes and based thereon alleges that Defendants’
15 conduct violated Business & Professions Code §§17200 *et seq.* as it was unlawful, unfair or
16 fraudulent.

17 49. At all times during the liability period, Plaintiff and others similarly situated were
18 victims of these practices of Defendants.

19 50. By retaining the interest it made from Plaintiff and the putative classes money from
20 the above referenced practice, Defendants unfairly made, and are unfairly making, more money.

21 51. At all times during the liability period, Plaintiff and those other similarly situated
22 were not provided their accrued interest on the money Defendants withdrew from their debits card
23 accounts.

24
25
26
27 ///
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and all others similarly situated, pray for relief and judgment against Defendants as follows:

1. That this action be certified as a class action pursuant to Code of Civil Procedure §382;

2. That pursuant to Business & Professions Code §17204, Defendants, its officers, directors, principals, assignees, successors, agents, representatives, employees, subsidiaries, affiliates, and all persons, corporations and other entities acting by, through, under, or on behalf of said defendant, or acting in concert or participation with it, be permanently enjoined from directly or indirectly committing any violations of Business and Professions Code §§17200 *et seq.*, including, but not limited to, the violations alleged in this complaint;

3. Ordering the disgorgement of all sums unjustly obtained from Plaintiff, the members of the Classes and the public;

4. Ordering Defendant to make restitution to Plaintiff, the members of the Classes and the public if it is found the practices are illegal;

5. An order granting the relief sought in the first cause of action for Plaintiff and each member of the Classes;

6. Awarding prejudgment and post-judgment interest at the maximum legal rate;

7. Awarding attorneys’ fees according to proof;

8. Awarding costs of suit herein; and

///

///

///

///

McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
(213) 225-6150

9. All such other and further relief as the Court deems just.

Date: January 4, 2022

Respectfully Submitted,

McCATHERN LLP

By: *Evan Selik*
EVAN SELIK
CHRISTINE ZAOUK
Attorney for Plaintiff,
NOAH TANNENBAUM

McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
(213) 225-6150

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [SLS Hotel of Beverly Hills Withdrew Money from Customers' Accounts Without Authorization, Class Action Alleges](#)
