

ORIGINAL

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LOS ANGELES SUPERIOR COURT

AUG 20 2002

JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK

BY STEPHANIE STANEZ, DEPUTY

Case assigned  
JUDGE Edward Ferns

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SHC LAGUNA NIGUEL I LLC, a Delaware  
Limited Liability Company, and SHC  
RANCHO, L.L.C., a Delaware Limited  
Liability Company, SHC BEVERLY HILLS II,  
L.L.C., a Delaware Limited Liability Company,

Plaintiffs,

v.

MARRIOTT INTERNATIONAL, INC., a  
Delaware Corporation; MARRIOTT HOTEL  
SERVICES, INC., a Delaware Corporation,  
THE RITZ-CARLTON HOTEL COMPANY,  
L.L.C., a Delaware Limited Liability Company,  
RENAISSANCE HOTEL OPERATING  
COMPANY, a Delaware Corporation, and  
DOES 1 through 100, inclusive,

Defendants.

Case No. BC280028

COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
3. BREACH OF FIDUCIARY DUTY;
4. FRAUDULENT CONCEALMENT;
5. UNFAIR AND DECEPTIVE BUSINESS PRACTICES AND UNFAIR COMPETITION;
6. ACCOUNTING;
7. EXPRESS, IMPLIED AND
8. EQUITABLE INDEMNITY; AND DECLARATORY RELIEF

Plaintiffs SHC Laguna Niguel I LLC ("SHC Laguna Niguel"), SHC Rancho, L.L.C. ("SHC Rancho") and SHC Beverly Hills II, L.L.C. ("SHC Beverly Hills") (hereinafter collectively)

upon knowledge as to itself and upon information and belief as to all other acts alleged

CHRISTENSEN, MILLER, FINK, COBS, GLASER, WEIL & SHAPIRO  
2151 AVENUE OF THE STARS  
18TH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
(310) 553-3000

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LAW OFFICES  
 CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
 3121 AVENUE OF THE STARS  
 SUITE 1500  
 LOS ANGELES, CALIFORNIA 90047  
 TEL: (310) 893-3000

## NATURE OF THE ACTION

1  
 2 1. SHC takes this action in order to, among other things, hold Marriott International,  
 3 Inc. (“Marriott”) accountable for violations of its management agreements covering three  
 4 luxury hotels that SHC owns in California that are managed by Marriott through its wholly  
 5 owned subsidiaries, Ritz-Carlton Hotel Company, LLC (“Ritz-Carlton”), Marriott Hotel  
 6 Services, Inc. (“Marriott Hotel”) and Renaissance Hotel Operating Company  
 7 (“Renaissance”). These three hotels are: The Ritz-Carlton, Laguna Niguel (“Ritz-Laguna  
 8 Hotel”), Marriott’s Rancho Las Palmas (“Rancho Hotel”), and the Renaissance Beverly Hills  
 9 (“Beverly Hills Hotel”) (collectively, the “Hotels”). By entering into agreements for the  
 10 management and operation of these Hotels (“Management Agreements”), SHC invested  
 11 Marriott and its subsidiaries Ritz-Carlton, Marriott Hotel and Renaissance (collectively the  
 12 “Marriott Defendants”) with the utmost trust and discretion over virtually all aspects of the  
 13 operations of the Hotels. With this investment of trust, the Marriott Defendants acquired  
 14 concurrent broad fiduciary obligations to exercise undivided loyalty and to make full  
 15 disclosure to SHC with respect to all of their dealings with the Hotels. By this lawsuit, SHC  
 16 seeks compensatory and punitive damages, declaratory and equitable relief, as well as the  
 17 right to terminate the Hotel Management Agreements against the Marriott Defendants based  
 18 upon their extensive breaches of fiduciary trust and related contractual, common law and  
 19 other duties owed to SHC.

## SUMMARY OF THE ACTION

20  
 21 2. Strategic Hotel Capital, L.L.C. (“Strategic”), which was founded in 1997 by a  
 22 group of institutional investors, is led by chairman and chief executive officer Laurence  
 23 Geller, who has held senior management positions for major hotel chains, including Holiday  
 24 Inn and Hyatt Corporation. Through SHC and other entities, Strategic owns a portfolio of 27  
 25 upscale urban and resort hotels in North America and overseas, including the Hotels. These  
 26 hotels are operated by a number of major, brand-name hotel companies, including Hyatt,  
 27 Four Seasons, Starwood and Hilton. Strategic’s management contracts place the utmost  
 28 trust, confidence and good faith in its operators, as well as the obligation to maximize the

1 profitability of its hotels.

2 3. The Ritz-Laguna Hotel, Rancho Hotel and Beverly Hills Hotel are three of a  
3 larger number of luxury hotels owned by Strategic (directly or indirectly through its  
4 subsidiaries) worldwide and managed directly by Marriott or indirectly through wholly  
5 owned Marriott subsidiaries. The hotel properties owned by Strategic and managed, directly  
6 or indirectly, by Marriott have a total value of nearly \$1 billion. This Complaint focuses on  
7 Marriott's actions at the Hotels, but SHC believes that these actions are representative of a  
8 pervasive and systematic pattern of misconduct by Marriott.

9 4. The Management Agreements entered into with the Marriott Defendants for  
10 operation of the Hotels are based on the core principle of fiduciary duty. As compensation,  
11 the Marriott Defendants are paid substantial base fees amounting to a certain percentage of  
12 hotel revenues and additional incentive fees. This compensation has totaled nearly \$50  
13 million since the inception of the relationship between Strategic and the Marriott Defendants.  
14 The Marriott Defendants are invested with exclusive trust and discretion over every aspect of  
15 the Hotels' operations, including handling and oversight of all cash and receivables;  
16 purchasing of all goods and services; providing services to guests; budgeting; keeping and  
17 maintaining accurate records of account; and ensuring proper and accurate accounting of  
18 costs incurred, and revenues derived from, operations of the Hotels.

19 5. The bedrock of the Marriott Defendants' fiduciary duty to SHC is complete  
20 disclosure of all relevant financial and other data and strict avoidance of conduct benefiting  
21 the Marriott Defendants at the cost and expense of the owner, SHC. For three years, SHC  
22 representatives have attempted repeatedly to obtain a comprehensive and meaningful  
23 accounting of Marriott's operating charges to the Hotels and an explanation of how the  
24 programs being funded by those charges benefit SHC. When pressed for specific information  
25 on numerous occasions in writing and in person, Marriott executives have only offered  
26 generic assurances that the operating charges are allocated among Marriott's hundreds of  
27 multi-branded hotels under various confusing formulas, but have refused to disclose  
28 specifically what is included in these charges; whether and to what extent the charges are

1 based on costs; how each of its specific programs works; whether all hotels are treated in the  
2 same way; and what benefits SHC receives from the programs for which it is charged. SHC  
3 believes that these evasions are representative of a “culture of entitlement” whereby Marriott  
4 believes it is entitled to profit through an ever-expanding web of programs, third-party  
5 affiliations and other ventures – all at the direct expense of SHC.

6 6. Marriott’s system obscures virtually all meaningful information from SHC.  
7 Through the use of a centralized accounting system and ever-increasing centralized  
8 administration of almost every facet of its management, Marriott has removed the relevant  
9 information from individual Hotel properties. To date, none of the on-site Marriott  
10 controllers at the Hotels can meaningfully track or explain to SHC Marriott’s charges or  
11 allocations. Marriott’s goal is clear: to make its “gross” management fees (which SHC  
12 believes are primarily intended to reimburse Marriott for corporate costs incurred in  
13 connection with Hotel operations, with some profit component) become “net” profit. As a  
14 result, Marriott has the ability to charge most of its corporate overhead back to owners in  
15 perpetuity, while treating the bulk of its management fees as pure profit.

16 7. Marriott also uses SHC’s proprietary information for its own benefit in breach  
17 of its contractual and fiduciary obligations. Marriott has access to confidential information  
18 relating to the Hotels and their guests. This highly sensitive information – including guest  
19 profiles, market segmentation and pricing strategies, and profit and expense data – is the  
20 property of SHC. Yet Marriott uses this information to support its own portfolio of brands,  
21 without compensating SHC in any way. The net effect is to have the Hotels promote and  
22 fund the development of new – and competing – properties (which may be managed or  
23 franchised by Marriott or its affiliates), the profits of which flow to Marriott.

24 8. The Marriott Defendants’ pattern of using the Hotels’ revenues, mass  
25 purchasing power and highly confidential hotel operating data as ever-expanding sources of  
26 profit-making – all at SHC’s expense – is a clear breach of Marriott’s contractual and  
27 fiduciary obligations to SHC. The Marriott Defendants have engaged in this misconduct  
28 and, at the same time, have withheld from SHC a proper and meaningful disclosure of

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
2151 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
310.583.3000

1 Marriott's self-interested transactions, while continuing to accept millions of dollars annually  
2 in management fees from SHC.

3 9. As set forth in greater detail herein, the actions of the Marriott Defendants  
4 that directly breach their contractual and fiduciary obligations to SHC include, among other  
5 things:

- 6 • Systematically using highly confidential and proprietary hotel sales and  
7 operational data owned by SHC to encourage other competing owner groups to  
8 develop and purchase competing hotel properties for sale, management or franchise  
9 by Marriott, thereby enhancing Marriott's profitability at the direct expense of SHC.
- 10 • Engaging in the unauthorized sale of the same highly confidential and  
11 proprietary hotel guest and other data owned by SHC to third parties for its own  
12 direct profit.
- 13 • Imposing millions of dollars of corporate service charges against the Hotels'  
14 revenues annually while refusing to honor Marriott's strict disclosure obligations as to  
15 how such charges are initially estimated, reconciled with actual costs, benefit SHC, or  
16 are otherwise handled within the Marriott system.
- 17 • Systematically creating numerous corporate programs and deducting from the  
18 Hotels' revenues the massive costs of these ever-expanding corporate programs,  
19 totaling millions of dollars since 1997, seemingly designed to enhance the brand  
20 image and profitability of Marriott with no measurable net benefit to the Hotels.
- 21 • Leveraging the buying power of the Hotels to enter into self-interested  
22 transactions whereby the Marriott Defendants abdicate their management  
23 responsibilities to third-party entities in return for equity stakes, questionable  
24 commissions, direct profits and other payments, all with no meaningful disclosure to,  
25 and to the direct detriment of, SHC.
- 26 • Abdicating their contractual and fiduciary responsibilities by delegating all  
27 authority for the purchasing of goods, services and supplies at the Hotels (at SHC's  
28 expense) to Marriott's partly-owned entity Avendra, LLC ("Avendra") without the  
consent of SHC.
- Deriving millions of dollars in suspect rebates from vendors dependent on  
Marriott for their lucrative contracts with MarketPlace and more recently Avendra  
(where such suspect rebates are now labeled "Sponsorship Funds").
- Entering into exclusive and self-serving vendor arrangements with affiliates  
for the purchase of goods, services and supplies at the Hotels without evidence of  
competitive pricing, solely to enhance the Marriott Defendants' profits.
- Using the purchasing power of SHC's assets to obtain an ownership position  
in Avendra which may eventually be monetized through a public offering of those  
shares for the benefit of the Marriott Defendants.
- Taking SHC cash and using such cash for the benefit of Marriott without  
adequate compensation to SHC.

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
2151 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90097  
310.593.3000

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- Issuing financial statements and accountings that fail to disclose the Marriott Defendants' profits and other income from self-interested affiliate and third-party transactions, as well as corporate charges.
- Deducting costs and expenses incurred in defense of lawsuits against Marriott and SHC based upon Hotel operations in violation of Management Agreement provisions and California law requiring Marriott's full indemnity of SHC for such costs.

10. The Marriott Defendants must be held accountable for their pervasive self-dealing and profiteering in place of their contractual and fiduciary obligation of trust and confidence owed to SHC. Marriott's conduct is not a one-time casual breach of faith; it is persistent and systematic. SHC can only be made whole through the award of compensatory and punitive damages and the right to terminate the Management Agreements.

**THE HOTEL PROPERTIES**

11. The Rancho Hotel is a full-service 444-room, Marriott hotel located in Rancho Mirage, California. Marriott, through its subsidiary Marriott Hotel, manages the Rancho Hotel owned by SHC Rancho.

12. The Ritz-Laguna Hotel is a 393-room, luxury-class hotel located in Dana Point, California. Ritz-Carlton, also a wholly owned subsidiary of Marriott, manages the Ritz-Laguna Hotel, which is owned by SHC Laguna Niguel.

13. The Beverly Hills Hotel is a 137-room, luxury-class hotel located in Los Angeles, California. Renaissance, another wholly owned subsidiary of Marriott, manages the Beverly Hills Hotel, which is owned by SHC Beverly Hills.

**THE PARTIES**

14. Plaintiff SHC Laguna Niguel is, and at all times relevant hereto was, a limited liability company duly organized and existing under the laws of the State of Delaware and doing business within the County of Orange, State of California. Plaintiff SHC Laguna Niguel owns the Ritz-Laguna Hotel. SHC Laguna Niguel, L.L.C. originally purchased the Ritz-Laguna Hotel on or about September 30, 1997. At the time of this purchase, the Ritz-Laguna Hotel was subject to an existing management agreement with Ritz-Carlton. In or about September of 1999, SHC Laguna Niguel, L.L.C. conveyed the property and assigned

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOB, GLASER, WEIL & SHAPIRO  
5121 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90087  
TEL: 213.933.3000

1 all its rights, title and interest in the property to SHC Laguna Niguel.

2 15. Plaintiff SHC Rancho is, and at all times relevant hereto was, a limited  
3 liability company duly organized and existing under the laws of the State of Delaware and  
4 doing business within the County of Riverside, State of California. Plaintiff SHC Rancho  
5 owns the Rancho Hotel. Plaintiff SHC Rancho purchased the Rancho Hotel on January 22,  
6 1998.

7 16. Plaintiff SHC Beverly Hills is, and at all times relevant to this Complaint was,  
8 a limited liability company duly organized and existing under the laws of the State of  
9 Delaware and doing business within the County of Los Angeles, State of California.  
10 Plaintiff SHC Beverly Hills owns the Beverly Hills Hotel. SHC Beverly Hills, LLC  
11 acquired the hotel on July 16, 1998. On or about April 12, 2001, SHC Beverly Hills, LLC  
12 conveyed the property and assigned all of its rights, title and interest in the property to SHC  
13 Beverly Hills.

14 17. Defendant Marriott is, and at all times relevant hereto was, a corporation duly  
15 organized and existing under the laws of the State of Delaware and doing business within the  
16 County of Los Angeles, State of California. Upon information and belief, SHC alleges that  
17 Marriott is, and at all times relevant hereto was, the entity that wholly owned, controlled and  
18 operated Marriott Hotel, Renaissance and Ritz-Carlton.

19 18. Defendant Marriott Hotel is, and at all times relevant hereto was, a  
20 corporation duly organized and existing under the laws of the State of Delaware and doing  
21 business within the County of Los Angeles, State of California. Marriott Hotel is a wholly  
22 owned subsidiary of Marriott and is the entity that entered into the Management Agreement  
23 to manage and operate the Rancho Hotel.

24 19. Defendant Ritz-Carlton is, and at all times relevant hereto was, a limited  
25 liability company duly organized and existing under the laws of the State of Delaware and  
26 doing business within the County of Los Angeles, State of California. Ritz-Carlton is a  
27 wholly owned subsidiary of Marriott and is the entity that entered into the Management  
28 Agreement to manage and operate the Ritz-Laguna Hotel.

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
2151 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90087  
(310) 593-3000

1           20. Defendant Renaissance is, and at all times relevant hereto was, a corporation  
2 duly organized and existing under the laws of the State of Delaware and doing business  
3 within the County of Los Angeles, State of California. Renaissance is a wholly owned  
4 subsidiary of Marriott and is the entity that entered into the Management Agreement with  
5 SHC Beverly Hills to manage and operate the Beverly Hills Hotel.

6           21. The true names and capacities, whether individual, corporate or otherwise, of  
7 the Marriott Defendants named herein as Does 1 through 100 are unknown to SHC at this  
8 time. Therefore, SHC sues said Marriott Defendants by such fictitious names. SHC will  
9 amend this Complaint to allege the true names and capacities of Does 1 through 100, when  
10 they have been ascertained. Upon information and belief, SHC alleges that each of the Doe  
11 Marriott Defendants is, in some manner, responsible for the damages alleged herein. Does 1  
12 through 100, inclusive, are included within the definition of the "Marriott Defendants."

13           22. Upon information and belief, SHC alleges that each Marriott Defendant was  
14 the employee, agent, servant, partner, and joint venturer of each of the remaining Marriott  
15 Defendants and was acting within the scope of said employment, agency, service,  
16 partnership and joint venture. SHC is further informed and believes that each act on the part  
17 of each Marriott Defendant was substantially ratified by each of the remaining Marriott  
18 Defendants.

### FACTUAL BACKGROUND

#### I. The Ritz-Laguna Hotel, The Rancho Hotel And The Beverly Hills Hotel Management Agreements.

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21           23. This action is based on the Marriott Defendants' breach of the fundamental  
22 trust and confidence expressly and inherently invested in them under the terms of the three  
23 operative Management Agreements for the Hotels. As set forth herein, all three  
24 Management Agreements have common features that establish the extensive discretion and  
25 authority over the operations of the Hotels granted to the Marriott Defendants and the  
26 inherent responsibility of the Marriott Defendants to exercise this broad authority with the  
27 utmost good faith, honesty and integrity and full disclosure to SHC.  
28



LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOB, GLASER, WEIL & SHAPIRO  
5121 AVENUE OF THE STARS  
EIGHTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
(310) 883-3000

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1           24.     With respect to the Ritz-Laguna Hotel, the predecessor company to SHC  
2 Laguna Niguel purchased this hotel from Prudential Insurance Company of America on  
3 September 30, 1997 subject to an existing management agreement with Ritz-Carlton  
4 (“Original Ritz Agreement”). In order to avoid termination of Ritz-Carlton’s management of  
5 the Ritz-Laguna Hotel in early 2000, Strategic and Ritz-Carlton entered into a Restructuring  
6 Agreement as to all Strategic hotels managed by Marriott and its subsidiaries effective as of  
7 January 1, 2000 (the “Restructuring Agreement”). As part of the Restructuring Agreement,  
8 and without limitation, a fully amended and restated Management Agreement was executed  
9 between SHC Laguna Niguel and Ritz-Carlton, effective January 1, 2000 (hereinafter the  
10 “Amended Ritz Agreement”). (The Original Ritz Agreement and the subsequent Amended  
11 Ritz Agreement shall sometimes hereinafter be collectively referred to as the “Ritz  
12 Agreements”).

13           25.     With respect to the Rancho Hotel, SHC Rancho entered into a Management  
14 Agreement with Marriott Hotel for this hotel on January 3, 1998, and this Agreement was  
15 amended in limited respects under the terms of the Restructuring Agreement. This  
16 Agreement, as amended, shall sometimes hereinafter be referred to as the “Rancho  
17 Agreement”.

18           26.     With respect to the Beverly Hills Hotel, SHC Beverly Hills entered into a  
19 Management Agreement with Renaissance for this hotel on July 16, 1998, and this  
20 Agreement was also amended in limited respects pursuant to the Restructuring Agreement.  
21 This Agreement as amended, shall sometimes hereinafter be referred to as the “Renaissance  
22 Agreement”. (The Ritz Agreements, Rancho Agreement and Renaissance Agreement shall  
23 sometimes be collectively referred to as the “Management Agreements”).

24                           **II. Special Relationship Of Trust And Confidence Established**  
25   **By The Management Agreements**

26           27.     The terms of the Management Agreements for each of the Hotels created a  
27 relationship of trust and confidence between each of the Marriott Defendants and SHC.  
28 Under the Management Agreements, the Marriott Defendants are required to exercise their

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOB, GLASER, WEIL & SHAPIRO  
3151 AVENUE OF THE STARS  
EIGHTEEN FLOOR  
LOS ANGELES, CALIFORNIA 90067  
(310) 892-3000

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1 extensive discretion and authority over Hotel operations with integrity, honesty, good faith  
2 and candor toward SHC and its interests. By way of example only, and without limitation,  
3 the Rancho Agreement and the Renaissance Agreement each contain the same provisions (at  
4 paragraph 1.02.C) requiring that:

[The] Manager . . . use its good faith efforts to operate the Hotel so as to  
*maximize the profitability and value of the Hotel* consistent with System  
Standards, sound marketing and industry practice. *(emphasis added)*

5  
6  
7 28. Similarly, the Ritz Agreements granted Ritz-Carlton the same wide-ranging  
8 authority and discretion to operate the Ritz-Laguna Hotel, subject to the express requirement  
9 that Ritz-Carlton “use reasonable good faith efforts to operate the Hotel” in accordance with  
10 its good faith projections of revenues, profits, expenses and all related components.  
11 (Amended Ritz Agreements at paragraph 4.2, 4.4 (b); Original Ritz Agreement, paragraphs  
12 4.2, 4.4(b)(where Ritz-Carlton was required to use its “best efforts” to achieve the results  
13 projected annually for revenues, profits, expenses and all related components)).

14 29. Based upon these obligations of trust and confidence, the Marriott Defendants  
15 retain extensive authority over Hotel operations and business dealings. This authority  
16 includes and extends to, without limitation, the procedures, terms and policies of purchasing;  
17 payment, hiring and firing of all personnel; the pricing and charging for rooms and services;  
18 the leasing, licensing and granting of concessions for commercial space; marketing and  
19 publicity; and the right to enter into contracts in the name of the Owner pursuant to such  
20 authority.

21 30. With respect to the Ritz-Laguna Hotel and by way of example only,  
22 paragraph 4.2 of the Ritz Agreements is substantially the same in setting forth Ritz-Carlton’s  
23 trusted authority over Hotel operations. By way of example, paragraph 4.2 of the Amended  
24 Ritz Agreement states in pertinent part that:

Operator shall have complete control and discretion in the operation,  
direction, management and supervision of the Hotel, subject only to those  
specific approvals of Owner set forth herein and the requirements of this  
Agreement. Such authority of Operator shall include, without limitation, the  
use of the Hotel for all customary purposes, determination of labor policies  
(including wage rates, collective bargaining agreements and the hiring and  
discharging of all employees which shall be employees of the Operator and

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBI, GLASER, WEIL & SHAPIRO  
2151 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
TEL: 883-3000

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1 not the Owner), credit policies (including entering into agreements with credit  
2 card organizations), terms of admittance, charges for rooms and commercial  
3 space, entertainment and amusement policies, supervision, management of  
4 food and beverage policies, and leasing, licensing and granting of concessions  
5 for commercial space at the Hotel, . . . and all phases of promotion and  
6 publicity relating to the Hotel. In exercising such authority . . . Operator may  
7 enter into such contracts, leases, concession agreements and other  
8 undertakings in the name of Operator or the Hotel (or Owner as shall be  
9 approved by Owner) and as Operator shall from time to time consider  
10 appropriate.”

11 31. In addition, the Ritz Agreements further provide that gross revenues from the  
12 operations of the Ritz-Laguna Hotel shall be deposited into bank operating accounts from  
13 which Ritz-Carlton has sole signature authority, on SHC's behalf, to make withdrawals to  
14 cover operating expenses, costs and charges incurred by the Hotel, including Ritz-Carlton's  
15 management fees and charges for corporate programs (such as the so called "Group Service  
16 Fee" referred to herein below). Specifically, and without limitation, paragraph 9.3 of the  
17 Ritz Agreements provides that ". . . the Operating Account shall be opened and maintained at  
18 all times solely by Operator and checks or other documents of withdrawal shall be signed,  
19 only by representatives of Operator . . .".

20 32. In similar manner to the Ritz Agreements, the Rancho Agreement and the  
21 Renaissance Agreement are virtually identical in entrusting Marriott Hotel and Renaissance  
22 with discretion and control over the Rancho Hotel's and the Beverly Hills Hotel's  
23 operations, subject, among other conditions, to certain designated approvals given to SHC  
24 and Marriott's overriding good faith obligation to maximize the profitability and value of the  
25 Hotel. By way of example only and without limitation, paragraph 1.02.C of both the Rancho  
26 Agreement and the Renaissance Agreement identically provides, in pertinent part, that:

27 Except as set forth herein, the operation of the Hotel shall be under the  
28 exclusive supervision and control of Manager which, except as otherwise  
specifically provided in the Agreement, shall be responsible for the proper  
and efficient operation of the Hotel. In fulfilling its obligations under this  
Agreement, Manager shall act as a reasonable and prudent operator of the  
Hotel, having regard for the status of the Hotel and maintaining the System  
Standards. Subject to Owner's rights set forth in this Agreement, Manager  
shall have discretion and control, free from interference, interruption or  
disturbance, in all matters relating to management and operation of the Hotel,  
including, without limitation, the following: charges for Guest Rooms,

commercial space, and services provided by the Hotel; food and beverage  
services; employment policies; credit policies; granting of leases, subleases,

1 licenses and concessions for shops and businesses within the Hotel . . . . and,  
2 generally, all activities necessary for operation of the Hotel. Subject to the  
3 terms and conditions of this Agreement, *Manager shall use its good faith*  
4 *efforts to operate the Hotel so as to maximize the profitability and value of*  
5 *the Hotel consistent with System Standards, sound marketing and industry*  
6 *practice. (emphasis added)*

7 33. In like manner to the Ritz Agreements, the Rancho Agreement and the  
8 Renaissance Agreement similarly provide that all gross revenues from the Rancho Hotel's  
9 and the Beverly Hills Hotel's operations shall be deposited into bank operating accounts.  
10 The Marriott Defendants are entrusted with signature authority, on behalf of SHC, to deduct,  
11 among other things, hotel operating costs, expenses and charges, their management fees and  
12 Marriott's charges for corporate programs. Specifically, and without limitation, paragraph  
13 4.03 of both the Rancho Agreement and the Renaissance Agreement provides that:

14 All funds derived from operation of the Hotel shall be deposited by Manager  
15 in bank accounts (the "Operating Accounts") in a bank or banks designated by  
16 Manager, subject to Owner's Approval. Withdrawals from said Operating  
17 Accounts shall be made solely by representatives of Manager whose  
18 signatures have been authorized.

19 34. As further evidence of the trust and confidence invested by SHC in the  
20 Marriott Defendants, the Management Agreements also give the Marriott Defendants the  
21 exclusive responsibility to keep and maintain all Hotel books and records for Hotel  
22 operations with the requirement that they be made available at reasonable times for  
23 inspection and audit by SHC. This requirement is confirmed in the Ritz Agreements at  
24 paragraph 10.1 as follows:

25 Operator shall keep full and adequate books of account and other records  
26 reflecting the results of operation of the Hotel in accordance with the Uniform  
27 System of Accounts and generally accepted accounting principles. The books  
28 of account and all other records relating to or reflecting the operation of the  
Hotel shall be kept either at the Hotel or at Operator's offices in Atlanta,  
Georgia or Bethesda, Maryland and shall be available to Owner and its  
representatives and its auditors or accountants, at all reasonable times for  
examination, audit, inspection and transcription. All of such books and  
records pertaining to the Hotel including, without limitation, books of  
account, guest record and front office records at all times shall be the property  
of Owner and shall not be removed from the Hotel or Operator's offices by  
Operator without Owner's approval and consent.

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LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
FIRST AVENUE OF THE STRAITS  
SUITE 1000  
LOS ANGELES, CALIFORNIA 90001  
(310) 483-3000

28

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
8181 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90047  
310.553.3000

1 35. Similarly, the Rancho Agreement and the Renaissance Agreement require, in  
2 pertinent part, the maintenance of books and records for inspection by SHC's  
3 representatives. Specifically and without limitation, paragraph 4.02 of both the Rancho  
4 Agreement and the Renaissance Agreement provides that:

5 Books of control and account pertaining to operations at the Hotel shall be  
6 kept on the accrual basis and in all material respects in accordance with the  
7 Uniform System of Accounts, with the exceptions provided in the Agreement.  
8 Owner may at reasonable intervals during Manager's normal business hours  
9 examine such records.

10 36. All of these provisions in the Management Agreements for each of the Hotels  
11 are directly representative of circumstances where a special relationship of trust and  
12 confidence exists. The entrustment by SHC of the operations of the Hotel properties (valued  
13 at hundreds of millions of dollars) to the Marriott Defendants carries the inherent  
14 requirement that the Marriott Defendants discharge these obligations under the Management  
15 Agreements with honesty, good faith and candor.

16 37. The Marriott Defendants and their affiliates manage numerous additional  
17 hotels for Strategic under virtually the same contractual arrangements. The other Strategic-  
18 owned properties managed by the Marriott Defendants or their affiliates are Marriott  
19 Lincolnshire Resort, in Lincolnshire, Illinois; the Marriott Schaumburg hotel in Schaumburg,  
20 Illinois; the Marriott East Side in New York, New York; the Paris Marriott Hotel Champs-  
21 Elysees in Paris, France; and the Hamburg Marriott Hotel in Hamburg, Germany. In total,  
22 the Marriott Defendants and their affiliates manage nearly \$1 billion in hotel assets for  
23 Strategic.

24 **III. Relationship of the Parties**

25 38. After its formation in 1997, Strategic turned to Marriott as it built its portfolio  
26 of hotels. The reasons for this were two-fold: Strategic (1) valued Marriott's experience as  
27 an operator of hotels; and (2) believed that Marriott would fulfill its management obligations  
28 in a professional manner, with full understanding of the relationship of trust and confidence  
29 created thereunder and with timely disclosure of all charges.

30 ///



1           42.     The release language in the Restructuring Agreement does not waive or  
2 release any of the claims addressed by this Complaint including, without limitation, claims  
3 regarding Marriott's improper use of confidential information, improper profiteering and  
4 self-interested transactions. In particular and without limitation, these subject claims were  
5 neither known by Strategic nor reasonably disclosed by Marriott as of the January 1, 2000  
6 Closing Date; they were not the subject of any review of accounting or other documentation  
7 during the PWC audit; and they were not otherwise released in any way.

8           43.     With the Restructuring Agreement completed, Strategic continued to expect  
9 that Marriott would strictly honor its obligations of trust and confidence under the  
10 Management Agreements. Unfortunately, Marriott has not lived up even to its limited  
11 agreements in the Restructuring Agreement.

12                           **V. Marriott's Compensation Under The Management Agreements**

13           44.     The compensation clauses in each of the Management Agreements for the  
14 Hotels, on their face, are designed to align and reward the Marriott Defendants for diligently  
15 performing their fiduciary obligations to SHC and their duty to maximize profitability to  
16 SHC. In conformity with this design, the structure of each of the Management Agreements  
17 is intended to incentivize this good faith conduct by allowing Marriott to share in the profits  
18 generated by the Hotels – on an increasing basis – to the extent that its efforts produce  
19 greater gross revenues and net operating income from Hotel operations.

20           45.     Accordingly, the Marriott Defendants are entitled to a base fee ("Base Fee")  
21 under each Management Agreement, which is set at a specified percentage of the gross  
22 revenues of each Hotel in the aggregate for each fiscal year.

23           46.     Each of the Marriott Defendants also has the ability under the Management  
24 Agreements to earn additional incentive fees ("Incentive Fees") based upon achieving target  
25 levels of net operating income after payment of defined operational costs and expenses, the  
26 Base Fee, designated reserves, and an owner return. Each of the Management Agreements  
27 gives the Marriott Defendants the ability to obtain Incentive Fees at a specified percentage of  
28 the targeted net operating income amount.

1 47. The Marriott Defendants have been well compensated under this structure.  
2 By way of example only, in fiscal year 2000, Marriott was paid total Base Fees of \$3.7  
3 million and total Incentive Fees of \$1.6 million for the three Hotels alone.

4 48. Under the Management Agreements, the Marriott Defendants are also  
5 authorized, inter alia, to deduct from Hotel revenues actual costs incurred to operate the  
6 individual Hotels and actual costs allocated to each Hotel on a centralized/group basis and  
7 incurred for the benefit of certain groups of Marriott-branded hotels. As set forth herein,  
8 these centralized costs (hereinafter "Corporate Charges") include, for example, national sales  
9 costs, group advertising, and employee training and relocation. Consistent with Marriott's  
10 above-referenced good faith obligations owed to SHC, these Corporate Charges should (i)  
11 reflect actual costs incurred by the Marriott Defendants; (ii) be costs that may rightfully be  
12 passed on to SHC; and (iii) provide a net benefit to the Hotels and maximize their  
13 profitability.

#### 14 VI. Corporate Charges

##### 15 A. Marriott Engages In A Deliberate Campaign To Expand Its Own 16 Profitability and Defray its Corporate Overhead By Imposing Corporate 17 Charges At The Expense Of SHC and Purposefully Obscuring the 18 Amount, Nature and Benefit of these Corporate Charges.

19 49. While continuing to accept management fees, Marriott imposes ever-  
20 increasing Corporate Charges, programs and fees on the Hotels that adversely affect the  
21 profits earned by SHC. At the same time, Marriott engages in accounting practices that  
22 obscure and render indecipherable the true nature of these Corporate Charges, programs and  
23 fees, the methods by which they are allocated among the Hotels, and the purported benefit  
24 derived by the Hotels.

25 50. These Corporate Charges, programs and fees, disguised as operating "costs,"  
26 deliver benefits to Marriott to which it is not entitled. Furthermore, they are charged in such  
27 a way as to make it virtually impossible for SHC to assess their propriety.

28 51. The Management Agreements require the Marriott Defendants to render an  
array of management services in exchange for multi-million dollar management fees. The



1 Base and Incentive Fees are accepted by Marriott while it deliberately attempts to offload on  
2 third parties, such as SHC, via the device of Corporate Charges as many of its costs of  
3 providing the management services as possible.

4 52. An integral part of Marriott's efforts to make "gross equal net" is its  
5 deliberate concealment of the nature, extent and composition of the Corporate Charges that  
6 SHC pays. As set forth herein, this concealment is effected in many ways and is a breach of  
7 the Marriott Defendants' express obligations to provide full and comprehensive accounting  
8 for the Hotels' financial performance and their implied obligations of good faith and fair  
9 dealing.

10 53. Marriott's reason for concealing and increasing these Corporate Charges is  
11 simple: these ever-expanding Corporate Charges provide Marriott with additional  
12 compensation and profits without any concomitant benefit to the Hotels.

13 54. These Corporate Charges are very large in both absolute and comparative  
14 terms. By way of example only, during fiscal year 2001 at the Rancho Hotel alone, the  
15 Corporate Charges for which Marriott reimbursed itself for purported Hotel expenses and  
16 costs ran to approximately \$2.5 million, being 2 ½ times the management fees charged to the  
17 Rancho Hotel for the same period, (ie. approximately \$1 million). As a result of this  
18 diversion of funds to Marriott disguised as "costs," SHC has been deprived of profits that  
19 rightfully belong to it.

20 **B. Marriott Corporate Charges Are Arbitrarily Imposed By**  
21 **The Marriott Defendants Without Adequate Disclosure**

22 55. Marriott Hotel and Renaissance impose a broad range of Corporate Charges  
23 for centralized programs, all deducted from the revenues of the Rancho Hotel and the  
24 Beverly Hills Hotel and purportedly benefiting all Marriott Hotels. Marriott professes that  
25 these Corporate Charges provide benefits to the Rancho Hotel and the Beverly Hills Hotel –  
26 and SHC believes that they certainly should benefit the Hotels. However, due to Marriott's  
27 policy of concealment and obfuscation, SHC is unable to assess whether these Corporate  
28 Charges are fully and properly chargeable to the Rancho Hotel and the Beverly Hills Hotel;

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBI, GLASER, WEIL & SHAPIRO  
3121 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90047  
310.799.2800

1 what portion constitutes additional undisclosed compensation to Marriott and what portion  
2 (if any) truly benefits the Hotels (as opposed to Marriott). SHC can only infer that these  
3 Corporate Charges subsidize Marriott's development of its numerous brands and provide  
4 undisclosed profits and streams of income and other benefits to Marriott (such as offsetting  
5 its corporate overhead costs), in breach of its contractual and fiduciary obligations owed to  
6 SHC. The methods of imposing these Corporate Charges vary among the Hotels as follows:

7 **(1) The Rancho Hotel and The Beverly Hills Hotel**

8 56. Marriott has imposed a procedure on these Hotels whereby estimated  
9 Corporate Charges are routinely and unilaterally deducted from operating accounts on a  
10 weekly basis. The Rancho Agreement and the Renaissance Agreement contain  
11 representations by Marriott that it is more "efficient" to estimate and deduct these Corporate  
12 Charges from operating accounts at SHC's hotels and then forward all funds to Marriott  
13 since they benefit all Marriott managed hotels (Rancho Agreement and Renaissance  
14 Agreement, ¶ 1.03).

15 57. In addition, the Rancho Agreement and the Renaissance Agreement also  
16 represent that these Corporate Charges for so-called "Chain Services" are allocated on a  
17 "fair" or "non-discriminatory" basis among all Marriott-managed hotels "receiving such  
18 services" (Rancho Agreement and Renaissance Agreement, ¶ 1.03). Specifically and without  
19 limitation, paragraph 1.03 of both the Rancho Agreement and the Renaissance Agreement  
20 provides, in pertinent part, that:

21 The charges for Chain Services shall include, as applicable, allocation of  
22 salaries, wages, and overhead related to the employees of Manager, Marriott,  
23 or any Affiliate involved in providing any of the Chain Services and shall be  
24 allocated on a fair and non-discriminatory basis among all hotels receiving  
such services. [The Renaissance Agreement provides that the Chain Services  
shall be allocated on a fair and reasonable basis.]

25 58. Also, without providing any details of the procedure, Marriott represents to  
26 SHC that the initially deducted Corporate Charges are subsequently "trued up" with actual  
27 costs to ensure the accuracy of the fees charged from year to year. In fact, in breach of its  
28 fiduciary obligations and contractual commitments to SHC, Marriott has steadfastly refused

1 to produce any detailed and meaningful support for these Corporate Charges and has resisted  
2 and evaded all attempts by SHC to obtain this information.

3 59. Marriott and its management subsidiaries for the Rancho Hotel and the  
4 Beverly Hills Hotel deduct these substantial fees from bank operating accounts on a weekly  
5 basis for over 50 categories of Marriott Corporate Charges without any meaningful  
6 disclosure to SHC of what benefit is received by SHC for these charges or how these charges  
7 are initially determined; reconciled (or "trued up") with actual costs; or allocated among  
8 other hotels. Generally, the same amount is transferred each week, regardless of the level of  
9 business at any of these Hotels. For example, after September 11, 2001, when the Hotels  
10 experienced drastic reductions in business, these amounts were not adjusted.

11 60. SHC has repeatedly requested that Marriott disclose the actual accounting  
12 documentation concerning these Corporate Charges. Marriott has, however, withheld such  
13 documentation in breach of its fiduciary and contractual obligations to SHC. Although  
14 Marriott has said it is willing to "open its books" to SHC, its interpretation of "opening its  
15 books" is limited to allowing SHC executives to meet with Marriott executives for an oral  
16 explanation of how, generally, the system is supposed to work. However, Marriott will not  
17 account for, or document, the actual amounts spent on, and the cost of, its many programs.  
18 A list of more than 50 categories of Corporate Charges imposed by Marriott is attached  
19 hereto as Exhibit "A."

20 (2) Ritz-Laguna Hotel

21 61. In regard to the Ritz-Laguna Hotel, Marriott's wholly owned subsidiary Ritz-  
22 Carlton employs a similar procedure to deduct unilaterally from Hotel operating accounts a  
23 so-called "Group Service Fee." Paragraph 1.1 of the Ritz Agreements, defines, among other  
24 terms, "Group Service" and "Group Service Fee" as follows:

25 "Group Service" shall mean the group benefits, services and facilities to be  
26 furnished by the Operator to the Hotel, relating to marketing, marketing  
27 research and development, direct sales, business promotions, sales promotion,  
28 publicity and public relations, advertising services and all other group  
benefits, services and facilities, including institutional advertising programs,  
if any, but excluding reservation systems, which are furnished to other Ritz-  
Carlton hotels by Operator or its Affiliates.

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
3121 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
(310) 883-3000

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“Group Service Fee” shall mean an amount up to 1% of Gross Operating Revenues for each Accounting Period during the Operating Term, which fee shall be calculated by determining the cost of Group Service to all Ritz Carlton hotels provided by Operator or its Affiliates and shall be apportioned in the manner provided in Article 6 to be paid by Owner to Operator . . . subject to the right of Owner to audit the amount and allocation of Group Service Fee.

62. Pursuant to the related Article 6 of the Ritz Agreements, Marriott must ensure that the Group Service Fee shall, among other matters, “be equitably apportioned between the participating hotels on the basis of the use of” such group services. (Ritz Agreements, paragraph 6(a); paragraph 1.1 (definition of “Group Service Fee”)).

63. Under paragraph 9.2 of the Ritz Agreements, Ritz-Carlton was also entrusted, on behalf of SHC, to deduct from Hotel gross revenues, *inter alia*, properly allocated Group Service Fees, “taking into account sound cash management.” By way of example and without limitation, paragraph 9.2 of the Amended Ritz Agreement provides, in pertinent part, that:

From the Operating Account, Operator shall pay all Deductions defined [to include the Group Service Fee] before any penalty or interest accrues thereon, however, *taking into account sound cash management.*” (*Emphasis added*)

64. Similarly, paragraph 9.2 of the Original Ritz Agreement also require Ritz-Carlton to exercise “sound cash management” in making, *inter alia*, these same deductions of the Group Service Fee from gross revenues of the Hotel.

65. In addition, as set forth hereinabove, Ritz-Carlton is also required to “keep full and adequate books of account and other records reflecting the results of the operation of the Hotel,” including the calculation and deduction of Group Service Fees, and to make these books and records available for inspection by SHC and its representatives “at all reasonable times for examination, audit, inspection and transcription.” (Ritz Agreements, paragraph 10.1).

66. Nevertheless, in like manner to the Rancho Hotel and the Beverly Hills Hotel, Ritz-Carlton has refused SHC’s repeated requests for disclosure as to how the Group Service Fees charged at the Ritz-Laguna Hotel are initially estimated, reconciled with actual costs, or allocated among Ritz-Carlton hotels. SHC believes Ritz-Carlton refuses to make any

LAW OFFICES  
CHRISTENSEN, MILLER, PINK, JACOBS, GLASER, WEILL & SHAPIRO  
8151 AVENUE OF THE STARS  
EIGHTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
LOS ANGELES TEL 983-3000

1 disclosure because it derives undisclosed profits, interest and other income from these Group  
2 Service Fees, all in direct violation of the express contractual and fiduciary obligations owed  
3 to SHC.

4 C. Marriott Engages In Deceptive Accounting  
5 In Order To Evade Detection Of Its Profiteering

6 67. In a multitude of ways, the Marriott Defendants conceal the nature, extent and  
7 composition of the Corporate Charges and Group Service Fees which SHC pays.

8 68. This deliberate obfuscation of vital information involves, among other  
9 matters:

- 10 • Steadfastly refusing to provide meaningful, concrete and detailed accountings of  
11 how the various Corporate Charges and Group Service Fees are derived, how the  
12 Hotels benefit from them, and how these Corporate Charges and Group Service Fees  
13 are allocated among Marriott's owners, including SHC;
- 14 • moving as many accounting functions from the Hotels to regional, central or  
15 other off-site offices, thereby impeding SHC's access to meaningful data about the  
16 Hotels;
- 17 • declining to permit SHC access to information kept off-site, even though access  
18 to that information is critical to SHC's understanding of the Corporate Charges and  
19 Group Service Fees, as well as other relevant accounting information concerning the  
20 Hotels;
- 21 • declining to respond to specific questions about the composition, derivation,  
22 allocation and justification for the Corporate Charges and Group Service Fees;
- 23 • obscuring the Corporate Charges through an omnibus accounting device entitled  
24 "Due To Marriott" and "Due from Marriott" in which all Corporate Charges are  
25 lumped together in such a way that even the Marriott controllers and accounting  
26 personnel at the Hotels charged with management responsibility for the Hotels are  
27 unable to determine for which items the Hotels are being charged and on what basis;
- 28 • obstructing SHC's access to even the most elementary information about the  
Hotels or making SHC's access to information about the Hotels as difficult as  
possible.

24 69. The Marriott Defendants' policy of concealment even extends to every-day  
25 accounting information about the operation of SHC's Hotels. By way of example, Marriott  
26 refuses to provide SHC with copies of reconciliations of bank statements relating to SHC's  
27 own bank accounts for the Hotels, insisting that the bank statements can only be examined  
28 on-site at the various hotels, a policy designed to impede and obstruct SHC's contractual

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
8131 AVENUE OF THE STARS  
EIGHTH FLOOR  
LOS ANGELES, CALIFORNIA 90047  
(310) 883-3000

1 right of access to information concerning its Hotels. Similarly, Marriott refuses to provide  
2 the general ledgers for SHC's Marriott-managed hotels to SHC's accountants off-site. (By  
3 way of example only, in connection with an audit that is currently being conducted at the  
4 Marriott Lincolnshire Hotel in Lincolnshire, Illinois, Marriott refused to deliver a copy of the  
5 general ledger to Strategic's accountants.)

## 6 VII. Misuse of SHC's Cash

7 70. As set forth hereinabove, with respect to the Rancho Hotel and the  
8 Renaissance Hotel, the Marriott Defendants are under a strict contractual obligation, among  
9 other matters, to operate the Hotels and manage revenues derived there from on SHC's  
10 behalf in "good faith" so as "to maximize the profitability and value of the Hotel"  
11 (Renaissance Agreement paragraph 1.02C; Rancho Agreement, paragraph 1.02C), and to  
12 keep and maintain accurate books and records of account for reasonable inspection by SHC  
13 (Rancho Agreement, paragraph 4.02; Renaissance Agreement, paragraph 4.02). In addition,  
14 with respect to the imposition and deduction of Corporate Charges, the Marriott Defendants  
15 are expressly required, among other matters, to allocate such Charges on a "fair and non-  
16 discriminatory basis" and to afford SHC "the right to review [Marriott's] methodology for  
17 allocating Chain Services among the individual hotels receiving such services" and to  
18 "supply all the reasonably requested data with respect thereto." (Renaissance Agreement,  
19 paragraph 1.03; Rancho Agreement, paragraph 1.03).

20 71. Similarly, with respect to the Ritz-Laguna Hotel, the Ritz Agreements require  
21 Marriott and its subsidiary Ritz-Carlton to allocate the Group Service Fee (defined as the  
22 "group benefits, services and facilities" furnished by Ritz-Carlton to the Hotel) on a good  
23 faith basis "taking into account sound cash management" (Ritz Agreements, paragraph 9.2),  
24 and also to ensure that the actual Group Service Fee charged to Ritz-Laguna Hotel "shall be  
25 equitably apportioned between the participating hotels on the basis of the use of" such group  
26 services by the Ritz-Laguna Hotel. (Ritz Agreements, paragraph 1.1, definition of "Group  
27 Service Fee"; paragraph 6(a)). In addition, in like manner to the Rancho Agreement and  
28 Renaissance Agreement, the Ritz Agreements also require Ritz-Carlton to maintain full and

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
2121 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
(310) 882-3000

1 Funds"). These so-called Sponsorship Funds are payable from vendors directly to Marriott  
2 based upon Marriott facilitating lucrative purchasing agreements between Avendra and such  
3 vendors. Although Marriott has failed to provide SHC with any detailed data in this regard,  
4 SHC is informed and believes and, based thereon, alleges that these Sponsorship Funds and  
5 other payments from vendors under the Avendra program go to Marriott and its affiliates.  
6 Once again, the existence of these suspect commission payments to Marriott by Avendra's  
7 actual vendors runs entirely counter to Marriott's express contractual and fiduciary  
8 obligation to ensure competitive purchasing for the SHC Hotels. The burden of paying ever-  
9 increasing Sponsorship Funds and other payments to Marriott will effectively prevent  
10 Avendra's vendors from engaging in competitive pricing.

11 130. In addition, in further derogation of Marriott's contractual and fiduciary  
12 obligations to SHC, SHC has learned that the "ceilings" on rebates and other commissions  
13 which Avendra (and by implication, Marriott, its nearly 50% owner) may retain for  
14 themselves from purported "competitive" purchasing on behalf of the hotels is substantial.  
15 This profiteering on rebates varies from 2.7% of total purchases through Avendra in 2000 to  
16 2.1% of total purchases in 2003. In addition, upon information and belief, Marriott retains  
17 Sponsorship Funds and other monies even beyond these ceilings on rebates. Although  
18 Avendra and Marriott have stated that rebate receipts beyond these ceilings are returned to  
19 Marriott and then to each of the Hotels on an allocated basis, Marriott has failed to provide  
20 any accountings or reporting to verify that this transfer of monies actually takes place.

21 131. In addition, contrary to Marriott's earlier statement that MDS would be  
22 subjected to a selection process for distribution purposes, Marriott has recently informed  
23 SHC that MDS was chosen to be the exclusive distributor of Avendra products to Marriott  
24 hotels even though they were not the most competitive bidder for such service (although  
25 Marriott has informed SHC that MDS eventually did agree to match the most competitive  
26 price). Significantly, and upon information and belief, Marriott is the only founder of  
27 Avendra using MDS for Avendra distribution purposes. SHC is informed and believes and,  
28 based thereon, alleges that Marriott receives a continuing benefit from preserving this

1 business for MDS, and that the cost of distribution could be substantially lower if one  
2 distributor were given the opportunity to service all of Avendra. In addition, SHC was  
3 recently informed by Marriott that Marriott intends to sell MDS – presumably at a profit.  
4 This is another example of Marriott using the buying power of the owner’s inventory to  
5 create an asset – MDS – from which it alone will profit.

6 F. Avendra’s Exclusive Dealing Provisions Result in Non-Competitive  
7 Pricing

8 132. While Marriott exclusively enjoys payment of Sponsorship Funds and suspect  
9 rebates under the Avendra program, Marriott’s wholesale abdication of its purchasing duties  
10 to Avendra directly harms SHC’s interests. In particular, SHC is informed and believes and,  
11 based thereon, alleges that the Marriott Defendants have permitted Avendra to enter into  
12 vendor and distribution agreements (which have not been produced for SHC), which include  
13 exclusive dealing provisions. These provisions state that vendors who provide goods or  
14 services to Avendra are prohibited from providing these goods and services directly to any  
15 Marriott hotel. The existence of these exclusive dealing arrangements with major Hotel  
16 vendors is entirely at odds with the requirement for competitive pricing since these vendors  
17 are prohibited from dealing directly with the Hotels on a system-wide or individual basis  
18 outside of Avendra.

19 133. Clearly, the creation of new Sponsorship Funds, Allowances, and other  
20 undisclosed monies payable to Marriott from vendors only serves to increase the cost of  
21 purchasing incurred by SHC Hotels, all to the benefit of Marriott and to the detriment of  
22 SHC.

23 XI. Marriott And Ritz-Carlton Have Harmed the Ritz-Laguna Hotel’s Status By  
24 Improperly Developing The Laguna Colony Hotel.

25 134. Marriott and Ritz-Carlton have again acted in their own self interest – and to  
26 the direct detriment of SHC – by improperly supporting the competing Laguna Colony Hotel  
27 in direct conflict with their fiduciary obligations owed to the Ritz-Laguna Hotel.  
28 Specifically, the Amended Ritz Agreement was intended, among other matters, to ensure that



LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
3151 AVENUE OF THE STARS  
SUITE 500  
LOS ANGELES, CALIFORNIA 90067  
(310) 832-3000

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1 Marriott and Ritz-Carlton were required to devote their full energies to the success of the  
2 Ritz-Laguna Hotel. In support of this contractual and fiduciary duty, provisions were  
3 included in the Amended Ritz Agreement to ensure that Ritz-Carlton's reservations system  
4 and other resources were not diverted to support the competing Laguna Colony Hotel.  
5 Paragraph 30.1(b) of the Amended Ritz Agreement contains these restrictions and states, in  
6 pertinent part, that:

7           During the Operating Term, neither the Laguna Beach Hotel nor the Monarch  
8 Beach Hotel (collectively, the "Other Hotels"), shall (i) be operated as a "Ritz-  
9 Carlton" hotel pursuant to a franchise or management agreement, or otherwise,  
10 (ii) be identified by by-line or tag-line or in advertising as a Ritz-Carlton  
11 Hotel, (iii) employ a Ritz-Carlton sales associate who is otherwise employed  
12 to exclusively sell hotels in the Ritz-Carlton System, (iv) be part of any Ritz-  
13 Carlton frequent traveler program, or (v) be part of a Ritz-Carlton reservation  
14 system. The foregoing clauses (iv) and (v) shall not prohibit the Other Hotels  
15 from participating in frequent traveler programs or reservation systems where  
16 less than 50% of the total rooms in such programs or systems are Ritz-Carlton  
17 hotel rooms.

18           135. The Ritz Agreement also provides specifically that no Ritz-Carlton hotel is  
19 permitted to be opened in the restricted areas proximate to the Ritz-Laguna Hotel during the  
20 initial thirty-year period of the Agreement. (Amended Ritz Agreement, ¶ 28)

21           136. Nevertheless, Marriott and Ritz-Carlton have consistently engaged in conduct  
22 demonstrating their intent and determination to promote and benefit the Laguna Colony  
23 Hotel at the expense of the Ritz-Laguna Hotel. Specifically, in March of 2001, a meeting  
24 was conducted between SHC and Ritz-Carlton regarding the Laguna Colony Hotel. SHC  
25 stressed at this meeting that it was willing to spend substantial sums to upgrade the Ritz-  
26 Laguna Hotel in order to protect its substantial investment in that property. SHC proposed  
27 development of a unique room design that would differentiate the Ritz-Laguna Hotel from  
28 the Laguna Colony Hotel and keep the Ritz-Laguna Hotel as the premier hotel in the market.  
Ritz-Carlton initially expressed enthusiasm about SHC's commitment. In addition, Ritz-  
Carlton claimed that it would not do anything to prejudice the Ritz-Laguna Hotel or  
undertake any activities to benefit the Laguna Colony Hotel at the expense of the Ritz-  
Laguna Hotel.

28. ///

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
3121 AVENUE OF THE STARS  
EIGHTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
(310) 983-3000

1           137. In May of 2001, another meeting was conducted at which SHC presented  
2 preliminary development work concerning its new world-class room designs. To the  
3 surprise of SHC, Ritz-Carlton told SHC's design consultant that some of the design concepts  
4 would not be appropriate because they would be too similar to some of the room designs at  
5 the competing Laguna Colony Hotel. Nonetheless, Ritz-Carlton encouraged SHC to  
6 continue with its design development work at this meeting.

7           138. In August of 2001, as SHC was working with its consultant's new room  
8 designs for the Ritz-Laguna Hotel, SHC was surprised to be informed by Ritz-Carlton that it  
9 did not want to do the redesigns proposed by SHC and merely wanted to use existing  
10 furniture that was almost 15 years old purportedly to "upgrade" the Ritz-Laguna Hotel.

11           139. As a result of this conduct and without limitation, SHC wrote to Ritz-Carlton  
12 on August 21, 2001, objecting to this approach and raising the issue as to whether a conflict  
13 of interest existed for Ritz-Carlton in favoring the Laguna Colony Hotel and in seeking to  
14 diminish the relative stature of the Ritz-Laguna Hotel, in complete violation of its  
15 obligations to SHC.

16           140. In response, Marriott and Ritz-Carlton promised that they had not done and  
17 would not do anything to jeopardize the Ritz-Laguna Hotel, notwithstanding their conduct to  
18 the contrary.

19           141. SHC believes that Marriott developed the Laguna Colony Hotel and fully  
20 intended to operate the Laguna Colony Hotel to the detriment of SHC. Marriott is not now  
21 operating the Laguna Colony Hotel only because it has been able to sell the Laguna Colony  
22 Hotel at a substantial profit (albeit by using SHC's confidential information — see ¶¶82  
23 through 92 herein).

24           142. Prior to the sale of the Laguna Colony Hotel, in further breach of the above-  
25 referenced restrictions in the Ritz Agreement, without any prior notice to SHC, Ritz-Carlton  
26 imposed so-called "Rules of Engagement" on its sales staff regarding the Laguna Colony  
27 Hotel. Once again, the directives in these Rules violate the restrictions in the Ritz  
28 Agreement and demonstrate Ritz-Carlton's intent to benefit the Laguna Colony Hotel.

1 143. In particular and among other things, the Rules of Engagement violate Ritz-  
2 Carlton's obligations by directing that: 1) it is acceptable for Ritz-Carlton reservation  
3 personnel to acknowledge that the competing hotel is an independent hotel "operated by the  
4 Ritz-Carlton," 2) Ritz-Carlton employees could sell the Laguna Colony Hotel even though  
5 they are not selling another brand other than Ritz-Carlton, and 3) it is acceptable for Ritz-  
6 Carlton personnel to forward the Ritz-Laguna Hotel guest information and leads to the  
7 Laguna Colony Hotel when such Ritz-Laguna Hotel personnel unilaterally determine that  
8 such business cannot be "accommodated" by the Ritz-Laguna Hotel. These directives not  
9 only violate the restrictions in the Ritz Agreement, but also create a direct conflict of interest  
10 for Marriott and Ritz-Carlton regarding their allegiances to the Ritz-Laguna Hotel versus the  
11 Laguna Colony Hotel in breach of their contractual and fiduciary obligations to SHC.

12 144. Marriott and Ritz-Carlton imposed these unilateral Rules of Engagement  
13 upon Ritz-Carlton sales staff commencing on September 27, 2001. A copy of such Rules,  
14 however, was not provided to SHC until February 11, 2002, after they had been in effect to  
15 the detriment of the Ritz-Laguna Hotel for almost five months. Upon receipt of these Rules,  
16 SHC raised each of the above-referenced issues with Ritz-Carlton, culminating in a letter  
17 dated March 18, 2002 demanding that the Rules of Engagement be materially altered to  
18 address these issues of concern. While Ritz-Carlton acknowledged the issues of concern  
19 raised by SHC, Ritz-Carlton was not willing to make material, substantial alterations to the  
20 Rules of Engagement to address these matters.

21 **XII. Marriott Has Improperly Refused to Indemnify SHC for the Costs of Ongoing**  
22 **Litigation**

23 145. Three class action lawsuits are pending in California state courts against  
24 Marriott, Ritz-Carlton or SHC, asserting primarily that the Hotels improperly charge a resort  
25 fee and/or energy surcharge fee to guests without proper or adequate disclosure of same.  
26 Specifically, these class action lawsuits are entitled Ireland et al v. Strategic Hotel Capital,  
27 LLC; Phillips et al v. Marriott International, Inc., et al.; and Aston et al, v. Marriott  
28 International, Inc. et al. (hereinafter, collectively, the "Guest Fee Class Actions").

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
2121 AVENUE OF THE STARS  
EIGHTEENTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
310.593.3000

1 146. Pursuant to the Ritz Agreement, Marriott is responsible and has sole  
2 discretion concerning the fees charged to hotel guests. (Amended Ritz Agreement, ¶ 4.2). In  
3 addition, the Amended Ritz Agreement also provides that Ritz Carlton, as manager, is  
4 required to indemnify SHC where litigation is commenced that asserts that such managers  
5 improperly performed this obligation. Specifically, paragraph 24.1 of the Amended Ritz  
6 Agreement states as follows:

7 Operator shall indemnify, defend and hold Owner harmless from any  
8 and all claims, demands, causes of action, losses, damages, fines,  
9 penalties, liabilities, costs and expenses including reasonable attorneys  
10 fees and court costs sustained or incurred by or asserted against Owner  
11 by reason of or arising out of (i) any gross negligence of Operator, its  
agents, contractors, subcontractors and employees; (ii) any malfeasance  
or misfeasance on the part of personnel hired by Operator for the  
management of the Hotel; and (iii) any breach of any covenant,  
representation or warranty of Operator herein contained.

12 147. As set forth hereinabove, the Marriott Defendants are responsible for charging  
13 and disclosing fees charged to guests at the Hotels. Because the central basis of the Guest  
14 Fee Class Actions allegations is the improper charging and non-disclosure of guest fees, the  
15 Marriott Defendants are contractually, equitably and/or impliedly required to indemnify SHC  
16 and pay for the legal expenses and costs incurred in defense of these Guest Fee Class  
17 Actions. Nevertheless, the Marriott Defendants have refused this indemnity obligation.  
18 Instead, SHC believes that Marriott continues to improperly deduct the attorneys' fees and  
19 costs incurred in defense of the Guest Fee Class Actions from Hotel operating accounts.  
20 SHC has requested that the Marriott Defendants cease and desist from making these  
21 deductions and indemnify SHC, but the Marriott Defendants have refused to do so.

22 **XIII. Marriott Is In Breach Of The Restructuring Agreement**

23 148. In the Restructuring Agreement, Marriott agreed, among other things, to  
24 adhere to certain practices and procedures. By way of example, and without limitation,  
25 Schedule 4.1A required certain procedures concerning Hotel vendor contracts and the  
26 payment of central office overhead by the Ritz Laguna Hotel as follows:

27 Vendor Contracts - Designated Hotel Properties will provide future  
28 contracts to SHC asset managers in accordance with the terms of the  
Amended Management Agreements. . . .

LAW OFFICES  
CHRISTENSEN, MILLER, FINN, JACOBS, GLASER, WEIL & SHAPIRO  
3121 AVENUE OF THE STARS  
SUITE 1900  
LOS ANGELES, CALIFORNIA 90067  
TEL: 310.552.3000

1 149. Furthermore, Marriott made certain representations to Strategic regarding its  
2 operations. By way of example, and without limitation, in Schedule 4.1A, Marriott  
3 represented as follows:

4 Employee Room Discounts (Lincolnshire) – Consistent with MI  
5 policies at all hotels in the system, Lincolnshire does not provide  
employee room discounts...

6 Chain Services and Corporate Charges (Lincolnshire) – MI represents  
7 that there are no manager-retained profit elements with respect to chain  
services

8 150. In addition, Schedule 4.3 of the Restructuring Agreement required that  
9 Marriott adhere to certain other accounting practices and procedures at all Hotels as follows:

10 (a) MI will provide a reconciliation of (i) the FF&E Reserve account, (ii) the  
11 owner control account/rent payable to owner, and (iii) the asset and liability summary to SHC in  
conjunction with the distribution of information provided to SHC on an accounting period basis.

12 (b) The Director of Finance of each Designated Hotel Property is to complete a  
13 formal reconciliation of all bank accounts on an accounting period and year-end basis.

14 (c) Excess cash balances are swept to investment accounts held on behalf of the  
owner daily.

15 (d) The Director of Finance of each Designated Hotel Property is aware of the  
16 various categories of charges in the InterUnit account and reconciles such account to determine the  
amounts due to or due from Marriott each period.

17 (e) All excess cash on hand is to be invested daily.

18 (f) The Director of Finance of each Designated Hotel Property is to transfer  
19 FF&E replacement funds, in accordance with the respective Amended Management Agreement, on  
a periodic basis to an interest bearing account.

20 (g) The Director of Finance of each Designated Hotel Property is to complete a  
21 formal reconciliation of each account on the balance sheet every period researching and clearing all  
reconciling items in a timely manner.

22 151. As to the Beverly Hills Hotel, Marriott has breached the Restructuring  
23 Agreement by, among other things, failing to deposit Hotel operating funds into an  
24 investment account for the benefit of the Hotel on a daily basis and failing to transfer FF&E  
25 replacement funds on a periodic basis to an interest bearing account.

26 152. Furthermore, Marriott has breached Schedule 4.1A of the Restructuring  
27 Agreement by misrepresenting how employee room discounts and chain services are  
28 calculated at the Marriott Lincolnshire.

1 accurate books and records concerning the Hotel operations (including the handling of the  
2 Group Service Fee) and to afford SHC the right to inspect and examine such books and  
3 records (Ritz Agreements, paragraph 10.1). In violation of these contractual provisions and  
4 their fiduciary obligations, the Marriott Defendants have misused SHC's cash (in the form of  
5 revenues from the Hotels) to earn unauthorized benefits in several ways as set forth below.

6           A.     **Marriott Routinely Uses SHC's Cash Without**  
7                    **Compensation to SHC For That Use.**

8           72.     Notwithstanding these contractual requirements and their fiduciary  
9 obligations, the Marriott Defendants use SHC's cash derived from the operation of the  
10 Hotels in any number of ways for their own corporate purposes without compensation to  
11 SHC for that use.

12           73.     Marriott routinely charges the Hotels' operating accounts for costs of the  
13 Hotels far in advance of the dates when Marriott is required to pay such costs. In the  
14 meantime, Marriott uses the cash so derived for its own corporate purposes and does not  
15 compensate SHC for that use.

16           74.     Marriott's use of the "Due to/due from Marriott" accounting device permits it  
17 to obscure the way and extent by which it borrows interest-free from SHC.

18           75.     In addition, Marriott has moved and continues to move off-site multiple  
19 functions formerly conducted on site at the Hotels, and uses that movement to further  
20 obscure its use of cash interest-free. While such movement of functions purports to be for  
21 SHC's benefit, it is actually for Marriott's benefit in that it removes vital management and  
22 accounting functions from the Hotels to places where such functions cannot easily be  
23 reviewed by SHC. By way of example, Marriott has recently instituted "Project Mercury" at  
24 its Marriott-branded hotels, by which virtually all accounting functions are now performed in  
25 Knoxville, Tennessee, rather than at the hotels. Upon information and belief, the Project  
26 Mercury accounts receive all credit card and other receivables attributable to the Hotels.  
27 Upon information and belief, a certain amount of these receivables are then transferred to a  
28 central disbursement account where they earn interest for Marriott's benefit prior to being

1 disbursed or paid. Due to Marriott's failure to provide information, SHC is deprived of  
2 learning how far in advance the funds are transferred to the central disbursement account  
3 prior to the disbursement of such funds and accordingly, the full extent of the interest benefit  
4 derived by Marriott.

5 B. The Marriott "Rewards" Program Is Another Profit Center That  
6 Marriott Uses To Extract Additional And Unjustified Compensation  
7 From SHC.

8 76. In similar manner, Marriott improperly uses SHC's cash to derive  
9 compensation for itself as part of its handling of the "Marriott Rewards" program. Marriott's  
10 guest loyalty program is entitled "Marriott Rewards." Because each Marriott-branded hotel  
11 (other than Ritz-Carlton) has historically paid a fee of 5% of total revenue (including taxes)  
12 generated by each Marriott Rewards member to defray costs of the Marriott Rewards  
13 program (recently reduced to 4.5%), the program by its nature generates huge amounts of  
14 cash flow. Marriott represents that this cash stream is then used for subsequent distributions  
15 to hotels where free accommodation is provided to guests based upon the member-guests'  
16 redemption of points under the same program. According to Marriott's 2001 10-K, these  
17 retained funds amounted to *more than \$600 million* in the aggregate at the end of 2001.  
18 Marriott has represented to SHC that it does not make a profit on the Marriott Rewards  
19 Program from either interest or investments. However, in direct violation of its express  
20 disclosure obligations, Marriott has failed to provide to SHC any meaningful accountings  
21 and documentation to track the payment and transfer of SHC's funds in relation to the  
22 Marriott Rewards Program, despite repeated requests to do so.

23 77. SHC is informed and believes and, based thereon, alleges that Marriott earns  
24 unjustified and undisclosed compensation and benefits through the Marriott Rewards  
25 Program at SHC's expense in at least three ways:

26 78. *First*, upon information and belief, Marriott improperly allocates to the  
27 Marriott Rewards Program many expenses not properly allocable thereto (e.g., its corporate  
28 overhead that should properly be paid by Marriott), thereby obscuring the true nature of the  
way in which the program operates and increasing the expense of the program to SHC.

LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO  
3121 AVENUE OF THE STARS  
EIGHTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
(310) 892-3000

1           79.     *Second*, upon information and belief, Marriott uses the positive cash balances  
2 generated by the program for its own corporate purposes without adequately compensating  
3 SHC for the use of those cash balances. These positive cash balances operate as a perpetual  
4 loan to Marriott from SHC and Marriott's other owners, permitting Marriott to reduce its  
5 own corporate borrowings, add to its profits, and obtain working capital to develop  
6 competing hotels.

7           80.     *Finally*, upon information and belief, Marriott's determination of the charges  
8 for the Rewards Program, and the amount of compensation that is paid to owners when  
9 points are redeemed are skewed in such a way that the full-service Marriott brands (such as  
10 the Rancho Hotel and the Beverly Hills Hotel) subsidize unfairly other existing and newly  
11 developing Marriott brands.

12           C.     Workers' Compensation

13           81.     Another area where Marriott inappropriately takes SHC's cash in violation of  
14 its contractual and fiduciary obligations is in workers' compensation. SHC is informed and  
15 believes and, based thereon, alleges that when a workers' compensation claim is filed at the  
16 Hotel, Marriott takes a reserve from the Hotel's cash, based on its estimate of the value of  
17 the claim. If the claim is closed, either by settlement or by judgment, at any time after the  
18 second anniversary of the claim, and the amount of the settlement or judgment is less than  
19 the reserved amount, Marriott keeps the balance of the reserve as revenue. There is no good  
20 faith or contractual justification for taking such unauthorized action. To date, Marriott has  
21 refused to give SHC an accounting of the workers' compensation claims, reserve amounts  
22 and settlement amounts for its properties, including the Hotels.

23                           VIII. Misuse of SHC's Confidential Information

24           A.     Marriott Is Required to Keep SHC's Own Confidential And Proprietary  
25                    Information Confidential

26           82.     The Marriott Defendants routinely obtain highly proprietary information in  
27 the course of their management of SHC Hotels, including guest demographics and profile  
28 data; sales, costs and profit analysis; business plans; and hotel market performance metrics



LAW OFFICES  
CHRISTENSEN, MILLER, FINK, JACOB, GLASER, WEIL & SHAPIRO  
5121 AVENUE OF THE STARS  
EIGHTH FLOOR, SUITE 8004  
LOS ANGELES, CALIFORNIA 90047  
(310) 833-3000

1 and promotional programs. In accordance with certain terms of the Management  
2 Agreements for the Hotels and the Marriott Defendants' general duties of trust and  
3 confidence, all Hotel books and records, accounting information and other documentation  
4 maintained by the Marriott Defendants are acknowledged by the Marriott Defendants as  
5 being the property of SHC and are to be kept confidential from disclosure to any third party  
6 entities. By way of example, the Original and Amended Ritz Agreements provide, in  
7 pertinent part, at paragraph 10.1 that:

8 All of [the Ritz-Laguna Hotel's] books and records pertaining to the  
9 Hotel including, without limitation, books of account, guest records  
10 and front office records at all times shall be the property of Owner and  
11 shall not be removed from the Hotel or Operator's offices by Operator  
12 without Owner's approval and consent.

11 83. By way of further example, the Rancho Agreement and the Renaissance  
12 Agreement also identically provide, in pertinent part, at paragraph 11.09A that:

13 [A]ll statements, reports, projections and other information relating to  
14 the operations of the Hotel are strictly confidential and each party will  
15 make every effort to ensure that the information is not disclosed to any  
16 outside person or entities (including the press) without the prior written  
17 consent of the other party...

16 84. In addition to these contractual prohibitions, a key element of the Marriott  
17 Defendants' duty of trust and confidence is to strictly maintain the confidentiality of all  
18 Hotel operational information in the course of their duties. The Marriott Defendants have  
19 flagrantly breached these fiduciary and contractual obligations in at least two respects, as set  
20 forth below.

21 **B. Marriott Uses SHC's Confidential Operational Data**  
22 **To Increase Marriott's Profit**

23 85. The Marriott Defendants have persisted in a practice of using SHC's highly  
24 confidential sales and operations data relating to the Hotels to develop for their own account,  
25 or to encourage the development by third parties of, new hotel properties carrying one of the  
26 plethora of Marriott-owned brands in direct competition with SHC's properties. In  
27 particular, the Marriott Defendants have completely disregarded their express contractual  
28 obligations and express and implied good faith obligations owed to SHC by using SHC's

1 highly confidential operational data to, among other matters, convince competing owner  
2 groups that certain localities are viable for hotel development, advise them of resources  
3 needed for the development of the hotel, identify the key sources of guest business, and  
4 advise them of the guest amenities that should be developed at such properties. The key  
5 objective of the Marriott Defendants in using this highly confidential information owned by  
6 SHC is to make a profit – either by selling the developed property or by promoting  
7 Marriott’s own brands as manager of a property – thereby receiving ever-increasing  
8 franchise fees, management fees, Corporate Charges and Group Service Fees. The Marriott  
9 Defendants’ quest for ever-expanding brand distribution and enhancement through this  
10 practice often is directed to encouraging other owner groups to develop hotels in direct  
11 competition with SHC-owned hotels already managed by Marriott or its affiliates. In  
12 essence, the Marriott Defendants use SHC’s own proprietary information directly against  
13 SHC’s own interests solely to derive additional management fees, franchise fees, Corporate  
14 Charges, Group Service Fees and other profits. As set forth below, a primary example of  
15 this conduct involved the Ritz-Laguna Hotel.

16 86. The Marriott Defendants, as a matter of policy, use SHC’s confidential and  
17 proprietary information to promote development by competitors of the Hotels. In effect,  
18 they sacrifice SHC’s Hotels for the benefit of Marriott.

19 C. **Marriott And Ritz-Carlton Used SHC’s Confidential Information**  
20 **Data To Develop and Pursue A Sale Of Marriott’s Laguna Colony Hotel**

21 87. During late 1999, as the parties negotiated the Restructuring Agreement,  
22 Marriott advised Strategic for the first time that it was developing and planning to open a  
23 competing luxury hotel in the area of the Ritz-Laguna Hotel, targeting the same guests as the  
24 Ritz-Laguna Hotel. The new hotel development was to be located at Laguna Beach  
25 (hereinafter the “Laguna Colony Hotel”), which is approximately three miles from the Ritz-  
26 Laguna Hotel. In order to induce SHC to enter into the Amended Ritz Agreement (as part of  
27 the Restructuring Agreement), Marriott represented to SHC that the Laguna Colony Hotel  
28 would only be operated as a Ritz-Carlton Hotel if SHC were to be the owner of the new

1 119. Eventually, the implementation of the purchasing program by SHC's  
2 consultant was scheduled to commence on January 14, 2002. In early January 2002, the food  
3 consultant sent Ritz-Carlton his standard retainer contract (a contract which the consultant  
4 has used with many other sophisticated owners and hotel operators), which Ritz-Carlton  
5 refused to sign. Ritz-Carlton claimed that the standard retainer contract was, in its opinion,  
6 woefully incomplete and that it required its attorneys to draft the agreement. Ritz-Carlton  
7 did not forward its proposed agreement to the consultant until January 23, 2002, more than  
8 one week after the consultant was scheduled to begin rendering services. In addition, Ritz-  
9 Carlton insisted that the consultant could not start rendering services until Ritz-Carlton had a  
10 signed agreement. The Marriott Defendants then attempted to impose the following  
11 unreasonable restrictions in their proposed agreement for the consultant to sign:

12 (a) Ritz-Carlton was allowed to terminate the consultant at any time if he was not  
13 achieving cost savings equal to his fee. This was so even though SHC, not Ritz-Carlton, was paying  
the fee and this had not been the agreement between SHC and the consultant.

14 (b) The consultant was required to reimburse Ritz-Carlton if the cost savings  
15 realized by the hotel did not exceed his annual fee. Again, this was not part of the agreement  
between SHC and the consultant, and SHC, not Ritz-Carlton or the Hotel, was paying this fee.

16 (c) Ritz-Carlton was permitted to disclose the results of the third-party  
17 evaluation, but SHC, as the owner, was precluded from disclosing the same results. Thus, if the  
18 consultant were to find that Ritz-Carlton's purchasing delivered a massive profit to Ritz-Carlton and  
19 was not competitive, SHC would have been precluded from disclosing this matter or taking  
affirmative action. Alternatively, if it was determined that the purchasing was competitive, Ritz-  
Carlton was permitted to disclose this fact to anyone.

20 (d) Ritz-Carlton insisted on having full access to the consultant's books and  
21 records to examine his pricing; however, Ritz-Carlton had no obligation to open its books and  
22 records or the books and records of Avendra to SHC or the consultant.

23 (e) The consultant was only permitted to discuss his findings with SHC if there  
24 was a representative of Ritz-Carlton present.

25 (f) The consultant was prohibited from revealing any Ritz Carlton-designated  
26 "confidential" information – which included contracts and invoices for the purchasing of food to  
27 SHC, even though SHC was paying for all such purchases.

28 (g) SHC was required to acknowledge that Ritz Carlton (and Avendra) were the  
sole parties having the right to purchase on behalf of the hotel, even though Ritz Carlton knew it was  
SHC's position that this was not the case.

(h) Ritz Carlton refused to show either SHC or its consultant copies of invoices  
from Avendra or Marriott-affiliated vendors of items purchased at the Hotel – and paid for with  
SHC's money – because Ritz Carlton claimed that these invoices were confidential and proprietary.