

120. Accordingly, Marriott did not accede to any of SHC's reasonable requests and thereby impeded and prevented any legitimate investigation of the Marriott Defendants' purchasing at the Ritz-Laguna Hotel.

121. To date, the Marriott Defendants have refused and continue to refuse to provide required and necessary information concerning their purchases of goods, supplies, and services from Marketplace, MDS and most recently, Avendra, in breach of the Management Agreements, the Restructuring Agreement, and their fiduciary obligations owed to SHC.

D. Marriott's Complete Assignment Of The Purchasing Function To Avendra For Three Years Violates The Management Agreements.

122. The Management Agreements for the Hotels all include the contractual requirements that the Marriott Defendants obtain the Owner's prior written consent before entering into significant new contracts that result in changes in policies and procedures affecting the Hotels. By way of example, the Rancho Agreement and the Renaissance Agreement require the Owner's prior written consent before entering into any new contracts for the purchase of goods, supplies and services at the Hotels having a non-terminable term in excess of one year or where the aggregate expenditures would, or are reasonably anticipated to, exceed \$50,000 in the aggregate per annum. (Rancho Agreement and Renaissance Agreement, ¶1.06). Similarly, all of the Management Agreements require that the Marriott Defendants obtain prior written consent of SHC to any change in Hotel policies and procedures "of a significant nature which would substantially affect" the operations, maintenance, or marketing orientation of the hotel or the nature of services provided to its guests and patrons. (Amended Ritz Agreement, ¶4.9; Rancho Agreement and Renaissance Agreement, ¶1.06).

123. The Management Agreements for the Hotels further prohibit the Marriott Defendants from assigning or transferring their interest in the Management Agreements without prior written consent of the Owner except, among other matters, where such assignment is to Marriott "or any Affiliate." (Amended Ritz Agreement, ¶22.1; Rancho

1 Agreement and Renaissance Agreement. ¶10.01). Each of the Management Agreements
2 further provides that in the event of an assignment, the Marriott Defendant will not be
3 relieved from its respective obligations under the Agreement. (Amended Ritz Agreement,
4 ¶22.1; Rancho Agreement and Renaissance Agreement, ¶10.01).

5 124. In complete disregard of these contractual requirements as well as its
6 ongoing fiduciary obligations, on or about January 26, 2001, Marriott entered into a
7 contractual arrangement to merge Marketplace with and into a new entity, Avendra. At the
8 same time, upon information and belief, Marriott engaged in a wholesale assignment of all
9 purchasing functions relating to the Hotels (including assignment of existing vendor
10 distributor agreements) directly to Avendra. In essence, Marriott at this time completely
11 abdicated and delegated its core contractual and fiduciary obligation for purchasing of all
12 goods, services and supplies for the SHC Hotels. It took this action in complete derogation
13 of its duties to SHC without any prior approval or consent whatsoever of SHC.

14 125. In addition, although Marriott has failed and refused to provide any
15 meaningful accountings, contracts or other data concerning details of its ownership interest
16 in Avendra, Marriott's own statements that Avendra is an "independent entity" indicate that
17 Avendra is not an "Affiliate" (as defined in the Management Agreements) where assignment
18 may be permitted.

19 126. In addition, SHC is informed and believes and, based thereon, alleges that,
20 under a Procurement Services Agreement by and between Marriott and Avendra effective
21 March 31, 2001 (the "Procurement Agreement"), Marriott has also delegated to Avendra vast
22 and highly discretionary agency authority and responsibility on behalf of the SHC Hotels, for
23 among other things: (1) the investigation, qualification and selection of vendors and
24 distributors; (2) the negotiation and execution of contracts with vendors and distributors; (3)
25 the negotiation of the amount of any "Sponsorship Funds" rebates, or allowances payable to
26 Marriott; (4) the collections accounting for, and distribution of allowances and "Sponsorship
27 Funds" from vendors and distributors; and (5) maintenance of custody of all copies of all
28 contracts with vendors and distributors as well as invoices and related documentation (which

1 materials Marriott continues to refuse to provide to SHC).

2 127. Upon information and belief, SHC has learned that Marriott, in fact, entered
3 into a three-year exclusive and non-terminable assignment of all of its core purchasing
4 obligations to Avendra, in which Marriott has almost a 50% ownership interest. Marriott has
5 not only selected Avendra as one of many competitive bidders to supply goods and services
6 to the hotels; it has completely abdicated its responsibility for the purchasing function to
7 Avendra.

8 E. Marriott Has Continued Its Concealed Profit-Making Through Avendra

9 128. SHC formally learned of the formation of Avendra when it received the
10 written announcement by Marriott to Owners of this fact by letter dated January 31, 2001.
11 Marriott represented in this written announcement that Avendra was "a new independent
12 entity" founded by certain hotel chains including Hyatt, Marriott and others. Marriott also
13 represented in writing that the "aggregation of the additional buying power" through
14 Avendra "will result in substantial savings to our hotels." As to compensation through
15 Avendra, Marriott only vaguely stated that the entity would receive revenues "through
16 retaining vendor-supplied rebates" and that any such rebates exceeding an undisclosed
17 "contractually agreed upon percentage will be returned to Marriott. ...and by Marriott to the
18 hotels." In addition, Marriott stated that MDS "will have to go through a competitive
19 selection process administered by Avendra to determine if it will be selected as a distributor
20 for ... Avendra." Marriott has also stated in its written announcement to Owners (including
21 SHC) that Avendra's global purchasing operation for the Hotels will improve the
22 "competitiveness, quality and pricing of goods and services provided to Owners." However,
23 Marriott has refused all of SHC's requests to provide even the most fundamental accounting
24 data and information necessary to investigate these representations, such as the actual
25 Marriott contract with Avendra itself and Avendra's contracts with national vendors.

26 129. In addition, in more detail and upon information and belief, the Procurement
27 Agreement creates additional sources of undisclosed payments and questionable
28 commissions to Marriott (designated in the Procurement Agreement as "Sponsorship

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

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.

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

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

28 ///

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").

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. . . .

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.

1 153. Furthermore, Marriott has breached Schedule 4.1A and 4.3 of the
2 Restructuring Agreement in connection with the operation of the Hotels by, among other
3 matters:

- 4 (a) failing to provide Vendor Contracts to SHC managers as required under the
5 Restructuring Agreement and the Management Agreements;
6 (b) failing to provide a meaningful reconciliation of the FF&E Reserve account,
7 the owner control account/rent payable to owner, and the asset and liability summary on the required
8 accounting period basis;
9 (c) failing to complete formal reconciliation of all bank accounts on an
10 accounting period and year end basis;
11 (d) failing to reconcile the various categories of charges in the InterUnit account
12 during each accounting period; and
13 (e) failing to complete a formal reconciliation of each account on the balance
14 sheet every accounting period and in a timely manner.

15 **FIRST CAUSE OF ACTION**

16 (For Breach of Contract
17 By Plaintiffs SHC Laguna Niguel I LLC, SHC Rancho, L.L.C.,
18 and SHC Beverly Hills II, L.L.C. As Against Defendants Marriott,
19 Marriott Hotel Services, Inc., The Ritz-Carlton Hotel Company, L.L.C.,
20 Renaissance Hotel Operating Company, and Does 1 through 100, inclusive)

21 154. SHC incorporates herein by reference each and every allegation of paragraphs
22 1 through 153 as though fully set forth herein.

23 155. As more particularly set forth in the foregoing paragraphs, the Original and
24 Amended Ritz Agreements provide, among other things, as follows:

- 25 (a) Marriott and Ritz-Carlton are required to equitably apportion the Group
26 Service Fee deducted from Ritz-Carlton hotel operating accounts on the basis of the use of the
27 Group Services charged;
28 (b) Marriott and Ritz-Carlton are precluded from entering into contracts with
Affiliates concerning the purchase of goods, supplies and services, unless the prices and terms are
competitive with non-Affiliate transactions;
(c) Marriott and Ritz-Carlton are required to maintain the strict confidentiality of
all books and records of account regarding Hotel operations;

29 ///

(d) Marriott and Ritz-Carlton may not enter into major purchasing or other transactions affecting services to guests without Owner consent in writing;

(e) Marriott and Ritz-Carlton may not assign their responsibilities under the Management Agreements without SHC's consent in writing; and

(f) Ritz-Carlton is required to indemnify and hold SHC harmless from any lawsuits alleging (i) gross negligence of Ritz-Carlton, its agents, contractors, sub-contractors and employees; (ii) any malfeasance or misfeasance on the part of personnel hired by Ritz-Carlton for the management of Ritz-Laguna Hotel and (iii) any breach of any covenant, representation or warranty of Ritz-Carlton in the Ritz Agreements.

156. As to the Amended Ritz Agreement only, the Laguna Colony Hotel is precluded from:

- i. being operated as a "Ritz-Carlton" hotel;
- ii. being identified in advertising as a Ritz-Carlton hotel;
- iii. employing any Ritz-Carlton sales associate who is exclusively employed to sell only hotels in the Ritz-Carlton system;
- iv. being part of any Ritz-Carlton frequent travel program; or
- v. being part of a Ritz-Carlton reservation system.

157. The Rancho Agreement and the Renaissance Agreement provide, among other things, as follows:

(a) The Marriott Defendants are required to manage and operate the Rancho Hotel and the Beverly Hills Hotel in good faith so as to "maximize the profitability and value" of such Hotels;

(b) Corporate Charges shall be allocated on a fair and non-discriminatory basis among all hotels based upon use of such services;

(c) SHC has the right to review Marriott methodology for allocating Corporate Charges and the Marriott Defendants shall supply all reasonably requested data with respect thereto;

1 (d) The Marriott Defendants are precluded from entering into contracts with
2 Affiliates concerning the purchase of goods, supplies and services, unless the prices and terms are
3 competitive with non-Affiliate transactions;

4 (e) The Marriott Defendants are required to maintain the strict confidentiality of
5 all books and records of account regarding Hotel operations;

6 (f) The Marriott Defendants may not enter into major purchasing or other
7 transactions affecting the services to guests without SHC's consent in writing; and

8 (g) The Marriott Defendants may not assign their responsibilities under the
9 Management Agreements without SHC's consent in writing.

10 158. Finally, the Restructuring Agreement required the Marriott Defendants,
11 among other things, to:

12 (a) provide vendor contracts to SHC asset managers in accordance with the terms
13 of the Management Agreements;

14 (b) provide a reconciliation of (i) the FF&E Reserve account, (ii) the owner
15 control account/rent payable to owner, and (iii) the asset and liability summary to SHC in
16 conjunction with the distribution of information provided to SHC on an accounting period basis;

17 (c) complete a formal reconciliation of all bank accounts on an accounting period
18 and year end basis;

19 (d) sweep excess cash balances into investment accounts held on behalf of the
20 owner daily;

21 (e) reconcile the various categories of charges in the InterUnit account for each
22 accounting period;

23 (f) transfer FF&E replacement funds, in accordance with the respective Amended
24 Management Agreement, on a periodic basis to an interest bearing account; and

25 (g) complete a formal reconciliation of each account on the balance sheet every
26 period researching and clearing all reconciling items in a timely manner.

27 159. SHC has performed all conditions, covenants, and promises required under
28 the Management Agreements and Restructuring Agreement, except those conditions,

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1 covenants, and promises which have been prevented or otherwise excused by the conduct of
2 Defendants.

3 160. Defendants have materially breached the Original and Amended Ritz
4 Agreements, the Rancho Agreement and the Renaissance Agreement, by, among other
5 matters:

6 (a) failing to manage and operate the Hotels in good faith so as to maximize
7 gross and net revenues from such operations;

8 (b) deriving and concealing profits and other income earned from deducting and
9 retaining Corporate Charges and Group Service Fees without disclosure to SHC including, without
10 limitation the Marriott Rewards Program;

11 (c) failing and refusing to provide any meaningful disclosure concerning how
12 Marriott Corporate Charges and the Group Service Fees are initially estimated, reconciled with
13 actual costs or allocated among the affected hotels;

14 (d) failing to disclose profits and other payments received by the Marriott
15 Defendants from its imposition of Corporate Charges and Group Service Fees, including, without
16 limitation, the Marriott Rewards program;

17 (e) using, investing and deriving profits from deducted Corporate Charges and
18 Group Service Fees for its own benefit without disclosure and to the detriment of SHC;

19 (f) failing and refusing to provide any meaningful data concerning the
20 methodology for the allocation of Corporate Charges and Group Service Fees to the Hotels;

21 (g) failing and refusing to provide any meaningful information regarding its
22 Affiliates and other entities in which it owns an interest, including Marketplace, MDS, STSN, HDS,
23 Avendra and Insights Magazine and/or the manner in which Marketplace, MDS, STSN, HDS and
24 Insights Magazine charge for the goods, supplies, and services provided to the Hotels;

25 (h) imposing additional and expanding Corporate Charges, programs and fees for
26 Hotel services without justifying the benefit to SHC;

27
28

1 (i) deriving unauthorized profits and income from programs instituted by the
2 Marriott Defendants, such as Marketplace, MDS, Marriott Rewards Program, MVP, STSN, HDS,
3 Insights Magazine and Avendra;

4 (j) deriving and concealing profits and other income earned from purchasing of
5 goods, supplies and services from Affiliates (through Marketplace, MDS, and otherwise) at the
6 Hotels;

7 (k) by improperly assigning and abdicating its purchasing obligations under the
8 Agreements of goods, supplies and services to Avendra, without the consent of SHC;

9 (l) deriving and concealing profits, sponsorship funds, allowances and other
10 income streams from the transfer of the purchasing function for the Hotels to Avendra;

11 (m) failing and refusing to purchase goods, supplies, and services for the subject
12 Hotels on any competitive basis with non-Affiliate vendors;

13 (n) using its bulk buying power on behalf of the Hotels to enter into self-
14 interested Affiliate and third party equity investments and derive undisclosed profits therefrom;

15 (o) engaging in deceptive and vague reporting and accounting practices designed
16 to conceal the Defendants' misuse and profiteering from Hotel revenues;

17 (p) using SHC's highly confidential and proprietary information to benefit the
18 Marriott Defendants, including without limitation, the sale of such information and the use of such
19 information for the development of new and competing Marriott managed hotels;

20 (q) disclosing and making use of SHC's confidential operational information, to
21 benefit the Marriott Defendants;

22 (r) failing to provide vendor contracts to SHC managers; and

23 (s) failing and refusing to provide indemnity for attorneys' fees, costs and other
24 expenses incurred in the defense of the Guest Fee Class Actions.

25 161. In addition, Marriott and Ritz-Carlton have also breached the Amended Ritz
26 Agreement, in among other ways, by:

27 (a) advising guests and otherwise promoting Laguna Colony Hotel as being
28 "operated by Ritz-Carlton";

1 (b) using sales associates to sell and market the Laguna Colony Hotel who were
2 also employed exclusively in selling Ritz Carlton Hotels;

3 (c) using Ritz Laguna Hotel highly confidential guest information in connection
4 with the development and sale of the Laguna Colony Hotel, including, without limitation, for the
5 development of pro-formas for the Laguna Colony Hotel; and

6 (d) supporting the Laguna Colony Hotel in Ritz-Carlton's reservation system.

7 162. The Marriott Defendants have breached the Restructuring Agreement, by
8 among other matters:

9 (a) by failing to invest funds in the Beverly Hills Hotel's operating account on a
10 daily basis;

11 (b) by failing to provide Vendor Contracts to SHC managers as required under
12 the Restructuring Agreement and the Management Agreements;

13 (c) by failing to provide a meaningful reconciliation of the FF&E Reserve
14 account, the owner control account/rent payable to owner, and the asset and liability summary on the
15 required accounting period basis;

16 (d) by failing to complete formal reconciliation of all bank accounts on an
17 accounting period and year end basis;

18 (e) by failing to reconcile the various categories of charges in the InterUnit
19 account during each accounting period;

20 (f) by failing to transfer FF&E replacement funds on a periodic basis to an
21 interest bearing account; and

22 (g) by failing to complete a formal reconciliation of each account on the balance
23 sheet every accounting period and in a timely manner.

24 163. As a direct and proximate result of the Defendants' breaches of contract, SHC
25 has sustained damages in an amount to be proven at trial plus pre- and post-judgment interest
26 at the legal rate.

27 ///

SECOND CAUSE OF ACTION

**(For Breach of the Implied Covenant of Good Faith and Fair Dealing
By Plaintiffs SHC Laguna Niguel I LLC, SHC Rancho, L.L.C.,
and SHC Beverly Hills II, L.L.C. As Against Defendants Marriott,
Marriott Hotel Services, Inc., The Ritz-Carlton Hotel Company, L.L.C.,
Renaissance Hotel Operating Company, and Does 1 through 100, inclusive)**

164. SHC incorporates herein by reference each and every allegation of paragraphs 1 through 153 as though fully set forth herein.

165. Implied in the Management Agreements and the Restructuring Agreement is a covenant of good faith and fair dealing, pursuant to which the contracting parties must deal fairly and in good faith with one another. The covenant of good faith and fair dealing obligates each party to refrain from taking any action which would deprive the other party of the benefits of the Management Agreements and the Restructuring Agreement or cause undue hardship or harm to the other party. In the furtherance and performance of the Management Agreements and the Restructuring Agreement, Defendants are obligated to abide by the covenant of good faith and fair dealing implied by law in the Management Agreements.

166. As more fully set forth above, the Marriott Defendants breached the covenant of good faith and fair dealing, by, among other things:

- (a) managing and operating the subject Hotels for their own benefit and to the detriment of SHC;
- (b) deriving undisclosed profits and other income from deductions of Corporate Charges and Group Service Fees without proper disclosure;
- (c) eliminating and deducting revenues from the Hotels' operations based upon unsubstantiated Corporate Charges and Group Service Fees;
- (d) failing and refusing to disclose how Corporate Charges and Group Service Fees are initially estimated, reconciled with actual costs and allocated between hotels;
- (e) routinely deducting and retaining substantial sums from the Hotels as reserves for, among other matters, future payroll, contingent events, workers compensation and the Marriott Rewards program without any meaningful disclosure to SHC;

1 (f) deriving and concealing profits, interest and other income from purchasing of
2 goods, supplies and services for hotels from Affiliates and other third party entities of which it has
3 an ownership interest (through Marketplace, MDS, Avendra, STSN, HDS, Insights Magazine, or
4 otherwise) to the detriment of, and without disclosure to, SHC;

5 (g) failing and refusing to provide information and documentation requested by
6 SHC concerning procedures for the purchasing of goods, supplies and services at the Hotels;

7 (h) using SHC's highly confidential and proprietary information for Defendants
8 own benefit, including without limitation, for the development of other hotel properties (such as the
9 Laguna Colony Hotel);

10 (i) failing and refusing to indemnify SHC for attorneys' fees, costs and other
11 expenses incurred in the defense of the Guest Fee Class Actions;

12 (j) refusing in bad faith to initiate procedures to ensure that the Laguna Colony
13 Hotel was not promoted as being operated or managed by Ritz-Carlton or otherwise supported by
14 the Ritz-Carlton reservations system;

15 (k) using its bulk buying power on behalf of the Hotels to enter into self-
16 interested Affiliate and third party equity investments and derive undisclosed profits therefrom;

17 (l) diverting revenues properly belonging to the Hotels for its own exclusive
18 benefit;

19 (m) engaging in deceptive and vague reporting and accounting practices designed
20 to conceal the Defendants' misuse and profiteering from Hotel revenues;

21 (n) imposing additional and expanding Corporate Charges, programs and fees for
22 Hotel services without justifying the benefit to SHC;

23 (o) delegating and abdicating its purchasing responsibilities for the Hotels
24 without permission from SHC; and

25 (p) deriving unauthorized profits and income from programs instituted by the
26 Marriott Defendants, such as Marketplace, MDS, Marriott Rewards Program, MVP, STSN, HDS,
27 Insights Magazine and Avendra.

28 ///

1 167. The aforementioned actions by the Marriott Defendants were and are in
2 violation of the covenant of good faith and fair dealing implied in the Management
3 Agreements and the Restructuring Agreement.

4 168. As a direct and proximate result of the Defendants' wrongful conduct in
5 breach of the covenant of good faith and fair dealing, SHC has sustained damages in an
6 amount to be proven at trial, plus pre- and post-judgment interest at the legal rate.

7 **THIRD CAUSE OF ACTION**

8 (For Breach of Fiduciary Duty
9 By Plaintiffs SHC Laguna Niguel I LLC, SHC Rancho, L.L.C.,
10 and SHC Beverly Hills II, L.L.C. As Against Defendants Marriott,
Marriott Hotel Services, Inc., The Ritz-Carlton Hotel Company, L.L.C.,
Renaissance Hotel Operating Company, and Does 1 through 100, inclusive)

11 169. SHC incorporates herein by reference each and every allegation of paragraphs
12 1 through 153 as though fully set forth herein.

13 170. By virtue of SHC's entrustment of the management of the Hotels to the
14 Marriott Defendants and their handling of SHC's revenues, operating accounts, and proceeds
15 related thereto, a fiduciary relationship was created and continues to exist between the
16 parties. Similarly, by virtue of SHC having placed trust and confidence in the Marriott
17 Defendants' integrity and entrusting them with primary authority to manage and maximize
18 revenues from the Hotels, a fiduciary relationship of trust and confidence existed at all times
19 herein mentioned between SHC and the Marriott Defendants. This fiduciary relationship of
20 trust and confidence required the Marriott Defendants to treat SHC with complete fairness
21 and with the utmost obligation to disclose all material facts to SHC.

22 171. Despite having voluntarily accepted the trust and confidence of SHC, and in
23 violation of this relationship of trust and confidence, the Marriott Defendants have breached
24 and continue to breach their fiduciary duties to SHC by, among other things:

- 25 (a) failing to adequately account to SHC for all revenues realized by the
26 Defendants in the operations of the Hotels;
27 (b) by deriving and concealing profits and other income rightfully due, owing and
28 payable to SHC from Corporate Charges, Group Service Fees and Affiliate purchasing through

1 to punish Defendants and to deter future similar misconduct.

2 **FOURTH CAUSE OF ACTION**

3 **(For Fraudulent Concealment**
4 **By Plaintiffs SHC Laguna Niguel I LLC, SHC Rancho, L.L.C.,**
5 **and SHC Beverly Hills II, L.L.C. As Against Defendants Marriott,**
6 **Marriott Hotel Services, Inc., The Ritz-Carlton Hotel Company, L.L.C.,**
7 **Renaissance Hotel Operating Company, and Does 1 through 100, inclusive)**

8 174. SHC incorporates herein by reference each and every allegation of paragraphs
9 1 through 153 as though fully set forth herein.

10 175. As more particularly set forth hereinabove, Marriott and Ritz-Carlton through
11 their responsible officers have made the following representations to SHC in writing and
12 orally concerning their management and operations of the Hotels, commencing in or about
13 the summer of 1997 as follows:

14 (a) that the Corporate Charges deducted from the Rancho Hotel's and the Beverly
15 Hills Hotel's operating accounts were reconciled or "trued up" with actual costs incurred for such
16 services by Marriott;

17 (b) that the Corporate Charges deducted by Marriott from the Rancho Hotel and
18 the Beverly Hills Hotel operating accounts are allocated fairly among hotels based upon the actual
19 receiving of such services by such hotels;

20 (c) that Marriott and Ritz-Carlton's purchasing of goods, supplies and services at
21 the Hotels from Affiliates are competitive in pricing with reputable vendors who are not Affiliates;

22 (d) that Marriott does not make a profit from either interest or investments based
23 upon the massive funds it retains as part of the Marriott Rewards program;

24 (e) that Marriott's introduction of Avendra as the "independent entity"
25 responsible for all purchasing at the Hotels was undertaken in order to improve the
26 "competitiveness, quality and pricing of goods and services provided to Owners (including SHC)"
27 and that MDS "will have to go through a competitive selection process administered by Avendra to
28 determine if it will be selected as a distributor for . . . Avendra";

29 (f) that any rebates or other payments from vendors exceeding a designated
30 ceiling under Avendra would be returned to Marriott and in turn returned by Marriott to the Owners

1 (including SHC); and

2 (g) that Marriott and Ritz-Carlton have not engaged in any conduct to benefit the
3 Laguna Colony Hotel at the expense of or to the detriment of the Ritz Laguna Hotel.

4 176. At the time Marriott made each of these representations to SHC, the
5 representations were false in that Marriott intended to and has, on information and belief and,
6 among other matters, derived profits, interest income and investment income from its
7 unilateral deduction of unsubstantiated Marriott Corporate Charges, Group Service Fees and
8 its non-competitive procedures for mass purchasing of goods, supplies and services through
9 Marketplace, MDS and Avendra and does not engage in any ongoing oversight on behalf of
10 SHC or as required under the Management Agreements to ensure that Avendra obtains
11 competitive pricing, including from MDS.

12 177. In fact, SHC is informed and believes and based thereon alleges that Marriott
13 and Ritz-Carlton have fraudulently concealed the following material facts in connection with
14 their management and operation of the Hotels as follows:

15 (a) that Marriott has derived undisclosed profits, interest income and investment
16 income from the deduction and retention of Corporate Charges and Group Service Fees from
17 revenues earned at Marriott and Ritz-Carlton managed hotels, including the Hotels;

18 (b) that Marriott has derived undisclosed profits from the purchase of goods,
19 supplies and services utilized at Marriott and Ritz-Carlton managed hotels (including the Hotels) at
20 the expense of SHC;

21 (c) that the relationship with Avendra (as more particularly set forth hereinabove)
22 will prevent SHC from obtaining competitive pricing for goods and services to the Hotels;

23 (d) that the retention of MDS as a distributor for Avendra is not based upon any
24 ongoing competitive bidding;

25 (e) that Marriott has used its bulk buying power and other assets of the Hotels to
26 enter into self-interested affiliated third party equity investments and derive undisclosed profits
27 therefrom (including STSN, HDS, and Insights Magazine);
28

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1 (f) that Marriott has diverted and deducted revenues properly belonging to the
2 Hotels for its own exclusive benefit;

3 (g) that Marriott has engaged in deceptive and vague reporting and accounting
4 practices designed to conceal their misuse and profiteering from Hotel operations;

5 (h) that the Marriott Defendants have engaged in an ever expanding campaign of
6 new Corporate Charges, programs and fees without proper disclosure to, and at the expense of SHC;
7 and

8 (i) that Marriott and Ritz-Carlton have used highly confidential and proprietary
9 information of the Hotels to assist in the development and business plan to benefit competitors of
10 SHC, including the Laguna Colony Hotel, to the detriment of the Hotels.

11 178. The suppression and concealment of the foregoing facts by the Marriott
12 Defendants were likely to and did mislead SHC in light of the other above-referenced
13 representations and assurances made by the Marriott Defendants.

14 179. At the time the above suppression and concealment of material facts were
15 made, SHC was ignorant of the existence of the foregoing facts, which the Marriott
16 Defendants suppressed, concealed and failed to disclose. In reasonable and justifiable
17 reliance upon the representations of the Marriott Defendants, SHC continued utilizing
18 Marriott and Ritz-Carlton to manage the Hotels.

19 180. As a direct and proximate result of the fraudulent conduct and concealment of
20 fact by the Marriott Defendants, SHC has sustained damages in an amount to be proven at
21 trial, plus pre- and post-judgment interest at the legal rate.

22 181. Further, the conduct of the Marriott Defendants (and of the officers, directors,
23 and/or managing agents of the Marriott Defendants who authorized, directed, and/or ratified
24 the acts of the Marriott Defendants) was willful and intentional and done with fraud,
25 oppression and malice against Plaintiffs, and with a conscious disregard of the rights of
26 Plaintiffs. The Marriott Defendants' conduct under these circumstances warrants the
27 imposition of punitive damages in a sum appropriate to punish the Marriott Defendants and
28 to deter future similar misconduct.

FIFTH CAUSE OF ACTION

**(For Unfair and Deceptive Business Practices and Unfair Competition
By Plaintiffs SHC Laguna Niguel I LLC, SHC Rancho, L.L.C.,
and SHC Beverly Hills II, L.L.C. As Against Defendants Marriott,
Marriott Hotel Services, Inc., The Ritz-Carlton Hotel Company, L.L.C.,
Renaissance Hotel Operating Company, and Does 1 through 100, inclusive)**

182. SHC incorporates herein by reference each and every allegation of paragraphs 1 through 153 as though fully set forth herein.

183. Business and Professions Code Section 17200 prohibits any unfair competition, including any unlawful, unfair or fraudulent business act or practice, and unfair, deceptive, untrue or misleading statements and any other act prohibited by Business and Professions Code Section 17500. In addition, California also recognizes the common law tort of unfair competition, which is similarly based on fraudulent or deceptive business practices.

184. The Marriott Defendants have violated California Business and Professions Code Section 17200, as well as the common law tort of unfair competition, by, among other things:

(a) deriving and concealing profits, interest income and investment income from Corporate Charges and Group Service Fees deducted from Hotel operating accounts at the expense of SHC;

(b) deriving and concealing profits from the purchasing of goods, supplies and services from Affiliates and other third party entities in which Marriott has an ownership interest (through Marketplace, MDS, STSN, HDS, Insights Magazine, Avendra and otherwise) in connection with the management of the Hotels; and

(c) by using highly confidential and proprietary information of the Hotels to gain undisclosed profits and to benefit Marriott to the detriment of SHC.

(d) using its bulk buying power on behalf of the Hotels to enter into self-interested Affiliate and third party equity investments and derive undisclosed profits therefrom;

(e) diverting revenues properly belonging to the Hotels for its own exclusive benefit;

1 (f) engaging in deceptive and vague reporting and accounting practices designed
2 to conceal the Defendants' misuse and profiteering from Hotel revenues;

3 (g) imposing additional and expanding Corporate Charges, programs and fees for
4 Hotel services which should properly be provided as part of the Marriott Defendants' management
5 fees; and

6 (h) deriving unauthorized profits and income from programs instituted by the
7 Marriott Defendants, such as Marketplace, MDS, Marriott Rewards Program, MVP, STSN, HDS,
8 Marriott Insights, and Avendra.

9 185. Pursuant to Business and Professions Code Sections 17203 and 17535, SHC
10 is entitled to restitution and complete disgorgement of any profits or other undisclosed
11 income Defendants have received as a result of their unlawful, unfair, deceptive and
12 misleading business practices, as set forth herein. SHC is also entitled to injunctive relief
13 against the Marriott Defendants, enjoining them from continued and repeated violations of
14 Business and Professions Code Sections 17200 and 17500.

15 186. In addition, as a direct and proximate result of the Marriott Defendants' unfair
16 business practices and unfair competition, SHC has sustained damages in an amount to be
17 proven at trial, plus pre- and post-judgment interest at the legal rate.

18 187. Further, the conduct of the Marriott Defendants (and of the officers, directors,
19 and/or managing agents of Defendants who authorized, directed, and/or ratified the acts of
20 the Marriott Defendants) was willful and intentional and done with fraud, oppression and
21 malice against Plaintiffs, and with a conscious disregard of the rights of Plaintiffs. The
22 Marriott Defendants' conduct under these circumstances warrants the imposition of punitive
23 damages in a sum appropriate to punish the Marriott Defendants and to deter future similar
24 misconduct.

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SIXTH CAUSE OF ACTION

(For an Accounting
By Plaintiffs SHC Laguna Niguel I LLC, SHC Rancho, L.L.C.,
and SHC Beverly Hills II, L.L.C. As Against Defendants Marriott,
Marriott Hotel Services, Inc., The Ritz-Carlton Hotel Company, L.L.C.,
Renaissance Hotel Operating Company, and Does 1 through 100, inclusive)

188. SHC incorporates herein by reference each and every allegation of paragraphs 1 through 153 as thoughtfully set forth herein.

189. As outlined above, SHC and the Marriott Defendants entered into Management Agreements and a Restructuring Agreement for the management of the Hotels. The Marriott Defendants' obligations under these Agreements included the duty to compensate SHC based on income arising out of the operations of the Hotels.

190. In addition the Ritz Agreements provide that SHC has the right to inspect the books and records of the Ritz Laguna Hotel. This right is memorialized in the Ritz Agreements in paragraph 10.1 as follows:

Operator shall keep full and adequate books of account and other records reflecting the results of operation of the Hotel in accordance with the Uniform System of Accounts and generally accepted accounting principles. The books 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.

191. The Rancho Agreement and the Renaissance Agreement also provide that SHC has the right to inspect the books and records of the Rancho Hotel and the Beverly Hills Hotel. In this regard, paragraph 4.02 of both the Rancho Agreement and the Renaissance Agreement provides, in pertinent part, as follows:

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

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1 192. During the course of the aforementioned Management Agreements and
2 Restructuring Agreement, SHC is informed and believes and based thereon alleges that the
3 Marriott Defendants have realized undisclosed profits and other income, which otherwise is
4 due to SHC, in violation of the terms of the Management Agreements and Restructuring
5 Agreement herein alleged.

6 193. The exact amount of money due from the Marriott Defendants to SHC is
7 presently unknown to SHC and cannot be ascertained without an accounting.

8 194. SHC is informed and believes and based thereon alleges that the amounts
9 owing are within the jurisdictional limits of this court.

10 195. SHC has demanded that the Marriott Defendants account for the
11 aforementioned transactions and pay the amounts due, owing and payable to SHC.
12 However, the Marriott Defendants have failed and refused and continue to fail and refuse to
13 render the requested accounting and pay SHC the amount rightfully due and payable.

14 **SEVENTH CAUSE OF ACTION**

15 (For Express, Implied and Equitable Indemnity
16 By Plaintiffs SHC Laguna Niguel I LLC, SHC Rancho, L.L.C.,
17 and SHC Beverly Hills II, L.L.C. As Against Defendants Marriott,
18 Marriott Hotel Services, Inc., The Ritz-Carlton Hotel Company, L.L.C.,
19 Renaissance Hotel Operating Company, and Does 1 through 100, inclusive)

20 196. SHC incorporates herein by reference each and every allegation of paragraphs
21 1 through 153 as though fully set forth herein.

22 197. Pursuant to the Ritz Agreement, Ritz-Carlton is expressly required to
23 indemnify SHC for attorneys' fees costs and other expenses incurred in defense of the Guest
24 Fee Class Actions.

25 198. In addition by virtue of the Management Agreements, the Marriott
26 Defendants impliedly agreed to hold SHC free and harmless from any and all claims and
27 liabilities allegedly caused by such Defendants' acts or omissions in performance of their
28 obligations under the Management Agreements, including the charging and disclosure of
guest fees.

28 ///

1 199. SHC has performed all the conditions and obligations to be performed on its
2 part under the Management Agreements with the Marriott Defendants.

3 200. On or about March 27, 2002, SHC made a written demand that Marriott and
4 Ritz Carlton indemnify SHC for any loss or other liability related to defense of the Guest Fee
5 Class Actions. Nevertheless, these Defendants have refused to indemnify SHC for the cost
6 of defending such Guest Fee Class Actions and other expenses. In addition, these
7 Defendants have stated that they have deducted and will continue to deduct these defense
8 expenses from the hotel operating accounts for, among others, the Hotels.

9 201. SHC has incurred substantial legal fees and costs as a direct and proximate
10 result of Marriott and Ritz-Carlton's failure to defend and indemnify SHC and has incurred
11 other incidental, general and special damages in a sum not presently ascertained but within
12 the jurisdictional limits of the Court.

13 **EIGHTH CAUSE OF ACTION**

14 **(For Declaratory Relief**

15 **By Plaintiffs SHC Laguna Niguel I LLC, SHC Rancho, L.L.C.,**
16 **and SHC Beverly Hills II, L.L.C. As Against Defendants Marriott,**
Marriott Hotel Services, Inc., The Ritz-Carlton Hotel Company, L.L.C.,
Renaissance Hotel Operating Company, and Does 1 through 100, inclusive)

17 202. SHC incorporates herein by reference each and every allegation of paragraphs
18 1 through 153 as though fully set forth herein.

19 203. An actual controversy has arisen and now exists between SHC and the
20 Marriott Defendants concerning their respective rights and duties under the Management
21 Agreements and the Restructuring Agreement.

22 204. Defendants have improperly deducted attorneys' fees, costs and expenses for
23 defense of the Guest Fee Class Actions. Defendants were put on notice to re-pay SHC for
24 these improperly deducted expenses and Defendants have refused to do so.

25 205. In addition, as more particularly specified above, the Marriott Defendants are
26 in default under the Amended Ritz Agreement, in among other ways, as follows:

27 (a) failing to manage and operate the Ritz-Laguna in good faith so as to
28 maximize gross and net revenues from such operations;

(b) concealing and failing to disclose profits and other income derived from deducting and retaining Group Service Fees without authorization from SHC;

(c) deriving and concealing profits and other income derived from the purchases of goods, supplies and services from Affiliates (through Marketplace, MDS, STSN and otherwise) at Ritz-Laguna Hotel;

(d) by improperly assigning and abdicating its purchasing obligations under the Amended Ritz Agreement to Avendra, without the consent of SHC;

(e) failing and refusing to provide any meaningful disclosure to SHC concerning how Group Service Fees are initially estimated, reconciled with actual costs or allocated among affected hotels;

(f) failing and refusing to provide any meaningful information regarding Marketplace, MDS and Avendra and/or the manner in which Marketplace, MDS and Avendra charge for the goods, supplies, and services provided to the Ritz-Laguna Hotel;

(g) failing and refusing to purchase goods, supplies, and services for the subject Hotel through Affiliates on any competitive basis with non-Affiliate vendors;

(h) using SHC's highly confidential and proprietary information to benefit the Marriott Defendants, including without limitation, for the development of Marriott's own hotel properties and the sale of such information;

(i) failing to disclose profits and other payments received by the Marriott Defendants from its imposition of Group Service Fees;

(j) failing and refusing to provide any methodology for the allocation of Group Service Fees to the Ritz Laguna Hotel;

(k) using its bulk buying power on behalf of the Hotel to enter into self-interested Affiliate and third party equity investments and derive undisclosed profits therefrom;

(l) diverting revenues properly belonging to the Hotel for its own exclusive benefit;

(m) engaging in deceptive and vague reporting and accounting practices designed to conceal the Defendants' misuse and profiteering from Hotel revenues;

(n) imposing additional and expanding Group Service Fees for Hotel services without justifying any benefit to SHC;

(o) deriving unauthorized profits and income from programs instituted by the Marriott Defendants, such as Marketplace, MDS, MVP, STSN, HDS, and Avendra;

(p) disclosing and making use of SHC's confidential operational information, including, among other information, highly valuable and confidential guest information, to benefit the Marriott Defendants;

(q) failing to maximize profits by refusing to implement any food purchasing program at the Ritz-Laguna Hotel;

(r) advising guests and otherwise promoting Laguna Colony Hotel as being "operated by Ritz-Carlton";

(s) employing Ritz-Carlton sales associates to sell and market the Laguna Colony Hotel who also exclusively sell Ritz-Carlton hotels;

(t) using Ritz-Laguna Hotel's highly confidential guest information in connection with the development and sale of the Laguna Colony Hotel, including, without limitation, for the development of pro-formas for the Laguna Colony Hotel;

(u) supporting the Laguna Colony Hotel in Ritz-Carlton's reservation system; and

(v) failing and refusing to provide indemnity for attorneys' fees, costs and other expenses incurred in the defense of Guest Fee Class Actions.

206. Pursuant to Article 17 of the Ritz Agreement, Defendants are in Default under the Ritz Agreement. In the event of a Default under the Amended Ritz Agreement, the non-defaulting party, namely SHC, has the right to terminate the Ritz Agreement, effective immediately, pursuant to Article 18 of the Amended Ritz Agreement. SHC seeks a judicial declaration from the Court that, on the basis of these Defaults, SHC has the right to terminate the Amended Ritz Agreement

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- 1 207. As stated in more detail above, Defendants are in default under the Rancho
2 Agreement and the Renaissance Agreement, in, among other ways, as follows:
- 3 (a) failing to manage and operate the Rancho Hotel and the Beverly Hills Hotel
4 in good faith so as to maximize gross and net revenues from such operations;
- 5 (b) deriving and concealing profits and other income earned from deducting and
6 retaining Marriott Corporate Charges without disclosure to SHC;
- 7 (c) concealing and failing to disclose profits and other income derived from
8 purchases of goods, supplies and services from Affiliates (through Marketplace, MDS, STSN, HDS,
9 and otherwise) at the subject Hotels;
- 10 (d) failing and refusing to provide any meaningful disclosures concerning how
11 Marriott Corporate Charges are initially estimated, reconciled with actual costs or allocated among
12 affected hotels;
- 13 (e) failing and refusing to provide any meaningful information regarding its
14 Affiliates, Marketplace, MDS, STSN and HDS and/or the manner in which Marketplace, MDS,
15 STSN and HDS charge for the goods, supplies, and services provided to the subject Hotels;
- 16 (f) failing and refusing to purchase goods, supplies, and services for the subject
17 Hotels through Affiliates on any competitive basis with non-Affiliate vendors;
- 18 (g) using its bulk buying power on behalf of the Hotels to enter into self-
19 interested Affiliate and third party equity investments and derive undisclosed profits therefrom;
- 20 (h) diverting revenues properly belonging to the Hotels for its own exclusive
21 benefit;
- 22 (i) engaging in deceptive and vague reporting and accounting practices designed
23 to conceal the Defendants' misuse and profiteering from Hotel revenues;
- 24 (j) imposing additional and expanding Corporate Charges, programs and fees for
25 Hotel services without justifying the benefit to SHC;
- 26 (k) deriving unauthorized profits and income from programs instituted by the
27 Marriott Defendants, such as Marketplace, MDS, Marriott Rewards Program, MVP, STSN, HDS,
28 Insights Magazine, and Avendra;

1 (l) using SHC's highly confidential and proprietary information to benefit
2 Defendants, including without limitation, for the development of competing hotel properties and the
3 sale of such information;

4 (m) failing and refusing to provide any meaningful data concerning the
5 methodology for the allocation of Corporate Charges to the Hotels;

6 (n) disclosing and making use of SHC's confidential operational information,
7 including among other matters, highly valuable and confidential guest information, to benefit the
8 Marriott Defendants; and

9 (o) failing and refusing to provide indemnity for attorneys' fees, costs and other
10 expenses incurred in the defense of Guest Fee Class Actions.

11 208. This conduct by Marriott constitute events of default under paragraph 9.01.E
12 of both the Rancho Agreement and the Renaissance Agreement. In the event of such
13 Defaults, SHC has the right to terminate the Rancho Agreement and the Renaissance
14 Agreement, effective immediately, under paragraph 9.02 of the Rancho Agreement and the
15 Renaissance Agreement. SHC seeks a declaration from the Court, that on the basis of these
16 Defaults, SHC has the right to terminate the Rancho Agreement and the Renaissance
17 Agreement.

18 209. SHC is informed and believes that the Defendants deny and dispute all of
19 SHC's contentions.

20 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
21 follows:

22 **ON THE FIRST CAUSE OF ACTION**

23 1. For general, special, and incidental damages against the Defendants, inclusive, jointly
24 and severally, and in amounts to be proven at trial;

25 **ON THE SECOND CAUSE OF ACTION**

26 2. For general, special, and incidental damages against the Defendants, inclusive, jointly
27 and severally, and in amounts to be proven at trial;

28

ON THE THIRD CAUSE OF ACTION

3. For general, special, and incidental damages against the Defendants, inclusive, jointly and severally, and in amounts to be proven at trial;

4. For punitive and exemplary damages against Defendants in an amount according to proof;

ON THE FOURTH CAUSE OF ACTION

5. For general, special, and incidental damages against the Defendants, inclusive, jointly and severally, and in amounts to be proven at trial;

6. For punitive and exemplary damages against Defendants in an amount according to proof;

ON THE FIFTH CAUSE OF ACTION

7. For general, special, and incidental damages against the Defendants, inclusive, jointly and severally, and in amounts to be proven at trial;

8. For punitive and exemplary damages against Defendants in an amount according to proof;

ON THE SIXTH CAUSE OF ACTION

9. For an accounting;

ON THE SEVENTH CAUSE OF ACTION

10. For full indemnification concerning the Guest Fee Class Actions;

11. For reimbursement of all attorneys fees and costs incurred in defending the Guest Fee Class Actions;

ON THE EIGHTH CAUSE OF ACTION

12. For a judicial declaration, as follows:

(a) that SHC is entitled to full indemnity for attorneys fees, costs, expenses or any liability incurred in defense of the Guest Fee Class Actions;

(b) that SHC has the right to terminate the Amended Ritz Agreement based on Defendants' Defaults pursuant to paragraphs 17.1, 17.5 and Article 18 of the Amended Ritz Agreement; and


1 (c) that SHC has the right to terminate the Rancho Agreement and the
2 Renaissance Agreement based on Defendants' Defaults pursuant to paragraphs 9.01 and 9.02 of such
3 Agreements.

4 **ON ALL CAUSES OF ACTION**

- 5 13. For attorneys fees;
6 14. For the costs of suit incurred herein;
7 15. For pre- and post-judgment interest at the maximum legal rate; and
8 16. For such other and further relief that the Court may deem just and proper.

9 Dated: August 20, 2002

10 CHRISTENSEN, MILLER, FINK, JACOBS,
11 GLASER, WEIL & SHAPIRO, LLC
Patricia L. Glaser
Sean Riley

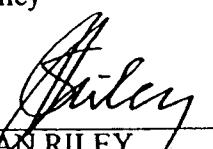
12 By: 
13 SEAN RILEY
Attorneys for Plaintiffs
14 SHC LAGUNA NIGUEL I LLC, SHE
15 RANCHO, L.L.C., and SHC BEVERLY
16 HILLS II, L.L.C.

17 **DEMAND FOR TRIAL BY JURY**

18 Plaintiffs hereby demand a trial by jury on all issues triable by jury.

19 Dated: August 20, 2002

20 CHRISTENSEN, MILLER, FINK, JACOBS,
21 GLASER, WEIL & SHAPIRO, LLC
Patricia L. Glaser
Sean Riley

22 By: 
23 SEAN RILEY
Attorneys for Plaintiffs
24 SHC LAGUNA NIGUEL I LLC, SHE
25 RANCHO, L.L.C., and SHC BEVERLY
26 HILLS II, L.L.C.