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21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA

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23 **CV 11 3677**  
24 Case No.:

25 RODNEY HARMON, individually and  
26 on behalf of a **CLASS** of similarly  
27 situated consumers,

28 Plaintiffs,

vs.

HILTON GROUP, PLC; HILTON  
INTERNATIONAL CO., HILTON  
HOTELS CORPORATION,

Defendants.

CLASS ACTION COMPLAINT FOR  
EQUITABLE, INJUNCTIVE AND  
DECLARATORY RELIEF, RESTITUTION  
AND DAMAGES

DEMAND FOR JURY TRIAL

CLASS ACTION

Plaintiff, RODNEY HARMON, by and through plaintiffs' undersigned counsel,  
individually and on behalf of all others similarly situated, hereby sets forth in this  
individual and CLASS Action Complaint claims for equitable, injunctive and declaratory  
relief, and restitution.

This CLASS Action is brought on behalf of all Consumers (referred to herein

1 collectively as "plaintiffs," "CLASS members" and "Consumers") who, subjected to  
2 defendants' SCHEME, as guests at defendants' HILTON FAMILY OF HOTELS, unwittingly  
3 purchased newspapers they reasonably believed and understood to be without charge.

4 WHEREFORE, Plaintiff individually and on behalf of the CLASS, avers as follows:

5 1. At all times relevant to this action, defendants intentionally, recklessly,  
6 and/or negligently concealed, suppressed, and misled consumers about the SCHEME.

7 2. Pursuant to Rules 23(b)(2), and/or 23(b)(3) of the Federal Rules of Civil  
8 Procedure, Plaintiffs will seek certification of a national Consumer CLASS consisting of:

9 All consumer residents in the United States who stayed at one or more  
10 HILTON FAMILY OF HOTELS and were charged \$0.75 pursuant to the  
11 SCHEME for a newspaper they reasonably believed was being provided to  
12 them without charge ("CLASS").

13 3. This action seeks injunctive and declaratory relief, restitution, and  
14 disgorgement for plaintiff individually and for the CLASS arising out of defendants'  
15 employment of the SCHEME, which SCHEME has resulted in plaintiff and the CLASS  
16 having suffered injury in fact, and lost money and damages.

#### 17 **JURISDICTION AND VENUE**

18 4. This Court has subject matter jurisdiction under complete diversity  
19 pursuant to 28 U.S.C. § 1332 given defendants are currently domiciled outside the State  
20 of California. This Court also maintains jurisdiction under CAFA, 28 U.S.C. § 1332(d),  
21 because this action is between citizens of different states, a CLASS action has been  
22 plead, and the matter in controversy exceeds the sum or value of \$5,000,000.00  
23 exclusive of interests and costs. None of the causes of action stated herein has been  
24 assigned or otherwise given to any other court or tribunal.

25 5. Venue is proper in this District pursuant to 28 U.S.C. 1391(a), (b) and (c),  
26 U.S.C. 1407 and 28 U.S.C. 22. Defendants do substantial business in the State of  
27 California, and within this Federal Judicial District, are registered to and in fact doing  
28 business within the State of California and otherwise maintain requisite minimum  
contacts with the State of California through their HILTON FAMILY OF HOTELS.

1 Additionally, plaintiff's stay at a Hilton Garden Inn, which stay forms the basis for this  
2 action, occurred within this Judicial District.

3 **PLAINTIFF**

4 6. Plaintiff resides within Sacramento County, State of California.

5 7. Plaintiff brings this action individually and as a CLASS action as a  
6 consumer who, subjected to the SCHEME, paid \$0.75 for a newspaper he reasonably  
7 believed was being provided without charge to him.

8 **DEFENDANTS**

9 8. During the CLASS period, defendants operated the following hotel chains:  
10 Hilton, Embassy Suites, Hilton Garden Inn, Hampton Inn, Doubletree, Homewood  
11 Suites, and Home2 Suites by Hilton (collectively "HILTON FAMILY OF HOTELS")  
12 Defendant HILTON HOTELS, PLC is and/or was at relevant times during the CLASS  
13 period the owner, operator, parent, and responsible entity, through its subsidiary and/or  
14 affiliated company HILTON INTERNATIONAL, INC., operating the HILTON FAMILY OF  
15 HOTELS throughout California and the United States. Defendant HILTON  
16 INTERNATIONAL, INC., is a California corporation with its principal place of business  
17 within California. HILTON INTERNATIONAL, INC. was at relevant times during the  
18 CLASS period the hotel division of HILTON HOTELS, PLC, and, in that capacity, was  
19 responsible for the operation of the HILTON FAMILY OF HOTELS throughout California  
20 and the United States. Defendant HILTON HOTELS CORPORATION was at relevant  
21 times during the CLASS period the owner, operator, parent, and entity responsible for  
22 the operation of the HILTON FAMILY OF HOTELS throughout California and the United  
23 States. Plaintiffs are informed and believe that defendants, and each of them,  
24 conspired in the development, design and implementation of the SCHEME. Plaintiffs are  
25 further informed and believe that the decisions relating to the conspiracy to and in the  
26 actual development, design of and implementation of the SCHEME were made in  
27 California by California residents and by entities with substantial operational ties to  
28 California, and that California law governs and applies to all of the conduct in

1 furtherance of this conspiracy and SCHEME, irrespective of where within the United  
2 States the SCHEME was ultimately implemented to the disadvantage of hotel guest  
3 consumers entitled to the benefit of California law.

4 9. Plaintiffs are further informed and believe and thereon allege that  
5 defendants, individually and collectively, were at all times herein mentioned the agents,  
6 servants, joint venturers, alter ego's, co-conspirators, controlling and actively  
7 participating parents, subsidiaries, affiliates, relations or employees of each of the other  
8 defendants, and were at all times herein mentioned acting within the course and scope  
9 of that agency, service and relationship, and with the consent and knowledge of, or in  
10 consort with, each other defendant, and as a single interdependent operation lacking  
11 sufficient or any adherence to separate corporate formalities, including financial  
12 independence.

### 13 THE SCHEME

14 10. Defendants, and each of them, operate and oversee the operation of the  
15 HILTON FAMILY OF HOTELS throughout California and the United States. For years,  
16 Defendants have had and continue to have a business practice of supplying its hotel  
17 guests with a newspaper which is delivered to the door of each guest's room.  
18 Defendants did so as a standard operating practice, without any request on the part of  
19 guests, including plaintiff and reasonable consumers, acting in a manner which has  
20 created a reasonable assumption and expectation on the part of defendants' guests that  
21 they were not being charged for receipt of these newspapers. In fact, and  
22 unbeknownst to plaintiff and the reasonable consumer, defendants' hotel guests have  
23 been and continue to be charged the price of \$.75 for each such newspaper.  
24 Defendants accomplish this result by "disclosing" the charge unfairly and fraudulently in  
25 a manner which effectively conceals and suppresses the \$.75 charge for the newspaper  
26 from defendants' hotel guests. The newspaper charge is inconspicuously placed in the  
27 paper sleeve in which the guest's room card is placed upon check-in. Specifically, the  
28 newspaper charge is written in extremely small font which is difficult to notice or read,

1 and placed in an innocuous position on the inside of the card holder opposite to the side  
2 that holds the card. The writing relating to the newspaper charge on the room card  
3 holder purports to confirm that the hotel guest is requesting delivery of a newspaper at  
4 a charge of \$.75. The language further advises the hotel guest that he may  
5 "unrequest" the newspaper by affirmatively calling the front desk. A critical feature of  
6 defendants' suppression of fact involves the manner in which the charge for the  
7 newspaper is accounted for on the guest's hotel bill. Specifically, rather than fairly and  
8 reasonably reflecting the \$.75 charge for the newspaper on each hotel guest's bill, \$.75  
9 is reflected as a bill credit but only for those who, in the unlikely event they become  
10 aware of defendants' SCHEME, affirmatively opt out of purchasing the newspaper. In  
11 approaching the accounting of the newspaper charges in this intentionally deceptive  
12 manner, defendants effectively prevent those being charged for the newspaper from  
13 discovering the \$.75 charge. This described activity on the part of defendants, and  
14 each of them, is referred to throughout this complaint as the "SCHEME".

15 The SCHEME is a matter of serious environmental concern and a cause of harm  
16 to residents of the United States, and the various states including California. Over the  
17 last several decades circulation and readership of paper newspapers has declined  
18 precipitous such that a minority of the population, believed to be in the range of 25-  
19 30% even read a paper newspaper. Studies have shown that the newspaper and  
20 periodical production industry is among the highest producers of greenhouse gases in  
21 this country, and deforestation caused by paper production is a matter of concern and  
22 worry in this state, country and worldwide. Energy production required to produce and  
23 deliver the SCHEME's newspapers is significant. Plaintiff is informed and believes that  
24 many if not the vast majority of newspapers delivered to guests in furtherance of the  
25 SCHEME (without specific request or expression of interest for a newspaper to read)  
26 are not read by the guests, resulting in the SCHEME constituting an offensive waste of  
27 precious resources and energy. This wasteful behavior is directly at odds with strong  
28 federal and state public policies to avoid unnecessary waste and accumulation of

1 garbage, to conserve energy sources, and to protect the environment from unnecessary  
2 and unreasonable impact.

### 3 **GENERAL ALLEGATIONS**

4 11. Plaintiff Rodney Harmon stayed at the Hilton Garden Inn Sonoma County  
5 Airport on the night of March 28, 2011. Plaintiff was charged \$132.19 for his stay  
6 comprised of the following itemized charges: 1) Guest Room - \$119.00; 2) Transient  
7 Occ. Tax - \$10.71; 3) CA. Tax - \$.10; and 4) BIA tax - \$2.38.

8 12. At the time of check-in, plaintiff received a paper holder in which his room  
9 card was placed by a hotel staff member. Plaintiff looked at the paper holder when it  
10 was handed to him and again when he opened the holder to retrieve his card to open  
11 his room door. He does not recall being alerted to or otherwise noticing any language  
12 relating to a newspaper.

13 13. In the morning, he noticed the hotel charges had been slid under the door  
14 of his room. The charges were itemized as described in Paragraph 11, *supra*, on the  
15 invoice. Plaintiff understood and reasonably believed that the charges reflected therein  
16 were debited to the credit card he had provided to the hotel staff person who checked  
17 him in the night before. The word "newspaper" does not appear anywhere on this  
18 invoice, and there is absolutely no mention of any charge relating to a newspaper.

19 14. At the time plaintiff left his room to check out, he noticed a *USA*  
20 *Today* on the hotel floor outside his room. He did not request a newspaper and  
21 assumed it had been placed there by hotel staff on a complimentary basis. He did not  
22 read or otherwise make use of the newspaper.

23 15. Several days thereafter, Plaintiff learned that he had  
24 supposedly requested the newspaper and had been charged \$.75 for its provision.

### 25 **CLASS ALLEGATIONS**

26 16. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, plaintiffs seek  
27 certification of a national CLASS defined as follows:

28 All consumer residents in the United States who stayed at one or more

1 HILTON FAMILY OF HOTELS and were charged \$0.75 pursuant to the  
2 SCHEME for a newspaper they reasonably believed was being provided to  
them without charge. ("CLASS").

3 17. This action has been brought and may properly be maintained and  
4 certified as a CLASS action because:

- 5 (a) The questions and issues of law or fact raised herein are of a  
6 common or general interest, affecting a large CLASS of individuals  
7 and the public at large;
- 8 (b) The CLASS consists of a sufficiently large group of individuals,  
9 believed to exceed seven (7) million members, and is so large that  
10 it is impractical to join all members of the CLASS before the Court  
11 as individual plaintiffs. Plaintiffs are informed and believe that the  
12 identity of CLASS members is readily ascertainable from various  
13 sources including the examination of Defendant's records, and/or  
14 via constitutionally adequate notice by publication;
- 15 (c) The questions of law or fact common to the CLASS are substantially  
16 similar and predominate over those questions affecting only specific  
17 members of the CLASS.
- 18 (d) The CLASS is united by a community of interest in obtaining  
19 appropriate equitable relief including injunctive relief including an  
20 order to cease and desist in the SCHEME, restitution, damages, and  
21 other available relief designed to redress the wrongful conduct of  
22 Defendants.
- 23 (e) Named plaintiff is a member of the CLASS, and his claims are  
24 typical of the CLASS.
- 25 (f) Named Plaintiff will fairly and adequately represent the claims of  
26 the CLASS, and protect the interests of the CLASS without  
27 exercising personal interest or otherwise acting in a manner  
28 inconsistent with the best interests of the CLASS generally.

1 (g) Named plaintiff has retained attorneys experienced in the litigation  
2 of CLASS and representative claims and in the area of consumer  
3 protection litigation who have agreed to and will responsibly and  
4 vigorously advocate on behalf of the CLASS as a whole.

5 (h) Without CLASS certification, the prosecution of separate consumer  
6 actions by individual members of the CLASS would be impracticable  
7 and financially difficult, and create a risk of repetitive, inconsistent  
8 and varying adjudications. This would have the effect of  
9 establishing incompatible standards of conduct for Defendants,  
10 discouraging the prosecution of meritorious but small claims,  
11 and/or result in adjudications which would be dispositive of the  
12 interests of other CLASS members not parties to the adjudication,  
13 or otherwise substantially impair the ability of CLASS members to  
14 protect their rights and interests.

15 (i) Defendants have acted or refused to act on grounds generally  
16 applicable to the CLASS, thereby making the award of equitable  
17 relief and/or restitution appropriate to the CLASS as a whole.

18 (j) The CLASS action procedure is superior to other methods of  
19 adjudication, and specifically designed to result in the fair, uniform  
20 and efficient adjudication of the claims presented by this complaint.  
21 This CLASS action will facilitate judicial economy and preclude the  
22 undue financial, administrative and procedural burdens which  
23 would necessarily result from a multiplicity of individual actions.

24 **FIRST CAUSE OF ACTION**

25 **(Unfair Business Practices)**

26 18. Plaintiff, individually and for the CLASS, hereby incorporates by reference  
27 paragraphs 1-17, as though fully set forth herein, and aver against defendants, and  
28 each of them.

1 19. California Business & Professions Code section 17200, *et seq.* ("UCL")  
2 precludes unfair competition, *i.e.*, the employment of any unlawful, unfair or fraudulent  
3 business acts or practices; and any unfair, deceptive, untrue or misleading advertising  
4 violating Cal. Bus. & Prof. Code section 17500. This prohibition extends to any act,  
5 omission, conduct or pattern of activity engaged in within California which affects the  
6 rights of consumers within the State of California and elsewhere.

7 20. Defendants' SCHEME is fraudulent within the meaning of the UCL in that  
8 defendants developed, implemented, and operated the SCHEME, as more particularly  
9 described in Paragraphs 10-15, *supra*, in a manner in which they actively mislead,  
10 conceal material facts, or suppress material facts in making partial, ineffective  
11 representations regarding the SCHEME to plaintiff and the CLASS.

12 21. Defendants' SCHEME, as more particularly described in Paragraphs 10-15,  
13 *supra*, is unlawful within the meaning of the UCL, in that defendants have and continue  
14 to violate Cal. Civil Code section 1750, *et seq.* (hereinafter "CLRA") to the extent that  
15 defendants' SCHEME violates, *inter alia*, Cal. Civ. Code section 1770(a)(14) and (19):1)  
16 precluding representations that a transaction confers or involves rights or remedies  
17 which it does not; and, 2) to the extent the SCHEME amounts to the enforcement of an  
18 unconscionable contract provision.

19 22. Defendants' SCHEME is unfair within the meaning of the UCL in that the  
20 the alleged consumer injury is substantial, causing millions of guests at defendant's  
21 hotels to unwittingly part with money for a newspaper they did not request and  
22 reasonably believed was provided to them without charge. There is no countervailing  
23 benefit to defendants' conduct. To the contrary, as set forth in detail in Paragraph 10,  
24 *supra*, the SCHEME offends the social morality and ethics of reasonable consumers, and  
25 resulting public policy which expresses the genuine concern of society to protect the  
26 environment from unnecessary and unreasonable impact. Under the circumstances, it  
27 is unfair for defendants to continue to act in the wrongful manner alleged and to retain  
28 the ill gotten gains associated with the SCHEME.

1 23. Were it not for the unfair competition of defendants, Plaintiff and the  
2 CLASS would not have been charged for a newspaper under the SCHEME for which  
3 reasonable consumers expect is being offered without charge.

4 24. Plaintiff and members of the CLASS have and will continue to suffer injury  
5 in fact and lose money as a direct result of defendants' unfair competition in that each  
6 has expended money to purchase and/or pay for newspapers they reasonably believed  
7 were being offered without charge to them. Consumers staying at the defendants'  
8 hotels will continue to suffer additional losses until the SCHEME is discontinued.

9 25. As a result of defendants' unfair competition as evidenced by the  
10 SCHEME, plaintiff and the CLASS are entitled to appropriate equitable relief including  
11 injunctive relief, and available monetary relief in the form of restitution (including fluid  
12 recovery when certified as a CLASS action). Plaintiffs are also entitled to recover  
13 penalties as well as an award of attorneys' fees for prosecuting this action.

#### 14 **SECOND CAUSE OF ACTION**

##### 15 **(Violation of the Consumers Legal Remedies Act)**

16 26. Plaintiff, individually and for the CLASS, hereby incorporates by reference  
17 Paragraphs 1-25, as though fully set forth herein, and averred against defendants, and  
18 each of them.

19 27. California Civil Code Section 1750, *et seq.*, ("CLRA") precludes defendants'  
20 SCHEME because the CLRA, *inter alia*, precludes: 1) representations that a transaction  
21 confers or involves rights or remedies which it does not; and 2) the enforcement of an  
22 unconscionable contract provision(s).

23 28. In engaging in the conduct described herein, as more specifically set forth  
24 in Paragraphs 10-15 of this Complaint, defendants, and each of them, violated the CLRA  
25 including Civil Code section 1770(a)(14) and (19).

26 29. Were it not for the misconduct of defendants, plaintiff and the CLASS  
27 would not have purchased or paid for newspapers which, due to the SCHEME, they  
28 reasonably believed were being offered by defendant free of charge.



1 35. Defendants have been, and continue to be, unjustly enriched, to the  
2 detriment of and at the expense of the CLASS members, as a result of their conduct  
3 directed against the CLASS as a whole and its resulting collection of money derived  
4 from the SCHEME.

5 36. Defendants have unjustly benefitted through the unlawful and/or wrongful  
6 collection of money from the SCHEME, and continue to so benefit to the detriment and  
7 at the expense of CLASS members.

8 37. Accordingly, defendants should not be allowed to retain the proceeds from  
9 the benefits conferred upon it by plaintiff and CLASS members, who seek disgorgement  
10 of defendants' unjustly acquired profits and other monetary benefits resulting from its  
11 wrongful and inequitable conduct, and seek restitution and/or rescission for the benefit  
12 of the plaintiff and CLASS members, in an equitable and efficient fashion to be  
13 determined by the Court.

14 38. Plaintiff and the CLASS members are entitled to the imposition of a  
15 constructive trust upon defendants such that their enrichment, benefit and ill-gotten  
16 gains may be allocated and distributed equitably by the Court to and/or for the benefit  
17 of CLASS members.

18 **RELIEF REQUESTED**

19 WHEREFORE, plaintiff and the CLASS pray judgment against defendants, and  
20 each of them, hereinafter as follows:

21 **ON THEIR FIRST CAUSE OF ACTION:**

- 22 1. Equitable and/or injunctive relief as appropriate;  
23 2. Monetary relief including restitution and fluid recovery;  
24 3. Attorneys' fees and costs of suit;  
25 4. Interest; and  
26 5. Such other and further relief as the Court deems proper.

27 **ON THEIR SECOND CAUSE OF ACTION:**

- 28 1. Injunctive relief;

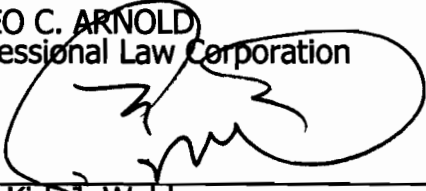
- 1 2. Attorneys' fees, and costs and expenses of suit;
- 2 3. Interest; and
- 3 4. Such other and further relief as the Court deems proper.

4 **ON THEIR THIRD CAUSE OF ACTION:**

- 5 1. Equitable relief in the form of restitution and disgorgement of profits;
- 6 2. Consequential damages;
- 7 3. Imposition of a constructive trust over the revenues of sale and resulting
- 8 profits received as a result of defendants' wrongful conduct;
- 9 4. Attorneys fees, costs, expenses and interest; and
- 10 5. Such other and further relief as the Court deems proper.

11 Date: July 22, 2011

12 CLAYEO C. ARNOLD  
A Professional Law Corporation

13 

14 By: \_\_\_\_\_  
15 Kirk J. Wolden  
16 Attorney for Plaintiff and the Class

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff and the CLASS demand trial by jury of each cause of action set forth in  
19 this Complaint and the issues in this matter.

20 Date: July 22, 2011

21 CLAYEO C. ARNOLD  
A Professional Law Corporation

22 

23 By: \_\_\_\_\_  
24 Kirk J. Wolden  
25 Attorney for Plaintiff and the Class