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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

17 JORDAN DOCTER and PAT BRADLEY,
18 individually and on behalf of all similarly
situated individuals,

19 Plaintiffs,

20 v.

22 ACCOR MANAGEMENT US INC.,
FORMERLY KNOWN AS FAIRMONT
23 HOTELS & RESORTS (U.S.) INC., a
Delaware corporation, and DOES 1 through 10,
24 inclusive,

25 Defendants.

FILED MAY 14 2019
ROSA J. ANJOEIRO, CLERK
By [Signature]
DEPUTY

Case No: STK-CV-UBT-2019-147

CLASS ACTION

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

FILE BY FAX

Date: 4-23-19
Time: 9:00 a.m.
Judge: W. Stephen Scott
Dept.: 9B

Complaint filed: January 4, 2019
FAC filed: March 1, 2019

1 Plaintiffs Jordan Docter and Pat Bradley (“Class Representatives” or “Plaintiffs”) and
2 Defendant Accor Management US Inc., formerly known as Fairmont Hotels & Resorts (U.S.)
3 Inc. (“Defendant”) have entered into a “Settlement Agreement and Release” (the “Settlement
4 Agreement”), which, if approved, would resolve this putative class action. Upon review and
5 consideration of the motion papers submitted by the parties, including the Settlement
6 Agreement and all exhibits thereto, the Court determines and orders as follows:

7 1. The Court has jurisdiction over this matter and venue is proper.

8 2. This action is provisionally certified as a class action, for settlement
9 purposes only, pursuant to California Code of Civil Procedure Section 382 and California
10 Rule of Court rule 3.763. The Settlement Class is defined as follows: “All consumers during
11 the period November 13, 2015 through November 16, 2017 who stayed at a Fairmont Hotels
12 and Resorts location in the United States and received a printed folio which contained more
13 than the last five digits of the credit or debit card and/or the entire expiration date of the credit
14 or debit card.” Excluded from the Settlement Class are all employees of Defendant or its
15 parents, subsidiaries or affiliates, all attorneys and employees of Settlement Class Counsel, any
16 judicial officer, or his/her immediate family, to which this case is assigned, and persons who
17 validly opt out of the settlement by following the procedures set forth in the Settlement
18 Agreement.

19 3. The Court preliminarily approves the proposed settlement set forth in the
20 Settlement Agreement as within the range of possible final approval.

21 4. The Court preliminarily appoints Eric A. Grover of Keller Grover LLP and
22 Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Settlement Class
23 Counsel.

24 5. The Court preliminarily appoints Jordan Docter and Pat Bradley as Class
25 Representatives for the Settlement Class.

26 6. The Court preliminarily finds, for purposes of this settlement only, that the
27 Settlement Class Representatives and Settlement Class Counsel fairly and adequately represent
28 and protect the interests of the absent Class Members.

1 7. The Court approves and appoints Heffler Claims Group (“Heffler Claims”) to
2 serve as the Claims Administrator and directs Heffler Claims to carry out all duties and
3 responsibilities of the Claims Administrator specified in the Settlement Agreement.

4 8. Pursuant to California Rules of Court rule 3.769, the Court approves the manner
5 of class notice set forth in the Settlement Agreement. The Court approves the form and content
6 of the notice form proposed by counsel, specifically the Postcard Settlement Class Notice and
7 Email Settlement Class Notice, which are attached to the Settlement Agreement as **Exhibit B**
8 **and C**, respectively. The Court finds that the notice procedure set forth in the Settlement
9 Agreement, which includes the U.S. mail distribution of the Postcard Settlement Class Notice,
10 the email distribution of the Email Settlement Class Notice, the publication of the Settlement
11 Website, and the online banner advertising campaign, constitutes the best notice practicable
12 under the circumstances and is in full compliance with the laws of the State of California and
13 the United States and the requirements of due process. The Court finds that the proposed notice
14 plan constitutes sufficient notice to the Settlement Class of the pendency of the action,
15 preliminary certification of the Settlement Class, the terms of the settlement, procedures to
16 submit a claim, procedures for objecting to the settlement, procedures to opt out of the
17 settlement, and the time and place of the Final Approval Hearing.

18 9. The Court directs Defendant to compile and, no later than 30 calendar days after
19 the entry of this Order, provide the Potential Class Member Contact List to the Claims
20 Administrator in the manner described in the Settlement Agreement.

21 10. The Court directs the Claims Administrator to run databases searches of all
22 Settlement Class Members’ telephone numbers that Defendant provided without a name and
23 address or email address in an effort to obtain the names and mailing and email addresses
24 associated with each telephone number. The Court also directs the Claims Administrator to run
25 all mailing addresses through the United States Postal Service National Change of Address
26 database to update the information that Defendant provided.

27 11. No later than 60 calendar days after the entry of this Order, the Court directs the
28 Claims Administrator to send a copy of the Postcard Settlement Class Notice via First Class

1 U.S. Mail to all persons shown by Defendant's records to be Settlement Class Members for
2 whom a mailing address is available but for whom no email address is available. The Claims
3 Administrator shall exercise its best judgment to determine the current mailing address for each
4 Settlement Class Member. The address identified by the Claims Administrator as the current
5 mailing address shall be presumed to be the best mailing address for each Settlement Class
6 Member.

7 12. No later than 60 calendar days after the entry of this Order, the Court directs the
8 Claims Administrator to email a copy of the Email Settlement Class Notice to all persons
9 shown by Defendant's records to be Settlement Class Members for whom an email address is
10 available.

11 13. If any Postcard Settlement Class Notice or Email Notice is returned to the
12 Claims Administrator as undeliverable, the Claims Administrator will immediately perform a
13 skip-trace and/or other customary address searches in an attempt to locate a valid address, and if
14 a new mailing address or e-mail address is obtained, re-mail the appropriate notice document to
15 that updated mailing address or e-mail address.

16 14. The Court directs the Claims Administrator, no later than 50 days after the entry
17 of this Order, to publish a website on the internet at the URL
18 www.fhrFACTAsettlement.com (or a similar name as agreed upon by the Parties if that one
19 is not available)(the "Settlement Website"), which shall set forth a summary of the terms
20 of the settlement, state the means by which Settlement Class Members may communicate
21 with the Claims Administrator (including but not limited to the Claims Administrator's
22 business name, address, a toll-free telephone number, and e-mail address), contain a set
23 of Frequently Asked Questions and corresponding answers, provide instructions on how
24 to submit a Claim Form (both electronically and by mail) and the deadline associated
25 therewith, and provide instructions on how to object to and opt out of the Class Action
26 Settlement and the deadlines associated therewith. The Settlement Website also shall
27 provide, free of charge, a viewable, printable, and downloadable copy, in PDF file
28 format, of each of the following documents: this Agreement; the Complaint; the Answer to

1 the Complaint; the Court's order preliminarily approving the Class Action Settlement; the Claim
2 Form (which is **Exhibit A** to the Settlement Agreement); and the Long-form Settlement Class
3 Notice (which is **Exhibit D** to the Settlement Agreement). The Settlement Website shall
4 remain active for 90 calendar days after the Settlement Effective Date. Defense Counsel and
5 Settlement Class Counsel shall have the right to review and approve the Settlement Website,
6 including its content, not less than 10 days before it goes live.

7 15. The Court directs the Claims Administrator, no later than 60 days after the entry
8 of this Order, to initiate an on-line banner advertising campaign as described in the Settlement
9 Agreement that will continue for a period to be determined by the Claims Administrator that
10 ends no later than 120 days after the Court's order preliminarily approving the Class Action
11 Settlement. The online banner ads will be drafted by the Claims Administrator and approved
12 by the Parties not less than 10 days before they go live. The intent of the online banner ads is to
13 communicate the following information in a format suggested by the Claims Administrator and
14 approved by the Parties: "If You Stayed at a Fairmont Hotels & Resorts location between
15 November 13, 2015 and November 16, 2017, inclusive, **You May be Entitled to Money From**
16 **a Class Action Settlement.**"

17 16. Settlement Class Members who wish to participate in the settlement shall
18 completely fill out and sign (or electronically submit) a Claim Form in the manner provided for
19 in the Settlement Agreement. Claim Forms submitted by Settlement Class Members must be
20 postmarked or received electronically no later than 60 days after the date on which the Claims
21 Administrator first sends out the Postcard Settlement Class Notice and Email Settlement Class
22 Notice.

23 17. The proposed procedure for the Settlement Class Members to submit a request
24 for exclusion from the settlement. Any Settlement Class Member requesting exclusion from the
25 settlement must send a letter, by first class United States mail, to the Claims Administrator
26 containing (1) the title of the Action; (2) the full name, address, and telephone number of the
27 person requesting exclusion; and (3) a statement that he or she requests exclusion from the
28 Settlement Class. Settlement Class Members who timely opt-out of the Class Action

1 Settlement shall: (a) have no right to receive any benefits under the Class Action Settlement; (b)
2 not be bound by the terms of the Class Action Settlement; and (c) have no right to object to the
3 terms of the Class Action Settlement or be heard at the final fairness hearing. Opt-out letters
4 must be submitted individually and cannot be made on behalf of a group of Settlement Class
5 Members. Each letter must be signed by the Settlement Class Member who is opting out and
6 must be postmarked no later than 60 days after the date on which the Claims Administrator first
7 sends out the Postcard Settlement Class Notice and Email Settlement Class Notice. Any
8 Settlement Class Member who submits a valid and timely request for exclusion shall no longer
9 be a member of the Settlement Class, shall be barred from participating in or objecting to this
10 settlement, and shall receive no benefit from this settlement.

11 18. The Court further orders that, as provided in the Settlement Agreement, each
12 Class Member shall be given a full opportunity to object to the Class Action Settlement. As
13 explained in the Postcard Settlement Class Notice and Email Settlement Class notice, any
14 Settlement Class Member seeking to object to the settlement shall submit his or her Objection
15 to the Claims Administrator no later than 60 days after the date on which the Claims
16 Administrator first sends out the Postcard Settlement Class Notice and Email Settlement Class
17 Notice. To be considered by the Court, the objection include: (1) a heading containing the
18 name and case number of the Action; (2) the Settlement Class Member's name and postal
19 address; (3) a statement as to the basis of the objector's belief that he or she is a member of
20 the Settlement Class; (4) a detailed statement of each objection, including, if available, the
21 factual and legal basis for each objection; and (5) a statement of whether the Settlement Class
22 Member intends to appear, either in person or through counsel, at the final approval hearing,
23 and, if through counsel, a statement identifying the counsel's name, postal address, telephone
24 number, and email address.

25 19. The Court directs the Claims Administrator to provide any objections it receives
26 to Settlement Class Counsel and Defendants' counsel within five days of receipt.

27 20. Plaintiffs shall file their motion for final approval of the class settlement and
28 their application for award of attorneys' fees and out-of-pocket costs, Class Representatives'

1 enhancements, and administration costs no later than 20 calendar days prior to the date of the
2 Final Approval Hearing.

3 21. The Final Approval Hearing shall be held on Order here, 2019 at 9:00
4 a.m. in San Joaquin Superior Court, Department 10A, located at 180 E. Weber Avenue,
5 Stockton, California 95202, at which the Court will determine whether the settlement should be
6 finally approved as a fair, reasonable, and adequate to the Settlement Class Members; whether
7 the Final Approval Order and Judgment should be entered; whether Settlement Class Counsel's
8 application for attorneys' fees and expenses should be approved; whether any request for
9 Settlement Class Representatives' enhancement awards should be approved; and whether the
10 request for the payment of administration costs should be approved.

11 22. The Court reserves the right to modify the date of the Final Approval Hearing
12 and related deadlines set forth herein. The Final Approval Hearing may be postponed,
13 adjourned or continued by Order of the Court without further notice to the Class.

14 23. Pending the final determination of whether the settlement should be approved,
15 all proceedings in the action, except as necessary to implement the settlement or comply with
16 the terms of the Settlement Agreement or this Order, are hereby stayed.

17 24. Should, for whatever reason, the settlement not become final, the fact that the
18 Parties were willing to stipulate to certification of the Settlement Class as part of the settlement
19 shall have no bearing on, nor be admissible in connection with, the issue of whether a class
20 should be certified in a non-settlement context.

21 25. In the event the settlement is not finally approved or is terminated, canceled or
22 fails to become effective for any reason, the Parties will be returned to their former positions,
23 and specifically the provisional certification will be of no effect.

24 **IT IS SO ORDERED.**

25 Dated: April 22, 2019

26 
27 HON. ~~W. STEPHEN SCOTT~~ **GEORGE J. ABDALLAH, JR.**
28 JUDGE OF THE SUPERIOR COURT