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DANIEL J. CALLAHAN

FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

MAY 28 2020

CLERK OF THE COURT
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SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

(Unlimited Jurisdiction)

DANIEL J. CALLAHAN,

Plaintiff,

v.

MARRIOTT MARQUIS HOTEL,
MARRIOTT INTERNATIONAL, INC.,
HOST HOTELS AND RESORTS, and DOES
1 through 20, inclusive,

Defendants.

Case No. **CGC-20-584599**

COMPLAINT

1. DISABILITY DISCRIMINATION –
DISCRIMINATORY TERMINATION OF
EMPLOYMENT (Gov. Code § 12940(a));
2. DISABILITY DISCRIMINATION –
FAILURE TO ACCOMMODATE (Gov.
Code § 12940(m));
3. DISABILITY DISCRIMINATION –
FAILURE TO ENGAGE IN
INTERACTIVE PROCESS (Gov. Code §
12940(n));
4. FAILURE TO PREVENT
DISCRIMINATION (Gov. Code §
12940(k));
5. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY

JURY TRIAL DEMANDED

PARTIES

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2 1. Plaintiff Daniel J. Callahan ("Plaintiff" or "Callahan") is an individual who
3 resides in the State of California, City and County of San Francisco.

4 2. Defendant Marriott Marquis Hotel ("Defendant" or "Marriott") is a 1,500 room
5 luxury hotel located in downtown San Francisco, California. It is a California corporation and
6 one of eight Marriott International Inc's hotels in San Francisco.

7 3. Defendant Marriott International, Inc. is an American multinational hospitality
8 company that manages and franchises a broad portfolio of hotels, with over 7000 properties in
9 131 countries around the world, including San Francisco, California.

10 4. Host Hotels and Resorts is the world's largest lodging real estate investment trust
11 (REIT). The San Francisco Marriott Marquis is one of Host's top 40 assets. Plaintiff is informed
12 and believes and thereon alleges that Host Hotels and Resorts is in a joint venture with San
13 Francisco Marriott Marquis and invests its resources into that property and derives revenues and
14 otherwise profits from that property.

15 5. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
16 Does 1 through 20, inclusive, and therefore sues these defendants by such fictitious names under
17 California Code of Civil Procedure § 474. Plaintiff will amend this Complaint to allege their
18 true names and capacities when the same are ascertained. Plaintiff is informed and believes and
19 thereon alleges that each of the fictitiously named defendants is legally responsible in some
20 manner for the acts and/or omissions herein alleged and that the injuries of Plaintiff as herein
21 alleged have been proximately caused by the aforementioned defendants, and each of them.

22 6. Plaintiff is informed and believes and thereon alleges that each of the defendants
23 named herein has at all times relevant to this action been the officer, agent, employee and/or
24 representative of the remaining defendants and has acted within the course and scope of such
25 agency and employment, and with the permission and consent of the co-defendants.

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1 10. Both before and after his spinal cord injury, Callahan remained active in his
2 profession and performed his work in an exemplary manner, all to the benefit of Marriott. He
3 maintained his membership in the pre-eminent and exclusive international concierge
4 organization called Les Clefs d'Or (500 members in the United States), and he remained active
5 as a board member of the Northern California Concierge Association, serving as Vice President,
6 Treasurer and Community Liaison. He was nominated as Concierge of the Year, and on
7 numerous occasions, Marriott selected Callahan for nomination for the "Hotel Heroes" Award
8 for his high quality work. Plaintiff also received a raise every year, and he was routinely the
9 recipient of the highest number of favorable guest comments among his colleagues. Callahan
10 received the prestigious Tiefel Award and Platinum Guest Award on innumerable occasions.
11 Plaintiff was proud to represent his profession and Marriott, and made valuable contributions to
12 raise awareness and by leading community efforts to promote the profession of concierges.

13 11. Callahan sustained a serious spinal cord injury in or about January 16, 2014.
14 Callahan returned to work at Marriott approximately one year later in January 2015 as a walking
15 paraplegic, unable to move around freely without a prosthetic device and a cane. Because the
16 nature of his work primarily involved interaction with hotel guests, Plaintiff was able to continue
17 fulfilling the duties and obligations of his position as long as he could sit down during the day.
18 Sitting was not a burdensome accommodation for Marriott; Plaintiff had previously assisted
19 guests while seated. Callahan's disability, while physical, was not readily apparent to the hotel
20 guests and did not interfere with Plaintiff's interactions with the hotel guests. However,
21 notwithstanding the fact that Callahan's medical condition allowed him to work while sitting
22 down, he still required reasonable and modest accommodations in order to prevent his condition
23 from worsening. For instance, because Callahan was essentially paralyzed from the waist down,
24 he needed to wear a diaper and thus he needed to work in close proximity to a restroom. He also
25 needed a proper chair and floor mat to enable him to move about while seated and to stand
26 comfortably. He also needed to park his vehicle in close proximity to the entrance of the hotel
27 because of his inability to walk long distances. He also required use of a breakroom or some
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1 other space where he could eat lunch and take his break since he no longer could walk to
2 restaurants or to the employee cafeteria which was located too far away from his work station.

3 12. Shortly after returning to work from his spinal cord injury, Callahan attempted to
4 acclimate to his work routine but found there were workplace accommodations needed in order
5 to make his work area safe and to prevent his medical condition from worsening. After
6 conferring with his physicians to identify exactly what was needed to protect his health, well-
7 being, and safety, Callahan's Neurologist sent Marriott's Human Resources Department a letter
8 stating, in particularity, what Callahan needed by way of accommodation to return to his
9 previous work position. The accommodations noted were modest by any standard.

10 Approximately 4 months later, Callahan's primary care physician followed up with at least two
11 additional letters sent directly to Marriott's Human Resources Department reiterating that
12 Callahan be "allowed to use a chair without locking wheels" and that he be allowed to "enter
13 through the Valet... because the Patient has difficulty walking long distances especially during
14 rainy days," among other things. Marriott initially provided Callahan with a proper chair, and the
15 existing mats that were already on the floor satisfied Plaintiff's need for a thick, stable mat which
16 cushioned his chair and which allowed for movement of the chair without buckling.

17 13. Other of Callahan's modest requests for accommodation were not met by
18 Marriott, who instead forced Callahan to make due with inadequate half measures. For instance,
19 Callahan was eventually "allowed" to park his car upstairs closer to the entrance door of the
20 hotel, however Marriott charged him a monthly fee of \$275.00 for the "privilege." Callahan was
21 also provided the use of a breakroom closet for meal breaks that was essentially a storage space
22 used by the bellmen for luggage. While continuing to perform the duties of his job at the highest
23 level, Callahan was not treated with any dignity or value.

24 14. Upon his return to work as a new paraplegic, Plaintiff was extremely self-conscious
25 about his condition. Plaintiff did not want to call attention to his disability. Nor did Plaintiff want
26 to be perceived as someone who was seeking special privileges notwithstanding his legal right to
27 be reasonably accommodated for his disability. Plaintiff worked extremely hard at trying not to
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1 ask either the Human Resources department or his managers for accommodation so as to prove
2 that he could still perform his job without asking for any favors. Callahan knew from his time
3 working at Marriott and observing HR practices, that Marriott was neither tolerant nor
4 sympathetic of individuals with disabilities or differences.

5 15. Unfortunately, as time passed, Callahan's condition became aggravated and he
6 needed to follow-up on his and his physicians' previous requests for accommodation. By the end
7 of 2016, Plaintiff was asked to vacate the rear bellmen's breakroom he had been using for a
8 break space. Plaintiff was forced to use a crowded storage area as his breakroom, which was
9 located further away from the restroom and Plaintiff's work station. It was a room primarily used
10 for storing supplies which was often blocked by carts and miscellaneous items stacked in front of
11 the entrance, blocking Plaintiff's access to the room and/or to a chair to sit on. The condition of
12 the second breakroom was far worse than the first which caused Callahan to have a series of on-
13 going discussions with his manager, Scott Garlow. Garlow acted in a contemptuous and or
14 indifferent manner toward Callahan's requests.

15 16. In approximately June 2016, the existing interlocking cushioned flooring mats
16 which had worked well for Callahan's disability, were removed without notice by housekeeping
17 for cleaning. Callahan spoke to Garlow who indicated that the mats were thrown away, and
18 Callahan and all of the concierge staff would have to work on the tile floors without mats of any
19 kind. Callahan explained to Garlow that this was dangerous for him because his chair could
20 shoot or roll out from underneath him due to its hard, smooth surface. Moreover, the hard tile
21 floor was uncomfortable to stand on for Callahan without the cushioning of a mat. No
22 accommodation was made for Callahan. It was not until *months* later that cheap, rubber front-
23 door styled welcome mats were brought in as a "temporary replacement" for all of the concierge
24 staff. These mats were uneven, too small, and dangerous for Callahan. Callahan again
25 complained to Garlow and to HR about the inadequacies of the replacement mat, however his
26 complaints were ignored. By October 24, 2016, these mats started to bubble and curl up, creating
27 a dangerous tripping hazard for Callahan as well as all of the workers. Callahan contacted HR
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1 (Yoke Yong, hereinafter "Yong") and Marriott's Health Services Nurse Manager (Ann Dinh,
2 hereinafter "Nurse") and John Collette (Human Resources) to complain and to remind them
3 about his disability and what his physicians had told them was needed for a proper
4 accommodation. Plaintiff's emails and complaints were again ignored. Garlow callously laughed
5 at Callahan, joking that "the mats are not *that* terrible."

6 17. On October 16, 2017, Garlow suggested to Callahan that since the lobby coffee
7 shop was busy, he should "run over to Starbucks" to get coffee. Callahan reminded him that
8 because he was paraplegic, running to Starbucks was not an option. In front of Garlow, Callahan
9 had to shuffle his feet for balance, appearing awkward, and a co-worker, standing nearby,
10 laughed out loud at Callahan. She made no gesture to help Plaintiff; instead, she stood and
11 laughed at him. Callahan explained to her and Garlow that he is incapable of making fine motor
12 movements which often makes him appear clumsy. Neither Garlow nor the co-worker
13 apologized for their comments and laughter. Callahan was embarrassed and humiliated. Callahan
14 sent an email to Marriott's General Manager, Chuck Pacioni, regarding the incident.

15 18. On November 7, 2017, Julie Fallon, the Area Director of Human Resources,
16 approached Callahan while he was working at his desk servicing hotel guests. She began
17 publicly speaking about the email Callahan sent to Pacioni, at which point, Callahan asked that
18 they meet privately at a more appropriate time when guests were not waiting in line. Several
19 days later, Fallon contacted Callahan about scheduling a meeting. No meeting ever occurred and
20 neither Garlow nor the co-worker were disciplined nor did they apologize to Callahan.

21 19. Over the next several months into 2018, Defendants made a decision to begin
22 renovation of the lobby of the hotel and to move Concierge services upstairs to the second floor.
23 Callahan, aware that there were renovations planned, specifically asked each of his supervisors
24 about accommodations for his disability in the new area on the 2nd floor over the course of
25 months. For example, the break area on the second floor was obviously not easily accessible for
26 Callahan as it required him to walk behind front desk associates, step over electrical cable covers
27 and wires, and the passageway was too narrow for Callahan to comfortably pass through. Garlow
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1 suggested that Callahan instead simply use the employee cafeteria, located two floors below
2 street level and very far away. Callahan reminded Garlow (again) that for the same reason he
3 could not "run over to Starbucks," he could not use the cafeteria because of its remote distance
4 from his work station. On September, 3, 7, 10, and 18, 2018, Callahan emailed his supervisors
5 and HR about his concerns about the lack of proper accommodations in the new work area, but
6 received no response from any of them.

7 20. On November 7, 2018, Callahan's materials folder and riser were removed from
8 his desk. Callahan had made a makeshift riser out of cardboard since no one at Marriott provided
9 him with a riser to enable him to reach the materials to provide to hotel guests. His co-worker,
10 Judy, mocked his disability claiming that she had "mobility issues too" and that Callahan's
11 materials were encroaching on her space. Callahan notified HR and the Nurse to come to the
12 desk to help mediate the issue. He sent an email which clearly stated his exasperation: "It
13 continues to be a struggle here at Marriott." Judy told the managers, "if we need to have Dan in a
14 pod to accommodate him, that's something to consider." She further stated, "Consideration for
15 me, Dan and others should be the same and I shouldn't be asked to make any effort to assist a
16 disabled co-worker." She then asked for a tape measure to make sure their desk space was equal.
17 Kim Clark, a Marriott manager, told Callahan, "Some people are just mean." No one from
18 management disciplined or counseled Plaintiff's co-worker. Human Resources Director Yong
19 walked by, overheard the discussion and said nothing.

20 21. On November 18, 2018, Plaintiff called the Marriott Regional Associate Help
21 Line to ask for support due to the repeated mocking of his disability and the lack of protection
22 and support from the human resources team and his management team at Marriott. Plaintiff
23 provided the person on the help line with his name and the details of what had transpired
24 regarding the insensitive and discriminatory comments made by his co-worker and his manager
25 on two occasions, as well as the lack of follow-up on his numerous requests for accommodation.

26 22. On November 30, 2018, Callahan sent an email to his managers and HR and the
27 Nurse, advising them that the mat being used did not provide sufficient support for either
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1 standing or for supporting the chair. The wheels of the chair would sink in making it impossible
2 for the chair to move. Callahan made a specific request to replace the floor mat on numerous
3 occasions.

4 23. On December 17, 2018, Callahan finally heard back from HR Director, Yong,
5 who wrote: "Good morning Dan, Thank you for being proactive with your work space
6 accommodations. It is important that we feel safe and comfortable at work....The new lobby will
7 re-open on 1/4/2019. How exciting! As of now, *no special accommodations* have been made to
8 any part of the hotel.... Thank you again for asking and I am available to talk should you any
9 other questions."

10 24. The Marriott renovation was fully underway for the duration of 2018. One of the
11 issues continuing to percolate was the lack of a break area for Plaintiff to use as he literally had
12 nowhere to go for his meal break. On December 5, 2018, Callahan pleaded with Garlow for
13 compassion and respect for his dignity. Callahan reminded Garlow that he had been asking for
14 help consistently for more than one year. Callahan explained his physical deficits yet again, and
15 explained why the designated break area for him to use did not work. He physically showed
16 Garlow how the access to the break room was cramped and often blocked by boxes, mats, cases
17 of water, and miscellaneous items. Callahan showed Garlow that stored boxes were stacked high
18 under the table so there was no usable leg space and therefore no place for Callahan to sit.

19 25. On January 4, 2019, after the renovation, Callahan met with managers Garlow and
20 Collette to again express his concerns regarding the new desk structure and how it was not
21 suitable ergonomically for a disabled person. Specifically, Callahan reiterated that his lack of
22 muscle strength disabled him from bending to the extent the width of the new desk required, in
23 addition to the improper height of the work area and counter of the desk. There was also no leg
24 room which would allow for the use of a chair, so if Plaintiff needed to sit down, he would be too
25 far away from the desk, and he could not comfortably reach the phone, the materials, or the
26 keyboard to his computer. He would also hit his knees on the sharp drawer knobs. In addition to
27 the lack of sitting and leg space, the mats on the floor were beveled and soft and too narrow for
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1 the chair, causing a trip hazard. Callahan offered suggestions, including the use of a riser to make
2 the desk taller so Callahan would not have to stoop or bend over it to use it. Colette was not
3 interested, did not engage with Plaintiff, and offered no feedback or assurance that any of the
4 requests for accommodation would be met.

5 26. On January 7, 2019, Callahan followed up the January 4th meeting with an email
6 to his managers and to Marriott HR. In this email, Callahan stated:

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8 "I'll need some accommodations at the new desk, please.... I need to have fluids more
9 frequently and will need to drink discreetly at the work area, in regard to my mobility and
10 distance from the break room.... Ann, you and I have been talking about mats; the mats
11 here are too narrow, beveled and soft, for the chair too.... I will stay here at three days a
12 week and speak with my doctors for now. With this new layout, walking distances to
work and to the break area and restrooms have increased several times more than the
distances I've been able to manage.... Scott and Naomi have placed risers to address the
reach over the desk and phone – Scott asked me to report end of shift Wednesday."

13 27. On January 11, 2019, the Nurse came to Callahan's station to measure for mats and a
14 new desk. The desk riser provided by Garlow had uneven heights and proved to be useless. The
15 Nurse returned to Callahan's desk on February 8th – one month later- to re-measure for the desk
16 riser. On February 11, 2019, Callahan emailed his managers and HR *again* with his proposed list
17 of accommodations (essentially the same as the list provided by his physicians) and also to
18 request a meeting with them and with a member of the renovation team to talk about his
19 accommodations while the team was on the property in order to save time and money. On
20 February 20, 2019, the Nurse advised Callahan that his request for a proper mat and chair needed
21 to be approved by finance and that "it was all about money at this point." When Callahan
22 mentioned that the cost was modest, she had no comment. When Callahan advised her that in
23 order to get to the restroom, he had to walk a significant distance, through three doors including
24 one with a code, and none of the doors were handicap-powered, the Nurse stated: "at this point
25 it's challenging what can be done."

26 28. On January 30, 2019, Plaintiff *again* emailed his managers and Marriott HR
27 regarding his accommodation needs. In pertinent part, he stated:

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2 "... There are several items we've talked about: A counter riser built to extend the desk
3 writing/desk service area would be great. The concierge requires more guest contact time
4 (phones paperwork, etc.) than any other [employee], needs space for materials and guest
5 service. Display racks for brochures, maps, etc. need to be within easy reach. Desk
6 counter is too wide ...and not high enough; reach is an issue. The mats are beveled, too
7 soft for chairs, (they sink in and require a strong effort to get out of the grooves they
8 create) and not suitable for me to stand on, or for the chair to be supported...I need the
9 use of a chair during my shift....Reach from the chair to keyboard and to guest is too
10 far....With mat and desk measurements/drawers, I can't use the chair properly. There are
11 other accommodations re: distance, etc. we have noted. Thank you. I look forward to
12 hearing from you."

13 29. On February 11, 2019, Callahan tried again to get the attention of his managers
14 and Marriott HR by sending yet another email, this time suggesting that a member of the
15 renovation team (Anthony Oregon) be involved so that the modifications could be done quickly
16 and would "match the look." Callahan also specifically asked that Yong stop by his desk so he
17 could be personally familiar with the accommodations being sought.

18 30. On March 1, 2019, the Nurse advised Callahan that while she would try and find a
19 proper mat for him to use under his desk, Marriott would not be providing the other items
20 "because of the money." Callahan, in disbelief, asked if she meant that the cost was too high for
21 the chair and other items, and she said "yes." In the meantime, Callahan's request for a meeting
22 to further engage with his managers and HR and a member of the renovation team was ignored.

23 31. On March 11, 2019, Callahan received an email from Collette, notifying him of a
24 meeting to take place on March 13 to discuss the concerns about Plaintiff's new desk set up.
25 Callahan reported to Collette's office at the designated time, but no one was there. He returned to
26 his desk. The meeting that was supposed to be confidential took place openly at the concierge
27 station with Collette, Garlow, and the Nurse. Callahan *again* was forced to explain his disability
28 in a public forum, reminded them of the many previous requests for accommodation made by
himself and his physicians, and asked them about the chair, mat, display racks and a riser. He
also demonstrated to them how he had no leg room and how the chair did not provide proper
support. He showed them how the knobs on the drawers gouged his knees because of lack of leg
space. He demonstrated why he needed a mat and proper chair. Callahan advised the group that a

1 riser could be easily and cheaply made by TAP Plastics, located just blocks from the hotel. He
2 also reiterated the issue with the inadequate break room area and the distance he had to walk to
3 get to the restroom. On March 15, 2019, the Nurse returned to Callahan's desk to advise him that
4 a proper mat was ordered. When Callahan inquired about a new chair, she responded "that topic
5 needs a different conversation."

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7 32. On March 27, 2019, Callahan sent yet another email to his
8 managers :

9 Good morning, Yoke, Ann and all.

10 I'd like to revisit my and my physician's requests and see how to
11 move things forward. I need to sit often at the desk and the desk design is
12 an obstacle to using the chair and requires I stand a lot. Leg room would
13 allow that I can sit properly and the desk/keyboard/monitors and riser will
14 be within reach allowing me to assist guests. Can you please let me know
15 what process is ongoing that addresses the lack of leg room to fit the chair?
16 Ann says this is a different conversation than the riser, mats and display
17 materials, but they are all related because of use, the *concern for cost* and
18 feasibility... Yoke, we were going to meet a few weeks back and you'd
19 offered some times. I wasn't able to say because I didn't see a response to
20 who would attend, the topics and depth/discretion for discussing the effect
21 of spinal cord injury.

22 Thank you, all the best, Dan

23 33. On April 8, 2019, Callahan met with Yong and reviewed the list of
24 accommodations (again) sent by Plaintiff's physicians. They reviewed the need for a riser (to
25 alleviate bending and stooping), a proper chair (which would provide support), distances to and
26 from break and restroom (which were unacceptable), reach to the desktop, monitor, and
27 keyboard (Plaintiff is unable to comfortably reach across the width of the desk to access
28 materials and maps to better serve guests), the floor and continuing lack of an appropriate floor
mat, the drawer handles (which were gouging Plaintiff's legs every day), and the location and
condition of the break room (which was essentially a storage closet unsuitable for a proper break
room). Collette stopped by and admitted that standing on the hard floor for only a few minutes
made his feet hurt.

1 34. On April 26, 2019, Callahan spoke with Kim Clark, another Marriott supervisor,
2 who informed Callahan that the mats had been delayed. Callahan reiterated his concerns and
3 discomfort with the improper chair, lack of riser, distance of the restroom and breakroom, and
4 other things. Clark acknowledged the issues and told Callahan that "leadership is allowing the
5 work conditions to continue and is doing nothing or as little as possible."

6 35. On May 17, 2019, there was still no chair, replacement mats, the drawer handles
7 had not been replaced, nor was Plaintiff provided with a riser or desk adjustment. At this point in
8 time, Plaintiff had an extensive discussion with Garlow regarding the failure of Marriott to
9 provide Plaintiff with any of the required accommodations he had been pleading for over the past
10 couple of years. Because Plaintiff was previously told that Marriott would not provide him with a
11 chair because of the "cost," he requested the use of a chair used by another employee who was
12 on modified duty. Plaintiff again reiterated that the chair and leg room space had still not been
13 resolved, the drawer handles not fixed, mats not down and further, no one from Human
14 Resources had engaged with him in a serious way or responded to his emails.

15 36. On May 22, 2019, Callahan had yet another discussion with Collette about the
16 same topics discussed with Garlow five days earlier. Collette told Plaintiff, "Nurse Ann is
17 working on it." Colette offered no assistance to Plaintiff. Two days later, Callahan was shown a
18 chair which someone found, which had no back support, and had a lumbar attachment which
19 pushed Plaintiff forward, placing more weight on his legs. An engineer who had been working
20 on Marriott's renovation and who had previously worked at a medical equipment store,
21 immediately understood the problem and recognized that the chair was completely inappropriate.
22 He tried to remove the lunbar piece from the chair, but could not.

23 37. On June 3, 2019, Callahan initiated yet another discussion with Garlow about the
24 chair and mat issue. Callahan conveyed to Garlow that the Nurse told him he was not getting
25 what he needed because it was a "financial issue." Garlow did not dispute this. Plaintiff's pain
26 was worsening and his strength to stand, lean, and move chairs, was diminishing. On June 5,
27 2019, a Marriott employee found Plaintiff a used chair, referred to by Manager Kim Clark as an
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1 “old and smelly” chair, that was found somewhere on the premises which at least had back
2 support. No other accommodation had been made by Marriott.

3 38. In or about the months of June, July and August, 2019, Plaintiff spoke with
4 Garlow on almost a daily basis regarding Marriott’s on-going failure to accommodate his
5 disability. Plaintiff was beginning to experience serious discomfort and had requested that he
6 work only three days per week because he was worn down, both emotionally and physically,
7 waiting for Marriott to provide him with what he needed to enable him to work.

8 39. On September 3, 2019, Callahan visited his Neurologist at UCSF. The physician,
9 Gary Abrams, MD, sent the following letter:

10 “Daniel J. Callahan is under my care for treatment of residual deficits from
11 a spinal cord injury in January 2014. The injury occurred after a spinal
12 injection and left him with unremitting pain and extreme weakness in his
13 lower back and both legs, impaired mobility, and bowel and bladder
dysfunction. Mr. Callahan is essentially a paraplegic who necessitates the
wearing of a diaper and prosthetics.

14 Initially, he was able to return to work despite the limited accommodations
15 provided by his workplace. Unfortunately, these inadequate
16 accommodations exacerbated his condition. He requires a cane to walk and
17 stand- his standing tolerance is limited. He needs a chair with cushion and
18 a mat to support the chair and his feet, which allows him to sit at an
appropriately designed desk. In addition, he needs extended and more
frequent periodic breaks with access to a break room and restroom
proximately located to his workstation.

19 His medical condition is stationary and permanent at this time. He presently
20 is unable to continue with his job duties, as his employer has apparently
21 failed to accommodate his medical needs....”

22 40. On September 6, 2019, Plaintiff visited his primary Internist,
23 Dr. Jim Y. Savage, who concurred with Dr. Abrams’ assessment. Dr. Savage wrote
24 the following letter to Marriott:

25 “This letter is to certify that I am the primary care physician of Mr. Daniel
26 Callahan and he is under my care. I saw Mr. Callahan on September 6, 2019 for
27 follow up. He complains of stiffness, diminished strength, increased lack of
28 mobility, and anxiety related to work conditions and having to leave his position.

1 Mr. Daniel Callahan is no longer medically cleared to return to work at this time.
2 Mr. Callahan suffers from paraplegia and related deficits and his neurosurgeon, Dr.
3 Gary Abrams has recommended that he not return to work at this time.

4 Mr. Callahan is presently unable to continue with his job duties. According to Mr.
5 Callahan, his employer was unable to provide the accommodation. Letters
6 requesting accommodation were sent to Mr. Callahan's employer, Marriott
7 Marquis HR department.

8 Should you have any questions regarding the patient's medical condition, please do
9 not hesitate to contact me at anytime at 415-981-1102...."

10 41. Callahan filed his Complaint of Discrimination with the Department of Fair
11 Employment and Housing ("DFEH") against each defendant within the statutory time period.
12 On that same date, the DFEH issued Callahan his Right-to-Sue letter. This action is filed within
13 one year of the date of that Right-to-Sue letter.

14 **FIRST CAUSE OF ACTION**
15 **Disability Discrimination**
16 **(California Government Code § 12940(a).)**

17 42. Plaintiff incorporates by reference paragraphs 1 through 41 as though fully set
18 forth herein.

19 43. At all times relevant to this Complaint, the California Fair Employment and
20 Housing Act ("FEHA") (Cal. Gov. Code § 12900 *et seq.*) and its implementing regulations were
21 in full force and effect and binding on the Defendants.

22 44. Pursuant to Government Code § 12940(a) it is unlawful for an employer to
23 discriminate against an employee because of the employee's physical disability.

24 45. Pursuant to Government Code §§ 12926 and 12926.1 Plaintiff has a physical
25 disability, a record of physical disability, and/or was perceived as or treated as having a physical
26 disability by Marriott.

27 46. Callahan is able to perform the essential functions of his job as Concierge with
28 reasonable accommodations for his disability.

1 47. Defendants were aware of Callahan's physical disability and knew that failing to
2 accommodate his disability would prevent Callahan from being physically able to continue his
3 employment. Defendants were aware of Plaintiff's own sensitivity about his disability and
4 allowed its employees to laugh at Plaintiff and go undisciplined. Defendants' constructively
5 terminated Plaintiff's employment because they knew that failure to accommodate Plaintiff's
6 disability and failing to protect Plaintiff from ridicule about his disability left Plaintiff incapable
7 of performing the duties of his job.

8 48. As a direct and proximate result of Defendants' wrongful conduct, Callahan has
9 suffered damages including, but not limited to, a loss of income and benefits, and has further
10 suffered emotional distress and other general damages.

11 49. In doing the things alleged herein, the Defendants' conduct was despicable, and
12 the Defendants acted toward Callahan with malice, oppression, fraud, and with willful and
13 conscious disregard of Callahan's rights, entitling Callahan to an award of punitive damages.
14 The Defendants' conduct described herein was engaged in by managing agents for the
15 Defendants and/or ratified by managing agents.

16 WHEREFORE, Plaintiff prays for relief as set forth below.

17
18 **SECOND CAUSE OF ACTION**
19 **Disability Discrimination – Failure to Make Reasonable Accommodation**
 (California Government Code § 12940(m).)

20 50. Plaintiff incorporates by reference paragraphs 1 through 49 as though fully set
21 forth herein.

22 51. At all times relevant to this Complaint, the FEHA and its implementing
23 regulations were in full force and effect and binding on the Defendants.

24 52. Pursuant to Government Code § 12940(m) it is unlawful for an employer to fail to
25 provide reasonable accommodation to an employee with a disability.
26
27
28

1 53. Pursuant to Government Code §§ 12926 and 12926.1 Callahan has a physical
2 disability, a record of physical disability, and/or was perceived as or treated as having a physical
3 disability by the Defendants.

4 54. As set forth above, Callahan requested a reasonable accommodation on numerous
5 occasions. Despite Callahan's requests, the Defendants failed and refused to provide Callahan
6 any reasonable accommodation(s).

7 55. As a direct and proximate result of Defendants' wrongful conduct, Callahan has
8 suffered damages including, but not limited to, a loss of income and benefits, and has further
9 suffered emotional distress and other general damages.

10 56. In doing the things alleged herein, the Defendants' conduct was despicable, and
11 the Defendants acted toward Callahan with malice, oppression, fraud, and with willful and
12 conscious disregard of Callahan's rights, entitling Callahan to an award of punitive damages.
13 The Defendants' conduct described herein was engaged in by managing agents for the
14 Defendants and/or ratified by managing agents.

15 WHEREFORE, Plaintiff prays for relief as set forth below.

16
17 **THIRD CAUSE OF ACTION**
18 **Disability Discrimination – Failure to Engage in Good Faith Interactive Process**
19 **(California Government Code § 12940(n).)**

20 57. Plaintiff incorporates by reference paragraphs 1 through 56 as though fully set
21 forth herein.

22 58. At all times relevant to this Complaint, the FEHA and its implementing
23 regulations were in full force and effect and binding on the Defendants.

24 59. Pursuant to Government Code § 12940(n) it is unlawful for an employer to fail to
25 engage in a good faith interactive process after a reasonable accommodation is requested by an
26 employee or after it becomes apparent to the employer that an employee's physical disability is
27 impeding the employee's ability to carry out the essential functions of his job.
28

1 60. Pursuant to Government Code §§ 12926 and 12926.1, Callahan has a physical
2 disability, a record of physical disability, and/or was perceived or treated as having a physical
3 disability by the Defendants.

4 61. As set forth above, Callahan requested reasonable accommodations on numerous
5 occasions. The Defendants failed and refused to respond to those requests and failed and refused
6 to engage in a timely, good faith interactive process. In addition, the Defendants failed to initiate
7 the interactive process after it became aware that Callahan's physical impairment was impacting
8 his ability to carry out the essential functions of his job.

9 62. As a direct and proximate result of Defendants' wrongful conduct, Callahan has
10 suffered damages including, but not limited to, a loss of income and benefits, and has further
11 suffered emotional distress and other general damages.

12 63. In doing the things alleged herein, Defendants' conduct was despicable, and
13 Defendants acted toward Callahan with malice, oppression, fraud, and with willful and conscious
14 disregard of Callahan's rights, entitling Callahan to an award of punitive damages. The
15 Defendants' conduct described herein was engaged in by managing agents for the Defendants
16 and/or ratified by managing agents.

17 WHEREFORE, Plaintiff prays for relief as set forth below.

18
19 **FOURTH CAUSE OF ACTION**
20 **Failure to Prevent Discrimination**
 (California Government Code § 12940(k).)

21 64. Plaintiff incorporates by reference paragraphs 1 through 63 as though fully set
22 forth herein.

23 65. At all times relevant to this Complaint, the FEHA and its implementing
24 regulations were in full force and effect and binding on the Defendants.

25 66. Pursuant to Government Code § 12940(k), it is unlawful for an employer to fail to
26 prevent discrimination or retaliation from existing in the workplace.

1 67. In engaging in the conduct described above, the Defendants failed to engage in
2 any reasonable steps to prevent discrimination against Callahan.

3 68. Callahan is informed and believes and thereon alleges that the Defendants do not
4 have appropriate policies, procedures, practices, guidelines, rules, and/or trainings regarding the
5 prevention of discrimination in the workplace. On at least two occasions, Plaintiff was subjected
6 to cruel laughter and ridicule due to his disability by his co-workers and the employees who
7 perpetrated such acts were undisciplined by the Human Resources department at Marriott.

8 69. As a direct and proximate result of the Defendants' wrongful conduct, Callahan
9 has suffered damages including, but not limited to, a loss of income and benefits, and has further
10 suffered emotional distress and other general damages.

11 70. In doing the things alleged herein, the Defendants' conduct was despicable, and
12 the Defendant acted toward Callahan with malice, oppression, fraud, and with willful and
13 conscious disregard of Callahan's rights, entitling plaintiff to an award of punitive damages. The
14 Defendants' conduct described herein was engaged in by managing agents for the Defendants
15 and/or ratified by managing agents.

16 WHEREFORE, Plaintiff prays for relief as set forth below.

17
18 **FIFTH CAUSE OF ACTION**
19 **Wrongful Termination in Violation of Public Policy**

20 71. Plaintiff incorporates by reference paragraphs 1 through 70 as though fully set
21 forth herein.

22 72. It is the public policy of the State of California to prohibit employers from
23 discharging employees in a discriminatory manner. This public policy is embodied in, *inter alia*,
24 the California Government Code, and the California Code of Regulations.

25 73. The consequence of Defendants' discriminatory decision to ignore Callahan's
26 pleas for accommodation for his disability, caused Plaintiff's predictable constructive
27 termination and such inaction on the part of Defendants was motivated at least in part by the (a)
28

1 Defendants' failure or refusal to provide Callahan with a reasonable accommodation, (b)
2 Defendants' failure or refusal to enter into to the interactive process with Callahan, (c)
3 Callahan's disability, and/or (d) Callahan's engaging in protected activity.

4 74. As a direct and proximate result of the Defendants' wrongful conduct, Callahan
5 has suffered damages including, but not limited to, a loss of income and benefits, and has further
6 suffered emotional distress and other general damages.

7 75. In doing the things alleged herein, the Defendants' conduct was despicable, and
8 the Defendants acted toward Callahan with malice, oppression, fraud, and with willful and
9 conscious disregard of Callahan's rights, entitling Callahan to an award of punitive damages.
10 The Defendants' conduct described herein was engaged in by managing agents for the
11 Defendants and/or ratified by managing agents.

12 WHEREFORE, Plaintiff prays for relief as set forth below.

13 ///

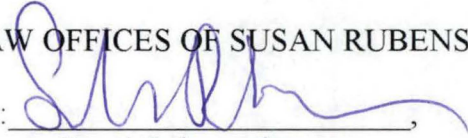
PRAYER FOR JUDGMENT

14 Plaintiff Daniel J. Callahan prays for judgment as follows:

- 15 1. For special, general, and compensatory damages according to proof at trial;
16 2. For punitive damages according to proof at trial;
17 3. For reasonable attorneys' fees, expert witness fees, and other litigation expenses pursuant
18 to California Government Code § 12965(b);
19 4. For all other relief the Court deems appropriate and just.

20 Dated: April 1, 2020

LAW OFFICES OF SUSAN RUBENSTEIN

21 By: 
22 Susan Rubenstein
23 Attorneys for Plaintiff Daniel J. Callahan

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY

LAW OFFICES OF SUSAN RUBENSTEIN

By:  _____

Attorneys for Plaintiff Daniel J. Callahan