

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Joseph and Anna Burgese</p> <p>(b) County of Residence of First Listed Plaintiff <u>Burlington</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, Email and Telephone Number) Lance Rogers, Esquire, Rogers & Associates, LLC 25 Elliott Avenue Bryn Mawr, PA 19010</p>	<p>DEFENDANTS Starwood Hotels & Resorts Worldwide, Inc. 2201 Collins Fee, LLC Jane Does 1-10</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p><i>(For Diversity Cases Only)</i></p> <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input checked="" type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY - Product Liability</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) _____ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332 (Diversity Jurisdiction)


Brief description of cause:
Negligence, Premises Liability, Assault, Civil Liability for Criminal Acts and Loss of Consortium

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 5/28/13 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

-----X:	:	
JOSEPH & ANNA BURGese,	:	
Plaintiff,	:	No.
v.	:	
STARWOOD HOTELS & RESORTS	:	JURY TRIAL DEMANDED
WORLDWIDE, INC.	:	
2201 COLLINS FEE, LLC	:	
JANE DOES 1-10	:	
Defendants.	:	
-----X:	:	

COMPLAINT

For their Complaint against the above Defendants, Plaintiffs Joseph and Anna Burgese aver as follows:

1. Plaintiffs Joseph and Anna Burgese are adult individuals and husband and wife who reside at 21 Larsen Park Drive, Medford, New Jersey 08055.
2. Defendant Starwood Hotels & Resorts Worldwide, Inc. ("Starwood") is a corporation organized in Maryland that is believed to operate the W South Beach Hotel in Miami Beach, Florida.
3. Defendant 2201 Collins Fee, LLC ("2201 Collins") is believed to be a New York Limited Liability Company with a principal place of business at 2201 Collins Avenue, Miami Beach, Florida 33139 that owns the W Hotel South Beach (the "Hotel") in Miami Beach, Florida.

4. Defendants Jane Doe 1-10 are persons of unknown identity that committed an unprovoked, sudden and violent assault on Plaintiff Anna Burgese. Plaintiffs are currently unaware of the identity or location of these individuals but reserve the right to supplement this Complaint once these individuals are identified.

5. This is an action for negligence, premises liability, assault, civil liability for criminal acts, and loss of consortium.

VENUE AND JURISDICTION

6. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332 since the parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as Defendants Starwood and 2201 Collins are subject to personal jurisdiction in this district.

FACTS

8. Plaintiffs Joseph and Anna Burgese traveled to Miami Beach, Florida, in January of 2013.

9. Plaintiffs regularly patronized the W South Beach Hotel and were paying guests of the Hotel during their January visit.

10. On Saturday, January 19, 2013, while walking through the Hotel's lobby, Plaintiff Anna Burgese was the subject of a completely unprovoked, sudden and brutal attack by an unknown number of Defendants named as Jane Doe in this matter.

11. Specifically, Plaintiff Anna Burgese was grabbed from behind and thrown with great force into a stone wall head-first.

12. Plaintiff was also tackled to the ground and struck by her assailant.

13. Following the attack, Plaintiff Anna Burgese was taken via ambulance to Mt. Sinai Hospital.

14. As a result of the attacks, Plaintiff Anna Burgese was seriously injured and suffered physical and mental anguish.

15. It is believed and therefore averred that the Hotel is frequented by prostitutes who attempt to make money by servicing the Hotel's visitors and guests.

16. The Hotel fosters a prostitute-friendly environment where prostitutes are permitted to market themselves on the premises, as evidenced by, among other things, the reviews left on various travel websites by former guests.

17. It is believed and therefore averred that, in the past, prostitutes have become violent with guests and/or visitors on the Hotel's premises and in the surrounding area.

18. It is believed and therefore averred that Plaintiff Anna Burgese's attack in the lobby of the Hotel was committed by prostitutes (named as Jane Does in this Complaint) who, according to the Miami Beach Police, may have been under the influence of alcohol and/or drugs and confused Plaintiff Anna Burgese as competition, *i.e.*, another prostitute who was capturing business at the Hotel.

19. It is believed and therefore averred that the Defendant Jane Doe prostitutes who attacked Plaintiff Anna Burgese were known to have been "working" the premises by Hotel employees on Saturday, January 19, 2013, and the Hotel failed to take reasonable steps to remove them.

20. It is believed and therefore averred that the Hotel's employees helped the Defendant Jane Doe prostitutes flee the scene of the crime and avoid capture and/or prosecution immediately following the attack.

21. It is believed and therefore averred that Defendants Starwood and 2201 Collins were aware of the probability of such an attack.

22. It is believed and therefore averred that Defendants 2201 Collins and Starwood failed to take sufficient precautions to prevent incidents of violence despite such knowledge.

23. Immediately after the attack on Plaintiff Anna Burgese, Plaintiff Joseph Burgese requested an individual who apparently worked at the Hotel to detain the attackers.

24. Plaintiff Joseph Burgese was assured the Hotel staff had done so.

25. Plaintiff Joseph Burgese was told by a member of the Hotel staff that they knew who the attackers were.

26. Later, the Hotel staff claimed ignorance as to the identity of the attackers.

27. Plaintiff Joseph Burgese subsequently discovered that Hotel staff not only failed to detain the Jane Doe Defendants, they placed the attackers into a taxi without so much as asking for their names.

28. The Hotel's staff had no reasonable explanation for failing to detain someone who had just committed assault on Plaintiff Anna Burgese, a guest of the Hotel.

29. Plaintiffs contacted the Hotel shortly after the incident in an attempt to identify the attackers in order to ensure that they are captured and prosecuted.

30. Plaintiffs were told by the Hotel's staff that the Hotel's video surveillance system captured the attack on video.

31. Plaintiffs requested that the Hotel provide any videotapes or other information relating to the attack and, to date, the Hotel has been evasive and completely unresponsive.

32. Plaintiffs served a letter on the Hotel directing the Hotel to preserve any relevant evidence.

33. Defendants Starwood, 2201 Collins and the Hotel have failed to offer any assistance to Plaintiffs whatsoever.

COUNT I

NEGLIGENCE

Plaintiff Anna Burgese v. All Defendants

34. Plaintiff incorporates by reference each and every one of the foregoing paragraphs of this Complaint as though set forth at length here.

35. Defendants Starwood and 2201 Collins owed a duty to take reasonable steps to protect its guests from harm.

36. Defendants 2201 Collins and Starwood failed to satisfy their obligations by:

- a. Failing to provide sufficient security at its facility to protect patrons such as Plaintiffs.
- b. Failing to take other reasonable precautions to protect patrons such as Plaintiffs.
- c. Failing to take additional precautions after prior incidents on its Property.
- d. Failing to properly supervise its employees.
- e. Failing to properly monitor its property.
- f. Failing to properly train its employees to respond to situations such as the attack on Plaintiff Anna Burgese.

g. Through its employees, failing to prevent Jane Doe Defendants from leaving the premises following the criminal attack on Plaintiff Anna Burgese.

37. As stated above, Jane Doe Defendants' negligent and intentional acts of violence were committed against Plaintiff Anna Burgese.

38. The acts of all Defendants as aforesaid proximately caused harm to Plaintiff Anna Burgese.

39. As a result of Defendants' conduct, Plaintiff sustained significant damages.

COUNT II

PREMISES LIABILITY

Plaintiff Anna Burgese v. Defendants Starwood and 2201 Collins

40. Plaintiff incorporates by reference each and every one of the foregoing paragraphs of this Complaint as through set forth at length here.

41. Plaintiff Anna Burgese was a business invitee at the time of the actions referred to above.

42. Defendants Starwood and 2201 Collins failed to use reasonable care to protect their invitees from harm as aforesaid.

43. Defendants' failures caused harm to Plaintiff Anna Burgese.

COUNT III

ASSAULT

Plaintiff Anna Burgese v. Defendants Jane Doe 1-10

44. Plaintiff incorporates by reference each and every one of the foregoing paragraphs of this Complaint as through set forth at length here.

45. Jane Doe Defendants committed an assault on Plaintiff Anna Burgese as aforesaid without provocation or justification.

46. Plaintiff Anna Burgese suffered injury as a result.

COUNT IV

CIVIL LIABILITY FOR CRIMINAL ACTS

Plaintiff Anna Burgese v. All Defendants

47. Plaintiff incorporates by reference each and every one of the foregoing paragraphs of this Complaint as through set forth at length here.

48. Pursuant to Florida law, civil remedies are available for criminal acts.

49. Jane Doe Defendants committed criminal assault against Plaintiff Anna Burgese.

50. It is believed and therefore averred that Defendants Starwood and 2201 Collins failed to prevent or acted to further the acts of Jane Doe Defendants.

51. Plaintiff was damaged as a result of such actions.

COUNT V

LOSS OF CONSORTIUM

Plaintiff Joseph Burgese v. All Defendants

52. Plaintiff incorporates by reference each and every one of the foregoing paragraphs of this Complaint as through set forth at length here.

53. Plaintiff Joseph Burgese is husband to Plaintiff Anna Burgese.

54. Plaintiff Anna Burgese's injuries as averred above have caused an interruption in

her abilities to perform her usual tasks, services and contributions to the marriage.

55. Such losses are the direct proximate result of Defendants' acts as aforesaid.

56. Plaintiff Joseph Burgese has therefore sustained damages as a result of Defendants' actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in its favor against Defendants in an amount in excess of seventy-five thousand dollars (\$75,000), plus such other and further relief as this Court deems necessary and just, and to order the following relief:

- (a) Actual and compensatory damages;
- (b) Punitive damages;
- (c) Attorney's fees;
- (d) Expenses and costs of suit;
- (e) Any additional relief the Court deems proper.

Dated: May 28, 2013

/s/ Lance Rogers
Lance Rogers
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