

CV-18-00610408  
Court File No.: 00CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

ZACHARY SCHNARR

Plaintiff

- and -

MARRIOTT INTERNATIONAL INC., MARRIOTT HOTELS OF CANADA LTD.,  
and STARWOOD CANADA ULC

Defendant

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF ACTION

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE

TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$» for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: December 7, 2018

Issued by 

Local registrar

Address of court office

393  
10<sup>th</sup>

University

Ave,  
Floor

Toronto, ON M5G 1E6

- TO: Marriott International, Inc.**  
c/o Marriott Hotels of Canada Ltd.  
2425 Matheson Blvd East, Suite 100  
Mississauga, Ontario L4W 5K4
- TO: Marriott Hotels of Canada Ltd.**  
2425 Matheson Blvd East, Suite 100  
Mississauga, Ontario L4W 5K4
- TO: Starwood Canada ULC**  
2425 Matheson Blvd East, Suite 100  
Mississauga, Ontario L4W 5K4

### CLAIM

1. The plaintiff on his own behalf and on behalf of the Class Members claims:
  - (a) an order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“*CPA*”) certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff of the class (as defined below);
  - (b) an aggregate assessment of damages in the amount of \$450,000,000 for:
    - (i) breach of contract;
    - (ii) negligence;
    - (iii) breach of fiduciary duty;
    - (iv) intrusion upon seclusion;
    - (v) breach of the *Personal Information Protection and Electronic Documents Act*, S.C., 2000, c. 5; *Privacy Act*, R.S. B. C. 1996, c. 373; *The Privacy Act*, C. C. S. M., c. P125; *The Privacy Act*, R. S. S. 1978, c. P-24; the *Privacy Act*, R.S. N.L. 1990, c. P-22; breach of the Civil Code of Quebec, L.R.Q., c. C-1991, art. 35-40, and the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c. P-39.1; and,
    - (vi) waiver of tort;
  - (c) punitive damages in an amount that this Court finds appropriate at the trial of the common issues or at a reference or references;
  - (d) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;

- (e) an equitable rate of interest on all sums found due and owing to the plaintiff and other class members or, in the alternative, pre- and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("*Courts of Justice Act*");
- (f) costs of this action on a full indemnity basis, or in an amount that provides substantial indemnity, plus pursuant to s. 26(9) of the *CPA* the costs of notices and of administering the plan of distribution of the recovery in this action; and,
- (g) such further and other relief as this Honourable Court deems just.

#### **THE PLAINTIFFS AND THE CLASS**

- 2. The plaintiff, Zachary Schnarr, is an individual who resides in the City of Toronto in the Province of Ontario.
- 3. In September of 2018 a reservation was made for Mr. Schnarr at the Westin Hotel in Toronto, Ontario. Mr. Schnarr provided the Defendants with multiple pieces of Personal Information, as defined below, for his stay at the Westin Hotel.
- 4. The plaintiff seeks to represent the following proposed class (the "Class" or the "Class Members"):

*All Canadian residents whose Personal Information was improperly accessed as a result of the Database Breach*

#### **THE DEFENDANTS**

- 5. Marriott International Inc., ("**Marriott**") owns and manages hotel properties located throughout Canada and has operations and properties across 130 countries.
- 6. Marriot Hotels of Canada and Starwood Canada ULC, are wholly-owned subsidiaries of Marriott International and are headquartered in Mississauga, Ontario.

## THE NATURE OF THE ACTION

7. On November 30, 2018 Marriott stated in a filing with U.S. regulators that there had been "unauthorized access" to its guest database since 2014 which has impacted up to 500 million of its customers (the "**Database Breach**").

8. Marriot further stated that on November 19, 2018 it learned that the information that was compromised was the contents of the Starwood brand proprieties guest reservation database.

9. Starwood brand properties include: W Hotels, St. Regis, Sheraton Hotels & Resorts, Westin Hotels & Resorts, Element Hotels, Aloft Hotels, The Luxury Collection, Tribute Portfolio, Le Méridien Hotels & Resorts, Four Points by Sheraton and Design Hotels, and Starwood branded timeshare properties.

10. The guest database that was breached contained information including, but not limited to: passport numbers, credit card information, mailing addresses, email addresses, date of birth, gender, arrival and departure information, reservation dates, communication preferences, names, Starwood Preferred Guest account information, and phone numbers of the Class Members (the "**Personal Information**").

11. Personal Information is collected, used and/or disclosed in the course of the Defendants commercial activities.

## CAUSES OF ACTION

### *Negligence*

12. The Defendants owed Class Members a duty of care in the collection, retention, use and disclosure of Personal Information and a duty to safeguard the confidentiality of their Personal Information.

13. The Defendants breached the standard of care by, among other things:

- (a) failing to keep the Personal Information of Class Members from being misused or disclosed to unauthorized parties;
- (b) failing to adopt, implement and maintain adequate security measures to safeguard the Personal Information, or by obtaining that Personal Information without authorization;
- (c) failing to detect the misuse of the Personal Information;
- (d) failing to disclose the misuse of the Personal Information;
- (e) failing to comply with the minimum standards provided in the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5; and,
- (f) failing to take steps to give notice to the Class Members affected by the misuse of the Personal Information.

14. As a result of the Defendants' acts and omissions, Class Members suffered damages and losses, for which they are liable.

***Breach of Contract***

15. Contrary to the express or implied terms of the Class Members' contracts with the Defendants, the Defendants breached these contracts by, *inter alia*:

- (a) failing to protect or safeguard the Personal Information of the Class;
- (b) allowing Class Members' Personal Information to be disclosed to unauthorized third parties;
- (c) failing to act in good faith by not installing, implementing, or maintain adequate security measures to protect the Personal Information; and
- (d) failing to notify the Class Members' of the Guest Database Breach in a prompt and timely fashion.

16. The Defendants breached the aforementioned contracts. As a result of these the plaintiff and Class Members have suffered losses and damages.

*Intrusion Upon Seclusion*

17. The actions of the Defendants constitute intentional or reckless intrusion upon seclusion that would be highly offensive to a reasonable person, for which they are liable. The Defendants failed to take appropriate steps to guard against the misuse of the Class Members' Personal Information. The Defendants actions were highly offensive, causing distress and anguish to Class Members, for which they are liable and should pay damages.

*Breach of Provincial Privacy Statues*

18. The actions of Defendants are willful and without a claim of right. As a result, the Defendants are liable pursuant to the B.C. *Privacy Act*, R.S.B.C 1996, c. 373, as amended; the Manitoba *Privacy Act*, C.C.S.M c. P125, as amended; the Saskatchewan *Privacy Act*, R.R.S 1978, c. P-24 as amended; the Newfoundland and Labrador *Privacy Act*, R.S.N.L. 1990, c. P-22, as amended the Quebec *Civil Code*, L.R.Q., c. C-1991 and the Quebec *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c. P-39.1.

*Waiver of Tort*

19. In the alternative to damages, the plaintiff plead an entitlement to waive the torts and claim an accounting, or other such restitutionary remedy, for disgorgement of all revenues generated by the Defendants from their unlawful conduct.

20. It would be unconscionable for the Defendants to retain the revenues generated by the conduct set out herein.

## VICARIOUS LIABILITY

21. Marriott International is vicariously liable for the actions and omissions of its subsidiaries, affiliates, partners, officers, directors and employees, including but not limited to, Marriott Hotels of Canada Ltd. and Starwood Canada ULC.

22. Similarly, both Marriott Hotels of Canada Ltd. and Starwood Canada ULC are vicariously liable for the actions and omissions of its subsidiaries, affiliates, partners, officers, directors and employees, including but not limited to, Marriott International.

## DAMAGES

23. The Personal Information that was compromised in the Database Breach contains sensitive information. By failing to protect the Personal information the Defendants have exposed the Class Members to abuse or other misuse of their Personal Information, including identity theft.

24. Due to the scope of the Database Breach and the sensitivity of the Personal Information Class Members will be required to incur heavy costs and commit substantial amounts of time in their efforts to mitigate or respond to this event.

25. The Defendants were, at all times, aware that their actions would have a significant adverse impact on Class Members. The Defendant's conduct was high-handed, reckless, without care, deliberate, and in disregard of the Class Members' rights. Accordingly, the plaintiff requests substantial punitive damages.

26. The plaintiff plead and rely on the *Courts of Justice Act*, the *CPA*, the *Personal Information Protection and Electronic Documents Act*, S.C., 2000, c. 5; *Privacy Act*, R.S.B.C 1996, c. 373; *The Privacy Act*, C.C.S.M c. P125; *The Privacy Act*, R.R.S 1978, c. P-24; *Privacy Act*, R.S.N.L. 1990, c. P-22, as amended the *Quebec Civil Code*, L.R.Q., c. C-1991 and the *Quebec Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c. P-39.1.



December 7, 2018

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Lawyers for the Plaintiff

Schnarr  
Plaintiff and

Marriott International Inc.  
Defendant, Marriott Hotels Of Canada Ltd.,  
And Starwood Canada UIC.

*CN-18-0061040800CP*  
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Proceeding commenced at TORONTO

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**NOTICE OF ACTION**

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