

DEC 21 2018

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SHEILA SACHE

PLAINTIFF

AND:

MARRIOTT INTERNATIONAL, INC. and STARWOOD
HOTELS & RESORTS WORLDWIDE LLC

DEFENDANTS

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

NOTICE OF CIVIL CLAIM

Name and Address of each Plaintiff

Sheila Sache
c/o Boughton Law Corporation
700 – 595 Burrard Street
Vancouver, BC V7X 1S8

Name and Address of each Defendant

Marriott International, Inc.
10400 Fernwood Road
Bethesda, Maryland
20817

Starwood Hotels & Resorts Worldwide LLC
10400 Fernwood Road
Department 955.23
Bethesda, Maryland, USA
20817

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1 STATEMENT OF FACTS

The Representative Plaintiff

1. The Plaintiff, Sheila Sache, is an individual resident of British Columbia. Ms. Sache makes this claim on her own behalf and on behalf of the Class Members (defined herein), pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50 (the "*CPA*").

The Defendants

2. The Defendant Marriott International Inc. ("**MII**") is a corporation duly incorporated pursuant to the laws of the State of Delaware, in the United States of America. MII has a registered and records office at 10400 Fernwood Road, Bethesda, Maryland, USA.

3. MII is an operator, franchisor and licensor of hotel and vacation properties under brand names including Marriott, Delta, Westin, Sheraton, Ritz-Carlton and Renaissance. MII is the largest hotel chain in the world and carries on business in British Columbia both as an operator, franchisor and licensor of hotel and vacation properties located in British Columbia and by providing hotel and vacation property services outside of British Columbia to British Columbia residents.

4. The Defendant Starwood Hotels & Resorts Worldwide LLC ("**Starwood**") is a corporation duly incorporated pursuant to the laws of the State of Maryland, in the United States of America. Starwood also has a principal office at 10400 Fernwood Road, Bethesda, Maryland, USA.

5. As of September 23, 2016, Starwood is an indirect wholly owned subsidiary of MII. Prior to its acquisition, Starwood was an independent owner, operator and franchisor of over 1200 hotel and vacation properties under brand names including Westin, Sheraton and W Hotels (the "**Starwood Properties**"), including in British Columbia and to British Columbia residents. Despite Starwood's acquisition by MII, Starwood remains the legal owner, operator and franchisor of the Starwood Properties.

6. At all material times, MII and Starwood (the "**Defendants**") acted in concert and jointly in carrying out their business activities, including their information security systems.

Class Definition

7. The class is defined as:

Class Members consist of the Plaintiff and all British Columbian resident persons who had their personal information recorded and/or stored by Marriott and had that personal information accessed by an unauthorized individual or individuals on one or more occasions between 2014 and December 1, 2018, or such other class definition or class period as the Court may ultimately decide on the application for certification.

Nature of Claim

8. This class action concerns the Defendants' breach of contract, breach of statutory duty, and the negligence for their failure to protect individuals' personal information, including the failure to implement and/or maintain reasonable security measures to protect the personal information of their guests, including contact, credit card, passport, and travel information.

Collection of Personal Information

9. Prior to its acquisition by MII, Starwood operated its own guest reservation database for the purpose of soliciting and managing reservations at its branded hotel and vacation properties (the "**Starwood Database**"). After September 23, 2016, the Defendants continued to use the Starwood Database for the purpose of soliciting and managing reservations at the Starwood Properties.

10. The Starwood Database was also used to solicit and manage reservations for certain independently owned and operated hotel and vacation properties that were not among the Starwood Properties, including but not limited to, Design Hotels (the "**Other Properties**").

11. The Starwood Properties and the Other Properties shall be collectively referred to as the "**Database Properties**".

12. In order to make a reservation to become a guest at any of the Database Properties, individuals (the "Starwood Guests") had to provide the Defendants with personal information including but not limited to:

- (a) names;
- (b) mailing address;
- (c) phone numbers;
- (d) email addresses;
- (e) passport numbers;
- (f) dates of birth;
- (g) gender;

- (h) arrival and departure information;
- (i) reservation dates;
- (j) communication preferences;
- (k) credit card information; and
- (l) where applicable, an individual's account information for Starwood's "Star Wood Preferred Guest" loyalty program.

(the "**Personal Information**")

13. The Plaintiff and the Class Members were all Starwood Guests, and provided their Personal Information to the Defendants.

14. The Defendants maintained electronic records which contained all of the Personal Information provided by the Starwood Guests in the Starwood Database.

Hacking of the Personal Information

15. In early September 2018, the Defendants became aware of an unauthorized attempt to access the Starwood Database, made by an individual or individuals unaffiliated with the Defendants (the "**Cybercriminals**").

16. In response to this attempt, the Defendants retained outside cyber-security experts, who discovered that:

- (a) the Cybercriminals had unauthorized access to the Starwood Database; and
- (b) the Cybercriminals had copied and encrypted data from the Starwood Database, including the Personal Information of approximately 500 million Starwood Guests, including residents of British Columbia.

(the "**Starwood Hack**")

17. From 2014 through to December 2018, the Defendants have failed to have adequate and necessary data security measures in place in order to protect the Personal Information of the Starwood Guests. Those failures include the following:

- (a) Failing to implement hardening techniques and education to prevent or mitigate the risk of cybercriminals and other hackers from:

- (i) using false emails or other communications purportedly from reputable companies or individuals in order to induce the release of information such as passwords, account numbers or security codes, known as "Phishing";
 - (ii) using false emails or other communications targeted at the Defendants' employees, purportedly from reputable companies or individuals in order to induce the release of information such as passwords, account numbers or security codes, known as "Spear Phishing"; and
 - (iii) using deceptive human interaction and social engineering practices with the Defendants' employees to induce them to breach normal security procedures and release information such as passwords, account numbers or security codes;
- (b) Failing to secure account and card numbers from hacking using the "Luhn Algorithm" and other similar algorithms, which were designed to permit the verification of account numbers, and which are now commonly used by cybercriminals and other hackers for hacking accounts; and
 - (c) Failure to use data encryption for the Personal Information stored and maintained by the Defendants in the Starwood Database.

18. The Defendants actually knew, or ought to have known, that electronic records containing the Personal Information of the Plaintiff and the Class Members were vulnerable to loss or theft.

19. The Defendants actually knew, or ought to have known, that the data security measures in place to protect the Personal Information of the Starwood Guests was inadequate.

20. The information which was accessed by way of the Starwood Hack is personal information of the Class Members as defined in Section 1 of the *Personal Information Protection Act*, SBC 2003, c. 63 ("*PIPA*") and Section 2 of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c.5 ("*PIPEDA*").

21. The Plaintiff and each of the Class Members has been a Starwood Guest on at least one occasion since 2014. On each occasion of making a reservation to become a Starwood Guest, it was required to provide the Personal Information.

22. The Plaintiff expected and relied on the Defendants' promises and guarantees that her Personal Information would be protected and safeguarded pursuant to the Defendants' contractual, common-law and statutory obligations.

Breach of Contract

23. Upon registering as a Starwood Guest, a contract was formed between each Class Member and the Defendants (the "**Contract**"). The Contract is a standard-form contract whereby the terms and conditions are universally set out by the Defendants. It was a term of the contract between the Class Members and the Defendants, express or implied, that when the Class Members provided their Personal Information to the Defendants:

- (a) the Defendants would treat the Personal Information as confidential;
- (b) the Defendants would handle the Personal Information of the Class Members in accordance with their established privacy policies;
- (c) the Defendants would treat the Personal Information of the Class Members in accordance with all legislation and regulations governing the collection and disclosure of personal information;
- (d) the Defendants would not disclose the Personal Information of the Class Members without their consent, except in the limited and defined circumstances provided under the Contract and the Defendants' privacy policies;
- (e) the Defendants would protect the Personal Information of the Class Members from being compromised, including by loss or theft;
- (f) the Defendants would take necessary steps to ensure the Class Members were not put at risk as a result of providing the Defendants with current and accurate Personal Information; and
- (g) such further and other terms as may be proved at trial.

24. The Defendants breached the Contract by:

- (a) failing to keep the Personal Information confidential by failing to use appropriate and up-to-date data security programs, technology and/or procedures to protect the Personal Information of the Class Members;

- (b) failing to handle the Personal Information of the Class Members in accordance with the Defendants' established privacy policies;
- (c) failing to collect, use, maintain and keep from disclosure the Personal Information of the Class Members in accordance with the legislation and regulations governing the collection and disclosure of the Personal Information, including *PIPA* and *PIPEDA*;
- (d) inadvertently disclosing the Personal Information of the Class Members without the Class Members' consent;
- (e) failing to protect the Personal Information from lost or stolen or otherwise compromised; and
- (f) such further and other breaches as may be proved at trial.

25. In failing to adequately and conscientiously protect and keep confidential the Class Members' Personal Information, the Defendants breached each Contract with the Class Members, exposing the Personal Information of the Class Members to the Cybercriminals and causing damages and losses to the Class Members.

Negligence

26. The Personal Information provided by the Class Members to the Defendants was collected and maintained in digital form by the Defendants, using various storage devices and programs.

27. The Personal Information was unique to each Class Member insofar as it pertained to the identity and financial interests of each Class Member.

28. The Defendants owed to the Plaintiff and each of the Class Members a duty of care to ensure that the Personal Information of each Class Member remained confidential and was not released, disclosed or otherwise made available to third parties, unless expressly authorized by the Contract or otherwise consented to by each Class Member.

29. There was a sufficient relationship of proximity between each of the Class Members and the Defendants to establish this duty of care because:

- (a) there was a direct exchange of the Personal Information by the Plaintiff and the Class Members to the Defendant, which was required by the Defendants as a precondition to individuals becoming Starwood Guests;
- (b) It was reasonable for the Plaintiff and the Class Members to expect that the Defendants would implement adequate safeguards to ensure that the Personal Information provided by the Plaintiff and the Class Members would be protected by the Defendants; and
- (c) such further and other factors as may be referred to and proved at trial.

30. The Defendants were negligent and breached the duty of care by failing to maintain a reasonable standard of care in protecting the Personal Information of the Class Members by:

- (a) Failing to use appropriate and up-to-date data security programs, technology or procedures to protect and keep confidential the Personal Information of the Plaintiff and the Class Members;
- (b) Failing to use appropriate and up-to-date back-up programs, technology or procedures to protect and keep confidential the Personal Information of the Plaintiff and the Class Members;
- (c) Failing to maintain the Personal Information of the Class Members in a secure fashion, in particular by storing the Personal Information in a manner that they knew or ought to have known made it vulnerable to being accessed by unauthorized third parties and theft; and
- (d) Failing to use adequate security measures and technologies to ensure that the Personal Information of the Class Members would remain safe and secure from loss, theft or unauthorized third parties.

31. The Defendants were reckless in their failure to properly store, maintain and secure the Personal Information of the Class Members, including the failure to maintain, update and implement appropriate digital security policies, procedures and technologies, and appropriate digital back-up policies, procedures and technologies.

32. The Defendants' failure to properly store, maintain, and secure the Personal Information of the Class Members was a result of operational negligence and recklessness. It was reasonably foreseeable that a failure to maintain, update and implement proper security measures would lead the Personal Information being hacked, accessed and stolen by the Cybercriminals or other

hackers. It was also reasonably foreseeable consequence that such a hack would cause harm and damage to the Class Members.

33. The reckless and negligent acts or omissions of the Defendants made the Personal Information of the Class Members vulnerable to the Cybercriminals, and caused or materially contributed to the unauthorized disclosure and theft of the Personal Information of the Class Members.

34. The Plaintiff and the Class Members have suffered harm and damages as a result of the unauthorized disclosure and theft of their Personal Information.

Breach of Statutory Duties to Protect Personal Information

35. The information provided to the Defendants, at its request, by Class Members, and which was collected, maintained, used and/or disclosed by the Defendants constitutes "personal information" as defined in *PIPA* and *PIPEDA*, and the Defendants were subject to the duties prescribed in those statutes to protect the Personal Information of the Class Members.

36. The Defendants' failure to protect the Personal Information of the Class Members constitutes a breach of its statutory duties, including but not limited to:

- (a) Failing to develop and implement appropriate privacy policies and practices to protect the Personal Information of the Class Members, in breach of section 5 of *PIPA*;
- (b) Allowing the use and disclosure of the Personal Information of the Class Members without the consent of the Class Members, in breach of section 6 of *PIPA*; and
- (c) Failing to make reasonable security arrangements to prevent authorized access, collection, disclosure, copying, modification, or disposal or similar risks of the Personal Information, in breach of section 34 of *PIPA*.

37. The Defendants' failure to meet their statutory obligations caused or materially contributed to the unauthorized disclosure and theft of the Class Members' Personal Information, and the harm and damages suffered by the Class Members as a result of the unauthorized disclosure and theft.

Damages

38. The Plaintiff and the Class Members claim that the Defendants are responsible and liable for damages resulting from the unauthorized disclosure and theft of each Class Members' Personal Information.

39. All Class Members have suffered loss and damages, including harm and injury to their interests, which were a direct result of the unauthorized disclosure and theft of their Personal Information.

40. As a result of the Defendants' acts or omissions described in this Notice of Civil Claim and which may be further particularized at trial, the Plaintiff and the Class Members will be continuously exposed for many years to the ongoing risk of identity theft and the associated economic loss. Most of the Personal Information obtained by the Hackers through the Starwood Hack is information about the unique, deeply private and personal circumstances of the Class Members that cannot easily be changed by the Class Members, or at all. The passage or potential passage of this Personal Information into the public domain is effectively permanent, exposing the Class Members to a real and ongoing risk of harm, including identity theft, for the rest of their lives.

41. As a result of the Defendants' acts or omissions described in this Notice of Civil Claim and which may be further particularized at trial, the Plaintiff and the Class Members suffered and will continue to suffer harm including the threat of and the actual unauthorized release, disclosure and use of their Personal Information, including sensitive financial information. The Plaintiff and the Class Members will incur expenses for credit reporting, credit monitoring services, credit counselling, identity theft monitoring services, identity theft protective services, identity theft recovery and additional services. The Class Members have also been forced to expend time and resources to investigate the theft of their Personal Information and take steps to address the risks arising therefrom.

42. The Defendants' negligence, recklessness, breach of contractual duties and/or breach of statutory duties has caused or materially contributed to each of the Class Members' harm and damages, including emotional and economic loss.

43. The Plaintiff pleads that the Defendants' conduct wilfully, recklessly or negligently disregarded the security and rights of the Plaintiff and the Class Members, and that its conduct was a marked departure from the standards expected of them. The Defendants were indifferent to the consequences of their failures to protect the Personal Information of the Class Members, and as such, the Defendants are liable to pay punitive and aggravated damages.

PART 2 RELIEF SOUGHT

1. The Plaintiff, on its own behalf, and on behalf of the Class Members, seeks the following orders:

- (a) An order pursuant to the *CPA* certifying this action as a class proceeding against the Defendants and appointing the Plaintiff as the named representative of the Class Members;
- (b) A finding that the Defendants breached the contract as between the Defendants and the Class Members;
- (c) A finding that the Defendants contravened their statutory duties under *PIPA*;
- (d) A finding that the Defendants contravened their statutory duties under *PIPEDA*;
- (e) A finding that the Defendants breached the Contract;
- (f) A finding that the Defendants breached a duty of care it owed to the Class Members;
- (g) An award of damages in an amount to be proven at trial comprised of one or more of the following:
 - (i) General damages;
 - (ii) Special damages, including but limited to:
 - A. Costs of credit counselling;
 - B. Compensation for lost time and/or lost income; and
 - C. Costs associated with or incurred for credit monitoring services, identity theft monitoring services, identity theft protective services and additional similar services;
 - (iii) Aggravated damages; and
 - (iv) Punitive damages;

- (h) An order directing an aggregate monetary award pursuant to section 29 of the *CPA*;
- (i) An order allowing for the use of standard proof of claim forms or other documentary evidence that minimizes the burden on the Class Members or specifying such other procedures pursuant to section 32 of the *CPA*;
- (j) An order all awarded damages be paid by the Defendants into a common fund and distributed to the Class Members in an appropriate manner as directed by the court;
- (k) An order or declaration that the Defendants must take specific steps to:
 - (i) Implement and enforce appropriate security and privacy policies;
 - (ii) Implement and enforce protocols or procedures regarding the manner of storage and use of Personal Information of Starwood Guests;
 - (iii) Ensure internal compliance with security and privacy policies, procedures and protocols and appropriate technologies for protecting the Personal Information of Starwood Guests, including implementing spot audits;
 - (iv) Ensure internal compliance with security and privacy policies, procedures and protocols by employees, agents, servants, and third parties engaged by the Defendants for the purposes of collecting, storing, maintaining and/or using the Personal Information of the Starwood Guests;
 - (v) Educate, train and supervise employees, agents, servants and third parties engaged by the Defendants on all data-security and privacy policies, procedures and protocols related to collecting, storing, maintaining and/or using the Personal Information of the Starwood Guests; and
 - (vi) Ensure the Personal Information of Starwood Guests is safely stored and appropriately encrypted and password protected;
- (l) Pre-judgment interest and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996 c 79.
- (m) Costs of this action , including the costs of investigation and prosecution, on a substantial indemnity basis;

- (n) Costs of administering the plan of distribution of the recovery in this action; and
- (o) such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

PART 3 LEGAL BASIS

Breach of Contract

1. Pursuant to the facts described in paragraphs at 23-25 and 38-43 of Part 2, the Defendants entered into a contract with each of the Class Members, which included a term that the Defendants would keep the Personal Information of the Class Members confidential and secure from authorized disclosure or theft. The Defendants failed to do so, which constitutes a breach of contract. The Class Members have suffered damages as a result of the breach of contract, which the Defendant is liable for.

Negligence

2. Pursuant to the facts described in paragraphs 26-34 and 38-43 of Part 2, the Defendant's reckless and/or negligent actions or omissions caused damages to the Class Members. The Defendant owed a duty of care to reasonably protect the Personal Information of the Class Members, and breached the standard of care by failing to implement adequate security measures. The consequences of this failure included unauthorized disclosure and theft of the Personal Information of the Class Members, which has caused damages to the Class Members, all of which was reasonably foreseeable.

Breach of Statutory Duties

3. Pursuant to the facts described in paragraphs 35 – 37 and 38-43, the Defendants breached their statutory duties under *PIPA* and *PIPEDA* to protect the Personal Information of the Class Members, which has resulted in harm and damages to each of the Class Members.

Plaintiff's address for service: Boughton Law Corporation
700 – 595 Burrard Street
P.O. Box 49290
Vancouver, BC V7X 1S8
ATTN: Mark C. Canofari

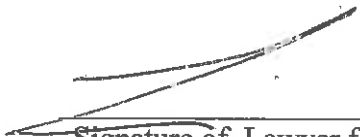
Fax number address for service (if any): 604-683-5317

E-mail address for service (if any): N/A

Place of trial: Vancouver, BC

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

Dated: December 13, 2018



Signature of Lawyer for Plaintiff
Mark C. Canofari

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

PART 1 CONCISE SUMMARY OF NATURE OF CLAIM:

This claim is a class action involving the unauthorized disclosure and theft of personal information as a result of the Defendants' breach of contract, breach of statutory duties and negligence.

PART 2 THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

PART 3 THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

PART 4

1. *Class Proceedings Act*, RSBC 1996, c 50
2. *Personal Information Protection Act*, SBC 2003, c. 63
3. *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5
4. *Court Order Interest Act*, RSBC 1996, c 79
5. *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff and the Class Members claim to serve this pleading on the Defendants MII and Starwood outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding pursuant to Section 10 of the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003 c 28 because this proceeding:

10(e)(i) concerns contractual obligations that, to a substantial extent were to be performed in British Columbia;

10(e)(iii) concerns contractual obligations and the contract is for the purchase of the property, services or both, for use other than in the course of the purchaser's trade or profession and resulted from a solicitation of business in British Columbia by or on behalf of the seller;

10(g) concerns a tort committed in British Columbia;

10(h) concerns a business carried on in British Columbia; and

10(i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.