

**CANADA**

**PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

**(Class Action Division)**

**SUPERIOR COURT**

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N°:

**WON KIL BAI**, domiciled 273 rue  
Fenwood, city of Dollard-des-  
Ormeaux, district of Montreal,  
province of Quebec, H9G 2Z6

Plaintiff

v.

**MARRIOTT INTERNATIONAL  
INC.**, legal person domiciled at 10400  
Fernwood Road, city of Bethesda, MD  
20817, United States of America

– and –

**MARRIOTT HOTELS OF  
CANADA LTD.**, legal person  
domiciled at 2425 Matheson Blvd  
East, Suite 100, city of Mississauga,  
province of Ontario, L4W 5K4,  
Canada

– and –

**STARWOOD CANADA ULC**, legal  
person with an establishment at 901  
rue du Square-Victoria, city Montréal,  
district of Montreal, province of  
Quebec, H2Z 1R1

Defendants

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**APPLICATION FOR AUTHORIZATION TO EXERCISE A CLASS ACTION  
AND TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF**  
(Article 574 and following of the *Code of Civil Procedure*)

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF  
QUÉBEC SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE  
PLAINTIFF STATES THE FOLLOWING:**

**I. DEFINITIONS**

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
  - a. “CCQ” means the *Civil Code of Quebec*;
  - b. “Class” and “Class Members” means all persons or entities resident in Canada who stayed at one of the **Starwood Properties** hotels operated by the Defendants between January 1, 2014 and November 30, 2018;
  - c. “Class Period” means the period between January 1, 2014 and November 30, 2018;
  - d. “Excluded Persons” means the **Defendants** and the directors, officers, subsidiaries, and affiliates of the **Defendants**;
  - e. “**Starwood Properties**” is a collection of hotels under the following brands operated by the Defendants, which 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, as well as Starwood branded timeshare properties.

**II. GENERAL PRESENTATION**

**A) The Action**

2. This data breach proceeding arises from the announcement of a data breach affecting approximately 500 million customers who had stayed at the Starwood Properties hotels operated by the Defendants in Canada and abroad.
3. As described below, on November 30, 2018, the Defendants issued a press release entitled “*Marriott Announces Starwood Guest Reservation Database Security Incident.*” The press release stated that the company had recently identified a data breach (the “**Data Breach**”) affecting hundreds of millions of

its customers, and that it believed unauthorized access was granted to millions of customers who had stayed at the hotels operated by the Defendants.

4. The Data Breach, believed to be second largest in history, is extensive in both its scope and the level of personal detail involved. It has caused, and will continue to cause, mental distress and financial harm to tens of thousands of Canadians.
5. This action seeks compensation for Canadians affected by the Data Breach.

**B) The Plaintiff**

6. Plaintiff Won Kil Bai (“Bai”) is a resident of Dollard-des-Ormeaux, Quebec. He is a member of the Starwood Rewards program and stayed at one or more Starwood Properties hotels during the Class Period. Bai learned from the news media on the morning of November 30, 2018 of the Data Breach.
7. The Defendant seeks the status of representative for the Class.

**C) The Defendants**

8. The Defendant Marriott Hotels International, Inc. is a global lodging company with more than 6,700 properties across 130 countries and territories, reporting revenues of more than \$22 billion in fiscal year 2017. The company is publicly traded on the NASDAQ. It is headquartered in Bethesda, Maryland, U.S.A.
9. The Defendant Marriott Hotels of Canada is the Canadian subsidiary of the Defendant Marriott Hotels International, Inc. It is headquartered in Mississauga, Ontario.
10. The Defendant Starwood Canada ULC operates hotels and motels under the Starwood brand.
11. The Defendants maintain, and have made available to the public, including the Plaintiff and other Class Members, a Privacy Policy (“**Privacy Policy**”), which states, in part, as follows:

**“Use of Personal Data**

Any Personal Data sent to us may be used by Marriott U.S. and its Service Providers for the purposes indicated in the Marriott Group Global Privacy Statement. If we intend to use your Personal Data for a purpose that is materially different from these purposes or if we intend to disclose it to a third party not previously identified, we will notify you and offer you the opportunity to opt-out of such uses and/or disclosures where it involves Personal Data or opt-in where Sensitive Personal Data is involved.

[...]

#### **Data Security**

*We use reasonable physical, electronic, and administrative safeguards to protect your Personal Data from loss, misuse and unauthorized access, disclosure, alteration and destruction, taking into account the nature of the Personal Data and the risks involved in processing that information.”*

[Emphasis added]

the whole as it appears from the Privacy Policy, denounced in support hereof as **Exhibit P-1**.

### **III. THE FACTS GIVING RISE TO THIS APPLICATION**

#### **A. The Data Breach**

12. On the morning of November 30, 2018, the Defendants issued a press release announcing the Data Breach (the “**Press Release**”). The Press Release stated, in part:

“On September 8, 2018, Marriott received an alert from an internal security tool regarding an attempt to access the Starwood guest reservation database in the United States. Marriott quickly engaged leading security experts to help determine what occurred. Marriott learned during the investigation that there had been unauthorized access to the Starwood network since 2014. The company recently discovered that an unauthorized party had copied and encrypted information, and took steps towards removing it. On November 19, 2018, Marriott was able to decrypt the information and determined that the contents were from the Starwood guest reservation database.”

the whole as it appears from the Press Release, a copy of which is denounced in support hereof as **Exhibit P-2**.

13. The press release described the vast extent of the Data Breach:

“The company has not finished identifying duplicate information in the database, but believes it contains *information on up to approximately 500 million guests who made a reservation at a Starwood property. For approximately 327 million of these guests*, the information includes some combination of *name, mailing address, phone number, email address, passport number*, Starwood Preferred Guest (“SPG”) account information, *date of birth, gender*, arrival and departure information, reservation date, and communication preferences. *For some, the information also includes payment card numbers and payment card expiration dates*, but the payment card numbers were encrypted using Advanced Encryption Standard encryption (AES-128). There are two components needed to decrypt the payment card numbers, and at this point, Marriott has not been able to rule out

the possibility that both were taken. For the remaining guests, the information was limited to name and sometimes other data such as mailing address, email address, or other information.”

[Emphasis added]

14. As the Press Release made clear, the full extent of the Data Breach, the precise number of persons affected and the nature of information stolen could not be determined.
15. The Data Breach constitutes an apparent violation of the Defendants’ promise, contained in the Data Policy and elsewhere in their communications with Class Members, to “use reasonable physical, electronic, and administrative safeguards” and to safeguard Class Members’ personal information.

#### **IV. THE DEFENDANTS’ LIABILITY**

##### **A) Civil Liability**

16. The Defendants entered into service contracts with the Plaintiff and other Class Members, who were guests at Starwoods Properties, which are operated by the Defendants.
17. The Defendants’ failure to safeguard Class Members’ personal information constitutes breaches of explicit and/or implied terms of those contracts, which caused damages to the Class Members, thereby engaging the Defendants’ civil liability.
18. In addition to the explicit terms of the above-mentioned contracts, on behalf of himself and all other Class Members who are resident of Quebec and as against the Defendants, the Plaintiff also pleads a violation of the general duty to act in the best interest of Class members and to act with prudence and diligence that Defendants owed Class Members resident in Quebec, as particularized herein.
19. The Defendants failed to fulfil that duty in the context of their relationships with the members of the Class who are residents of Quebec and in the context of the transactions in which the Defendants were involved.
20. As a result, the Defendants committed a fault and therefore caused or contributed to injuries to Class Members who are residents of Quebec by causing or contributing to significant monetary damages and losses and are bound to compensate the Class Members for those losses.
21. The negligence, want of due diligence, faults and breaches occurred in or emanated from Quebec with respect to those Class Members who are resident of Quebec.

22. For those Class Members who are not residents of Quebec, the Defendants owed them a duty of care to safeguard their personal information in a safe and confidential manner.
23. The Defendants breached the Plaintiff's and Class Members' rights to the privacy of their personal information and acted in reckless disregard to their right to determine for themselves when, how, and to what extent, information about themselves is communicated or made available to others.
24. As particularized throughout this pleading, the Defendants breached this duty of care and failed to act in the best interests of the Québec class members by permitting the Data Breach to occur, thereby causing harm to the Class Members and engaging their civil liability.

**B) Breach of Privacy and Consumer Protection Legislation**

25. The Defendants breached the Class Members' rights to the privacy of their personal information and their right to determine when, how, and to what extent that information is communicated or made available to others.
26. In particular, the Defendants breached their duty under s. 10 of the *Act Respecting the Protection of Personal Information in the Private Sector*, CQLR c. P-39.1, having failed to “*take the security measures necessary to ensure the protection of the personal information collected, used, communicated, kept or destroyed and that are reasonable given the sensitivity of the information, the purposes for which it is to be used, the quantity and distribution of the information and the medium on which it is stored.*”
27. The Plaintiff, and other individual Class Members, were each a “consumer” as defined in the consumer protection legislation of the various provinces enumerated below. Each of the Defendants was a “merchant” (or “supplier”) and was in the business of supplying services, as defined in the consumer protection legislation of the various provinces enumerated below.
28. The Plaintiff, and other individual Class Members, have suffered injury as a result of the Defendants' business acts or practices.
29. For those Class Members who are not residents of Quebec, the Plaintiff asserts, on his behalf, and on behalf of other Class Members, the following causes of action:
  - (i) The common law tort of invasion of privacy;
  - (ii) The statutory tort of invasion of privacy pursuant to the following legislation (“**Privacy Legislation**”):

- a. Alberta's *Personal Information Protection Act*, Statutes of Alberta, 2003 Chapter P-6.5;
  - b. British Columbia's *Privacy Act*, C.C.S.M. c. P-125, sections 2 and 3;
  - c. British Columbia's *Personal Information Protection Act* [SBC 2003] Chapter 63;
  - d. Canada's *Privacy Act*, (R.S.C., 1985, c. P-21);
  - e. Manitoba's *Privacy Act*, C.C.S.M. c. P-125, sections 2 and 3;
  - f. New Brunswick's *Personal Health Information Privacy and Access Act*, Chapter P-7.05;
  - g. The *Newfoundland and Labrador Privacy Act*, R.S.N.L. 1990, c. P-22, sections 3 and 4;
  - h. *Newfoundland and Labrador's Personal Health Information Act*, Chapter P-7.01;
  - i. Ontario's *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5;
  - j. Ontario's *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A; and
  - k. Saskatchewan's *Privacy Act*, R.S.S. 1978, c. P-24, sections 2, 3 and 6.
- (iii) False, misleading, deceptive, unfair and/or unconscionable acts or practices in breach of the following legislation (“**Consumer Legislation**”):

- a. *Business Practices and Consumer Protection Act*, SBC 2004, c 2, sections 4, 5, 8, 9 and 10;
  - b. *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, sections 7, 8, 9 and 10;
  - c. *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A, sections 14, 15 and 17; and
  - d. *The Consumer Protection Act*, SS 1996, c C-30.1, sections 5, 6, 7 and 8.
30. In addition to the foregoing, those Class Members who are residents of Quebec, the Plaintiff asserts, on his behalf, and on behalf of other Class Members, the following causes of action and breaches of the duties, obligations and rights provided by the following statutory provisions:

- a. Breach of the *Charter of Human Rights and Freedoms*, RSQ, c C-12, section 5; and
- b. *Civil Code of Quebec*, LRQ, c C-1991, articles 3 and 35-37.

(collectively with the above-mentioned Québec statutes, the “**Québec Legislation**”)

31. Because of these failures, the Plaintiff and Class Members are justified in seeking punitive damages, under section 272 of the *Consumer Protection Act* and under section 49 of the *Charter of Human Rights and Freedoms*.

## **V. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

### **A) The conditions of this action justify a class action proceeding**

32. The size and the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings.
33. The Defendants operate some 6,500 hotel properties around the world. While the exact size of the Class is unknown at this point, the Plaintiff expects that the Class will reach tens of thousands of members.
34. Through proper discovery, scrutiny of records maintained by the Defendants or its transfer agents, and a Class notice period, the Plaintiff expects to properly ascertain a definitive Class size.



35. The Plaintiff's claims are typical of the claims that all Class Members will have, as all members of the Class were similarly affected by the Defendants' wrongful conduct and misrepresentations, complained of herein.
36. The Class Members' Claims raise identical, similar or related issues of law or fact.
37. These common questions are as follows:
  - a. Did the Defendants owe the Plaintiff and other members of the Class duties to safeguard their personal information under the relevant Consumer Legislation? If so, did the Defendants breach these duties?
  - b. Did the Defendants owe the Plaintiff and other members of the Class duties to safeguard their personal information under the relevant Privacy Legislation? If so, did the Defendants breach these duties?
  - c. Did the Defendants owe the Plaintiff and other members of the Class duties to safeguard their personal information under the Quebec Legislation? If so, did the Defendants breach these duties?
  - d. Did any of the Defendants commit the tort of invasion of privacy?
  - e. Did the Defendants owe the Plaintiff and other members of the class a duty of prudence and diligence?
  - f. If some or all of the Defendants owed a duty of prudence and diligence to the Class, or any of them, did any of the Defendants violate such duty of diligence and committed a fault thereby engaging the Defendants' civil liability? If so, what Defendant committed a fault and with respect to whom?
  - g. Did any of the Defendants owe a duty of care to the Members of the Class, under the common law? If so, what Defendant owed a duty and to whom?
  - h. Are any of the Defendants liable to the Plaintiff and the Class, or any of them, for damages? If so, what Defendant is liable, to whom and in what amount?
  - i. Are the Defendants liable to the Class Members for punitive damages?
38. As particularized herein, the Defendants violated their legal obligations and their duties and responsibilities to the Class, supporting the Class's claims.

**B) The proposed Class Representative is in a position to properly represent Class Members**

39. The proposed Class Representative understands the requirements of time and the dedication required for this role. He is prepared to devote the required time and effort to carry forward this proposed class action on behalf of Class Members.
40. The proposed Class Representative is a member of the Starwood Rewards program and stayed at one or more Starwood Properties hotels during the Class Period, and as such, has suffered damages.
41. The proposed Class Representative has no conflict of interest with other members of the Class and is represented by counsel that are experienced at litigating shareholder claims in class actions against large public companies.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**AUTHORIZE** the Class described herein;

“Class” and “Class Members” are comprised of:

all persons or entities resident in Canada who stayed at one of the **Starwood Properties** hotels operated by the Defendants between January 1, 2014 and November 30, 2018.

**NAME** the Plaintiff as the Class Representative

**IDENTIFY** the principal questions of fact and law to be treated collectively as the following:

- a. Did the Defendants owe the Plaintiff and other members of the Class duties to safeguard their personal information under the relevant Consumer Legislation? If so, did the Defendants breach these duties?
- b. Did the Defendants owe the Plaintiff and other members of the Class duties to safeguard their personal information under the relevant Privacy Legislation? If so, did the Defendants breach these duties?
- c. Did the Defendants owe the Plaintiff and other members of the Class duties to safeguard their personal information under the Quebec Legislation? If so, did the Defendants breach these duties?
- d. Did any of the Defendants commit the tort of invasion of privacy?

- e. Did the Defendants owe the Plaintiff and other members of the class a duty of prudence and diligence?
- f. If some or all of the Defendants owed a duty of prudence and diligence to the Class, or any of them, did any of the Defendants violate such duty of diligence and committed a fault thereby engaging the Defendants' civil liability? If so, what Defendant committed a fault and with respect to whom?
- g. Did any of the Defendants owe a duty of care to the Members of the Class, under the common law? If so, what Defendant owed a duty and to whom?
- h. Are any of the Defendants liable to the Plaintiff and the Class, or any of them, for damages? If so, what Defendant is liable, to whom and in what amount?
- i. Are the Defendants liable to the Class Members for punitive damages?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** the class action on behalf of the Class;

**GRANT** the Plaintiff's action against the Defendants in respect of the rights of action asserted against Defendants under the Consumer Legislation, Privacy Legislation, Quebec Legislation, and, if necessary, the common law;

**CONDEMN** the Defendants to pay to each member of the Class compensatory damages for all monetary losses, with interest at the legal rate plus the additional indemnity provided at article 1619 C.C.Q. calculated from the date of the summons;

**CONDEMN** the Defendants to pay to each member of the Class punitive damages in an amount to be determined, with interest at the legal rate plus the additional indemnity provided at article 1619 C.C.Q. calculated from the date of the judgment to be rendered on the merits;

**ORDER** collective recovery in accordance with articles 595 to 598 of the *Code of Civil Procedure*;

**THE WHOLE** with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

**APPROVE** the notice to the members of the Class in the form to be submitted to

the Court;

**ORDER** the publication of the notice to the members of the Class no later than thirty (30) days after the date of the judgment authorizing the class proceedings;

**ORDER** that the deadline for a member of the Class to exclude themselves from the class action proceedings shall be sixty (60) days from the publication of the notice to the members of the Class;

**THE WHOLE WITH COSTS** including experts' fees.

Montréal, November 30, 2018

*Woods LLP*

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**WOODS LLP**

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**SUMMONS**  
**(Articles 145 and following C.c.p.)**

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Take notice that the plaintiff has filed this originating application in the office of the Superior court in the judicial district of Montreal.

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1, Notre-Dame Street, Montreal, Quebec H2Y 1B6 within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of

territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

In support of the originating application, the plaintiff intends to use the following exhibits:

**P-1.** Defendants' privacy policy

**P-2.** Press release issued on the morning of November 30, 2018 by Marriott International

These exhibits are available upon request.

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montréal, November 30, 2018

*Woods LLP*

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**WOODS LLP**

Counsel for the Plaintiff

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No.:

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**(CLASS ACTION)**  
**SUPERIOR COURT**  
**DISTRICT OF MONTREAL**  
**PROVINCE OF QUÉBEC**

---

**WON KIL BAI**

*Plaintiff*

vs.

**MARRIOTT INTERNATIONAL, INC. ET**  
**ALS.**

*Defendants*

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**MOTION TO AUTHORIZE THE**  
**BRINGING OF A CLASS ACTION**  
**PURSUANT TO ARTICLE 574 OF CODE**  
**OF CIVIL PROCEDURE**

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**ORIGINAL**

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