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9  
10 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

11 \_\_\_\_\_  
12 Federal Trade Commission,  
13 Plaintiff,

14 v.

15 Wyndham Worldwide Corporation, a Delaware )  
corporation; )  
16 Wyndham Hotel Group, LLC, a Delaware )  
17 limited liability company; )  
18 Wyndham Hotels and Resorts, LLC, a Delaware )  
limited liability company; and )  
19 Wyndham Hotel Management, Inc., a )  
20 Delaware Corporation, )  
21 Defendants. )  
\_\_\_\_\_ )

No. \_\_\_\_\_

COMPLAINT FOR  
INJUNCTIVE AND  
OTHER EQUITABLE  
RELIEF

1 Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

2 1. The FTC brings this action under Section 13(b) of the Federal Trade  
3 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive  
4 relief and other equitable relief for Defendants’ acts or practices in violation of  
5 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with Defendants’  
6 failure to maintain reasonable and appropriate data security for consumers’  
7 sensitive personal information.

8 2. Defendants’ failure to maintain reasonable security allowed intruders  
9 to obtain unauthorized access to the computer networks of Wyndham Hotels and  
10 Resorts, LLC, and several hotels franchised and managed by Defendants on three  
11 separate occasions in less than two years. Defendants’ security failures led to  
12 fraudulent charges on consumers’ accounts, more than \$10.6 million in fraud loss,  
13 and the export of hundreds of thousands of consumers’ payment card account  
14 information to a domain registered in Russia. In all three security breaches,  
15 hackers accessed sensitive consumer data by compromising Defendants’ Phoenix,  
16 Arizona data center.

17 **JURISDICTION AND VENUE**

18 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
19 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

20 4. Venue is proper in this district under 28 U.S.C. § 1391(b), (c), and  
21 15 U.S.C. § 53(b).

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1 center in Phoenix, Arizona (the “Phoenix data center”) that it uses to store and  
2 process payment card data, and the payment card data of some of its subsidiaries,  
3 including Wyndham Hotels and Resorts, LLC. Hotel Group is a wholly-owned  
4 subsidiary of Wyndham Worldwide, and through its subsidiaries it franchises and  
5 manages approximately 7,000 hotels under twelve hotel brands, one of which is  
6 the Wyndham brand. It transacts or has transacted business in this district and  
7 throughout the United States. At all relevant times, Hotel Group has controlled  
8 the acts and practices of its subsidiaries described below and approved of or  
9 benefitted from such subsidiaries’ acts and practices at issue in this Complaint.

10 9. Defendant Wyndham Hotels and Resorts, LLC (“Hotels and  
11 Resorts”) is a Delaware limited liability company with its principal office or place  
12 of business at 22 Sylvan Way, Parsipanny, New Jersey 07054. Hotels and Resorts  
13 is a wholly-owned subsidiary of Hotel Group. Throughout the relevant time  
14 period, Hotels and Resorts has licensed the Wyndham name to independent hotels  
15 through franchise agreements, and provided various services to those hotels,  
16 including information technology services. At all times material to this  
17 Complaint, Hotels and Resorts has licensed the Wyndham name to approximately  
18 seventy-five independently-owned hotels under franchise agreements. Hotels and  
19 Resorts transacts or has transacted business in this district and throughout the  
20 United States, including franchising hotels located in Arizona. At all relevant  
21 times, Hotel Group and Wyndham Worldwide have performed various business  
22 functions on behalf of Hotels and Resorts, or overseen such business functions,

1 including legal assistance, human resources, finance, and information technology  
2 and security. Hotel Group and Wyndham Worldwide controlled the acts and  
3 practices of Hotels and Resorts that are at issue in this Complaint.

4       10. Defendant Wyndham Hotel Management, Inc. (“Hotel  
5 Management”) is a Delaware corporation with its principal office or place of  
6 business at 22 Sylvan Way, Parsippany, New Jersey 07054. Hotel Management is  
7 also a wholly-owned subsidiary of Hotel Group. Like Hotels and Resorts, Hotel  
8 Management licenses the Wyndham name to independently-owned hotels, but  
9 does so under management agreements in which it agrees to fully operate the hotel  
10 on behalf of the owner. At all times material to this Complaint, Hotel  
11 Management has licensed the Wyndham name to approximately fifteen  
12 independently-owned hotels under management agreements. Hotel Management  
13 transacts or has transacted business in this district and throughout the United  
14 States, including managing at least one hotel in Arizona. At all relevant times,  
15 Hotel Group and Wyndham Worldwide have performed various business  
16 functions on Hotel Management’s behalf, or overseen such business functions,  
17 including legal assistance and information technology and security. Hotel Group  
18 and Wyndham Worldwide controlled the acts and practices of Hotel Management  
19 that are at issue in this Complaint.

20       11. Defendants Wyndham Worldwide, Hotel Group, Hotels and Resorts,  
21 and Hotel Management have operated as a common business enterprise while  
22 engaging in the unfair and deceptive acts and practices alleged in this Complaint.

1 Defendants have conducted their business practices described below through an  
2 interrelated network of companies that have common ownership, business  
3 functions, employees, and office locations. Because these Defendants have  
4 operated as a common enterprise, they are jointly and severally liable for the  
5 unfair and deceptive acts and practices alleged below.

### 6 **COMMERCE**

7 12. At all times material to this Complaint, Defendants have maintained  
8 a substantial course of trade in or affecting commerce, as “commerce” is defined  
9 in Section 4 of the FTC Act, 15 U.S.C. § 44.

### 10 **DEFENDANTS’ BUSINESS ACTIVITIES**

#### 11 **Defendants’ Business Structure**

12 13. Wyndham Worldwide is a hospitality business that, through its  
13 subsidiaries, franchises and manages hotels and sells timeshares. It conducts its  
14 business through three subsidiaries, including Hotel Group. At all times relevant  
15 to this Complaint, Hotel Group’s wholly-owned subsidiaries, Hotels and Resorts  
16 and Hotel Management, licensed the Wyndham brand name to approximately  
17 ninety independently-owned hotels under franchise or management agreements  
18 (collectively hereinafter “Wyndham-branded hotels”).

#### 19 **Defendants’ Network Infrastructure**

20 14. Throughout the relevant time period, Wyndham Worldwide has been  
21 responsible for creating information security policies for itself and its subsidiaries,  
22 including Hotel Group and Hotels and Resorts, as well as providing oversight of

1 their information security programs. From at least 2008 until approximately June  
2 2009, Hotel Group had responsibility for managing Hotels and Resorts’  
3 information security program. In June 2009, Wyndham Worldwide took over  
4 management and responsibility for Hotels and Resorts’ information security  
5 program.

6 15. Under their franchise and management agreements, Hotels and  
7 Resorts and Hotel Management require each Wyndham-branded hotel to purchase,  
8 and configure to their specifications, a designated computer system, known as a  
9 property management system, that handles reservations, checks guests in and out,  
10 assigns rooms, manages room inventory, and handles payment card transactions.  
11 These property management systems store personal information about consumers,  
12 including names, addresses, email addresses, telephone numbers, payment card  
13 account numbers, expiration dates, and security codes (hereinafter “personal  
14 information”).

15 16. The property management systems for all Wyndham-branded hotels,  
16 including those managed by Hotel Management, are part of Hotels and Resorts’  
17 computer network, and are linked to its corporate network, much of which is  
18 located in the Phoenix data center. Hotels and Resorts’ corporate network  
19 includes its central reservation system, which coordinates reservations across the  
20 Wyndham brand.

21 17. Each Wyndham-branded hotel’s property management system is  
22 managed by Defendants. Only Defendants, and not the owners of the Wyndham-

1 branded hotels, have administrator access that allows Defendants to control the  
2 property management systems at the hotels. Defendants set the rules, including all  
3 password requirements, that allow the Wyndham-branded hotels' employees to  
4 access their property management systems.

5 18. Defendants have even more direct control over the computer  
6 networks of the Wyndham-branded hotels managed by Hotel Management. Hotel  
7 Management controls the "operation" of those hotels pursuant to its management  
8 agreements, including their information technology and security functions and the  
9 hiring of employees to administer the hotels' computer networks.

10 19. The owners of the Wyndham-branded hotels pay Defendants fees to  
11 support their property management systems and to connect them to Hotels and  
12 Resorts' computer network. Defendants' technical support team is responsible for  
13 addressing and resolving any technical issues that a Wyndham-branded hotel has  
14 with its property management system. As explained further below, Defendants'  
15 information security failures led to the compromise of many of the Wyndham-  
16 branded-hotels' property management system servers, resulting in the exposure of  
17 thousands of consumers' payment card accounts.

#### 18 **DEFENDANTS' DECEPTIVE STATEMENTS**

19 20. Hotels and Resorts operates a website where consumers can make  
20 reservations at any Wyndham-branded hotel. In addition, some Wyndham-  
21 branded hotels operate their own individual websites, which describe the  
22 individual hotel and its amenities. Customers making reservations from a



Wyndham-branded hotel's individual website are directed back to Hotels and Resorts' website to make the reservation.

21. Since at least 2008, Defendants have disseminated, or caused to be disseminated, privacy policies or statements on their website to their customers and potential customers. These policies or statements include, but are not limited to, the following statement regarding the privacy and confidentiality of personal information, disseminated on the Hotels and Resorts' website:

. . . We recognize the importance of protecting the privacy of individual-specific (personally identifiable) information collected about guests, callers to our central reservation centers, visitors to our Web sites, and members participating in our Loyalty Program (collectively, "Customers"). . . .

This Policy applies to residents of the United States, hotels of our Brands located in the United States, and Loyalty Program activities in the United States only. . . .

We safeguard our Customers' personally identifiable information by using standard industry practices. Although "guaranteed security" does not exist on or off the Internet, we take commercially reasonable efforts to create and maintain "fire walls" and other appropriate safeguards to ensure that to the extent we control the Information, the Information is used only as authorized by us and consistent with this Policy, and that the Information is not improperly altered or destroyed.

22. There is a link to this privacy policy on each page of the Hotels and Resorts' website, including its reservations page.

23. Although this statement is disseminated on the Hotels and Resorts' website, it states that it is the privacy policy of Hotel Group.

1                   **DEFENDANTS' INADEQUATE DATA SECURITY PRACTICES**

2                   24.     Since at least April 2008, Defendants failed to provide reasonable  
3 and appropriate security for the personal information collected and maintained by  
4 Hotels and Resorts, Hotel Management, and the Wyndham-branded hotels, by  
5 engaging in a number of practices that, taken together, unreasonably and  
6 unnecessarily exposed consumers' personal data to unauthorized access and theft.  
7 Among other things, Defendants:

- 8                   a.     failed to use readily available security measures to limit  
9                   access between and among the Wyndham-branded hotels'  
10                  property management systems, the Hotels and Resorts'  
11                  corporate network, and the Internet, such as by employing  
12                  firewalls;
- 13                  b.     allowed software at the Wyndham-branded hotels to be  
14                  configured inappropriately, resulting in the storage of  
15                  payment card information in clear readable text;
- 16                  c.     failed to ensure the Wyndham-branded hotels implemented  
17                  adequate information security policies and procedures prior to  
18                  connecting their local computer networks to Hotels and  
19                  Resorts' computer network;
- 20                  d.     failed to remedy known security vulnerabilities on Wyndham-  
21                  branded hotels' servers that were connected to Hotels and  
22                  Resorts' computer network, thereby putting personal

1 information held by Defendants and the other Wyndham-  
2 branded hotels at risk. For example, Defendants permitted  
3 Wyndham-branded hotels to connect insecure servers to the  
4 Hotels and Resorts' network, including servers using outdated  
5 operating systems that could not receive security updates or  
6 patches to address known security vulnerabilities;

- 7 e. allowed servers to connect to Hotels and Resorts' network,  
8 despite the fact that well-known default user IDs and  
9 passwords were enabled on the servers, which were easily  
10 available to hackers through simple Internet searches;  
11 f. failed to employ commonly-used methods to require user IDs  
12 and passwords that are difficult for hackers to guess.

13 Defendants did not require the use of complex passwords for  
14 access to the Wyndham-branded hotels' property  
15 management systems and allowed the use of easily guessed  
16 passwords. For example, to allow remote access to a hotel's  
17 property management system, which was developed by  
18 software developer Micros Systems, Inc., Defendants used  
19 the phrase "micros" as both the user ID and the password;

- 20 g. failed to adequately inventory computers connected to the  
21 Hotels and Resorts' network so that Defendants could  
22 appropriately manage the devices on its network;

- 1 h. failed to employ reasonable measures to detect and prevent  
2 unauthorized access to Defendants' computer network or to  
3 conduct security investigations;
- 4 i. failed to follow proper incident response procedures,  
5 including failing to monitor Hotels and Resorts' computer  
6 network for malware used in a previous intrusion; and
- 7 j. failed to adequately restrict third-party vendors' access to  
8 Hotels and Resorts' network and the Wyndham-branded  
9 hotels' property management systems, such as by restricting  
10 connections to specified IP addresses or granting temporary,  
11 limited access, as necessary.

12 **INTRUSIONS INTO DEFENDANTS' COMPUTER NETWORK**

13 25. As a result of the failures described above, between April 2008 and  
14 January 2010, intruders were able to gain unauthorized access to Hotels and  
15 Resorts' computer network, including the Wyndham-branded hotels' property  
16 management systems, on three separate occasions. The intruders used similar  
17 techniques on each occasion to access personal information stored on the  
18 Wyndham-branded hotels' property management system servers, including  
19 customers' payment card account numbers, expiration dates, and security codes.  
20 After discovering each of the first two breaches, Defendants failed to take  
21 appropriate steps in a reasonable time frame to prevent the further compromise of  
22 the Hotels and Resorts' network.

## **First Breach**

26. In April 2008, intruders first gained access to a Phoenix, Arizona Wyndham-branded hotel's local computer network that was connected to the Internet. The hotel's local network was also connected to Hotels and Resorts' network through the hotel's property management system. Using this access, in May 2008, the intruders attempted to compromise an administrator account on the Hotels and Resorts' network by guessing multiple user IDs and passwords – known as a brute force attack.

27. This brute force attack caused multiple user account lockouts over several days, including one instance in which 212 user accounts were locked out, before the intruders were ultimately successful. Account lockouts occur when a user inputs an incorrect password multiple times, and are a well-known warning sign that a computer network is being attacked. Defendants did not have an adequate inventory of the Wyndham-branded hotels' computers connected to its network, and, therefore, although they were able to determine that the account lockouts were coming from two computers on Hotels and Resorts' network, they were unable to physically locate those computers. As a result, Defendants did not determine that the Hotels and Resorts' network had been compromised until almost four months later.

28. The intruders' brute force attack led to the compromise of an administrator account on the Hotels and Resorts' network. Because Defendants did not appropriately limit access between and among the Wyndham-branded

1 hotels' property management systems, the Hotels and Resorts' own corporate  
2 network, and the Internet – such as through the use of firewalls – once the  
3 intruders had access to the administrator account, they were able to gain unfettered  
4 access to the property management system servers of a number of hotels.

5 29. Additionally, the Phoenix hotel's property management system  
6 server was using an operating system that its vendor had stopped supporting,  
7 including providing security updates and patch distribution, more than three years  
8 prior to the intrusion. Defendants were aware the hotel was using this unsupported  
9 and insecure server, yet continued to allow it to connect to Hotels and Resorts'  
10 computer network.

11 30. In this first breach, the intruders installed memory-scraping malware  
12 on numerous Wyndham-branded hotels' property management system servers,  
13 thereby accessing payment card data associated with the authorization of payment  
14 card transactions that was present temporarily on the hotels' servers.

15 31. In addition, the intruders located files on some of the Wyndham-  
16 branded hotels' property management system servers that contained payment card  
17 account information for large numbers of consumers, stored in clear readable text.  
18 These files were created and stored in clear text because Defendants had allowed  
19 the property management systems to be configured inappropriately to create these  
20 files and store the payment card information that way.

21 32. As a result of Defendants' unreasonable data security practices,  
22 intruders were able to gain unauthorized access to the Hotels and Resorts'

1 corporate network, and the property management system servers of forty-one  
2 Wyndham-branded hotels – twelve managed by Hotel Management and twenty-  
3 nine franchisees of Hotels and Resorts. This resulted in the compromise of more  
4 than 500,000 payment card accounts, and the export of hundreds of thousands of  
5 consumers' payment card account numbers to a domain registered in Russia.

### 6 **Second Breach**

7 33. In March 2009, approximately six months after Defendants  
8 discovered the first breach, intruders were able again to gain unauthorized access  
9 to the Hotels and Resorts' network, this time through a service provider's  
10 administrator account in the Phoenix data center.

11 34. In May 2009, Defendants learned that several Wyndham-branded  
12 hotels had received complaints from consumers about fraudulent charges made to  
13 their payment card accounts after using those cards to pay for stays at Wyndham-  
14 branded hotels. At that point, Defendants searched Hotels and Resorts' network  
15 for the memory-scraping malware used in the previous attack, and found it on the  
16 property management system servers of more than thirty Wyndham-branded  
17 hotels. As a result of Defendants' failure to monitor Hotels and Resorts' network  
18 for the malware used in the previous attack, hackers had unauthorized access to  
19 the Hotels and Resorts' network for approximately two months.

20 35. In addition to again using memory-scraping malware to access  
21 personal information, in this second breach the intruders reconfigured software at  
22 the Wyndham-branded hotels to cause their property management systems to

1 create clear text files containing the payment card account numbers of guests using  
2 their payment cards at the hotels.

3 36. Ultimately, the intruders exploited Defendants' data security  
4 vulnerabilities to gain access to the Hotels and Resorts' network and the property  
5 management system servers of thirty-nine Wyndham-branded hotels – nine of  
6 which were managed by Hotel Management and thirty franchisees of Hotels and  
7 Resorts. In this second incident, the intruders were able to access information for  
8 more than 50,000 consumer payment card accounts and use that information to  
9 make fraudulent charges on consumers' accounts.

### 10 **Third Breach**

11 37. In late 2009, intruders again compromised an administrator account  
12 on Hotels and Resorts' network. Because Defendants had still not adequately  
13 limited access between and among the Wyndham-branded hotels' property  
14 management systems, Hotels and Resorts' corporate network, and the Internet –  
15 such as through the use of firewalls – once the intruders had access to this  
16 administrator account they were able again to access multiple Wyndham-branded  
17 hotels' property management system servers. As in the previous attacks, the  
18 intruders installed memory-scraping malware to access payment card account  
19 information held at the Wyndham-branded hotels.

20 38. Again, Defendants did not detect this intrusion themselves, but  
21 rather learned of the breach from a credit card issuer. The credit card issuer  
22 contacted Defendants in January 2010, and indicated that the account numbers of



1 credit cards it had issued were used fraudulently shortly after its customers used  
2 their credit cards to pay for stays at Wyndham-branded hotels.

3 39. As a result of Defendants' security failures, in this instance,  
4 intruders compromised Hotels and Resorts' corporate network and the property  
5 management system servers of twenty-eight Wyndham-branded hotels – eight  
6 managed by Hotel Management and twenty franchisees of Hotels and Resorts. As  
7 a result of this third incident, the intruders were able to access information for  
8 approximately 69,000 consumer payment card accounts and again make fraudulent  
9 purchases on those accounts.

#### 10 **Total Impact of Breaches**

11 40. Defendants' failure to implement reasonable and appropriate  
12 security measures exposed consumers' personal information to unauthorized  
13 access, collection, and use. Such exposure of consumers' personal information  
14 has caused and is likely to cause substantial consumer injury, including financial  
15 injury, to consumers and businesses. For example, Defendants' failure to  
16 implement reasonable and appropriate security measures resulted in the three data  
17 breaches described above, the compromise of more than 619,000 consumer  
18 payment card account numbers, the exportation of many of those account numbers  
19 to a domain registered in Russia, fraudulent charges on many consumers'  
20 accounts, and more than \$10.6 million in fraud loss. Consumers and businesses  
21 suffered financial injury, including, but not limited to, unreimbursed fraudulent  
22 charges, increased costs, and lost access to funds or credit. Consumers and

1 businesses also expended time and money resolving fraudulent charges and  
2 mitigating subsequent harm.

3 **VIOLATIONS OF THE FTC ACT**

4 41. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or  
5 deceptive acts or practices in or affecting commerce.”

6 42. Misrepresentations or deceptive omissions of material fact constitute  
7 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

8 43. Acts or practices are unfair under Section 5 of the FTC Act if they  
9 cause or are likely to cause substantial injury to consumers that consumers cannot  
10 reasonably avoid themselves and that is not outweighed by countervailing benefits  
11 to consumers or competition. 15 U.S.C. § 45(n).

12 **Count I**

13 **Deception**

14 44. In numerous instances through the means described in Paragraph 21,  
15 in connection with the advertising, marketing, promotion, offering for sale, or sale  
16 of hotel services, Defendants have represented, directly or indirectly, expressly or  
17 by implication, that they had implemented reasonable and appropriate measures to  
18 protect personal information against unauthorized access.

19 45. In truth and in fact, in numerous instances in which Defendants have  
20 made the representations set forth in Paragraph 44 of this Complaint, Defendants  
21 did not implement reasonable and appropriate measures to protect personal  
22 information against unauthorized access.

46. Therefore, Defendants' representations as set forth in Paragraph 44 of this Complaint are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## Count II

## Unfairness

47. In numerous instances Defendants have failed to employ reasonable and appropriate measures to protect personal information against unauthorized access.

48. Defendants' actions caused or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

49. Therefore, Defendants’ acts and practices as described in Paragraph 47 above constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

## CONSUMER INJURY

50. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

## **THIS COURT’S POWER TO GRANT RELIEF**

51. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this

1 Court to grant injunctive and such other relief as the Court may deem appropriate  
2 to halt and redress violations of any provision of law enforced by the FTC. The  
3 Court, in the exercise of its equitable jurisdiction, may award ancillary relief,  
4 including rescission or reformation of contracts, restitution, the refund of monies  
5 paid, and the disgorgement of ill-gotten monies, to prevent and remedy any  
6 violation of any provision of law enforced by the FTC.

7 **PRAYER FOR RELIEF**

8 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15  
9 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

10 A. Enter a permanent injunction to prevent future violations of the FTC  
11 Act by Defendants;

12 B. Award such relief as the Court finds necessary to redress injury to  
13 consumers resulting from Defendants' violations of the FTC Act, including but not  
14 limited to, rescission or reformation of contracts, restitution, the refund of monies  
15 paid, and the disgorgement of ill-gotten monies; and

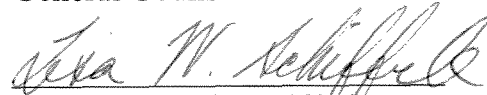
16 C. Award Plaintiff the costs of bringing this action, as well as such  
17 other and additional relief as the Court may determine to be just and proper.

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Dated: June 26, 2012

Respectfully submitted,

Willard K. Tom  
General Counsel



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