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13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 **CHARLES CREAMER and**  
16 **JENNIFER TREVINO,**

17 Plaintiffs, individually and as  
18 representatives of all persons  
19 similarly situated,

20 vs.

21 **STARWOOD HOTELS & RESORTS**  
22 **WORLDWIDE, INC.,**

23 Defendant.

**No. 16**

**COMPLAINT**

**CLASS ACTION (ERISA)**

**JURY TRIAL DEMANDED**

Case Filed: December 16, 2016  
Trial Date: TBD

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1 **COMPLAINT**

2 **Preliminary Statement**

3 1. This case is filed as a class action because Starwood Hotels & Resorts  
4 Worldwide, Inc. (Starwood) serially breached its fiduciary duties in the management,  
5 operation and administration of its employees' 401(k) plan, the Starwood Hotels &  
6 Resorts Worldwide, Inc. Savings & Retirement Plan (Plan).

7 2. It failed to ensure that fees charged to participants were reasonable. It  
8 caused Plan participants who invested in index funds to pay seven times more than a  
9 reasonable fee due to multiple layers of fees. It failed to follow the express written  
10 instructions of Plan participants. It failed to make adequate disclosure concerning its  
11 practice of revenue sharing. Further, it failed to include a stable value fund instead of  
12 a money market fund in the investment option.

13 3. Starwood as fiduciary to the Plan, which consists of the Plan  
14 participants' retirement money, had a fiduciary obligation to act for the exclusive  
15 benefit of participants.

16 4. Starwood made conscious decisions over the years which exposed Plan  
17 participants to unnecessarily high management fees and limited their ability to invest  
18 in stable value funds.

19 5. It ignored explicit instructions of Plan participants as to how their  
20 retirement money should be invested. It intentionally and consciously chose  
21 investment options which subjected Plan participants to poor performance and high  
22 fees.

23 6. Starwood's failings and breaches of fiduciary duties include, but are not  
24 limited to the following:

- 25 a. Failing to make sure that Plan fees were reasonable;
- 26 b. Failing to offer a stable value fund, and instead had Plan participants  
27 maintain excessively high cash balances in money market funds  
28 resulting in the loss of millions of dollars to participants had they



1 **PARTIES**

2 **Defendant Starwood**

3 10. Starwood is a corporation which is one of the world's largest hotel  
4 companies. It owns, operates, franchises and manages hotels, resorts, spas, residences  
5 and vacation ownership properties throughout the world and employs over 180,000  
6 people. In 2015, it had revenue of \$5.7 billion.

7 11. Starwood is the Plan Sponsor under 29 U.S.C. § 1002(16)(B).

8 12. As required by 29 U.S. C. §1102(a)(1), the Plan is established and  
9 maintained by a written plan document entitled "Starwood Hotels & Resorts  
10 Worldwide, Inc. Savings & Retirement Plan".

11 13. The plan is an "employee pension benefit plan" under 29 U.S.C.  
12 §1002(2)(A), and an "individual account plan" or "defined contribution plan" under 29  
13 U.S.C. §1002(34).

14 14. As of December 31, 2015, the Plan had assets of \$1,226,298,526 and had  
15 43,580 participants.

16 15. Starwood is both the Plan Sponsor and Administrator. It is responsible  
17 for selecting the investment options available to participants.

18 16. The corporate trustee for the Plan is State Street Bank & Trust.  
19 Recordkeeping and administrative services for the Plan are provided by Voya  
20 Financial.

21  
22 **Plaintiffs**

23 17. Plaintiff Charles (Cy) Creamer resides at 5853 Virginia # 1, Los  
24 Angeles, California 90038. He worked at Starwood for about six and one-half years  
25 through November 2016 including jobs in bell service, room service and banquet  
26 services. He participated in the Plan. Annual account statements for Plaintiff  
27 Creamer from January 1, 2010 to September 30, 2016 are attached as Exhibit One.

28 18. Plaintiff Jennifer Trevino resides at 11535 Venice Boulevard, # 1, Los

1 Angeles, California 90066. She worked at Starwood for two periods, from 2010 to  
2 2012, and from 2013 to 2015. Her jobs included in room dining services. She was a  
3 participant in the Plan from 2010 to 2015. Her account with the Plan was closed on  
4 December 3, 2015. Annual account statements for Jennifer Trevino are attached as  
5 Exhibit Two.

6 19. Neither Plaintiff is a sophisticated investor. Both were dependent on  
7 Starwood FOR making full and fair disclosure of all relevant facts and fulfilling its  
8 fiduciary duties to them under ERISA.

9  
10 **ERISA FIDUCIARY STANDARDS AND PROHIBITED TRANSACTIONS**

11 20. ERISA imposes strict fiduciary duties of loyalty and prudence upon  
12 Starwood as a fiduciary of the Plan. The statute states, “a fiduciary shall discharge his  
13 duties with respect to a plan solely in the interest of the participants and beneficiaries  
14 and (A) for the exclusive purpose of (i) providing benefits to participants and their  
15 beneficiaries; and (ii) defraying reasonable expenses of administering the plan; [and]  
16 (B) with the care, skill, prudence and diligence under the circumstances then prevailing  
17 that a prudent man acting in like capacity and familiar with such matters would use in  
18 the conduct of like character and with like aims.”

19 21. Under ERISA, fiduciaries that exercise control or authority over plan  
20 assets, including the selection of plan investments and service providers, must act  
21 prudently at all times and act solely in the interest of plan participants.

22  
23 **FACTS APPLICABLE TO ALL CLAIMS**

24 **Starwood Failed to Ensure Reasonable Fees for the Plan**

25 22. The United States Supreme Court held in *Tibble v. Edison International*,  
26 135 S. Ct. 1823 (2015), that plan fiduciaries have an ongoing duty to maintain and  
27 monitor investments.

28 23. Starwood had the bargaining power to obtain and maintain low fees. The

1 market place for retirement plans, especially ones holding over \$1 billion in assets  
2 such as this Plan, is very competitive. Thus, the Plan had significant bargaining  
3 leverage to procure high quality management and administrative services at a low cost.

4 24. However, Starwood did not even exercise this power for many years. At  
5 about the same time as the *Tibble* decision, Starwood managed to cut the fees of its  
6 fund offerings cut in half. Fees were reduced an average of 40 basis points (.40%).  
7 This means that for the prior five years, an unnecessary \$20 million in fees were  
8 incurred by Plan participants -- 40 basis points times \$1 billion in assets equals \$4  
9 million per year in excess fees or \$20 million over a five year period.

10 25. These excess fees came directly out of the pockets of Plan participants  
11 who earned less on their retirement money.

12 26. Indeed, the Starwood Plan received from the BrightScope rating service a  
13 score of only 61. The top BrightScope rating for peer plans is 90. This difference  
14 means that sixteen years of additional work was required by Starwood employees to  
15 reach the same level of savings as peer plan participants. Starwood participants lost  
16 savings of \$110,871 per participant, or \$5 billion collectively, as compared to the  
17 highest ranking peer plan. See [https://www.brightscope.com/401k-rating/247869/  
18 Starwood-Hotels-Resorts-Worldwide-Inc/251907/Starwood-Hotels-Resorts-  
19 Worldwide-Inc-Savings-And-Retirement-Plan/](https://www.brightscope.com/401k-rating/247869/Starwood-Hotels-Resorts-Worldwide-Inc/251907/Starwood-Hotels-Resorts-Worldwide-Inc-Savings-And-Retirement-Plan/).

20 27. Further, a recent survey by NEPC, an independent investment consulting  
21 firm, found that the median recordkeeping costs of 113 plans was \$64 per plan  
22 participant in 2015, Exhibit Three hereto, as compared with Starwood's cost of close  
23 to \$100.

24 28. The Starwood Plan has consistently averaged recordkeeping and  
25 administrative fees that are close to \$100, more than 50% higher than the median cost  
26 of \$64. As a Plan with assets well over \$1 billion, Starwood could have negotiated  
27 substantially lower recordkeeping and administrative fees.

28 29. The recordkeeping and administrative fees for the Starwood Plan are as

1 follows:

	<b>Number Plan Participants</b>	<b>Assets</b>	<b>Total fees</b>	<b>Fees Per Participant</b>
<b>2010</b>	39,925	\$801,774,934	\$3,963,577.00	\$99.28
<b>2011</b>	41,712	\$808,787,086	\$3,694,229.00	\$88.57
<b>2012</b>	45,293	\$950,174,829	\$3,659,456.00	\$99.28
<b>2013</b>	44,861	\$1,148,751,202	\$4,838,658.00	\$107.86
<b>2014</b>	45,015	\$1,226,716,376	\$4,838,658.00	\$107.49
<b>2015</b>	43,580	\$1,226,298,526	\$4,232,445.00	\$97.12
	<b>Average</b> 43,397			<b>Average</b> <b>\$99.93</b>

19 30. An extra \$36 in recordkeeping and administrative fees per year for six  
20 years for the average number of plan participants is over \$ 9 million in excess fees  
21 incurred by the Plan.

22 31. A retirement plan should obtain competitive bids for record keeping  
23 services on a regular basis. The disclosure documents of the Plan give no indication  
24 that Starwood followed such a practice. The Plan ended up paying recordkeeping and  
25 administrative fees which were excessive in light of the median fee of \$64.

26 32. Prior to January 2015, participants were **not** charged a flat monthly fee  
27 for recordkeeping services, even though the per participant cost of providing  
28 recordkeeping services is not related to the amount of money in a participant's



1 account. The cost of recordkeeping services is the same for a participant with \$1,000  
2 in his account as for a participant with \$50,000. Having recordkeeping fees based on  
3 a percentage of plan assets causes fees to increase as assets increase even though no  
4 additional services are required. Thus, Plan participants incurred unnecessary fees.

5  
6 **Starwood Engaged in Revenue Sharing With Inadequate Disclosure**

7 33. Starwood engaged in the practice of revenue sharing with the investment  
8 funds it offered plan participants. This means that funds paid Starwood monies for  
9 their inclusion in the investment menu. However, Starwood does not disclose the  
10 amount of revenue sharing it received. (See Starwood Savings & Retirement Plan  
11 Information About Plan Fees and Expenses dated June 30, 2012 attached as Exhibit  
12 Four.) Starwood only states that some of the investment funds in the Plan menu return  
13 to the Plan a portion of the fees they charge without disclosing the amount returned. It  
14 does not disclose which funds pay money and how much they pay.

15 34. Supposedly, revenue sharing payments are made as compensation to a  
16 plan's record keeper for providing administrative services that the fund would  
17 otherwise have to do itself. However, the revenue sharing payments can easily become  
18 kickbacks or "pay to play" payments for including a fund within the Plan's menu of  
19 investment choices if the revenue sharing payments are in excess of reasonable  
20 compensation for the administrative services rendered. In that case, funds are selected  
21 for inclusion in the menu of investment options not because of their intrinsic merit, but  
22 due to the kickbacks.

23 35. Participants need to be told the amount of the revenue sharing payments  
24 that are made in order to know whether they are reasonable compensation for services  
25 provided or represent kickbacks from service providers to get included in the Plan.

26 36. Further, Starwood fails to disclose if the amount of the revenue sharing  
27 payments are based on a percentage of assets. If revenue sharing is based on a  
28 percentage of assets, it will simply increase as plan assets increase and not bear any

1 reasonable relation to compensation for record keeping services performed.

2 37. A prudent and loyal fiduciary should monitor revenue sharing to make  
3 certain that the record keeper does not receive compensation that exceeds a reasonable  
4 per participant fee.

5  
6 **Starwood Failed to Follow the Explicit Investment Instructions of Plan**  
7 **Participants**

8 38. In 2010, Plaintiff Creamer elected to have his contributions diversified  
9 over six separate funds, but Starwood ignored that directive and put 100% of  
10 Creamer's money into a single fund, the BlackRock LifePath 2050 Index Fund. The  
11 percentage that Creamer had elected to put in BlackRock LifePath 2050 Index Fund  
12 was zero!

13 39. The same thing happened in 2011. The same thing happened in 2012.  
14 The same thing happened in 2013. The same thing happened in 2014. The same thing  
15 happened in 2015.

16 40. For five years, Starwood completely ignored Creamer's instructions and  
17 instead put 100% of his money into a fund where he designated that 0% be invested.  
18 In 2016, Starwood finally put 12% of Creamer's money into the six funds that he had  
19 selected – JP Morgan Dividend Real Return, T Rowe Price Large Cap Value,  
20 Vanguard Institutional Index, Hartford Mid Cap, Manning & Napier Overseas, and  
21 Victory Integrity Small Cap Value. Inexplicably, Starwood still left 88% of  
22 Creamer's money in the LifePath 2050 Fund that he had not even selected.

23 41. Plaintiffs are informed and believe that Starwood failed to employ  
24 reasonable and prudent mechanisms to ensure that investment allocation decisions of  
25 participants were followed. In the case of Plaintiff Creamer, his directives were  
26 ignored for six years.

1 **Starwood Subjected Participants to Two Layers of Fees Which Were Seven Times**  
2 **Larger Than Comparable Vanguard Funds**

3 42. BlackRock Trusts represented \$493 million of the Plan's \$1.2 billion in  
4 holdings as of December 31, 2015. BlackRock Life Path Index Funds accounted for  
5 \$280 million of that amount.

6 43. These BlackRock LifePath Index funds just hold other BlackRock index  
7 funds. For instance, the BlackRock Life Path 2020 Index Fund holds nothing but other  
8 BlackRock funds.

9 44. BlackRock Life Path 2050 Index Fund institutional shares have net  
10 operating expenses of .20%. As noted, the 2050 Index Fund is a fund that invests all  
11 of its assets in other BlackRock funds. 52% of the Life Path Index Fund was invested  
12 in the BlackRock Russell 1000 Index Fund now known as the BlackRock Large Cap  
13 Index Fund. The Russell 1000 Index fund had net operating expenses of .08%. Thus,  
14 the fee paid by Plan participants is .20% plus .08% for a total of .28%. In contrast,  
15 the Vanguard Institutional Index Fund Institutional Shares has a total expense ratio of  
16 only .04% so the Plan has chosen funds with fees that are 700% more than the  
17 comparable Vanguard fund - a difference of 24 basis points. 24 basis points on \$280  
18 million in assets equals \$4 million in excess fees over six years.

19 45. Starwood breached its fiduciary duties by allowing these fees to be  
20 incurred.

21  
22 **Starwood's Plan Had Too Much Money in a Money Market Fund and Nothing in**  
23 **a Stable Value Fund**

24 46. Starwood's Plan had \$133 million sitting in a money market fund  
25 earning a measly .65 percent a year and nothing in any stable value fund. The Plan had  
26 no stable value fund on its menu.

27 47. A stable value fund is an important option for a conservative investor.

28 48. Stable value funds invest in short to intermediate term bonds in which

1 the returns are protected by wrap contracts to stabilize returns over time and preserve  
2 funds. A wrap contract is issued by an insurance company or other financial institution  
3 and provides a guaranty that investors will receive the book value of their account plus  
4 interest that reflects the performance of the underlying bond holdings.

5 49. Stable value funds are an essential investment alternative for 401(k)  
6 plans. Equity markets have been historically more volatile than bond markets. A  
7 stable investment option allows plan participants to move out of equity markets during  
8 periods of high volatility and into a stable investment that protects principal while  
9 offering a moderate rate of interest.

10 50. Stable value funds also offer investors who do not want to ride out  
11 periods of market instability with the ability to protect their principal and earn a  
12 reasonable rate of return. Historically, stable value funds have substantially  
13 outperformed money market funds, while experiencing far less volatility than bond  
14 funds.

15 51. As of December 31, 2015, the Plan had \$133 million invested in a money  
16 market fund which only earned .65% a year. It offered no stable value fund at all.

17 52. A stable value fund would have provided essentially the same level of  
18 risk as a money market while delivering much better return.

19 53. For example, Vanguard offers the Battelle Stable Value Fund which has  
20 had a five year return of 2.94%, or 2.29% more than the Starwood's Plan's money  
21 market.

22 54. An enhanced performance of 2.29% on \$133 million over six years equals  
23 lost income to Plan participants of \$18 million.

24 55. By failing to offer a stable value fund as an investment option in addition  
25 to a money market fund, Starwood failed to fulfill its fiduciary duties to Plaintiffs to  
26 offer them a reasonable and adequate array of investment choices.

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1 **Damages**

2 56. As the result of the foregoing conduct and omissions by Starwood,  
3 Plaintiffs and all persons similarly situated have sustained monetary losses in an  
4 amount to be determined at trial, but believed to be well in excess of \$25 million.

5 **CLASS ACTION ALLEGATIONS**

6 57. Plaintiffs bring this action as a class action pursuant to Rules 23(a) and  
7 23(b)(1), or, in the alternative, 23(b)(3) of the Federal Rules of Civil Procedure on  
8 behalf of the following class of similarly situated persons (the Class):

9 All participants in and beneficiaries of the Starwood Retirement  
10 Plan for the period from six years before the filing of this action  
11 until the time of trial (the Class Period).

12 58. The members of the class are so numerous that joinder of all members is  
13 impracticable. At all relevant times, the number of Class members was about forty  
14 thousand or more.

15 59. Common questions of law and fact exist as to all members of the Class  
16 and predominate over any questions solely affecting individual members of the Class.  
17 Among such questions are:

- 18 (a) Whether Starwood breached its fiduciary duties with respect to the  
19 administration, management and supervision of the Plan;  
20 (b) Whether Starwood breached its fiduciary duties by failing to include a  
21 stable value fund in the investment menu of the Plan;  
22 (c) Whether Starwood breached its fiduciary duties by failing to minimize  
23 Plan fees and expenses;  
24 (d) Whether the fees charged, collected and negotiated in connection with  
25 the Plan were reasonable;  
26 (e) Whether the Plan's practice of revenue sharing was reasonable and  
27 whether it was in breach of Starwood's fiduciary duties;  
28 (f) Whether Starwood breached its fiduciary duties by causing Plan

1 participants to pay two layers of fees while investing in index funds;  
2 (g) Whether Starwood breached its fiduciary duties by failing to follow  
3 the express investment instructions of Plan participants; and,  
4 (h) Whether Starwood's alleged breaches of fiduciary duties caused losses  
5 to the Plan and its participants, and if so, in what amount.

6 60. There are no substantial individual questions among Class members on  
7 the merits of this action.

8 61. Plaintiffs' claims are typical of the members of the Class.

9 62. Plaintiffs have been injured by the alleged breaches of fiduciary duties  
10 and are committed to fairly, adequately and vigorously representing and protecting the  
11 interests of Class members.

12 63. Plaintiffs have retained counsel who are experienced in class action  
13 litigation.

14 64. Neither Plaintiffs, nor their counsel, have any interests that would cause  
15 them to refrain from vigorously pursuing this action.

16 65. Plaintiffs are adequate class representatives.

17 66. Class certification of Plaintiffs' claims is appropriate pursuant to Fed. R.  
18 Civ. P. 23(b)(1) because the prosecution of separate actions by individual Class  
19 members would create a risk of inconsistent or varying adjudications which would  
20 establish incompatible standards of conduct for Starwood, and/or because  
21 adjudications with respect to individual Class members would as a practical matter be  
22 dispositive of the interests of non-party Class members.

23 67. In the alternative, class certification is also appropriate under Fed. R. Civ.  
24 Pro. 23(b)(3) because common issues of law and fact predominate over questions  
25 affecting only individual members of the Class.

26 68. A class action is superior to other available methods for the fair and  
27 efficient adjudication of this controversy. Starwood has injured Plaintiffs and the  
28 members of the Class by diminishing their investment returns. The diminution of

1 returns and excessive fees are relatively small for each individual, but large in the  
2 aggregate. Individual participants have an insufficient stake in the outcome of this  
3 matter to devote substantial resources to pursue it so only through a class action  
4 mechanism can their claims be effectively pursued.

5 69. On information and belief, the names and addresses of all Class members  
6 are available through Starwood, and adequate notice can be provided to Class members  
7 as required by Fed. R. Civ. Pro. 23.

8  
9 **CLAIM FOR RELIEF**

10 **Breach of Fiduciary Duties Under ERISA**

11 70. Plaintiffs incorporate each of the preceding paragraphs as if set forth  
12 fully herein.

13 71. Defendant Starwood failed to ensure that fees in connection with the  
14 Plan were reasonable.

15 72. Defendant Starwood failed to engage in a prudent process for the  
16 selection of Plan investment options and failed to include a stable value fund in  
17 addition to a money market fund.

18 73. Defendant Starwood failed to engage in reasonable and prudent Plan  
19 management by exposing Plan participants who invested in index funds to incur two  
20 levels of fees resulting in a total amount of fees that were seven times larger than other  
21 options.

22 74. Defendant Starwood failed to ensure that investment directions of Plan  
23 participants were followed.

24 75. Defendant Starwood failed to give Plan participants adequate disclosure  
25 concerning revenue sharing which made it impossible to determine whether the  
26 amounts paid were reasonable for services rendered.

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**JURY TRIAL DEMANDED**

76. Plaintiffs demand a trial by jury under F. R. Civ. Pro. 38 and the Constitution of the United States.

**PRAAYER FOR RELIEF**

Wherefore, Plaintiffs pray for judgment as follows:

- A. Certify this action as a class action and appoint Plaintiffs’ counsel as class counsel pursuant to F. R. Civ. Pro.23;
- B. Declare that Defendant has breached its fiduciary duties to the Class;
- C. Enjoin Defendant from further violations of its fiduciary responsibilities, duties and obligations under ERISA;
- D. Order that Defendant make good to the Plan all losses resulting from its breaches of fiduciary duties;
- E. Order that Defendant disgorge any profits that it has made through its breaches of fiduciary duties;
- F. Award Plaintiffs reasonable attorneys’ fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. 1132(g), and/or for the benefit obtained for the common fund;
- G. Order Defendant to pay pre-judgment interest; and,
- H. Award such other and further relief as the Court deems just.

Dated this 16th day of December, 2016.

Respectfully Submitted,

**SOLOUKI | SAVOY, LLP**

By:  /s/ Grant Savoy  
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Shoham J. Solouki, Esq.  
*Attorneys for Plaintiffs*



1 [Additional Counsel for Plaintiffs]

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