

NOTICE OF PREMIERE VACATION COLLECTION OWNERS ASSOCIATION, INC. SETTLEMENT

You may benefit from this class action settlement. You are not being sued.

If you owned Points in the Premiere Vacation Collection Owners Association, Inc. (the “Association”) at any time between 2011 and 2022, you may benefit from the settlement of this class action lawsuit.

A federal court authorized this notice.
This is not a solicitation from a lawyer.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you owned Points in the Association between 2011 and 2022, you would receive a cash payment as explained in Section 6, below.
EXCLUDE YOURSELF	You would receive no cash benefits, but you will not be giving up any legal claims you may have against Diamond Resorts International, Inc. (“DRI”), Diamond Resorts Management, Inc. (“DRM”), Troy Magdos (“Magdos”), and/or Kathy Wheeler (“Wheeler”) (collectively, “Defendants”).
OBJECT	You may write to the Court about why you don’t like this settlement. You may also appear at the Final Approval Hearing.
GO TO A HEARING	You may ask to speak in Court about the fairness of the settlement.

These rights and options, and deadlines to exercise them, are explained below.

1. Why was this notice issued?

The Plaintiffs—Norman Zwicky, George Abarca, Vikki Osborn, and Elizabeth Stryks-Shaw (collectively, the “Plaintiffs”)—filed a class action Complaint alleging that the defendants violated the Racketeering Influenced and Corrupt Organizations Act (“Federal RICO”), the Arizona Anti-Racketeering Act (“Arizona RICO”) and the Arizona Timeshare Owners Association and Management Act (the “Arizona Timeshare Act”) by misrepresenting how much they would have to pay in annual fees (also called “Assessments”) for timeshare interests the Plaintiffs purchased. *See Zwicky v. Diamond Resorts Inc.*, CV-20-02322-PHX-DJH, 2021 WL 2685585, at *1 (D. Ariz. June 30, 2021).

The Defendants remaining in this case (after dismissal by the Court of others) are Diamond Resorts International, Inc. and Diamond Resorts Management, Inc. (the “Corporate Defendants”); and Troy Magdos and Kathy Wheeler (the “Individual Defendants”). All Defendants have denied and continue to deny all material allegations of the Complaint including, specifically, the allegations that they made any

misrepresentations, and have asserted numerous defenses. If this settlement is not approved, the parties will continue to engage in additional discovery, including, without limitation, the review and analysis of thousands of pages of additional documents and the taking of depositions.

After the Court's ruling on the Defendants' various motions to dismiss, the parties participated in a full day, private mediation in November 2021, before a retired federal chief magistrate judge serving as mediator. Prior to mediation, each side submitted comprehensive statements setting forth the strengths and weaknesses of their case. The parties reached an agreement-in-principle to settle this matter at that mediation. After further negotiations taking place after the mediation, the parties refined the agreement-in-principle and reached the agreement to settle on the terms set forth herein, which Plaintiffs believe provides additional benefits to the Class. The Settlement provides for the establishment of a Settlement Fund of \$13,000,000.00 to pay Settlement Class Member Payments, Settlement Administration Costs, any attorneys' fees and litigation expenses awarded by the Court, any Service Awards ordered by the Court, and any *cypres* payment due under the Settlement. The Settlement also includes certain non-monetary benefits.

Your legal rights are affected whether you act or don't act. Read this notice carefully.

2. What is this lawsuit about?

In this lawsuit, Plaintiffs claimed that Defendants intentionally underestimated certain fees and costs relating to how much Plaintiffs would have to pay the Association (hereinafter, "Assessments") to maintain the right to use his or her Points. *See Zwicky*, 2021 WL 2685585 at *1. Specifically, the Plaintiffs alleged that Assessments for each year were forecasted in an annual budget based on an estimation of Association expenses, but the actual Assessments then imposed upon Association members were materially greater than had been predicted. *See id.* Plaintiffs alleged that their Assessments increased because Defendants allegedly hid certain fees and costs for the management services that they, or their affiliates, provided the Association and/or intentionally excluded them from the annual budgets despite knowing they would result in increased Assessments at the end of the year. *See id.* at **1–2.

In 2013, Plaintiff Zwicky hired Jon L. Phelps, one of the Class Counsel of this lawsuit to contact the Association and request information why his annual Assessments had increased. When the Association did not release the records he requested, Zwicky, through Attorneys Jon L. Phelps and Edward L. Barry, filed a records inspection action against the Association in an Arizona state trial court in 2015 ("Document Inspection Action"). *See Zwicky v. Premiere Vacation Collection Owners Ass'n*, 244 Ariz. 228, 230–231, ¶¶ 4–9, 418 P.3d 1001, 1003–04 (App. 2018). The trial court ordered, amongst other relief, that the Association give Zwicky over one thousand pages of documents so he could determine how the Association was calculating Assessments and issued a ruling allowing Zwicky to disclose that information to Members, like yourself, and file this class action lawsuit. *See id.* The Association appealed the trial court's decisions. The Arizona Court of Appeals, in January 2018, upheld the trial court's ruling that the Association had to produce those documents, but held that Zwicky could not disclose the documents to Members and preserved the confidential nature of certain documents. *See id.* at ¶¶ 30–34. The Arizona Court of Appeals remanded the case back to the Arizona trial court, which determined that Zwicky could *only* use the information from those records to file this class action Complaint, which he did in August 2020. *See Zwicky*, 2021 WL 2685585, at *2–4.

3. What is a class action?

In a class action, one or more people called Class Representatives—in this case, Norman Zwicky, George Abarca, Vikki Osborn, and Elizabeth Stryks-Shaw—sue for themselves and on behalf of a group of people (or a “Class”) who have similar claims. Here, the Class consists of all persons who are current or former Members of the Association who were assessed Assessments during the Class Period.

4. Why is there a settlement?

The Court has not decided in favor of Plaintiffs or Defendants. To avoid the cost, risk, and delay of litigation, and the uncertainty of trial, the parties agreed to settle this Action. Plaintiffs and Class Counsel believe the settlement is fair, reasonable, and adequate.

5. Am I a Class member?

The Court has decided that everyone falling under the following criteria is a Class Member:

[A]ll current and former members of the Association who were assessed Assessments for any Calendar year(s) from 2011 through and including 2022.

ILX Acquisitions, Inc. and any entity that received any bulk transfer/assignment of ILX’s Bulk Membership Interest in the Association are excluded from the Class, as are DRI, DRM, their parents, subsidiaries, successors, affiliates, current officers and directors and all judges assigned to the Action and their immediate family members.

There are approximately 26,500 Class Members.

6. What can I get from the settlement?

Everyone who does not **exclude** themselves from the Class will become a Settlement Class Member and will receive a cash payment. The amount you receive will depend on, among other things, the number of “Points” you owned, the Assessments assessed on those Points, the length of time you owned such Points, and how many Class Members elect to be excluded from the Class.

Please note that this settlement does not affect the validity of your agreements with the Association and/or the Corporate Defendants or your responsibility for any existing payment obligations under those agreements.

7. When will I receive these benefits?

If you do not **exclude** yourself, and if the settlement is approved by the Court, you will receive these cash benefit approximately **ninety (90) days** after the settlement has been finally approved by the Court.

8. Are there any other benefits of the settlement?

In addition to the \$13,000,000.00 Settlement Amount, Defendants have also agreed to adopt the following standards governing future dealings with the Association and its members (“Non-Monetary Terms”):

- a. During any period of time in which the Association, as the 'Managing Entity', engages DRM or any of its affiliates as the 'Manager' to provide some or all of the management services to the Collection and or the Club Accommodations contemplated by the PVC

Membership Plan, such engagement shall be pursuant to a written management contract (the "PVC Management Contract") that complies with and contains all applicable provisions of the (a) Arizona Timeshare Owners' Association and Management Act (A.R.S. § 33-2201 et. seq.), (b) Arizona Real Estate Timeshares Act (A.R.S. § 33-2197 et. seq.), and (c) all Collection Instruments including, the PVC Membership Plan ((a) - (c) are collectively, the "Management Requirements," as such may be amended from time to time).

- b. DRM intends to propose an amended PVC Management Contract to the Association Board on or before February 28, 2024 that, in addition to the Management Requirements and other customary terms, provides for the items set forth below.
- c. The amended PVC Management Contract shall contain a complete disclosure of the calculation of the "Management Fee" and of any additional material amounts payable by the Association to the Manager or to any affiliate of the Manager, whether designated as a "fee," reimbursement or absorption of expenses of the Manager or affiliate, or direct or indirect corporate costs thereof.
- d. The amended PVC Management Contract shall provide that the Management Fee shall not exceed 15% of the total Assessments assessed upon Members of the Association in each Fiscal Year (the "15% Cap"), except as provided for in Article IV, Section 4.03 of the Premiere Vacation Club Membership Plan (restated) dated February 14, 2008, as such may be amended from time to time, provided that in all events:
 - i. any Management Fee exceeding the 15% Cap must comply with standards of commercial reasonableness; and
 - ii. any intent to increase the Management Fee above the 15% Cap must be disclosed to current Members of the Association in advance in clear, conspicuous, and understandable terms and in a manner calculated to provide actual notice to each Member.
- e. The amended PVC Management Contract shall further provide that DRM shall perform or cause the Manager to perform (if other than DRM) its duties under the amended PVC Management Contract in compliance with the Management Requirements including, without limitation, with respect to the preparation of itemized annual operating and reserve budgets and the provision of such budgets to Members of the Association.
- f. Without limiting the generality of the foregoing, the budgets shall contain a complete disclosure as to the common expenses and operating costs of the Collection, including all of the variable costs of operation, management and reserves, and method of assessment, and shall also contain any related party transaction disclosures that appear in any audited financial statements of the Association and the Manager for the previous budget year.
- g. The annual budgets and the audited financial statements shall disclose any material reimbursement or absorption or allocation of internal expenses of the Manager or affiliate, and/or direct or indirect corporate costs thereof, in a clear, specific, conspicuous, and readily understandable manner.

These non-cash benefits will benefit all current Members, even those Members who chose to exclude themselves from receiving cash benefits.

Questions? Visit www.ZwickySettlementAssessment.com

9. How do I become part of the settlement and receive those cash benefits?

If you are a member of the Class and entitled to receive a payment, you do not need to submit anything to receive a Settlement Class Member Payment. To make sure that you receive your cash benefits at your current address and all other notices regarding this settlement, you should log into your Diamond Resorts account at loginso.diamondresorts.com and verify that you have provided your current contact information, including mailing address, physical address, email account, and phone number.

10. What am I giving up by receiving those cash benefits?

If the Court approves the Settlement, and you **do not exclude** yourself from the Settlement (“opt-out”), you will release all claims related to any and all improper or excessive charges or fees, including Assessments, and any actions taken by any of the Defendants relating to the charging or assessing of any and all charges or fees to the Association or its members. A release means that you can’t sue or be part of any other lawsuit against the Defendants, the Association, or other parties specified in the Settlement Agreement and Release (“Settlement Agreement”) regarding the claims or issues in this lawsuit. The Settlement Agreement is available for review at www.ZwickyAssessmentSettlement.com.

11. How do I EXCLUDE myself from this settlement?

If you do not want to receive a cash benefit from the Settlement and become a Settlement Class Member you must exclude yourself from the Settlement. To exclude yourself from the Settlement, you **must** send a letter by mail stating that you want to be excluded from *Zwicky, et al. v. Diamond Resorts International, Inc. et al.*, Case No. 2:20-CV-02322-PHX-DJH. Be sure to include the name and number of this case, the date, and your legal name, address, telephone number, email address, and signature. You must mail your exclusion request so that it is postmarked **no later than December 26, 2023**, and sent to the following address:

Zwicky Assessment Settlement
c/o JND Legal Administration
P.O. Box 91345
Seattle, WA 98111

Unless you exclude yourself from the Settlement (also sometimes referred to as “opting out” of the Settlement), you give up the right to sue the Defendants, the Association and certain other individuals and or entities for the claims that the Settlement resolves.

12. If I exclude myself, do I still receive benefits from this settlement?

You will not receive the cash benefits from this Settlement if you exclude yourself from this Settlement. However, if you are a current Member of the Association, you will receive the non-monetary benefits described above.

13. Do I have lawyers in this case?

Yes, the Court has named the law firm of **Phelps & Moore, PLC**, and counsel **Edward L. Barry** as Class Counsel. Their information is provided below. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How much will the Class Representatives receive?

Subject to court approval, Plaintiffs George Abarca, Vikki Osborn, and Elizabeth Stryks-Shaw will each receive **\$1,500.00** out of the \$13,000,000.00 Settlement Amount for their services as Class Representatives since 2020 or 2021 in addition to their Settlement Class Member Payments. Subject to court approval, Plaintiff Zwicky will receive **\$10,000.00** (in addition to his Settlement Class Member Payment) out of the Settlement Amount for his services related to and in the Document Inspection Action since 2013 and as a Class Representative in this Action. Class Representatives have not received any prior payment for their services related to this Action and have not received, and will not receive, any additional or prior benefits from Defendants or anyone else regarding this litigation. The Court's approval of any Service Award is separate from and independent of the Court's determination of whether to approve the Settlement. If the Court declines to approve the Settlement, no money will be paid to the Class Representatives.

15. How will the lawyers be paid?

Class Counsel will ask the Court for an award of attorneys' fees of **25%** of the \$13,000,000.00 Settlement Fund, for a total of **\$3,250,000.00**. Class Counsel will also ask the Court for an award of expenses advanced in prosecuting the claims. You will not be charged for these lawyers; they will receive these fees and expenses out of the Settlement Fund, subject to the Court's approval.

With the exception of \$1,661.00 paid by Zwicky to Jon L. Phelps for sending an initial demand letter in 2013-14, which was refunded, Class Counsel have not received any prior payment for their work investigating these allegations, prosecuting this litigation, or negotiating the Settlement; they have paid all prior fees, expenses, and costs themselves. This Settlement and their requested award of fees and expenses, if approved, would be the first and only monetary benefit Class Counsel receive for their work in this case.

The Court's award of attorneys' fees and expenses to Class Counsel shall be separate from and independent of the Court's determination of whether to approve the Settlement. If the Court declines to approve the Settlement, no award of attorneys' fees and expenses shall be paid to Class Counsel.

The Parties agreed that the Defendants will not object to an award up to 25% of the Settlement Fund as attorneys' fees, and reimbursement of expenses, but so agreed only after reaching agreement on all other material terms of the Settlement in this matter.

16. How do I OBJECT, or tell the Court that I do not like the Settlement?

You may tell the Court that you do not agree with the entire Settlement or any part of the Settlement by submitting your objection to the Court by **December 26, 2023** at the address listed below, stating that you object and the reasons why you think the Court should not approve the Settlement. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

You must include the name and number of the case: *Zwicky, et al. v. Diamond Resorts International, Inc. et al.*, Case No. 2:20-CV-02322-PHX-DJH, your name, address, telephone number, email address, and signature. If you are objecting, you may also appear at the Final Approval Hearing, as explained below.

If you chose to hire your own lawyer to file this objection for you, he or she must file an appearance in this case by **December 26, 2023**.

If you file an objection, you must:

- provide the identity and address of all counsel who represent you (if any), including any former or current counsel or any other counsel who may be entitled to compensation related to the objection;
- state whether said counsel has complied with all applicable laws and rules for filing in this Court;
- state whether you or your counsel intend to personally appear at the Final Approval Hearing;
- identify any witness whom you intend to call to testify;
- state all grounds for the objection, accompanied by any legal support for the objection known you or your counsel;
- state the number of times you have objected to a class action settlement within the preceding five (5) years, the caption of every case (including case number) in which your prior objections were made; the name of your counsel in each such prior objection; and a copy of any orders issued by the trial and appellate courts;
- provide a copy of any orders related to or ruling upon your counsel's or the counsel's law firm's prior objections made on behalf of any objector that were issued by the trial and appellate courts in each case in which your counsel and/or counsel's law firm have objected to a class action settlement within the preceding five (5) years; and
- provide a copy of any and all agreements that relate to the objection between you or your counsel and any other person or entity.

The address you must file your objections with is:

Clerk of Court
United States District Court for the District of Arizona – Phoenix Division
Sandra Day O'Connor U.S. Courthouse, Suite 130
401 West Washington Street, SPC 1
Phoenix, Arizona 85003-2118

In addition to filing your objection with the Court, you **must also** mail the same written objection so that it is postmarked no later than **December 26, 2023** to the following addresses:

Phelps & Moore, PLC
6424 East Greenway Parkway,
Suite 100
Scottsdale, Arizona 85254

Edward L. Barry
2120 Company Street,
Third Floor
Christiansted, Virgin Islands 00820

Julie Singer Brady
Brandon Crossland
Baker & Hostetler, LLP
200 South Orange Avenue
Orlando, Florida 32801

Please note that if the Court does not approve the Settlement pursuant to your objection, you and all other Class Members will not receive any of the benefits outlined above and the litigation will proceed as if the Settlement was never reached.

17. When and where is the FINAL APPROVAL HEARING?

The Court will hold a hearing to decide whether to approve the Settlement. You may attend if you wish, but you are not required to do so. The Court will hold this Final Approval Hearing either in person or remotely at **10:00 a.m. MST on February 8, 2024, in Courtroom 605 of the United States District Court for the District of Arizona, 401 West Washington Street, Phoenix, Arizona 85003**. The purpose of the hearing will be for the Court to determine whether the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Class, and to determine the appropriate amount of compensation for Class Counsel and Service Awards to the Class Representatives (if any). At that hearing the Court will be available to hear any objections and arguments concerning the fairness of the proposed Settlement. If you chose to hire your own lawyer to represent you at the Final Approval Hearing, he or she must file an appearance in this case by **December 26, 2023**. The hearing may be postponed to a later date without notice, so it is a good idea to check the Settlement Website at www.ZwickyAssessmentSettlement.com for any changes.

You are not required to attend this hearing if you do not wish to.

18. How do I get more information?

This notice is only a summary of the proposed Settlement of this Action. All pleadings and documents filed with the Court, including the Settlement Agreement, may be reviewed, or copied in the Clerk of Court, United States District Court for the District of Arizona at the following address:

Clerk of Court
United States District Court for the District of Arizona – Phoenix Division
Sandra Day O’Connor U.S. Courthouse, Suite 130
401 West Washington Street, SPC 1
Phoenix, Arizona 85003-2118

Please do not call the Judge about this case. Neither the Judge, nor the Clerk of Court, will be able to give you advice about this case. Furthermore, Defendants’ attorneys do not represent you and cannot give you legal advice.

If you have any questions regarding this case or the Settlement, you can obtain information through the Settlement’s Website at www.ZwickySettlementAssessment.com. You can also contact Class Counsel at:

Phelps & Moore, PLC
6424 East Greenway Parkway, Suite 100
Scottsdale, Arizona 85254
(480) 534-1400
driclass@phelpsandmoore.com

Edward L. Barry
2120 Company Street, Third Floor
Christiansted, Virgin Islands 00820
(340) 719-0601
class.matters.2022@gmail.com

Before doing so, please read this full notice carefully and review the Settlement Website, which includes the complete Settlement Agreement; your question(s) may have been answered therein.