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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Norman Zwicky; George Abarca; Vikki Osborn; and Elizabeth Stryks-Shaw, for themselves and on behalf of all others similarly situated,

Plaintiffs,

v.

Diamond Resorts International, Inc.; Diamond Resorts Management, Inc.; Troy Magdos; and Kathy Wheeler,
Defendants.

Case No.: 2:20-cv-02322- DJH

**[PROPOSED] ORDER AND
JUDGMENT GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

(ASSIGNED TO THE **HONORABLE
DIANE J. HUMETEWA**)

THIS MATTER HAVING COME before the Court for hearing on Plaintiffs' Unopposed Motion for Final Approval of the Class Action Settlement ("Settlement") pursuant to the Court's Orders entered November 15, 2022 (Doc. 136), granting preliminary certification of the Settlement Class, and entered September 6, 2023 (Doc. 149), granting preliminary approval of the Settlement Agreement and Release, now upon the motion for approval of the Class Action Settlement as set forth in the Settlement Agreement (Doc. 129-1) ("Agreement"), and due and adequate notice having been given to the members of the Class and the Court having considered all papers filed and proceedings had herein, including the Final Approval Hearing held on February 8, 2024 to determine the fairness of the Settlement and Motion for Attorneys' Fees, Costs, and Service Awards, and the Court otherwise being fully informed in the premises and for good cause appearing therefore, the Court finds that the Settlement is fair, reasonable, adequate, and in the best interests of the Class Members and further finds that the amounts sought in the Motion for Attorneys' Fees, Costs, and Service Awards is fair and reasonable.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. This Order and Judgment approving the Settlement incorporates by reference the definitions in the Agreement filed in this action, and all capitalized terms herein shall have the same meanings as set forth in the Agreement.

2. This Court has jurisdiction over the subject matter of this Action and may grant Final Approval of the Settlement, including all Exhibits to the Settlement Agreement. 28

1 U.S.C. § 1332. The Court also has personal jurisdiction over the Parties and the Settlement
2 Class Members.

3 3. The Court grants Final Approval of the Settlement, as set forth in the Settlement
4 Agreement, as it is fair, reasonable and adequate, consistent and in compliance with all
5 applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness
6 Act, the United States Constitution (including the Due Process Clause) and the Rules of
7 the Court, and is in the best interests of each of the Parties and the Settlement Class
8 Members.

9 4. The Settlement Class approved by this Court, and for which Final Approval is given,
10 is as follows:

11 All current and former members of the Premiere Vacation
12 Collection Owners Association who were assessed
13 Assessments for any Calendar year(s) from 2011 through
14 and including 2022, excluding ILX Acquisition and any
entity that received any bulk transfer/assignment of
ILX Acquisition's Bulk Membership in the Premiere
Vacation Collection Owners Association.

15 Excluded from the Class are Diamond Resorts International, Inc., Diamond
16 Resorts Management, Inc., their parents, subsidiaries, successors, affiliates, current
17 officers and directors and all judges assigned to this litigation and their immediate
18 family members.

19 5. The Class Period is July 31, 2010 through October 5, 2023 (the date of notice to the
20 Class).

21 6. For settlement purposes only, the Settlement Class satisfies all the requirements of
22 Federal Rule of Civil Procedure 23(a) (including the requirements of numerosity,
23 commonality, typicality and adequacy) and the requirements of Rule 23(b)(3).

24 7. The Court finds that the mailing of the Class Notice constituted the best notice
25 practicable under the circumstances, and that such individual notice to all Class Members
26 constituted valid, due, and sufficient notice to all persons entitled thereto, complying fully
27 with the requirements of Fed. R. Civ. P. 23 and due process.
28

1 8. Defendants complied with the Class Action Fairness Act of 2005 and 28 U.S.C. §
2 1715 and its notice obligations by providing appropriate federal and state officials with
3 information about the Settlement. Plaintiffs complied with A.R.S. § 13-2314.04(H).

4 9. There have been no objections to the Settlement and only 3 opt-outs. The Settlement
5 Class Members include the members of the Class who did not opt-out of the Settlement.

6 10. Each and every Settlement Class Member is and shall be conclusively and forever
7 bound by the Agreement. The Agreement shall be preclusive in all pending and future
8 lawsuits or other proceedings. It shall be binding as to any and all of the Released Claims,
9 as specified in Section XIII of the Agreement.

10 11. The Releases in Section XIII of the Agreement are incorporated into this Order and
11 shall become effective on the Effective Date of the Settlement. Accordingly, each and
12 every Settlement Class Member hereby compromises, settles, and releases each and every
13 one of the Released Claims against the Released Parties, as defined in the Agreement.

14 12. The Court directs the Parties and their counsel to further implement and
15 consummate the Settlement in accordance with the terms and conditions set forth in the
16 Agreement, and orders all Parties to take the necessary steps to effectuate the Settlement
17 as set forth in the Agreement.

18 13. The allocation of Settlement Class Member Payments is hereby approved as fair and
19 reasonable. The distribution of Settlement Class Member Payments as set forth in the
20 Agreement is final. As set forth in the Agreement, the Settlement Administrator shall take
21 all reasonable and diligent steps to pay all eligible Settlement Class members within thirty
22 (30) days of the Effective Date in accordance with the terms of the Agreement.

23 14. Within thirty (30) days after entry of this Order, the Corporate Defendants shall pay
24 or cause to be paid the remainder of the Settlement Fund amount (\$12,925,000) into the
25 Escrow Account.

26 15. Having reviewed the filings, including the Motion for Attorneys' Fees, Costs and
27 Service Awards, the Court finds, concludes and orders as follows:

28 a. Class Counsel has vigorously prosecuted this case and conducted extensive

1 investigation of the governing law, relevant facts and relevant documents.
2 During the litigation, Defendants provided more than 4,800 pages of documents
3 and electronic data and Class Counsel reviewed an additional 2,000 pages of
4 public records relevant to the claims in this litigation. Throughout the litigation
5 and to prepare for mediation, Class Counsel determined damages and has
6 information on which to make an informed decision about the Settlement.

- 7 b. Class Counsel worked to create the plan of allocation of Settlement Class
8 Member Payments, which were included in the Settlement Agreement submitted
9 to the Court on April 14, 2022. The plan of allocation is fair, reasonable and
10 equitable.
- 11 c. The Settlement provides for a Settlement Fund that shall be used to pay
12 Settlement Class Member Payments, the attorneys' fees and litigation costs,
13 Service Awards to the Class Representatives, and all Settlement Administration
14 Costs, in an aggregate value of \$13,000,000. After adjustment for attorneys' fees
15 and litigation costs, Service Awards to the Class Representatives, and all
16 Settlement Administration Costs, the remainder of the Settlement Fund will be
17 paid to Class Members as set forth in the Agreement and there shall be no
18 reversion.
- 19 d. The Settlement eliminates the risks inherent in continuing the litigation in this
20 case, including the risk of achieving and maintaining class action status and the
21 risks of no monetary recovery for Class Members.
- 22 e. The Settlement is fair, reasonable and in the best interests of the Class Members
23 particularly given the complex issues in the Action, the risks to Class members,
24 and the further delay that would be entailed in continued litigation—including
25 motion practice, a potential trial, and the subsequent appeal of any judgment
26 after such trial.
- 27 f. Considering the foregoing findings and the risks and duration of litigation, the
28 amount offered in the Settlement is fair, reasonable and adequate.

- 1 g. Class Counsel and the Class Representatives adequately litigated this Action and
2 adequately represented the best interests of the Settlement Class for the purposes
3 of negotiating, entering into, and implementing the Settlement. Class Counsel's
4 opinion urging approval of the Settlement merits great weight both because of
5 Class Counsel's familiarity with the Action and because of their extensive
6 experience in other complex litigation.
- 7 h. The Court finds that there was no collusion between the Parties. The Settlement
8 is the result of extensive arm's length adversarial negotiations and mediation
9 process. The parties engaged in mediation with Hon. Edward Infante, a
10 nationally recognized and highly experienced mediator with substantial complex
11 class action knowledge.
- 12 i. All counsel represented the interests of their clients vigorously and devoted a
13 considerable amount of time, effort and resources to secure the terms of the
14 Settlement, including the plan of allocation to ensure a fair, adequate and
15 equitable distribution of the Settlement Fund.
- 16 j. The Court finds that Class Counsel's request, which consisted of a request for
17 an amount for attorney's fees of \$3,250,000.00 (25% of the Settlement Fund)
18 and out of pocket costs and expense reimbursement of \$22,335.45, for a total of
19 \$3,272,335.45 is appropriate in accordance with the standards set forth in this
20 Circuit. In making this determination, the Court has considered the following
21 factors: the result achieved; the complexity of the case and the risks and expense
22 to Class Counsel of litigating the Action; the skill, experience, and performance
23 of Class Counsel; the contingent nature of the fee; and the fees awarded in
24 comparable cases.
- 25 k. The Court further finds that a Service Award to Class Representative Zwicky in
26 the amount of \$10,000.00 and Service Awards to the other Class Representatives
27 in the amount of \$1,500.00 each to be deducted out of the Settlement Fund is
28 warranted given the actions the Class Representatives have taken to protect the

1 interests of the Class Members, the degree to which the Class Members have
2 benefitted from those actions; the amount of time and effort the Class
3 Representatives expended in pursuing the litigation; the risk to the Class
4 Representatives in commencing suit, both financial and otherwise; the potential
5 notoriety and personal difficulties encountered by the Class Representatives; and
6 the relationship between the Service Awards and the total Settlement Fund, and
7 the amounts received by the individual Class Members. The Service Awards
8 totaling \$14,500.00 are fair, reasonable and appropriate in accordance with the
9 standards set forth in this Circuit.

10 1. For the reasons set forth above, Plaintiff's Motion for Attorneys' Fees, Costs,
11 and Service Awards is granted. The Settlement Administrator is hereby ordered
12 to pay Class Counsel's attorneys' fees in the amount of \$3,250,000.00 and out
13 of pocket costs and expense reimbursement of \$22,345.45 for a total payment of
14 \$3,272,335.45 as attorneys' fees and costs. Such fees and costs shall be deducted
15 from the Settlement Fund and paid to Class Counsel within five (5) days of the
16 Effective Date as set forth in the Agreement. The Settlement Administrator is
17 hereby ordered to pay Service Awards in the amount of \$10,000.00 to Class
18 Representative Zwicky and in the amount of \$1,500.00 for each of the three other
19 Class Representatives. The Service Awards shall be deducted from the
20 Settlement Fund and payment shall be made to Class Representatives within five
21 (5) days of the Effective Date as set forth in the Agreement.

22 16. Without affecting the finality of this Order for purposes of appeal, the Court retains
23 jurisdiction over this matter, and the Parties submit to such exclusive jurisdiction, with
24 respect to effectuating and supervising the interpretation, implementation, and enforcement
25 of the Agreement and any disputed questions of law or fact related thereto as provided in
26 the Agreement.

27 17. The Action and the Released Claims are hereby dismissed on the merits and with
28 prejudice as to the members of the Settlement Class without additional cost to any of the

1 Parties other than as provided for in the Agreement and herein.

2 18. This Order adjudicates all of the claims, rights, and liabilities of the Parties to the
3 Settlement, and is intended to be final and immediately appealable. There being no just
4 cause of the delay, the Clerk shall enter Final Judgment pursuant to Fed. R. Civ. P. 54(b)
5 and Fed. R. Civ. P. 58(a).

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