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MICHAEL K. JEANES Clerk
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C. Troxel, Deputy

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PHELPS & MOORE
PROFESSIONAL LIMITED LIABILITY COMPANY
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Jon L. Phelps (027152)
jon@phelpsandmoore.com
Attorney for Plaintiff

THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Case No. CV2015-051911

NORMAN ZWICKY,

Plaintiff,

vs.

VERIFIED COMPLAINT

PREMIERE VACATION COLLECTION
OWNERS ASSOCIATION, f.k.a. Premiere
Vacation Club, an Arizona nonprofit
corporation,

Defendant.

Plaintiff Norman Zwicky ("Plaintiff"), by and through undersigned counsel, for his
cause of action alleges as follows:

Parties; Jurisdiction; General Nature of Claim

1. Plaintiff Norman Zwicky is an Arizona resident, and a member of the Defendant Premiere Vacation Collection Owners Association.
2. Defendant Premiere Vacation Collection Owners Association (the "Association"), formerly known as Premiere Vacation Club, is a corporation organized and existing under the laws of the State of Arizona, and is an incorporated association of members having rights to use and occupy certain vacation resort properties conditioned upon certain financial obligations on their (members') part.

1 3. This Court has subject matter jurisdiction hereof under Article VI, Section 14
2 of the Arizona Constitution.

3 4. Plaintiff, through this action, seeks judicial enforcement of his right to inspect
4 the books and records of the Association for a “proper purpose” existing under A.R.S. § 10-
5 11602 (statutory inspection right for nonprofit corporations); A.R.S. § 33-2209 (right of
6 inspection under Timeshare Owner's Association and Management Act); and under the
7 common law.

8 **Association; Relationship to Diamond Resorts International; Member Benefits**
9

10 5. Although nominally “nonprofit,” the Association—encompassing 13 vacation
11 resorts located in the Continental U.S. and Mexico comprising the Premiere Vacation
12 Collection— is one of many similar “clubs” or collections created and wholly controlled by
13 Diamond Resorts International (hereinafter, sometimes, “DRI”), a Nevada corporation. The
14 Association is merely an arm or instrumentality of DRI, a for-profit corporation, and its
15 purposes and functions are ultimately proprietary.

16 6. Although in some respects the Diamond Resorts International “club” system
17 resembles a timeshare regime, in reality Plaintiff holds no meaningful ownership interest in
18 any specific real property, no specific temporal occupancy rights to any identifiable real
19 property, and indeed no meaningful legal or equitable interest at all in any specific real
20 property. Quoting from DRI’s 2014 10-K filing with the Securities and Exchange

21 Commission:

22 We [DRI] offer a vacation ownership program whereby
23 members acquire vacation ownership interests (“VOIs” or
24 “Vacation Interests”) in the form of points. Members receive an
25 annual allotment of points depending on the number of points
26 purchased, and, through the Clubs, they can use these points to
stay at destinations within our network of resort properties
Unlike a traditional interval-based vacation ownership product
that is linked to a specific resort and week during the year, our
points-based system permits our members to maintain flexibility
relating to the location, season and duration of their vacation.

1 7. The Board of Directors of the Association is controlled by Diamond Resorts
2 International, and the developer-dominated Board invariably retains DRI or a DRI affiliate
3 to serve simultaneously as property management company at each of the constituent resorts
4 to manage the Association's finances, including fiscal affairs relating to common expenses
5 of the resorts, which are defrayed through assessments levied by the Board and charged to
6 members.

7 8. Specifically, 3 of the 5 members of the Board of the Association are DRI
8 executives serving (respectively) as president, vice president and secretary/treasurer of the
9 Association; and the Board always retains DRI as property management company for each
10 of the constituent resorts within the collection. Quoting again from Diamond Resort
11 International's last 10-K filing with the SEC:

12 Each of the Diamond Resorts managed resorts, other than
13 certain resorts in our European Collection and Latin America
14 Collection, is typically operated through an HOA [home owners
15 association], which is administered by a board of directors.
16 Directors are elected by the owners of intervals at the resort
17 (which may include one or more of the Diamond Collections)
18 and may also include representatives appointed by us as the
19 developer of the resort. As a result, we are entitled to voting
20 rights with respect to directors of a given HOA by virtue of (i)
21 our ownership of intervals at the related resort; (ii) our control of
22 the Diamond Collections that hold intervals at the resort and/or
23 (iii) our status as the developer of the resort. The board of
24 directors of each HOA hires a management company to provide
25 the services described above, which in the case of all Diamond
26 Resorts managed resorts, is us.

21 **Assessments: Fiduciary Duties of Board, Property Management Company (DRI)**

22 9. Both the Board (dominated by DRI) and the property management company
23 or companies (DRI itself or DRI subsidiary) have fiduciary duties to the Association and its
24 members in managing the fiscal affairs of the Association and the collection's resorts,
25 including duties of honesty, good faith and reasonableness in levying and apportioning
26 assessments to cover common expenses of the Association.

1 10. Specifically, the Board and the property management company have the duty
2 to assure that common expenses are properly calculated to include only true common
3 expenses and not the internal overhead or administrative expenses of DRI mischaracterized
4 as common expenses of members; and to assure that common expenses are fairly allocated
5 to units within the collection that DRI owns or controls (directly or indirectly) and which
6 DRI rents to the general public (in the same manner as an ordinary hotelier).

7 **Exorbitant Assessments; Destruction of Value of Plaintiff's Investment**

8 11. Plaintiff originally owned a simple, standard timeshare interest in Kohl's
9 Ranch, now a DRI vacation property in Payson, Arizona. Responding to a DRI's sales
10 solicitation, Plaintiff in 2004 relinquished his timeshare interest and, paying substantial
11 additional cash consideration, "converted" it into 13,000 "points" in the Premiere Vacation
12 Club (now referred to as the "Premiere Vacation Collection").

13 12. "Points" are DRI's internal currency that members use to reserve and pay for
14 a room or suite in a DRI-network resort (typically but not necessarily for a period of 1
15 week).

16 13. In December of 2004, Plaintiff paid \$26,395 for a "Platinum" club
17 membership, consisting of 13,000 points; and, in addition, committed on a permanent basis
18 to the payment of membership dues and assessments levied by the Association, as well as
19 additional fees payable directly to DRI. These charges are annually imposed upon Plaintiff
20 whether or not Plaintiff actually uses his "points."

21 14. During the past several years, Plaintiff has seen an extraordinary increase in
22 his annual assessments, with the result that for 2015, the Association through DRI billed
23 him for \$2,162.59 in assessments (plus a \$175 "connection fee"). In the previous year, the
24 Association/DRI charged \$2,003.09 in assessments (plus a \$170 "connection fee").

25 15. Because of the exorbitant assessments claimed by the DRI-dominated board,
26 Plaintiff's 13,000 points, for which he paid more than \$26,000, are now essentially

1 worthless. The economic benefits of Plaintiff's points ownership and membership in the
2 Association are largely illusory.

3 16. In fact ordinary consumers can obtain roughly the same vacation
4 accommodations for roughly the same cost as the DRI annual assessments (\$2,000 for a
5 week's lodging)—without paying the massive up-front cost, without committing to life-
6 long, unconditional assessment obligations, and without the temporal and geographic
7 booking restrictions of DRI's "club" or "collection" system.

8 17. As a result, DRI points are in fact sold by existing members on the
9 secondary market for pennies on the dollar. See: **Exhibit A** (Internet offering by broker of
10 15,000 DRI points for \$499); **Exhibit B** (offering 8,500 points for \$299); **Exhibit C** (6,000
11 points for \$99).

12 18. Because of the excessiveness of the assessments claimed by the Association
13 and DRI, and the lack of resale market for his near-worthless points, Plaintiff in the present
14 case has accrued arrearages in his assessment liability in an amount exceeding \$10,000, and
15 DRI has threatened to revoke his membership and take other collection actions.

16 **Proper Purpose for Inspection; Dishonorment of Inspection Rights**

17 19. Plaintiff's purpose, which has been made abundantly clear to the Association
18 and to DRI, is to determine whether the Board acted reasonably and in good faith in
19 calculating and approving the assessments in question (which are disputed by Plaintiff), and
20 to determine whether DRI has been paying a fair, equitable and proportionate share of
21 common expenses for units DRI owns, controls, and/or rents to the general public on a
22 profit-generating basis.

23 20. Plaintiff has requested from DRI the following specific records of the
24 Association, showing the following information, to no avail:

25 [a] Number of "points" in each resort held by private
26 owners (owners who are not Diamond Resorts or affiliated with
the Diamond Resorts), and the percentage of total ownership of

1 all units devoted to timeshare use in that resort that those points
2 represent.

3 [b] Number of "points" in each resort owned or
4 controlled by Diamond Resorts, and the percentage of total
5 ownership of all units devoted to timeshare use in that resort that
6 those points represent.

7 [c] Number of "points" in each resort owned or controlled
8 by the local resort association, and the percentage of total
9 ownership of all units devoted to timeshare use in that resort that
10 those points represent.

11 [d] Number of "points" in each resort owned or
12 controlled by the Premier Vacation Club Association, Inc., and
13 the percentage of total ownership of all units devoted to
14 timeshare use in that resort that those points represent.

15 [e] The amount paid by Diamond Resorts (or any
16 affiliate) to each local resort association in the form of
17 assessments or other contributions towards common expenses
18 (please specify), and how that amount was calculated or
19 determined.

20 [f] The amount paid by Diamond Resorts (or any
21 affiliate) to Premier Vacation Club Association, Inc., in the form
22 of assessments or other contributions towards common expenses
23 (please specify), and how that amount was calculated or
24 determined.

25 **Exhibit D** (Letter to DRI).

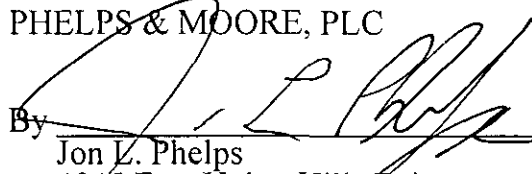
26 **WHEREFORE**, Plaintiffs respectfully requests the following:

- 27 A. An order recognizing and enforcing Plaintiff's inspections rights
28 under A.R.S. § 10-11602 (nonprofit corporations), A.R.S. § 33-
29 2209 (timeshare owner associations), and/or the common law,
30 and requiring the Association to produce, or make available for
31 copying, the books and records described above;
- 32 B. An award reasonable attorneys' fees, pursuant to A.R.S. § 10-
33 11604(C) and 12-341.01; and
- 34 C. For such other and further relief as the Court deems just and
35 proper.

36 RESPECTFULLY SUBMITTED this 12 day of May, 2015.

1 PHELPS & MOORE, PLC

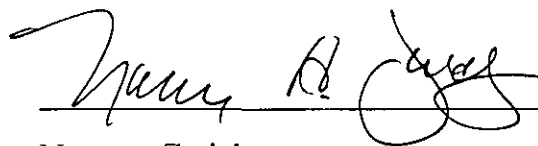
2
3 By


Jon L. Phelps
4045 East Union Hills Drive
Suite A-102
Phoenix, Arizona 85050
Counsel for Plaintiff

6
7
8
9
10 **VERIFICATION**

11
12 I, Norman Zwicky, am the Plaintiff in this action. I declare, certify, and verify under
13 penalty of perjury, as outlined in Rule 80(i) of the Arizona Rules of Civil Procedure, that the
14 foregoing Verified Complaint is true and correct, except for those items that have been
15 alleged upon information and belief, which I am informed and believe to be true.

16 EXECUTED this 11th day of May, 2015.

17
18 

19 Norman Zwicky

EXHIBIT A



Matching Timeshare Owners with Vacationers!
MyResortNetwork.com

Contact an owner at Diamond Resorts International Points in Anywhere, World

Resort Home | **rent a timeshare** | **buy a timeshare** | **rent your timeshare** | **sell your timeshare**

Contact the Owner

[go to another resort](#) | [live site activity](#) | [my account](#)



Contact the owner about your interest in buying their property. No agent solicitations and no spammers.



Ad Information for Diamond Resorts International Points in Anywhere, World

Owner Christopher Nuding	Price \$499.00	Date of Contact 4/25/2015
Unit # 15,000	Bdrms/Bthrms/OCC / varies / points	Week Number Float

Additional Information Free Closing! Enjoy 15,000 points, with Annual usage. All closing is done by an accredited BBB member with an A+ rating. Call or email for more details! 34771RM

▶ See [all of my rental advertisements](#) 87 ad(s)

▶ See [all of my resale advertisements](#) 652 ad(s)

Your Contact Information and Message to the owner/agent of this ad

Your Name E-mail Address

Home Phone Alt. Phone

A phone number is required for the owner to contact you. We will NEVER call you or share this number with anyone.

Your Message

Spammers will be reported.



Before submitting this form, please type the characters displayed above:

Note: NO spaces between letters. All lower case letters are OK.

Please click just once - please be patient while the message is sent to this owner. Your personal information will not be sold or shared with anyone else. Be very careful of anyone asking you to wire money or send a bank check.












Helpful Information

- Pictures of this Resort ▶ [See Pictures](#) ▶ [Submit Pictures](#)
- Reviews of this Resort ▶ [Read Resort Reviews](#) ▶ [Submit a Review of this Resort](#)
- ▶ Do you need [market information](#) about what units are renting and selling for?
- ▶ Do you need a [timeshare lease](#)?

EXHIBIT A

- » Do you need a [timeshare sales contract](#)?
- » Do you need a [rental car](#) or [airline reservations](#) ?
- » We can e-mail you when any owner posts a new ad at this resort... [click](#)
 - Free - no charge for this is service. Other websites charge for this.
 - Be the first to find out when a new ad is posted.
 - Privacy - your e-mail will be kept confidential and not shared.

<p>Timeshare Promotions</p> <ul style="list-style-type: none"> » Timeshare Tours » Vacation Ownership » Timeshare Packages » Travel Clubs » Vacation Club 	<p>Timeshare Tools</p> <ul style="list-style-type: none"> » Timeshare Lease » Timeshare Sales Contract » Timeshare Calendar » Glossary » Vacation Finder Service » Timeshare prices 	<p>Timeshare Help</p> <ul style="list-style-type: none"> » Broker Assistance » Timeshare Brokers » Timeshare Financing » Timeshare Services & Business » Timeshare Closings » Timeshare Appraisal » Timeshare Exchange » Timeshare Advertising » Donate Timeshare » Travel Insurance 	<p>« Search by area »</p> <p>Search <input type="text"/></p> <p>» Last Minute Travel</p> <ul style="list-style-type: none"> » Timeshare Points » USA Resorts » Caribbean Resorts » Mexico Resorts » Canadian Resorts » Other International
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 Flights	 Cars	 Cruises	 Golf	 Ski	 Lake	 Beach	 Theme Park	 Travel Insurance		<p>Contact My Resort Network.com</p> <p>TESTIMONIALS</p>
<p>FAQ :: about us :: site directory :: terms and privacy :: timeshare rentals :: timeshare resales :: </p>										




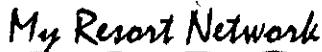
			© Copyright 2015 My Resort Network. All Rights Reserved.
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EXHIBIT B



Matching Timeshare Owners with Vacationers!
MyResortNetwork.com

Contact an owner at Diamond Resorts International Points in Anywhere, World

Resort Home | [rent a timeshare](#) | [buy a timeshare](#) | [rent your timeshare](#) | [sell your timeshare](#)

Contact the Owner

[go to another resort](#) | [live site activity](#) | [my account](#)



Contact the owner about your interest in buying their property. No agent solicitations and no spammers.



Ad Information for Diamond Resorts International Points in Anywhere, World

Owner Christopher Nuding	Price \$199.00	Date of Contact 4/25/2015
Unit # 8,500	Bdrms/Bthrms/OCC / varies / points	Week Number Float

Additional Information Offers are welcome! Enjoy 8,500 Points with Annual usage starting in 2015. All closing is done by an accredited BBB member with an A+ rating. Call or email for more details! 21635RM

▶ See [all of my rental advertisements](#) 87 ad(s)

▶ See [all of my resale advertisements](#) 652 ad(s)

Your Contact Information and Message to the owner/agent of this ad

Your Name E-mail Address

Home Phone Alt. Phone

A phone number is required for the owner to contact you. We will NEVER call you or share this number with anyone.

Your Message

Spammers will be reported.



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Helpful Information

- Pictures of this Resort ▶ [See Pictures](#) ▶ [Submit Pictures](#)
- Reviews of this Resort ▶ [Read Resort Reviews](#) ▶ [Submit a Review of this Resort](#)
- ▶ Do you need [market information](#) about what units are renting and selling for?
- ▶ Do you need a [timeshare lease](#)?

EXHIBIT B

- » Do you need a [timeshare sales contract](#)?
- » Do you need a [rental car](#) or [airline reservations](#) ?
- » We can e-mail you when any owner posts a new ad at this resort... [click](#)
 - Free - no charge for this is service. Other websites charge for this.
 - Be the first to find out when a new ad is posted.
 - Privacy - your e-mail will be kept confidential and not shared.

- Timeshare Promotions**
- » [Timeshare Tours](#)
 - » [Vacation Ownership](#)
 - » [Timeshare Packages](#)
 - » [Travel Clubs](#)
 - » [Vacation Club](#)

- Timeshare Tools**
- » [Timeshare Lease](#)
 - » [Timeshare Sales Contract](#)
 - » [Timeshare Calendar](#)
 - » [Glossary](#)
 - » [Vacation Finder Service](#)
 - » [Timeshare prices](#)











- Timeshare Help**
- » [Broker Assistance](#)
 - » [Timeshare Brokers](#)
 - » [Timeshare Financing](#)
 - » [Timeshare Services & Business](#)
 - » [Timeshare Closings](#)
 - » [Timeshare Appraisal](#)
 - » [Timeshare Exchange](#)
 - » [Timeshare Advertising](#)
 - » [Donate Timeshare](#)
 - » [Travel Insurance](#)


« Search by area »

Search

» [Last Minute Travel](#)

- » [Timeshare Points](#)
- » [USA Resorts](#)
- » [Caribbean Resorts](#)
- » [Mexico Resorts](#)
- » [Canadian Resorts](#)
- » [Other International](#)

 Flights	 Cars	 Cruises	 Golf	 Ski	 Lake	 Beach	 Theme Park	 Travel Insurance		<p>Contact My Resort Network.com</p> <p>TESTIMONIALS</p>
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EXHIBIT B

EXHIBIT C



**Contact an owner at Diamond Resorts International
Points
in Anywhere, World**

Matching Timeshare Owners with Vacationers!
MyResortNetwork.com

Resort Home | [rent a timeshare](#) | [buy a timeshare](#) | [rent your timeshare](#) | [sell your timeshare](#)

Contact the Owner | [go to another resort](#) | [live site activity](#) | [my account](#)



Contact the owner about your interest in buying their property. No agent solicitations and no spammers.



Ad Information for Diamond Resorts International Points in Anywhere, World

Owner Christopher Nuding	Price \$99.00	Date of Contact 4/25/2015
Unit # 6,000	Bdrms/Bthrms/OCC / varies / points	Week Number Float

Additional Information Free closing. Enjoy 6,000 points with Annual usage starting in 2014. All closing is done by an accredited BBB member with an A+ rating. Call or email for more details! 0781s

▸ See [all of my rental advertisements](#) 87 ad(s)

▸ See [all of my resale advertisements](#) 652 ad(s)

Your Contact Information and Message to the owner/agent of this ad

Your Name E-mail Address

Home Phone Alt. Phone

A phone number is required for the owner to contact you. We will NEVER call you or share this number with anyone.

Your Message

Spammers will be reported.

XPU

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Reviews of this Resort ▸ [Read Resort Reviews](#) ▸ [Submit a Review of this Resort](#)












▸ Do you need [market information](#) about what units are renting and selling for?

▸ Do you need a [timeshare lease](#)?

EXHIBIT C

- » Do you need a [timeshare sales contract](#)?
- » Do you need a [rental car](#) or [airline reservations](#) ?
- » We can e-mail you when any owner posts a new ad at this resort... [click](#)
 - Free - no charge for this is service. Other websites charge for this.
 - Be the first to find out when a new ad is posted.
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EXHIBIT C

EXHIBIT D

LAW OFFICES
PHELPS & MOORE
Professional Limited Liability Company

Street Address:
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Phoenix, Arizona 85050

JON L. PHELPS
Phone (602) 788-2089
Fax (602) 663-9050
jon@phelpsandmoore.com

ERICA M. FEDON
erica@phelpsandmoore.com

March 16, 2015

Patricia Rosado/Legal Department
Diamond Resorts International
10600 W. Charleston Blvd.
Las Vegas, NV 89135

Re: Norman Zwicky: Contract No. 51141; Membership No.: 1554010

Ms. Rosado:

As I never received a response to my letter dated February 21, 2014, I am writing to follow up on the matter. My client hereby revokes the offer set forth in my February 21, 2014 letter.

As a member of the Association, my client is entitled to and is requesting the following documentation for each of the past four years:

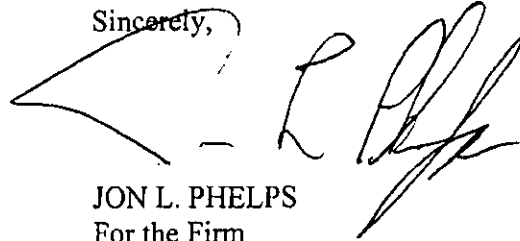
- Number of "points" in each resort held by private owners (owners who are not Diamond Resorts or affiliated with the Diamond Resorts), and the percentage of total ownership of all units devoted to timeshare use in that resort that those points represent.
- Number of "points" in each resort owned or controlled by Diamond Resorts, and the percentage of total ownership of all units devoted to timeshare use in that resort that those points represent.
- Number of "points" in each resort owned or controlled by the local resort association, and the percentage of total ownership of all units devoted to timeshare use in that resort that those points represent.
- Number of "points" in each resort owned or controlled by the Premier Vacation Club Association, Inc., and the percentage of total ownership of all units devoted to timeshare use in that resort that those points represent.
- The amount paid by Diamond Resorts (or any affiliate) to each local resort association in the form of assessments or other contributions towards common expenses (please specify), and how that amount was calculated or determined.

Patricia Rosatto/Legal Department
Diamond Resorts International
March 16, 2015
Page 2

- The amount paid by Diamond Resorts (or any affiliate) to Premier Vacation Club Association, Inc., in the form of assessments or other contributions towards common expenses (please specify), and how that amount was calculated or determined.

I urge you to give this matter your immediate attention. If we do not receive the requested documents on, or before, **April 13, 2015**, litigation for an accounting will be commenced without further demand.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Phelps', written over a horizontal line.

JON L. PHELPS
For the Firm

JLP/emf