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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **MARICOPA COUNTY**

12 NORMAN ZWICKY, ) NO. CV2015-051911  
13 )  
14 Plaintiff, )  
15 ) **DEFENDANT’S OBJECTION TO**  
16 v. ) **PROPOSED FORM OF ORDER**  
17 )  
18 PREMIERE VACATION COLLECTION )  
OWNERS ASSOCIATION, f.k.a. Premiere ) (Assigned to the Honorable John Hannah)  
Vacation Club, an Arizona nonprofit )  
corporation, )  
Defendant. )

19 Defendant Premiere Vacation Collection Owners Association (“PVCOA”) objects to  
20 Plaintiff’s proposed form of order. Plaintiff’s proposed order includes legal findings and  
21 conclusions that go far beyond the Court’s statements on the record during the oral argument  
22 on the parties’ cross-motions for summary judgment, or the Court’s orders in the minute  
23 entry filed on March 14, 2016. These proposed legal findings are unnecessary and  
24 superfluous, and do not clarify the relief Plaintiff seeks in this matter. PVCOA objects to  
25 Plaintiff’s proposed legal findings and proposes that the Court omit the sections on pages 1-3  
26 of the proposed order beginning “**THE COURT FINDS**” and “**THE COURT FURTHER**  
27 **FINDS,**” as these sections are unnecessary.

1 At the hearing on March 11, 2016, Plaintiff’s counsel represented to the Court that the  
2 relief being sought in this case consisted of inspection of the documents identified in section  
3 8 of Plaintiff’s Rule 26.1 initial disclosures, particularly items (h) through (k) of that list.  
4 During that discussion, the Court indicated that PVCOA would be ordered to produce those  
5 items (h) through (k) in section 8 of Plaintiff’s Rule 26.1 initial disclosures, along with  
6 additional evidence as necessary to understand the allocation of management fees and  
7 common expenses, including information related to revenue for any hotel operations by the  
8 resort properties in the Premiere Vacation Collection. Plaintiff’s proposed order lists 22  
9 categories of information, going far beyond the information identified in the Rule 26.1 initial  
10 disclosures or discussed with the Court. These extensive requests are overly burdensome  
11 and irrelevant to Plaintiff’s stated proper purpose of investigating suspected mismanagement  
12 and/or determining how assessments are apportioned between the developer and the  
13 members. The Plaintiff and Court should know that many of the documents requested are  
14 available to Plaintiff by logging into [www.diamondresorts.com](http://www.diamondresorts.com) and clicking on “HOA  
15 Information” under the “My Community” tab on the left of the screen. Included there are  
16 meeting minutes, budgets, and audited financials.

17 Furthermore, Plaintiff uses a number of undefined terms that are vague and  
18 ambiguous. Requests No. 8 through 11 use the phrase “[a]ll documents that will allow  
19 Plaintiff to determine . . .” This phrase is vague and unclear because instead of specifying or  
20 describing the documents Plaintiff wishes to inspect, Plaintiff puts the burden on PVCOA to  
21 guess which documents might lead Plaintiff to certain conclusions or analysis. The burden  
22 of surmising what determinations Plaintiff might draw from PVCOA’s business records  
23 should not be placed on PVCOA. These requests give little guidance as to what documents  
24 or records Plaintiff is actually requesting. PVCOA objects to request No. 20 because the  
25 terms “due from” or “due to” are vague and ambiguous. In addition, this request is  
26 duplicative, because PVCOA has already provided Plaintiff with information regarding the  
27 amounts paid by PVCOA for management fees, and request No. 2 also seeks management  
28

1 fees paid to DRI by PVCOA. PVCOA objects to the use of the undefined terms “developer  
2 subsidy,” “inventory recovery,” “reimbursement” and “repossessed” in requests No. 2, 14  
3 and 21. These terms are vague and ambiguous, and provide PVCOA with little guidance  
4 regarding the documents Plaintiff is seeking. In addition, these requests were not included in  
5 Plaintiff’s Rule 26.1 initial disclosure, and are not relevant to Plaintiff’s stated proper  
6 purpose.

7 PVCOA objects to requests No. 12 and 13 because these categories of documents  
8 were not included in the Rule 26.1 initial disclosure, the requests are duplicative, and the  
9 requests call for the disclosure of resort employees’ personal and financial information.  
10 Plaintiff has not shown any reason that the names and individual salary information of resort  
11 employees has anything to do with the stated purpose of investigating mismanagement or  
12 determining the allocation of assessment fees. While a total figure for annual staff  
13 compensation might be relevant to determining PVCOA’s expenses, such information  
14 regarding PVCOA’s annual expenses has already been provided to Plaintiff. There is no  
15 legitimate reason to request all employees’ names and salary information. This request is  
16 invasive of employees’ privacy, as well as overly burdensome for PVCOA.

17 PVCOA objects to requests No. 15 through 19 because these requests were not  
18 included in Plaintiff’s Rule 26.1 initial disclosures, are unduly burdensome, and are  
19 irrelevant to the stated purpose of investigating mismanagement or determining the  
20 allocation of assessment fees. Although the Court indicated that Plaintiff may be entitled to  
21 information regarding the amount of revenue derived from hotel operations, Plaintiff is not  
22 entitled to the sort of exhaustively detailed information requested in the proposed order. In  
23 fact, a particular resort’s hotel operations are not “directly related to the timeshare plan,”  
24 A.R.S. § 33-2209(A), nor are they relevant to Plaintiff’s stated purpose of determining  
25 whether his assessments are correctly calculated. Any document request for information  
26 related to revenue derived from hotel operations must be narrowly tailored, so as to be  
27 relevant to the stated proper purpose.  
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1 PVCOA objects to request No. 22 because these requests were not included in  
2 Plaintiff's Rule 26.1 initial disclosures, and are irrelevant to Plaintiff's stated proper purpose.  
3 In addition, this request is duplicative, since Plaintiff has already received information  
4 related to the number of non-DRI members in the Association. Plaintiff is not entitled to the  
5 personal financial information of delinquent members, since this would invade the members'  
6 privacy interests.

7 PVCOA objects to the extent that any of the requests require PVCOA to generate  
8 financial analysis or records. Plaintiff is only entitled to inspect existing records as they are  
9 kept in the normal course of business; PVCOA is not obligated to generate new records or  
10 engage in specified financial analysis.

11 The proposed language to protect PVCOA's confidential, proprietary, and/or trade  
12 secret information is insufficient. PVCOA objects to the inclusion of "persons similarly  
13 situated to Plaintiff that may in the future retain the services of Plaintiff's counsel" in the list  
14 of persons to whom any document may be disclosed. If and when Plaintiff's counsel  
15 acquires additional clients, Plaintiff may move to amend the protective order to include them  
16 in the list of persons entitled to view the documents. Before that time, a blanket exception  
17 for any and all hypothetical clients is premature and speculative. PVCOA also objects to the  
18 following language: "nothing in this Order is intended to restrict the legitimate use or  
19 disclosure of any documents obtained, in the event of future litigation on the substantive  
20 merits." Because Plaintiff has not yet brought any claims against PVCOA other than this  
21 records request, any "future litigation" is undefined and speculative. The terms "substantive  
22 merits" and "legitimate" are also too vague to provide sufficient guidance and protection of  
23 PVCOA's interest in protecting its confidential and proprietary information. If Plaintiff ever  
24 does bring any additional claims against PVCOA, Plaintiff will have the ability to formally  
25 request documents through discovery, or could also request amendment of the protective  
26 order at that time to permit use of the documents in any future litigation. At this stage, any  
27  
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1 such future litigation is hypothetical, and the Court is poorly positioned to evaluate the  
2 contours of what “legitimate use” might entail.

3 PVCOA proposes that the Court’s Order include the following language:

4 PVCOA may designate documents as CONFIDENTIAL upon making a good  
5 faith determination that the documents contain information protected from  
6 disclosure by statute or that should be protected from disclosure because it  
7 contains sensitive personal information (including but not limited to Social  
8 Security numbers, financial information, and similar confidential personal  
9 information), personnel records, trade secrets, proprietary business  
10 information, or other confidential research, development, financial, or  
11 commercial information. Documents designated as CONFIDENTIAL under  
12 this Order shall not be used or disclosed by Plaintiff or his counsel for any  
13 purpose whatsoever other than for this litigation or to investigate whether  
14 Plaintiff’s assessment fees have been accurately assessed. Plaintiff and his  
15 counsel shall not disclose or permit the disclosure of any CONFIDENTIAL  
16 documents or information to any third party or entity except for the Court and  
17 its staff; Plaintiff’s counsel and employees and agents of counsel; or other  
18 persons by written consent of PVCOA or upon order of the Court and on such  
19 conditions as may be agreed or ordered. This Order shall be subject to  
20 modification by the Court on its own motion or on motion of a party or any  
21 other person with standing concerning the subject matter.

22  
23 PVCOA also objects that the proposed requirements for the production of  
24 electronically stored information (“ESI”) are unduly burdensome. Plaintiff has not identified  
25 any legal basis why PVCOA would be obligated to produce records in any format other than  
26 as they are kept in the normal course of business. We understand that PVCOA is able to  
27 produce documents in their native format, primarily PDF, DOC, DOCX, XLS, XLSX, and  
28 EML files, and any ORACLE records may be exported as CSV files.

1 It is also inconsistent with applicable statutes for Plaintiff to seek to impose the cost  
2 of producing copies on PVCOA. A.R.S. § 33-2209(E) expressly places the burden of paying  
3 for copies on the timeshare member, rather than the association:

4 A request to copy records under this section includes, if reasonable, receiving  
5 copies made by photographic, xerographic or other means. The association or  
6 other managing entity may impose a reasonable charge covering the cost of  
7 labor and materials for copies of any documents provided to the owner or the  
8 owner's representative. The charge shall not exceed the estimated cost of  
9 production or reproduction of the records.

10 PVCOA is entitled, by statute, to impose a reasonable charge (not exceeding the estimated  
11 cost of production or reproduction of the records) covering the cost of labor and materials for  
12 copies of any documents provided to Plaintiff, including ESI. PVCOA respectfully requests  
13 that the Court's Order reflect this statutory right by providing that PVCOA may impose a  
14 reasonable charge covering the cost of labor and materials for copies of any documents  
15 provided to Plaintiff, including ESI.

16 DATED this 25<sup>th</sup> day of March, 2016.

17 **COPPERSMITH BROCKELMAN PLC**

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