

1 LAW OFFICES
2 PHELPS & MOORE
3 PROFESSIONAL LIMITED LIABILITY COMPANY
4 4045 EAST UNION HILLS DRIVE
5 SUITE A-102
6 PHOENIX, ARIZONA 85050
7 (602) 788-2089

8 Jon L. Phelps (027152)
9 jon@phelpsandmoore.com
10 Counsel for Plaintiff Norman Zwicky

11 EDWARD L. BARRY
12 ATTORNEY AT LAW
13 2120 COMPANY STREET
14 THIRD FLOOR
15 CHRISTIANSTED, VIRGIN ISLANDS 00820
16 (340) 719-0601

17 Edward L. Barry (005856)
18 ed@AttorneyEdBarry.com
19 Co-Counsel for Plaintiff Norman Zwicky

20 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
21 **IN AND FOR THE COUNTY OF MARICOPA**

22 NORMAN ZWICKY,

23 Plaintiff,

24 vs.

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

 Defendant.

Case No. CV2015-051911

**APPLICATION FOR AWARD OF
ATTORNEYS' FEES AND COSTS**

**(ASSIGNED TO THE HONORABLE
JOHN HANNAH)**

Plaintiff Norman Zwicky ("Plaintiff"), by and through undersigned counsel, hereby requests that this Court award to Plaintiff and against Defendant Premiere Vacation Collection Association ("Defendant") attorneys' fees in the amount of \$28,696.00 and costs in the amount of \$704.10 in connection with this matter. The Court should grant this Application based upon A.R.S. §§ 12-341, 341.01 as this matter arises out of contract.

1 Further, Plaintiff is entitled to an award of attorneys' fees as the successful party under the
2 terms of the parties' Purchase Contract. This Application is supported by the following
3 Memorandum of Points and Authorities, the Declaration of Jon L. Phelps with itemized
4 statement of the costs and fees incurred, attached hereto as **Exhibit A**, the Declaration of
5 Edward L. Barry, attached hereto as **Exhibit B**, and the entire record, by reference
6 incorporated herein.

7 MEMORANDUM OF POINTS AND AUTHORITIES

8 **I. Background**

9 This matter arises out of an agreement entered into by Plaintiff and Defendant's
10 predecessor for the purchase of a timeshare. In October 2004, Plaintiff entered into another
11 agreement with Defendant to convert his interest in the timeshare into points that could be
12 used to stay at vacation properties in Defendant's collection. Plaintiff filed the Complaint in
13 this matter on May 13, 2015, seeking to enforce his right to inspect Defendant's records.
14 Defendant filed its Answer on August 19, 2015. Plaintiff filed his Motion for Summary
15 Judgment (the "Motion") on November 25, 2015. Defendant filed its Response to the
16 Motion and a Counter Motion for Summary Judgment ("Counter-Motion") on January 11,
17 2016. Plaintiff filed his Reply brief and Response to the Counter-Motion on February 1,
18 2016. Oral argument on the Motion was heard by the Court on March 11, 2016. On March
19 11, 2016, the Court issued a Minute Entry Order (the "Order") granting the Plaintiff's
20 Motion and denying Defendant's Counter-Motion. The Order directed Plaintiff to submit an
application for attorneys' fees within 20 days of the order.¹

21 **II. Legal Argument**

22 Plaintiff is entitled to his attorneys' fees and costs based on two grounds: (1) as the
23 prevailing party in a matter arising out of contract; and (2) pursuant the parties' Purchase
24 Contract.

25 ¹ Defendant agreed to extend the deadline for filing the instant application until April
26 7, 2016.

1 **a. Entitlement to Attorneys' Fees and Costs Based on Contract**

2 Under A.R.S. § 12-341, "the successful party to a civil action shall recover from his
3 adversary all costs expended or incurred therein unless otherwise provided by law."
4 Further, under A.R.S. § 12-341.01, "in any contested action arising out of a contract,
5 express or implied, the court may award the successful party reasonable attorney fees." The
6 purpose of the awarding attorneys' fees to the successful party is to "mitigate the burden of
7 the expense of litigation to establish a just claim or a just defense." A.R.S. § 12-341.01(B).

8 Further, Exhibit A to the Statement of Facts of Plaintiff's Motion (the "Purchase
9 Contract") provides that the successful party in litigation regarding the Purchase Contract is
10 entitled to an award of attorneys' fees. So, it is not within this Court's discretion to refuse to
11 award Plaintiff his attorneys' fees. *Chase Bank of Arizona v. Acosta*, 179 Ariz. 563, 575,
12 880 P.2d 1109, 1121 (App. 1994)

13 Therefore, this Court should grant Plaintiff's request for an award of attorneys' fees
14 and costs in this matter.

15 **III. Conclusion**

16 The Court should award to Plaintiff and against Defendant attorneys' fees in the
17 amount of \$28,696.00 and costs in the amount of \$704.10 as itemized in the exhibit
18 attachment to the Declaration in Support of Application for Award of Attorneys' Fees and
19 Costs because Plaintiff has prevailed on this claim arising out of contract and based on the
20 Purchase Contract's provision entitling the successful party to an award of attorneys' fees.

21 RESPECTFULLY SUBMITTED this 7th day of April, 2016.

22 PHELPS & MOORE, PLC

23 By /s/ Jon L. Phelps

24 Jon L. Phelps
25 4045 East Union Hills Drive
26 Suite A-102
 Phoenix, Arizona 85050
 Counsel for Plaintiff

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LAW OFFICE OF EDWARD L. BARRY

By /s/ Jon L. Phelps w/permission for:

Edward L. Barry
2120 Company Street
Third Floor
Christiansted, Virgin Islands 00820
Co-Counsel for Plaintiff

ORIGINAL of the foregoing efiled on
this the 7th day of April, 2016;

COPY of the foregoing delivered via azturbocourt.gov
on this the 7th day of April, 2016 to:

The Honorable John Hannah
Northeast Regional Center
18380 N. 40th Street
Phoenix, Arizona 85032

COPY of the foregoing delivered via U.S. mail
on this the 7th day of April, 2016 to:

John E. DeWulf
Katherine DeStefano
COPPERSMITH BROCKELMAN PLC
2800 North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Counsel for Defendant

By /s/ Kelly Naddaff

EXHIBIT A

1 LAW OFFICES
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6 PHOENIX, ARIZONA 85050
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8 Jon L. Phelps (027152)
9 jon@phelpsandmoore.com
10 Attorney for Plaintiff Norman Zwicky

11 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 Case No. CV2015-051911

14 NORMAN ZWICKY,

15 Plaintiff,

16 vs.

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

21 Defendant.

22 **DECLARATION OF JON L. PHELPS**
23 **IN SUPPORT OF APPLICATION FOR**
24 **AWARD OF ATTORNEYS' FEES AND**
25 **COSTS**

26 (ASSIGNED TO THE HONORABLE
JOHN HANNAH)

Jon L. Phelps, under penalty of perjury, declares as follows:

1. I am a Member of the firm of Phelps & Moore, PLC. I am, and have been, primarily responsible for the representation of Plaintiff Norman Zwicky ("Plaintiff") in this matter. I submit this Declaration in support of Plaintiff's Application for Award of Attorneys' Fees and Costs (the "Application").

2. I base this Declaration upon my personal knowledge and matters shown upon the regularly kept business records of Phelps & Moore, PLC.

3. I am familiar with attorneys' fees and legal services in the community, having been licensed to practice by the Supreme Court of Arizona since 2009, been admitted to

1 practice in the United States District Court for the District of Arizona since 2009, and
2 having been involved in a litigation practice in state and federal courts since 2009.

3 4. Plaintiff seeks to be reimbursed in the total amount of \$28,696.00 for attorneys'
4 fees incurred in connection with civil court case number: CV2015-051911. Pursuant to the
5 fee agreement between Phelps Law Group, the predecessor to Phelps & Moore, PLC, and
6 Plaintiff, Plaintiff is obligated to pay for the total charges itemized as set forth on **Exhibit 1**
7 attached hereto.

8 5. The tasks performed and the time spent on each task related to this action are
9 listed in an itemization of attorney time attached hereto as **Exhibit 1**. The individuals
10 performing the tasks are identified as "JLP," "RMM," "ELB," "LAC," "EMF," "CTH,"
11 "CLS," or "KDB." "JLP" refers to Jon L. Phelps. My billing rate is currently \$295.00 per
12 hour. "RMM" refers to Robert M. Moore. Mr. Moore is a partner in the firm of Phelps &
13 Moore, and has been licensed to practice by the Supreme Court of Arizona since 1990, been
14 admitted to practice in the United States District Court for the District of Arizona since
15 1991, and has been involved in litigation practice in state and federal courts since 1991. The
16 hourly rate for Mr. Moore is \$295.00. "ELB" refers to Edward L. Barry. Mr. Barry is co-
17 counsel, and Mr. Barry has been licensed to practice for over 35 years in both Arizona, the
18 United States Virgin Islands, and at various times in the U.S District Court. Mr. Barry is
19 currently in good standing both in Arizona and the Unites States Virgin Islands. The hourly
20 rate for Mr. Barry is \$375.00. "LAC" refers to Laura A. Ciancanelli. Ms. Ciancanelli was an
21 associate attorney with Phelps Law Group and has been licensed to practice by the Supreme
22 Court of Arizona since 2008. The hourly rate for Ms. Ciancanelli was \$205.00 per hour.
23 "EMF" refers to Erica M. Fedon. Ms. Fedon was an associate attorney with Phelps & Moore
24 and has been licensed to practice by the Supreme Court of Arizona since 2013. The hourly
25 rate for Ms. Fedon was \$215.00 per hour. "CTH" refers to Cy T. Hainey. Mr. Hainey is an
26

1 associate attorney at Phelps & Moore and has been licensed to practice by the Supreme
2 Court of Arizona since 2013. The hourly rate for Mr. Hainey is \$215.00. "KDB" refers to
3 Karen Duckworth-Barnes. Ms. Duckworth-Barnes is a paralegal at Phelps & Moore and
4 acted under my direction and supervision. The hourly rate for Ms. Duckworth-Barnes is
5 currently \$90.00. "CLS" refers to Casey Lee Scatterday. Ms. Scatterday is a paralegal at
6 Phelps & Moore and acted under my direction and supervision. The hourly rate for Ms.
7 Scatterday is currently \$90.00. These hourly rates are comparable to, or less than, what is
8 generally charged for comparably experienced lawyers and paralegals in the community.

9 6. Based upon the legal services provided as itemized in **Exhibit 1**, I believe that
10 attorneys' fees in the amount of \$28,696.00 and costs in the amount of \$704.10 are
11 reasonable.

12 RESPECTFULLY SUBMITTED this 7th day of April, 2016.

13 PHELPS & MOORE, PLC

14
15 By /s/ Jon L. Phelps

16 Jon L. Phelps
17 4045 East Union Hills Drive
18 Suite A-102
19 Phoenix, Arizona 85050
20 Counsel for Plaintiff

21 **ORIGINAL** of the foregoing efiled on
22 this the 7th day of April, 2016;

23 **COPY** of the foregoing delivered via azturbocourt.gov
24 on this the 7th day of April, 2016 to:
25 The Honorable John Hannah
26 Northeast Regional Center
18380 N. 40th Street
Phoenix, Arizona 85032

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on this the 7th day of April, 2016 to:

1 John E. DeWulf
2 Katherine DeStefano
3 **COPPERSMITH BROCKELMAN PLC**
4 2800 North Central Avenue, Suite 1200
5 Phoenix, Arizona 85004
6 Counsel for Defendant

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26 By /s/ Kelly Naddaff

EXHIBIT 1

Phelps & Moore, PLC
4045 East Union Hills Drive, Suite A-102
Phoenix, AZ 85050
Ph : 602-788-2089, Fax : 602-663-9050

Client Entry Report

Date	User:	Description:	Time:	Rate:	Hr	Amount:
Client : Norman Zwicky						
User : Casey Lee						
Matter : Timeshare issue						
5/13/2015	CLS	Draft Certificate re Compulsory Arbitration, Civil Coversheet and Summons.	0.40	85.00	Hr	34.00
5/22/2015	CLS	Phone conference with process server re service of summons, complaint and discovery.	0.10	85.00	Hr	8.50
5/22/2015	CLS	Prepare discovery and research statutory agent for service of process.	0.20	85.00	Hr	17.00
2/1/2016	CLS	Revise Reply re Summary Judgment / Response to Cross-Motion (.2); Revise Controverting Statement of Facts (.2) Prepare exhibits to Controverting Statement of Facts (.2)	0.60	90.00	Hr	54.00
			1.30			113.50
User : Cy Hainey						
Matter : Timeshare issue						
4/17/2015	CTH	Interoffice conference with JLP re Case status update pending response from Diamond Resort	0.10	195.00	Hr	19.50
7/22/2015	CTH	Review letter correspondence from opposing counsel re: settlement offer. (.1) Draft letter to opposing counsel re: reject offer. (.2)	0.30	195.00	Hr	58.50
8/21/2015	CTH	Review answer.	0.10	195.00	Hr	19.50
11/20/2015	CTH	Review exhibits to statement of facts in connection with statement of facts.	1.80	195.00	Hr	351.00
11/23/2015	CTH	Review exhibits to statement of facts. (.5) Phone conference with client re: sign affidavit. (.1)	0.60	195.00	Hr	117.00
1/12/2016	CTH	Review response to motion for summary judgment. (.5)	0.50	215.00	Hr	107.50
1/26/2016	CTH	Electronic correspondence to opposing counsel re: request for stipulation to combine response and reply in one pleading. (.1) Review reply. (.5)	0.60	215.00	Hr	129.00

1/27/2016	CTH	Review controverting statement of facts in support of reply to motion for summary judgment in connection with exhibits for factual accuracy. (1.4) Review controverting statement of facts in support of response to counter motion for summary judgment in connection with exhibits for factual accuracy. (.8) Review reply. (.4)	2.60	215.00	Hr	559.00
2/1/2016	CTH	Review exhibits in connection to counter-statement of facts for accuracy. (.4)	0.40	215.00	Hr	86.00
3/11/2016	CTH	Attend oral arguments	2.00	215.00	Hr	430.00
3/24/2016	CTH	Interoffice conference with KDB re draft Affidavit in support of Application for Award of Attorneys' fees and costs, prepare attorney time itemization	0.10	215.00	Hr	21.50
3/24/2016	CTH	Interoffice conference with JLP re: discuss basis for entitlement to attorneys' fees based on common law and statutory inspection rights. (.2) Research entitlement to attorneys' fees and costs based on inspection rights. (.5) Review reply in support of motion for summary judgment re: review argument for entitlement to attorneys' fees. (.3) Continue draft application for attorneys' fees. (.8)	2.70	215.00	Hr	580.50
3/30/2016	CTH	Review and revise application for award of attorneys' fees. (.8)	0.80	215.00	Hr	172.00
3/30/2016	CTH	Interoffice conference with JLP re: extension for application for attorneys' fees. (.2) Phone call with opposing counsel re: agree to extension of of deadlines for application and response to objection to proposed order. (.1) Electronic correspondence to opposing counsel re: request written confirmation extending deadlines. (.1)	0.40	215.00	Hr	86.00
3/31/2016	CTH	Interoffice conference with KDB re extension of time for Application for Award of Attorneys' Fees and Costs, contact co-counsel for time entries	0.10	215.00	Hr	21.50
3/31/2016	CTH	Interoffice conference with KDB re revise Draft Application re co-counsel, and prepare exhibit attachment	0.10	215.00	Hr	21.50
3/31/2016	CTH	Interoffice conference with RMM and KDB re calculation of attorney time	0.10	215.00	Hr	21.50
			<u>13.30</u>			<u>2,801.50</u>

User : Erica Fedon**Matter : Timeshare issue**

12/12/2013	EMF	Interoffice conference with JLP re: drafting demand letter for timeshare issue.	0.20	175.00	Hr	35.00
12/20/2013	EMF	Draft demand letter to Diamond Resorts.	0.80	175.00	Hr	140.00
12/20/2013	EMF	Review file and notes in preparation for demand letter.	0.70	175.00	Hr	122.50
12/20/2013	EMF	Phone conference with client re amount of annual fee back in 2004 and amount it was raised to in 2009.	0.20	175.00	Hr	35.00
2/12/2014	EMF	Interoffice conference with JLP re responding to letter from Diamond Resorts.	0.10	195.00	Hr	19.50
2/21/2014	EMF	Draft response to letter from Diamond share dated 2.3.14.	0.40	195.00	Hr	78.00
6/19/2014	EMF	Interoffice conference with JLP and RMM re production of documents; demand letter sent; transfer of case to class action status	0.20	195.00	Hr	39.00
			2.60			469.00

User : Laura Ciancanelli**Matter : Timeshare issue**

6/16/2013	LAC	Interoffice conference with JLP re case status (.2); review case law on boilerplate K's and parties' intent (.3); research to determine statutory agent/legal address (.2); telephone conference with client (.1); prepare letter to legal department (.2); email to JLP re recommendations (.3)	1.50	105.00	Hr	157.50
5/16/2013	LAC	Review documents received from Diamond Resort International (.8); prepare letter with second request for documents (.4); prepare spreadsheet analysis of Membership Plans from 2008 to 2010 (1.2)	2.40	105.00	Hr	252.00
			3.90			409.50

User : JON PHELPS**Matter : Timeshare issue**

4/16/2013	JLP	Interoffice conference with LAC re case status	0.20	275.00	Hr	55.00
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4/16/2013	JLP	Meet with client re Diamond Resorts Dispute (.6) ; review and revise letter to Diamond International (.1)	0.70	275.00	Hr	192.50
5/16/2013	JLP	Finalize letter to request records	0.10	275.00	Hr	27.50
6/25/2013	JLP	Review letter from Diamond Resorts	0.10	275.00	Hr	27.50
8/22/2013	JLP	Phone conference with client re status	0.10	245.00	Hr	24.50
12/12/2013	JLP	Interoffice conference with EMF re prepare demand letter to Diamond Resorts International	0.20	245.00	Hr	49.00
12/27/2013	JLP	Review and revise demand letter and prepare email correspondence to client re demand letter	0.50	245.00	Hr	122.50
2/3/2014	JLP	Review correspondence from Diamond Resorts International	0.10	275.00	Hr	27.50
2/12/2014	JLP	Interoffice conference with EMF re prepare response letter to Diamond Resorts	0.10	275.00	Hr	27.50
2/21/2014	JLP	Review and revise demand letter	0.30	275.00	Hr	82.50
6/19/2014	JLP	Interoffice conference with EMF and RMM re production of documents; demand letter sent; transfer of case to class action status	0.20	275.00	Hr	55.00
8/26/2014	JLP	Interoffice conference with RMM re Case status update and claim re timeshare fees	0.10	275.00	Hr	27.50
4/17/2015	JLP	Interoffice conference with CTH re Case status update pending response from Diamond Resort	0.10	295.00	Hr	29.50
6/22/2015	JLP	Read and respond to electronic correspondence from B. Schulman re extension and discovery requests	0.20	295.00	Hr	59.00
6/22/2015	JLP	Phone conference with J. Kanefield re extension (.1) Phone conference with E. Barry re expert witness (.3) Phone conference with V. Copeland and B. Schulman re extension, discovery requests, and possible early resolution of case (.3) Phone conference with E. Barry re developments related to extension, discovery requests, and possible early resolution of case (.4)	1.10	295.00	Hr	324.50

7/7/2015	JLP	Review correspondence from opposing counsel re settlement offer (.1) prepare electronic correspondence to client re settlement offer (.1)	0.20	295.00	Hr	59.00
7/22/2015	JLP	Review, revise, and finalize letter to opposing counsel re rejection of offer	0.10	295.00	Hr	29.50
8/3/2015	JLP	Read and respond to electronic correspondence from associate counsel re strategy for discovery	0.30	295.00	Hr	88.50
8/11/2015	JLP	Prepare electronic correspondence to consulting counsel	0.20	295.00	Hr	59.00
8/11/2015	JLP	Phone conference with J. DeWulf - new counsel for association	0.30	295.00	Hr	88.50
10/1/2015	JLP	Phone conference with co-counsel re strategy for discovery and disclosure	0.50	295.00	Hr	147.50
10/5/2015	JLP	Review and revise initial disclosure statement (.6) Phone conference with outside counsel re possible MSJ (.7)	1.30	295.00	Hr	383.50
10/8/2015	JLP	Review Defendant's Initial Disclosure Statement	0.20	295.00	Hr	59.00
10/8/2015	JLP	Phone call with detailed message to opposing counsel re disclosure statement	0.10	295.00	Hr	29.50
3/9/2016	JLP	Interoffice conference with KDB re prepare documents for oral arguments	0.10	295.00	Hr	29.50
3/11/2016	JLP	Interoffice conference with KDB re deadline to lodge proposed order and deadline for chinadoll	0.10	295.00	Hr	29.50
3/24/2016	JLP	Interoffice conference with JLP re prepare attorney time itemization for co-counsel	0.10	295.00	Hr	29.50
3/24/2016	JLP	Interoffice conference with CTH re: discuss basis for entitlement to attorneys' fees based on common law and statutory inspection rights.	0.20	295.00	Hr	59.00
3/24/2016	JLP	Interoffice conference with KDB re prepare attorney time itemization for co-counsel	0.10	295.00	Hr	29.50
3/29/2016	JLP	Interoffice conference with KDB re contact co-counsel re Declaration	0.10	295.00	Hr	29.50
			<u>8.00</u>			<u>\$2,547.50</u>

User : Karen Barnes

Matter : Timeshare issue

3/9/2016	KDB	Interoffice conference with JLP re prepare documents for oral arguments	0.10	90.00	Hr	9.00
3/10/2016	KDB	Prepare documents for oral arguments	0.80	90.00	Hr	72.00
3/11/2016	KDB	Interoffice conference with JLP re deadline to lodge proposed order and deadline for chinadoll	0.10	90.00	Hr	9.00
3/24/2016	KDB	Interoffice conference with JLP re prepare attorney time itemization for co-counsel	0.10	90.00	Hr	9.00
3/24/2016	KDB	Interoffice conference with CTH re draft Affidavit in support of Application for Award of Attorneys' fees and costs, prepare attorney time itemization (.1); draft same (1.5)	2.10	90.00	Hr	189.00
3/25/2016	KDB	Supplement draft attorney time itemization	0.50	90.00	Hr	45.00
3/29/2016	KDB	Interoffice conference with JLP re contact co-counsel re Declaration	0.10	90.00	Hr	9.00
3/31/2016	KDB	Interoffice conference with CTH re extension of time for Application for Award of Attorneys' Fees and Costs, contact co-counsel for time entries (.1); read and respond to electronic correspondence re same (.1)	0.20	90.00	Hr	18.00
3/31/2016	KDB	Phone call with detailed message to co-counsel re time itemization (.1); read and respond to electronic correspondence from co-counsel re same (.1); save co-counsel Declarations in Support of Application for Award of Attorneys' Fees and Costs to client efile (.1); supplement draft attorney time itemization re same (.3); supplement draft itemization re all actual costs (.2); Interoffice conference with RMM and CTH re calculation of attorney time (.1); supplement draft Application re total fees and costs (.3)	1.20	90.00	Hr	108.00
			<u>5.20</u>			<u>468.00</u>

User : Edward Barry

Matter : Timeshare issue

ELB	Initial review timeshare purchase contracts, bylaws, amended and restarted timeshare plan, and related documents	2.00	375.00	Hr	750.00
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ELB	Further factual investigation and review, including litigation research; extensive review of multipl SEC documents (Prospectus, 10-Ks, etc.)	10.00	375.00	Hr	3,750.00
ELB	Further factual and legal research; draft, multiple revisions, motion for summary judgment and statement of facts	20.00	375.00	Hr	7,500.00
ELB	Review Deft Response; Further factual research, further review SEC documents etc; further legal research, draft Reply re summary judgment/response to cross-motion; draft Controverting statement of facts	15.00	375.00	Hr	5,625.00
ELB	Prepare for and attend oral argument in Arizona	7.00	375.00	Hr	2,625.00
ELB	Draft proposed Order	2.00	375.00	Hr	750.00
ELB	Research and draft response in opposition to objections to proposed Order	1.50	375.00	Hr	562.50
		<u>57.50</u>			<u>21,562.50</u>

User : Rob Moore

Matter : Timeshare issue

6/19/2014	RMM	Interoffice conference with EMF and JLP re production of documents; demand letter sent; transfer of case to class action status	0.20	295.00	Hr	59.00
8/26/2014	RMM	Interoffice conference with JLP re Case status update and claim re timeshare fees	0.10	295.00	Hr	29.50
4/27/2015	RMM	Review of multiple electronic correspondence re claim	0.40	295.00	Hr	118.00
4/27/2015	RMM	Review complaint	0.30	295.00	Hr	88.50
3/31/2016	RMM	Interoffice conference with CTH and KDB re calculation of attorney time	0.10	295.00	Hr	29.50
			<u>1.10</u>			<u>324.50</u>

TOTAL FOR ALL ATTORNEYS' FEES:

\$28,696.00

User : Expenses

Matter : Timeshare issue

5/12/2015	Filing Fee- Complaint	319.00
10/5/2015	Westlaw Electronic Research	3.36
11/25/2015	Filing Fee- Motion for Summary Judgment	6.00
11/30/2015	Copies	5.40

12/4/2015	Postage for Motion for Summary Judgment	3.18
1/31/2016	Copy Fee	1.90
2/1/2016	Filing Fee- Reply to Summ. Judgment- Statement of Facts	12.00
2/1/2016	Postage for Reply to Summ. Judgement- Statement of Facts	2.30
2/16/2016	Filing Fee- Notice of Appearance of Co-Counsel	6.00
2/29/2016	Copy Fee	4.30
3/18/2016	Filing Fee- Notice of Lodging- Proposed Order	6.00
3/18/2016	Postage for Notice of Lodging and Proposed Order	1.20
	TOTAL FOR ALL EXPENSES:	<u>\$704.10</u>
	TOTAL FOR ALL ATTORNEYS' FEES AND COSTS:	<u>\$29,400.10</u>

EXHIBIT B

DECLARATION OF EDWARD L. BARRY

1. I have been licensed to practice law for over 35 years, I am licensed and in good standing both in Arizona and the United States Virgin Islands, and have also at various times practiced in the U.S. District Courts of those and other jurisdictions (either as a regular admittee to the federal court in question and on a *pro hac vice* basis).
2. I believe I have strong professional reputation. I have an A-V rating from Martindale-Hubbell. I have been called upon by two different presidents of the Virgin Islands Bar Association to serve as *amicus curiae* counsel for the Bar in proceedings before the Supreme Court of the Virgin Islands, and on one occasion as co-counsel on the amicus briefs in a case before the United States Supreme Court. I have also, for example, done significant federal environmental litigation as lead counsel (i.e., sole counsel) on behalf of several environmental groups in *Pugh v. Turnbull*, D.VI Civ. No. 149/2005 (resulting in "St. Croix Sea-Change Accord," a landmark agreement requiring the Virgin Islands Government to ultimately cease the discharge of treated sewage into the sea of St. Croix).
3. I have particular experience in timeshare and related litigation. I represent two timeshare associations in the Virgin Islands on an ongoing regular basis (one owning an entire resort; and the other co-owning and co-operating a resort, and having membership rolls numbering in the thousands); also a privately-owned hotel; a condominium association; and also individual officers and directors of a condominium association in litigation. By way of example, I recently represented one of the above-mentioned associations against the United States Small Business Administration in complex receivership proceedings (lead counsel/*pro hac vice*) in the U.S. District Court of Rhode Island, resulting a settlement with the SBA that required transfer of 1,300 timeshare units by the SBA to the association. *United States v. Fairway Capital Corporation*, Civil Case No. 00-035-L. I was also instrumental as original lead counsel in procuring a settlement of over \$15 million for 3 associations of timeshare owners in federal RICO litigation, *Bd. Of Dir., Bluebeard's Hilltop Villas Condo. Assn v. Fairfield Resorts, Inc.*, D. VI No. 534/2004.
4. My normal hourly billing rate is \$375.
5. My fee arrangement with Mr. Zwicky is solely through a fee sharing arrangement with Phelps & Moore, PLC. For that reason I have not kept detailed contemporaneous records of my time in this matter.
6. However, I am able to reliably reconstruct and estimate the time I expended, by cross-referencing Westlaw research records and otherwise, and the estimates now set forth are very conservative estimates of my actual time expended. Subject to the above, I estimate my time as follows:
 - a. Initial review timeshare purchase contracts, bylaws, amended and restated timeshare plan, and related documents. 2.0 hours
 - b. Further factual investigation and review, including litigation search; extensive review of multiple SEC documents (Prospectus, 10-Ks, etc.) 10.0 hours
 - c. Further factual and legal research; draft, multiple revisions, motion for summary judgment and statement of facts 20.0 hours
 - d. Review Deft Response; Further factual research, further review SEC documents etc; further legal research, draft Reply re summary judgment/response to cross-motion; draft Controverting statement of facts 15.0 hours
 - e. Prepare for and attend oral argument in Arizona 7.0 hours
 - f. Draft proposed Order 2.0 hours

g. Research and draft response in opposition to objections to proposed Order 1.5

57.5 hours

7. Based on the foregoing, I believe the reasonable value of my services herein to be \$21,562.50 (57.5 hours x \$375 per hour).

I HEREBY DECLARE UNDER PENALTY OF PERJURY THAT I HAVE CAREFULLY REVIEWED THE CONTENTS OF THIS DECLARATION AND THAT ALL FACTUAL REPRESENTATIONS SET FORTH IN THIS DECLARATION ARE TRUE.

EXECUTED: April 6, 2016

/s/ Edward L. Barry
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