

1 John E. DeWulf (#006850)
2 Katherine DeStefano (#025441)
3 **COPPERSMITH BROCKELMAN PLC**
4 2800 North Central Avenue, Suite 1200
5 Phoenix, Arizona 85004
6 (602) 224-0999
7 jdewulf@cblawyers.com
8 kdestefano@cblawyers.com
9 *Attorneys for Defendant*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **MARICOPA COUNTY**

10 NORMAN ZWICKY,) NO. CV2015-051911
11)
12) Plaintiff,)
13) **DEFENDANT’S NOTICE OF**
14) **PRODUCTION OF DOCUMENTS**
15) **PURSUANT TO COURT ORDER**
16)
17) PREMIERE VACATION COLLECTION)
18) OWNERS ASSOCIATION, f.k.a. Premiere) (Assigned to the Honorable John Hannah)
19) Vacation Club, an Arizona nonprofit)
20) corporation,)
21)
22) Defendant.)

18 Defendant Premiere Vacation Collection Owners Association (“PVCOA”) hereby
19 responds to the Court’s order dated May 6, 2016, ordering PVCOA to produce items 1–7 and
20 15–19 from Plaintiff’s proposed form of order. PVCOA has designated certain documents as
21 “CONFIDENTIAL,” because they contain sensitive personal information, personnel records,
22 trade secrets, proprietary business information, or other confidential research, development,
23 financial, or commercial information. In addition, the court’s order dated May 6, 2016,
24 directs that “all documents and records provided to the plaintiff pursuant to this order, and
25 the information in those documents, shall be maintained in confidence by the plaintiff and
26 not disclosed to anyone except the plaintiff, his current attorneys and any attorneys with
27 whom they [may] be discussing potential future representation of the plaintiff, accountants
28 and other experts retained or potentially retained by the plaintiff’s attorneys to assist them in

1 the representation and the personnel of the firm of the attorneys’ and experts’ firms.” All
2 documents designated as “CONFIDENTIAL” must be maintained in confidence by the
3 Plaintiff and his attorneys in compliance with the Court’s order.

4 **1. All Public Reports, timeshare plans, notifications of material change, or other**
5 **documents filed with the Arizona Department of Real Estate relating to the**
6 **Association.**

7 Response: See documents produced herewith, including public reports filed with the
8 Arizona Department of Real Estate (PVCOA000876–1205).

9 **2. All property management agreements between the Association and Diamond**
10 **Resorts International or affiliates (hereinafter, collectively, “DRI”), and any**
11 **amendments or modifications, and**

12 **a. Documents showing the management fees paid or owed to DRI by the**
13 **Association for the years 2012, 2013, 2014 and 2015.**

14 **b. Documents showing the precise nature, description and amount of any**
15 **“reimbursement of resort management and general and administrative**
16 **expenses” paid or owed to DRI by the Association for the years 2012, 2013, 2014**
17 **and 2015.**

18 Response: See documents produced herewith, including annual financial reports for
19 PVCOA and its resorts for the period from 2011 through 2015 (PVCOA000048–588;
20 PVCOA001270–86), Indirect Corporate Costs spreadsheet (PVCOA000589–592), Interval
21 Assignment and Recovery Agreements for PVCOA and its resorts for the period from 2011
22 through 2015 (PVCOA000593–718), Management Agreements for PVCOA and its resorts
23 for the period from 2011 through 2015 (PVCOA000719–832; PVCOA001252–69),
24 Management Fees report (PVCOA000833), annual budgets for PVCOA and its resorts for
25 the period from 2011 through 2015 (PVCOA000834–75); and Occupancy and Revenue
26 report (PVCOA001206–51).
27
28

- 1 **3. All property management agreements between DRI and each constituent Resort**
2 **(the “Resorts”) of the Association, and any amendments or modifications, and**
3 **a. Documents showing the management fees paid or owed to DRI by the Resorts for**
4 **the years 2012, 2013, 2014 and 2015.**
5 **b. Documents showing the precise nature, description and amount of any**
6 **“reimbursement of resort management and general and administrative**
7 **expenses” paid or owed to DRI by the Resorts for the years 2012, 2013, 2014 and**
8 **2015.**

9
10 Response: See documents produced herewith, including annual financial reports for
11 PVCOA and its resorts for the period from 2011 through 2015 (PVCOA000048–588;
12 PVCOA001270–86), Indirect Corporate Costs spreadsheet (PVCOA000589–592), Interval
13 Assignment and Recovery Agreements for PVCOA and its resorts for the period from 2011
14 through 2015 (PVCOA000593–718), Management Agreements for PVCOA and its resorts
15 for the period from 2011 through 2015 (PVCOA000719–832; PVCOA001252–69),
16 Management Fees report (PVCOA000833), annual budgets for PVCOA and its resorts for
17 the period from 2011 through 2015 (PVCOA000834–75); and Occupancy and Revenue
18 report (PVCOA001206–51).

- 19 **4. Profit and Loss statements (or similar) for the Resorts for the years 2012, 2013,**
20 **2014 and 2015, showing the revenues and expenses of the Resorts (whether or not**
21 **classified as common revenues or common expenses of the Resorts’ owners**
22 **association).**

23 Response: See documents produced herewith, including annual financial reports for
24 PVCOA’s resorts for the period from 2011 through 2015 (PVCOA000048–588;
25 PVCOA001270–86).

- 26 **5. Profit and Loss statements (or similar) for the owners association (“HOA”) of**
27 **the Resorts for the years 2012, 2013, 2014 and 2015.**
28

1 Response: PVCOA shall produce herewith its annual financial reports for the period
2 from 2011 through 2014 (PVCOA000048–588; PVCOA001270–86). The financial report
3 for the year 2015 has not yet been completed by the independent accounting firm and is
4 unavailable at this time. PVCOA will supplement this response when the 2015 financial
5 report becomes available.

6 **6. Annual budgets for the Association for the years 2012, 2013, 2014 and 2015.**

7 Response: See documents produced herewith, including annual budgets for PVCOA
8 and its resorts for the period from 2011 through 2015 (PVCOA000834–75).

9
10 **7. Annual budgets for the HOA of the Resorts for the years 2012, 2013, 2014 and**
11 **2015.**

12 Response: See documents produced herewith, including annual budgets for PVCOA
13 and its resorts for the period from 2011 through 2015 (PVCOA000834–75).

14 **15. All documents showing room occupancy totals (measured by room-days or any**
15 **similar measurement used by the Association or DRI) in the Resorts for the**
16 **years 2012, 2013, 2014 and 2015 for each of the following categories:**

- 17 **a. Room rentals to the general public;**
18
19 **b. Room rentals to members of a DRI collection other than the Association;**
20
21 **c. Room rentals to non-DRI owners utilizing an “exchange” program such as RCI;**
22
23 **d. Occupancy by Association members through the use of their “points.”**
24
25 **e. Unoccupied/vacant units.**

26 Response: See documents produced herewith, including Occupancy and Revenue
27 report (PVCOA001206–51).

28 **16. All documents showing annual room rental revenues of the Resorts for the years**
2012, 2013, 2014 and 2015 for each of the following categories:

- 1 **a. Room rentals to the general public;**
2 **b. Room rentals to members of a DRI collection other than the Association;**
3 **c. Room rentals to non-DRI owners utilizing an “exchange” program such as RCI;**
4 **d. Occupancy by Association members through the use of their “points.”**

5 **Response:** See documents produced herewith, including Occupancy and Revenue
6 report (PVCOA001206–51).
7

- 8 **17. All documents relating to any sharing or allocation of any category or type of**
9 **room rental revenues between DRI and the Association, or between DRI and the**
10 **Resorts HOAs, and any agreements or other documents specifying the same.**

11 **Response:** See documents produced herewith, including Interval Assignment and
12 Recovery Agreements for PVCOA and its resorts for the period from 2011 through 2015
13 (PVCOA000593–718), and Occupancy and Revenue report (PVCOA001206–51).
14

- 15 **18. All documents showing the annual room rental costs or expenses of the Resort**
16 **for the years 2012, 2013, 2014 and 2015, for each of the following categories:**

- 17 **a. Room rentals to the general public;**
18 **b. Room rentals to members of a DRI collection other than the Association through**
19 **the use of their “points”;**
20 **c. Room rentals to non-DRI owners utilizing an “exchange” program such as RCI;**
21 **d. Occupancy by Association members through the use of their “points.”**

22 **Response:** PVCOA has searched for responsive documents, but no such documents
23 exist. PVCOA and the Resorts do not keep records in the normal course of business
24 recording costs and expenses attributable solely to room rentals or occupancy by members.
25 Costs and expenses are recorded for each Resort’s operations as a whole, as reflected in the
26 other documents produced herewith, including annual financial reports for PVCOA and its
27
28

1 resorts for the period from 2011 through 2015 (PVCOA00048–588; PVCOA001270–86),
2 Indirect Corporate Costs spreadsheet (PVCOA000589–592), Interval Assignment and
3 Recovery Agreements for PVCOA and its resorts for the period from 2011 through 2015
4 (PVCOA000593–718), Management Agreements for PVCOA and its resorts for the period
5 from 2011 through 2015 (PVCOA000719–832; PVCOA001252–69), Management Fees
6 report (PVCOA000833), annual budgets for PVCOA and its resorts for the period from 2011
7 through 2015 (PVCOA000834–75); and Occupancy and Revenue report (PVCOA001206–
8 51).

9 PVCOA cannot be compelled to produce records that do not exist. *See Schwartz v.*
10 *Superior Court In & For Cty. of Maricopa*, 186 Ariz. 617, 621, 925 P.2d 1068, 1072 (App.
11 1996) (concluding that a *subpoena duces tecum* cannot require more than “production” of
12 documents for inspection by the requesting party, and that one cannot be compelled to
13 produce documents which do not exist). To the extent that Plaintiff requests that PVCOA
14 create records not currently in existence, which may or may not even be possible, since this
15 information is not recorded in the normal course of business, this request is unreasonable and
16 unduly burdensome.

17 **19. All documents relating to any sharing or allocation of room rental costs and**
18 **expenses between DRI and the Association (or between DRI and the Resorts**
19 **HOAs), and any agreements or other documents specifying the same.**

20 Response: See response to request No. 18, above.

21 DATED this 6th day of June, 2016.

22 **COPPERSMITH BROCKELMAN PLC**

23
24 By /s/ John E. DeWulf
25 John E. DeWulf
26 Katherine DeStefano
27 2800 N. Central Avenue, Suite 1200
28 Phoenix, Arizona 85004
Attorneys for Defendant

1 ORIGINAL e-filed and a copy hand-delivered
2 this 6th day of June, 2016, to:

3 Jon L. Phelps, Esq.
4 PHELPS & MOORE
5 4045 E. Union Hills Drive
6 Suite A-102
7 Phoenix, Arizona 85050
8 Attorneys for Plaintiff

9 Copy mailed this 6th day of June, 2016, to:

10 Edward L. Barry, Esq.
11 Law Office of Edward L. Barry
12 2120 Company Street, Third Floor
13 Christiansted, Virgin Islands 00820
14 Co-Counsel for Plaintiff

15 By /s/ Verna Colwell

16
17
18
19
20
21
22
23
24
25
26
27
28