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17 **SUPERIOR COURT OF ARIZONA**  
18 **MARICOPA COUNTY**

19 NORMAN ZWICKY, ) NO. CV2015-051911  
20 )  
21 Plaintiff, )  
22 ) **JOINT STATEMENT RE:**  
23 v. ) **SCHEDULING**  
24 )  
25 PREMIERE VACATION COLLECTION )  
26 OWNERS ASSOCIATION, f.k.a. Premiere ) (Assigned to the Honorable John Hannah)  
27 Vacation Club, an Arizona nonprofit )  
28 corporation, )  
29 Defendant. )  
30 )  
31 )

32 At the Status Conference on March 29, 2018, the Parties and the Court identified  
33 the outstanding issues for the Court to resolve after the Arizona Court of Appeals rendered  
34 an Opinion in Case No. 1 CA-CV 16-0659. As discussed at the Status Conference, the  
35 only issue remaining is whether certain documents produced by Defendant, Premiere  
36 Vacation Collection Owners Association (“PVCOA”), should be given continued

1 confidentiality protections. During the Status Conference, Plaintiff, Norman Zwicky's  
2 ("Zwicky") counsel, Edward Barry, outlined a procedure for handling this issue and  
3 Defendant's counsel, Brandon Crossland, agreed to the proposed procedure (the  
4 "Confidentiality Procedure").<sup>1</sup> As ordered by the Court at the conclusion of the Status  
5 Conference on March 29, 2018, counsel for Plaintiff and Defendant attempted to agree  
6 upon a Scheduling Order for the Confidentiality Procedure. However, after multiple  
7 exchanges of emails and proposed deadlines relating to the Confidentiality Procedure, the  
8 Parties were unable to reach an agreement on the Scheduling Order. This Statement adopts  
9 the Confidentiality Procedure agreed to by counsel and approved by the Court at the Status  
10 Conference in terms of the steps to be taken. However, because the Parties could not agree  
11 on dates for the steps of the Confidentiality Procedure, the Parties are submitting their  
12 alternative dates to the Court as identified below.

13 **I. Defendant's Statement Regarding the Scheduling Order.**

14 In its proposed schedule, PVCOA has requested sufficient time to review the  
15 production previously made by PVCOA, ensure that the designations of "confidential" are  
16 proper based upon a fulsome discussion with the appropriate employees or agents of  
17 PVCOA, and produce the requested information to Plaintiff as outlined in step 1 of the  
18 Confidentiality Procedure. However, Defendant's counsel, Brandon Crossland, who will  
19 be taking the lead on this issue on behalf of PVCOA, will be out of the country from April  
20 19, 2018 through April 28, 2018. Despite his absence from the country, PVCOA is  
21 requesting less than thirty (30) days from the date of submission of this Statement,  
22 including the ten (10) days during which lead counsel will be out of the country, to  
23 complete this step in the Confidentiality Procedure. PVCOA submits that an appropriate  
24 amount of time for this portion of the Confidentiality Procedure is critical to ensure that  
25 the universe of the documents at issue is properly outlined as between the Parties. The

26 \_\_\_\_\_  
27 <sup>1</sup> Each of the steps in the Confidentiality Procedure are outlined below. While the Parties cannot agree on the deadlines  
28 for each of the steps in the Confidentiality Procedure, there is no dispute regarding each of the steps that must be  
included as part of the Confidentiality Procedure.

1 remainder of PVCOA’s proposed deadlines are based on the first step and PVCOA submits  
2 that the deadlines that it has proposed are necessary to ensure that PVCOA is afforded the  
3 proper due process to ensure that it’s highly confidential and trade secret documents are  
4 adequately protected from improper dissemination to the public at large.

5 PVCOA objects to the overly expedited timeframe proposed by Plaintiff in its  
6 counter-proposal given the repeated threats Plaintiff has made regarding the intended use  
7 of these confidential and trade secret protected documents and the lack of sufficient time  
8 for the Parties to brief – and for the Court to review and rule upon – these sensitive issues.  
9 Thus, PVCOA respectfully requests that the Court enter a Scheduling Order based upon  
10 the dates proposed by PVCOA to ensure that PVCOA is afforded due process in the  
11 protection of its highly confidential documents and information and to hopefully avoid  
12 unnecessary additional litigation regarding these issues upon the completion of the  
13 Confidentiality Procedure.

14 **II. Plaintiff’s Statement Regarding the Scheduling Order.**

15 The Defendant’s proposed deadlines seem to make these proceedings unduly  
16 cumbersome, expensive and time-consuming. The documents should have been submitted  
17 to Plaintiff in an indexed and Bates-stamped compilation within a few days after the status  
18 conference, with any documents deemed “confidential” appropriately marked. This is for  
19 the most part a ministerial task, given that (1) the documents have already been produced;  
20 and (2) Defendant has already identified the categories of documents (and provided the  
21 supporting affidavit of PVCA Director Wheeler) in its Motion for Stay filed with the Court  
22 of Appeals.<sup>2</sup>

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23 <sup>2</sup> Quoting the Motion (p. 10):

24 PVCOA did not designate all documents produced pursuant to the  
25 superior court’s order dated May 6, 2016 as CONFIDENTIAL, and  
26 is not asking for such treatment to apply to all of those documents.  
27 PVCOA designated as CONFIDENTIAL only certain documents  
28 that contain highly sensitive trade secret, proprietary, and  
confidential information. Those documents include the Indirect  
Corporate Costs spreadsheet; the Interval Assignment and Recovery

1 As the Court is aware, this matter has been pending for nearly three years. The time  
2 element is particularly significant here, where Plaintiff has been precluded from filing  
3 a *Twombly/Iqbal*-compliant complaint due to the suppression of certain critical information,  
4 yet at the same time may face statute of limitations issues.

5 In reality, the issues on remand are nothing more than a garden variety discovery  
6 dispute. The Court must first determine whether the identified documents are cognizable  
7 trade secrets, and, if so, whether they should be suppressed by a confidentiality order.  
8 Ariz.R.Civ.P. 26(c)(4); *cf.*, *e.g.*, LAW REVIEW COMMISSION COMMENTS, Cal. Evid.  
9 Code §1060 (“[D]isclosure of the matters protected by the [trade secret] privilege may be  
10 essential to disclose of ... fraud .... Recognizing the privilege in such cases would amount  
11 to a legally sanctioned license to commit the wrongs complained of, for the wrongdoer  
12 would be privileged to withhold his wrongful conduct from legal scrutiny.”). Plaintiff,  
13 under seal, will explain in detail why certain identified documents are essential to his fraud  
14 and related causes of action. There is no reason this process should take months.

15  
16 **III. Proposed Deadlines for the Confidentiality Procedure.**

17 The Parties agree that the steps below accurately reflect the Confidentiality  
18 Procedure proposed by Plaintiff’s counsel (and accepted by Defendant’s counsel) at the  
19 Status Conference. However, the Parties do not agree on the deadlines for the completion  
20 of each step for the Confidentiality Procedure. Thus, the Parties propose the following  
21 schedule to resolve this matter:  
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23  
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26 Agreements for PVCOA and its resorts for the period from 2011  
27 through 2015; the Management Agreements for PVCOA and its  
28 resorts for the period from 2011 through 2015; the Management  
Fees report; and the Occupancy and Revenue report.

<b>Step in the Confidentiality Procedure</b>	<b>Plaintiff's Proposed Deadline</b>	<b>Defendant's Proposed Deadline<sup>3</sup></b>
Defendant will compile all documents produced in the matter to date, will Bates label the documents, index the documents and note all documents that Defendant designates as "confidential," and produce the documents and an index to Plaintiff's counsel.	April 24, 2018 <sup>4</sup>	May 4, 2018
Plaintiff will review the documents and provide a list to Defendant's counsel identifying any and all documents where Plaintiff disputes the "confidential" designation.	May 1, 2018	May 11, 2018
Counsel for Plaintiff and Defendant shall "meet and confer" regarding the documents where the Parties disagree about the "confidential" designation.	May 8, 2018	June 1, 2018
Defendant will file a Motion seeking to preserve the "confidential" designation over any documents that remain in dispute after the meet and confer. In the Motion, Defendant shall also identify any witnesses it intends to call at the evidentiary hearing. If Plaintiff seeks to depose such witnesses, then the Court shall extend the deadlines in this Scheduling Order to accommodate Plaintiff taking such depositions. <sup>5</sup>	May 15, 2018	June 29, 2018
Plaintiff will file a Response to the Motion disputing the "confidential" designation over any documents that remain in dispute after the meet and confer.	May 29, 2018	July 13, 2018
Defendant shall file its Reply Brief.	June 8, 2018	August 3, 2018

<sup>3</sup> In this Statement, Defendant is proposing dates that have been offered as a compromise to Plaintiff regarding the Confidentiality Procedure. Initially, Defendant requested until September 28, 2018 for the evidentiary hearing, but Defendant, in good faith, conferred with Plaintiff and has offered to expedite the schedule.

<sup>4</sup> Defendant notes that lead counsel, Brandon Crossland, will be out of the country on April 24, 2018.

<sup>5</sup> Plaintiff submits that Defendant should submit appropriate affidavits in support of the claim of confidentiality. These may, or may not, reveal fact issues warranting an evidentiary hearing. For example, this Court may find as a matter of law that certain documents are "trade secrets," but nevertheless contain evidence of fraud, breach of fiduciary duty, or other matters essential to Plaintiff's causes of action. In response, Defendant asserts that Plaintiff already consented – and the Court acknowledged – that Defendant is entitled to an evidentiary hearing on this matter at the Status Conference.

1 If the Parties are unable to resolve this issue, then the Court will hold an evidentiary  
2 hearing<sup>6</sup> to determine whether certain documents designated as “confidential” by  
3 Defendant shall remain confidential. The Parties request two (2) hours for the evidentiary  
4 hearing. Defendant requests that the evidentiary hearing take place on **August 31, 2018,**  
5 **at 9:00 a.m.** and Plaintiff requests that the evidentiary hearing take place as quickly as  
6 practicable after the completion of briefing but in no event later than the judicial rotation  
7 as this Court is already very familiar with the issues.

8 A form of Order is submitted herewith.

9 DATED this 12<sup>th</sup> day of April, 2018.

10 **COPPERSMITH BROCKELMAN PLC**

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<sup>6</sup> If during the Confidentiality Procedure the Parties cannot agree on the “confidential” designations, then PVCOA requests and is entitled to – as identified by the Court at the Status Conference – an evidentiary hearing in order to establish that there is good cause regarding the confidential nature of the documents that were produced in this matter.

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**ORIGINAL** e-filed this  
12<sup>th</sup> day of April, 2018.

/s/ Verna Colwell