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13 **SUPERIOR COURT OF ARIZONA**
14 **MARICOPA COUNTY**

15	NORMAN ZWICKY,) NO. CV2015-051911
16)
17	Plaintiff,)
18	v.) DEFENDANT’S MOTION
19) REQUESTING THAT THE COURT
20	PREMIERE VACATION COLLECTION) PRESERVE CONFIDENTIAL
21	OWNERS ASSOCIATION, f.k.a. Premiere) DESIGNATION AND NATURE OF
22	Vacation Club, an Arizona nonprofit) CERTAIN DOCUMENTS
23	corporation,)
)
	Defendant.)
)

24 Defendant, Premiere Vacation Collection Owners Association (“PVCOA” or
25 “Association”), pursuant to Arizona Rule of Civil Procedure 26(c)(1) and this Court’s Order
26 dated April 19, 2018 (the “Scheduling Order”), files this Motion Requesting that the Court
27 Preserve Confidential Designation and Nature of Certain Documents (the “Motion”), and in
28 support states as follows:

1 **Factual Background**

2 Plaintiff filed a Verified Complaint (the “Complaint”) in the instant action against
3 PVCOA on May 13, 2015, seeking “judicial enforcement of his rights to inspect the books and
4 records of the Association for a ‘proper purpose....’” See Complaint, ¶ 4. After asserting
5 various allegations of wrongdoing against PVCOA generally regarding the alleged improper
6 increase of his annual maintenance fees, Plaintiff requested an order recognizing and enforcing
7 Plaintiff’s inspection rights and requiring the Association to produce certain books and records
8 described in the Complaint. See Complaint, Wherefore Clause, ¶ A. Plaintiff did not seek any
9 other substantive relief from the Court as part of the Complaint. See generally Complaint.

10 On August 19, 2015, PVCOA filed its Answer to the Complaint (the “Answer”) and
11 denied any wrongdoing against Plaintiff and any other members of PVCOA. On December 7,
12 2015, Plaintiff filed his Motion for Summary Judgment (the “MSJ”) and stated that the sole
13 issue in the case was “simple and straightforward” in that Plaintiff only sought books and
14 records of the Association to determine, **for himself**, whether there had been a
15 mismanagement of the Association’s affairs and requested certain documents. See MSJ, Pg. 2
16 (emphasis added). On March 11, 2016, after briefing by the parties and an oral argument on
17 the MSJ, the Court entered an Order (the “MSJ Order”) granting Plaintiff’s MSJ and denying
18 PVCOA’s motion for summary judgment. After the parties could not agree upon the detailed
19 terms of a proposed judgment – including the scope of a confidentiality provision over certain
20 documents to be produced by PVCOA – the Court set a hearing on May 6, 2018 to resolve the
21 matter. At that hearing, after argument from counsel regarding the confidentiality issue, the
22 Court made the following oral ruling regarding confidentiality:

23 It’s ordered that all documents and records provided to the Plaintiff pursuant to
24 this order and the information in those documents shall be maintained in
25 confidence by the Plaintiffs and not disclosed to anyone except the Plaintiff, his
26 current attorneys, and any attorneys with whom they may be discussing
27 potential future representation of the Plaintiffs, and accountants and other
28 experts retained or potentially retained by the Plaintiff’s attorneys to assist them
in the representation, and the personnel of the firms that the lawyers and the

1 excerpts – personnel of the firm – of the attorneys and experts’ firms. Any
2 disclosure beyond that requires a further order of this Court.¹

3 *See Ex. A, pg. 36, ln. 25 – pg. 37, ln. 11.*

4 On June 6, 2016, along with a Notice of Production of Documents (the “Notice of
5 Production”)² and based upon the confidentiality protection afforded by the Court, PVCOA
6 produced over a thousand pages of documents, including many that were designated as
7 confidential because they are private, proprietary or contain trade secrets of PVCOA. The
8 confidential documents contained sensitive and proprietary business information (some of
9 which Diamond Resorts Management, Inc. (“DRM”) may have an interest in protecting even
10 though it is not a party to this action), trade secrets, private information about members of
11 PVCOA and the assessments that they are due to pay to PVCOA. The Association agreed to
12 produce these documents given the protective order entered on May 6, 2016. *See Ex. B.*

13 Nonetheless, Plaintiff then filed a Motion for Modification of Protective Order and
14 Order to Disclose Owners List on July 29, 2016 (the “Motion to Modify”). In the Motion to
15 Modify, Plaintiff acknowledged that – as opposed to filing the action to determine certain
16 matters for himself – he intended to file a federal class action against PVCOA. *See Motion to*
17 *Modify, Pg. 2.* Given Plaintiff’s then current intent, Plaintiff requested modification of the
18 protective order such that the ruling “shall in no way be construed to prohibit or restrict
19 Plaintiff or his counsel from quoting, referring to, or otherwise utilizing the information
20 produced in connection with this litigation ... in such proposed class action.” *See id.* at Pg. 3.

21
22 ¹ The Court did note that the basis for its order was “the agreement of the parties and the
23 Plaintiff’s current need for the information as opposed to any finding by the Court that any of
24 those information is in fact entitled to be treated as confidential.” *See Transcript of*
25 *Proceedings dated May 6, 2016, a copy of which is attached hereto as Exhibit “A,” pg. 38,*
lns. 1-5.

26 ² In the Notice of Production, PVCOA expressly stated that its production of confidential
27 records was done in reliance on the protective order provided by the Court on June 6, 2016. A
28 copy of the Notice of Production is attached hereto as **Exhibit “B.”**

1 Indeed, Plaintiff made these requests without even addressing whether the confidentiality
2 designations made by PVCOA were appropriate. *See id.*

3 After a hearing on the Motion to Modify, the Court entered a Ruling on August 19,
4 2018 (the “Modification Order”) where the Court ordered that “the protective order set forth on
5 the record on May 6, 2016 and memorialized in the minute entry of that date is hereby
6 modified to permit the plaintiff or his attorneys to quote or refer to the information produced in
7 connection with this litigation in a complaint or other court filing in the proposed class action
8 litigation.” *See* Modification Order, Pgs. 1-2. The Court left the protective order, as modified,
9 in place until 60 days after the proposed class action lawsuit was filed. *See id.* at Pg. 2.

10 After the entry of the Modification Order, the Court entered a Final Judgment on
11 September 14, 2016, which included the following language:

12 **IT IS FURTHER ORDERED** that the documents provided to Plaintiff shall
13 not be disclosed to any person other than Plaintiff’s attorneys, accountants, or
14 other consultants, or to persons similarly situated to Plaintiff that may in the
15 future retain the services of Plaintiff’s counsel, except that Plaintiff or his
16 attorneys may quote or refer to the information produced in connection with this
litigation in a complaint or other court filing in the proposed class action
litigation.

17 **IT IS FURTHER ORDERED** the foregoing protective order shall remain in
18 effect until 60 days after the proposed class action lawsuit is filed in the District
Court, and it shall then expire.

19 *See* Final Judgment, Pg. 4. Thereafter, on October 14, 2016, PVCOA filed its Notice of
20 Appeal of the Final Judgment and Modification Order on October 14, 2016.

21 After briefing by Plaintiff and PVCOA, the Appellate Court heard oral argument on the
22 appeal and entered its Opinion on January 23, 2019 (the “Opinion”). As it related to the
23 modification of the protective order, the Appellate Court vacated the Final Judgment as it
24 related to confidentiality and stated that PVCOA should have “an opportunity to establish why
25 the protective order should continue to apply to these ‘confidential’ documents.” *See id.*
26 Based on these findings, the Appellate Court remanded the matter. *See id.*
27

1 After entry of the Opinion by the Appellate Court, this Court held a Status Conference
2 on March 29, 2018, during which Plaintiff’s counsel proposed an agreeable process for
3 resolving the confidentiality issue. In accordance with the Scheduling Order, the parties have
4 conferred regarding the confidentiality issue, but were unable to resolve all of the issues
5 regarding the designation of certain confidential documents. Specifically, Plaintiff and
6 Defendant have been unable to agree that the following categories of documents are
7 confidential:

- 8 1. Financial reports of PVCOA and various resort associations from 2011-2014
9 (PVCOA000048–588; PVCOA001270–1304) (the “Financial Reports”);
- 10 2. Document describing various services provided by DRM relating to costs
11 (PVCOA000589-592) (the “Cost Description Document”);
- 12 3. Management Agreements for PVCOA and its resorts for the period from 2011
13 through 2015 (PVCOA000719–832; PVCOA001252–69) (the “Management
14 Agreements”);
- 15 4. Spreadsheet identifying various fees and costs (PVCOA000833) (the “Fees
16 Document”);
- 17 5. Annual budgets for PVCOA and its resorts for the period from 2011 through
18 2015 (PVCOA000834–75) (the “Budgets”); and
- 19 6. Collateral Assignment of Property Management Agreements (PVCOA001252-
20 001269) (the “Assignment of Management Agreements”).³

21 Thus, PVCOA files this Motion and requests that the Court enter a comprehensive protective
22 order over the Confidential Documents.

23 Legal Analysis

24 PVCOA is not seeking to prevent Plaintiff from inspecting the Confidential Documents
25 – indeed, the Confidential Documents were produced to Plaintiff on June 6, 2016 by PVCOA.
26 Rather, the Confidential Documents should not be made available to the public at large (and
27 competitors of PVCOA) as they are confidential, proprietary and are protected as trade secrets.

28 ³ These documents shall be collectively referred to as the “Confidential Documents.”

1 This is especially true given that Plaintiff’s claimed need for the use of the documents does not
2 outweigh PVCOA’s confidentiality and trade secret interests. Moreover, Plaintiff has
3 repeatedly claimed that the documents will be used as part of a federal court class action to be
4 overseen by a different court and this Court should not be the ultimate arbiter of how these –
5 and potentially similar – documents will be treated as part of a different action, between
6 potentially different parties, in front of a different court. These issues will be addressed in turn
7 below.

8 **I. The Confidential Documents Should Remain Confidential.**

9 In this Motion, PVCOA is requesting that the Court enter a comprehensive protective
10 order over the Confidential Documents preventing Plaintiff from quoting or attaching the
11 Confidential Documents to a class action complaint or otherwise disseminating the
12 Confidential Documents to the public. Arizona Rule of Civil Procedure 26(c)(1)(G) authorizes
13 protective orders to prevent the disclosure of trade secrets or other confidential research,
14 development, or commercial information. Ariz. R. Civ. P. 26(c)(1)(G). Rule 26(c)(4)
15 establishes the procedure for obtaining a protective order and it provides that “the burden of
16 showing good cause for an order remains with the party seeking confidentiality.” *Id.* at R.
17 26(c)(4).⁴ Here, there is good cause for the entry of a protective order as the Confidential
18 Documents constitute not only confidential documents, but also trade secrets.⁵

19 ⁴ The trial court is also required to make findings of facts concerning any relevant factors
20 including but not limited to: “(i) any party's or person's need to maintain the confidentiality of
21 such information or materials; (ii) any nonparty's or intervenor's need to obtain access to such
22 information or materials; and (iii) any possible risk to the public health, safety, or financial
welfare to which such information or materials may relate or reveal.” *Id.*

23 ⁵ Federal Rule of Civil Procedure 26(c)(1)(G) and Arizona Rule of Civil Procedure 26(c)(1)(G)
24 are substantially the same and although “a federal court's interpretation of a federal procedural
25 rule is ‘not binding in the construction of our rule,’ [Arizona courts] recognize its instructive
26 and persuasive value and that ‘uniformity in interpretation of our rules and the federal rules is
27 highly desirable.’” *Flynn v. Campbell*, 402 P.3d 434, 438 (Ariz. 2017). As such, federal
28 decisions applying and construing Federal Rule 26(c)(1)(G) are persuasive in the interest of
maintaining uniformity among the Federal Rules and the Arizona Rules and PVCOA will cite
to some Federal authority in support of this Motion.

1 **A. The Confidential Documents Are Confidential, Proprietary and Constitute**
2 **Trade Secrets.**

3 As noted above, protective orders are appropriate not just for trade secrets, but for other
4 confidential and proprietary business information. Indeed, protective orders are justified when
5 there is reasonable evidence that documents sought are internal records that are very specific to
6 the manner of doing business and related to the finances of the business – such as how a
7 business spends its money. *MacMillan v. Schwartz*, 250 P. 3d 1213, 1222 (Ariz. Ct. App.
8 2011). In *MacMillan*, the dispute involved a trial court order modifying spousal maintenance
9 and the wife’s request for business records of the husband’s company. After the husband
10 requested a protective order before producing the documents, the court stated that reasonable
11 evidence supported the protective order when, in part, the husband argued that:

12 “[I]n this case we’re talking about all *sorts of internal records*
13 *that are very specific to how we do business and what we spend*
14 *money on....[W]hen they started to ask for internal records and*
 receipts, all we really needed at that point was a confidentiality
 agreement and all that information would have been available.”

15 *Id.* (emphasis added). The trial court’s decision was affirmed on appeal.

16 Conversely, the Arizona Court of Appeals held that a trial court abused its discretion
17 where it granted a motion to compel production of a taxpayer’s private business records and
18 information while not correspondingly granting the taxpayer’s motion for protective order on
19 statutory confidentiality grounds. *Arizona Portland Cement Co. v. Arizona State Tax Court*,
20 916 P.2d 1070, 1070 (Ariz. Ct. App. 1995). In *Portland Cement*, Portland Cement argued that
21 the information requested related to fixed and variable costs of Portland Cement that would
22 grant competitors considerable competitive advantage if disclosed to the public. *Id.* After the
23 trial court required a production of the documents without a protective order, the appeals court
24 reversed the trial court and found that a protective order should have been entered with the
25 order compelling production. *Id.* at 1073.

1 Here, PVCOA faces these very concerns regarding its private financial records.⁶ For
2 example, the Financial Reports contain detailed financial records that identify how PVCOA
3 manages its Resorts, what costs and expenses it charges, and how the members are charged for
4 those services. *See* Wheeler Dec., ¶ 9. The Financial Reports include a Statement of
5 Revenues, Expenses and Changes in Fund, which includes member assessments, payroll
6 expenses, management fees, bad debt, and other specific and itemized expenses. *See id.* The
7 Financial Reports also include notes that detail the various financial aspects of PVCOA and the
8 various Resorts. *See id.* All of this detailed information is invaluable to the private business of
9 each Resort and of PVCOA. *See id.* Competitors could review this information if they were
10 looking to change their business structures, their member assessments, and their management
11 fee arrangements based on how PVCOA (and its manager) operate the various resorts. *See id.*
12 PVCOA has protected this information as confidential and has not produced it to the public.
13 *See* Wheeler Dec., ¶ 5. While PVCOA agrees that its members are entitled to this type of
14 information, PVCOA does not share this information with the public and the filing of or
15 quoting to this information could hurt the business of PVCOA. *See id.* The same analysis
16 would be true for the Budgets, which include various line items of revenues and expenses. *See*
17 Wheeler Dec., ¶ 9.

18 In addition to these detailed financial records, PVCOA is seeking to protect as
19 confidential, a single-page spreadsheet that contains the Management Fees, IRAA
20 Contributions, and Indirect Corporate Costs paid by each of the component resorts for 2011-
21 2015 (the “Fees Document”). *See* Wheeler Dec., ¶ 11. The Fees Document contains very
22 specific financial information identifying what fees were charged to each resort for
23 management (again, a figure that is likely confidential and proprietary to DRM as well as
24

25 ⁶ During the initial litigation, PVCOA identified that certain documents could be produced, but
26 only under the protection of a protective order and confidentiality provision. *See* Declaration
27 of Kathy Wheeler dated June 6, 2018 (the “Wheeler Dec.”), a copy of which is attached hereto
28 as **Exhibit “C.”**

1 PVCOA), contributions for unused inventory, and costs charged for general services for
2 centralized accounting, legal, HR and other services. *See id.* Additionally, the Cost
3 Description Document outlines a list of services that PVCOA received in exchange for certain
4 costs paid to the management company. *See id.* These documents are internal records that
5 specifically identify the manner in which PVCOA conducts the business of managing the
6 resorts and running its operations. *See id.* Moreover, the Fees Document (and Financial
7 Reports and Budgets) expressly identifies how PVCOA spends its money. *See id.*

8 As for the Management Agreements and the Assignment of the Management
9 Agreements,⁷ the Management Agreements and the Assignment of the Management
10 Agreements are never made available to the public and PVCOA does not consent to their
11 distribution to the public or their recitation in a court filing. *See Wheeler Dec.*, ¶ 10. These
12 documents identify the management fees that PVCOA pays, the services that PVCOA receives
13 in exchange for the management fees, other costs that PVCOA has agreed to pay to its
14 management company, and the rights and responsibilities of PVCOA and the management
15 company. *See id.* This information is valuable to PVCOA because it demonstrates how
16 PVCOA conducts business, how it utilizes the management company and what it pays the
17 management company. *See id.* Competitors would be interested in seeing the terms of the
18 Management Agreements to assist in the streamlining and efficiency of their businesses, which
19 would harm PVCOA's business. *See id.*

20 Rule 26 identifies both trade secrets *and other confidential information* as being proper
21 subjects of protective orders limiting their disclosure. Ariz. R. Civ. P. 26(c)(1)(G). Based on
22 the foregoing, it is undeniable that all of the Confidential Documents are confidential and that
23 they contain detailed financial information that directly relates to the business of PVCOA. As
24

25 ⁷ These documents, along with the Fees Document and Cost Description Document, were
26 prepared by DRM, or its predecessor in interest, but DRM is not a party to this action. DRM
27 likely has interests that it would seek to protect regarding these documents if it were a party to
28 this case. PVCOA does not represent DRM's interests in this case.

1 such, a protective order pursuant to Ariz. R. Civ. P. 26 is required given the production of the
2 Confidential Documents by PVCOA and Plaintiff should not be permitted to disseminate the
3 information to the public as part of a federal court class action matter or otherwise.

4 Based on the same analysis outlined above, the Confidential Documents are also trade
5 secrets and should be protected as such. Arizona protects trade secrets through the adoption of
6 the Uniform Trade Secrets Act (“UTSA”). A.R.S. § 44-401, *et seq.* The UTSA defines “trade
7 secret” as:

8 [I]nformation, including a formula, pattern, compilation,
9 program, device, method, technique or process, that both:

10 (a) Derives independent economic value, actual or potential, from
11 not being generally known to, and not being readily ascertainable
12 by proper means by, other persons who can obtain economic
value from its disclosure or use.

13 (b) Is the subject of efforts that are reasonable under the
14 circumstances to maintain its secrecy.

15 *Id.* § 44-401(4). “This rather expansive definition emphasizes the secrecy of the alleged trade
16 secret, as well as the competitive advantage afforded by it.” *Enter. Leasing Co. of Phoenix v.*
17 *Ehmke*, 3 P.3d 1064, 1069 ¶ 14 (Ariz. Ct. App. 1999). “[A] trade secret may include a
18 grouping in which the components are in the public domain but there has been accomplished
19 an effective, successful and valuable integration of those public elements such that the owner
20 derives a competitive advantage from it.”⁸ *Id.* at ¶ 17.

21 _____
22 ⁸ “The Restatement of Torts provides additional guidance [as to what constitutes trade secret]
23 by adopting a six-factor test: ‘(1) the extent to which the information is known outside of his
24 business; (2) the extent to which it is known by employees and others involved in his business;
25 (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value
26 of the information to him and to his competitors; (5) the amount of effort or money expended
27 by him in developing the information; (6) the ease or difficulty with which the information
could be properly acquired or duplicated by others.’” *FireClean LLC v. Tuohy*, Case No. CV-
16-00604-TUC-JAS (EJM), 2018 WL 1811712, ** (D. Ariz. Apr. 17, 2018) (quoting
Restatement (First) of Torts § 757 cmt. b (1939)). The Arizona Court of Appeals has also
looked to these factors. *See Enter. Leasing Co.*, 3 P.3d at 1069 n.6.

1 Proprietary financial information, such as financial documents containing sensitive
2 internal records – profit and loss figures, break-even points, and sales revenues – may receive
3 trade secret status “so long as there is no public disclosure.” *Id.* at ¶ 18. Indeed, the court in
4 *Ehmke* recognized that such proprietary information could be used by competitors to have a
5 detailed account of the financial data of a business and make strategic business decisions to the
6 detriment of the business losing the trade secret protection. *Id.* at ¶ 21. Based on the sworn
7 Declaration of Kathy Wheeler, the Confidential Documents are trade secrets.

8 **B. Plaintiff’s Claimed Need for Disclosure Does Not Outweigh the Privacy**
9 **Concerns of PVCOA.**

10 As argued above, there is no question that PVCOA has established good cause to enter
11 the protective order over the Confidential Documents. Thus, the next step in the analysis is for
12 the Court to weigh “the claim to privacy against the need for disclosure.” *FireClean LLC*,
13 2018 WL 1811712 at *2. In *FireClean LLC*, the district court made clear that Federal Rule
14 26(c) extends “protection to other confidential business information, not just information that
15 specifically qualifies as a trade secret.” *Id.* Thus, the district court in *FireClean LLC* found
16 that where the plaintiff – a private company akin to PVCOA – showed that the discovery at
17 issue contained private financial information, it had shown good cause for a protective order
18 barring public disclosure of the materials. *Id.* at *4. In deciding whether the protective order
19 was necessary by balancing the private and public interests, the district court considered:

- 20 (1) whether disclosure will violate any privacy interests; (2) whether the
21 information is being sought for a legitimate purpose or for an improper purpose;
22 (3) whether disclosure of the information will cause a party embarrassment; (4)
23 whether confidentiality is being sought over information important to public
24 health and safety; (5) whether the sharing of information among litigants will
25 promote fairness and efficiency; (6) whether a party benefitting from the order
of confidentiality is a public entity or official; and (7) whether the case involves
issues important to the public.

26 *Id.* Disclosure of the private financial information of a private company violates its privacy
27 interest in such information. *Id.*

1 Here, the balancing test immediately weighs in favor of PVCOA because the
2 Confidential Documents are clearly confidential, proprietary, and constitute trade secrets that
3 warrant protection from disclosure by this Court. Moreover, there cannot be any claim that
4 these documents – or Plaintiff’s unknown, but threatened claim – is important to public health
5 and safety or involves issues important to the public. At best, and assuming Plaintiff’s
6 threatened claims have merit, which they do not, these issues would relate to maintenance fees
7 charged to members in a private entity.

8 Thus, the only reason to even consider removing the confidential designation over the
9 Confidential Documents is Plaintiff’s claim that he needs the documents to support his
10 proposed, but yet to be disclosed, federal court class action. However, and without the benefit
11 of reviewing Plaintiff’s claims, Plaintiff’s stated need for the documents simply does not make
12 sense. First, Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement
13 of the claim showing that the pleader is entitled to relief,” in order to “give defendant fair
14 notice of what the ... claim is and the grounds upon which it rests.” *See Bell Atl. Corp. v.*
15 *Twombly*, 550 U.S. 544, 554-555 (2007) (citing to Rule 8, Fed. R. Civ. P.). This standard is
16 relatively low for non-fraud based claims and Plaintiff simply does not need the Confidential
17 Documents for such claims.

18 For fraud claims, Rule 9(b) imposes additional pleading requirements: in “alleging
19 fraud or mistake, a party must state with particularity the circumstances constituting fraud or
20 mistake.” *Barba v. Lee*, 2009 U.S. Dist. Lexis 132415, *13 (D. Ariz. 2009). To meet the Rule
21 9(b) standard, “a plaintiff must set forth *more* than the neutral facts necessary to identify the
22 transaction. The plaintiff must set forth what is false or misleading about a statement, and why
23 it is false. In other words, the plaintiff must set forth an explanation as to why the statement or
24 omission complained of was false or misleading.” *In re: GlenFed, Inc. Secs. Litig.*, 42 F.3d
25 1541, 1548 (9th Cir. 1994). The plaintiff must include statements regarding the time, place
26 and nature of the alleged fraudulent activities. *See id.* However, again, without the benefit of
27 analyzing Plaintiff’s claims, these standards do not necessarily demand the attachment or direct

1 quotation from the Confidential Documents. Given that every other factor in the balancing test
2 clearly weighs in favor of a protective order, Plaintiff is wholly unable to establish that the
3 balance between PVCOA's need to maintain the confidential nature of the documents is
4 outweighed by Plaintiff's claimed need to quote them in the federal court class action. Thus,
5 the Court should not remove the confidentiality restrictions.

6 **II. The Protective Order Should Not Be Modified to Allow Plaintiff to Use the**
7 **Confidential Documents in Collateral Litigation.**

8 Despite initially claiming that this records inspection case was solely for the purpose of
9 Plaintiff, for himself, determining whether he had been overcharged fees by PVCOA, Plaintiff
10 has now repeatedly threatened filing a federal court class action case against PVCOA.
11 However, despite repeatedly acknowledging that he intends to file a class action in federal
12 court, which is obviously a different forum than this Court, Plaintiff seeks to have this Court
13 set the precedent and standard for how confidential documents will be treated as between the
14 parties (whoever they are) in the next case before a different court. In other words, Plaintiff is
15 asking this Court to remove the confidential designation over a variety of private financial
16 documents so that he can use them in a separate federal court case that will have an entire
17 different set of issues from those presented to this Court. Presumably, if successful, Plaintiff
18 will then claim that PVCOA cannot challenge Plaintiff's use of the same or similar
19 confidential documents in the separate court case. Plaintiff is not entitled to such relief and this
20 Court should not act as the final arbiter of confidentiality over documents that will be used in a
21 separate federal court case.

22 Indeed, a "party seeking the modification of a protective order to permit protected
23 materials to be discoverable in collateral litigation must follow a three-step process." *PCT Int'l*
24 *Inc. v. Holland Elecs. LLC*, Case No. CV-12-01797-PHX-JAT, 2014 WL 2510204, *2 (D.
25 Ariz. June 4, 2014). The process requires the party seeking the modification to establish the
26 following:

1 As an initial matter, the collateral litigant must demonstrate the relevance of the
2 protected discovery to the collateral proceedings and its general discoverability
3 therein. Such relevance hinges on the degree of overlap in facts, parties, and
4 issues between the suit covered by the protective order and the collateral
5 proceedings. Second, the court must be satisfied that the protected discovery is
6 sufficiently relevant to the collateral litigation that a substantial amount of
7 duplicative discovery will be avoided by modifying the protective order. The
8 court that issued the [protective] order is in the best position to make the
9 relevance assessment for it presumably is the only court familiar with the
10 contents of the protected discovery. Finally, if the court modifies the protective
11 order to permit the discovery, responsibility shifts to the court overseeing the
12 collateral litigation to determine whether the collateral litigants may ultimately
13 obtain the materials in discovery.

10 *Id.* Here, Plaintiff has not – and cannot – meet his burden to compel the Court to modify the
11 protective order to allow him to use the Confidential Documents in collateral litigation, which
12 is his only stated purpose.

13 First, Plaintiff has not filed the class action, nor has Plaintiff proffered his class action
14 complaint to PVCOA or this Court to allow an evaluation by the Court to determine which of
15 the Confidential Documents are relevant to the threatened case or whether such documents
16 would be generally discoverable in that unfiled action. Without this, Plaintiff essentially wants
17 this Court – which will not oversee the collateral and future litigation – to sanction Plaintiff’s
18 uninhibited disclosure of the Confidential Documents to support his proposed class action
19 solely because he obtained the records in this records inspection case. Such a position belies
20 the protections afforded by Rule 26(c)(1)(G) and the procedural safeguards for collateral
21 litigants to obtain confidential documents produced in a separate action. Importantly, as noted
22 by the *PCT* court, this Court has no ability to examine relevance because this Court has not
23 been afforded information that would identify “the degree of overlap in facts, parties, and
24 issues between” this case and the threatened class action. Plaintiff cannot (although he must in
25 order to succeed) demonstrate that his interest in avoiding duplicative discovery outweighs
26 PVCOA’s confidentiality concerns. *See id.* at *11-12. Thus, Plaintiff has failed to sufficiently
27

1 establish the relevance of the documents he seeks to use and he cannot modify the protective
2 order to use the Confidential Documents in separate litigation.

3 Second, because there is no collateral litigation – only a stated intention to file a class
4 action – there is no factual basis for the Court to determine if the protective order should be
5 modified to allow the documents to be used in another litigation. This is of special importance
6 because there is no assurance that Plaintiff will or could be the class representative in the
7 threatened action. Indeed, if Plaintiff is not permitted to act as a class representative, then his
8 efforts to modify the protective order in this case would benefit some other unnamed party. To
9 allow these unidentified non-party litigants to have free reign with the use and disclosure of
10 confidential and trade secret protected documents produced in this case would, again, run afoul
11 of the procedural safeguards that courts have put in place when collateral litigants seek
12 confidential documents. Stated differently, the possible claims and defenses, discovery
13 requests, and parties involved in the future class action are far too speculative to fail to protect
14 the Confidential Documents here based upon the premise that there is a chance that Plaintiff
15 will file a claim, that the claim will state a cause of action, that the claims will relate to these
16 documents, that Plaintiff is permitted to be a class representative, and that the next court would
17 agree to remove the confidential nature over the Confidential Documents. Rather, this Court
18 should allow the court that actually hears the anticipated class action to determine how and
19 whether to protect the confidential nature of the Confidential Documents.

20 **Conclusion**

21 For the reasons stated herein, Defendant, Premiere Vacation Collection Owners
22 Association, respectfully requests that the Court find that the Confidential Documents are
23 protected, enter a comprehensive protective order over the Confidential Documents, not permit
24 Plaintiff to quote from, attach or otherwise disclose the Confidential Documents (or the
25 contents thereof) as part of a publicly filed complaint absent a separate court ruling from the
26 court that will oversee the matter, award PVCOA its attorneys' fees and costs incurred in filing
27 this Motion, and grant all such other relief as the Court deems just and proper.

1 DATED this 6th day of June, 2018.

2 **COPPERSMITH BROCKELMAN PLC**

3 By /s/ John E. DeWulf
4 John E. DeWulf
5 Katherine DeStefano
6 2800 N. Central Avenue, Suite 1900
7 Phoenix, Arizona 85004

8 **BAKERHOSTETLER**

9 By: /s/ Brandon Crossland (Pro Hac Vice)

10 *Attorneys for Defendant*

11 **ORIGINAL** e-filed and e-mailed and mailed
12 this 6th day of June, 2018, to:

13 Jon L. Phelps, Esq.
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22 Christiansted, Virgin Islands 00820
23 *Co-Counsel for Plaintiff*

24 /s/ Verna Colwell

Exhibit A

Exhibit A

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

NORMAN ZWICKY,

Plaintiff,

v.

PREMIERE VACATION COLLECTION
OWNERS ASSOCIATION,

Defendant.

No. CV 2015-051911

Phoenix, Arizona
May 6, 2016
9:34 a.m.

BEFORE THE HONORABLE JOHN R. HANNAH, JR.

TRANSCRIPT OF PROCEEDINGS

Oral Argument

Proceedings recorded by electronic sound recording; transcript
produced by AVTranz.

JOSEPH JANOWIAK
Transcriptionist

1 THE COURT: Okay. Well, the --

2 MR. BARRY: Your Honor, may --

3 THE COURT: No.

4 MR. BARRY: -- please very briefly?

5 THE COURT: No, sir.

6 MR. BARRY: Okay.

7 THE COURT: I need to move forward. All right.

8 First I'm going to formalize the order that I made tentatively
9 before. Based on the granting of the motion for summary
10 judgment it's ordered that within -- is 30 days -- is a 30-day
11 timeframe too soon? How much time do you need realistically?

12 MR. DEWULF: I wish I knew, Your Honor, but 30 days
13 seems reasonable to me. I just -- I don't know what I don't
14 know here, but I would think that would be reasonable.

15 THE COURT: We'll start out with 30 days with the
16 expectation that counsel will be mutually reasonable in their
17 expectations of each other and of Mr. DeWulf's client. It's
18 ordered that the Defendant shall produce to Plaintiff's counsel
19 within 30 days the items listed in the form of order lodged by
20 the Plaintiffs as follows: item 1, 2, 3, 4, 5, 6, 7, 15, 16,
21 17, 18, and 19.

22 It's further ordered that the records provided to the
23 Plaintiff pursuant to this order and the information in
24 those -- and any non-public information in those records -- let
25 me rephrase that. It's ordered that all documents and records

1 provided to the Plaintiff pursuant to this order and the
2 information in those documents shall be maintained in
3 confidence by the Plaintiffs and not disclosed to anyone except
4 the Plaintiff, his current attorneys, and any attorneys with
5 whom they may be discussing potential future representation of
6 the Plaintiffs, and accountants and other experts retained or
7 potentially retained by the Plaintiff's attorneys to assist
8 them in the representation, and the personnel of the firms that
9 the lawyers and the experts -- personnel of the firm -- of the
10 attorneys and experts' firms. Any disclosure beyond that
11 requires a further order of this Court.

12 This order does not apply to any documents or
13 information in documents that are public record, such as SEC
14 filings, shareholder disclosures, and the like. The Court is
15 of the view that the -- that it may well be appropriate for the
16 Plaintiffs to be permitted to disclose this information in
17 other forms, including other litigation, government agencies,
18 and so on, but those matters are not before the Court now.
19 There's no imperative for the Court to make that decision now,
20 for example, no issue of public safety that would require
21 immediate disclosure. If there is some matter of public
22 concern that the Plaintiffs think requires future -- will
23 require disclosure, then they can certainly bring that to the
24 Court's attention and at some point the Court will consider
25 whether any of this information truly is entitled to

1 confidentiality. The basis for the Court to order it today
2 frankly is the agreement of the parties and the Plaintiff's
3 current need for the information as opposed to any finding by
4 the Court that any of those information is in fact entitled to
5 be treated as confidential.

6 All right. I've got a room full of lawyers. I've
7 got to move on to my next matter. Thank you very much, Mr.
8 Barry.

9 MR. BARRY: Thank you very much, Your Honor.

10 MR. PHELPS: Thank you, Your Honor.

11 THE COURT: And just one other thing. I think I'm
12 probably going to -- just so I have something on my calendar,
13 because I don't like having cases on my calendar with no
14 hearings and no future dates, what if I set a status hearing in
15 60 days? That's just really a placeholder. If you want to
16 vacate it and move it back or whatever, that'd be fine with me.

17 MR. DEWULF: We would appreciate that. Your Honor,
18 and I don't -- and I'm not sure what the Court's procedure is,
19 but if an issue were to arise, such as like you would in a
20 discovery matter, do you have a protocol for that that can be
21 done quickly or do you want it fully briefed? How would that
22 be done?

23 THE COURT: You can use -- even though I complained
24 about your referring to this as a -- by the discovery rules,
25 since this isn't part of the rules anyway I guess we can talk

Exhibit B

Exhibit B

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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 v.) **PRODUCTION OF DOCUMENTS**
15) **PURSUANT TO COURT ORDER**
16 PREMIERE VACATION COLLECTION)
17 OWNERS ASSOCIATION, f.k.a. Premiere) (Assigned to the Honorable John Hannah)
18 Vacation Club, an Arizona nonprofit)
19 corporation,)
20)
21 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 **b. Room rentals to members of a DRI collection other than the Association;**
19 **c. Room rentals to non-DRI owners utilizing an “exchange” program such as RCI;**
20 **d. Occupancy by Association members through the use of their “points.”**
21 **e. Unoccupied/vacant units.**

22 Response: See documents produced herewith, including Occupancy and Revenue
23 report (PVCOA001206–51).
24

25
26 **16. All documents showing annual room rental revenues of the Resorts for the years**
27 **2012, 2013, 2014 and 2015 for each of the following categories:**
28

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

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

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

21
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:

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

10 Edward L. Barry, Esq.
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13 Christiansted, Virgin Islands 00820
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15 By /s/ Verna Colwell

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Exhibit C

Exhibit C

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6 *Attorneys for Defendant*

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

10 NORMAN ZWICKY,) NO. CV2015-051911
11)
Plaintiff,)
12) **DECLARATION OF KATHY**
v.) **WHEELER IN SUPPORT OF**
13) **DEFENDANT’S MOTION**
PREMIERE VACATION COLLECTION) **REQUESTING THAT THE COURT**
14 OWNERS ASSOCIATION, f.k.a. Premiere) **PRESERVE CONFIDENTIAL**
15 Vacation Club, an Arizona nonprofit) **DESIGNATION AND NATURE OF**
corporation,) **CERTAIN DOCUMENTS**
16)
17 Defendant.)
18) (Assigned to the Honorable John Hannah)

19 I, Kathy Wheeler, hereby state:

20 1. I currently serve as a Director on the Board of Directors of Premiere Vacation
21 Collection Owners Association (“PVCOA”) and have served in that role since December
22 2010. I have personal knowledge of the facts set forth below.

23 2. Pursuant to the Court’s minute entry dated May 6, 2016 and the oral ruling of
24 the Court from the hearing on May 6, 2016, PVCOA produced the following documents:

- 25 • Public reports filed with the Arizona Department of Real Estate (PVCOA000876-
26 1205);
27 • Annual audited financial reports for PVCOA and its resorts for the period from 2011
28

- 1 through 2015 (PVCOA000048–588; PVCOA001270–1304) (the “Financial
2 Reports”);
- 3 • Document describing various services provided by DRM relating to costs
4 (PVCOA000589–592) (the “Cost Description Document”);
 - 5 • Interval Assignment and Recovery Agreements for PVCOA and its resorts for the
6 period from 2011 through 2015 (PVCOA000593–718);
 - 7 • Management Agreements for PVCOA and its resorts for the period from 2011
8 through 2015 (PVCOA000719–832; PVCOA001252–69) (the “Management
9 Agreements”);
 - 10 • Spreadsheet identifying various fees and costs (the “Fees Document”)
11 (PVCOA000833);
 - 12 • Annual budgets for PVCOA and its resorts for the period from 2011 through 2015
13 (PVCOA000834–75) (the “Budgets”);
 - 14 • Occupancy and Revenue report (PVCOA001206–51); and
 - 15 • Collateral Assignment of Property Management Agreements (PVCOA001252-
16 001269) (the “Assignment of Management Agreements”).

17 3. I assisted in the retrieval and production of these documents and have personal
18 knowledge regarding the contents of the documents.

19 4. Since this matter has come back to this Court after the appeal, PVCOA
20 designated certain documents as “confidential,” because they contain sensitive trade secrets,
21 proprietary business information, or other confidential research, development, financial, or
22 commercial information. Specifically, PVCOA designated the Financial Reports, Cost
23 Description Document, Management Agreements, Fees Document, Budgets, and Assignment
24 of Management Agreements as “confidential.”¹ I understand that the Confidential
25 Documents are now at issue before the Court to determine whether they should remain

26
27 ¹ These documents shall be collectively referred to as the “Confidential Documents.”

1 confidential.

2 5. Generally, PVCOA would not have produced the Confidential Documents
3 without the confidentiality protections afforded by the Court as the Confidential Documents
4 contain detailed financial and commercially valuable information. In general, the
5 Confidential Documents are the internal records of PVCOA that have very specific financial
6 information that directly relates to the manner and procedures upon which PVCOA conducts
7 business. Moreover, the Confidential Documents are not made available to the public at
8 large, are not provided to the State of Arizona and have only ever been provided to members
9 of PVCOA upon request. Indeed, while PVCOA would provide the Confidential Documents
10 to its members, I can recall less than five (5) instances of PVCOA ever providing any of the
11 Confidential Documents to a member and I am not aware of any instance where any of the
12 Confidential Documents were provided to a non-member of PVCOA or to the public at
13 large. Even when any of these documents were provided to a member of PVCOA there was
14 an expectation that they would be maintained as confidential given their sensitive nature.
15 Certainly, the Confidential Documents are protected against distribution to competitors and
16 the general public because of their confidential and proprietary nature.

17 6. The Board of Directors for PVCOA (the "Board") deems these documents
18 confidential and does not consent to the distribution of these documents to the public, either
19 through the filing of, recital to, or reference to the Confidential Documents in a court filing
20 or otherwise.

21 7. In fact, PVCOA's position regarding confidentiality was made clear when
22 PVCOA produced the Confidential Documents. In PVCOA's Notice of Production of
23 Documents, PVCOA stated that its production of confidential records was done in reliance
24 on the protective order in the Court's Ruling dated May 6, 2016, ordering that "all
25 documents and records provided to the plaintiff pursuant to this order, and the information in
26 those documents, *shall be maintained in confidence* by the plaintiff and not disclosed to
27

1 anyone except the plaintiff, his current attorneys and any attorneys with whom they be [sic]
2 discussing potential future representation of the plaintiff, accountants and other experts
3 retained or potentially retained by the plaintiff's attorneys to assist them in the representation
4 and the personnel of the firm of the attorneys' and experts' firms" (emphasis added).

5 8. The Confidential Documents all have independent economic value, based on
6 the fact that this information is not generally known to PVCOA's competitors in the vacation
7 ownership resort marketplace. PVCOA's competitors would obtain economic value from the
8 public disclosure or use of this information, which would harm the business of PVCOA.

9 9. Specifically, the Financial Reports and Budgets contain detailed financial
10 records and projections for PVCOA and the component resorts within PVCOA. For
11 example, the Financial Reports contain detailed financial records that identify how PVCOA
12 manages its Resorts, what costs and expenses it charges, and how the members are charged for
13 those services. They also include balance sheets that identify cash on hand, assessment
14 receivables, liabilities, and accounts payable. The Financial Reports also include a Statement of
15 Revenues, Expenses and Changes in Fund, which Statement has member assessments, payroll
16 expenses, management fees, bad debt, and other specific and itemized expenses. The Financial
17 Reports also include notes that detail the various financial aspects of PVCOA and the various
18 Resorts. All of this detailed information is invaluable to the private business of each Resort and
19 of PVCOA. It would be valuable to competitors looking to change their business structures,
20 their member assessments, or their management fee arrangements to understand how PVCOA
21 (and its manager) operate the various resorts. The same analysis would apply to the Budgets.

22 10. As for the Management Agreements and the Assignment of the Management
23 Agreements, PVCOA aggressively protects these confidential documents. The Management
24 Agreements and the Assignment of the Management Agreements are never made available to
25 the public and PVCOA does not consent to their distribution to the public or their recitation
26 in a court filing. These documents identify the management fees that PVCOA pays, the

1 services that PVCOA receives in exchange for the management fees, other costs that
2 PVCOA has agreed to pay to its management company, and the rights and responsibilities of
3 PVCOA and the management company. This information is valuable to PVCOA because it
4 demonstrates how PVCOA conducts business, how it utilizes the management company and
5 what it pays the management company. Competitors would likely be interested in seeing the
6 terms of the Management Agreements to assist in the streamlining and efficiency of their
7 businesses, which would harm PVCOA's business.

8 11. Finally, the same facts would be true for the Cost Description Document and
9 Fees Document as both documents contain detailed financial and business operational
10 information. The Cost Description Document expressly outlines a laundry list of services
11 that PVCOA receives in exchange for certain costs paid to the management company. The
12 Fees Documents then identifies, with exact specificity, the management fees charged,
13 contributions from other parties, and other costs charged to PVCOA in exchange for certain
14 services. These documents are internal records that very specifically identify the manner in
15 which PVCOA conducts the business of managing the resorts and running its operations.
16 Even more specifically, the Fees Document (and Financial Reports and Budgets) expressly
17 identifies how PVCOA spends its money. While PVCOA is willing to produce such records
18 to its members, PVCOA would never agree to release these documents to the public at large.

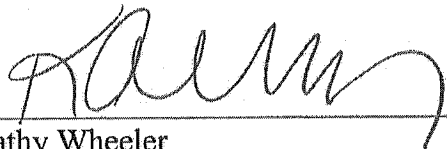
19 12. PVCOA uses reasonable efforts to maintain the confidentiality of the
20 Confidential Documents. PVCOA does not share the information contained in the
21 Confidential Documents with the public. Typically, unless there is a specific request,
22 PVCOA does not provide the detailed financial information contained within the
23 Confidential Documents to its general membership, but the information is made available to
24 PVCOA's member officers and directors. For example, the full budgets included as part of
25 the Confidential Documents are not routinely provided to members of PVCOA, but they do
26 receive single-page budget summaries. In addition, PVCOA ensures that electronically
27

1 stored information is accessible only to those individuals through password-protected
2 accounts or documents. This financial and management information is not generally known
3 in the vacation ownership resort industry and confers a competitive advantage to PVCOA.
4 PVCOA has expended considerable money to develop this information and maintain its
5 confidentiality.

6 13. PVCOA would not have agreed to produce the Confidential Documents in this
7 case had it known that Plaintiff would thereafter be able to remove the confidential
8 designations and use the information in a subsequent class action. Rather, PVCOA would
9 have appealed any order requiring the production because the information contained in the
10 Confidential Documents is confidential, proprietary, and highly valuable to PVCOA.

11
12 I declare under the penalty of perjury that the foregoing is true and correct.

13
14 DATED this 6 day of June, 2018.

15 
16 _____
17 Kathy Wheeler