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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
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11 Clarke and Rebecca Wixon, Norman
12 and Barbara Wixon, and Kandice
13 Scattolon, derivatively and on behalf of
themselves and all others similarly
situated,

14 Plaintiffs,

15 v.

16 Wyndham Resort Development Corp.
17 (f/k/a Trendwest Resorts, Inc.), Gene
Hensley, David Herrick, John Henley,
Peggy Fry and John McConnell, and
nominally, WorldMark, The Club,

18 Defendants.
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Case No. C 07-02361 JSW (BZ)

**SETTLEMENT AGREEMENT
AND RELEASE**

22 Plaintiffs Clarke and Rebecca Wixon, Norman and Barbara Wixon, and Kandice Scattolon
23 (“Plaintiffs”), by and through their counsel, and Gene Hensley, David Herrick, John Henley, Peggy
24 Fry, and John McConnell, in their capacities as current and former members of the Board of Directors
25 of WorldMark, the Club (“Director Defendants”), by and through their counsel, hereby enter in this
26 Settlement Agreement and Release (“Settlement Agreement”), subject to Court approval, providing for
27 the terms of settlement (the “Settlement”) and Mutual Releases set forth herein.
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WHEREAS, on October 23, 2007, Plaintiffs Clarke and Rebecca Wixon and Norman and Barbara Wixon filed their First Amended Complaint in this Court, asserting claims against Wyndham on behalf of a class of persons who own WorldMark Vacation Credits and who reside in or purchased their Vacation Credits in California, for breach of contract, breach of the covenant of good faith and fair dealing, violation of California Civil Code § 1750 *et seq.* (“CLRA”), violation of California Business and Professions Code § 17200 *et seq.* (“UCL”), violation of California Business and Professions Code § 11210 *et seq.* (“VOTA”), and declaratory relief; and adding Director Defendants as parties and asserting against them claims for breach of fiduciary duty and declaratory relief.

WHEREAS, on May 16, 2008, Plaintiffs Clarke and Rebecca Wixon and Norman and Barbara Wixon filed their Second Amended Complaint in this Court, reasserting their class claims against Wyndham, and asserting against Director Defendants on behalf of Plaintiffs and nominal Defendant WorldMark, The Club (“WorldMark”) derivative claims for breach of fiduciary duty and declaratory relief. Plaintiffs sought monetary damages, as well as injunctive and declaratory relief.

WHEREAS, Director Defendants filed a second motion to dismiss the derivative claims asserted in the Second Amended Complaint, which the Court granted in part on July 23, 2008, granting Plaintiffs leave to file a Third Amended Complaint to allege specific allegations of demand futility.

1 **WHEREAS**, Plaintiffs associated with the law firm of Gersh & Helfrich, LLP, and filed a Third
2 Amended Complaint, which on November 3, 2009, in response to Director Defendants' third motion to
3 dismiss, the Court found alleged derivative claims with the requisite specificity to proceed.

4 **WHEREAS**, discovery, which had been ongoing between Plaintiffs and Wyndham since July
5 2007, commenced in December 2008 between Plaintiffs and Director Defendants and has continued
6 since that time.

7 **WHEREAS**, on April 24, 2009, Plaintiffs Clarke and Rebecca Wixon and Norman and Barbara
8 Wixon filed a motion for class certification with respect to the claims asserted against Wyndham and a
9 motion for leave to file a Fourth Amended Complaint to amend the class definition, and Director
10 Defendants moved pursuant to Fed. R. Civ. P. 23.1 to dismiss Plaintiffs Clarke and Rebecca Wixon and
11 Norman and Barbara Wixon as representative plaintiffs in the derivative action.

12 **WHEREAS**, on October 19, 2009, the Court granted Plaintiffs' motion for leave to file a Fourth
13 Amended Complaint, granted in part their motion for class certification with respect to the class claims
14 asserted against Wyndham, and granted in part Director Defendants' motion to dismiss Plaintiffs as
15 adequate representative plaintiffs in the derivative action.

16 **WHEREAS**, on January 27, 2010, the Court granted Plaintiffs' motion to file a Fifth Amended
17 Complaint to add Plaintiff Kandice Scattolon as an additional representative plaintiff to cure the
18 deficiency identified by Director Defendants' Rule 23.1 motion.

19 **WHEREAS**, on October 2, 2008, WorldMark commenced a proceeding entitled *WorldMark,*
20 *The Club v. Robin Miller, et al.*, Case No. 24-2008-00025130-CU-PT-GDS, in the Superior Court of
21 California for Sacramento County ("the State Case"). In that matter, WorldMark sought a protective
22 order to prevent Mr. Miller and other WorldMark members from obtaining a copy of the WorldMark
23 membership register and member email addresses. Plaintiffs Clarke and Rebecca Wixon and Norman
24 and Barbara Wixon intervened in the State Case. Following intervention, the Sacramento Superior
25 Court denied the requested protective order. The State Case is now pending in the California Court of
26 Appeal, Third Appellate District.

27 **WHEREAS**, Plaintiffs and Director Defendants ("the Parties") have explored and discussed at
28 length the factual and legal issues in the Action. These discussions were informed by substantial

1 discovery completed in the Action, expert discovery and analysis, and the Parties' investigation of the
2 law applicable to the claims asserted against Director Defendants and relevant defenses.

3 **WHEREAS**, on November 11, 2009, the Parties initiated settlement discussions in a full-day
4 mediation session before the Honorable William J. Cahill (Ret'd) at JAMS in San Francisco, California,
5 to no avail. Subsequently, the Parties commenced settlement discussions without the assistance of a
6 Neutral, and since January 2010 have actively negotiated settlement while litigating the Action.

7 **WHEREAS**, on May 17, 2010, as a result of the vigorous negotiations described above, the
8 Parties reached agreement in principle on non-monetary settlement of the substantive claims asserted
9 by Plaintiffs against the Director Defendants, subject to Court approval.

10 **WHEREAS**, on June 4, 2010, after reaching agreement on non-monetary settlement terms, the
11 Parties participated in a mediation session before the Honorable Edward A. Infante (Ret'd) at JAMS in
12 San Francisco, California, where they reached agreement on a monetary amount in settlement to satisfy
13 Plaintiffs' Counsel's claims for attorneys' fees, expenses, and costs, subject to Court approval, which
14 would fully settle all outstanding issues and claims between the Parties.

15 **WHEREAS**, Plaintiffs, by and through their undersigned counsel, have: (a) made a thorough
16 investigation of the facts and circumstances surrounding the allegations asserted in the Action; and (b)
17 engaged in investigation and discovery of the claims asserted in the Action, including but not limited
18 to: (i) researching, reviewing, and analyzing the applicable contracts and documents that govern the
19 Parties' legal rights, duties, and obligations vis a vis one another; (ii) deposing witnesses and experts;
20 (iii) reviewing and analyzing thousands of pages of paper and e-discovery documents produced in the
21 Action; (iv) engaging in discovery motion practice before United States Magistrate Judge Bernard
22 Zimmerman; and (v) investigating the law applicable to the claims asserted in the Action.

23 **WHEREAS**, Director Defendants believe Plaintiffs' claims have no merit. They have denied
24 and expressly continue to deny any legal responsibility or liability to Plaintiffs, any WorldMark
25 member, or WorldMark for any of the matters asserted in the Action, but they believe settlement is
26 desirable to avoid the time, expense, and inherent uncertainty of defending protracted litigation and to
27 resolve, finally and completely, all pending and potential claims Plaintiffs asserted or could have
28 asserted in the Action against Director Defendants or the State Case against WorldMark.

1 **WHEREAS**, Plaintiffs’ counsel are experienced in this type of litigation and believe that
2 Plaintiffs’ claims have merit, counsel also recognize the costs and risks of continued prosecution of the
3 Action and the State Case, and believe it is in the interests of Plaintiffs, all WorldMark members, and
4 WorldMark to resolve the Action and the State Case, as well as Plaintiffs’ claims against Director
5 Defendants arising from the conduct or actions alleged in or stemming from the Action or the State
6 Case, in this Settlement Agreement.

7 **WHEREAS**, extensive arms-length negotiations resulted in this Settlement Agreement, subject
8 to Court approval.

9 **WHEREAS**, the undersigned Parties submit this Settlement Agreement to benefit Plaintiffs,
10 WorldMark members, and WorldMark, and believe it is fair, reasonable, adequate, and in the best
11 interest of WorldMark and its members.

12 **WHEREAS**, this Settlement Agreement is intended to supersede any and all agreements
13 previously executed by the Parties with respect to claims asserted in the Action.

14 **NOW, THEREFORE**, it is hereby stipulated and agreed, by and between the undersigned
15 parties, as follows:

16 **I. DEFINITIONS**

17 1. As used in this Settlement Agreement, the following terms have the corresponding
18 meanings set forth below. Where appropriate, terms used in the singular shall be deemed to include the
19 plural and vice versa.

20 (a) “Action” shall mean and refer only to the claims for breach of fiduciary duty and
21 declaratory relief asserted by Plaintiffs derivatively on behalf of WorldMark against Director
22 Defendants in *Wixon v. Wyndham Resort Development Corp.*, Case No. C-07-2361-JSW, and shall
23 explicitly exclude and preserve any and all claims that have been asserted by Plaintiffs against
24 Wyndham in that proceeding.

25 (b) “Approval Hearing” shall mean a hearing to be held by the Court to determine whether
26 the settlement should be approved and the Action dismissed.

27 (c) “Approval Order” shall mean a final order and judgment of the Court granting final
28 approval of the Settlement, dismissing with prejudice Plaintiffs’ Fifth Amended Complaint in the

1 Action as to Director Defendants, and deeming the Parties' claims released as set forth in this
2 Agreement.

3 (d) "Board" or "Board of Directors" shall mean the Board of Directors of WorldMark, The
4 Club.

5 (e) "Director Defendants" shall mean Gene Hensley, David Herrick, John Henley, Peggy
6 Fry, and John McConnell in their capacities as former or current directors of WorldMark, The Club.

7 (f) "Director Defendants' Counsel" shall mean Director Defendants' attorneys of record in
8 the Action, *i.e.*, the Law Offices of Judith H. Ramseyer PLLC, K&L Gates LLP, or either of them.

9 (g) "Management Agreement" shall mean WorldMark, The Club's Management
10 Agreement.

11 (h) "Member" or "Membership" shall mean a member of WorldMark, The Club, as defined
12 by WorldMark's By-Laws, § 3, and documents incorporated therein.

13 (i) "Monetary Settlement Amount" shall mean a monetary payment of one million eight
14 hundred thousand dollars and no cents (\$1,800,000), that Continental Casualty Company
15 ("Continental") has agreed to pay on behalf of Director Defendants to fully satisfy Plaintiffs' Counsel's
16 claim for attorneys' fees, expenses, and costs, subject to Court approval and Continental's reservation
17 of rights. The Monetary Settlement Amount will be paid separate and apart from any non-monetary
18 relief provided to Plaintiffs, WorldMark members, or WorldMark.

19 (j) "Notice Order" shall mean a Court order, in substantially the form attached hereto as
20 Exhibit B, directing that Settlement Notice be given to Owners and setting the Approval Hearing.

21 (k) "Plaintiffs" shall mean representatives Clarke and Rebecca Wixon, Norman and Barbara
22 Wixon, and Kandice Scattolon, on behalf of WorldMark and all WorldMark members.

23 (l) "Plaintiffs' Counsel" shall mean Plaintiffs' attorneys of record in the Action, *i.e.*, Girard
24 Gibbs LLP, Gersh & Helfrich, LLP, or either of them.

25 (m) "Released Persons" shall mean Director Defendants and their heirs, spouses, assigns,
26 agents, legal counsel, representatives, employees, successors, subrogees, and insurers.

27 (n) "Robin Miller" or "Respondent Miller" means the individual respondent named in the
28 State Case.

(o) "Settlement Notice" means a notice directed to WorldMark Members, substantially in the form attached hereto as Exhibit B-1, describing the material terms of the settlement set forth in this Agreement, the procedure and deadline for commenting on or objecting to the settlement, and the date and time of the Approval Hearing.

(p) "State Case" means and refers to a proceeding commenced by WorldMark filing a petition in the Superior Court of California for Sacramento County, entitled *WorldMark, The Club v. Robin Miller, et al.*, Case No. 2008-00025130-CU-PT-GDS, and Plaintiffs' complaint in intervention filed in that case in which Plaintiffs assert claims against WorldMark. The State Case is now pending in the California Court of Appeal for the Third Appellate District, Case No. 061019. The term "State Case" as used in the Settlement Agreement excludes and is meant to preserve any and all claims Plaintiffs have asserted in that proceeding against Wyndham, if any, any and all claims and interests Respondent Miller has asserted in that proceeding, and WorldMark's claims and interests as related to Respondents Miller and Wyndham.

(q) "WorldMark" means WorldMark, The Club.

(r) "Wyndham" means Wyndham Resort Development Corporation (formerly known as Trendwest Resorts, Inc.).

II. REQUIRED EVENTS

Promptly after execution of this Settlement Agreement by all Parties:

2. The Parties will use their best efforts, consistent with the terms of this Settlement Agreement, to obtain a Court order approving the Settlement.

3. Should the Court disapprove of the Settlement Agreement, this Settlement is voidable by either party. The Parties agree to use their best efforts, consistent with the terms of this Settlement Agreement, to cure any defect(s) identified by the Court.

4. The Parties acknowledge that prompt approval, consummation, and implementation of the settlement set forth in this Settlement Agreement are essential. They shall cooperate with each other in good faith to carry out the purposes of and to effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all documents and other materials and/or information reasonably

1 necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions,
2 actions, or activities contemplated thereby.

3 5. Upon entry of the Approval Order, the Action shall be dismissed, with prejudice, subject
4 to the continuing jurisdiction of this Court.

5 **III. SETTLEMENT TERMS**

6 6. As consideration for dismissal of the Action and release of claims as provided for in the
7 Mutual Releases set forth in paragraphs 49-51, below, the Parties have agreed to and shall adopt and
8 fully implement the following provisions.

9 **A. Appointment of “Nonaffiliated” Member to the WorldMark Board**

10 7. A Director Defendant will resign from the Board so the vacancy created by this
11 resignation can be filled by appointment to the Board of a “nonaffiliated” Member. If an order
12 approving Settlement is obtained sufficiently in advance to permit it, the Director Defendant resignation
13 and Board appointment to fill this vacancy shall be effectuated before the 2010 election. For purposes
14 of this Settlement Agreement, “nonaffiliated,” when used to describe a Member, WorldMark director,
15 or candidate for the Board, means an Member, director, or candidate who:

- 16 a) is not now and never has been employed by Wyndham or any related entity;
17 b) is unrelated to any of the Director Defendants; and
18 c) shall not be offered or promised employment or financial or other consideration
19 by Wyndham or any related entity, or by WorldMark or any of the Director
20 Defendants, at any time before or during his or her service on WorldMark’s
21 Board (except as permitted under §§ 4.1(c)(ii) and 4.5(h) of WorldMark’s By-
22 Laws).

23 For purposes of this Settlement Agreement, “affiliated” refers to a Member, WorldMark director, or
24 candidate for the Board who fails to meet one or more of the conditions set forth in
25 subparagraphs (a)-(c) above.

26 8. The appointment occasioned by the resignation described in paragraph 7 will be for the
27 normal term for which a WorldMark director currently serves, and the person so appointed need not
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stand for election at the 2010 annual meeting of Members. Immediately after the appointment, the Board will consist of three affiliated directors and two “nonaffiliated” directors.

9. The Board will use the following advisory criteria to help it identify qualified candidates for appointment to fill the vacancy created by this Settlement Agreement:

- a) Whether the person is current on all financial obligations to WorldMark;
- b) Whether the person has been a Member and user of WorldMark’s facilities and services for at least three years;
- c) Whether the person has experience with Wyndham exchange programs or other timeshare products;
- d) Whether the person has prior business experience or experience serving on a nonprofit or corporate board;
- e) Value the person would add to the Board based on his or her professional, educational, or personal expertise and experiences; and
- f) Whether the person has flexibility to attend quarterly meetings.

10. As an initial pool of candidates to fill the vacancy created by this Agreement, the Board will consider all nonaffiliated Members who have run for election to the Board or participated on the Advisory or Nominations Committees for any of the past three years (2007-2009). The Board also will consider all other nonaffiliated Members who seek to be considered for the appointment, including those who express an interest in writing pursuant to paragraph 11, below.

11. The Settlement Notice sent to Members under this Settlement Agreement shall advise Members of the Board vacancy created by the resignation described in paragraphs 7 and 8 of this Agreement; list the advisory criteria that will guide the Board’s identification of qualified nonaffiliated Members to fill the vacancy; and provide a deadline by which a Member may submit a one-page letter of interest to be considered for appointment.

12. Nothing in this Settlement Agreement shall limit or be deemed to limit the Board’s authority to select the candidate who, in the Board’s considered business judgment, would best serve WorldMark’s interests, except as specifically set forth in paragraphs 7 through 10, above.

1 **B. Maintenance of Nonaffiliated Member Appointment Through 2013 Election**

2 13. Director Defendants, collectively and each of them, shall take no action to reduce the
3 number of nonaffiliated directors (as opposed to taking action to remove from the Board a specific
4 person who is a nonaffiliated Member and replace the person with another nonaffiliated Member)
5 through at least the 2013 Board election.

6 14. Beginning with the 2014 Board election, no specific composition of WorldMark's Board
7 will be required. The Board shall continue to exercise its considered business judgment to vote for or
8 select for appointment the candidates, whether nonaffiliated or affiliated, who would best serve the
9 interests of WorldMark and its members.

10 **C. Grounds for Removal of Affiliated or Nonaffiliated Directors**

11 15. Removal of appointed or elected directors, whether affiliated or nonaffiliated, is
12 governed by WorldMark's Bylaws.

13 **D. Listing of Board Candidates and Required Disclosures**

14 16. If the Approval Order is obtained sufficiently in advance to permit it, beginning with the
15 2010 election all candidates seeking election to the Board will be listed on ballots and candidacy
16 statements in alphabetical order by last name and, as is current practice, incumbents will be identified
17 as incumbents.

18 17. If the Approval Order is obtained sufficiently in advance to permit it, beginning with the
19 2010 election each candidate seeking election to the Board shall be required to disclose, to the Board
20 and on their candidacy statements, the following:

- 21 a) any past or present affiliation with Wyndham;
22 b) whether the candidate is a competitor of Wyndham or any related entity; and
23 c) whether the candidate has advertised to trade, rent, or sell or has traded, rented, or
24 sold Wyndham timeshare products or WorldMark vacation credits, vacations, or
25 housekeeping tokens for profit or to generate income.

26 If the Board learns that a candidate has failed to comply with the foregoing disclosure requirements,
27 that person may be disqualified from participating in the election.

1 18. No later than 90 days after entry of the Approval Order, the listing, identification, and
2 disclosure requirements identified in paragraphs 16 and 17 of this Settlement Agreement shall be added
3 to the written procedures adopted by the Board, under the authority of WorldMark's Bylaws, governing
4 the candidacy, nomination, and election of persons to the Board.

5 **E. Voting Practices And Proxy Assignments**

6 19. If the Approval Order is obtained sufficiently in advance to permit it, beginning with the
7 2010 election the following language shall be deleted from proxy instructions or proxy documents used
8 for Board elections: "I acknowledge and agree that the Board of WorldMark will be appointed my
9 proxy if I did not designate an individual owner to act as my proxy." Thereafter, no proxy instructions
10 or proxy document used for a Board election or other matter determined by the collective vote of the
11 Members shall contain language to the effect that the Board, a WorldMark director, or any other person
12 will be appointed or deemed the proxy holder for a Member if the Member returns a blank proxy
13 document that does not exercise the Member's vote or designate a valid proxy holder.

14 20. If the Approval Order is obtained sufficiently in advance to permit it, beginning with the
15 2010 election and thereafter, a proxy document returned by a Member that does not exercise the
16 Member's vote and additionally does not designate a valid proxy holder shall not be counted as a vote
17 in the election.

18 **F. Role of Outside Counsel For The Board**

19 21. The Settlement Notice sent to Members under this Settlement Agreement shall contain a
20 statement, substantially in the form attached hereto as Exhibit A, advising Members of the role of
21 outside counsel retained by the Board.

22 22. No later than 90 days after entry of the Approval Order, a statement describing the role
23 of outside counsel for the Board substantially in the form attached hereto as Exhibit A shall be posted
24 on the official WorldMark by Wyndham website.

25 **G. Periodic Review of the Management Agreement**

26 23. No later than 90 days after entry of the Approval Order, the Board shall create a
27 subcommittee composed of one nonaffiliated director, another director (affiliated or nonaffiliated), and
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the Board's outside counsel, which will be assigned the task of reviewing the Management Agreement and recommending to the Board changes, amendments, or alterations, if any.

24. The Board shall consider the subcommittee's recommendations with respect to the Management Agreement at a regularly-scheduled Board meeting. The Board shall, based on its collective business judgment, articulate any reasons for disagreeing with the recommendations of the subcommittee. The Board, collectively or through designated delegate(s), shall raise with Wyndham those subcommittee recommendations it determines to pursue. Any outcome resulting from a discussion between WorldMark, the Board, and Wyndham regarding the Management Agreement, or any proposal to change, amend, or modify the Management Agreement, shall be negotiated between the parties to that agreement.

25. A subcommittee of the Board as described in paragraph 23 shall undertake its review of the Management Agreement every three years, beginning as soon as practicable after its creation. After three cycles of subcommittee review (*e.g.*, 2019), the Board may, by unanimous vote, agree to a different timeline for review of the Management Agreement.

H. Notice to WorldMark of Resort Development

26. Director Defendants represent that when resorts are being considered or developed, the developer (Wyndham) has reported these matters to the Board during executive session.

27. When the developer makes such reports, the Board's regularly-prepared meeting minutes shall reflect that the Board discussed with Wyndham in executive session matters pertaining to future resort development. Confidentiality concerning the particular resorts being developed or considered for development shall be maintained as long as necessary to ensure or protect Wyndham's competitive position with respect to potential or future real estate transactions or resort development.

I. Member-to-Member Communications; Election Website

28. To facilitate Member communication concerning WorldMark elections and Annual Owner Meetings while preserving the privacy of Member contact information and the WorldMark Membership Register as a corporate asset, Director Defendants shall obtain the cooperation and participation of WorldMark to create, launch, and maintain an independent website (*e.g.*, www.worldmarkelections2010.com) that will operate during each Election Cycle ("Election Website").

1 For purposes of this Settlement Agreement, "Election Cycle" means the period each year from the time
2 voting materials are sent to Members, *i.e.*, September, through the conclusion of the Annual Owner
3 Meeting.

4 29. Members shall be notified in the *Destinations* and, to the extent permitted, *Insider*
5 e-magazines before the Election Cycle of a date certain by which to submit a statement or
6 correspondence concerning the upcoming election or Annual Owner Meeting that they wish to have
7 posted for viewing by other Members on the Election Website. Members will be provided the slate of
8 election candidates and any ballot proposals no later than twenty-one (21) days before the submission
9 deadline.

10 30. To be eligible for posting on the Election Website, the statements or correspondence
11 described in paragraph 28 must meet the following criteria:

- 12 a) Only one submission may be made per Member family;
- 13 b) Submissions may consist of no more than 250 words;
- 14 c) Submissions must be accurate with respect to WorldMark Bylaws,
15 guidelines, and regulations;
- 16 d) Submissions must not be overtly slanderous or contain profanity or highly
17 personal attacks, and
- 18 e) Submissions must be directly related to the election or Annual Owner
19 Meeting business.

20 31. Any statement or correspondence described in paragraph 28 that does not satisfy one or
21 more of the criteria listed in paragraph 30 (a) through (e) shall be declined for posting on the Election
22 Website and returned to the submitting Member with a statement of the reason for its return. The
23 Member shall have five (5) business days to correct the deficiency and resubmit the statement or
24 correspondence. Where appropriate, WorldMark will engage independent counsel (such as current
25 outside counsel, Paul Draper) to evaluate submissions for compliance with the criteria listed in
26 paragraph 30 (a) through (e), and the decision of independent counsel regarding compliance or
27 noncompliance will be binding on WorldMark and the submitting Member.

1 32. From 2010 through 2012, Director Defendants, WorldMark, and Wyndham will use the
2 Election Website for election-related advocacy, subject to the same submission deadline and eligibility
3 criteria governing statements and correspondence submitted by Members, as stated in paragraphs 28
4 through 31 of this Settlement Agreement. An exception during this time period applies, however, if an
5 issue arises for which the Board believes, after having consulted with outside counsel, it has a fiduciary
6 duty to advocate a position to Members. In that case, the Board and WorldMark retain their right to
7 use WorldMark's resources, including without limitation publications, Member contact information,
8 and, to the extent permitted, WorldMark's website and Member email addresses, to communicate with
9 Members on such issues. Director Defendants, WorldMark, and Wyndham are not limited to the
10 Election Website for election-related advocacy (subject to the exception noted above) after the 2012
11 election.

12 33. The Election Website and its web address (URL) will be announced to all Members in
13 *Destinations* magazine and, to the extent permitted, the *Insider* e-magazine. Additionally, the
14 September publication of *Destinations* and, as permitted, the September and October publications of
15 the *Insider* e-magazine (if the order approving the Settlement is obtained sufficiently in advance to
16 permit it in 2010) will contain a notice informing Members how to access the Election Website.

17 34. In addition to the Election Website described herein, the mailing house option provided
18 by WorldMark Bylaws § 7.1(a) will remain available to Wyndham, WorldMark, the Board, and
19 individual Members for direct mail communication with other Members, according to its terms.

20 35. This Settlement Agreement imposes no limitations on the Board's or WorldMark's use
21 of WorldMark's corporate resources to provide Members with content-neutral election-related
22 communications, such as election notices and "get out the vote" reminders.

23 **J. Confidentiality of Voting Records**

24 36. Consistent with current practice, Director Defendants, the Board, and persons acting on
25 WorldMark's behalf shall not contact the election administrator during the Election Cycle to learn the
26 voting records of specific Members or early voting results.

1 **K. Permissible Contacts With Election Administrator**

2 37. Director Defendants, the Board, and persons acting on WorldMark's behalf may
3 communicate with the election administrator to determine if a quorum requirement has been satisfied,
4 and may interact with the election administrator as needed to assist in the administration of elections or
5 the tabulation of election results.

6 **L. Dismissal of Plaintiffs' Complaint in Intervention in State Case**

7 38. Within five (5) days of entry of the Approval Order, Plaintiffs will file with the Superior
8 Court of California for the County of Sacramento a notice of dismissal of their complaint in
9 intervention, with prejudice, as against WorldMark, only, in the State Case. If applicable, Plaintiffs
10 will file related notices with any appellate court in which the State Case is then pending. Plaintiffs will
11 not seek to enforce the existing order of the Superior Court or any subsequent order issued in the State
12 Case, whether by the Superior Court, Court of Appeal, or Supreme Court. Further, Plaintiffs will not
13 seek from WorldMark attorney fees, expenses, costs, or reimbursements of any kind for any
14 proceeding involving or related to the State Case, other than as provided herein.

15 **IV. NOTICE AND RELATED PROVISIONS**

16 39. Subject to Court approval, notice of settlement shall be provided to WorldMark
17 Members as described below:

- 18 a) The Notice of Settlement, in substantially the form attached hereto as Exhibit
19 B-1 shall be mailed to all WorldMark Members via bulk rate postage within ten
20 (10) business days of entry of the Notice Order.
- 21 b) The Notice of Settlement, in substantially the form attached hereto as Exhibit
22 B-1, shall be posted in a clear and prominent fashion on WorldMark's website
23 in a location accessible to Members only (www.worldmarktheclub.com) within
24 five (5) business days of entry of the Notice Order. On WorldMark's home
25 page Members will be instructed how to access the Notice of Settlement and be
26 linked to the sign-in page. The Notice of Settlement shall remain on
27 WorldMark's website through the date of the Approval Hearing.

1 c) The Notice of Settlement, in substantially the form attached hereto as Exhibit
2 B-1, shall be posted in a clear and prominent fashion on Plaintiffs' Counsels'
3 firm websites, www.GirardGibbs.com and www.ghlawoffice.com, within five (5)
4 business days of entry of the Notice Order. The Notice of Settlement shall
5 remain on the law firm websites through the date of the Approval Hearing.

6 d) To the extent permitted, the first publication of *Insider* e-magazine after a Notice
7 Order is issued will contain a notation advising Members that Notice of
8 Settlement may be found on WorldMark's website and providing the web address
9 for the Notice.

10 40. All costs associated with mailed notice shall be paid 50% by Plaintiffs and 50% by
11 Continental on behalf of Director Defendants. Each Party shall bear separately any costs associated
12 with posting settlement notice on its website(s).

13 41. Proof of Notice. No later than five (5) days before the Approval Hearing, Director
14 Defendants' and Plaintiffs' Counsel shall file with the Court a sworn declaration, with a copy to all
15 Parties, attesting that the Notice of Settlement was disseminated to Members in a manner consistent
16 with the Court's Notice Order.

17 **V. SETTLEMENT PAYMENT**

18 42. Plaintiffs and Director Defendants, with the consent of Continental subject to its
19 reservation of rights, agree to a monetary sum (defined above as the Monetary Settlement Amount) of
20 One Million Eight Hundred Thousand Dollars and No Cents (\$1,800,000) in settlement of Plaintiffs'
21 Counsel's claim of attorneys' fees, expenses, and costs incurred by Plaintiffs in the Action or State
22 Case, subject to Court Approval. In no event shall Director Defendants or their insurer, Continental, be
23 required to pay Plaintiffs or Plaintiffs' Counsel any monetary amount in settlement greater than
24 \$1,800,000.

25 43. Within twenty-one (21) days of the Court's entry of the Approval Order, Director
26 Defendants, through Continental, shall pay the Monetary Settlement Amount, by check payable as
27 directed by Plaintiffs' Counsel, to be held in trust by Plaintiffs' Counsel until such time as the
28 Approval Order is no longer subject to reversal, vacation, or modification in any way and is no longer

1 subject to appellate review, at which time the Monetary Settlement Amount may be released to
2 Plaintiffs' Counsel. In the event the Approval Order is appealed and reversed, and such reversal
3 becomes final (*i.e.*, all appeals and avenues of review are exhausted), the full amount of the Monetary
4 Settlement Amount shall be remitted to Continental within twenty-one (21) days of such reversal
5 becoming final.

6 **VI. APPROVAL HEARING**

7 44. The Parties shall, as soon as practicable, jointly apply to the Court for entry of the Notice
8 Order and a scheduled date and time for the Approval Hearing. At the Approval Hearing, the Parties
9 will move for final approval of the settlement set forth in this Agreement and entry of Approval Order.

10 45. As part of the application described in paragraph 44, the Parties will ask the Court to
11 enter an order requiring any Member who wishes to be heard at the Approval Hearing or to have his/her
12 comment or objection considered by the Court, to file with the Court a written notice of comment or
13 objection and, if applicable, notice of the Member's intent to appear at the Approval Hearing, and to
14 provide copies of same to Plaintiffs' Counsel and Director Defendants' Counsel, at least ten (10) days
15 before the Approval Hearing.

16 46. Subject to Court approval, the Parties agree that any Member who does not provide a
17 notice of intent to appear or written objection or comment in compliance with the deadlines set forth in
18 paragraph 45 and the Settlement Notice Order, will be deemed to have waived any objections and
19 opposition to the fairness, adequacy, and reasonableness of the Settlement and shall not be permitted to
20 object, present argument, or comment at the Approval Hearing.

21 47. The agreed-upon procedures and requirements for filing written comment or objection
22 and written notice of intent to appear in connection with the Approval Hearing are intended to ensure
23 the efficient administration of justice and orderly presentation of any Member's comment or objection
24 to the Settlement Agreement, in accordance with the due process rights of all Members.

25 48. If settlement is approved as agreed to by the Parties, the Parties will move jointly for
26 entry of the Approval Order.

1 **VII. MUTUAL RELEASE, DISMISSAL OF ACTION AND STATE CASE, AND**
2 **JURISDICTION OF COURT**

3 49. By this Settlement and Agreement, Plaintiffs, WorldMark, all past, present and future
4 WorldMark Members, and Plaintiffs' Counsel ("Plaintiff Releasing Parties"), release WorldMark and
5 all of its predecessors and successors, past present, and future officers, directors, employees, attorneys,
6 representatives, and agents, and the Released Parties and each of them, from any and all claims or
7 causes of action, known or unknown, that were or could have been asserted by Plaintiffs or any
8 Member against Director Defendants, either directly as personal claims or derivatively on behalf of
9 WorldMark, based on California or other state law or federal statute, ordinance, regulation, common
10 law, or other source of law, arising out of or relating in any way to the Action or the State Case, or any
11 of the transactions, facts, disclosures, acts, matters or occurrences, statements, representations or
12 omissions, or failures to act that were alleged in the complaints filed in the Action, and the complaint in
13 intervention filed in the State Case ("Released Claims"). Nothing in this Settlement Agreement shall
14 release Wyndham from the class claims for breach of contract, breach of implied covenant of good faith
15 and fair dealing, violation of the UCL, violation of VOTA, and declaratory relief asserted against
16 Wyndham, and any claims or causes of action Plaintiffs have asserted against Wyndham, either
17 individually or on behalf of the class that Plaintiffs represent, including any claims, counterclaims, or
18 cross-claims asserted in the complaint in intervention filed by Plaintiffs against Wyndham, if any, in the
19 State Case. Nothing in this Settlement Agreement releases any party from any claims, counterclaims, or
20 cross-claims Respondent Miller has or may have arising from his demand for the WorldMark
21 membership register and email addresses of WorldMark members, as is presently being litigated in the
22 State Case. Released Claims do not include any liabilities, claims, rights, suits, or causes of action
23 either Party may assert to enforce the terms of this Agreement.

24 50. Without assuming whether the Release given by this Settlement Agreement is a general
25 release, Plaintiffs and Members shall be deemed to have expressly waived and, by operation of the
26 Approval Order, waived to the fullest extent permitted by law the provisions, rights, and benefits of
27 Section 1542 of the California Civil Code, which provides as follows:
28

1 A general release does not extend to claims which the creditor does not know or suspect
2 exist in his or her favor at the time of executing the release, which if known by him or
3 her must have materially affected his or her settlement with the debtor.

4 The Plaintiff Releasing Parties recognize that, even if they later discover facts in addition to or different
5 from those which they now know or believe to be true, they nevertheless agree that, upon entry of the
6 Approval Order, Plaintiff Releasing Parties fully, finally, and forever release any and all Released
7 Claims. The Parties acknowledge that the foregoing waiver and release was bargained for and is a
8 material element of the Settlement Agreement.

9 51. By this Settlement and the following Release, Director Defendants release Plaintiffs and
10 Plaintiffs' Counsel from any and all claims or causes of action that were, or could have been, asserted
11 by Director Defendants pertaining to the Action and the State Case ("Director Defendants' Released
12 Claims"). Director Defendants recognize that, even if they later discover facts in addition to or
13 different from those which they now know or believe to be true, Director Defendants nevertheless agree
14 that, upon entry of the Approval Order, Director Defendants fully, finally and forever settle and release
15 any and all of the Director Defendants' Released Claims. Director Defendants' Released Claims do not
16 include any liabilities, claims, rights, suits, or causes of action Director Defendants may have against
17 Continental, Wyndham, or any person or entity that is not expressly a party to this Settlement
18 Agreement. Director Defendants' Released Claims do not include any claims, counterclaims, or cross-
19 claims Wyndham may have, if any, in the State Case, or any claims, counterclaims, or cross-claims
20 WorldMark may have with respect to Respondents Wyndham and Miller arising from Miller's demand
21 for the WorldMark membership register and email addresses of WorldMark members, as is being
22 litigated in the State Case. Director Defendants' Released Claims do not include any liabilities, claims,
23 rights, suits, or causes of action either Party may assert to enforce the terms of this Agreement. The
24 Parties acknowledge that the foregoing waiver and release was bargained for and is a material element
25 of the Settlement Agreement.

26 52. The administration and consummation of the Settlement as embodied in this Settlement
27 Agreement shall be under the authority of this Court. The Court shall retain jurisdiction to protect,
28 preserve, and implement the Settlement Agreement, including but not limited to, the Release. The

1 Court expressly retains jurisdiction to enter such further orders as may be necessary or appropriate in
2 administering and implementing the terms and provisions of the Settlement Agreement.

3 **VIII. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

4 53. Plaintiffs' Counsel, who are signatories hereof, represent and warrant that they have the
5 authority, on behalf of Plaintiffs, to execute, deliver, and perform this Settlement Agreement and to
6 consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly
7 and validly executed and delivered by Plaintiffs' Counsel and Plaintiffs and constitutes their legal,
8 valid, and binding obligation.

9 54. Director Defendants, through their undersigned attorney(s), represent and warrant that
10 they have the authority to execute, deliver, and perform this Settlement Agreement and to consummate
11 all of the transactions contemplated hereby. The execution, delivery, and performance by Director
12 Defendants of this Settlement Agreement and their consummation of the actions contemplated hereby
13 have been duly authorized by all necessary corporate action on the part of WorldMark. This Settlement
14 Agreement has been duly and validly executed and delivered by Director Defendants' Counsel and
15 Director Defendants and constitutes their legal, valid and binding obligation.

16 **IX. OTHER PROVISIONS**

17 55. This Settlement Agreement may not be used in evidence and shall not at any time be
18 construed or deemed to be an admission or concession by Director Defendants with respect to any
19 alleged wrongdoing, fault, or omission of any kind whatsoever, regardless of whether this Settlement
20 Agreement results in entry of the Approval Order as contemplated herein. Director Defendants
21 specifically deny all of the allegations made by Plaintiffs in connection with the Action and the State
22 Case.

23 56. This Settlement Agreement is entered into only for purposes of Settlement. In the event
24 the Approval Order is not entered or the Approval Order is subsequently reversed on appeal, this
25 Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or
26 condition of this Settlement Agreement (except the provision of paragraph 43 requiring return of the
27 Monetary Settlement Amount payment to Continental), or any draft thereof, of the discussion,
28 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any

1 effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes
2 whatsoever, in the Action or State Case, and all Parties shall be restored to their prior rights and
3 positions as if the Settlement Agreement had not been entered into.

4 57. The Parties agree that the settlement consideration and other terms of the settlement set
5 forth in this Agreement were negotiated at arm's length in good faith by the Parties, and reflect a
6 settlement that was reached voluntarily after consultation with experienced legal counsel.

7 58. This Agreement may not be modified or amended, nor may any of its provisions be
8 waived, except by a writing signed on behalf of all Parties or their successors-in-interest.

9 59. The headings herein are used for the purpose of convenience only and are not meant to
10 have legal effect.

11 60. The administration and consummation of the settlement set forth in this Agreement will
12 be under the authority of this Court, and the Court will retain jurisdiction for, among other things,
13 entering orders concerning enforcement of this Agreement.

14 61. The waiver by one Party of any breach of this Agreement by any other Party will not be
15 deemed a waiver of any other prior or subsequent breach of this Agreement.

16 62. This Agreement and its exhibits constitute the entire agreement among the Parties
17 concerning the settlement of the Action, and no representations, warranties, or inducements have been
18 made by any Party concerning this Agreement and its exhibits other than those contained and
19 memorialized in such documents. This Agreement supersedes all prior understandings,
20 communications, and agreements with respect to the subject of this Agreement.

21 63. This Agreement may be executed in one or more counterparts. All executed
22 counterparts and each of them will be deemed to be one and the same instrument, provided that the
23 Parties' respective counsel exchange among themselves all signed counterparts.

24 64. This Agreement will be binding on, and inure to the benefit of, the successors and
25 assigns of the Parties.

26 65. The construction, interpretation, operation, effect, and validity of this Agreement, and all
27 documents necessary to effectuate it, will be governed by the internal laws of the State of California
28

1 without giving effect to any choice or conflict of law provision, or rule that would cause the application
2 of the laws of any other jurisdiction.

3 66. Except as otherwise provided in this Settlement Agreement, each party to this Settlement
4 Agreement shall bear his, her, or its own costs of the litigation.

5 67. The Parties to this Settlement Agreement reserve the right, by agreement and subject to
6 Court approval, to grant any reasonable extension of time that might be necessary to carry out the
7 provisions of this Settlement Agreement, as well as to correct any inadvertent, non-substantive mistakes
8 or typographical errors contained in any of the Settlement papers.

9 68. Proper notice shall be given to Plaintiffs and Director Defendants of all applications for
10 Court approval or Court orders required under this Settlement Agreement.

11 69. The determination of the terms of, and the drafting of, this Settlement Agreement has
12 been by mutual agreement after negotiation, with consideration by and participation of all Parties and
13 their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and
14 their counsel, the presumption that ambiguities shall be construed against the drafter does not apply.
15 The Parties were represented by competent and effective counsel throughout the course of settlement
16 negotiations and in the drafting and execution of this Settlement Agreement, and there is no disparity in
17 bargaining power between the Parties to this Settlement Agreement.

18 70. This Settlement Agreement constitutes the entire, fully integrated agreement among the
19 Parties and cancels and supersedes all prior written and unwritten agreements and understandings
20 pertaining to the Settlement of the Action.

21 71. Plaintiffs' Counsel and Director Defendants' Counsel agree to cooperate fully with one
22 another in seeking entry of the Notice Order, the Court's approval of this Settlement Agreement and the
23 Settlement set forth herein, and entry of the Approval Order, and to promptly agree on and execute all
24 such other documentation as may be reasonably required to obtain the Court's approval of the
25 Settlement.

26 72. The Parties agree that any disputes regarding the meaning of the terms and conditions of
27 this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or
28

any disagreement regarding the manner in which any issue or dispute arising under this Settlement Agreement should be resolved, shall be submitted to the Court for resolution.

73. All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

Plaintiffs' Counsel:

Jonathan K. Levine
Elizabeth C. Pritzker
GIRARD GIBBS LLP
601 California Street, Suite 1400
San Francisco, California 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846
jkl@girardgibbs.com; ecp@girardgibbs.com

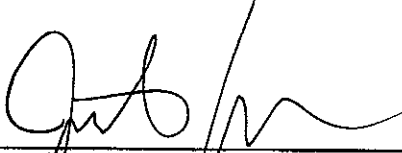
James Helfrich
GERSH & HELFRICH, LLP
1860 Blake Street, Suite 300
Denver, Colorado 80202
Telephone: (303) 293-2333
Facsimile: (303) 293-2433
jh@ghlawoffice.com

Director Defendants' Counsel:

Judith H. Ramseyer
LAW OFFICES OF JUDITH H. RAMSEYER PLLC
2025 First Avenue, Suite 1130
Seattle, Washington 98121
Telephone: (206) 728-6872
Facsimile: (206) 260-6689
judy@ramseyerlaw.com

Matthew G. Ball
K&L GATES LLP
4 Embarcadero Center, Suite 1200
San Francisco, California 94111
Telephone: (415) 882-8200
Facsimile: (415) 882-8220
Matthew.Ball@klgates.com

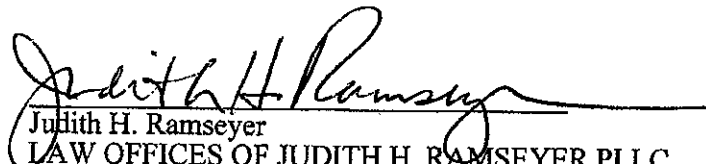
IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized attorneys below.



Jonathan K. Levine
Elizabeth C. Pritzker
Todd I. Espinosa
GIRARD GIBBS LLP
601 California Street, Suite 1400
San Francisco, California 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846

James Helfrich
GERSH & HELFRICH, LLP
1860 Blake Street, Suite 300
Denver, Colorado 80202
Telephone: (303) 293-2333
Facsimile: (303) 293-2433

Plaintiffs' Counsel



Judith H. Ramseyer
LAW OFFICES OF JUDITH H. RAMSEYER PLLC
2025 First Avenue, Suite 1130
Seattle, Washington 98121
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Facsimile: (206) 260-6689

Matthew G. Ball
K&L GATES LLP
4 Embarcadero Center, Suite 1200
San Francisco, California 94111
Telephone: (415) 882-8200
Facsimile: (415) 882-8220

Director Defendants' Counsel

1 EXHIBIT A

2 **Use of Independent Counsel for WorldMark Board**

3 The WorldMark Governing Documents state that the business and affairs of the Club shall be
4 exercised or controlled by its Board of Directors (“the Board”). The Board uses its independent
5 review and judgment in performing these corporate functions.

6 To assist the Board in exercising its duties and responsibilities, it may retain an independent
7 law firm or attorney to advise the Board, as appropriate. Outside counsel provides legal advice to the
8 Board on corporate governance matters and election issues, among other things, and may advise the
9 Board on transactional, management, and related matters. Currently, Paul Draper, Law Offices of
10 Paul Draper, serves as WorldMark’s outside counsel.

11 In selecting outside counsel, the Board shall ensure that its counsel is not affiliated with the
12 developer, Wyndham Resort Development Corporation (“Wyndham”). To guard against potential or
13 actual conflicts of interest, and to ensure independence, outside counsel shall not be a WorldMark
14 member at the time of his or her retention, nor have a financial or other interest in the Club or
15 Wyndham. Outside counsel shall serve entirely at the discretion of the Board. Legal services
16 rendered by outside counsel are paid for by WorldMark, The Club.

EXHIBIT B

Jonathan K. Levine (State Bar No. 220289)
jkl@girardgibbs.com
Elizabeth C. Pritzker (State Bar No. 146267)
ecp@girardgibbs.com
Todd I. Espinosa (State Bar No. 209591)
tie@girardgibbs.com
GIRARD GIBBS LLP
601 California Street
San Francisco, California 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846

Class Counsel and
Attorneys for Plaintiffs Clarke and Rebecca Wixon,
Norman and Barbara Wixon, and Kandice Scattolon

[Additional counsel appear on signature page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CLARK and REBECCA WIXON, NORMAN
and BARBARA WIXON, and KANDICE
SCATTOLON, derivatively and on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

WYNDHAM RESORT DEVELOPMENT
CORP. (f/k/a Trendwest Resorts, Inc.), GENE
HENSLEY, DAVID HERRICK, JOHN
HENLEY, PEGGY FRY, AND JOHN
MCCONNELL, and nominally,
WORLDMARK, THE CLUB,

Defendants.

Case No. C 07-2361 JSW (BZ)

**[PROPOSED] ORDER (1) APPROVING
FORM OF NOTICE, (2) DIRECTING
THAT NOTICE BE ISSUED, AND
(3) SETTING DATE FOR APPROVAL
HEARING ON PROPOSED
SETTLEMENT BETWEEN PLAINTIFFS
AND DIRECTOR DEFENDANTS**

Class and Derivative Action

1 Plaintiffs Clarke and Rebecca Wixon, Norman and Barbara Wixon, and Kandice Scattolon
2 (“Plaintiffs”), on behalf of nominal Defendant WorldMark, the Club (“WorldMark”), and Defendants
3 Gene Hensley, David Herrick, John Henley, Peggy Fry and John McConnell (collectively, “Director
4 Defendants”), have entered into a Settlement Agreement and Release (the “Settlement Agreement”),
5 dated July 1, 2010, which, if approved, will resolve in full the derivative claims asserted by Plaintiffs in
6 this litigation against the Director Defendants (the “Settlement”).

7 Having read and considered the Settlement Agreement and all exhibits thereto, including the
8 proposed Notice of Settlement, and being familiar with the files and records in this case, the Court finds
9 there is sufficient basis to (1) approve the form of the proposed Notice, (2) direct that Notice be issued
10 to WorldMark members, and (3) set a hearing to determine whether the Settlement should be approved.

11 Accordingly, the Court hereby finds and rules as follows:

12 (1) The proposed form of Notice and means to deliver the Notice to all WorldMark members
13 constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient
14 notice in full compliance with the requirements of applicable law, including the Due Process Clause of
15 the United States Constitution. The form of and procedures for disseminating Notice of the proposed
16 Settlement to WorldMark members set forth in the Settlement Agreement is approved.

17 (a) Within ten business days after entry of this Order, the Notice of Settlement,
18 substantially in the form attached hereto as **Exhibit 1**, shall be sent by U.S. mail, bulk rate postage, to
19 all WorldMark members.

20 (b) Within five business days after entry of this Order, the Notice of Settlement,
21 substantially in the form attached hereto as **Exhibit 1**, shall be posted in a clear and prominent manner
22 in a location accessible only to WorldMark members on the WorldMark by Wyndham website
23 (www.worldmarktheclub.com). On WorldMark’s home page, Members will be instructed how to
24 access the Notice of Settlement and be linked to the sign-in page. The Notice of Settlement shall
25 remain on the WorldMark by Wyndham website through the date of the Approval Hearing.

26 (c) Within five business days after of this Order, Plaintiffs’ counsel shall post in a clear
27 and prominent manner the Notice of Settlement, substantially in the form attached hereto as **Exhibit 1**,
28 on their firm websites (www.girardgibbs.com and www.ghlawoffice.com). The Notice of Settlement

1 shall remain on the WorldMark by Wyndham website through the date of the Approval Hearing.

2 (d) To the extent permitted, the first publication of *Insider* e-magazine after this Notice
3 Order is issued will contain a notation advising Members that Notice of Settlement may be found on
4 WorldMark's website and providing the web address for the Notice.

5 (e) Not later than five days before the Approval Hearing, Counsel for Plaintiffs and
6 Director Defendants each shall file a sworn declaration attesting that the Notice of Settlement was
7 disseminated to WorldMark members in a manner consistent with the terms of the Settlement
8 Agreement and as ordered by this Court.

9 (2) A hearing to determine final approval of the Settlement Agreement (the "Approval
10 Hearing"), shall be held at _____ on **August 27, 2010**, before the undersigned in Courtroom 11 of
11 the United States District Courthouse for the Northern District of California, 450 Golden Gate Avenue,
12 San Francisco, CA 94102. At the Approval Hearing, the Court will consider whether the Settlement
13 should be approved as fair, reasonable and adequate; and whether a final order and judgment granting
14 approval of the Settlement and dismissing the lawsuit with prejudice should be entered.

15 (a) Counsel for Plaintiffs and Director Defendants may file memoranda, declarations, or
16 other statements and/or materials in support of the request for Settlement approval no later than **July**
17 **23, 2010**.

18 (b) Any WorldMark member who intends to object to or comment on final approval of
19 the Settlement Agreement must, on or before **August 10, 2010**, file any such objection or comment
20 with the Court, and provide copies of the objection or comment to: (1) Girard Gibbs LLP, c/o Jonathan
21 K. Levine, 601 California Street, 14th Floor, San Francisco, CA 94108; and (2) K&L Gates LLP, c/o
22 Matthew Ball, 4 Embarcadero Center, Suite 1200, San Francisco, CA 94111. Each filed statement
23 must include the WorldMark member's name, address, telephone number, WorldMark account
24 number, signature, and a description of the person's objection or comments related to the Settlement
25 Agreement. Additionally, if the WorldMark member intends to appear in person or through counsel at
26 the Approval Hearing, the filed statement must so state.

27 (c) To appeal from any provision of the order approving the Settlement as fair,
28 reasonable, and adequate, a WorldMark member must file a timely written objection and appear in

1 person or through counsel at the Approval Hearing, or seek leave of Court excusing such appearance
2 prior to the Approval Hearing.

3 (d) No later than **August 13, 2010**, Plaintiffs and Director Defendants may file any
4 reply in support of final approval of the Settlement Agreement.

5 The Court reserves the right to continue the date of the Approval Hearing and related deadlines.
6 In that event, the revised hearing date and/or deadlines shall be posted on the settlement websites
7 referred to in the Notice, and the parties shall not be required to re-send or re-publish notice.
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9

10 DATED: July __, 2010

11 The Honorable Jeffrey S. White
12 UNITED STATES DISTRICT JUDGE
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1 **CERTIFICATE OF SERVICE**

2
3 I, Jonathan K. Levine, hereby certify that on July 1, 2010, I filed the following document(s):

4 **[PROPOSED] ORDER (1) APPROVING FORM OF NOTICE, (2) DIRECTING THAT**
5 **NOTICE BE ISSUED, AND (3) SETTING DATE FOR APPROVAL HEARING ON**
6 **PROPOSED SETTLEMENT BETWEEN PLAINTIFFS AND THE DIRECTOR**
7 **DEFENDANTS**

8 By ECF (Electronic Case Filing): I e-filed the above-detailed document utilizing the United
9 States District Court, Northern District of California's mandated ECF service on July 1, 2010. Counsel
10 of record are required by the Court to be registered e-filers, and as such are automatically e-served with
11 a copy of the document(s) upon confirmation of e-filing.

12 I declare under penalty of perjury that the foregoing is true and correct. Executed at
13 San Francisco, CA on July 1, 2010.

14 /s/ Jonathan K. Levine

EXHIBIT B-1

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Clarke and Rebecca Wixon *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

Wyndham Resort Development Corp. (f/k/a
Trendwest Resorts, Inc.), Gene Hensley, David
Herrick, John Henley, Peggy Fry and John
McConnell, and nominally, WorldMark, The Club,

Defendants.

Case No. C 07-02361 JSW (BZ)

**NOTICE OF PENDENCY OF
SETTLEMENT OF DERIVATIVE ACTION**

TO: ALL OWNERS OF WORLDMARK, THE CLUB
THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A LAWSUIT AGAINST CERTAIN
WORLDMARK DIRECTORS. PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY.
IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

1. **PURPOSE OF THIS NOTICE.** This notice is being sent at the direction of the United States District Court, Northern District of California (“Court”) to all persons who own WorldMark, The Club (“WorldMark”) Vacation Credits, to inform you about a proposed settlement (“Settlement”) of litigation involving WorldMark and certain WorldMark directors. If approved by the Court, the Settlement would fully, finally and forever resolve the litigation on the terms and conditions summarized in this notice.
2. **THE SETTLEMENT APPROVAL HEARING IS AUGUST __, 2010.** The Court will hold a settlement approval hearing on **August __, 2010 at __.m.** before the Honorable Jeffrey S. White, at the U.S. District Courthouse, 450 Golden Gate Avenue, 19th Floor, Courtroom 11, San Francisco, California 94102. You have an opportunity to comment on the Settlement and to be heard at this hearing. The Settlement is described in paragraph 5 of this notice. If you wish to comment or appear at the hearing, you must follow the procedures described in paragraph 6 on page 4 of this notice.
3. **LITIGATION OVERVIEW.** In 2007, five WorldMark Owners (“Plaintiffs”) filed a derivative lawsuit, U.S. District Court Case No. C-07-02361 JSW (BZ), on behalf of WorldMark and all other Owners, against former and current WorldMark directors Gene Hensley, David Herrick, John Henley, Peggy Fry and John McConnell, alleging that, as a majority of WorldMark’s Board, these directors breached their fiduciary duties to WorldMark and to Owners by taking actions that benefit the developer, Wyndham Resort Development Corporation (“Wyndham”) rather than Owners, and taking actions or enacting policies that affect WorldMark elections and inhibit member communications. If approved by the Court, the Settlement will fully resolve this lawsuit and partially resolve another lawsuit, *WorldMark v. Miller*, Sacramento County Case No. No. 34-2008-00025130-CU-PT-GDS, filed in 2008 by WorldMark in California state court to prevent distribution of WorldMark’s member register and owner email addresses.

The Settlement does not affect or resolve a pending class action lawsuit against Wyndham, which also is proceeding as U.S. District Court Case No. C-07-02361 JSW (BZ). In the event the class action against Wyndham is resolved by settlement or by other means, a separate notice will be sent.

4. **THERE HAS BEEN NO FINDING OF WRONGDOING OR LITIGATION SUCCESS.** The Court has not decided the merits of the claims or defenses in the litigation. This notice does not, and is not intended to, imply that there have been or would be any findings of violation of law by any individual director. The WorldMark directors named in the litigation deny all liability or wrongdoing alleged in the litigation. They believe the Settlement is desirable to avoid the substantial expense, burden, risk, distraction, and uncertainty of protracted litigation. All parties believe the Settlement confers substantial benefits and is in the best interests of WorldMark and Owners.

5. **THE SETTLEMENT.** The terms and conditions of the proposed Settlement are set forth in the parties' Settlement Agreement and Release, which has been filed with the Court. The following description of the terms of the proposed Settlement is a summary only. While some of the stated terms have been standard practice, the filing and prosecution of the litigation was a substantial and material causal factor underlying the decision to implement other of the following practices:

A. *Appointment of Nonaffiliated Director.* One WorldMark director will resign from the WorldMark Board before the 2010 election, assuming the Settlement is approved in time to permit implementation on this schedule. WorldMark and its directors will fill the vacancy by appointing a "nonaffiliated" Owner. For purposes of the Settlement, "nonaffiliated" means an Owner who is not now and never was employed by a Wyndham entity, who is not related to any WorldMark director, and who will not receive during his/her term any consideration, compensation, or other financial benefit from WorldMark, any WorldMark director, or a Wyndham entity (except as permitted under §§ 4.1(c)(ii) and 4.5(h) of the WorldMark By-Laws). This appointment will be for a normal term, and the appointed person will not have to stand for election at the 2010 annual owner meeting. Immediately after the appointment, the WorldMark Board will consist of three affiliated directors and two nonaffiliated directors.

The WorldMark Board will use the following criteria to help it identify qualified candidates to fill this vacancy: (1) Whether the person is current on all financial obligations to WorldMark; (2) Whether the person has been an Owner and user of WorldMark's facilities and services for at least three years; (3) Whether the person has experience with Wyndham exchange programs or other timeshare products; (4) Whether the person has prior business experience or experience serving on a nonprofit or corporate board; (5) What value the person would add to the Board based on his or her professional, educational, or personal expertise and experiences; and (6) Whether the person has flexibility to attend quarterly meetings. As an initial pool of candidates, the WorldMark Board will consider nonaffiliated Owners who have run for election to the Board or participated on the Advisory or Nominations Committees for any of the past three years (2007 - 2009), as well as any other qualified nonaffiliated Owner who requests consideration. If you wish to be considered to fill the vacancy created by this settlement, send a one-page letter of interest describing your qualifications, **postmarked by July 30, 2010**, to Stephanie Aardal, WorldMark, The Club, 9805 Willows Road, Redmond, WA 98052.

B. *Disclosures Concerning Board Candidates.* Assuming the Settlement is approved in time for implementation, beginning in the 2010 election. Board candidates will be listed in alphabetical order by last name on ballots and candidacy statements. Candidates must disclose to the Board and on their candidacy statements: (1) any past or present affiliation with any Wyndham entity; (2) whether the person is a competitor of any Wyndham entity; and (3) whether the person ever has advertised to trade, rent, or sell or has traded, rent or sold Wyndham timeshare products or WorldMark vacations, vacation credits, or housekeeping tokens for profit or income.

C. *Proxy-Related Practices.* The following language will be removed from proxy instructions or proxy documents used for elections: "I acknowledge and agree that the Board of WorldMark will be appointed my proxy if I did not designate an individual owner to act as my proxy." Blank proxy documents that do not exercise a vote or identify the Owner's valid proxy designee will not be counted in tabulating votes.

D. *WorldMark's Retention and Use of Outside Counsel.* WorldMark will post on its website a statement describing how the Board uses its outside legal counsel and general guidelines for that counsel, substantially as described below. The Governing Documents state that the business and affairs of WorldMark shall be exercised or controlled by its Board of Directors. The Board uses its independent judgment to govern WorldMark's affairs, and it may retain an independent law firm or attorney to advise it. Outside counsel provides legal advice on corporate governance matters and election issues, among other things, and may provide advice on transactional, management, and related matters. Currently, Paul Draper, Law Offices of Paul Draper, serves as outside counsel to WorldMark's Board of Directors. In selecting outside counsel, the Board shall ensure that its counsel is unaffiliated with the developer, Wyndham. Outside counsel shall not be a WorldMark Owner at the time of retention or have a financial or other interest in the Club or Wyndham. Outside counsel shall serve entirely at the discretion of the Board, and legal services rendered by outside counsel shall be paid for by WorldMark.

- E. Periodic Review of Management Agreement.** Within 90 days of Settlement approval, the WorldMark Board will create a subcommittee, consisting of two directors (at least one nonaffiliated) and outside counsel, to review the Management Agreement and recommend changes, if any. The committee will conduct this review process once every three years through at least three review cycles. Any committee recommendations accepted by the Board will be raised with the manager, and any resulting changes to the Management Agreement will be negotiated between the Board and the manager.
- F. Notice to WorldMark of Resort Development.** Board meeting minutes will reflect when Wyndham discusses with the Board in executive session future resort development. Board minutes will maintain the confidentiality of these discussions as necessary to protect Wyndham's competitive position with regard to real estate transactions or resort development.
- G. Election Website.** To facilitate Member-to-Member communication on election matters, WorldMark will establish an independent website that operates during each election cycle. The September publication of *Destinations* magazine and September and October publications of the *Insider* e-magazine, as permitted, will notify Members of the website, its web address (URL), and how to access the site. Members will be given a date by which they can submit statements or correspondence concerning the upcoming election, or Annual Owner Meeting for posting on the website and viewing by other members. Member submissions to the website must meet the following criteria: (1) only one submission per Member family; (2) no more than 250 words; (3) accurate with respect to WorldMark Bylaws, guidelines, and regulations; (4) not overtly slanderous or contain profanity or highly personal attacks, and (5) directly related to the upcoming election/owner meeting. Submissions that do not meet all criteria will be returned to the Member, noting the reason for its return. The Owner will have five business days to correct the deficiency and resubmit the statement. Outside counsel will have final and binding say as to whether a statement meets the stated criteria for posting. At the end of the Annual Owner Meeting the website will be taken down until the next election cycle. Through 2012, WorldMark, the Board, and Wyndham will use the website to post election-related advocacy statements, and may but are not required to use it thereafter, subject to the same deadlines and content criteria governing Owner statements. WorldMark may at any time use any and all other means available to it to communicate with Owners if the Board, after consulting outside counsel, believes it has a fiduciary duty to advocate a position to Owners in such fashion. The mailing house option provided by WorldMark Bylaws § 7.1(a) remains available to individual Owners, WorldMark, its Board, and Wyndham for direct mail communication with other Owners.
- H. Confidentiality of Owner Voting Records.** Consistent with current practice, WorldMark, its directors, and those acting on its behalf will not contact the election administrator during an election cycle to learn the voting records of particular Members or early voting results. WorldMark and those working on its behalf may interact with the election administrator to assist in the administration of elections or the tabulation of election results.
- I. Dismissal of Plaintiffs' State Case Claims.** If settlement is approved, Plaintiffs will dismiss all claims they assert against WorldMark in the California state litigation in which WorldMark has sought to prevent the distribution of the owner register and owner email addresses, *WorldMark v. Miller*, Sacramento County Case No. No. 34-2008-00025130-CU-PT-GDS. Claims related to Wyndham or WorldMark's claims related to the individual owner are not resolved by this settlement.
- J. Release of Claims.** If the Court approves the settlement, all current WorldMark Owners shall have fully, finally, and forever released all claims that have been or could have been alleged in the litigation or that arise out of, in connection with, or are related to the claims asserted in the litigation, including any unknown claims against the individual director defendants, their heirs, assigns, and other representatives. In addition, each director defendant shall have fully, finally, and forever released the Plaintiffs that brought the litigation, Plaintiffs' counsel, and WorldMark from any and all claims, including unknown claims, which any of them may have against Plaintiffs, Plaintiffs' counsel or WorldMark, that arise out of, in connection with, or relate to the claims asserted in the litigation. The Released Claims do not include any issues, claims, counterclaims, or cross-claims raised in pending litigation against Wyndham, the directors' insurer, or others not a party to the settlement agreement. For a fuller description of the claims being released, please see paragraphs 49-51 of the Stipulation for Settlement and Release, which is available for viewing at www.GirardGibbs.com/WorldMark-Director-Settlement.asp.

K. Settlement Payment. Plaintiffs and director defendants, with the consent of the insurer for director defendants subject to its reservation of rights, agree to a settlement payment in the amount of \$1.8 million to satisfy Plaintiffs' attorneys' claim of attorneys' fees, expenses, and costs incurred in the litigation and all other monetary claims.

6. **THE SETTLEMENT HEARING AND YOUR RIGHT TO BE HEARD.** You do not need to attend the Settlement approval hearing, which will be held on **August __, 2010 at __:__.m** in San Francisco, California, unless you wish to address the Court or appeal the Settlement's approval. You have the right to attend or comment on the Settlement if you want to.

If you wish to comment on the Settlement, you must submit your comment in writing. Your written comments must: (1) include a reference at the beginning to *Wixon v. Wyndham*, Case No. C 07-02361 JSW (BZ); (2) list your name, address, telephone number, and WorldMark Owner account number; (3) be signed by you; (4) explain your comment/objection; and (5) if you intend to appear at the hearing personally or through counsel, state on the first page of your submission "Intent to Appear at Hearing." Comments must be **received** by the Court and attorneys listed below **no later than August __, 2010**:

Clerk of the Court:

Clerk of the Court
U.S. District Court, Northern
District of California
450 Golden Gate Ave.
San Francisco, CA 94102

Plaintiffs' Counsel:

Jonathan Levine or Elizabeth Pritzker
Girard Gibbs LLP
601 California Street, Suite 1400
San Francisco, CA 94108
(415) 981-4800

Director Defendants' Counsel:

Matthew G. Ball
K & L Gates LLP
4 Embarcadero Center, Suite 1200
San Francisco, CA 94111
(415) 882-8200

If you do not present your comments in writing in compliance with these procedures, your views will not be considered, you will not be permitted to address the Court, and you will waive your objections.

7. **MORE INFORMATION.** This notice only summarizes the lawsuit and the settlement. For more details, you may review the Settlement Agreement and Release, available online in Adobe Portable Document Format (pdf) at www.worldmarktheclub.com or www.GirardGibbs.com/WorldMark-Director-Settlement.asp. The Settlement Agreement and all other pleadings and papers filed in the lawsuit are available for inspection and copying during regular business hours at the office of the Clerk of the Court, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102.

If you would like more information, you may contact Plaintiffs' counsel at the address and telephone number listed above, or by email to WorldMark-Director-Settlement@GirardGibbs.com.

PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS ABOUT THE SETTLEMENT.

DATED: JULY , 2010

**BY ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**