

**DAVID C. BERMAN**

A Professional Corporation

ATTORNEYS AT LAW

71 MAPLE AVENUE ♦ MORRISTOWN ♦ NEW JERSEY 07960  
TELEPHONE (973) 631-1000 ♦ FACSIMILE (973) 631-1111

David C. Berman<sup>Ω</sup>  
DBerman@NJLawyer.com  
Edward Breen  
EBreen@NJLawyer.com  
Edward N. Mazlish<sup>Ω</sup>  
EMazlish@NJLawyer.com

<sup>Ω</sup>Member of NY and NJ Bars

June 15, 2009

**Sent By E Filing and NJLS**

The Honorable Peter G. Sheridan  
United States District Judge  
East State Street  
Trenton, NJ

Re: In Re Resorts Condominiums International, LLC  
Civil Action No. 06-cv-1222 (PGS)  
Client Matter No. 4245.001

Dear Judge Sheridan:

We write to Your Honor to address certain issues that have arisen with respect to the four Objectors who have given notice of their intention to appear at the Fairness Hearing on June 16, 2009.

We have just received the letter to the court from Susan B. Collins, Esq., dated June 6, 2009, and believe that a response to that letter is appropriate. In addition, we believe that submissions of Ms. Collins and three other Objectors warrant careful scrutiny from the Court, to the extent they appear to be acting from interests beyond their role as timeshare owners and settlement class members. In particular, we address the issues raised by their objections to the notice plan that was utilized in this case. Our responses to these objections are as follows.

**1. Shep Altshuler, Publisher (Docket No. 128)**

Shep Altschuler is the Publisher of TimeSharing Today, a magazine and related website that addresses the interests of owners of time share properties, such as the RCI Weeks Program members who are the members of the class in the instant case. In addition to RCI, his publications deal with matters related to all of the time share exchange companies that compete with RCI for members who have time share weeks or other such interests to deposit for exchange.

Mr. Altshuler's Objection asserts incorrectly that the form of notice was "woefully inadequate." His primary point is that the notice did not extract from the settlement agreement those

terms that Mr. Altshuler finds most important and restate those terms in the notice. He also concedes that class members, including himself, were mailed a copy of the notice, but he objects to the form in which it was sent. In fact, the form of notice satisfies the requirements of Rule 23(c)(2)(B) and (e) that govern here. The form of "summary" notice that was mailed to class members is attached as Exhibit A to the Declaration of Philip S. Brojan.

As required by Rule 23(c)(2)(B), the notice provides a description of the nature of the action under the heading, "What is this about?" It then provides a definition of the class certified, under the heading, "Who is included and what does the settlement provide?" It also generally describes the claims asserted and expressly refers to the claim regarding the alleged skimming of rentals that Mr. Altshuler indicates to be central to his concern. With regard to the remaining items in this section of the rule, the notice indicates that, "You may hire your own attorney, if you wish"; that you could "exclude yourself by April 6, 2009"; and that if you do not exclude yourself, "your claims against defendant that were or could have been asserted in the lawsuit will be released . . . ."

Rule 23(e) simply directs that in class action settlements, the "court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Here, the court directed that the notice be included in the mailing that was sent to each class member that is on RCI's mailing list. RCI states in the Brojan Declaration that it did so. It further states that out of the 1,668,015 copies sent by mail, only 3,321 were returned as undeliverable. This small number of returns is likely due to the fact that RCI's members are motivated to ensure that their address is correct in RCI's files.

In addition to the mailed notice, the court further required that the notice, including the long form of notice attached to as Exhibit A-7 to the Declaration of Jenelle W. Welling (Docket No. 95-18) be posted on RCI's website and that the summary form of notice be published in USA Today. These provisions were complied with. *See* Declaration of Eric C. Hudgens (Docket No. 186-5.) The RCI.com website publication included a highlighted link on RCI's home page to the settlement documents and included a full copy of the settlement agreement and other related case documents. *Id.* Mr. Altshuler's objection to the form of notice makes much of the fact that the notice was on page 94 of the Endless Vacation magazine. He ignores the fact, however, that the notice was flagged in a separate box displayed on the Table of Contents page directing class members to the form of notice on page 94. *See* Brojan Decl., Exh. A.

Evidence that the form of notice was successful is provided by Mr. Altshuler's Objection, which contains an article published in the Timesharing Today magazine that restated all of the important points of the notice. Clearly, Mr. Altshuler received the notice and understood its import, and he provided that information to all of his readers, as well.

Other than its incorrect assessment of the notice provisions of Rule 23, Mr. Altshuler's objection provides little, if any, analysis of the other terms of the settlement that are presently before the court. His objection appears to simply reflect a difference of opinion between himself and the named class representatives and the tens of thousands of other class members who considered all of the options and concluded that this settlement was the best compromise available to the members of the class under the circumstances. As the court will recall, all of the class representatives appeared in chambers for settlement discussions and, ultimately, after further negotiations approved the settlement in its current form.

Rather than addressing the merits of the terms of the settlement, which includes the ability to opt out and also allows members to move their business to a competitor, Mr. Altshuler seems more intent on working with fellow objector, Susan Collins, Esq., in generating as many objections as possible, and in generating interest in his publication. Indeed, Mr. Altshuler has an ongoing dispute with RCI and its competitor, Interval International ("II"), that suggests another motive for his attack on this settlement. As he states on his website, "RCI and II have banned our ads in their magazines. Why? We're not exactly sure, but we suspect it's because we have aggressively helped to promote the resale market and a number of alternate exchange companies." See <http://www.tstoday.com/aboutus.aspx> (viewed June 12, 2009).

Even with the sustained effort evidenced by Mr. Altshuler's objection and Ms. Collins' June 6, 2009 letter to the court (addressed below), the number of objections received pales in comparison to the millions of notices sent, the hundred thousand or more "hits" on the settlement notice page of RCI.com and the 15,000 or more class members who affirmatively undertook to file a claim to obtain the benefits provided by the settlement in addition to injunctive relief.

## 2. **Susan Collins, Esq. (Docket Entry No.113)**

Ms. Collins is a licensed and practicing attorney in the State of New York. She engages in a general practice that includes litigation. She timely received notice and timely filed an Objection and notice to appear in her own capacity as an RCI member. Thereafter, and after the parties filed their brief that addressed the Objections, Ms. Collins submitted a letter dated June 6, 2009 indicating that, along with Mr. Altshuler, she had "invited" other class members to email her and authorize her to speak on their behalf. As an attachment to her letter, she included emails from purported class members whom she solicited to object to the settlement. None of these purported objections meet the requirements of this court's Preliminary Approval Order. Moreover, Ms. Collins was not retained by these individuals, does not purport to represent their interests as an attorney and has not complied with the pro hac vice requirements of this court for representing such individuals. Plaintiffs' counsel, on the other hand, complied with the requirements of class certification and by order of this court are authorized to speak on behalf of all absent class members. As such, Plaintiffs hereby move to strike from the record, Ms. Collins' June 6, 2009 letter and its attachments. Plaintiffs further request that, at the hearing on this matter, Ms. Collins be allowed to appear solely on her own behalf and not on behalf of other purported class members.

To the extent considered by the court, the two emails highlighted in Ms. Collins' June 6 letter illustrate the lack of merit in the objections. Ms. Collins refers to a Thomas Hilligan who states that he is a retired attorney who did not know he had the right to object. First, it is worth noting that Mr. Hilligan received and read the notice in a timely fashion. Second, Rule 23(c)(2) specifies that the notice provide a statement (which it did here) that the class member may enter an appearance through an attorney, and does not require that the procedure for submitting an objection be included.

Mr. Hilligan does not say what level of due diligence he applied to understanding the settlement and its terms, apparently having chosen not to look at RCI.com or any of the information contained thereon, not to call any of the counsel identified in the notice and not to call the toll free number listed in the notice. Ms. Collins also refers to a Hiren Goradia, who purports to speak for the people of Mumbai, India about the terms of this settlement. As a foreign resident who did not submit a claim, however, Ms. Goradia is not releasing any claims she may have. She, along with the other residents of Mumbai and all other foreign jurisdictions who did not submit claim forms, remain free

to institute whatever claims they may have in any forum that has jurisdiction.

Finally, with regard to the specific objections that Ms. Collins submitted on her own behalf she addressed primarily her view that, "Any corporation which bills itself as an exchange company should be restricted to facilitating exchanges between members, with very limited exceptions." (Docket no. 113 at 2.) She offers no legal authority for this proposition, however. Ms. Collins had the right to opt-out and to pursue her own claim for injunctive relief. She chose not to do so and did not advise any the class members who contacted her to do so, either. Plaintiffs thus submit that Ms. Collins objections should be overruled.

**3. Steve Willett, Esq. (Docket Entry No. 144 ) and James B. Hicks, Esq. (Docket Entry No. 143)**

Mr. Willett and Mr. Hicks indicated their intention to appear by telephone. At this time, Plaintiffs are not aware that either of these attorneys have made appropriate arrangements with the court to do so. Plaintiffs address their objections here, in brief, in order to provide the court with additional information should they appear at the hearing.

Mr. Willett, by way of his Objection, argues that he has spoken to plaintiffs' counsel on many occasions during the past several years. Our records reflect that he contacted at least three of plaintiffs' law firms on multiple occasions during the last three years. He argues that he could get a better settlement, and that this action should be dismissed in favor of a new action that he would like to file in California. As with Ms. Collins, Mr. Willett had ample notice and opportunity to appear in this action with his own clients either as a member of the Plaintiffs' steering committee or on behalf of his own Objectors. Alternatively, he could have filed a separate class action rather than wait and see what happened in this case. While the Court should consider and address his objections on the merits, the Court should not entertain the procedural argument now advanced by Mr. Willett, in effect claiming that he could have done better, when he has no understanding of the obstacles and risks that plaintiffs' counsel have overcome. "The test is whether the settlement is adequate and reasonable, not whether a better settlement is conceivable." *Klingensmith v. Max & Erma's Rests., Inc.*, 2007 U.S. Dist. LEXIS 81029 (W.D. Pa. Oct. 23, 2007) And of course, in considering rejecting this settlement would benefit the class in the long run, the court must determine whether "further litigation will generate significant expenses and is unlikely to result in greater recovery for the class members. The opinion of experienced counsel, particularly one with knowledge of this area of the law, is entitled to substantial weight." *Gaskin v. Pennsylvania*, 389 F. Supp. 2d 628, 644 (E.D. Pa. 2005)

Mr. Hicks is also a litigator from California. He argues that the proposed settlement should be rejected in its entirety and the "action should be dismissed, so that class members can retain their pre-existing exchange rights without being forced to give them up under the Settlement." The argument completely ignores the structure of the settlement which does not forfeit any pre-existing

exchange rights. Any member can opt out and will not relinquish any rights at all. Tellingly, though, only twenty-eight exclusion requests were filed. Moreover, even class members who opt out will still obtain the advantages of the programmatic changes.

Thank you.

Respectfully submitted,  
**DAVID C. BERMAN**  
A Professional Corporation  
**Liaison and Local Attorneys for Plaintiffs**

By: /s/ DAVID C/ BERMAN  
David C. Berman  
71 Maple Avenue  
Morristown, NJ 07960

Robert S. Green, Esq.  
Jenelle Welling, Esq.  
**GREEN WELLING LLP**  
**Interim Co-lead Counsel for Plaintiffs**  
595 Market Street, Suite 2750  
San Francisco, CA 94105

**Christopher M. Placitella, Esq.**  
**COHEN, PLACITELLA & ROTH, P.C.**  
**Interim Co-lead Counsel for Plaintiffs**  
Two Penn Center Plaza, Suite 1705  
Philadelphia, PA 19102-1865

cc: All counsel (Sent via ECF Only)  
CC: Susan Collins, Esq. via facsimile 716.675.6813  
CC: Shep Altschuler facsimile not avialbale and sent via first class mail  
CC: Steve Willett, Esq. via facsimile 703.323.5658  
CC: James B. Hicks, Esq. via facsimile 213.612.0373

F:\DOCS\T\Timeshare (Murillo)\ClassMembers\IntentionToAppear-WDMRev.r.doc