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Elaine Cefola, Kenneth Davis and Jerome Garoutte
11

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

14 CURTIS BERRIEN; ROSE HUERTA; TINA) **Case No. CV 10-03125 CW**
15 MUSHARBASH; FERN PROSNITZ; MICHAEL)
ANDLER; MARCUS BONESS; TIMOTHY)
16 BONNELL; RICHARD BUFORD; ELAINE) **SETTLEMENT AGREEMENT AND**
CEFOA; KENNETH DAVIS; JEROME) **RELEASE**
17 GAROUTTE, on behalf of themselves and all)
18 others similarly situated,)
) **CLASS ACTION**
19 Plaintiffs,)
20 v.)
NEW RAINTREE RESORTS)
21 INTERNATIONAL, LLC; RVC MEMBERS,)
22 LLC; DOUGLAS Y. BECH)
)
23 Defendants.)

1 Plaintiffs and Class Representatives Curtis Berrien, Rose Huerta, Tina Musharbash; Fern
2 Prosnitz, Michael Andler, Marcus Boness, Timothy Bonnell, Richard Buford, Elaine Cefola, Kenneth
3 Davis and Jerome Garoutte (collectively, "Plaintiffs") and Defendants New Raintree Resorts
4 International, LLC ("RRI"), RVC Members, LLC ("RVC") and Douglas Y. Bech (collectively,
5 "Defendants") (Plaintiffs and Defendants are collectively referred to herein as "the Parties"), by and
6 through their counsel, hereby enter into this Settlement Agreement and Release ("Settlement
7 Agreement"), subject to Court approval.

8 RECITALS

9 WHEREAS, Plaintiffs filed the above-captioned litigation (the "Action") against Defendants on
10 July 16, 2010 in the United States District Court for the Northern District of California (the "Court"),
11 Case No. CV 10-03125 CW.

12 WHEREAS, on November 12, 2011, the Court denied the motion to dismiss for lack of personal
13 jurisdiction filed by Defendants RRI and Bech.

14 WHEREAS, on April 22, 2011, Plaintiffs filed a motion for certification of a plaintiff class of
15 California residents who were charged the special assessment issued by Defendants in October or
16 November 2009 (the "Special Assessment"). Defendants opposed the motion and submitted an expert
17 report in opposition to class certification. The hearing on class certification was held on June 9, 2011.
18 On August 15, 2011, the Court granted class certification and certified the California Class.

19 WHEREAS, discovery between Plaintiffs and Defendants commenced in November 2010 and
20 continued through June 2011 when counsel for the Parties began settlement discussions.

21 WHEREAS, the Parties have explored and discussed at length the factual and legal issues in the
22 Action. These discussions were informed by substantial fact discovery, expert discovery and analysis,
23 and the Parties' investigation of the law and facts applicable to the claims asserted against Defendants
24 and relevant defenses and the ability of the Action to proceed as a class action.

25 WHEREAS, beginning on June 28, 2011, the Parties initiated settlement discussions in
26 supervised mediation sessions before the Honorable Victor H. Persón (Ret'd) in Los Angeles,
27 California, which continued under the auspices of Judge Persón through September 2011.

1 WHEREAS, on September 28, 2011, as a result of the negotiations and mediation sessions
2 described above, the Parties reached agreement in principle, subject to Court approval, on settlement of
3 the claims asserted by Plaintiffs in the Action on behalf of a proposed nationwide settlement class
4 ("Settlement Class," defined below). Those settlement discussions did not address Plaintiffs' attorneys'
5 fees. Separate negotiations regarding attorneys' fees began only after the Parties reached agreement in
6 principle regarding settlement of the individual and class claims.

7 WHEREAS, on September 28, 2011, the Parties filed a stipulation informing the Court that the
8 Parties had reached an agreement, in principle, for settlement of the Action on behalf of the proposed
9 Settlement Class. On September 29, 2011, the Court vacated all pending dates and deadlines in the
10 Action.

11 WHEREAS, Plaintiffs, by and through their undersigned counsel, have: (a) made a thorough
12 investigation of the facts and circumstances surrounding the allegations asserted in the Action; and (b)
13 engaged in investigation and discovery of the claims asserted in the Action, including but not limited to:
14 (i) researching, reviewing, and analyzing the applicable contracts and documents that govern the
15 Parties' legal rights, duties, and obligations *vis-a-vis* one another; (ii) deposing witnesses and experts;
16 (iii) reviewing and analyzing thousands of pages of paper and e-discovery documents produced in the
17 Action; and (iv) investigating the law applicable to the claims and defenses asserted in the Action.

18 WHEREAS, while Class Counsel are experienced in this type of litigation and believe that
19 Plaintiffs' claims have merit, they also recognize the costs and risks of continued prosecution of the
20 Action, and believe it is in the interests of Plaintiffs and all members of the Settlement Class (as defined
21 below) to resolve the Action and support this Settlement Agreement.

22 WHEREAS, while Defendants, without conceding or admitting liability in any way, believe
23 they have meritorious defenses, they also recognize and acknowledge the expense and risk of continued
24 litigation, and believe it is in the interests of Defendants and the Settlement Class to resolve the Action
25 and support this Settlement Agreement.

26 WHEREAS, extensive arm's-length negotiations resulted in this Settlement Agreement, subject
27 to Court approval.

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1 WHEREAS, the undersigned Parties submit this Settlement Agreement to benefit Plaintiffs and
2 Settlement Class members, and believe it is fair, reasonable, adequate, and in the best interest of
3 Plaintiffs and Settlement Class members.

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

6 NOW, THEREFORE, it is hereby stipulated and agreed, by and between the undersigned
7 Parties, as follows:

8 **I. DEFINITIONS**

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

12 (a) "Action" means *Berrien, et al. v. New Raintree Resorts International, LLC, et al.*, Case
13 No. CV 10-03125 CW (N.D. Cal.).

14 (b) "Adverse Credit Reference" means a consumer report, as defined under 15 U.S.C.
15 § 1681a(d)(1), or information included in such a consumer report, that is in any way detrimental to the
16 Settlement Class member who is the subject of the report or information.

17 (c) "Supplemental Points" means additional allocations of Points intended to compensate
18 members of the Settlement Class for amounts paid toward the Special Assessment and/or amounts paid
19 towards Maintenance Fees for periods during which their Club membership rights were suspended.

20 (d) "CAFA Notice" means notice to the appropriate government authorities, substantially in
21 the form of **Exhibit A** hereto, that complies with the Class Action Fairness Act ("CAFA"), 28 U.S.C. §
22 1715(b).

23 (e) "Class Counsel" means Girard Gibbs LLP.

24 (f) "Club" means Raintree Vacation Club and its affiliates, including Club Regina.

25 (g) "Court" means the United States District Court for the Northern District of California.

26 (h) "Defendants" means Defendants New Raintree Resorts International, LLC, RVC
27 Members, LLC and Douglas Y. Bech.

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1 (i) "Defendants' Counsel" means Looper Reed & McGraw, P.C. and Crone Hawxhurst
2 LLP.

3 (j) "Effective Date" means the last date by which the Final Approval Order has been
4 entered and the time for seeking appellate review of any and all matters related to the Action and the
5 Parties' Settlement has expired or, if appellate review is sought, the Settlement has been affirmed in its
6 entirety by the court of last resort and such affirmance has become no longer subject to further appeal
7 or review.

8 (k) "Fee and Expenses Award" means an award to be approved by the Court in an amount
9 not to exceed \$1,750,000.00, which shall include, subject to Court approval: (i) incentive awards to
10 Plaintiffs; (ii) Class Counsel's attorneys' fees and expenses, including expert witness fees and other
11 investigative or litigation expenses incurred by Plaintiffs and/or Class Counsel; (iii) settlement
12 administration fees and expenses; (iv) fees and expenses associated with disseminating Settlement
13 Notice to the Settlement Class and dissemination of the CAFA Notice to appropriate government
14 authorities; and (v) fees and expenses charged by the Settlement Administrator.

15 (l) "Final Approval" means final approval by the Court of the Settlement and this
16 Settlement Agreement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

17 (m) "Final Approval Order" means a final order and judgment entered by the Court, in which
18 the Court grants Final Approval of the Settlement.

19 (n) "Maintenance Fee" means the total amount charged to each Club member on an annual
20 or bi-annual basis as a condition of Club membership, typically referred to as a "maintenance fee."

21 (o) "Parties" means Plaintiffs and Defendants.

22 (p) "Plaintiffs" means Plaintiffs and Class Representatives Curtis Berrien, Rose Huerta,
23 Tina Musharbash, Fern Prosnitz, Michael Andler, Marcus Boness, Timothy Bonnell, Richard Buford,
24 Elaine Cefola, Kenneth Davis and Jerome Garoutte.

25 (q) "Points" means the points or other interval usage, such as weeks, allotted to Club
26 members under their Club memberships.

27 (r) "Preliminary Approval" means the issuance by the Court of an order substantially in the
28 form of the Preliminary Approval Order.

1 (s) "Preliminary Approval Order" means a Court order, in substantially the form of **Exhibit**
2 **B** hereto, granting Plaintiffs leave to file a First Amended Complaint (**Exhibit C hereto**), preliminarily
3 certifying the Settlement Class for the purpose of this Settlement, preliminarily approving the
4 Settlement, approving the form of the Settlement Notice, directing that the Settlement Notice be sent to
5 the Settlement Class and setting a briefing and hearing schedule for Plaintiffs' motion for Final
6 Approval.

7 (t) "Settlement" means the Parties' settlement, as memorialized in this Settlement
8 Agreement and Release.

9 (u) "Settlement Administrator" means The Garden City Group, Inc., which shall be retained
10 by the Parties to perform the functions described herein.

11 (v) "Settlement Agreement" means this Settlement Agreement and Release.

12 (w) "Settlement Class" means a class comprised of all persons who reside in the United
13 States and were charged the Special Assessment, including Plaintiffs. Excluded from the Class are
14 those persons who have already settled their claims relating to the issuance of the Special Assessment,
15 those persons whose Club memberships have already been validly terminated for non-payment of
16 amounts due under Club membership purchase promissory notes as of the date of Preliminary
17 Approval, Defendants, any entity in which any Defendant has or had a controlling interest, any entity
18 which has or had a controlling interest in any of Defendants, any members, managers or officers of
19 Defendants, the legal representatives, heirs, successors, and assigns of Defendants, and any judge
20 assigned to the Action and his or her immediate family. In addition, persons who exclude them
21 themselves from the Settlement Class in accordance with the requirements set by the Court shall not be
22 members of the Settlement Class.

23 (x) "Settlement Notice" means a notice directed to Settlement Class members, subject to
24 Court approval, substantially in form of **Exhibit D** hereto.

25 (y) "Special Assessment" means the special assessment that was billed to Club members in
26 or around October or November 2009 that is the basis of the Action.

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1 **II. REQUIRED EVENTS**

2 A. The Parties shall use their best efforts, consistent with the terms of this Settlement
3 Agreement, to obtain Preliminary Approval of the Settlement and the Preliminary Approval Order from
4 the Court.

5 B. The Parties shall use their best efforts, consistent with the terms of this Settlement
6 Agreement, to obtain Final Approval of the Settlement and the Final Approval Order from the Court.

7 C. The Parties shall cooperate with each other in good faith to carry out the purposes of and
8 to effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder,
9 and shall promptly take any and all actions and execute and deliver any and all documents and other
10 materials and/or information reasonably necessary or appropriate to carry out the terms of this
11 Settlement Agreement.

12 D. Upon entry of the Final Approval Order, the Action shall be dismissed, with prejudice,
13 subject to the continuing jurisdiction of this Court and Paragraph VIII.D.

14 **III. SETTLEMENT TERMS**

15 As consideration for dismissal of the Action, and the release of claims as provided for herein,
16 Defendants have agreed to and shall adopt and fully implement the following provisions and practices:

17 **A. Reinstatement of Club Membership Rights and Waiver of Unpaid Amounts.** Each
18 member of the Settlement Class whose rights as a member of the Club were suspended due to
19 nonpayment of Maintenance Fees and/or the Special Assessment shall have his or her Club membership
20 rights immediately reinstated upon payment in full of the 2012 Maintenance Fee within 60 days of the
21 Effective Date of the Settlement, provided that the member of the Settlement Class is a Club member
22 on the Effective Date. Defendants shall provide 2012 Maintenance Fee invoices by the Effective Date
23 of the Settlement to all members of the Settlement Class whose Club memberships have been
24 suspended due to nonpayment, which shall inform such members of the date by which payment of 2012
25 Maintenance Fees must be made in order to be reinstated. Upon such reinstatement, each member of
26 the Settlement Class shall receive the allocation of Points for 2012 to which he or she is ordinarily
27 entitled under his or her Club membership and shall have one year from the date of such reinstatement
28 to use those Points. Any unpaid amounts of past-due Maintenance Fees and/or the Special Assessment,

1 and any interest, penalties or other charges related thereto, shall be waived and Defendants shall cease
2 all collections efforts related to such nonpayment and any interest, penalties or other charges related
3 thereto.

4 **B. Supplemental Points.**

5 1. Certain members of the Settlement Class shall be entitled to receive
6 Supplemental Points under the Settlement. Supplemental Points shall be allocated to eligible members
7 of the Settlement Class under the Settlement as follows:

8 a. Supplemental Points shall be allocated to eligible members of the
9 Settlement Class based on a Settlement Class member's 2010 Points allotment, which allocation shall
10 depend upon the eligible Settlement Class member's circumstances as described in paragraphs III.B.1.b
11 to III.B.1.e, below.

12 b. Supplemental Points shall be allocated to members of the Settlement
13 Class who paid some or all of the Special Assessment and/or paid some or all of their 2010 or 2011
14 Maintenance Fees during periods when their Club membership rights were suspended. Members of the
15 Settlement Class who paid their 2010 and/or 2011 Maintenance Fees and did not pay the Special
16 Assessment, but actually used their 2010 and/or 2011 point allotments shall not be entitled to
17 Supplemental Points for the Points allotments that they have used.

18 c. Members of the Settlement Class with every-other-year memberships
19 who paid some or all of the Special Assessment and/or paid some or all of their 2010 or 2011
20 Maintenance Fees during periods when their Club membership rights were suspended shall receive
21 Supplemental Points based on half of their every-other-year Points allotments.

22 d. Examples: The Settlement provides for allocation of Supplemental Points
23 to eligible members of the Settlement Class as follows:

24 i. Members of the Settlement Class who satisfy the following
25 conditions shall be entitled to Supplemental Points equal to their 2010 Points allotments:

26 A. Payment in full of both (i) the Special Assessment and (ii)
27 Maintenance Fees for both 2010 and 2011;

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1 B. Payment in full of the Special Assessment but no payment
2 of Maintenance Fees for both 2010 and 2011; or

3 C. No payment of the Special Assessment but full payment of
4 Maintenance Fees for either 2010 or 2011.

5 ii. Members of the Settlement Class who satisfy the following
6 conditions shall be entitled to Supplemental Points equal to twice their 2010 Points allotments:

7 A. Payment in full of (i) the Special Assessment and (ii)
8 Maintenance Fees for either (but not both) 2010 or 2011; or

9 B. No payment of the Special Assessment but full payment of
10 Maintenance Fees for both 2010 and 2011.

11 iii. Members of the Settlement Class who paid nothing toward the
12 Special Assessment and 2010 and 2011 Maintenance Fees shall receive no Supplemental Points.

13 e. If a member of the Settlement Class made a partial payment of the
14 Special Assessment and/or 2010 or 2011 Maintenance Fees, and is eligible to receive Supplemental
15 Points, then Supplemental Points shall be allocated to the member on a pro rata basis, by multiplying
16 each of the percentages of the Special Assessment, 2010 Maintenance Fees and 2011 Maintenance Fees
17 he or she paid by the member's 2010 Points allotment and summing the products of each percentage
18 and the member's 2010 Points allotment.

19 2. Supplemental Points allocated to eligible members of the Settlement Class under
20 this Settlement may be used as follows:

21 a. Supplemental Points shall be allocated to and be available for use by
22 eligible members of the Settlement Class within 30 days after the Effective Date of the Settlement.

23 b. Supplemental Points may be used at any Raintree Vacation Club resort at
24 which a Settlement Class member normally has usage rights under his or her Club membership, upon a
25 confirmed reservation, on a space available basis, which must be made within 90 days of the proposed
26 usage.

1 c. There shall be no charges associated with the use of Supplemental Points
2 at any resort, except for taxes and other charges required by law or customarily charged to persons
3 staying at the particular resort at which Supplemental Points are used.

4 d. Except as otherwise provided herein, Supplemental Points may be used
5 on the same basis, on the same terms and subject to payment of the same fees as each Settlement Class
6 member's usual Points allotment may be used.

7 e. The use period for Supplemental Points shall begin 60 days following the
8 Effective Date of the Settlement and end seven years after the first day of such use period.

9 f. Members of the Settlement Class who are otherwise eligible to receive
10 Supplemental Points, but who are not Club members on the Effective Date, shall receive Supplemental
11 Points, which they will be permitted to use on the same terms specified above as if they are current
12 Club members.

13 **C. Other Relief to Members of the Settlement Class.**

14 1. **Reporting Requirements Regarding Special Assessment Funds.** Within 60
15 days following the Effective Date of the Settlement, Defendants shall publish a report to Club members
16 containing a detailed description of how all Special Assessment funds have been, or will be, spent.
17 Within one year after the Effective Date of the Settlement, Defendants shall publish a report to Club
18 members containing a detailed description of how all Special Assessment funds have been spent.

19 2. **Reporting Requirements Regarding Club Finances and Fees.** If Defendants
20 have not previously done so, beginning 60 days after the Effective Date of the Settlement, Defendants
21 shall immediately place all funds collected from Club members in a segregated and separately
22 identifiable, interest-bearing account. Within 60 days after the Effective Date of the Settlement,
23 Defendants shall engage an independent auditor to conduct an annual accounting of all funds collected
24 from Club members, the uses of such funds and all Club expenses, as well as an accounting of the
25 Club's capital improvement reserve. A detailed report certified by the auditor shall be published to
26 Club members by June 30 of each year. The report shall identify, describe and itemize, using generally
27 accepted accounting procedures and categories, all Club-related expenses and revenues, all amounts
28 received from Club members and all expenditures of funds received from members and/or the capital

1 improvement reserve for the previous year including specific descriptions of the uses and purposes of
2 all expenditures. The report shall also identify, but not certify, all material factors considered in any
3 decision to increase or decrease the fees charged to Club members in the year that the report is issued
4 and shall specifically identify and describe the increases or decreases in Club expenses that are the basis
5 for any increase or decrease in fees charged to Club members. Funds collected from Club members
6 may be used to pay for such audit and report.

7 **3. Certification Regarding Adverse Credit References and Forfeiture.** Within
8 ten calendar days after the Effective Date of the Settlement, Defendants shall certify to the Court that,
9 since the announcement of the Special Assessment, no member of the Settlement Class has been or will
10 be subject to any Adverse Credit Reference related to nonpayment of 2010 or 2011 Maintenance Fees,
11 the Special Assessment, or any penalties and other additional charges or fees related to such
12 nonpayment. Within ten calendar days after the Effective Date of the Settlement, Defendants shall
13 further certify to the Court that no member of the Settlement Class has been subject to any forfeiture of
14 Club membership related to such nonpayment.

15 **4. No Increase of Fees or Charges to Pay for Settlement.** No fees or other
16 charges paid by members of the Settlement Class, including Maintenance Fees, shall be increased in the
17 future to pay any costs associated with the Settlement or its implementation.

18 **IV. CAFA NOTICE AND SETTLEMENT NOTICE**

19 A. Within ten days after the filing of this Settlement Agreement with the Court, Defendants
20 shall comply with the requirements of 28 U.S.C. § 1715(b) and, with the assistance of the Settlement
21 Administrator, serve the CAFA Notice upon the appropriate federal official and the appropriate state
22 official(s) of each state in which a Settlement Class member resides.

23 B. Subject to Court approval and unless otherwise ordered by the Court, the Settlement
24 Notice, substantially in the form of **Exhibit D**, shall be sent to all members of the Settlement Class by
25 the Settlement Administrator by first class mail by the deadline set by the Court.

26 C. Defendants shall provide mailing addresses for all pertinent federal officials and state
27 official(s) and mailing addresses for all members of the Settlement Class to the Settlement
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1 Administrator in order to allow the Settlement Administrator to send copies of the CAFA Notice and
2 the Settlement Notice in accordance with the deadlines set by the Court.

3 D. All costs associated with the CAFA Notice and Settlement Notice shall be paid as agreed
4 in Paragraphs V.A.-B.

5 **V. PAYMENT OF FEE AND EXPENSES**

6 A. Defendants agree to pay, and will not object to Plaintiffs' application to the Court for, a
7 Fee and Expenses Award in an amount not to exceed \$1,750,000.00. The Fee and Expenses Award
8 shall include, subject to Court approval: (i) incentive awards of \$3,000 to each Plaintiff; (ii) Class
9 Counsel's attorneys' fees and expenses, including expert witness fees and other investigative or
10 litigation expenses incurred by Class Counsel; (iii) settlement administration fees and expenses; (iv)
11 fees and expenses associated with disseminating Settlement Notice to the Settlement Class and
12 dissemination of the CAFA Notice to appropriate government authorities; and (v) fees and expenses
13 charged by the Settlement Administrator.

14 B. Unless otherwise ordered by the Court, Defendants shall pay the Fee and Expenses
15 Award in the amount ordered by the Court within five business days after receipt of notice of Final
16 Approval.

17 **VI. PRELIMINARY APPROVAL AND FINAL APPROVAL**

18 A. 1. As part of the motion for Preliminary Approval described in Paragraph II.B.,
19 Plaintiffs shall ask the Court to enter an order requiring any Settlement Class member who wishes to
20 opt-out of the Settlement to serve a written opt-out notice on Class Counsel, which must be postmarked
21 or delivered by the deadline set by the Court. Such opt-out rights may only be exercised individually
22 by a Settlement Class member personally and not by another acting in a representative capacity. Any
23 such opt-out request shall include: (i) the member's full name and current address and telephone
24 number, (ii) the member's Club membership number, (iii) the member's personal signature, and (iv) a
25 specific and clear statement of his or her desire to be excluded from the Settlement. Failure to comply
26 with these requirements will result in the Settlement Class member being bound by the terms of the
27 Settlement. Any Settlement Class member who timely opts out of the Settlement shall not be bound by
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1 the Settlement or this Settlement Agreement, may not file an objection to the Settlement and shall be
2 deemed to have waived any rights or benefits under the Settlement and this Settlement Agreement.

3 2. Plaintiffs shall also ask the Court to enter an order requiring any Settlement Class
4 member who wishes to have his or her objection to the Settlement or the Fee and Expenses Award
5 considered by the Court to file with the Court a written notice of objection and contemporaneously
6 serve Class Counsel and Defendants' Counsel by the deadline set by the Court. Such right to object
7 may only be exercised individually by a Settlement Class member. To state a valid objection to the
8 Settlement or the requested Fee and Expenses Award, an objecting Settlement Class member must
9 provide the following information in his or her written objection: (i) the member's full name and
10 current address and telephone number, (ii) the member's Club membership number, (iii) the member's
11 personal signature, (iv) a specific and clear statement of the position(s) the objector wishes to assert,
12 including the factual and legal grounds for the position, and (v) if the member wishes to appear at the
13 Final Approval hearing personally or through counsel, a statement to that effect. If the objecting
14 Settlement Class member states an intention to appear at the Final Approval hearing, the objection must
15 include copies of all papers, exhibits, or other evidence that the objecting Settlement Class member (or
16 his or her counsel) will present to the Court in connection with the Final Approval hearing.

17 3. Plaintiffs shall further ask the Court to order that any objecting Settlement Class
18 member shall be subject to discovery, including deposition, by any Party on ten calendar days' notice.

19 4. Plaintiffs shall further ask the Court to order that any Settlement Class member
20 who does not file and serve a written objection in compliance with the requirements set forth herein or
21 who fails to comply with any discovery obligations shall be deemed to have waived any objection and
22 opposition to the fairness, adequacy, and reasonableness of the Settlement and the Fee and Expenses
23 Award and shall not be permitted to object, present argument, or comment at the Final Approval
24 hearing, either individually or through counsel.

25 5. These agreed-upon procedures and requirements for written Settlement opt-out
26 notices, objections and notices of intent to appear at the Final Approval hearing are intended to ensure
27 the efficient administration of justice and the orderly presentation of any Settlement Class member's
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1 objection to the Settlement and related matters, in accordance with the due process rights of all
2 members.

3 B. As part of the motion for Preliminary Approval, Plaintiffs will also ask the Court to
4 approve the Settlement Notice and authorize its dissemination to all members of the Settlement Class.

5 C. If the Court grants Preliminary Approval of the Settlement, Plaintiffs shall move for
6 Final Approval as described in Paragraph II.B within 45 days after the issuance of the Preliminary
7 Approval Order, or by the deadline set by the Court. As part of that motion for Final Approval,
8 Plaintiffs shall request an indicative ruling from the Court pursuant to Rule 62.1 of the Federal Rules of
9 Civil Procedure stating that, in the event that an objecting Settlement Class member takes an appeal
10 from the Final Approval Order and/or judgment and has not already been deposed by a Party, the Court
11 will grant a motion by Plaintiffs for leave to take discovery of such an appellant, including a deposition,
12 if the United States Court of Appeals for the Ninth Circuit remands the Action for that purpose.

13 D. Should the Court disapprove the Settlement or any term or provision of this Settlement
14 Agreement, or fail to grant Final Approval of the Settlement in its entirety, the Settlement and this
15 Settlement Agreement is voidable by either Party thirty calendar days after such disapproval. Any
16 Party voiding the Settlement pursuant to this provision shall give contemporaneous written notice to
17 counsel for the other Parties.

18 **VII. RELEASES**

19 **A. Releases.**

20 1. Upon the Effective Date, Plaintiffs, all members of the Settlement Class,
21 Defendants, Defendants' Counsel and Class Counsel mutually release each other from all manner of
22 actions, causes of action, lawsuits, claims, counterclaims, damages, debts, obligations, liabilities,
23 promises, defenses, agreements, costs, expenses (including attorneys' fees), and demands of whatever
24 kind or nature, whether based on statute, tort, contract, or other theory of recovery, whether known or
25 unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or
26 contingent, liquidated or unliquidated, that, as of the date that the Final Approval Order is entered: (i)
27 were asserted in the Action; (ii) arise from the Action; and/or (iii) arise from the Special Assessment.
28 Plaintiffs, all members of the Settlement Class, Defendants, Defendants' Counsel and Class Counsel

1 expressly waive and/or are deemed to waive all rights under California Civil Code § 1542, which
2 provides:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
5 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
6 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
7 THE DEBTOR.

8 The Parties acknowledge that the foregoing waiver and release was bargained for and is a material
9 element of the Settlement Agreement.

10 2. Such release provided for in Paragraph VII.A.1. shall not apply to any liabilities,
11 claims, rights, suits or causes of action any Party may assert to enforce the terms of this Settlement
12 Agreement. Such release provided for in Paragraph VII.A.1. shall in no way apply to liabilities, claims,
13 rights, suits or causes of action not identified in Paragraph VII.A.1. In particular, such release shall in
14 no way release, bar or limit any liabilities, claims, rights, suits or causes of action regarding any future
15 special assessments or other future charges or the representations made by any of the Defendants
16 regarding future special assessments or charges, including the June 2009 special message to Club
17 members by Defendant Bech. Except with regard to the liabilities, claims, rights, suits or causes of
18 action identified in Paragraph VII.A.1., the Settlement and this Settlement Agreement shall have no
19 preclusive or precedential effect as against any Settlement Class member and shall not serve as the
20 basis for any defense or assertion of non-liability as against any liabilities, claims, rights, suits or causes
21 of action asserted by a member of the Settlement Class.

22 **B. Dismissal.** Upon entry of the Final Approval Order, the Action shall be dismissed, with
23 prejudice, subject to the continuing jurisdiction of the Court and subject to Paragraph IX.D.

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

25 A. Class Counsel, who are signatories hereof, represent and warrant that they have the
26 authority, on behalf of Plaintiffs, to execute, deliver, and perform this Settlement Agreement and to
27 consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and
28 validly executed and delivered by Class Counsel and Plaintiffs and constitutes their legal, valid, and
binding obligation.

1 B. Defendants, through their undersigned counsel, represent and warrant that they have the
2 authority and capacity to execute, deliver, and perform this Settlement Agreement. The execution,
3 delivery, and performance by Defendants of this Settlement Agreement and its consummation of the
4 actions contemplated hereby have been duly authorized by all necessary corporate action on the part of
5 Defendants. This Settlement Agreement has been duly and validly executed and delivered by
6 Defendants' Counsel and Defendants and constitutes their legal, valid, and binding obligation.

7 C. Defendants, in any transaction affecting the management or operation of the Club or the
8 rights or interests of Club members, shall continue to be bound to and comply with the terms of the
9 Settlement. Defendants further agree that the Club shall at all times be operated in a manner fully
10 consistent with the terms of the Settlement and the rights of members the Settlement Class under the
11 Settlement and this Settlement Agreement.

12 D. This Settlement Agreement is entered into solely for purposes of compromise and
13 settlement. In the event the Final Approval Order is not entered or is subsequently reversed on appeal
14 or if any provision of the Settlement or the Final Approval Order is invalidated, avoided or otherwise
15 set aside by a court or administrative body after the issuance of the Final Approval Order, the Parties'
16 Settlement and this Settlement Agreement, including any releases or dismissals hereunder, are canceled
17 and null and void, and no term or condition of this Settlement Agreement or any draft thereof, or the
18 discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions,
19 shall have any force or effect; nor shall any such matter be admissible in evidence for any purpose, or
20 used for any purposes whatsoever, in the Action, or any other action or proceeding, and all Parties shall
21 be restored to their prior rights, claims and positions as if the Settlement Agreement had not been
22 entered into, including the refund of any portion of the Fee and Expenses Award paid to Class Counsel,
23 less amounts actually paid to the Settlement Administrator for expenses related to the Settlement Notice
24 and the CAFA Notice and any other administrative expenses.

25 **IX. ADDITIONAL PROVISIONS**

26 A. The Settlement consideration and other terms of the Settlement set forth in this
27 Settlement Agreement were negotiated at arm's-length in good faith by the Parties, and reflect a
28 Settlement that was reached voluntarily after consultation with experienced legal counsel.

1 B. The Parties shall cooperate in good faith in the execution and implementation of the
2 Settlement, and may mutually agree in writing to an amendment of the Settlement Agreement if
3 deemed reasonable and necessary to effectuate the purpose and intent of the Settlement.

4 C. This Settlement Agreement may not be modified or amended, nor may any of its
5 provisions be waived, except by a writing signed on behalf of all Parties.

6 D. The administration and consummation of the Settlement set forth in this Settlement
7 Agreement will be under the authority of the Court in the Action, and the Court shall retain jurisdiction
8 for, among other things, entering motions and orders concerning enforcement of and compliance with
9 this Settlement Agreement.

10 E. The waiver by one Party of any breach of this Settlement Agreement by any other Party
11 will not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

12 F. The exhibits to this Settlement Agreement are an integral part of the Settlement and are
13 expressly incorporated in and made a part of this Settlement Agreement. This Settlement Agreement
14 and its exhibits constitute the entire agreement among the Parties concerning the Settlement of the
15 Action; and no representations, warranties, or inducements have been made by any Party concerning
16 this Settlement Agreement and its exhibits other than those contained and memorialized in such
17 documents. This Settlement Agreement supersedes all prior understandings, communications, and
18 agreements with respect to the subject of this Settlement Agreement.

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

22 H. This Settlement Agreement will be binding on, and inure to the benefit of, all
23 representatives, heirs, successors, and assigns of the Parties.

24 I. The construction, interpretation, operation, effect, and validity of this Settlement
25 Agreement, and all documents necessary to effectuate it, will be governed by the internal laws of the
26 State of California without giving effect to any choice or conflict of law provision or rule that would
27 cause the application of the laws of any other jurisdiction.

28

1 J. Except as otherwise provided in this Settlement Agreement, each Party shall bear his,
2 her or its own costs of litigation and the Settlement.

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

7 L. Proper notice shall be given to Plaintiffs and Defendants of all applications for Court
8 approval or Court orders required under this Settlement Agreement.

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

16 N. This Settlement Agreement constitutes the entire, fully integrated agreement among the
17 Parties and cancels and supersedes all prior written and unwritten agreements and understandings
18 pertaining to the Parties' Settlement.

19 O. The Parties and their counsel shall cooperate fully with one another in seeking entry of
20 the Preliminary Approval Order, the Court's approval of this Settlement Agreement and the Settlement
21 set forth herein and entry of the Final Approval Order, and shall promptly agree on and execute all such
22 other documentation as may be reasonably required to obtain the Court's approval of the Settlement.

23 P. The Parties agree that any disputes regarding the meaning of the terms and conditions of
24 this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, or the
25 manner in which any issue or dispute arising under this Settlement Agreement should be resolved, shall
26 be submitted to the Court for resolution.

27
28

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

4 **Class Counsel:**

5 Jonathan K. Levine
6 Elizabeth C. Pritzker
7 Todd Espinosa
8 GIRARD GIBBS LLP
9 601 California Street, Suite 1400
10 San Francisco, California 94108
11 Telephone: (415) 981-4800
12 Facsimile: (415) 981-4846
13 jkl@girardgibbs.com; ecp@girardgibbs.com; tie@girardgibbs.com

14 **Defendants' Counsel:**

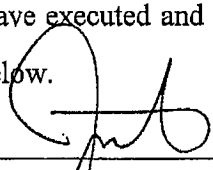
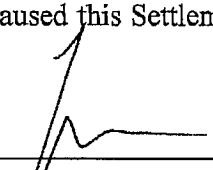
15 James J. Ormiston
16 LOOPER REED & MCGRAW, P.C.
17 1300 Post Oak Blvd., Suite 2000
18 Houston, Texas 77056
19 Telephone: (713) 986-7000
20 Facsimile: (713) 986-7100
21 jormiston@lrmlaw.com

22 Daryl M. Crone
23 Gerald E. Hawxhurst
24 CRONE HAWXHURST LLP
25 10880 Wilshire Blvd., Suite 1150
26 Los Angeles, California 90024
27 Telephone: (310) 893-5150
28 Facsimile: (310) 893-5195
daryl@cronehawxhurst.com

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

Dated: November 15, 2011

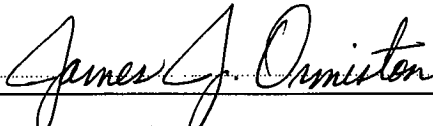
BY: _____



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

Plaintiffs' Counsel and Class Counsel

1 Dated: November 15, 2011

BY:



2 James J. Ormiston
3 **LOOPER REED & MCGRAW, P.C.**
4 1300 Post Oak Blvd., Suite 2000
5 Houston, Texas 77056
6 Telephone: (713) 986-7000
7 Facsimile: (713) 986-7100

8 Daryl M. Crone
9 Gerald E. Hawxhurst
10 **CRONE HAWXHURST, LLP**
11 10880 Wilshire Blvd., Suite 1150
12 Los Angeles, California 90024
13 Telephone: (310) 893-5150
14 Facsimile: (310) 893-5195

15 *Defendants' Counsel*

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EXHIBIT A

November 15, 2011

Ms. Kamala D. Harris
c/o CAFA Coordinator
Office of the Attorney General
State of California
Consumer Law Section
110 West "A" Street, Suite 1100
San Diego, California 92186-5266

Re: Proposed Class Action Settlement in *Curtis Berrien et al. v. New Raintree Resorts International, LLC, et al.*, United States District Court, Northern District of California, Docket No. C-10-03125 CW

Dear Ms. Harris:

Pursuant to Section 1715 of Title 28 of the United States Code (28 U.S.C. § 1715, the "Class Action Fairness Act of 2005"), this letter and its enclosures shall constitute notice of a proposed class action settlement in the above-referenced action evidenced by the following enclosed materials: (1) Plaintiffs' Proposed First Amended Class Action Complaint on behalf of a nationwide Settlement Class; and (2) the parties' Settlement Agreement and Release, including exhibits thereto.

Also enclosed with this letter is a chart prepared by New Raintree Resorts International, LLC, identifying the number of class members in each state encompassed within the proposed Settlement that have been provided with Notice of the Class Action Settlement, and their percentage of the Class.

Should you have any questions regarding this matter, please do not hesitate to contact me directly.

Sincerely,

[NAME]

[TITLE]

New Raintree Resorts International, LLC

cc: Mr. James J. Ormiston, Esq., Looper Reed & McGraw, P.C., counsel for Defendants New Raintree Resorts, LLC, RVC Members, LLC and Douglas Y. Bech
Mr. Jonathan K. Levine, Esq., Girard Gibbs LLP, Class Counsel for Plaintiffs and the Class

EXHIBIT B

1 Jonathan K. Levine (State Bar No. 220289)
2 jkl@girardgibbs.com
3 Elizabeth C. Pritzker (State Bar No. 146267)
4 ecp@girardgibbs.com
5 Todd Espinosa (State Bar No. 209591)
6 tie@girardgibbs.com
7 **GIRARD GIBBS LLP**
8 601 California Street
9 San Francisco, California 94108
10 Telephone: (415) 981-4800
11 Facsimile: (415) 981-4846

12 Class Counsel and Attorneys for Individual and
13 Representative Plaintiffs Curtis Berrien, Rose Huerta,
14 Tina Musharbash, Fern Prosnitz, Michael Andler,
15 Marcus Boness, Timothy Bonnell, Richard Buford,
16 Elaine Cefola, Kenneth Davis and Jerome Garoutte

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

19 CURTIS BERRIEN; ROSE HUERTA; TINA
20 MUSHARBASH; FERN PROSNITZ; MICHAEL
21 ANDLER; MARCUS BONESS; TIMOTHY
22 BONNELL; RICHARD BUFORD; ELAINE
23 CEFOLA; KENNETH DAVIS; JEROME
24 GAROUTTE, on behalf of themselves and all
25 others similarly situated,

26 Plaintiffs,

27 v.

28 NEW RAINTREE RESORTS
INTERNATIONAL, LLC; RVC MEMBERS,
LLC; DOUGLAS Y. BECH

Defendants.

Case No. CV 10-03125 CW

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

CLASS ACTION

1 This matter came before the Court for hearing on November 29, 2011, on the unopposed motion
2 of Plaintiffs Curtis Berrien, Rose Huerta, Tina Musharbash, Fern Prosnitz, Michael Andler, Marcus
3 Boness, Timothy Bonnell, Richard Buford, Elaine Cefola, Kenneth Davis and Jerome Garoutte
4 (“Plaintiffs”) for preliminary approval of the proposed Settlement Agreement and Release
5 (“Settlement”), resolving class claims asserted in the litigation against Defendants New Raintree
6 Resorts International, LLC, RVC Members, and Douglas Y. Bech (“Defendants”) (Plaintiffs and
7 Defendants are referred to collectively as the “Parties”), on behalf of a proposed nationwide class of
8 persons residing in the United States who were charged the Special Assessment, as that term is defined
9 in the Parties’ Settlement Agreement at paragraph I.(y). In their motion, Plaintiffs further request (i)
10 leave to file a First Amended Complaint to conform the class definition set forth in the pleadings with
11 that contained in the proposed Settlement, (ii) preliminary certification of a Settlement Class, (iii)
12 approval of the form and manner of Settlement Notice to be mailed to the Settlement Class, and (iv)
13 approval of the procedures and schedule for final approval of the proposed Settlement.

14 The Court having considered all papers filed and proceedings had herein and good cause
15 appearing therefore, **IT IS HEREBY ORDERED** that:

16 1. Solely for purposes of the proposed Settlement, the Court grants Plaintiffs leave to file a
17 First Amended Complaint to conform the class definition and class allegations to the proposed
18 Settlement, which is attached as Exhibit C to the Settlement. Defendants are excused from filing an
19 answer or any other responsive pleading with respect to the First Amended Complaint, without
20 prejudice to Defendants and their right to deny allegations and otherwise respond under the Federal
21 Rules of Civil Procedure, absent this Settlement becoming effective.

22 2. The Court previously entered an order certifying a litigation class pursuant to Fed. R.
23 Civ. P. 23. *See* Dkt No. 75. For the reasons stated in the Court’s prior class certification order, the
24 Court finds that the Parties’ proposed Settlement Class satisfies the prerequisites of numerosity,
25 commonality, typicality, and adequacy of representation, and further finds that common questions
26 predominate over any questions affecting only individual members such that resolution on a class basis
27 is superior to other available methods for a fair resolution of this controversy. Fed. R. Civ. P. 23(a),
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1 (b). Accordingly, the Court preliminarily certifies the following class for purposes of the proposed
2 Settlement (the "Settlement Class"):

3 All persons who reside in the United States and were charged the Special Assessment.
4 Excluded from the Settlement Class are those persons who have already settled their
5 claims relating to the issuance of the Special Assessment, those persons whose Club
6 memberships have already been validly terminated for non-payment of amounts due
7 under Club membership purchase promissory notes as of the date of the issuance of the
8 Court's order granting preliminary class settlement approval in this action, Defendants,
9 any entity in which any Defendant has or had a controlling interest, any officers or
10 directors of any Defendant, the legal representatives, heirs, successors, and assigns of
11 Defendants, and any judge assigned to this action and his or her immediate family.

12 3. Capitalized terms not otherwise defined herein shall have the same meaning as set forth
13 in the Settlement.

14 4. The Court preliminarily approves the proposed Settlement, finding that its terms appear
15 sufficiently fair, reasonable, and adequate to warrant dissemination of notice of the proposed Settlement
16 to the Settlement Class. The Court finds that the proposed Settlement contains no obvious deficiencies
17 and that the Parties entered into the proposed Settlement in good faith, following arm's-length
18 negotiation between their respective counsel.

19 5. Defendants shall comply with the requirements of 28 U.S.C. § 1715(b) and timely serve
20 notice of the proposed Settlement upon the appropriate federal official and the appropriate State official
21 of each State in which a Settlement Class member resides. Defendants shall also provide copies of their
22 submissions to Plaintiffs' counsel.

23 6. The Court hereby approves and adopts the form and procedures for disseminating a
24 Notice of Class Action Settlement to the Settlement Class set forth in the proposed Settlement (the
25 "Settlement Notice"). The Court finds that the form, content and manner in which notice is to be given
26 to the Settlement Class constitutes the best notice practicable under the circumstances, and constitutes
27 valid, due, and sufficient notice to the Settlement Class in full compliance with the requirements of
28 applicable law, including the Due Process Clause of the United States Constitution. Members of the
Settlement Class who wish to opt out of the Settlement or object to or comment on the Settlement or the
Fee and Expenses Application (described herein) shall comply with this order and the Settlement
Notice.

1 7. On or before December 15, 2011, the Parties shall cause individual notice, substantially
2 in the form of Exhibit D to the Settlement, to be mailed to all reasonably identifiable Settlement Class
3 members. By that same date, Plaintiffs will post the notice on the Girard Gibbs LLP website
4 (www.girardgibbs.com).

5 8. All costs and expenses in connection with providing notice to the Settlement Class and
6 administering the proposed Settlement shall be paid in accordance with the terms of the Settlement.

7 9. A hearing on entry of final approval of the Settlement, an award of fees and expenses to
8 Class Counsel, and incentive payments to the named Plaintiffs (the "Final Approval Hearing") shall be
9 held at 2 p.m. on March 8, 2012, before the undersigned in Courtroom 2 of the United States District
10 Court for Northern District of California, 1301 Clay Street, Oakland, California, 94612. At the Final
11 Approval Hearing, the Court will consider: (a) whether the Settlement Class should be certified; (b)
12 whether the Settlement should be approved as fair, reasonable, and adequate for the class; (c) whether a
13 judgment granting approval of the Settlement and dismissing the lawsuit with prejudice should be
14 entered; and (d) whether Class Counsel's application for attorneys' fees and expenses and incentive
15 awards for the named Plaintiffs should be granted.

16 10. Any Settlement Class member shall have the right to individually and personally opt out
17 of the Settlement Class and the Settlement by sending a written request for exclusion from the
18 Settlement Class to the addresses listed in the Settlement Notice, postmarked or delivered no later than
19 January 30, 2012. To be effective, the request for exclusion must include: (i) the member's full name
20 and current address and telephone number, (ii) the member's Club membership number, (iii) the
21 member's personal signature, and (iv) a specific and clear statement of his or her desire to be excluded
22 from the Settlement. If the Settlement is finally approved, any Settlement Class member who does not
23 submit a timely and valid request for exclusion shall be subject to and bound by the Settlement and
24 every order or judgment entered concerning the Settlement. Settlement Class members who opt out
25 shall be deemed to have waived any right to object to the Settlement, to appear at the Final Approval
26 Hearing and to present any argument or evidence regarding the Settlement.

1 11. Counsel for the respective parties shall file memoranda, declarations, or other statements
2 and/or materials in support of the request for final approval of the Settlement as described in the
3 Settlement Notice, no later than December 15, 2011.

4 12. Class Counsel shall file an application for an award of attorneys' fees and costs and for
5 an incentive award to the named Plaintiffs as described in the Settlement Notice ("Fee and Expenses
6 Application") no later than December 15, 2011.

7 13. Any member of the Settlement Class who intends to object to final approval of the
8 Settlement or the Fee and Expenses Application must, on or before January 30, 2012, file any such
9 objection and, if applicable, notice of the member's intent to appear at the Final Approval Hearing, with
10 the Court, and provide copies of the objection or comment to: (1) Girard Gibbs LLP, c/o Raintree Class
11 Settlement Objection, 601 California Street, 14th Floor, San Francisco, CA 94108; and (2) Looper Reed
12 & McGraw, P.C., c/o James J. Ormiston, 1300 Post Oak Blvd., Suite 2000, Houston, Texas 77056.
13 Each objection must include: (i) the member's full name and current address and telephone number, (ii)
14 the member's Club membership number, (iii) the member's personal signature, (iv) a specific and clear
15 statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the
16 position, and (v) if the member wishes to appear at the Final Approval Hearing personally or through
17 counsel, a statement to that effect. The notice of intent to appear must include copies of any papers,
18 exhibits, or other evidence that the objecting Class member (or his or her counsel) will present to the
19 Court in connection with the Final Approval Hearing.

20 14. Any member of the Settlement Class who objects to final approval of the Settlement or
21 the Fee and Expenses Application shall be subject to discovery, including depositions, by any Party on
22 ten calendar days' notice.

23 15. Any Settlement Class member who does not file and serve a written objection in
24 compliance with the requirements set forth above or who fails to comply with any discovery obligations
25 as required by the Settlement Agreement, the Settlement Notice, this Order or any other order of the
26 Court shall be deemed to have waived any objection and opposition to the fairness, adequacy, and
27 reasonableness of the Settlement and the Fee and Expenses Application and shall not be permitted to
28 object, present argument, or evidence regarding the Settlement.

1 16. No later than February 23, 2012, the Parties shall file any replies in support of final
2 approval of the Settlement and Class Counsel shall file any reply in support of the Fee and Expenses
3 Application.

4 17. The Court may continue the date of the Final Approval Hearing and related deadlines.
5 In that event, the revised hearing date and/or deadlines shall be posted on the websites referred to in the
6 Settlement Notice, and the Parties shall not be required to re-send or re-publish notice of the Settlement.

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8 **IT IS SO ORDERED.**

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10 Dated: _____, 2011

11 Honorable Claudia Wilken
12 United States District Judge
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EXHIBIT C

1 Jonathan K. Levine (State Bar No. 220289)
jkl@girardgibbs.com
2 Elizabeth C. Pritzker (State Bar No. 146267)
ecp@girardgibbs.com
3 Todd Espinosa (State Bar No. 209591)
tie@girardgibbs.com
4 **GIRARD GIBBS LLP**
5 601 California Street
6 San Francisco, California 94108
7 Telephone: (415) 981-4800
Facsimile: (415) 981-4846

8 Class Counsel and Attorneys for Individual and
9 Representative Plaintiffs Curtis Berrien, Rose Huerta,
Tina Musharbash, Fern Prosnitz, Michael Andler,
10 Marcus Boness, Timothy Bonnell, Richard Buford,
11 Elaine Cefola, Kenneth Davis and Jerome Garoutte

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

14 CURTIS BERRIEN; ROSE HUERTA; TINA) Case No. CV 10-03125 CW
15 MUSHARBASH; FERN PROSNITZ; MICHAEL)
ANDLER; MARCUS BONESS; TIMOTHY)
16 BONNELL; RICHARD BUFORD; ELAINE) **[PROPOSED] FIRST**
17 CEFOLA; KENNETH DAVIS; JEROME) **AMENDED COMPLAINT**
GAROUTTE, on behalf of themselves and all)
18 others similarly situated,)
) **DEMAND FOR JURY TRIAL**
19 Plaintiffs,)
)
20 v.)
NEW RAIN TREE RESORTS) **CLASS ACTION**
21 INTERNATIONAL, LLC; RVC MEMBERS,)
22 LLC; DOUGLAS Y. BECH)
)
23 Defendants.)

1 Plaintiffs Curtis Berrien, Rose Huerta, Tina Musharbash, Fern Prosnitz, Michael Andler, Marcus
2 Boness, Timothy Bonnell, Richard Buford, Elaine Cefola, Kenneth Davis and Jerome Garoutte
3 (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated, allege the following:

4 **I.**

5 **JURISDICTION AND VENUE**

6 1. The Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332(a). This
7 is a civil action in which the matter in controversy exceeds the sum or value of \$75,000, exclusive of
8 interest and costs, and is between citizens of different States. Plaintiffs are all citizens of California.
9 Defendants New Raintree Resorts International, LLC ("RRI"), RVC Members, LLC ("RVC") and
10 Douglas Y. Bech (collectively, "Defendants") are all citizens of Texas.

11 2. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the
12 events or omissions giving rise to the claims alleged herein occurred in this District.

13 **II.**

14 **PARTIES**

15 **A. Plaintiffs**

16 3. Plaintiff Curtis Berrien is a citizen of California, residing in Berkeley, California. In June
17 1998, Mr. Berrien purchased a time-share interest in Club Regina, a Mexican affiliate of the Raintree
18 Vacation Club vacation time-share plan, for \$7950.00. (The Raintree Vacation Club vacation time-share
19 plan and its affiliates are referred to collectively herein as "Raintree Vacation Club" or the "Club.") In
20 October 1999, Mr. Berrien purchased a Club membership upgrade. In November 2009, Mr. Berrien
21 received a statement dated November 13, 2009 from RVC at his home in Berkeley seeking payment of
22 an \$820.00 Special Assessment. This Special Assessment was in addition to the \$820.00 in annual
23 membership and maintenance fees charged to Mr. Berrien as a Club member. Mr. Berrien has been
24 damaged and has suffered economic harm due to Defendants' actions, as more fully alleged herein.

25 4. Plaintiff Rose Huerta is a citizen of California, residing in Morgan Hill, California. Ms.
26 Huerta purchased a time-share interest in Club Regina in April 1998 for \$30,950. In June 1999 and May
27 2006, Ms. Huerta purchased Club membership upgrades. In November 2009, Ms. Huerta received a
28 statement dated November 13, 2009 from RVC at her home in Morgan Hill seeking payment of a

1 \$1681.00 Special Assessment. This Special Assessment was in addition to the \$1681.00 in annual
2 membership and maintenance fees charged to Ms. Huerta as a Club member. Ms. Huerta has been
3 damaged and has suffered economic harm due to Defendants' actions, as more fully alleged herein.

4 5. Plaintiff Tina Musharbash is a citizen of California, residing in San Jose, California. Ms.
5 Musharbash purchased a time-share interest in Club Regina in February 1997 for \$12,105.00. In
6 November 2009, Ms. Musharbash received a statement dated November 13, 2009 from RVC at her
7 home in San Jose seeking payment of a \$724.00 Special Assessment. This Special Assessment was in
8 addition to the \$724.00 in annual membership and maintenance fees charged to Ms. Musharbash as a
9 Club member. Ms. Musharbash has been damaged and has suffered economic harm due to Defendants'
10 actions, as more fully alleged herein.

11 6. Plaintiff Fern Prosnitz is a citizen of California, residing in Walnut Creek, California.
12 Ms. Prosnitz purchased a time-share interest in Club Regina in April 1997 for \$19,950.00. In November
13 2009, Ms. Prosnitz received a statement dated November 13, 2009 from RVC at her home in Walnut
14 Creek seeking payment of an \$846.00 Special Assessment. This Special Assessment was in addition to
15 the \$846.00 in annual membership and maintenance fees charged to Ms. Prosnitz as a Club member.
16 Ms. Prosnitz has been damaged and has suffered economic harm due to Defendants' actions, as more
17 fully alleged herein.

18 7. Plaintiff Michael Andler is a citizen of California, residing in Los Angeles, California.
19 Mr. Andler purchased a time-share interest in the Club in July 2006 for \$22,950. In November 2009,
20 Mr. Andler received a statement dated November 13, 2009 from RVC at his home in Los Angeles
21 seeking payment of an \$883.00 Special Assessment. This Special Assessment was in addition to the
22 \$883.00 in annual membership and maintenance fees charged to Mr. Andler as a Club member. Mr.
23 Andler has been damaged and has suffered economic harm due to Defendants' actions, as more fully
24 alleged herein.

25 8. Plaintiff Marcus Boness is a citizen of California, residing in Folsom, California. Mr.
26 Boness purchased a time-share interest in the Club in September 2005 for \$3000.00. In May 2006, Mr.
27 Boness purchased a Club membership upgrade. In November 2009, Mr. Boness received a statement
28 dated November 13, 2009 from RVC at his home in Folsom seeking payment of a \$820.00 Special

1 Assessment. This Special Assessment was in addition to the \$820.00 in annual membership and
2 maintenance fees charged to Mr. Boness as a Club member. Mr. Boness has been damaged and has
3 suffered economic harm due to Defendants' actions, as more fully alleged herein.

4 9. Plaintiff Timothy Bonnell is a citizen of California, residing in Lemon Grove, California.
5 Mr. Bonnell purchased a time-share interest in the Club in May 2002 for \$10,950.00. In May 2005, Mr.
6 Bonnell purchased a Club membership upgrade. In November 2009, Mr. Bonnell received a statement
7 dated November 13, 2009 from RVC at his home in Lemon Grove seeking payment of an \$820.00
8 Special Assessment. This Special Assessment was in addition to the \$820.00 in annual membership and
9 maintenance fees charged to Mr. Bonnell as a Club member. Mr. Bonnell has been damaged and has
10 suffered economic harm due to Defendants' actions, as more fully alleged herein.

11 10. Plaintiff Richard Buford is a citizen of California, residing in Santa Barbara, California.
12 Buford purchased a time-share interest in Club Regina in August 1997 for \$13,450. In November 2009,
13 Mr. Buford received a statement dated November 13, 2009 from RVC at his home in Santa Barbara
14 seeking payment of a \$724.00 Special Assessment. This Special Assessment was in addition to the
15 \$724.00 in annual membership and maintenance fees charged to Mr. Buford as a Club member. Mr.
16 Buford has been damaged and has suffered economic harm due to Defendants' actions, as more fully
17 alleged herein.

18 11. Plaintiff Elaine Cefola is a citizen of California, residing in La Jolla, California. Ms.
19 Cefola purchased a time-share interest in Club Regina in May 2004 for \$12,450.00. In November 2009,
20 Ms. Cefola received a statement dated November 13, 2009 from RVC at her home in La Jolla seeking
21 payment of a \$410.00 Special Assessment. This Special Assessment was in addition to the \$410.00 in
22 annual membership and maintenance fees charged to Ms. Cefola as a Club member. Ms. Cefola has
23 been damaged and has suffered economic harm due to Defendants' actions, as more fully alleged herein.

24 12. Plaintiff Kenneth Davis is a citizen of California, residing in Redding, California. Mr.
25 Davis purchased a time-share interest in Club Regina in April 1994 for \$12,950.00. In November 2009,
26 Mr. Davis received a statement dated November 13, 2009 from RVC at his home in Redding seeking
27 payment of a \$724.00 Special Assessment. This Special Assessment was in addition to the \$724.00 in
28

1 annual membership and maintenance fees charged to Mr. Davis as a Club member. Mr. Davis has been
2 damaged and has suffered economic harm due to Defendants' actions, as more fully alleged herein.

3 13. Plaintiff Jerome Garoutte is a citizen of California, residing in Stockton, California. Mr.
4 Garoutte purchased a time-share interest in Club Regina in October 1999 for \$17,950. In October 2003,
5 Mr. Garoutte purchased a Club membership upgrade. In November 2009, Mr. Garoutte received a
6 statement dated November 13, 2009 from RVC at his home in Stockton seeking payment of a \$957.00
7 Special Assessment. This Special Assessment was in addition to the \$957.00 in annual membership and
8 maintenance fees charged to Mr. Garoutte as a Club member. Mr. Garoutte has been damaged and has
9 suffered economic harm due to Defendants' actions, as more fully alleged herein.

10 **B. Defendants**

11 14. Defendant RRI is a Texas limited liability company and of one the largest U.S.-based
12 time-share developers. Through its various subsidiaries, RRI directs the operation of the Club and 21
13 time-share resorts in Mexico, the western United States (including Palm Springs, California), Mexico
14 and Canada. These subsidiaries include Defendant RVC, as well as non-parties Raintree Vacation
15 Exchange, LLC, a Texas limited liability company, and Club Regina, S.A. de C.V., a Mexican entity.

16 15. Defendant RVC is a Texas limited liability company and a subsidiary of Defendant RRI.
17 RVC manages resort properties for the Club.

18 16. Defendant Bech is a citizen of Texas, the chief executive officer of Defendant RRI and a
19 principal of both RRI and non-party Raintree Vacation Exchange, LLC. In this capacity as RRI CEO,
20 Defendant Bech has directed the actions of RRI and RVC complained of herein and has personally
21 communicated with Club members regarding these actions.

22 17. Defendants, and each of them, are individually sued as participants and as aiders and
23 abettors in the improper acts, plans, schemes, and transactions that are the subject of this lawsuit.

24 18. Defendants, and each of them, have participated as members of the improper acts or acted
25 with or in furtherance of them, or aided or assisted in carrying out their purposes as alleged in this
26 Complaint, and have performed acts and made statements in furtherance of the violations and
27 conspiracy.

1 III.

2 SUBSTANTIVE ALLEGATIONS

3 **A. Raintree Vacation Club Structure and Annual Membership and Maintenance Fees**
4 **Paid by Club Members**

5 19. In a conventional vacation timeshare, a participant typically purchases an interest in a
6 specific piece of property. The participant owns the right to a specific week of occupancy in a specific
7 unit in a specific resort. While the participant may be entitled to trade that week for a week in some
8 other resort, what the participant is purchasing is a guaranteed week in a specific unit of a specific resort.

9 20. Raintree Vacation Club is not operated as a conventional timeshare. In general, a person
10 wishing to become a Club member purchases a beneficial trust interest in a specific Club resort property.
11 At the time of the acquisition of that trust interest, the purchaser simultaneously assigns the trust interest
12 to non-party and RRI subsidiary RVC Exchange, LLC in exchange for a membership in the Club and
13 usage rights at some or all of the 21 Club resorts. The extent of these usage rights and the particular
14 resorts to which they extend depend on the membership category chosen by the purchaser.

15 21. The 21 Raintree Vacation Club resorts are:

- 16 a. Cimarron Golf Resort, Palm Springs, California;
- 17 b. Club Regina Los Cabos, Mexico;
- 18 c. Club Regina Puerto Vallarta, Mexico;
- 19 d. Club Regina Cancun, Mexico;
- 20 e. Desert Arroyo, Phoenix, Arizona;
- 21 f. Franz Klammer Lodge, Telluride, Colorado;
- 22 g. Grand Regina, Los Cabos, Mexico;
- 23 h. Las Cúpulas Oaxaca, Mexico;
- 24 i. Kona Reef, Hawaii;
- 25 j. Park Plaza, Park City, Utah;
- 26 k. Polo Towers, Las Vegas, Nevada;
- 27 l. The Sandcastle Resort, Birch Bay, Washington;
- 28 m. The River Club Resort, Telluride, Colorado;
- n. The Teton Club, Jackson Hole, Wyoming;

- 1 o. The Miners Club, Park City, Utah;
- 2 p. Villa Vera, Acapulco, Mexico;
- 3 q. Villa Vera Isla Puerto Mujeres, Mexico;
- 4 r. Villa Vera Oaxaca, Mexico;
- 5 s. Villa Vera Puerto Mio, Zihuatanejo, Mexico;
- 6 t. Villa Vera Puerto Vallarta, Mexico; and
- 7 u. Whiski Jack, Whistler, British Columbia.

8 22. The above-described purchase and assignment transaction is effected through one or more
9 written agreements, to which Defendants RRI, RVC and Bech are third parties. These agreements
10 include an agreement for the purchase of the resort trust interest between the purchaser and an entity
11 holding beneficial or ownership rights to the specific resort property, which may include provisions
12 regarding the assignment of the purchased interest. A sales and marketing entity may also be a party to
13 the agreement in some instances. Either or both of the rights-holding and sales and marketing entities
14 are RRI subsidiaries. Where there is a separate assignment agreement, it is usually entered into between
15 the purchaser and non-party RVC Exchange, LLC.

16 23. The above-described agreements and/or company regulations referred to in those
17 agreements generally provide for the payment of an annual membership fee by Club members. These
18 annual membership fees are in addition to maintenance fees paid by members. The total amount of Club
19 members' annual membership fees and maintenance fees vary according to each Club member's
20 membership category and typically range from several hundred to over a thousand dollars per year.

21 24. In general, according to the above-described agreements and company regulations,
22 maintenance fees are to be used for the physical operation, upkeep and maintenance of facilities.
23 Annual membership fees are to be used for other administrative expenses.

24 25. The agreements defining Plaintiffs' and other Class members' rights and obligations as
25 Raintree Vacation Club members do not provide for the charging of special assessments to Club
26 members.

27
28

1 **B. Defendants' First Attempt to Charge Raintree Vacation Club Members a "Special**
2 **Assessment," Which Was Later Withdrawn**

3 26. In June 2009, Defendant Bech caused a letter to be sent to Club members, in which he
4 stated that "continuously rising operating and energy costs have resulted in the deferral of various
5 maintenance and upgrade matters" at Raintree Vacation Club resorts. Defendant Bech informed Club
6 members of Defendants' decision to charge a "Special Assessment" to Club members to implement the
7 "needed improvements as soon as possible."

8 27. Around the time that Defendant Bech's letter was sent to Club members, Defendant RVC
9 sent separate fee statements to Club members seeking payment of the Special Assessment by July 15,
10 2009. The amount of the Special Assessment charged was approximately equal to the Club member's
11 annual membership fees and maintenance fees and thereby doubled each Club member's membership
12 costs for the year. According to the fee statements, checks were to be made payable directly to RVC.

13 28. An installment credit card payment option was also available. A credit card debit
14 authorization form that accompanied the Special Assessment fee statements stated that RRI had engaged
15 Resort Condominiums International de Mexico, S de R.L. de C.V. to collect and process installment
16 payments of the Special Assessment. That authorization form further stated that late payment would
17 subject Club members to "late and collection charges" and that Club members would not be permitted to
18 make resort reservations prior to be Special Assessment being paid in full.

19 29. Club members sent numerous complaints to Defendants regarding Defendant Bech's
20 letter and the Special Assessment fee statement. Among other things, Club members disputed
21 Defendants' authority to charge a Special Assessment and complained that Defendants had failed to
22 make proper use of maintenance fees paid by Club members. In a June 22, 2009 e-mail response to one
23 Club member, Defendant Bech stated that Defendants would agree not to charge any additional Special
24 Assessment for the next ten years and, thereafter, would charge Special Assessments no more often than
25 five years. Defendant Bech further stated that Special Assessments would be limited to 50% of Club
26 members' annual maintenance fees.

27 30. In late June 2009, RVC sent written "reminder" notices to Club members requesting
28 payment of the Special Assessment by the July 15, 2009 deadline.

1 31. On July 2, 2009, an e-mail message was sent to Club members informing them of
2 Defendants' decision to withdraw the Special Assessment and refund payments made by Club members.
3 Defendants stated that there were "serious mistakes" in the way that the Special Assessment was
4 communicated and that the Defendants intended to "revisit the issue" later in the year "after compiling
5 information that will demonstrate clearly and unequivocally that Raintree has used the maintenance fee
6 monies properly but they are insufficient to cover operating costs."

7 32. The July 2, 2009 e-mail message further announced Defendants' recent launch of a new
8 website, www.raintreelistens.com, which they described as "an information and discussion forum for
9 Raintree Vacation Club Members."

10 **C. Defendants' Second Attempt to Charge Raintree Vacation Club Members a**
11 **"Special Assessment," Which Was Not Withdrawn**

12 33. In November 2009, Defendants again attempted to charge Club members a Special
13 Assessment. This second Special Assessment was not withdrawn and is the basis for this action.

14 34. RVC sent letters and invoices to Club members describing the renewed Special
15 Assessment charge and seeking payment. In these letters, RVC stated that the Special Assessment was
16 necessary to fund capital improvements and upgrades at Club resorts and to establish a capital reserve
17 and that further information would be available at the www.raintreelistens.com website.

18 35. Despite the promises made in the July 2, 2009 e-mail, the letters and invoices that RVC
19 sent to Club members failed adequately to document the need for the Special Assessment or to
20 demonstrate clearly and unequivocally that maintenance fee monies previously collected had been used
21 properly.

22 36. Around the time that RVC send the renewed Special Assessment invoices, Club members
23 also received their regular annual membership fee and maintenance fee statements. As before, the
24 renewed Special Assessment for each Club member was set at an amount approximately equal to each
25 member's annual membership fees and maintenance fees and, in effect, doubled Club membership costs
26 for the year.

27 37. Payment of the Special Assessment was due on February 25, 2010. Checks were to be
28 made payable to RVC. An installment credit card payment option was again made available. A credit

1 card payment authorization form that accompanied the invoice stated that RVC had engaged Resort
2 Condominiums International to collect and process Special Assessment payments.

3 38. Plaintiffs estimate that the renewed Special Assessment represents a total additional
4 charge of tens of millions of dollars to Club members.

5 39. Defendants published information regarding the Special Assessment on the
6 www.raintreelistens.com website. This information included a question and answer page stating that
7 Club members who are not current on their Special Assessment would not be able to use their
8 memberships or make reservations at Club resorts and that Club memberships would be deemed in
9 default and reclaimed after two years of overdue payments.

10 40. The electronic discussion forum on the www.raintreelistens.com website was primarily
11 moderated by Dan Keeney of DPK Public Relations, a public relations firm hired by RVC to
12 communicate with Club members on behalf of Defendants. Keeney made numerous posts on the
13 discussion forum in 2009 and 2010 in response to Club members' questions and comments regarding the
14 Club and the Special Assessment. In these posts, Keeney admitted, among other things, that Club
15 members' contracts do not refer to any Special Assessments.

16 **D. Harm to Plaintiffs Resulting from Defendants' Conduct**

17 41. Plaintiffs Andler, Boness, Buford, Musharbash and Prosnitz have refused to pay the
18 Special Assessment demanded by Defendants. As a result, as further described herein, Defendants will
19 not permit them to exercise their rights as a Club member to make reservations at Club resorts.

20 42. In a letter dated June 22, 2010, Plaintiff Berrien informed RVC that he disputed and
21 would not pay the Special Assessment. His letter further stated that he was placing his annual
22 membership and maintenance fees in escrow pending resolution of the dispute. Because Mr. Berrien has
23 not paid the Special Assessment, Defendants will not permit him to exercise his rights as a Club member
24 to make reservations at Club resorts.

25 43. In a letter dated February 19, 2010, Plaintiff Bonnell informed RVC that he opposed the
26 Special Assessment, but would make payments in a series of monthly installments. As of the date of the
27 filing of this complaint, Mr. Bonnell has paid approximately half of the Special Assessment demanded
28 by Defendants.

1 44. Plaintiffs Cefola, Davis, Garoutte and Huerta have paid the full amount of the Special
2 Assessments demanded by Defendants. Had they not done so, Defendants would not have permitted
3 them to exercise their rights as a Club member to make reservations at Club resorts.

4 **E. Defendants' Misuse of Maintenance Fees Previously Paid by Raintree Vacation**
5 **Club Members**

6 45. In their communications with Club members regarding the Special Assessment,
7 Defendants have repeatedly stated that Defendants have made numerous improvements and renovations
8 to Club resorts in recent years, but that Club members' maintenance fees have been insufficient to cover
9 the cost of these improvements and renovations. Defendants have represented that this shortfall is the
10 reason that they have imposed the Special Assessment upon Club members.

11 46. In his 2009 e-mail exchange regarding the Special Assessment, Defendant Bech stated
12 that Defendants spent approximately \$6 million in capital reserves for renovations at the three Club
13 resorts at Cancun, Los Cabos and Puerto Vallarta (collectively, the "Club Regina resorts") in 2007.

14 47. On information and belief, Plaintiffs allege that Defendants have misrepresented and/or
15 falsely stated the undertaking of improvements and renovations at the Club Regina resorts.

16 48. Several Plaintiffs have made visits to Club Regina resorts in 2006 and subsequent thereto
17 and are not aware of any significant renovation or construction at any of these resorts. Plaintiffs have
18 regularly vacationed at these resorts since becoming Club members and would have noticed new
19 renovation and construction work.

20 49. According to financial information published on the www.raintreelistens.com website,
21 Defendants collected \$24.0 million and \$26.7 million in maintenance fees in 2007 and 2008,
22 respectively, but incurred only \$0.8 million and \$0.4 million in repair and upgrade expenses in those two
23 years, respectively, not including the purported renovations to the Club Regina resorts.

24 50. On information and belief, Plaintiffs allege that Defendants have misspent Club members'
25 maintenance and other fees and have diverted those fees to uses other than the repair and renovation of
26 Club resorts, as contemplated in the above-described purchase and assignment agreements and company
27 regulations. Nonetheless, Plaintiffs and Class members are entitled to relief based on Defendants'
28 conduct, including the charging of the Special Assessment and the suspension of Club membership
rights, regardless of the reasons or motives for such conduct.

1 IV.

2 CLASS ACTION ALLEGATIONS

3 51. Plaintiffs bring this action on behalf of themselves and all other similarly situated persons
4 as members of a Class defined as follows: All persons who reside in the United States and were charged
5 the Special Assessment (the "Class"). Excluded from the Class are those persons who have already
6 settled their claims relating to the issuance of the Special Assessment, those persons whose Club
7 memberships have already been validly terminated for non-payment of amounts due under Club
8 membership purchase promissory notes as of the date of the issuance of the Court's order granting
9 preliminary class settlement approval in this action, Defendants, any entity in which any Defendant has
10 or had a controlling interest, any entity which has or had a controlling interest in any of Defendants, any
11 members, managers or officers of Defendants, the legal representatives, heirs, successors, and assigns of
12 Defendants, and any judge assigned to this action and his or her immediate family.

13 52. This action has been brought and may be properly maintained pursuant to the provisions
14 of Rule 23 of the Federal Rules of Civil Procedure.

15 53. Numerosity — Fed. R. Civ. P. 23(a)(1): Members of the Class are so numerous and
16 widely dispersed that joinder of them in one action is impracticable. There are approximately 38,000
17 members of Raintree Vacation Club. While the precise number of Class members is unknown to
18 Plaintiffs at this time, the Class is believed to number in the thousands. The identity of each and every
19 Class member is readily ascertainable from billing information and records in Defendants' possession,
20 custody or control. Class members may be notified of the pendency of this action by first-class or
21 electronic mail, supplemented (if deemed necessary or appropriate by the Court) by published notice.

22 54. Common Questions of Fact and Law — Fed. R. Civ. P. 23(a)(2), (b)(3): Common
23 questions of law and fact exist as to all members of the Class and predominate over any questions
24 affecting only individual Class members. These common legal and factual questions include, but are not
25 limited to, the following:

- 26 (a) Whether Defendants charged and collected a Special Assessment from Club
27 members;

- 1 (b) Whether Defendants had any valid legal basis for charging and collecting the
2 Special Assessment from Club members;
- 3 (c) Whether Defendants had any valid legal basis for threatening to suspend and
4 terminate Club memberships for non-payment of the Special Assessment;
- 5 (d) Whether Defendants made false or misleading representations regarding the use
6 of maintenance fees paid by Club members;
- 7 (e) Whether Defendants made false or misleading representations regarding the
8 reason for and purpose of the Special Assessment;
- 9 (f) Whether Defendants actually used funds collected through the Special
10 Assessment for the purposes represented;
- 11 (g) Whether Defendants intentionally interfered with Plaintiffs' and Class members'
12 contractual rights;
- 13 (h) Whether Defendants' business practices, as described herein, are unfair and/or
14 fraudulent;
- 15 (i) Whether Defendants' wrongful conduct damaged Plaintiffs and Class members;
16 and
- 17 (j) Whether Plaintiffs and Class members are entitled to declaratory, injunctive
18 and/or equitable relief.

19 55. **Typicality** — Fed. R. Civ. P. 23(a)(3): Plaintiffs' claims are typical of the claims of the
20 members of the Class in that Plaintiffs and all Class members were charged the Special Assessment by
21 Defendants.

22 56. **Adequacy** — Fed. R. Civ. P. 23(a)(4): Plaintiffs will fairly and adequately protect the
23 interests of the Class in that Plaintiffs have no interests that are adverse or antagonistic to those of the
24 Class. Plaintiffs have retained counsel competent and experienced in complex class action litigation,
25 and Plaintiffs intend to prosecute this action vigorously.

26 57. **Superiority** — Fed. R. Civ. P. 23(b)(3): A class action is superior to all other available
27 means for the fair and efficient adjudication of this controversy. The economic harm suffered by each
28 individual Class member may be limited. Given the size of individual Class members' claims, the

1 expense and burden of individual litigation make it economically infeasible and procedurally
2 impracticable for Class members to seek redress individually for the wrongs done to them. The
3 likelihood of individual Class members prosecuting separate claims is exceedingly remote, and even if
4 the members of the Class could afford individual litigation, given the size of the Class, the court system
5 could not. Individual litigation increases the delay and expense to all parties and the court system
6 presented by the complex legal and factual issues of the case. By contrast, a class action will present far
7 fewer management difficulties, promote an orderly and expeditious administration and adjudication of
8 the class claims, foster economies of scale, ensure uniformity of decisions, and provide comprehensive
9 supervision by a single court.

10 58. In the alternative, the Class may be certified because:

- 11 (a) The prosecution of separate actions by the individual members of the Class would
12 create a risk of inconsistent or varying adjudication with respect to individual
13 Class members which would establish incompatible standards of conduct for
14 Defendants;
- 15 (b) the prosecution of separate actions by individual Class members would create a
16 risk of adjudications with respect to them which would, as a practical matter, be
17 dispositive of the interests of other Class members not parties to the adjudications
18 or substantially impair or impede their ability to protect their interests; and
- 19 (c) Defendants have acted or refused to act on grounds generally applicable to the
20 Class, thereby making appropriate final and injunctive relief with respect to the
21 members of the Class as a whole.

22 **FIRST CAUSE OF ACTION**

23 **Intentional Interference with Contractual Relations**

24 59. Plaintiffs incorporate by reference all paragraphs alleged herein. This claim is brought on
25 behalf of Plaintiffs and the Class against all Defendants.

26 60. Plaintiffs and Class members have valid contracts with third parties, namely the purchase
27 and transfer agreements through which Plaintiffs and Class members became members of the Raintree
28 Vacation Club.

1 61. Defendants had knowledge of these purchase and transfer agreements at all times relevant
2 herein.

3 62. Defendants' intentionally interfered with and disrupted Plaintiffs' and Class members'
4 rights under these agreements by demanding payment of a Special Assessment not authorized under
5 these agreements, threatening to suspend and eventually terminate Plaintiffs' and Class members'
6 memberships in the Raintree Vacation Club and actually preventing Plaintiffs and Class members from
7 exercising their rights as Club members to make reservations at Club resorts.

8 63. As a result of Defendants' actions, Plaintiffs and Class members were damaged in that
9 that they have suffered monetary losses, impairment of credit and/or suspension of their right to use
10 Raintree Vacation Club resorts.

11 **SECOND CAUSE OF ACTION**

12 **Unfair and/or Fraudulent Business Practices in Violation of**
13 **Cal. Bus. & Prof. Code §§ 17200, et seq.**

14 64. Plaintiffs incorporate by reference all paragraphs alleged herein. This claim is brought on
15 behalf of Plaintiffs and the Class against all Defendants.

16 65. Defendants' acts and practices, as alleged herein, constitute unfair, and/or fraudulent
17 business practices, in violation of the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§
18 17200, et seq.

19 66. Each Defendant is a "person" as defined in California Business & Professions Code
20 § 17201.

- 21 67. The business practices engaged in by Defendants that violate the UCL include:
- 22 (a) Demanding and collecting payment of the Special Assessment from Plaintiffs and
23 Class members;
 - 24 (b) Preventing Plaintiffs and Class members who have not paid the Special
25 Assessment from exercising their rights as Raintree Vacation Club members to
26 make reservations at Club resorts; and
 - 27 (c) Representing to Plaintiffs and Class members that Defendants have the authority
28 to demand and collect payment of the Special Assessment and to suspend or

1 terminate Club membership rights for non-payment of the Special Assessment
2 when they do not.

3 68. Defendants' business practices are unfair in that Defendants have:

- 4 (a) Intentionally interfered with Plaintiffs' and Class members' contractual rights as
5 Raintree Vacation Club members;
- 6 (b) Engaged in conduct that is immoral, unethical, oppressive, unscrupulous, or
7 substantially injurious to Plaintiffs and Class members;
- 8 (c) Engaged in conduct that causes a substantial injury to consumers, not outweighed
9 by any countervailing benefits to consumers or to competition, which the
10 consumers could not have reasonably avoided.

11 69. Defendants' business practices are fraudulent in that they have deceptively represented to
12 Plaintiffs and Class members that they have the authority to demand and collect payment of the Special
13 Assessment and to suspend or terminate Club membership rights for non-payment of the Special
14 Assessment.

15 70. Plaintiffs and Class members have suffered injury in fact and have lost money or property
16 as a result of Defendants' unfair and/or fraudulent business practices, in that they: (1) paid the Special
17 Assessment; and/or (2) were denied their contractual rights as Club members..

18 71. Pursuant to California Business and Professions Code § 17203, Plaintiffs and Class
19 members therefore are entitled to equitable relief, including restitution, disgorgement of all profits
20 accruing to Defendants because of their unfair and/or fraudulent business practices, and a permanent
21 injunction enjoining Defendants from engaging in the unfair and/or fraudulent acts and practices
22 described herein.

23 V.

24 **PRAAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated pray for
26 judgment against Defendants as follows:

27 a. For an order certifying the proposed Class herein under Rule 23 of the Federal Rules of
28 Civil Procedure, and appointing Plaintiffs and their counsel of record to represent said Class;

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Class Counsel and Attorneys for Individual and
Representative Plaintiffs Curtis Berrien, Rose Huerta, Tina
Musharbash, Fern Prosnitz, Michael Andler, Marcus
Boness, Timothy Bonnell, Richard Buford, Elaine Cefola,
Kenneth Davis and Jerome Garoutte

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Curtis Berrien, et al. v. New Raintree Resorts
International, LLC, et al.

Case No. CV 10-03125 CW

NOTICE OF CLASS ACTION SETTLEMENT

TO: U.S. MEMBERS OF RAINTREE VACATION CLUB AND CLUB REGINA
THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A CLASS ACTION LAWSUIT AGAINST
NEW RAINTREE RESORTS INTERNATIONAL, LLC, RVC MEMBERS, LLC AND DOUGLAS Y. BECH
PLEASE READ THIS NOTICE CAREFULLY. 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 persons residing in the United States who are members of Raintree Vacation Club or Club Regina (together the "Club") and were charged a "Special Assessment" in or around October or November 2009. This notice is to inform you about a proposed settlement ("Settlement") of litigation involving New Raintree Resorts International, LLC, RVC Members, LLC and Douglas Y. Bech ("Defendants"). If approved by the Court, the Settlement will fully, finally and forever resolve the litigation against Defendants on the terms and conditions summarized in this notice.
2. **THE SETTLEMENT APPROVAL HEARING IS MARCH 8, 2012.** The Settlement is described in paragraph 5 on pages 1-3 of this notice. The Court will hold a Settlement approval hearing on **March 8, 2012 at 2:00 p.m.** before the Honorable Claudia Wilken, at the U.S. District Courthouse, 1301 Clay Street, Courtroom 2, Oakland, California 94612. You may comment on the Settlement or be heard at this hearing. To comment or appear at the hearing, you must follow the procedures described in paragraph 7 on pages 3-4 of this notice. You may also exclude yourself from the Settlement by following the procedures described in paragraph 8 on page 4 of this notice. If you exclude yourself from the Settlement, you retain the right to sue Defendants separately about the same legal claims in this lawsuit, but you will not be able to comment on the Settlement or appear at the hearing and you will not be entitled to receive any of the Settlement benefits described in paragraph 5 on pages 1-3 of this notice.
3. **LITIGATION OVERVIEW.** In 2010, eleven members of the Club ("Plaintiffs") filed a class action lawsuit against Defendants, U.S. District Court Case No. CV-10-03125 CW, on behalf of certain Club members. The lawsuit alleges that Defendants intentionally interfered with the Club members' contractual relations and engaged in certain acts that violate California law. Among other things, the lawsuit challenged Defendants' authority to charge and collect a "Special Assessment" in October or November 2009 and to suspend the membership rights of Club members who declined to pay all or some of the Special Assessment. Defendants contest and deny the alleged claims.
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 lawsuit. Defendants deny all liability or wrongdoing, but 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 Club members.
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:
 - A. **Reinstatement of Club Membership Rights and Waiver of Unpaid Maintenance Fees.** If the Settlement is approved, each member of the Settlement Class whose rights as a Club member were suspended due to nonpayment of Maintenance Fees and/or the Special Assessment will have his or her Club membership rights immediately reinstated upon payment in full of the 2012 Maintenance Fee within 60 days of the Settlement being implemented, provided that the member of the Settlement Class is a Club member at that time. Defendants will provide 2012 Maintenance Fee invoices to all suspended members by the implementation date of the Settlement

that will specify the date that 2012 Maintenance Fees must be paid in order for members to be reinstated. Upon such reinstatement, each member of the Settlement Class shall receive the allocation of Points (or weeks) for 2012 to which he or she is ordinarily entitled under his or her Club membership and will have one year from the date of such reinstatement to use those Points. Any unpaid amounts of past-due Maintenance Fees and the Special Assessment, and any interest, penalties or other charges related thereto, shall be waived and Defendants shall cease all collections efforts related to such nonpayment and any interest, penalties or other charges related thereto.

- B. Supplemental Points.** If the Settlement is approved, certain members of the Settlement Class will be entitled to receive Supplemental Points under the Settlement. Supplemental Points will be allocated to eligible members of the Settlement Class based on each member's 2010 Points (or weeks) allotment as follows, depending on the payments each member has made:

Payment(s) Made by Class Member	Supplemental Points Allocation
1. Paid both the Special Assessment and Maintenance Fees for both 2010 and 2011	1. Will receive Supplemental Points equal to Class Member's 2010 Points
2. Paid the Special Assessment, but did not pay Maintenance Fees for both 2010 and 2011	2. Will receive Supplemental Points equal to Class Member's 2010 Points
3. Paid Maintenance Fees for either (but not both) 2010 or 2011, but did not pay the Special Assessment	3. Will receive Supplemental Points equal to Class Member's 2010 Points
4. Paid Maintenance Fees for either (but not both) 2010 or 2011, plus the Special Assessment	4. Will receive Supplemental Points equal to 2x Class Member's 2010 Points
5. Paid Maintenance Fees for both 2010 and 2011, but did not pay the Special Assessment	5. Will receive Supplemental Points equal to 2 x Class Member's 2010 Points

Members of the Settlement Class who paid nothing toward the Special Assessment and paid nothing toward 2010 and 2011 Maintenance Fees will not receive any Supplemental Points.

If a member of the Settlement Class made a partial payment of the Special Assessment and/or 2010 or 2011 Maintenance Fees, and is eligible to receive Supplemental Points, then Supplemental Points will be allocated to the member on a pro rata basis. Members with every-other-year memberships will receive Supplemental Points based on half their every-other-year Points allotments.

Supplemental Points will be allocated to and be available for use by eligible members of the Settlement Class within 30 days after the Settlement is implemented. Supplemental Points may be used at any Raintree Vacation Club resort at which a Settlement Class member normally has usage rights under his or her Club membership, upon a confirmed reservation, on a space available basis. Supplemental Points reservations may be made no more than 90 days in advance. There will be no charges associated with the use of Supplemental Points at any resort, except for taxes and other charges required by law or customarily charged to persons staying at the resort at which Supplemental Points are used. Except as otherwise stated herein, Supplemental Points may be used on the same basis, on the same terms and subject to payment of the same fees as each Settlement Class member's usual Points allotment. The use period for Supplemental Points will begin 60 days after the Settlement is implemented and end seven years after the first day of such use period. Members of the Settlement Class who are otherwise eligible to receive Supplemental Points, but who are not Club members at the time that the Settlement becomes effective, will receive Supplemental Points, which they may use on the same terms specified above as if they are current Club members.

- C. Reporting Requirements Regarding Special Assessment Funds.** Within 60 days of the Settlement being implemented, Defendants will publish a report to Club members containing a detailed description of how all Special Assessment funds have been, or will be, spent. Within one year of the Settlement being implemented, Defendants will publish a second report to Club members detailing how all Special Assessment funds have been spent.

D. Reporting Requirements Regarding Club Finances and Fees. If Defendants have not previously done so, beginning 60 days after the Settlement is implemented, Defendants will place all funds collected from Club members in a segregated and separately identifiable, interest-bearing account. Within 60 days after the Settlement is implemented, Defendants will engage an independent auditor to conduct an annual accounting of all funds collected from Club members, the uses of such funds and all Club expenses, as well as an accounting of the Club's capital improvement reserve. A detailed report certified by the auditor will be published to Club members by June 30 of each year. The report will identify, describe and itemize, using generally accepted accounting procedures and categories, all Club-related expenses and revenues, all amounts received from Club members and all expenditures of funds received from members and/or the capital improvement reserve for the previous year including specific descriptions of the uses and purposes of all expenditures. The report will also identify, but not certify, all material factors considered in any decision to increase or decrease the fees charged to Club members in the year that the report is issued and will specifically identify and describe the increases or decreases in Club expenses that are the basis for any increase or decrease in fees charged to Club members. Funds collected from Club members may be used to pay for such audit and report.

E. Certification Regarding Adverse Credit References and Forfeiture. Within ten calendar days of the Settlement being implemented, Defendants will certify to the Court that, since the announcement of the Special Assessment, no member of the Settlement Class has been or will be subject to any adverse credit reference related to nonpayment of 2010 or 2011 Maintenance Fees, the Special Assessment, or any penalties and other additional charges or fees related to such nonpayment. Within ten calendar days of the Settlement being implemented, Defendants will further certify to the Court that no member of the Settlement Class has been subject to any forfeiture of Club membership related to such nonpayment.

F. No Increase of Fees or Charges to Pay for the Settlement. No fees or other charges paid by members of the Settlement Class, including Maintenance Fees, will be increased in the future to pay any costs associated with the Settlement or its implementation.

G. Release of Claims. If the Settlement is approved, Plaintiffs, all members of the Settlement Class, Defendants, Defendants' Counsel and Class Counsel will mutually release each other from all claims that: (i) were asserted in the Action; (ii) arise from the Action; and/or (iii) arise from the Special Assessment. For a fuller description of the claims being released, please see paragraphs VI.A.1-2. of the Settlement Agreement and Release, which is available for viewing at www.GirardGibbs.com/Raintree-Settlement.asp.

6. CLASS COUNSEL'S FEE AND EXPENSES APPLICATION. Plaintiffs and the Class have been represented by Girard Gibbs LLP, a law firm in San Francisco, California ("Class Counsel"). To date, Class Counsel have not been compensated for any of their work or reimbursed for any of the significant expenses incurred in the litigation. Subject to Court approval, Defendants have agreed to pay a fee and expense award in an amount not to exceed \$1.75 million to compensate Class Counsel for the work they have performed for the Class, the litigation expenses incurred, and the costs associated with the notice and administration of the Settlement, together with any amounts paid to Plaintiffs as incentive awards. Also subject to Court approval, each of the named Plaintiffs will receive a \$3,000 incentive award to be paid out of the total amount of any fee and expense award to Class Counsel. Neither Plaintiffs, the Club, nor the Class will be responsible for the payment of any of Class Counsel's fees or expenses or the incentive awards. In addition, the Settlement described above is not contingent upon the Court's award of fees or expenses to Class Counsel or the incentive awards to the Plaintiffs. Class Counsel's fee and expenses application, including the incentive awards, are subject to Court approval. You may comment on these matters, if you wish, following the procedures set forth in paragraph 7 below.

7. THE SETTLEMENT HEARING AND YOUR RIGHT TO BE HEARD. You do not need to attend the Settlement approval hearing, which will be held on **March 8, 2012 at 2:00 p.m.** in Oakland, California, unless you wish to address the Court. You have the right to attend or comment on the Settlement or fee and expenses application if you want to.

If you wish to comment on or object to the Settlement or fee and expenses application, you must submit your comment **in writing**. Your written comments must: (1) include a reference at the beginning to *Berrien v. New Raintree Resorts International, LLC*, Case No. CV 10-03125 CW; (2) list your name, address, telephone number, and Club membership

number; (3) be personally signed by you; (4) specifically and clearly explain your comment/objection and the basis for it; 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." If you intend to appear at the hearing, your comment/objection must include copies of all papers, exhibits or other evidence that you will present to the Court at the hearing. If you object to the Settlement or fee and expenses application, you may be subject to discovery, including a deposition, by Class Counsel or Defendants' Counsel on ten days' notice. If you are requested to provide discovery, but do not do so, you will waive or forfeit your right to object to the Settlement and you will not be permitted to address the Court at the hearing or present any evidence or other materials.

Written comments must be received by the Court and attorneys listed below no later than January 30, 2012:

Clerk of the Court:

Clerk of the Court
U.S. District Court, Northern
District of California
1301 Clay Street
Oakland, CA 94612

Class Counsel:

Jonathan Levine or Elizabeth Pritzker
Girard Gibbs LLP
601 California Street, Suite 1400
San Francisco, CA 94108

Defendants' Counsel:

James J. Ormiston
Looper Reed & McGraw, P.C.
1300 Post Oak Blvd.
Suite 2000
Houston, TX 77056

If you do not present your comments on or objections to the Settlement in writing in compliance with these procedures, your views will not be considered, you will not be permitted to address the Court or present any evidence or other materials, and you will waive or forfeit your right to object to the Settlement.

8. **YOUR RIGHT TO EXCLUDE YOURSELF FROM THE SETTLEMENT.** You may exclude yourself, or opt-out, from the Settlement. If you exclude yourself, you will keep the right to sue Defendants, on your own, about the legal issues in this case, and you will not be legally bound by the Court's judgment in the class action. If you start your own lawsuit against Defendants, you will have to hire and pay for your own lawyer and prove your claims. If you exclude yourself from or opt-out of the Settlement, you give up the right to receive any of the Settlement benefits, comment on the Settlement or fee and expenses application and give up the right to be heard at the Settlement approval hearing.

If you wish to exclude yourself from the Settlement, you must send a letter by U.S. mail or overnight delivery to Class Counsel at the address set forth in paragraph 7 above. Your letter must: (1) include a reference at the beginning to *Berrien v. New Raintree Resorts International, LLC*, Case No. CV 10-03125 CW; (2) list your name, address, telephone number, and Club membership number; (3) be personally signed by you; and (4) specifically state that you wish to be excluded from the Settlement. Your letter must be postmarked or delivered no later than January 30, 2012. You may not exclude yourself on the telephone, by e-mail or by fax.

9. **MORE INFORMATION.** This notice 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.GirardGibbs.com/Raintree-Settlement.asp. The Settlement Agreement and all other 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, 1301 Clay Street, Oakland, California 94612.

If you would like more information about the Settlement, you may contact Class Counsel, Girard Gibbs LLP, 601 California Street, Suite 1400, San Francisco, CA 94108; telephone number (415) 981-4800; or by email to Raintree-Settlement@GirardGibbs.com.

DO NOT CONTACT THE COURT WITH QUESTIONS ABOUT THE SETTLEMENT.

DATED: _____, 2011

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