

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

Clarke and Rebecca Wixon et al. v. Wyndham Resort  
Development Corp., et al.

Case No. C 07-02361 JSW (BZ)

**NOTICE OF CLASS ACTION SETTLEMENT**

**TO: ALL OWNERS OF WORLDMARK, THE CLUB  
THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A CLASS ACTION LAWSUIT AGAINST  
WYNDHAM RESORT DEVELOPMENT CORP. 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 all persons who own WorldMark, The Club (“WorldMark”) Vacation Credits, to inform you about a proposed settlement (“Settlement”) of litigation involving Wyndham Resort Development Corp. (“Wyndham”). If approved by the Court, the Settlement will fully, finally and forever resolve the litigation against Wyndham on the terms and conditions summarized in this notice. You have previously received a similar notice advising you of a proposed settlement of certain derivative claims asserted against certain WorldMark directors. This is a different notice relating to a different proposed Settlement, please read it carefully.
2. **THE SETTLEMENT APPROVAL HEARING IS AUGUST 5, 2011.** The Court will hold a Settlement approval hearing on **August 5, 2011 at 9:00 a.m.** before the Honorable Jeffrey S. White, at the U.S. District Courthouse, 450 Golden Gate Avenue, 19<sup>th</sup> Floor, Courtroom 11, San Francisco, California 94102. You have an opportunity to comment on the Settlement and to be heard at this hearing. The Settlement is described in paragraph 5 of this notice. If you wish to comment or appear at the hearing, you must follow the procedures described in paragraph 7 on page 5 of this notice. You may also exclude yourself from the Settlement by following the procedures described in paragraph 8 on page 6 of this notice. If you exclude yourself, or opt-out of the Settlement, you will retain the right to sue Wyndham 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.
3. **LITIGATION OVERVIEW.** In 2007, four WorldMark owners (“Plaintiffs”) filed a class action lawsuit, U.S. District Court Case No. C-07-02361 JSW (BZ), on behalf of certain WorldMark owners against Wyndham, alleging that Wyndham, as the developer and manager for the WorldMark resorts, engaged in certain acts that violate the WorldMark governing documents and California law. Among other things, the lawsuit challenged the setting of credit values by Wyndham at 12 WorldMark resorts, Wyndham’s implementation of TravelShare and Fun Time reservations, the reduction in the number of weeks set aside and not sold at new WorldMark resorts, and Wyndham’s use of WorldMark resorts for sales and marketing purposes. Wyndham contests and denies 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 litigation. This notice does not, and is not intended to, imply that there have been or would be any findings of violation of law by Wyndham. Wyndham denies all liability or wrongdoing alleged in the litigation. It believes the Settlement is desirable to avoid the substantial expense, burden, risk, distraction, and uncertainty of protracted litigation. All parties believe the Settlement confers substantial benefits and is in the best interests of WorldMark and owners.
5. **THE SETTLEMENT.** The terms and conditions of the proposed Settlement are set forth in the parties’ Settlement Agreement and Release, which has been filed with the Court. The following description of the terms of the proposed Settlement is a summary only:

**A. Credit Cancellation and Reduction of Credit Values at Certain Resorts.** If the Settlement is approved, Wyndham will cancel 22 million WorldMark Vacation Credits that it currently holds as unsold developer credits. Cancelled Vacation Credits will no longer be available for sale, will not be sold, and cannot be used by Wyndham in connection with voting in any WorldMark election. The 22 million cancelled Vacation Credits will be allocated to reduce red season credit values in certain categories of units at certain of the resorts at issue in the lawsuit, as set forth below.

Resorts Selected for Credit Value Reductions (Red Season)	Unit Type	Number of Units	Number of Season Weeks	Old Credit Value	New Reduced Credit Value	Total Credits Canceled To Permit Credit Reductions
<b>Anaheim</b>	Studio	10	50	11,000	10,500	6,400,000
	1 bd	62	50	14,000	13,000	
	2 bd	122	50	16,500	16,000	
<b>Camlin</b>	1 bd	57	31	12,000	11,500	883,500
<b>Las Vegas - Tropicana</b>	2 bd	36	50	13,000	12,500	2,100,000
	2 bd dlx	48	50	15,000	14,500	
<b>Long Beach - Washington</b>	2 bd	59	33	13,500	13,000	1,023,000
	3 bd	3	33	15,500	15,000	
<b>Mission Valley</b>	1 bd	55	50	12,500	11,500	2,750,000
<b>New Orleans</b>	1 bd	22	38	12,000	11,500	418,000
<b>San Diego</b>	Studio H	49	50	12,000	11,000	3,875,000
	1 bd	19	50	15,000	13,500	
<b>San Francisco</b>	Studio H	40	40	9,000	8,500	1,740,000
	1 bd	47	40	12,000	11,500	
<b>Santa Fe</b>	Hotel	1	36	9,000	8,500	1,494,000
	C-Studio	10	36	12,000	10,500	
	1 bd-c	5	36	13,000	12,000	
	1 bd	14	36	14,000	12,500	
<b>Taos</b>	Studio	15	36	11,000	10,500	540,000
	Studio-dlx	4	36	12,000	11,500	
	1 bd	9	36	13,000	12,500	
	2 bd	2	36	15,000	14,500	
<b>W Yellowstone</b>	2 bd	67	20	13,500	13,000	870,000
	3 bd	10	20	15,500	14,500	
<b>Total Credits Canceled to Permit Reductions:</b>						<b>22,093,500</b>

As a result of this Settlement term, Wyndham's rights and obligations as to the 22 million Vacation Credits, including Wyndham's voting rights in WorldMark elections, will be eliminated. Within 15 days of the Settlement's Effective Date, or as soon as practicable thereafter, the WorldMark reservation system will be modified, and the new lower credit red season values at the affected resorts reflected above will be in place for stays at these resorts, so that members have the benefit of the new, lower credit values when they book reservations or stay at these resorts.

**B. Exchange of Certain Units in Anaheim to Provide More Availability at Lower Credit Values.** If the Settlement is approved, 21 units at WorldMark Anaheim will be returned to Wyndham within 18 months after the Settlement becomes effective. These 21 units at WorldMark Anaheim will be replaced by additional weeks equivalent to 21 units at WorldMark's Dolphin's Cove Resort (also in Anaheim), which has lower credit values. Wyndham will cancel 7 million Vacation Credits associated with this exchange (16.9 million from WorldMark Anaheim less 9.9 million for WorldMark Dolphin's Cove) from its pool of unsold

developer credits. The 7 million cancelled Vacation Credits will no longer be available for sale, will not be sold, and cannot be used by Wyndham in connection with voting in any WorldMark election.

Resort	Number of Credits	Number of Units
Anaheim	16,874,000 Cancelled	21 Removed
Dolphin's Cove	9,860,000 Added	21 Added
<b>Net Change</b>	<b>7,014,000 Cancelled</b>	<b>-0-</b>

As a result of this Settlement term, Wyndham's rights and obligations as to the 7 million Vacation Credits, including Wyndham's voting rights in WorldMark elections, will be eliminated.

**C. Extraction of Underutilized Units and Cancellation of Related Credits.** If the Settlement is approved, between 400 and 481 units at certain underutilized WorldMark resorts will be returned to Wyndham. Underutilized units include only units at resorts with overall Vacation Credit occupancy rates below WorldMark's 85% average rate. This provision of the Settlement "right-sizes" the resorts by eliminating units that WorldMark members underutilize and relieving WorldMark of the expense and ongoing burden of maintaining units that are being underutilized. The specific resorts and number of units being removed at each such resort are identified below (assuming all 481 units are removed):

Resort	Number of Credits Cancelled	Number of Units Removed
Angels Camp	19,780,000	44
Bison Ranch	8,460,000	18
Canmore	13,824,000	31
Denarau Island	12,688,000	22
Galena	10,568,000	31
Grand Lake	13,968,000	32
Indio	59,384,000	113
Lake of the Ozarks	11,664,000	24
Las Vegas Tropicana	36,504,000	56
Pinetop	9,304,000	23
Rancho Vistoso	10,828,000	23
Steamboat Springs	18,008,000	27
Taos	20,652,000	37
<b>Total</b>	<b>245,632,000</b>	<b>481</b>

If the Settlement is approved, within 12 months of the Settlement's Effective Date, Wyndham will seek regulatory approval to transfer out of WorldMark a minimum of 400 and up to a maximum of the 481 units identified above or, with the consent of Class Counsel and the WorldMark Board, and with Court approval, certain substitute units (subject to the overall 481 unit maximum) that meet the criteria used to identify the units listed above. Wyndham will complete the transfer of at least 400 units (the "First Transfer Phase") as soon as practicable upon obtaining regulatory approval. If more time is needed to obtain regulatory approval to complete the First Transfer Phase, Wyndham may, depending upon the amount of time required, seek the consent of Class Counsel or a Court order for additional time to complete the First Transfer Phase. After the First Transfer Phase is complete, Wyndham will cancel the Vacation Credits associated with these underutilized units from its pool of unsold developer credits.

When the First Transfer Phase is complete, Wyndham will promptly notify the Court and Class Counsel. At that time, to the extent that Wyndham has not reached the 481 unit maximum or the 245.6 million cap on Vacation Credits, Wyndham may either (i) continue to attempt to obtain the authority to legally transfer the remaining 81 units or such number of substitute units that meet the criteria used to select the original specified units (the "Additional Transfer Phase"); or (ii) declare that this term of the Settlement has been finally and fully performed. After the Settlement's Effective Date, Wyndham has the right to void the Settlement if and only if, after exhausting all commercially reasonable efforts, Wyndham is unable to obtain

regulatory approval to legally and effectively transfer out of WorldMark a minimum of 400 units as provided for under this term of the Settlement.

If all 481 units are removed, Wyndham will cancel the 245.6 million Vacation Credits associated with these underutilized units from its pool of unsold developer credits. The 245.6 million cancelled Vacation Credits will no longer be available for sale, will not be sold, and cannot be used by Wyndham in connection with voting in any WorldMark election. As a result of this Settlement term, Wyndham's rights and obligations as to the 245.6 million Vacation Credits, including Wyndham's voting rights in WorldMark elections, will be eliminated. If fewer units are removed, the corresponding number of Vacation Credits to be cancelled will be reduced accordingly. Based on a thorough review of occupancy and credit usage data, Plaintiffs and Wyndham agree that extraction of the units will not materially impair availability at the resorts identified above.

- D. *Aggregate Changes in Credits and Units and Reserves.*** If the Settlement is approved and implemented, the maximum net reduction in the number of Vacation Credits held by Wyndham for sale as WorldMark Vacation Credits will be 274.7 million, calculated as follows: 22 million cancelled + 262.5 million extracted – 9.86 million added at WorldMark Dolphin's Cove. As a result of the Settlement, Wyndham's rights and obligations as to the 274.7 million Vacation Credits, including Wyndham's voting rights in WorldMark elections, will be eliminated. WorldMark owners would be relieved of maintenance and other costs associated with the extracted units, and the number of credits available to compete for reservations at WorldMark resorts will be reduced, while ensuring that the number of units remaining after extraction will be sufficient to meet owner demand.

At the time units are transferred out of WorldMark, exterior reserves maintained for future refurbishment and repair at resorts where units are being returned to Wyndham will be transferred to, and held by, an independent association or governing body responsible for exterior maintenance at the resort. Interior reserves maintained for future refurbishment and repair of the units returned to Wyndham will be deposited with an escrow agent.

***Amendment of Governing Documents.*** To reduce the Vacation Credit values under terms A and B above, and to extract the underutilized units under term C above, will require the Declaration of Vacation Owner Program (the "Declaration") recorded against the title to each of the affected resort properties to be amended to reflect the reduced Vacation Credit values and the extraction of units. Under the terms of the Settlement Agreement and Release, the parties have agreed that a vote of the WorldMark Membership is not required to amend the Declaration for this purpose.

- E. *Cessation of Sales of TravelShare with Fun Time.*** If the Settlement is approved, Wyndham will cease selling new TravelShare memberships with Fun Time on the later of October 31, 2011 or 90 days after the Settlement becomes effective. WorldMark owners who join TravelShare prior to that date will not be affected by the Settlement.
- F. *Election Website.*** If the Settlement is approved, Wyndham will establish a separate internet website for owners to access during election cycles for the purpose of, and with content pertaining to, WorldMark Board of Director election matters, subject to reasonable review and approval of any owner postings by the WorldMark Board or the Board's authorized designee. Wyndham will notify WorldMark owners of the website's existence each election cycle via Destinations Magazine and the Insider Magazine.
- G. *Limitations of Party Weekends.*** If the Settlement is approved, Wyndham will not be able to book Party Weekends at any specific WorldMark resort during any particular calendar month in which the occupancy at the resort has exceeded 90% based on occupancy data from the same month in the preceding calendar year.

**H. Release of Claims.** If the Settlement is approved, all WorldMark owners as of December 3, 2010 who do not exclude themselves from the Settlement will release all claims that have been or could have been alleged in the litigation or that arise out of, are connected with, or are related to the claims asserted in the litigation, including any unknown claims against Wyndham. Wyndham will similarly release all such claims against Plaintiffs and Plaintiffs' Counsel. For a fuller description of the claims being released, please see pages 25-26 of the Settlement Agreement and Release, which is available for viewing at [www.GirardGibbs.com/Wyndham-Settlement.asp](http://www.GirardGibbs.com/Wyndham-Settlement.asp).

**I. Dismissal of Pending Litigation; Required Action if Settlement is Voided.** If the Settlement is approved, the class action lawsuit will be dismissed, with prejudice, subject to the continuing jurisdiction of this Court. The Wixon plaintiffs also will dismiss with prejudice their complaint in intervention filed in the California state litigation involving a dispute as to the distribution of the owner register and owner email addresses, *WorldMark v. Miller*, Sacramento County Superior Court Case No. 34-2008-00025130-CU-PT-GDS.

After the Settlement's Effective Date, Wyndham has the right to void the Settlement if and only if, after exhausting all commercially reasonable efforts, Wyndham is unable to obtain regulatory approval to extract and transfer out of WorldMark a minimum of 400 units as provided for under the extraction provision of the Settlement. If Wyndham exercises this right, the Parties will, within ten (10) business days thereafter, request a Court order that: (i) the judgment and dismissal of the Action be vacated; (ii) Plaintiffs' Fifth Amended Class Action Complaint and Wyndham's Answer thereto be reinstated as the operative pleadings and the record be reinstated; (iii) the Parties shall be restored to their respective positions in the litigation as of July 2, 2010; (iv) all Settlement Class members shall be restored to their respective positions as of July 2, 2010; and (v) notice to the settlement class shall be provided, if deemed necessary, by the Court at Wyndham's expense.

**6. PLAINTIFFS' COUNSEL'S FEE AND EXPENSE APPLICATION.** Plaintiffs and the Class have been represented by Girard Gibbs LLP, a law firm in San Francisco, California. Girard Gibbs has been assisted by Gersh & Helfrich LLP, a Denver, Colorado law firm. To date, Plaintiffs' 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, Wyndham has agreed to pay a fee award in an amount not to exceed \$5 million to compensate Plaintiffs' Counsel for the work they have performed for the Class, the litigation expenses incurred (including experts), 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 may receive a \$5,000 incentive award to be paid out of the total amount of any fee award to Plaintiffs' Counsel. Neither Plaintiffs, WorldMark, nor the Class will be responsible for the payment of any of Plaintiffs' 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 Plaintiffs' Counsel or the incentive awards to the named plaintiffs.

Plaintiffs' Counsel's fee and expense 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 **August 5, 2011 at 9:00 a.m.** in San Francisco, California, unless you wish to address the Court or appeal the Settlement's approval or the fee and expense award. You have the right to attend or comment on the Settlement or fee and expense application if you want to.

If you wish to comment on the Settlement or fee and expense application, you must submit your comment **in writing**. **Your written comments must:** (1) include a reference at the beginning to *Wixon v. Wyndham*, Case No. C 07-02361 JSW (BZ); (2) list your name, address, telephone number, and WorldMark owner account number; (3) be signed by you; (4) explain your comment/objection; and (5) if you intend to appear at the hearing personally or through counsel, state on the first page of your submission "Intent to Appear at Hearing." Written comments must be **received** by the Court and attorneys listed below **no later than July 8, 2011**:

*Clerk of the Court:*

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

*Plaintiffs' Counsel:*

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

*Wyndham's Counsel:*

Kirk Quillian  
Troutman Sanders LLP  
600 Peachtree Street, N.E.  
Suite 5200  
Atlanta, GA 30308

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

- 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 Wyndham, 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 Wyndham, you will have to hire and pay for your own lawyer and prove your claims. If you exclude yourself, you give up the right to comment on the Settlement or fee and expense 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 Plaintiffs' Counsel at the address set forth in paragraph 7 above. Your letter must: (1) include a reference at the beginning to *Wixon v. Wyndham*, Case No. C 07-02361 JSW (BZ); (2) list your name, address, telephone number, and WorldMark owner account number; (3) be signed by you; and (4) specifically state that you wish to be excluded from the Settlement. Your letter must be postmarked no later than July 8, 2011. You cannot exclude yourself on the telephone or by e-mail.

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

**If you would like more information about the Settlement, you may contact Plaintiffs' counsel, Girard Gibbs LLP, 601 California Street, Suite 1400, San Francisco, CA 94108; telephone number (415) 981-4800; or by email to [Wyndham-Settlement@GirardGibbs.com](mailto:Wyndham-Settlement@GirardGibbs.com).**

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

**DATED: APRIL 19, 2011**

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