

## DECLARATION

I, Edward L. Barry, declare the following in support of Plaintiffs' Motion for Final Approval of Settlement:

1. I am a resident of the U.S. Virgin Islands, licensed to practice law and in good standing in the Virgin Islands and in Arizona.
2. I have over 40 years of civil litigation experience, including substantial experience in litigation involving timeshare associations and condominium associations. My experience specifically includes the following current or prior representation of Associations of timeshare owners in litigation relating to assessment liability:
  - a. *Great Bay Condo. Association, Inc. v. The Neighborhood Ass'n, Inc.*, V.I. Superior Court No. ST-19-CV-650- ongoing representation of suite interval owners in the Ritz-Carlton St. Thomas in challenge to certain assessments levied by master association.
  - b. *U.S. v. Fairway Capital Corp.*, D. RI Civ. No. 00-035-L- representation (*pro hac vice*) of Hotel on the Cay Time-Sharing Association, Inc. in United States District Court, District of Rhode Island, seeking recovery of past assessments against SBA as receiver for former developer on 1400 units; multimillion-dollar liability contested.
  - c. *Board of Directors, Bluebeard's Castle Hilltop Villas Condominium Association v. Fairfield Resorts, Inc.*, Virgin Islands District Court Civil No. 534/2004- represented three Associations comprising approximately 5,000 timeshare owners in federal RICO case against Developer, involving excessive assessments, misapplication of same.
3. The information attached in my C.V. as embedded **Exhibit A** is accurate.
4. I have been actively and substantially involved in this matter since 2014, approximately, when Jon Phelps consulted me regarding the assessments charged by the Premiere Vacation Collection Association, Inc. to Mr. Zwicky. My initial factual research entailed, but was by no means limited to, extensive review of the S.E.C. filings of Diamond Resorts International, Inc., public filings with the Arizona Department of Real Estate, as well as the budgets and financial statements of the Association—all performed without charge.

5. I am intimately familiar with the evidence and legal issues in this case. As cocounsel of record, I co-drafted all significant legal memoranda the Arizona Superior Court inspection action (and the appellate brief), and this lawsuit, and have personally undertaken substantial factual and legal research at all stages. I traveled from the Virgin Islands to Arizona for two Superior Court hearings (and participated in two others telephonically). I have spent approximately 1100 hours working on this matter (including an estimated 50 hours from and after December 1, 2023), as documented in my Declaration of December 12, 2023 submitted as Exhibit 2 to Plaintiffs' Motion for Attorneys' Fees, Costs and Service Awards (Doc.151-2).
6. I traveled to Irvine, California to attend the mediation conducted by the Hon. Edward Infante (Ret.).It is my opinion that Mediator Infante was well-versed in the factual and legal issues in this case (Plaintiffs, for their part, submitted a very lengthy and well-documented *ex parte* mediation brief); that he demonstrated an exceptional level of knowledge and experience in mediating class actions and complex litigation; and that he was instrumental in facilitating a settlement of this case.
7. The negotiations in the all-day mediation session in November of 2021, leading to a Terms Sheet (agreement in principle) were challenging, intensive, and strictly arms-length. Subsequently, the parties continued to vigorously engage in negotiations leading to modifications of the terms sheet, including the nonmonetary provisions of the settlement. These modifications to the Terms Sheet, in my opinion, significantly enhanced the value of the settlement to the class. Specifically, the final Settlement and Release Agreement requires an all-cash, single lump sum payment, instead of certain credits against future assessments billed to existing Association members under the Terms Sheet; avoids all risk of default in the payment of future annual installment payments otherwise payable under the Terms Sheet; yields an overall present value of the total settlement payout that is equal to or greater than the 5-installment structure of payments under the Terms Sheet; and creates significant savings in administrative expenses charged against the settlement fund because the term (duration) of settlement administration by JND Legal Administration is substantially shorter.
8. I am well-familiar with the nature and contents of all documentary evidence obtained in course of preliminary investigation, the Superior Court action, and in discovery in this litigation. This evidence includes computer-generated summaries of the "indirect corporate costs" included in the annual assessment charges of the Premiere Vacation Collection Owners Association, Inc. between the years 2011-22. I believe such documentary evidence is sufficiently definite and reliable to enable an informed and reliable understanding of the nature, quality and extent of the expected evidence on both sides of the liability question, and on the proof of damages (including claimed offsets).



9. Based on this evidence it is my opinion that the maximum, non-trebled award of compensatory damages in this case is approximately \$35 million. I personally prepared, for purposes of the Mediation, and have previously filed with the Court, an extensive work-up showing the evidence and basis for calculating this \$35 million estimate. Renewed Motion for Preliminary Approval, February 15, 2023, Exhibit 12 (Doc. 144-12).
10. Based on my careful assessment, in collaboration and consultation with my cocounsel Jon Phelps and Robert Moore, of the factual and legal strength of the claims, defenses and damages (including potential offsets), respectively; and the uncertainty, risk, cost and delay of further litigation (including appeals on the merits and on “standing” and class certification issues), it is my opinion that the settlement reached in the Settlement Agreement and Release is fair, reasonable and adequate and is in the best interests of the putative class.

Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in Christiansted, St. Croix, Virgin Islands.

Date: December 14, 2023

  
EDWARD L. BARRY

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Law House  
2020 Company Street, Third Floor  
Christiansted, U.S. Virgin Islands 00820  
(340) 719-0601  
ed.barry.legal@gmail.com

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- **AV-rated civil litigator; licensed Arizona and Virgin Islands**
- **Education**
  - B.A., Michigan State University, Honors College (high honors)
  - J.D., Arizona State University
- **Admissions**
  - Supreme Court of the United States
  - Supreme Court of Arizona
  - Supreme Court of the Virgin Islands
  - United States Court of Appeals, Third Circuit
  - United States Tax Court
  - United States District Courts- Arizona, Virgin Islands, W.D. Michigan, and E.D. Michigan
  - *Pro hac vice*, United States District Courts- Connecticut, Rhode Island
- **Recognitions**
  - **Distinguished Service Award, Supreme Court of the Virgin Islands- 2023** (awarded for co-representation of Virgin Islands Bar Association as amicus curiae counsel in two federal appeals advocating termination of federal certiorari review of territorial Supreme Court decisions and seeking equal autonomy of V.I. Supreme Court with stateside counterparts).
  - **President's Award-Virgin Islands Bar Association- 2017** (recognizing service as amicus counsel for Virgin Islands Bar Association advocating reforms in indigent criminal appointment system in appeal before Virgin Islands Supreme Court)
  - **Listed, *Bar Register of Preeminent Lawyers*** (multiple years)
- **Representation of timeshare associations, including**
  - The Neighborhood Association, Inc. (suite owners in Ritz Carlton Resort, St. Thomas< Virgin Islands)- ongoing defense of lawsuit by master timeshare association re assessment liability and other issues. (*Great Bay Condo. Association, Inc. v. The Neighborhood Ass'n, Inc.*, No. ST-19-CV-650).
  - Hotel on the Cay Time-Sharing Association, Inc.- lawsuit against Government of the Virgin Islands regarding property tax liability, disputed leasehold interests of

timeshare Resort (*Hotel on the Cay v. Government*, SX-2012-CV-00013); litigation in District Court of Rhode Island (*pro hac vice*) against U.S. Small Business Administration receiver in 2014 claim for assessments on 1400 units (*U.S. v. Fairway Capital Corp.*, D. RI Civ. No. 00-035-L); multiple additional litigation matters since 2010.

- *Bluebeard's Castle*, St. Thomas- represented three associations of timeshare owners totaling 5,000 members in RICO litigation against successor to former developer (*Board of Directors, Bluebeard's Castle Hilltop Villas Condominium Association v. Fairfield Resorts, Inc.*, Civil No. 534/2004).
- **Ongoing or recent representation of other HOAs, officers or directors**
  - Carambola Property Owners Association (Sugar Island Master Association)
  - Granada del Mar Condominium Association
  - Saman Villas Condominium Owners Association
  - Sapphire Beach Resort and Marina Condominium Owners Association (defense of former officers, directors, and property management company)
- **Mass tort**
  - Sole counsel for global manufacturer of sandblasting equipment defending numerous claims of pulmonary injury from silica dust exposure by oil refinery workers (*In re Sandblaster Silicosis Litigation*, Virgin Islands Super. Ct. No. SX-19-MC-23).
- **Notable Litigation**
  - Counsel for Virgin Islands Bar Association as amicus curiae in following cases:
    - *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Aurelius Inv., LLC*, 500 U.S.---, 140 S. Ct. 1649 (2020) (constitutional challenge to Financial Oversight and Management Board under the Appointments Clause; general attack on racially discriminatory predicate of *Insular Cases* and progeny; cocounsel on amicus brief)
    - *In re Holcombe*, 63 V.I. 800 (V.I. 2015) (challenge to Virgin Islands indigent criminal appointment system; sole counsel for Bar on amicus brief, argued)
    - *Fahie v. Virgin Islands*, 858 F.3d 162 (3d Cir. 2017) (challenge to Third Circuit's certiorari review powers over decisions of Virgin Islands Supreme Court; cocounsel on amicus brief, argued)
    - *Vooy's v. Bentley*, 901 F.3d 172 (3d Cir. 2018) (*en banc*) (renewed challenge to Third Circuit's certiorari jurisdiction; cocounsel on briefs)
  - *Dunston v. Governor of the Virgin Islands*, 2016 WL 3976642 (D.V.I. 2016) and 672 F. App'x 213 (3d Cir. 2016) (sole counsel for Presiding Judge of Virgin Islands Superior Court at trial and on appeal; successful challenge to removal of judge by Governor without cause on separation of powers grounds)
  - *Crandall v. Eureka Fluid Works*, No. 86-1741, D.Ariz.1986 (lead plaintiff's counsel; reportedly the first acute toxic formaldehyde exposure plaintiff's verdict in nation; industry "test case")

- Significant verdicts, settlements, arbitration awards, as plaintiff's counsel, various tort claims
- **Other reported appellate cases (partial list); sole counsel unless noted**
  - *Barclays Investments, Inc. v. St. Croix Estates.*, 399 F.3d 570 (3d Cir. 2005) (complex commercial real estate finance)
  - *Nicholas v. People of the Virgin Islands*, 56 V.I. 718, 732 (V.I. 2012) (appointed by V.I. Supreme Court as appellate counsel in appeal of first-degree murder conviction)
  - *Stiles v. Yob*, 65 V.I. 234, 236 (V.I. 2016) (challenge to candidacies of at-large delegates to the Republican National Convention)<sup>1</sup>
  - *Redemption Holdings, Inc. v. Gov't of the Virgin Islands*, 65 V.I. 243, 245 (V.I. 2016) (fraudulent conveyance of debtor's post-foreclosure redemption rights)
  - *Tremcorp Holdings, Inc. v. Harris*, 65 V.I. 364, 369 (2016) (*per curiam*) (construing "final judgment rule" as applied to appellate jurisdiction of single case in consolidated lawsuits)
  - *Fawkes v. Sarauw*, 66 V.I. 237, 241 (V.I. 2017) (review of preliminary injunction barring local senator-elect's oath of office) (*per curiam*)
  - *Rodriquez v. 32nd Legislature of Virgin Islands*, 859 F.3d 199 (3d Cir. 2017) (challenge to qualifications of competing candidate in local Senate race; cocounsel on the briefs)
  - *In re Baby E.C. through Shearer*, 69 V.I. 826, 829 (V.I. 2018) (representation of child welfare advocacy organization and guardian ad litem in mandamus proceedings)
  - *Zwicky v. Premiere Vacation Collection Owners Ass'n*, 244 Ariz. 228, 418 P.3d 1001 (Ct. App. 2018) (timeshare owner inspection rights; cocounsel on the brief)
  - *Tremcorp Holdings, Inc. v. Harris*, 73 V.I. 638 (V.I. 2020) (review of securities fraud arbitration award)
- **Pro bono**
  - Substantial and ongoing commitment, child dependency and neglect cases; other matters

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<sup>1</sup> No membership in any political party should be inferred.