



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEPHEN APPEL, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

C.A. No. 12844-VC[MR](#)

DAVID J. BERKMAN, STEPHEN J.
CLOOBECK, RICHARD M. DALEY,
FRANKIE SUE DEL PAPA, JEFFREY W.
JONES, DAVID PALMER, HOPE S.
TAITZ, ZACHARY D. WARREN,
ROBERT WOLF, LOWELL D. KRAFF,
and APOLLO MANAGEMENT VIII, L.P.,

Defendants.

[PROPOSED] SCHEDULING ORDER

WHEREAS, plaintiff Stephen Appel (“Plaintiff”), on behalf of himself and the putative Class, and defendants David J. Berkman, Stephen J. Cloobek, Richard M. Daley, Frankie Sue Del Papa, Jeffrey W. Jones, David Palmer, Hope S. Taitz, Zachary D. Warren, Robert Wolf, (collectively, the “Director Defendants”), Lowell D. Kraff and Apollo Management VIII, L.P. (together and with the Director Defendants, “Defendants,” and together with Plaintiff, the “Parties”) entered into a

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Stipulation and Agreement of Compromise, Settlement, and Release on November 1, 2019 (the “Settlement Stipulation”);¹

WHEREAS, the Settlement Stipulation sets forth the terms and conditions for the proposed Settlement and dismissal with prejudice of the Action, subject to review and approval by the Court pursuant to Court of Chancery Rule 23 upon notice to the putative Class Members; and

WHEREAS, the Court having read and considered the Settlement Stipulation and accompanying documents, and all Parties having consented to the entry of this Order;

NOW, THEREFORE, this ___ day of _____, 20___, upon application of the Parties, IT IS HEREBY ORDERED that:

1. For purposes of settlement only, and pending the Settlement Hearing (defined below), a non-opt-out class is conditionally certified pursuant to Court of Chancery Rule 23 consisting of any record holders and all beneficial owners of the common stock of Diamond Resorts International, Inc. (“Diamond”) who held or owned such stock at any time during the period beginning on and including June 29, 2016 through and including September 2, 2016 (the “Class Period”), including any and all of their respective successors-in-interest, successors, predecessors-in-

¹ Capitalized terms not defined in this Order have the meaning set forth in the Settlement Stipulation (certain of which are repeated here for ease of reference only).

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interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, transferees, and assigns.

2. Excluded from the Class are (i) Defendants and their immediate family members, affiliates, legal representatives, heirs, estates, successors or assigns; (ii) any entity in which any Defendant has had a direct or indirect controlling interest; and (iii) any holder of Diamond common stock who exercised his, her or its right to appraisal pursuant to 8 *Del. C.* § 262 (the “Appraisal Petitioners”), and any successors-in-interest thereto (each an “Excluded Person,” and collectively, the “Excluded Persons”).

3. Plaintiff Stephen Appel is designated as the representative Plaintiff on behalf of himself and the putative Class.

4. The law firms of Andrews & Springer LLC and Friedman Oster & Tejtel PLLC are designated as Class Counsel.

5. A hearing (the “Settlement Hearing”) will be held on _____, 2020, at __:__.m., in the Delaware Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware, 19801, to determine: (i) whether to certify the Class for settlement purposes only; (ii) whether Plaintiff and

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Class Counsel have adequately represented the Class; (iii) whether the proposed Settlement should be approved as fair, reasonable and adequate to the Class and in the best interests of the Class; (iv) whether this Action should be dismissed with prejudice and all the Defendant Released Claims against the Defendant Released Parties should be released; (v) whether an Order and Final Judgment approving the Settlement should be entered; (vi) whether and in what amount any Fee and Expense Award should be paid to Class Counsel out of the Settlement Amount; and (vii) whether and in what amount any incentive fee should be awarded to Plaintiff to be paid solely out of any Fee and Expense Award.

6. The Court approves, in form and content, the (i) Notice of Pendency and Proposed Settlement of Class Action (the “Notice”), substantially in the form attached as Exhibit B to the Settlement Stipulation; and the (ii) Proof of Claim Form, substantially in the form attached as Exhibit C to the Settlement Stipulation. The date and time of the Settlement Hearing shall be included in the Notice before it is mailed and published.

7. The Court finds that the mailing and publication of the Notice in substantially the manner set forth in Paragraphs 11 and 12 of this Order (i) constitutes the best notice reasonably practicable under the circumstances; (ii) constitutes due, adequate, and sufficient notice to all persons entitled to receive

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notice of the proposed Settlement; and (iii) meets the requirements of Court of Chancery Rule 23, due process, and applicable law.

8. The Court may adjourn and reconvene the Settlement Hearing, including the consideration of the Fee Application, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof, or a notation on the docket in the Action.

9. The Court may approve the Settlement, according to the terms and conditions of the Settlement Stipulation, with such modifications as may be consented to by the Parties or as otherwise permitted pursuant to the Settlement Stipulation, with or without further notice to the Class. Further, the Court may render its Order and Final Judgment, and order the payment of the Fee and Expense Award and Incentive Award to Plaintiff, all without further notice to the Class.

10. The Court approves the firm A.B. Data, Ltd. as the Administrator and Class Counsel's selection of an appropriate banking institution for maintenance of the Account in accordance with the terms of the Settlement Stipulation. All Settlement Funds held in the Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as the Settlement Funds shall be distributed pursuant to the Settlement Stipulation and/or further order(s) of the Court.

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11. As soon as practicable after the date of entry of this Order, and in no event fewer than sixty (60) calendar days before the Settlement Hearing, the Administrator shall cause the Notice along with the Proof of Claim form, substantially in the form attached as Exhibits B and C to the Settlement Stipulation, to be mailed by United States mail, first class, postage prepaid, to each person included on the list of Diamond stockholders used for the distribution of Diamond's April 2016 Annual Proxy Statement or on the list of Diamond stockholders who received distributions in the Closing. All stockholders of record who held Diamond common stock on behalf of beneficial owners and who receive the Notice shall be requested to forward the Notice promptly to such beneficial owners. The Administrator shall use reasonable efforts to provide notice to such beneficial owners by making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners.

12. The Administrator shall provide further notice to the Class within fourteen (14) calendar days of the entry of this Order by causing the Settlement Agreement, the Notice, and the Proof of Claim Form to be placed on the Administrator's website and on the website of Andrews & Springer LLC.

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13. At least fifteen (15) calendar days prior to the Settlement Hearing, Plaintiff shall file with the Court proof of mailing and publication of the Notice as provided in paragraphs 11 and 12 of this Order.

14. At the Settlement Hearing, any Class Member who desires to do so may appear personally or by counsel, and show cause, if any, why the Settlement in accordance with and as set forth in the Settlement Stipulation should not be approved as fair, reasonable, and adequate and in the best interests of the Class; why the Order and Final Judgment should not be entered in accordance with and as set forth in the Settlement Stipulation; or why the Court should not grant Class Counsel's Fee Application or request for an Incentive Award for Plaintiff; provided, however, that unless the Court in its discretion otherwise directs, no Class Member, or any other Person, shall be entitled to contest the approval of the terms and conditions of the Settlement or (if approved) the Order and Final Judgment to be entered thereon, or the Fee and Expense Award, and no papers, briefs, pleadings, or other documents submitted by any Class Member or any other person (excluding a party to the Settlement Stipulation) shall be received or considered, except by order of the Court for good cause shown, unless, no later than ten (10) business days prior to the Settlement Hearing, such person files with the Register in Chancery, Delaware Court of Chancery, 500 North King Street, Wilmington, DE, 19801, and serves upon the attorneys listed below: (a) a written notice of intention to appear that includes the

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name, address, and telephone number of the objector and, if represented by counsel, the name and address of the objector's counsel; (b) proof of membership in the Class; (c) a detailed statement of objections to any matter before the Court; and (d) the grounds thereof or the reasons for wanting to appear and be heard, as well as all documents or writings the Court shall be asked to consider. These writings must also be served by File & Serve*Xpress*, by hand, by first-class mail, or by express service upon the following attorneys such that they are received no later than ten (10) business days prior to the Settlement Hearing:

Peter B. Andrews
Andrews & Springer LLC
3801 Kennett Pike
Building C, Suite 305
Wilmington, DE 19807

Stephen B. Braerman
Bayard, P.A.
600 N. King Street, Suite 400
P.O. Box 25130
Wilmington, DE 19899

Raymond J. DiCamillo
Richards, Layton & Finger, P.A.
920 N. King Street
Wilmington, DE 19801

Daniel A. Mason
Paul Weiss Rifkind Wharton
& Garrison LLP
500 Delaware Avenue, Suite 200
P.O. Box 32
Wilmington, DE 19899

Joanne P. Pinckney
Pinckney, Weidinger, Urban
& Joyce LLC
3711 Kennett Pike, Suite 210
Greenville, DE 19807

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15. Unless the Court otherwise directs, any Person who fails to object in the manner described above shall be deemed to have waived and forfeited any and all rights it/she/he may otherwise have to object to the Settlement and/or any Fee and Expense Award to Class Counsel and any Incentive Award to Plaintiff (including any right of appeal) and shall be forever barred from raising such objection in the Action or any other action or proceeding. Class Members who do not object need not appear at the Settlement Hearing or take any other action to indicate their approval.

16. At least fifteen (15) business days prior to the Settlement Hearing, Class Counsel shall file any opening briefs in support of the proposed Settlement, and Class Counsel shall file their Fee Application and petition for an Incentive Award for Plaintiff, including any supporting affidavits. Any objections to the Settlement or application shall be filed and served no later than ten (10) business days prior to the Settlement Hearing. Any reply papers in support of the Settlement and any reply in support of Class Counsel's Fee Application and petition for an Incentive Award for Plaintiff shall be filed at least five (5) business days prior to the Settlement Hearing.

17. All proceedings in the Action against Defendants, other than proceedings as may be necessary to carry out the terms and conditions of the Settlement Agreement, are hereby stayed and suspended until further order of this

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Court. Pending final determination of whether the Settlement should be approved, Plaintiff and the Class Members, and anyone acting or purporting to act on behalf of, in the stead of, or derivatively for any Class Member, are barred and enjoined to the maximum extent permitted under law from commencing, pursuing, prosecuting, instigating, maintaining or in any way participating in the commencement, pursuit, continuation, or prosecution of any action asserting any of the Released Claims against any of the Released Parties.

18. If the Settlement is approved by the Court following the Settlement Hearing, the Court shall enter the Order and Final Judgment substantially in the form attached to the Settlement Stipulation as Exhibit D. The effectiveness of the Settlement shall not be conditioned upon the approval of the Fee and Expense Award, either at all or in any particular amount, by the Court. For the avoidance of doubt, Defendants shall have no responsibility for, and no liability with respect to, Plaintiff's attorneys' fees or expenses beyond payment of the Settlement Amount.

19. If the Settlement is terminated pursuant to the terms of the Settlement Stipulation or the Effective Date otherwise fails to occur, then this Scheduling Order and any related orders entered by the Court shall be treated as vacated, *nunc pro tunc*; the Settlement Stipulation shall be null and void and of no force and effect (except for those provisions contained in paragraphs 1, 20, 21, 27, 28, 29, and 38 of the Settlement Stipulation); Plaintiff and Defendants shall be deemed to have

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reverted to their respective litigation status immediately prior to the execution of the Settlement Stipulation; Plaintiff and Defendants shall negotiate a new trial schedule in good faith; Plaintiff and Defendants shall proceed as if the Settlement Stipulation had not been executed and the related orders had not been entered; and all of their respective claims and defenses as to any issue in this Action shall be preserved without prejudice.

20. The Court may, for good cause shown, extend any of the deadlines set forth in this Order without further notice to the Class, and the Court retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

Vice Chancellor Montgomery-Reeves