



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

Plaintiff,

v.

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.

C.A. No. 12844-VCMR

[PROPOSED] ORDER AND FINAL JUDGMENT

On this ___ day of _____, 2020, a hearing having been held before this Court to determine whether the terms and conditions of the Settlement, as reflected in the Stipulation and Agreement of Compromise, Settlement, and Release (the "Settlement Stipulation"), including Exhibits A-E thereto, which are incorporated herein by reference,¹ are fair, reasonable, and adequate for the settlement of all Released Claims; whether and in what amount to grant the Fee and Expense Award;

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

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whether and in what amount to grant the Incentive Award; whether this Order and Final Judgment should be entered in the above-captioned action (the “Action”); and the Court having considered all matters submitted to it at the hearing and otherwise;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over the Parties and Class Members.

2. The mailing of the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”) pursuant to and in the manner prescribed in the Scheduling Order entered on _____, 20__ (the “Scheduling Order”), which was mailed by first-class mail on _____, 20__, combined with the posting of the Notice on the Administrator’s website and the website of Andrews & Springer LLC, pursuant to and in the manner prescribed in the Scheduling Order, which was done on _____, 20__, is hereby determined to be the best notice reasonably practicable under the circumstances, to constitute due and sufficient notice to all persons entitled to receive notice of the Settlement, and to have met the requirements of Court of Chancery Rule 23, due process, and applicable law. It is further determined that all Class Members, as well as their transferees, heirs, executors, successors, and assigns, are bound by this Order and Final Judgment.

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3. The Court hereby finds, pursuant to Court of Chancery Rules 23(a), 23(b)(1) and (b)(2), as follows:

(a) That (i) the Class, as defined below, is so numerous that joinder of all members is impracticable; (ii) there are questions of law and fact common to the Class; (iii) the claims of Plaintiff are typical of the claims of the Class; (iv) Plaintiff and Class Counsel have fairly and adequately protected and represented the interests of the Class; (v) the prosecution of separate actions by individual Class Members would create a risk of inconsistent adjudications which would establish incompatible standards of conduct for Defendants; (vi) as a practical matter, the disposition of this action would influence the disposition of any pending or future identical cases brought by other Class Members; and (vii) Defendants have allegedly acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole;

(b) That the requirements of Court of Chancery Rules 23(a), 23(b)(1) and (b)(2) have been satisfied;

(c) That the requirements of the Court of Chancery Rules and due process have been satisfied in connection with the Notice and publication of the Notice; and

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(d) For purposes of settlement only, the Court finally certifies a non-opt-out Class 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-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 (excluding (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, and any successors-in-interest thereto).

4. The Court finds that Plaintiff held Diamond common stock, has standing to prosecute this Action and is an adequate representative of the Class.

5. For purposes of settlement only, the Court finally appoints Plaintiff as representative of the Class and finally appoints Andrews & Springer LLC and Friedman Oster & Tejtell PLLC as Class Counsel.

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6. The Settlement is found to be fair, reasonable, and adequate, and in the best interests of the Class, and is hereby approved in all respects pursuant to Court of Chancery Rule 23.

7. The Parties are hereby authorized and directed to consummate the Settlement in accordance with the terms and provisions of the Settlement Stipulation, and the Register in Chancery is directed to enter and docket this Order and Final Judgment.

8. The releases contained in the Settlement Stipulation, together with the definitions contained in the Settlement Stipulation related to the Released Parties and the Released Claims are expressly incorporated herein in all respects and shall be effective as of the Effective Date.

9. This Action is hereby dismissed with prejudice as to Plaintiff and all other Class Members. The Parties are to bear their own costs, except as otherwise provided in this Order and Final Judgment, the Scheduling Order, and the Settlement Stipulation.

10. Upon the Effective Date, Plaintiff, all Class Members, and Defendants, on behalf of themselves and anyone acting on their behalf, including their respective heirs, executors, administrators, estates, predecessors in interest, predecessors, successors in interest, successors, and assigns in their capacities as such, shall fully, finally and forever release, settle and discharge the Released Parties from and with

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respect to the Released Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Claims against the Released Parties.

11. Class Counsel are hereby awarded a Fee and Expense Award in the amount of \$_____, which amount the Court finds to be fair and reasonable. The Fee and Expense Award shall be paid pursuant to the provisions of the Settlement Stipulation and shall be paid solely out of the Settlement Fund. Neither Plaintiff, nor Class Counsel, shall make, or assist any other counsel in making, any application for an award of fees or expenses in any other jurisdiction. Plaintiff is also hereby awarded an Incentive Award of \$_____, to be paid from the Fee and Expense Award awarded to Class Counsel. For the avoidance of doubt, Defendants shall have no responsibility for, and no liability with respect to, Plaintiff's attorneys' fees, the Incentive Award or any expenses beyond payment of the Settlement Amount.

12. The binding effect of this Order and Final Judgment and the obligations of Plaintiff, Class Members and the Parties under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of Class Counsel's Fee and Expense Award or the Incentive Award to Plaintiff.

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13. All Class Members shall be and are deemed bound by the Settlement Stipulation and this Order and Final Judgment. This Order and Final Judgment, including the release of all Released Claims against all Released Parties, shall have res judicata, collateral estoppel and all other preclusive effect in all pending and future lawsuits, arbitrations or other proceedings maintained by, or on behalf of, Plaintiff or any Class Members, as well as their respective heirs, executors, administrators, estates, predecessors in interest, predecessors, successors in interest, successors, and assigns and anyone claiming through or on behalf of any of them.

14. Neither the Settlement, the Settlement Stipulation, nor this Order and Final Judgment shall constitute any evidence, or an admission or concession by Plaintiff or Defendants or their counsel, any Class Member, or any of the Released Parties, of any fault, liability or wrongdoing whatsoever, as to any facts or claims alleged or asserted in this Action, or in any other actions or proceedings, or as to the validity or merit of any of the claims or defenses alleged or asserted in this Action or in any other action or proceeding. Nor shall the Settlement Stipulation or this Order and Final Judgment be considered a finding or evidence of any damages or injury to Plaintiff or any Class Member. Neither this Order and Final Judgment, nor any of the terms and provisions of the Settlement Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the

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Settlement, nor the Settlement proceedings, nor any statements in connection therewith, (a) shall be argued to be, used or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or omissions on the part of any Defendant or any of the Released Parties, or of any infirmity of any defense, or of any damage to Plaintiff or any other Class Member, or (b) shall otherwise be used to create or give rise to any inference or presumption against any Defendant or any of the Released Parties concerning any fact or any purported liability, fault, or wrongdoing of Defendants or any of the Released Parties or any injury or damages to any person or entity, or (c) shall otherwise be admissible in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Settlement Stipulation and this Order and Final Judgment may be introduced in any proceeding subject to Rule 408 of the Delaware Uniform Rules of Evidence, and any and all other state and federal law corollaries thereto, whether in the Court or otherwise, as may be necessary to argue and establish that the Settlement and Order and Final Judgment have res judicata, collateral estoppel or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement Stipulation, the Settlement and this Order and Final Judgment or to secure any insurance rights or proceeds of any Defendants or any of the Released Parties or as otherwise required by law. The fact of entering

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into the Settlement Stipulation, and any discussions, negotiations and proceedings related thereto, the Settlement itself, and this Order and Final Judgment shall not be construed as, offered into evidence as, or deemed to be evidence of, the fair value of Diamond's common stock as of the date of the Merger.

15. Without further order of this Court, the Parties may agree in writing to (i) amendments, modifications, and expansions of the Settlement Stipulation and/or any of the Exhibits attached thereto to effectuate the Settlement that are not materially inconsistent with this Order and Final Judgment and that do not materially limit the rights of Class Members under the Settlement Stipulation, and (ii) reasonable extensions of time to carry out any of the provisions of the Settlement Stipulation or this Order and Final Judgment.

16. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration and consummation of the Settlement.

Vice Chancellor

Dated: _____, 2020