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 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

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

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

Plaintiffs,

v.

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

Defendants.

**Case No. CV 10-03125 CW**

**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 to the definition set forth in this order.  
18 Defendants are excused from filing an answer or any other responsive pleading with respect to the First  
19 Amended Complaint, without prejudice to Defendants and their right to deny allegations and otherwise  
20 respond under the Federal Rules of Civil Procedure, absent this Settlement becoming effective.

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

1 All persons who reside in the United States and were charged the Special Assessment that  
2 was issued to owners of Raintree Vacation Club and related timeshare interests in or  
3 around October or November 2009. Excluded from the Settlement Class are those  
4 persons who have already settled their claims relating to the issuance of the Special  
5 Assessment, those persons whose Club memberships have already been validly  
6 terminated for non-payment of amounts due under Club membership purchase  
7 promissory notes as of the date of the issuance of the Court's order granting preliminary  
8 class settlement approval in this action, Defendants, any entity in which any Defendant  
9 has or had a controlling interest, any officers or directors of any Defendant, the legal  
10 representatives, heirs, successors, and assigns of Defendants, and any judge assigned to  
11 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") and as further specified herein. The Court finds that the form, content and manner  
26 in which notice is to be given to the Settlement Class constitutes the best notice practicable under the  
27 circumstances, and constitutes valid, due, and sufficient notice to the Settlement Class in full  
28 compliance with the requirements of 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.

7. On or before December 15, 2011, the Parties shall cause individual notice, substantially  
in the form of Exhibit D to the Settlement, to be mailed to all reasonably identifiable Settlement Class

1 members. By that same date, Plaintiffs will post the notice on the Girard Gibbs LLP website  
2 ([www.girardgibbs.com](http://www.girardgibbs.com)). Also by that date, Defendants shall cause the Settlement Administrator to  
3 send e-mail notification to those members of the Settlement Class for whom Defendants have e-mail  
4 addresses apprising them of the mailing of the Settlement Notice.

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. Any such deposition shall be held within 100 miles of the objecting  
23 Settlement Class member's place of residence.

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

1 reasonably of the Settlement and the Fee and Expenses Application and shall not be permitted to  
2 object, present argument, or evidence regarding the Settlement.

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

6 17. The Court may continue the date of the Final Approval Hearing and related deadlines.  
7 In that event, the revised hearing date and/or deadlines shall be posted on the websites referred to in the  
8 Settlement Notice, and the Parties shall not be required to re-send or re-publish notice of the Settlement.  
9 The Settlement Notice shall state that the Court may reschedule the Final Approval Hearing and shall  
10 direct members of the Settlement Class to the Court's calendar and schedule web page  
11 (<http://www.cand.uscourts.gov/cw>) so that Settlement Class members may confirm the date of the Final  
12 Approval Hearing.

13  
14 **IT IS SO ORDERED.**

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16 Dated: December 5, 2011

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18 CLAUDIA WILKEN  
19 United States District Judge  
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