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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CLARKE and REBECCA WIXON,	)	
	)	
Plaintiff(s),	)	No. C 07-2361 JSW (BZ)
	)	
v.	)	<b>ORDER GRANTING IN PART AND</b>
	)	<b>DENYING IN PART DIRECTOR</b>
WYNDHAM RESORT DEVELOPMENT	)	<b>DEFENDANTS' MOTION TO COMPEL</b>
CORP., et al.,	)	
	)	
Defendant(s).	)	
_____	)	

Defendants Hensley, Herrick, Fry, Henley, and McConnell ("defendants") have moved to compel plaintiffs to respond to four interrogatories. Having read all the papers submitted, I find no need for argument or a hearing. **IT IS ORDERED** that defendants' motion to compel is **DENIED** in part and **GRANTED** in part as follows:

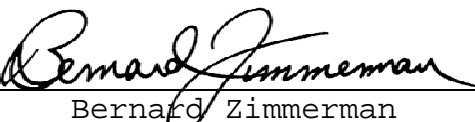
1. Plaintiffs' objections that Interrogatories 1(a), 2(a), 2(b), 3(a), 3(b), 4(a), and 4(b) are premature are **SUSTAINED**. Defendants have failed to show why the information sought in these interrogatories will assist them with their motion challenging plaintiffs' adequacy as Rule 23.1 representatives or why, given the competing demands on

1 plaintiffs' counsel, there is a legitimate need to have these  
2 interrogatories answered at the present time. To the extent  
3 the defendants seek information necessary for the purposes of  
4 determining whether plaintiffs are adequate class  
5 representatives, such information generally can be better  
6 obtained via deposition.<sup>1</sup> If plaintiffs succeed on the Rule  
7 23.1 motion, they shall answer these interrogatories within  
8 sixty (60) days of the ruling.

9 2. Plaintiffs **SHALL** respond to interrogatories 1(b),  
10 2(d), 3(d), and 4(d) concerning the specific types of damages  
11 they have suffered by **April 17, 2009**.

12 3. Plaintiffs' objections to interrogatories 2(c), 3(c),  
13 and 4(c) as seeking impermissible legal analysis are  
14 **SUSTAINED**.

15 Dated: April 13, 2009

16   
17 \_\_\_\_\_  
18 Bernard Zimmerman  
19 United States Magistrate Judge

20 G:\BZALL\REFS\WIXON V. TRENDWEST\ORDER ON DIRECTOR D'S MOT TO COMPEL.wpd

21 \_\_\_\_\_  
22 <sup>1</sup> Among the elements that courts must evaluate in  
23 considering whether a derivative plaintiff meets  
24 representation requirements under Rule 23.1 are economic  
25 antagonisms between representative and class; the remedy  
26 sought by plaintiff in the derivative action; indications that  
27 the plaintiff is not the driving force behind litigation;  
28 plaintiff's unfamiliarity with the litigation; whether there  
is other litigation pending between the plaintiff and the  
defendant; the relative magnitude of the plaintiff's personal  
interests as compared to his interest in derivative action  
itself; the plaintiff's vindictiveness toward the defendant;  
and, the degree of support the plaintiff is receiving from  
shareholders he purports to represent. Larson v. Dumke, 900  
F.2d 1363, 1367 (9th Cir. 1990); see also Davis v. Comed,  
Inc., 619 F.2d 588, 593 (6th Cir. 1980).