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 WYNDHAM RESORT DEVELOPMENT CORPORATION

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

CLARKE and REBECCA WIXON and  
 NORMAN and BARBARA WIXON, on  
 behalf of themselves and all others similarly  
 situated,

Plaintiffs,

v.

WYNDHAM RESORT DEVELOPMENT  
 CORP. (f/k/a Trendwest Resorts, Inc.), GENE  
 HENSLEY, DAVID HERRICK, JOHN  
 HENLEY, PEGGY FRY, and JOHN  
 McCONNELL, and nominally,  
 WORLDMARK, THE CLUB,

Defendants.

Case No. C 07-02361 JSW

**STIPULATION REGARDING  
 SUPPLEMENTAL AND FURTHER  
 PRODUCTION OF DOCUMENTS AND  
 ELECTRONICALLY STORED  
 INFORMATION**

CLASS AND DERIVATIVE ACTION

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<sup>1</sup> Admitted *pro hac vice*.

Plaintiffs and Defendant Wyndham Resort Development Corp. (“Wyndham”) have reached an agreement regarding the search, collection and production of responsive hard copy documents and Electronically Stored Information (“ESI”) in Wyndham’s possession, custody or control to facilitate the exchange of discoverable information within the time limits specified by this Court’s Order Scheduling Trial and Pretrial Matters dated August 31, 2009 (Dkt. No. 412). The terms of the parties’ agreement are set forth below:

**A. Wyndham’s Supplemental Productions**

1. Hard Copy Productions: Wyndham will supplement its production of responsive, non-privileged hard copy documents collected through January 1, 2010 by February 17, 2010. For ease of production, Wyndham agrees to provide its supplemental hard copy document productions in single page .tif format on CD, external hard drive or similar media.

2. ESI Productions:

a. Agreed Search Term Protocol:

Wyndham agrees to search for responsive ESI in its possession, custody or control using mutually agreed-upon search terms. These search terms are reflected in Jonathan Levine’s August 8, 2008, letter to William Loeffler, and are set forth below:

appoint! AND board  
appoint! AND director  
by law  
board, board of directors, director, worldmark board  
board membership, worldmark board membership  
bonus time  
Class action

compushare  
credit dilution  
credit value  
decl! of vacation ownership  
developer AND vote  
don harrill  
dues AND increase  
dues AND raise  
elect!  
fax credit  
first come first served  
fun time  
gene hensley  
govern! document  
housekeeping fees AND increase  
Housekeeping Fees AND raise  
injunction  
john henley  
john mcconnell  
john walker  
manag! agreement  
marci tribe  
membership register  
michael moyer  
owner understanding  
owners forum  
party weekend  
philip abdouch  
privileges AND travelshare  
proxy  
proxies  
transferability  
travelshare  
relative use  
relative use value  
resale  
resale market  
reservation guideline  
reservation rule  
secondary market  
TEN agreement  
william peare  
worldmark owners community  
wyndham AND vote  
vot!

b. Supplemental ESI Productions:

Wyndham agrees to supplement its prior ESI productions for ESI created up through and until September 19, 2009, that has been or will be, collected from the following Wyndham custodians previously identified in Elizabeth Pritzker's January 13, 2009 letter to William Droze:

Aardal, Stephanie  
Betancourt, Sylvia  
Beutel, Kristin  
Bott, Andy  
Crane, Stephanie  
Darone, John  
Dost, Terri  
Franke, Deborah  
Fry, Peggy  
Gallagher, Christine  
Grey, Scott  
Groeninger, Tom  
Henley, John  
Herrick, Dave  
Johnson, Tom C  
Litwack, Alan  
Lyon, Dorothy  
McClung, Scott  
Natale, Ken  
Noritake, Wendy  
Peacock, Kristen  
Richards, Geoff  
Rimmasch, Kim  
Smith, Michael  
Staniewicz, Patty  
Wilson, Donna

The collection of ESI for these individual custodians will include ESI collected by Wyndham since its prior collection for each custodian, with two exceptions. With respect to Stephanie Crane and John Darone, Wyndham will supplement its prior production with ESI from January 1,

2002, through September 19, 2009. Wyndham will manually review potentially privileged ESI for Stephanie Crane and John Darone which precedes the filing of the Complaint for privilege, and provide a privilege log identifying documents that have been withheld from production based on an assertion of privilege.

Wyndham further agrees to supplement its prior ESI productions for ESI maintained on the following non-custodial shared drives:

- <http://usflemlv1.wst.corproot.com/CEM1/uicommander?req=cem.userMaintenance.cemLoginStart>
- <http://webconnect.corproot.com/sites/stratops/TSPRI/default.aspx>
- <http://webconnect.corproot.com/sites/twpit/Projects/Forms/AllItems.aspx>
- \\usflfsc0\resort\_development\$\office records\business development group\presentations-approval requests
- \\usflfsc0\resort\_development\$\Office Records\Business Development Group\M&A\UMBRELLA.

For ESI generated after the commencement of the litigation, Wyndham will not be required to conduct a manual review of such ESI and in lieu of a privilege log, Wyndham will cause its ESI vendor to generate and produce an electronic index of all ESI that includes a privilege term specified in Wyndham's automated privilege screen. To assist Plaintiffs' counsel in assessing the basis for withholding any ESI captured in Wyndham's automated privilege screen, Wyndham shall provide Plaintiffs' counsel with an "Attorneys'-Eyes Only" listing of the privilege terms used by the automated privilege screen.

By **February 8, 2010**, Wyndham shall produce:

1) the search-term positive supplemental ESI obtained for all custodians (except Crane and Darone) identified in subparagraph A.2.b., above, that does not contain a privilege term;

2) the search-term positive ESI that does not contain a privilege term obtained for Crane and Darone;

3) an electronic index of all post-filing ESI for the custodians listed in this subparagraph (except Crane and Darone) that is captured by Wyndham's automated privilege screen; and

4) an "Attorneys'-Eyes Only" listing of the privilege terms used by Wyndham's automated privilege screen.

**B. Wyndham's New Custodial ESI Searches/Productions**

Using the search terms described in subparagraph A.2.a., Wyndham will search for and produce responsive ESI from the following additional custodians, according to the terms described below:

Akins, Dave  
Brandt, Erik  
Darcy, Wendy  
Folk, Richard (Rich)  
Kumma, Tom  
Lewis, Cris  
Maino, Cecile  
Miner, Steve  
Moran, Tim  
Murphy, Kelly  
Ross, Cindy

By **January 22, 2010**, Wyndham shall produce all search-term positive ESI collected as of December 9, 2009 for the custodians identified in this paragraph that does not contain a privilege term.

By **February 17, 2010**, Wyndham shall produce all search-term positive ESI created as of September 19, 2009 and collected after December 9, 2009 for the custodians identified in this paragraph that does not contain a privilege term.

By **February 17, 2010**, Wyndham will complete a manual review of all search-term positive ESI for the custodians identified in this paragraph that was created prior to the commencement of this action and that includes a includes a privilege term based upon Wyndham's automated privilege screen.

Wyndham will not be required to conduct a manual review of ESI created after the filing of this action, and in lieu of a privilege log, Wyndham will by **February 17, 2010** cause its ESI vendor to generate and produce to Plaintiffs' counsel based upon Wyndham's automated privilege screen an electronic index of all search-term positive ESI for the custodians identified in this paragraph (and Crane and Darone from subparagraph A.2.b.).

On a rolling basis commencing no later than **February 27, 2010**, and at one week intervals thereafter, with a final production on **March 10, 2010**, Wyndham shall produce any pre-filing ESI initially captured in its automated privilege screen that Wyndham, in the exercise of good faith, determines not to be privileged after a manual review.

By **March 10, 2010**, Wyndham shall provide a privilege log identifying all pre-filing ESI for the custodians identified in this paragraph that was withheld

from production based on an assertion of privilege (and Crane and Darone from subparagraph A.2.b.).

**C. Schedule for Supplemental Responses by Plaintiffs**

By **March 18, 2010**, Plaintiffs shall serve supplemental responses, if any, to such interrogatories as Plaintiffs, in the exercise of good faith, reasonably believe to be appropriate in light of the further and supplemental production of documents and ESI by Wyndham described in this stipulation.

**D. Extension of Time To Supplement Discovery Responses or Challenge Privilege Claims**

Subject to Court approval of this stipulation, Plaintiffs shall have until **April 9, 2010** to file any legal challenge to privilege claims asserted by Wyndham as part of the automated privilege screen indices described in this stipulation, or to privilege claims set forth in the privilege logs provided for in paragraphs A and B of this stipulation.

Subject to Court approval of this stipulation, Plaintiffs and Wyndham shall each have until **April 9, 2010** to move to compel further or supplemental responses, or to move to compel the production of responsive documents or ESI.

**E. Format of the Wyndham's ESI Production**

Wyndham will produce ESI in native format without .tif image files (except where .tif images may be necessary for redacted documents), with the understanding that such format does not allow for the Bates numbering of individual pages or the labeling of specific pages as confidential. Wyndham's



ESI vendor will include a Bates number metadata field for the ESI production consistent with prior productions.

**F. Clawback Agreement**

All ESI productions will be governed by the existing Stipulated Order Supplementing Protective Order Regarding Privileged Documents in Discovery dated January 28, 2009 (Dkt No. 206).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: January 6, 2010

/s/ William M. Droze

Attorneys for Defendant  
Wyndham Resort Development  
Corporation

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DATED: January 6, 2010

/s/ Elizabeth C. Pritzker  
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: January 8, 2010

  
HON. BERNARD ZIMMERMAN  
United States Magistrate Judge