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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MICHELLE RENEE MCGRATH, on  
behalf of herself and all others similarly  
situated,

Plaintiff,

v.

WYNDHAM RESORT  
DEVELOPMENT CORPORATION, an  
Oregon Corporation; WYNDHAM  
VACATION OWNERSHIP, INC., a  
Delaware Corporation; WYNDHAM  
WORLDWIDE OPERATIONS, INC., a  
Delaware Corporation, and DOES 1  
through 10, Inclusive,

Defendants.

Case No.: 15cv1631 JM (KSC)

**ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT,  
CONDITIONAL  
CERTIFICATION, APPROVAL  
OF CLASS NOTICE AND  
SETTING OF FINAL FAIRNESS  
HEARING**

The Court, having fully reviewed the Motion for Order Granting Preliminary Approval of Class Action Settlement, the supporting Points and Authorities, Declarations of Isam C. Khoury and Christina M. Lucio, the Joint Stipulation of Class Action Settlement (“Settlement Agreement”), and the Notice of Class Action Settlement, and in recognition of the Court’s duty to make a preliminary determination as to the reasonableness of any proposed class action settlement and, if preliminarily determined to be reasonable, to ensure proper notice is provided to

1 Class Members in accordance with due process requirements, and to conduct a Final  
2 Approval hearing as to the good faith, fairness, adequacy and reasonableness of any  
3 proposed settlement, **HEREBY MAKES THE FOLLOWING DETERMINATIONS**  
4 **AND ORDERS:**

5 1. The Court finds, on a preliminary basis, that the Settlement Agreement  
6 incorporated in full by this reference and made a part of this Order Granting  
7 Preliminary Approval appears to be within the range of reasonableness of a settlement  
8 which could ultimately be given final approval by this Court. The Court notes that  
9 Defendants Wyndham Resort Development Corporation, Wyndham Vacation  
10 Ownership, Inc., Wyndham Vacation Resorts, Inc., Wyndham Worldwide  
11 Operations, Inc., (collectively, “Defendants” or “Wyndham”) agreed to pay the non-  
12 reversionary Gross Settlement Amount of \$7,250,000 in full satisfaction of the claims  
13 as more specifically described in the Settlement Agreement.

14 2. The Court also finds that, on a preliminary basis, the Settlement is fair  
15 and reasonable to all members of the Class when balanced against the probable  
16 outcome of further litigation relating to class action certification, liability and  
17 damages issues, and potential appeals of rulings. The Court further finds that  
18 significant investigation, research, litigation, formal and informal discovery have  
19 been conducted such that Counsel for the Parties are able to reasonably evaluate their  
20 respective positions. The Court further finds that Settlement at this time will avoid  
21 substantial costs, delay and risks that would be presented by the further prosecution  
22 of the litigation, and that the proposed Settlement has been reached as the result of  
23 intensive, informed and non-collusive and arms’-length negotiations between the  
24 Parties. **ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR**  
25 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS HEREBY**  
26 **GRANTED.**

27 3. As a part of preliminary approval, the Court accepts and incorporates  
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1 the Settlement Agreement and hereby conditionally certifies the following class of  
2 persons, for purposes of this Settlement only, pursuant to the terms and condition  
3 contained in said Settlement Agreement, the Class defined as follows:  
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5 All current and former California Sales Representatives of Wyndham  
6 Resort Development Corporation, Wyndham Vacation Ownership,  
7 Inc., Wyndham Vacation Resorts, Inc., or Wyndham Worldwide  
8 Operations, Inc., who were paid commissions, at any time during the  
9 period from June 16, 2011 through July 11, 2017.

10 4. The Court approves and appoints Plaintiffs Michelle Renee McGrath  
11 and Veronica O'Boy as Class Representatives.

12 5. The Court approves and appoints Cohelan Khoury & Singer and  
13 Farnaes & Lucio, APC as Class Counsel.

14 6. The Court approves and appoints Rust Consulting, Inc., as the  
15 Settlement Administrator to administer the Settlement pursuant to the terms of the  
16 Settlement Agreement.

17 7. The Court finds that the Notice of Class Action Settlement ("Class  
18 Notice") together with the Change of Address form (Exhibits B and C to the  
19 Settlement Agreement, collectively "Notice Packet") advise the Class of the  
20 pendency of the Class Action, of the proposed Settlement terms, of the preliminary  
21 Court approval of the Settlement, of the automatic payment of a proportionate share  
22 of the Settlement monies if the Class Member does not request to be excluded, of the  
23 released claims, of the estimated amount each may expect to receive pursuant to the  
24 proposed Settlement, of their right to submit objections or requests for exclusion and  
25 of the manner and timing for doing either of these acts.

26 8. The Court further finds the proposed Class Notice fairly and adequately  
27 advises the Class of the terms of the proposed Settlement, of their rights, of the  
28 benefits available to Class Members, and of the Final Approval hearing date, time  
and place, and their right to file documentation in support of or in opposition to the

1 Settlement and to appear in connection with said hearing. The Court finds the Class  
2 Notice clearly comports with all constitutional requirements including those of due  
3 process. ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY  
4 APPROVES THE PROPOSED CLASS NOTICE.

5 9. The Court finds the mailing to the Class Member's present and last  
6 known address, with safeguards to perform reasonable skip traces of returned as  
7 undeliverable Notice Packets, constitutes an effective method of notifying Class  
8 Members of their rights with respect to the proposed Settlement. ACCORDINGLY,  
9 IT IS HEREBY ORDERED that:

10 (a) On or before **Monday, August 28, 2017** [15 business days of the  
11 entry of the Preliminary Approval Order], Wyndham shall forward to the appointed  
12 Settlement Administrator, the Class List as provided for by the terms of the  
13 Settlement Agreement;

14 (b) On or before **Tuesday, September 12, 2017** [10 business days  
15 of receipt of the Class List], the Settlement Administrator shall mail to each Class  
16 Member, by first class United States mail, postage pre-paid, the Notice of Class  
17 Action Settlement, Change of Address Form and pre-printed return envelope,  
18 (collectively the "Notice Packet"). The exterior of the mailing envelope shall include  
19 the following language below the Administrator's address:

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21 **Important Legal Document:**

22 **You may get Money from a Class Action**  
23 **Settlement; your prompt reply to correct a**  
24 **Bad address is required.**

25 (c) All mailings shall be made to the present and/or last known  
26 mailing address of the Class Members based on Wyndham's records, and as may be  
27 updated and located by the Settlement Administrator and as may be provided to the  
28 Settlement Administrator by Class Counsel. The Court finds, and so orders, that the  
mailing of Notice Packets to the Class as set forth in this paragraph is the best means

1 practicable by which to reach Class Members and is reasonable and adequate  
2 pursuant to all constitutional and statutory requirements including all due process  
3 requirements; and,

4 10. IT IS FURTHER ORDERED that:

5 (a) Requests for Exclusion. Requests for Exclusion from the  
6 Settlement must be faxed or mailed to the Settlement Administrator and confirmed,  
7 faxed or postmarked no later than **Monday, November 13, 2017** [62 calendar days  
8 from the initial mailing of the Notice Packet to the Class (“Response Deadline”)].  
9 The Response Deadline for a Request for Exclusion will be extended fifteen (15)  
10 calendar days for any Class Member who is re-mailed a Notice Packet by the  
11 Settlement Administrator in accordance with the notice procedure described in the  
12 Settlement Agreement. If the Response Deadline falls on a Saturday or Federal  
13 Holiday, the Response Deadline will be extended to the next day which the U.S.  
14 Postal Service is open.

15 (b) Objections. Notices of Objection to Settlement must be  
16 submitted in writing and explain in clear and concise terms, the basis for each  
17 objection, setting forth the factual and legal arguments in support of the objection.  
18 All papers in support of an objection must be filed with the Court, with copies served  
19 on Counsel for the Parties by first-class U.S. mail, on or before the Response  
20 Deadline, **Monday, November 13, 2017**. The Notice of Objection must contain the  
21 Class Member’s name and address, and must be personally signed by the Class  
22 Member. Class Members who fail to file and serve a timely and valid Notice of  
23 Objection will be deemed to have waived all objections to the Settlement and will be  
24 foreclosed from making any objections, whether by appeal or otherwise, to the  
25 Settlement Agreement.

26 (c) Notice of Intention to Appear at Final Approval hearing. Class  
27 Members who serve a timely and valid Notice of Objection will have the right to  
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1 appear at the Final Approval Hearing in order to have their objections heard by the  
2 Court. To do so, a Notice of Intention to Appear must be filed and served in the same  
3 manner as the Notice of Objection on or before the **Monday, November 13, 2017**  
4 Response Deadline.

5 11. The Amended Consolidated Complaint attached as Exhibit A to the  
6 Settlement Agreement is deemed filed and served as of the date of this Order.  
7 Pursuant to the terms of the Parties' agreement to file the Amended Consolidated  
8 Complaint, Defendants' answer filed on July 22, 2015 [Dkt. 2], shall be deemed to  
9 be the answer by all Defendants to the Amended Consolidated Complaint.  
10 Defendants shall maintain all available defenses.

11 12. IT IS FURTHER ORDERED that the Final Approval hearing shall be  
12 held before the undersigned at **10:00 a.m. on January 22, 2018**, in the above-entitled  
13 Court, in the United States District Court for the Southern District of California, 221  
14 West Broadway, 5th Floor, Courtroom 5D, San Diego, California 92101 to consider  
15 the fairness, adequacy and reasonableness of the proposed Settlement preliminarily  
16 approved by this Order of Preliminary Approval, and to consider the application of  
17 Class Counsel for awards of reasonable attorneys' fees and litigation expenses, the  
18 Class Representative Enhancement Payments, and the Settlement Administrator's  
19 expenses.

20 13. IT IS FURTHER ORDERED, pursuant to Local Rule 7.1(e).1 of the  
21 United States District Court for the Southern District of California, that all papers in  
22 support of the request for Final Approval of the Class Action Settlement, and Class  
23 Counsels' request for awards of attorneys' fees and litigation costs, the Class  
24 Representative Enhancement Payments and Settlement Administrator's expenses  
25 shall be served and filed with the Court at least twenty-eight (28) calendar days before  
26 the Final Fairness hearing.

27 14. IT IS FURTHER ORDERED that if, for any reason, the Court does not  
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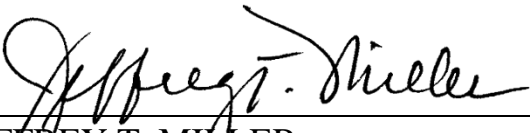
1 execute and file an Order Granting Final Approval and Judgment, or if the Effective  
2 Date, as defined by the Settlement Agreement, does not occur for any reason  
3 whatsoever, the Settlement Agreement and the proposed Settlement subject of this  
4 Order and all evidence and proceedings had in connection therewith, shall be null and  
5 void and without prejudice to the *status quo ante* rights of the Parties to the litigation  
6 as more specifically set forth in the Settlement Agreement.

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8 15. IT IS FURTHER ORDERED that, pending further order of this Court,  
9 all proceedings in this matter except those contemplated by this Order and in the  
10 Settlement Agreement are stayed.

11 16. The Court expressly reserves the right to adjourn or to continue the  
12 Final Approval hearing from time-to-time without further notice to Class Members,  
13 except that notice of a continuance shall be provided to all Class Members who  
14 submit a Notice of Objection.

15 IT IS SO ORDERED.

16 Dated: August 7, 2017

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19 JEFFREY T. MILLER  
20 United States District Judge  
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