CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No : 500-06-000777-157

SUPERIOR COURT

(Class Actions Division)

MARTIN ROBICHAUD

Plaintiff

v.

INTRAWEST ULC

-and-

DIAMOND RESORTS CORPORATION, a legal person having its place of business at 10,600 West Charleston Boulevard, State of Nevada, City of Las Vegas, 89135, USA

-and-

DIAMOND RESORTS INTERNATIONAL INC. a legal person having its place of business at 10,600 West Charleston Boulevard, State of Nevada, City of Las Vegas, 89135, USA

-and-

DIAMOND RESORTS IW HOLDING COMPANY, a legal person having its place of business at 10,600 West Charleston Boulevard, State of Nevada, City of Las Vegas, 89135, USA

-and-

DIAMOND RESORTS CANADA, Ltd., a legal person having its place of business at 666 Burrard Street, Suite 1700, Park Place, in the City of Vancouver, Province of British Columbia, V6C 2X8, Canada

Defendants

APPLICATION FOR AUTHORIZATION TO CARRY OUT A CLASS ACTION AND FOR THE GRANT OF REPRESENTATIVE STATUS, AS WELL AS FOR THE AMENDMENT OF THE APPLICATION INITIATING THE PROCEEDINGS

(Articles 574-576 and 585 of the Quebec Code of Civil Procedure)

IN SUPPORT OF HIS CLAIM, THE PLAINTIFF ALLEGES:

1. On December 30, 2015, Plaintiff Mr. Martin Robichaud ("**Mr. Robichaud**") filed a *Motion for Authorization to Institute a Class Action and for Grant of Representative Status* against Defendant Intrawest ULC ("**Intrawest") (Exhibit R-1)**.

2. On March 20, 2018, the Honourable Anne Jacob, j.s.c., authorized Mr. Robichaud to bring the following class action against Intrawest:

> *"An action in reduction of price and compensatory and punitive damages in order to sanction the defendant for its use of prohibited trade practices relating to membership in Club Intrawest, and a claim relating to costs, the amount of which was not precisely indicated in the contract."*

(the "**Class Action"**), as appears from said judgment **(Exhibit R-2)** (the "**Judgment"**).

3. The Judgment (R-2) grants Mr. Robichaud the status of representative for the purposes of exercising the Class Action on behalf of the members of the following group:

> *"All natural persons who purchased Club Intrawest points in Quebec from Intrawest ULC, or from one of its subsidiaries or related companies, with the exception of those who had divested themselves of the points before a mandatory fixed minimum resale price for the points was introduced in 2007, which had to be respected for all of the advantages related to the points and to participation in Club Intrawest to be transferred."*

(the "**Class"**)

4. On June 20, 2018, Mr. Robichaud filed a *Statement of Claim* by which he commenced the Class Action against Intrawest on behalf of the Class **(Exhibit R-3) (**the "**Originating Application**").

5. By way of this application, Mr. Robichaud is asking the Court to add four defendants to the Class Action, namely defendants Diamond Resorts Corporation, Diamond Resorts International, Inc. Diamond Resorts IW Holding Company and Diamond Resorts Canada, Ltd. (collectively, "**Diamond**") because Diamond became the successor of Intrawest in respect of the assets and contracts relevant to the Class Action.

6. As the Court has already certified the Class Action against Intrawest, this application aims solely to permit Mr. Robichaud to commence the Class Action against Diamond and to amend the Originating Application in accordance with the draft Amended Originating Application **(Exhibit R-4)**.

I. THE PARTIES

A. THE PLAINTIFF: MR. ROBICHAUD

7. Mr. Robichaud is a consumer within the meaning of the *Consumer Protection Act*, CQLR c. P-40.1 ("**CPA"**) and the *Civil Code of Quebec* ("**CCQ"**).

B. THE INITIAL DEFENDANT IN THE CLASS ACTION: INTRAWEST

8. Intrawest is a company incorporated in Alberta whose principal place of business in Quebec is in the municipality of Mont-Tremblant. It also has establishments in Montreal.

9. From 1993 until 2015 or 2016, Intrawest operated a program known as Club Intrawest (the "**Club**"), of which consumers could become members by acquiring points that would allow them to book vacation time ("**Points**").

10. On September 29, 2016, the Club changed its name to the Embarc Members Association ("**Embarc**") **(Exhibit R-5)**. For the purposes of this proceeding, references to the Club shall include Embarc from the latter date.

C. THE NEW DEFENDANTS: THE DIAMOND ENTITIES

11. Like Intrawest, Diamond also operates a vacation time-sharing program under a shared ownership model (i.e., "timesharing company").

12. Diamond Resorts Corporation and Diamond Resorts International, Inc. are U.S. companies whose principal places of business are in the United States, in Las Vegas, the State of Nevada.

13. Diamond Resorts IW Holding Company is also a U.S. company whose principal place of business is in Las Vegas, the State of Nevada **(Exhibit R-6)**.

14. Diamond Resorts Canada, Ltd. is a Canadian company whose principal place of business is in Vancouver, the province of British Columbia **(Exhibit R-7)**.

II. THE INITIAL CLASS ACTION

15. The Originating Application (R-3) alleges the following:

    a) Intrawest operates the Club wherein consumers can become members to book vacation time;

    b) Membership in the Club consists of the acquisition of Points that can be redeemed over the course of a year in order to stay at various resorts;

    c) Mr. Robichaud became a member of the Club by entering into a contract for the acquisition of Points (the "**Agreement**") **(Exhibit R-8)**. The other members of the Class also adhered to this standard contract;

    d) The process of selling Intrawest Points involves offering consumers incentives to attend a presentation and pressuring them into signing the adhesion contract to the Club;

    e) The contractual documents provided to consumers at the time of enrolment, namely the document entitled "Summary of Key Elements of Your Membership" (the "**Summary**") **(Exhibit R-9)** and the contract for the acquisition of Points (R-8), provide the following with respect to the possibility of disposing of Points:

        i) Intrawest has a right of first refusal for the repurchase of the Points, which must be offered to Intrawest before they can be resold to a third party (the "**Right of First Refusal**"); and

        ii) Starting five years after enrolment, the consumer may request Intrawest to redeem Points (the "**Redemption Program**").

    f) In addition, the representations made by Intrawest and the contractual documents it provides to consumers do not allow them, prior to making a commitment, to become aware of and understand:

        i) The imposition of a minimum sale price when consumers seek to sell their ExtraOrdinary Escape ("**EE"**) Points, which allow them to book vacation time at non-Intrawest resorts, to third parties (the "**Minimum Resale Price**"); and

        ii) The value of the annual fee that consumers must pay to redeem their Points for vacation time or risk losing the benefits of Points and Club membership (the "**Fee"**).

    g) The combined effect of the Redemption Program, the Right of First Refusal and the Minimum Resale Price makes it illusory or very disadvantageous for consumers to dispose of their Points.

16. The Class Action is based on Intrawest's various violations of the CPA, the *Regulation respecting the application of the Consumer Protection Act* (the "**Regulation"**) and the CCQ in connection with consumer contracts entered into with Class Members:

    a) Sections 4 and 8 of the Agreement (R-8) refer to external documents that were not brought to the attention of consumers when they signed up, which calls for the application of article 1435 CCQ and constitutes a violation of article 25.9 of the Regulation;

    b) Section 6 of the Agreement (R-8) and the "Annual Resort Fees" section of the Summary (R-9) provide for "Resort Fees" and other fees, the specific amount of which is not stated, and which can be unilaterally changed by Intrawest without the conditions required by the CPA being met, in violation of sections 11.2 and 12 of the CPA;

    c) Sections 8 and 12 of the Agreement (R-8) are clauses that purport to exclude or limit Intrawest's obligation to be bound by the statements of its representatives, contrary to section 25.5 of the Regulation;

    d) Section 13 of the Agreement (R-8) provides for the application of the laws of British Columbia in violation of section 19 of the CPA; and

    e) The contractual documents given to consumers at the time of enrolment do not mention the Minimum Resale Price, nor do they indicate the terms and conditions of the Right of First Refusal and the Redemption Program, thereby giving a general impression that is not in keeping with reality and deliberately omitting the terms and conditions for the resale of Points, the whole in violation of sections 216, 218, 219 and 228 of the CPA.

17. The claims of Mr. Robichaud and other members of the Class under section 272 of the CPA are as follows:

    a) A reduction in the payment of the purchase price of Points

    b) Reimbursement of the Fees they paid as a member of the Club; and

    c) Punitive damages.

III. THE FACTS GIVING RISE TO MR. ROBICHAUD'S ACTION AGAINST DIAMOND

18. As will be explained in this section:

    a) In November 2015, certain Diamond entities acquired Intrawest’s assets related to the Club **(subsection A)**;

b) Mr. Robichaud has attempted unsuccessfully to identify the Diamond entity or entities that have replaced Intrawest as manager(s) of the Club and to whom the Membership Agreements with Class Members have been assigned **(subsection B)**;

c) Based on the information he was able to obtain on the roles of the Diamond entities following the Purchase Agreement (R-10), Mr. Robichaud is compelled to add them all as defendants **(subsection C)**; and

d) Finally, Mr. Robichaud is entitled to claim from Intrawest and Diamond, on a solidary basis, the reimbursement of the Fees paid, the reduction of the purchase price of his Points and punitive damages **(subsection D)**.

A. DIAMOND ACQUIRES KEY ASSETS RELATED TO THE CLUB

19. On November 24, 2015, Intrawest and its parent company, Intrawest U.S. Holdings Inc. entered into a transaction with Diamond Resorts Corporation and its parent company, Diamond Resorts International, Inc. for the sale of the principal assets of the Club, as evidenced by a redacted copy of the Purchase Agreement **(Exhibit R-10)** (the "**Transaction**" or the "**Assignment"**).

20. On January 28, 2016, Diamond Resorts Corporation then transfers to Diamond Resorts IW Holding Company and Diamond Resorts Canada, Ltd. certain assets acquired in the Transaction, as appears from a redacted copy of the "Transition Services Agreement" **(Exhibit R-11)** (the "**Transition Services Agreement**").

21. As will be explained in the next subsection, Mr. Robichaud was provided with these two agreements (R-10 and R-11) only on November 2, 2020, as part of Intrawest's responses to undertakings that it subscribed to following pre-trial examinations.

22. At the time of the filing of the Originating Application (R-3), Mr. Robichaud was unaware of the terms and conditions of the transfer of the Club to Diamond, the identity of the parties involved in the transfer, their respective implications and, finally, the consequences of this transfer on the Class Action against Intrawest.

B. THE STEPS TAKEN BY MR. ROBICHAUD TO UNDERSTAND THE ROLE OF THE VARIOUS DIAMOND ENTITIES FOLLOWING THE TRANSACTION

23. In the Class Action, Mr. Robichaud sought to ascertain the identity of the Diamond entity which is:

a) The assignee of the “Restated Management Agreement” **(Exhibit R-12)**; and

b) The assignee of the contracts for the acquisition of Points, including the Agreement (R-8).

24. Intrawest was formerly the "*manager"* of the Club pursuant to a Restated Management Agreement dated March 26, 2009 (R-12), which provided, among other things, as follows:

    a) Intrawest had exclusive authority to provide administrative services to the Club and was responsible for the management and operation of the resorts and the affairs of the Club (section 3.1 of R-12);

    b) Intrawest had exclusive authority to provide financial services for the operation of the Club (section 3.2 of R-12); and

    c) Intrawest owned, operated and had exclusive control over the Club's booking system which allows Class Members to book and occupy the resorts that are made available to them (section 3.3 of R-12).

25. As mentioned above, Intrawest was also the party that entered into the contracts for the acquisition of Points with consumers, including the Agreement (R-8) with Mr. Robichaud.

26. However, Mr. Robichaud was confronted with incomplete information, some of which appears to contradict the information he had at the time of filing the Originating Application (R-3).

27. On February 5, 2019, in connection with the delivery of notices to Class Members, Intrawest filed a proceeding entitled "*Application to Authorize Diamond Resorts Canada, Ltd. to Send the Notices to the Class Members via Mail and E-Mail*," together with two sworn statements **(*En liasse*, Exhibit R-13)**, which are signed by the following persons:

    a) Ms. Jane Zsigmond, Assistant Secretary of Intrawest; and

    b) Mr. Guillaume Boudreau-Simard, Counsel for Diamond Resorts Canada, Ltd.

28. In this proceeding, Intrawest claims that it is no longer in possession of the information that would allow it to send the notice to Class members, which is allegedly in the possession of Embarc (formerly the Club) and is asking the Court to authorize Diamond Resorts Canada, Ltd. - which is allegedly acting as Embarc's "*manager*" - to communicate these notices directly to Class members.

29. Although Intrawest refers to the Transaction (R-10) on several occasions in this proceeding, it does not disclose any document relating to said Transaction.

30. Mr. Robichaud was then confronted with incomplete and contradictory information:

    a) On the one hand, Diamond Resorts International, Inc. appears to be acting as the "*manager"* of the Club for the following reasons:

i) On January 29, 2016, in a press release, Diamond Resorts International, Inc. claims to have acquired the "*management contracts*" as part of the Transaction **(Exhibit R-14)**;

ii) On February 20, 2018, Diamond Resorts International, Inc. confirmed to Mr. Robichaud the sale of his Points to third parties **(Exhibit R-15)**; and

iii) Diamond Resorts International, Inc. operates the electronic platform for Embarc (formerly the Club) **(Exhibit R-16)**.

b) On the other hand, it seems that it would be rather Diamond Resorts Canada, Ltd. who would be acting as the Club's *manager* (R-13).

31. In the summer of 2019, as part of Intrawest's discovery of its designees, Mr. Robichaud's attorneys sought to clarify the situation:

a) On June 20, 2019, while examining Mr. Robert Reyes, a former employee of Intrawest who was then employed by Diamond Resorts Canada, Ltd, Mr. Robichaud's attorneys sought to ascertain which Diamond entities were assignees of the Club's "*management agreements"*. Not being able to answer the question, Mr. Reyes agreed to answer it by way of undertaking **(Exhibit R-17, under confidential cover)**; and

b) On August 28, 2019, while examining Mr. Trevor Bruno, former Vice President of Corporate Development of Intrawest and a director of the Club, Mr. Robichaud's attorneys requested a copy of the Purchase Agreement (R-10) **(Exhibit R-18, under confidential cover)**.

32. On November 2, 2020, Intrawest provided Mr. Robichaud with the undertakings subscribed to by the examined individuals:

a) In response to Mr. Bruno's undertaking, Intrawest provided heavily redacted copies of the Purchase Agreement (R-10) and the Transition Services Agreement (R-11) **(Exhibit R-19, under confidential cover)**; and

b) In response to Mr. Reyes' undertaking, who was supposed to indicate the entities to which the Club's *management agreements* had been assigned, Intrawest merely referred to the Purchase Agreement (R-10) (**Exhibit R-20, under confidential cover)**.

33. As will be explained below, Mr. Robichaud is unable to confirm the identity of the Diamond entities that are assignees of the Restated Management Agreement (R-12) and the contracts for the acquisition of Points, including the Agreement (R-8).

C. THE ROLE OF THE DIAMOND ENTITIES FOLLOWING THE TRANSACTION

34. The Purchase Agreement (R-10) provides that Intrawest assigns to Diamond Corporation Resorts "*all right, title and interest*" in the purchase agreements providing for the financing of the Members, including the Agreement (R-8) (section 2.01(a)(vi) of R-10).

35. This redacted version of the Purchase Agreement (R-10), however, does not allow one to determine whether this assignment is accompanied by an assignment of debt.

36. To date, Intrawest has resisted to provide Mr. Robichaud with an unredacted copy of the Purchase Agreement, which would allow him to verify whether it contains clauses relating to the obligations of Diamond Resorts Corporation or Diamond Resorts International, Inc. to assume the obligations arising from the contracts for the acquisition of Points, including the Agreement (R-8).

37. It would be unlikely, however, for Diamond not to have agreed to assume any liabilities or obligations undertaken by Intrawest under the contracts for the acquisition of Points, including the Agreement (R-8).

38. Intrawest was formerly the "*manager*" of the Club under the Restated Management Agreement (R-12), which was acquired by Diamond Resorts Corporation (section 2.01(a)(ii) of R-10), which necessarily implies that the latter had to fulfill the obligation contained in the Agreement (R-8) to allow Mr. Robichaud to use his Points to occupy the resorts made available to him.

39. According to counsel for Diamond Resorts Canada, Ltd. (R-13, "*Affidavit of Me Boudreau-Simard*", para. 6), the latter is now acting as "*manager*" of the Club. This is likely due to a second assignment of the Restated Management Agreement (R-12) between the latter and Diamond Resorts Corporation (R-11, "*Recitals*", section B).

40. Since Mr. Robichaud does not know whether this second transfer would have occurred directly between Diamond Resorts Corporation and Diamond Resorts Canada, Ltd. or indirectly through Diamond Resorts IW Holding Company, the majority shareholder of Diamond Resorts Canada, Ltd., it is simply not possible at this time to exclude the solidary liability of Diamond Resorts IW Holding Company.

41. Finally, despite the Purchase Agreement (R-10) and the sworn statement of Diamond Resorts Canada, Ltd.'s lawyer (R-13), the fact remains that Diamond Resorts International, Inc. is the entity that claims to have acquired the Club (R-14) and it is also the entity that confirmed the sale of Mr. Robichaud's Points to a third party (R-15) and that operates the electronic platform to which the consumers have access (R-16).

42. Mr. Robichaud never consented to any of these assignments.

43. In conclusion, the consequence of these assignments of the Agreement (R-8), as well as the Restated Management Agreement (R-12), is that the Diamond entities named as defendants must now be held solidarily liable with Intrawest:

    a) False and misleading representations made by Intrawest to Mr. Robichaud in connection with his joining the Agreement (R-8); and

    b) Illegal fees were claimed from Mr. Robichaud, which continued to be collected by one of the Diamond entities (R-16).

44. In this context, it is necessary for the continuation of Mr. Robichaud's action to include the Diamond entities in the Class Action for the following reasons:

    a) Diamond Resorts Corporation acquired Intrawest's rights under the contracts for the acquisition of Points (R-10), including the Agreement (R-8), and is the assignee of the Restated Management Agreement (R-12);

    b) Diamond Resorts International, Inc. is responsible, at least in part, for the operations of the Club since it confirmed the sale of Mr. Robichaud's Points to a third party (R-15) and appears to be the one operating the Club's electronic system (R-16), in addition to having publicly indicated that it had acquired the Club's *management contracts* (R-14);

    c) Diamond Resorts IW Holding Company is an assignee of certain assets acquired by Diamond Resorts Corporation from Intrawest and Intrawest U.S. Holdings Inc. as part of the Purchase Agreement (R-10), as evidenced by the Transition Services Agreement (R-11); and

    d) Diamond Resorts Canada, Ltd. is also one of the assignees of certain assets acquired by Diamond Resorts Corporation from Intrawest and Intrawest U.S. Holdings Inc. as part of the Purchase Agreement (R-10), as evidenced by the Transition Services Agreement (R-11) and is said to be the one now operating the Club, according to its counsel (R-13).

45. In the event that Diamond has, subsequent to the Purchase Agreement (R-10), assigned the Restated Management Agreement (R-12) to an entity other than those already designated as defendants or that the rights in the Agreement (R-8) have been otherwise assigned to another entity, Mr. Robichaud reserves the right to designate the entity as defendant.

D. THE DAMAGES CLAIMED BY MR. ROBICHAUD

46. In view of the foregoing, Mr. Robichaud may claim the following damages under section 272 of the CPA:

    a) The reimbursement by Intrawest and Diamond, on a solidary basis, of the Fees collected by them from Mr. Robichaud that were not specifically mentioned in the Agreement (R-8), in violation of sections 11.2 and 12 of the CPA;

    b) The reimbursement by Intrawest and Diamond, on a solidary basis, to Mr. Robichaud of $29,019.00, representing a 95% reduction in the purchase price of his Points, arising from Intrawest's material omissions and false and erroneous representations, in violation of ss. 216, 218, 219 AND 228 of the CPA; and

    c) The payment by Intrawest and Diamond, on a solidary basis, to Mr. Robichaud of $5,000 as punitive damages for their failure to comply with their obligations under the CPA.

IV. THE FACTS GIVING RISE TO THE EXERCISE OF THE CLASS ACTION AGAINST DIAMOND

A. THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

47. The legal consequences of the Purchase Agreement (R-10), as well as the subsequent assignments of the contracts for the acquisition of Points and the Restated Management Agreement (R-12), are the same for the other members of the Class and Mr. Robichaud.

48. For the reasons set out in paragraphs 34 to 45 above, the facts alleged appear to warrant the following findings which are sought in accordance with section 272 of the CPA by the other members of the Class:

    a) The reimbursement by Intrawest and Diamond, on a solidary basis, of the Fees they charged Class Members that were not specifically identified in the contracts for the acquisition of Points, in violation of sections 11.2 and 12 of the CPA;

    b) Reimbursement by Intrawest and Diamond, on a solidary basis, of an amount equal to a reduction of at least 75% of the price for which their Points were purchased, resulting from Intrawest's material omissions and false and erroneous representations, in violation of sections 216, 218, 219 and 228 of the CPA; and

    c) Payment by Intrawest and Diamond, on a solidary basis, to each Class Members of $5,000 as punitive damages for their breaches of their obligations under the CPA.

B. MEMBERS' REQUESTS RAISE THE SAME, SIMILAR OR RELATED QUESTIONS OF LAW OR FACT

49. The Honourable Anne Jacob, j.s.c., has already allowed in the Judgment (R-2) several questions of fact and law that are same, similar or related with respect to Intrawest.

50. In light of the foregoing, it is necessary to also submit to the Court the common issues, which are questions of fact and law that are same, similar or related for all Class members:

    a) Is Diamond responsible for Intrawest's prohibited trade practices against Members?

    b) Are Intrawest and Diamond solidarily liable to reimburse Class Members a sum representing the reduction of their obligations with respect to the acquisition of the Points?

    c) Is Diamond responsible for the Fees that Intrawest claimed from the Class Members?

    d) Is Intrawest responsible for the Fees that Diamond claimed from the Class Members?

    e) Are Intrawest and Diamond solidarily liable to reimburse Class Members for the Fees charged?

    f) Are Intrawest and Diamond solidarily liable to pay to each Class Members $5,000 in punitive damages?

C. THE COMPOSITION OF THE CLASS MAKES IT DIFFICULT OR IMPRACTICAL TO APPLY THE RULES ON AGENCY OR JOINDER

51. The Honourable Anne Jacob, j.s.c., has already ruled in the Judgment (R-2) that the composition of the Class made it difficult or impractical to apply the rules on agency or joinder.

52. Since Mr. Robichaud is not asking the Court to change the composition of the Class, this matter need not be revisited.

D. MR. ROBICHAUD IS ABLE TO PROVIDE ADEQUATE REPRESENTATION TO MEMBERS IN THE EXERCISE OF THEIR RIGHTS AGAINST DIAMOND

53. The Honourable Anne Jacob, j.s.c., has already ruled in the Judgment (R-2) that Mr. Robichaud was an adequate representative for the purposes of the class action against Intrawest.

54. Mr. Robichaud is also able to provide adequate representation to Class members for the purposes of their claim against Diamond.

55. Mr. Robichaud owned his Points while Intrawest was still operating the Club and continued to own those Points when Intrawest assigned the Agreement (R-8), the contracts for the acquisition of Points of the other Class Members and the Restated Management Agreement (R-12) to Diamond.

56. Indeed, the sale of Mr. Robichaud's Points to a third party, which is one of the objects of the dispute, occurred in December 2017 **(Exhibit R-21)** and therefore after the Transaction. It was Diamond Resorts International, Inc. that confirmed this sale to Mr. Robichaud in February 2018 (R-15), without Mr. Robichaud ever having been notified of any assignment affecting his rights.

57. As a result of the Transaction, Mr. Robichaud likely had to pay certain Fees to one of the Diamond entities for the years 2016 and beyond (R-16), as did the other members of the Class who did not dispose of their Points until 2016.

58. Mr. Robichaud has personal knowledge and understanding of the facts giving rise to his claim against Diamond, as well as those of the Class Members, although in this case the relevant facts relate primarily to legal transactions between Intrawest and Diamond, as well as between the Diamond entities.

59. Furthermore, there is no reason to change the judicial district in which the Class Action was filed, namely that of Montreal, notably because Mr. Robichaud's attorneys and those of Intrawest practice in that district and because the Quebec lawyer for Diamond Resorts Canada, Ltd., one of the entities covered by the present application, also practices in the judicial district of Montreal

FOR THESE REASONS MAY IT PLEASE THE COURT TO:

GRANT the present *Application for authorization to carry out a class action and for the grant of representative status, as well as for the amendment of the application initiating the proceedings*;

AUTHORIZE the Plaintiff, Mr. Martin Robichaud, to amend the Originating Application dated June 20, 2018 (R-3) in accordance with the amendments contained in the draft Amended Originating Application (R-4);

AUTHORIZE the Plaintiff, Mr. Martin Robichaud, to proceed with the Class Action described below against Intrawest ULC, Diamond Resorts Corporation, Diamond Resorts International, Inc, Diamond Resorts IW Holdings Company and Diamond Resorts Canada, Ltd:

> *"An action in reduction of price and compensatory and punitive damages in order to sanction the use of prohibited trade practices relating to membership in Club Intrawest, and a claim relating to costs, the amount of which was not precisely indicated in the contract."*

ATTRIBUTE to the Plaintiff Mr. Martin Robichaud the status of representative plaintiff for the purpose of bringing a class action against Intrawest ULC, Diamond Resorts Corporation, Diamond Resorts International, Inc. and Diamond Resorts IW Holdings Company and Diamond Resorts Canada, Ltd. on behalf of the class, as described below:

> *"All natural persons who purchased Club Intrawest (or Embarc Members Association) points in Quebec from Intrawest ULC, or from one of its subsidiaries or related companies, with the exception of those who had divested themselves of the points before a mandatory fixed minimum resale price for the points was introduced in 2007, which had to be respected for all of the advantages related to the points and to participation in Club Intrawest (or Embarc Members Association) to be transferred."*

IDENTIFY, in addition to the issues already identified in the March 20, 2018 judgment of the Honorable Anne Jacob, j.c.s., additional issues of fact and law to be addressed collectively as follows:

a) Is Diamond responsible for Intrawest's prohibited trade practices against Members?

b) Are Intrawest and Diamond solidarily liable to reimburse Class Members a sum representing the reduction of their obligations with respect to the acquisition of the Points?

c) Is Diamond responsible for the Fees that Intrawest claimed from the Class Members?

d) Is Intrawest responsible for the Fees that Diamond claimed from the Class Members?

e) Are Intrawest and Diamond solidarily liable to reimburse Class Members for the Fees charged?

f) Are Intrawest and Diamond solidarily liable to pay to each Class Members $5,000 in punitive damages?

REPLACE the conclusions authorized by the judgment of the Honorable Anne Jacob, j.s.c. dated March 20, 2018, with the following conclusions:

a) **GRANT** the Amended Originating Application;

b) **CONDEMN** the defendants Intrawest ULC, Diamond Resorts Corporation, Diamond Resorts International, Inc. and Diamond Resorts IW Holding Company and Diamond Resorts Canada, Ltd., on a solidary basis, to reimburse representative Plaintiff Martin Robichaud the amount of the fees he paid as annual resort dues, namely $10,239.73, with interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Québec*, starting on December 30, 2015;

c) **CONDEMN** the defendants Intrawest ULC, Diamond Resorts Corporation, Diamond Resorts International, Inc. and Diamond Resorts IW Holding Company and Diamond Resorts Canada, Ltd., on a solidary basis, to pay representative Plaintiff Martin Robichaud the amount of $29,019.00 as a reduction of the price he paid to become a member of Club Intrawest, with interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Québec, as of* December 30, 2015;

d) **CONDEMN** the defendants Intrawest ULC, Diamond Resorts Corporation, Diamond Resorts International, Inc. and Diamond Resorts IW Holding Company and Diamond Resorts Canada, Ltd., on a solidary basis, to pay representative plaintiff Martin Robichaud the amount of $5,000.00 in punitive damages, with interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Québec*, starting on December 30, 2015;

e) **CONDEMN** the collective recovery of the amount of the claims of the members of the Class described below, in accordance with the provisions of Articles 595 to 598 of the *Code of Civil Procedure of Québec*;

f) **CONDEMN** the defendants Intrawest ULC, Diamond Resorts Corporation, Diamond Resorts International, Inc. and Diamond Resorts IW Holding Company and Diamond Resorts Canada, Ltd., on a solidary basis, to reimburse each of the members of the Class for the amount of the fees they paid as annual resort dues, with interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Québec*, starting on December 30, 2015;

g) **CONDEMN** the defendants Intrawest ULC, Diamond Resorts Corporation, Diamond Resorts International, Inc. and Diamond Resorts IW Holding Company and Diamond Resorts Canada, Ltd., on a solidary basis, to pay each member of the Class an amount to be perfected corresponding to at least 75% of the amount paid to become a member of Club Intrawest and acquire points, as a reduction of the sale price, with interest at the legal rate and additional indemnity provided for in article 1619 of the *Civil Code of Québec,* starting on December 30, 2015;

h) **CONDEMN** the defendants Intrawest ULC, Diamond Resorts Corporation, Diamond Resorts International, Inc. and Diamond Resorts IW Holding Company and Diamond Resorts Canada, Ltd., on a solidary basis, to pay each member of the Class the sum of $5,000.00 as punitive damages, with interest at the legal rate and additional indemnity provided for in article 1619 of the *Civil Code of Québec*, as of December 30, 2015;

i) **CONDEMN** Defendants Intrawest ULC, Diamond Resorts Corporation, Diamond Resorts International, Inc. and Diamond Resorts IW Holding Company and Diamond Resorts Canada, Ltd., on a solidary basis, to provide any other appropriate relief;

j) The whole with costs, including the expert fees.

ALL, free of charge except in case of dispute.

Montreal, January 12, 2023

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Tel. 514-982-4545 / Fax 514-284-2046
Code BW 0208 / Our reference : 5779-1

SUMMONS
(articles 145 and following *C.C.P.*)

Take notice that the plaintiff has filed this originating application in the office of the Superior Court of the judicial district of Montreal.

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6 within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

In support of the originating application, the plaintiff intends to use the following exhibits:

Exhibit R-1	Motion for authorization to institute a class action and for granting representative status to Mr. Robichaud, dated December 30, 2015;
Exhibit R-2	Judgment of the Honourable Anne Jacob, J.S.C., dated March 20, 2018, authorizing the filing of a class action against Intrawest ULC;
Exhibit R-3	Statement of Claim of the representative/plaintiff Mr. Martin Robichaud, dated June 20, 2018;
Exhibit R-4	Draft Amended Originating Application of the representative/plaintiff Mr. Martin Robichaud;
Exhibit R-5	Intrawest ULC's statement of information in the Quebec Enterprise Register as of June 18, 2018;
Exhibit R-6	Statement of Information of Diamond Resorts IW Holding Company in the Enterprise Register of Quebec as of December 21, 2022;
Exhibit R-7	Statement of information of Diamond Resorts Canada, Ltd. in the Quebec Enterprise Register as of December 21, 2022;
Exhibit R-8	*Purchase and Membership Agreement* between Martin Robichaud and Intrawest ULC dated May 9, 2009;
Exhibit R-9	Club Intrawest document entitled *Summary of Key Elements of Your Membership - Acknowledgement of Terms of Agreement*, signed by Martin Robichaud on May 9, 2009;
Exhibit R-10	Redacted version of the agreement entitled "Purchase Agremeent," between Intrawest U.S. Holdings Inc. and Intrawest ULC with Diamond Resorts Corporation and Diamond Resorts International, Inc. dated November 24, 2015;
Exhibit R-11	Redacted version of the agreement entitled "Transition Services Agreement" between Intrawest U.S. Holdings Inc. and Intrawest ULC with Diamond Resorts IW Holding Company, dated January 29, 2016;
Exhibit R-12	Restated Management Agreement between Club Intrawest and Intrawest ULC, dated March 26, 2019;

Exhibit R-13	Procedure entitled "Application to Authorize Diamond Resorts Canada, Ltd. to Send the Notices to the Class Members" by Intrawest ULC, dated February 5, 2019, accompanied by a sworn statement of Ms. Jane Zsigmond dated January 31, 2019, and a sworn statement of Mr. Guillaume Boudreau-Simard dated January 28, 2019;
Exhibit R-14	Press Release from Diamond Resorts International, Inc. dated January 29, 2016, entitled "*Diamond Resorts International Completes Acquisition of Intrawest Resort Club Group*";
Exhibit R-15	Letter from Diamond Resorts International, Inc. to Anne-Marie Proulx and Martin Robichaud dated February 20, 2018;
Exhibit R-16	History of Martin Robichaud's account at Club Intrawest, generated by the Diamond Resorts International, Inc. information system;
Exhibit R-17	**(Under confidential cover)** Stenographic transcript of the August 28, 2019, examination of Mr. Trevor Bruno;
Exhibit R-18	**(Under confidential cover)** Stenographic transcript of the June 20, 2019, examination of Mr. Robert Reyes;
Exhibit R-19	**(Under confidential cover)** Intrawest ULC's November 2, 2020, response to the undertakings subscribed by Mr. Trevor Bruno;
Exhibit R-20	**(Under confidential cover)** Intrawest ULC's November 2, 2020, response to the undertakings subscribed by Mr. Robert Reyes; and
Exhibit R-21	*En liasse*, Sale *& Transfer Worksheet* and *Club Intrawest -Transfer of Membership* dated December 20, 2017.

These exhibits are available on request.

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, January 12, 2023

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NOTICE OF PRESENTATION

TAKE NOTICE that the present *Application for authorization to carry out a class action and for the grant of representative status, as well as for the amendment of the application initiating the proceedings* will be presented for adjudication before the Honourable Anne Jacob of the Superior Court. sitting in the Class Actions Division, at the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6, on a date, at a time and in a room to be determined by the Honourable Anne Jacob, j.s.c.

Montreal, January 12, 2023

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