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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 16 2018

BY *[Signature]*
ILAYALI WADE, DEPUTY

6 *Additional Counsel for Plaintiffs on Signature Page*
7 Attorneys for Plaintiffs
8 MIKE SPITZER AND MICHELLE MACOMBER

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APR 12 2018
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN BERNARDINO

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13 MIKE SPITZER and MICHELLE MACOMBER,
individually and on behalf of a class and subclass
14 of similarly situated individuals,
15 Plaintiff,
16 vs.
17 FRHI HOTELS & RESORTS (CANADA) INC.,
and DOES 1 through 10, inclusive
18 Defendants.

Case No. CIVDS1712220
~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND JUDGMENT

Date: May 16, 2018
Time: 8:30 a.m.
Dept: S25
Judge: Hon. Keith D. Davis

Action Filed: June 22, 2017
FAC Filed: July 28, 2017
Trial Date: None

FILED

1 The Court, having granted preliminary approval of the parties' class action settlement on
2 October 26, 2017, and directed notice of the proposed settlement to all Settlement Class Members,
3 having read and considered Plaintiffs' Motion for Award of Reasonable Attorneys' Fees and Costs,
4 Class Representative Enhancements and Claims Administration Fees and supporting papers and
5 Plaintiffs' Motion for Final Approval of Class Action Settlement and Judgment and supporting
6 papers, and upon consideration of argument presented on May 16, 2018, and with GOOD CAUSE
7 APPEARING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

8 1. This Court has jurisdiction over the subject matter of this action and all parties to this
9 action, including the Settlement Class Members,¹ as defined in Settlement Agreement
10 and Release ("Settlement Agreement"), and defendant FRHI Hotels & Resorts
11 (Canada) Inc. ("Defendant"). Specifically, the members of the Settlement Class that
12 are subject to this Final Order and Judgment are: All natural persons who: (1) during
13 the period December 2, 2015 through November 28, 2016, inclusive, placed a call
14 while physically located in California to one of Defendant's toll-free telephone
15 numbers and spoke with a representative of Defendant; and (2) was either a California
16 resident at the time such call was made or used a phone number with a California area
17 code to place such call regardless of residency. Excluded from the Settlement Class
18 are all attorneys and employees of Settlement Class Counsel, any judicial officer, or
19 his/her immediate family, to which this case is assigned, and persons who validly opt
20 out of the settlement.

21 2. The Court hereby finds that the notice of settlement, which was provided to all
22 Settlement Class Members via email, U.S. mail, a settlement website, and online
23 banner advertising campaign, as specified in the Settlement Agreement and as ordered
24 by the Court, provided the terms of the settlement, the date of the final fairness hearing,
25 the manner in which Settlement Class Members could object to or participate in the
26 settlement, and the manner in which Settlement Class Members could opt out of the

27 ¹ Unless otherwise provided in this Final Approval Order and Judgment, all capitalized terms shall
28 have the same meaning as set forth in the Settlement Agreement and Release.

1 class. The Court finds that it was the best notice practicable under the circumstances,
2 and complied fully with due process, and all other applicable laws. The Court further
3 finds that a full and fair opportunity has been afforded to all Settlement Class
4 Members to participate in the proceedings to determine whether the proposed
5 settlement should be given final approval.

6 3. The Court finds that the settlement is fair, reasonable and adequate in all respects, and
7 is the product of good faith, arm's-length negotiations between the parties, and fully
8 complies with all applicable provisions of law. Accordingly, the Court hereby finally
9 and unconditionally approves the settlement, and specifically:

10 a. Approves the non-reversionary \$3,500,000.00 Gross Settlement Amount as fair,
11 reasonable, and adequate. To the extent it has not already done so, within 10
12 business days of the date of this Final Approval Order and Judgment,
13 Defendant shall deposit the remaining amount required to fund all payments
14 required by the Settlement Agreement and this Final Approval Order and
15 Judgment;

16 b. Approves the payment from the Gross Settlement Amount of \$10,000 each to
17 the named Plaintiffs and Settlement Class Representatives Mike Spitzer and
18 Michelle Macomber as a service award, which is justified by the time and
19 effort that they expended on behalf of the Settlement Class and the risk they
20 assumed in bringing this action;

21 c. Approves the payment from the Gross Settlement Amount of Settlement Class
22 Counsel's attorneys' fee request of \$1,166,667, which represents one-third of
23 the Gross Settlement Amount. The Court is satisfied that an award of fees to
24 Class Counsel in the amount of \$1,166,667 is reasonable and appropriate under
25 the circumstances of this case;

26 d. Approves Settlement Class Counsel's request for reimbursement from the
27 Gross Settlement Amount of out-of-pocket costs in the amount of \$22,122.75;
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- e. Approves the payment from the Gross Settlement Amount to Heffler Claims Group LLC, the Claims Administrator, of an amount not to exceed \$300,000.00, as final payment for the costs and expenses of administering the settlement;
- f. The Court grants the parties' request to accept all late but otherwise valid claims postmarked on or before the date of this Final Approval Order and Judgment and approves payment from the Net Settlement Fund of the amount determined by the Claims Administrator to be due to each Settlement Class Member who submitted an approved Claim Form; and
- g. Approves the payment of any unused funds remaining in the Gross Settlement Amount, if any, and the funds represented by any uncashed settlement checks, to the designated cy pres recipient, Public Counsel.

- 4. The Claims Administrator shall make all payments required by this Final Approval Order and Judgment in accordance with the terms of the Settlement Agreement.
- 5. This Final Approval Order and Judgment applies to all claims or causes of action settled under the terms of the Settlement Agreement and shall be fully binding with respect to all Settlement Class Members who did not properly request exclusion pursuant to the Preliminary Approval Order. (See Exhibit. A, list of opt-outs.) This Final Approval Order and Judgment shall have a res judicata effect and bar the named Plaintiffs and each Settlement Class Member who did not timely opt-out from bringing any action asserting any of the "Released Claims" as provided in the Settlement Agreement.
- 6. If the settlement does not become final and effective in accordance with the terms of the Settlement Agreement, this Order and Judgment, and all orders entered in connection herewith, shall be vacated and shall have no further force or effect.

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7. Pursuant to Rule 3.769(h), California Rules of Court, the Court hereby enters Judgment in this action; provided, however, that, without affecting the finality of the settlement or the Judgment entered herein, this Court shall retain exclusive and continuing jurisdiction over the Action and the Parties, including all Settlement Class Members, for purposes of enforcing and interpreting this Order and Judgment, the settlement, and the claims process established therein.

IT IS SO ORDERED.

Dated: 5.16, 2018

KEITH D. DAVIS, Judge

HONORABLE JUDGE KEITH D. DAVIS

EXHIBIT A
