

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

CAROLYN NOLEN, WINDY KELLEY,  
CARA KELLEY and PAULA LITTON,  
on behalf of themselves and all others  
similarly situated,

CASE NO.: 6:20-cv-00330-PGB-EJK

Plaintiffs,

v.

FAIRSHARE VACATION OWNERS  
ASSOCIATION,

Defendant.

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**PLAINTIFFS' MOTION FOR APPROVAL OF CLASS NOTICE**

By Order of July 12, 2021, this Court certified a Rule 23(b)(3) class and directed the parties to file a motion seeking approval of the proposed notice to Class members by August 2, 2021. (Doc. 95 at 19–20). In accord therewith, Plaintiffs propose the form and content of the Short Form and Long Form notices attached hereto as Exhibits A & B.<sup>1</sup> As explained below in the Local Rule 3.01(g) certification, the parties are continuing to discuss the content of the notices and have limited areas of disagreement at present.

In accordance with Rule 23 and the recommendations of the Federal Judicial Center (“FJC”), the proposed notice is written in “plain, easily understood language.”

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<sup>1</sup> Plaintiffs anticipate the notice administrator may make non-substantive, stylistic and formatting changes upon receipt of the final, approved notice.

Moreover, it satisfies the requirements set out in the rule, *see* Fed. R. Civ. P. 23(c)(2)(B)(i-vii), and contains all information necessary “to enable class members to make an informed decision about their participation.” David F. Herr, ANNOTATED MANUAL FOR COMPLEX LITIGATION, Fourth (“Manual”) § 21.311 (rev. 2016). The notice is written in neutral, objective, and accurate language, making clear that certification is not a decision on the merits and explaining the Class Members’ options and rights at this stage of the proceedings. The proposed notice also contains a procedure for Class Members to opt-out of the Class. The procedure is not burdensome and requires no more than a letter postmarked within 45 days of the notice being sent with minimal required information to ensure a record of the excluded timeshare owner.

Because notice must be disseminated in a manner that is “practicable under the circumstances,” including by “individual notice to all members who can be identified through reasonable effort,” and appropriate means include “United States mail, electronic means, or other appropriate means,” *see* Fed. R. Civ. P. 23(c)(2)(B), Plaintiffs propose notice be given by a combination of U.S. and electronic mail, as well as a notice website.

Specifically, Plaintiffs propose individual notice via electronic mail to all class members for whom an email address can be identified from Defendant’s records (“E-Mail Notice”). That E-Mail Notice will consist of the Short Form notice, attached hereto as Exh. A. For any class members for whom Defendant cannot identify an email address, and for class members whose E-Mail Notice is returned as

undeliverable and an alternative email address cannot be determined, Plaintiffs propose firstclass, direct mail, also consisting of the Short Form notice. The Short Form notice directs Class Members to the notice website where the Long Form notice will be posted.

## I. BACKGROUND

This case involves a timeshare exchange program. Consumers, such as Plaintiffs, purchase timeshare interests which are then placed into the Trust. Once subject to the Trust—also known as Club Wyndham Plus or the Fairshare Program—timeshare purchasers can use their points to book stays at other resort locations affiliated with the Fairshare Program, rather than just at their home resort.

### A. Relevant Procedural History

Plaintiffs initially moved for class certification on February 12, 2021. (Doc. 62). On March 18, 2021, the Court entered orders granting in part Fairshare’s motion to dismiss, (Doc. 67) (“Motion to Dismiss Order”), and denying as moot Plaintiffs’ original class certification motion, (Doc. 68). In reliance on the Motion to Dismiss Order, Plaintiffs filed a Second Amended Complaint (“SAC”). (Doc. 69). On April 9, 2021, the Court struck the SAC. (Doc. 76). In accord with the order striking the SAC, Plaintiffs filed their amended class certification motion on April 22, 2021. (Doc. 82). Fairshare responded in opposition on May 24, 2021. (Doc. 89).

The Court entered its order granting the motion on July 12, 2021. (Doc. 95). Therein, the Court certified the following class:

All persons and entities who are citizens of the United States of America and who on or after March 14, 2008: (1) purchased a timeshare with a Property Interest (or the Use Rights therein) subject to the Fairshare Vacation Plan Use Management Trust or (2) purchased (including upgrading or refinancing) a Property Interest (or the Use Rights therein) previously subject to the Fairshare Vacation Plan Use Management Trust.

Excluded from the Class are members of the judiciary assigned to this case, entities currently in bankruptcy, entities whose obligations have been discharged in bankruptcy, and governmental entities. Also excluded from the Class is Defendant, including any entity in which Defendant has a controlling interest, is a parent or subsidiary, or which is controlled by Defendant, as well as the officers, directors, affiliates, legal representatives, heirs, predecessors, successors, and assigns of Defendant. (Doc. 95 at 19).

## II. ARGUMENT

### A. Legal Standard.

Rule 23(c)(2)(B) requires that “[f]or any class certified under Rule 23(b)(3) . . . the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (holding that the Due Process Clause requires notice and opt out rights in (b)(3) cases); *see generally* WRIGHT & MILLER, 7AA Fed. Prac. & Proc. Civ. § 1786 (3d ed.). Ordinarily, notice “should be given promptly after the certification order is issued.” Manual § 21.311.

“The method and manner of the notice process is ‘left to the discretion of the court subject only to the broad ‘reasonableness’ standards imposed by due process.’” *Florida Educ. Ass'n v. Dep't of Educ.*, 447 F. Supp. 3d 1269, 1274–75 (N.D. Fla. 2020) (quoting *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975)). “There is no single way in which the notice must be transmitted. Nonetheless, ‘notice by mail to all of the identified class members ... will suffice.’” *Id.* (quoting WRIGHT & MILLER, 7B Fed. Prac. & Proc. Civ. § 1797.6 (3d ed.)).

The touchstone of the analysis is that the notice “clearly and concisely state in plain, easily understood language” the following:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

In addition to these textual requirements, a proposed notice should contain relevant information necessary “to enable class members to make an informed decision about their participation.” Manual § 21.311; *accord In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104-05 (5th Cir. 1977) (“Not only must the substantive claims be adequately described but the notice must also contain information

reasonably necessary to make a decision to remain a class member and be bound by the final judgment or opt out of the action.”). A notice may contain “information that a reasonable person would consider to be material in making an informed, intelligent decision of whether to opt out or remain a member of the class and be bound by the final judgment.” *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d at 1105.

### **B. The Court Should Approve the Proposed Notice and Notice Plan**

The proposed notice contains all of the language required by Rule 23(c)(2)(B)(i-vii), and is written in easy-to-understand language, eschewing legal jargon. First, pursuant to subsection (i), the proposed notice describes the nature of the action brought by Plaintiffs against Fairshare. *See* Short Form at 1; Long Form p. 1 and p. 4 at Question 2.

Second, pursuant to subsection (ii), the class definition is reduced to plain language in terms such that any recipient or reader can readily determine if he or she is a Class Member. Short Form at 2; Long Form p. 5–6 at Question 9.

Third, pursuant to subsection (iii), the proposed notice explains the nature of the claims pursued by Plaintiffs on behalf of the Class and the defenses asserted by Fairshare, including references to the website where Plaintiffs’ Amended Complaint and Fairshare’s Answer and Motion for Summary Judgment will be available. Short Form at 1; Long Form p. 1, p. 4 at Question 2, p. 5 at Questions 4–7, & p. 8 at Question 17.

Fourth, pursuant to subsection (iv), the proposed notice explains that a Class Member can retain a lawyer at his or her own expense, but that he or she is not required

to do so and will be represented by Class Counsel. Long Form pp. 7–8 at Questions 14–15.

Fifth, pursuant to subsections (v)-(vi), the proposed notice clearly explains that the Court will exclude anyone who makes a proper request for exclusion and explains the steps necessary for exclusion from the Class and the deadlines for those exclusions. Short Form at 2; Long Form pp. 6–7 at Questions 12–13.

Sixth, pursuant to subsection (vii) the proposed notice clearly explains that by staying in the Class, any judgment will be binding, whether that judgment is favorable or unfavorable to the Class Member. Short Form at 2; Long Form p. 6 at Question 11. For these reasons, the proposed notice satisfies each of the textual requirements of Rule 23(c)(2)(B).

In addition to the textual requirements, the proposed notice provides Class Members with other relevant information useful to making a decision about remaining in the Class. It describes, in general terms, what a class action is and why the Court certified this case as a class action. *See* Long Form pp. 4–5 at Question 3. It discloses that Plaintiffs are seeking monetary relief in the form of damages, punitive damages, and attorneys’ fees and costs. Long Form p. 5 at Question 7, p. 8 at Question 16; *cf.* Manual § 21.311 (“The notice should . . . describe the relief sought.”). And it explains how the case will be tried, that a Class Member need not attend trial, and how a Class

Member can share in any recovery. *See* Long Form pp. 8–9 at Questions 17–18. These are all topics suggested by the FJC in its model forms.<sup>2</sup>

The proposed notice is written from a neutral perspective. On more than one occasion, it “emphasiz[es] that the court has not ruled on the merits.” Manual § 21.311; *see, e.g.*, Short Form at 1; Long Form p. 5 at Question 6. It does not attempt to persuade Class Members to remain in the Class or to exclude themselves, but provides neutral and objectively accurate information about the benefits and consequences of such a decision. *See generally id.*

Importantly, the proposed notice “explain[s] [the] risks and benefits of retaining class membership and opting out” so that Class Members can make an informed decision. Manual § 21.311. It describes, in language similar to FJC model forms, the consequences of doing nothing and of asking for exclusion. Short Form at 1–2; Long Form pp. 5–6 at Questions 11–12. For example, it explains why a Class Member may seek exclusion, including if the Class Member wants to sue Fairshare individually. Long Form pp. 6–7 at Question 12.

The proposed notice also contains categories of information specific to this lawsuit. It explains on the first page that this is a notice approved by the Court and is not a solicitation. Short Form at 1; Long Form p. 1. This is important to ensure that Class Members do not discard the notice believing it to be an advertisement. Class Members would also logically want to know about the payment of attorneys’ fees if

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<sup>2</sup> <https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction>; <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>



they remain in the Class, which is why the notice states it will be up to the Court to decide the amount of attorneys' fees. Long Form p. 8 at Question 16.

For these reasons, the proposed notice properly meets all the requirements of Rule 23.

### **C. The Exclusion Process Contains Proper Safeguards and Is Not Burdensome**

The proposed procedure for opting out is not burdensome. To opt-out, a Class Member need only sign and return a letter, by U.S. mail and postmarked before the opt out deadline, containing his or her name, address, telephone number, and signature. Long Form p. 7 at Question 13. An Exclusion Request form will also be available on the notice website for Class Members to download, fill-out, and return. *Id.*

These are minimal requirements necessary to ensure authenticity and to avoid ambiguity. *See, e.g., In re Prudential Ins. Co. of America Sales Pracs. Litig.*, No. MDL 1061, 1999 WL 496491, at \*4 (D.N.J. May 6, 1999) (describing similar requirements to the ones proposed here as "simple steps"). Courts have, for example, required much more information than is being requested in this case. *Accord In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 118 (D.N.J. 2012) (requiring name, address, telephone number and information about the opt-out's purchases, including policy number, premium paid, and policy dates); *In re Mexico Money Transfer Litig. (W. Union & Valuta)*, 164 F. Supp. 2d 1002, 1032 (N.D. Ill. 2000) (requiring approximate number of transactions), *aff'd sub nom. In re Mexico Money Transfer Litig.*, 267 F.3d 743 (7th Cir. 2001); *In re Chipcom Corp.*, 1997 WL 1102329, at \*20 (D. Mass. June 26, 1997) (requiring number

of shares purchased or sold, date of transaction, and price); *In re Conn. Gen. Life Ins. Co.*, No. MDL 1136, 1997 WL 910387, at \*27 (C.D. Cal. Feb. 13, 1997) (same).

The proposed notice provides Class Members 45 days to mail in their exclusion request, which is consistent with Due Process. *See In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 708 (E.D. Mo. 2002) (four weeks to object to class settlement consistent with Due Process) *see also Geiger v. Sisters of Charity of Leavenworth Health Sys., Inc.*, No. 14-2378, 2015 WL 4523806, at \*5 (D. Kan. July 27, 2015) (approving schedule giving class members 28 days to opt-out or object to class action settlement); *Miller v. Republic Nat. Life Ins. Co.*, 559 F.2d 426, 430 (5th Cir. 1977) (holding a period of “almost four weeks between the mailing of the notices and the settlement hearing” was adequate); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) (approving notice mailed 26 days before the deadline for opting out of a settlement); *Grunin v. International House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975) (19 days’ notice was enough time to object); *United Founders Life Ins. Co. v. Consumers Nat. Life Ins. Co.*, 447 F.2d 647, 652 (7th Cir.1971) (timing of notice was adequate where it was mailed on May 28 and fairness hearing was held on June 22)).

Class Members are afforded sufficient time to exclude themselves from the case, which would allow all exclusions to be processed before trial commences.

#### **D. Notice Administration**

Within hours of receiving the Court’s Class Certification Order by mail, Class Counsel inquired of Defendant’s counsel regarding obtaining the information

necessary to notice the class, specifically, the names and contact information (email and physical addresses) for all Club Wyndham Plus members dating back to March 14, 2008 (collectively, “Class List”). Counsel for Defendant recently informed Class Counsel that Defendant is working to compile this information but is not yet able to provide it. Defense counsel advised this information will be available by mid-August. Following receipt of the Class List, Plaintiffs will solicit bids from 8 notice administrators concerning notice administration in this case. Following the competitive bidding process, Class Counsel will select a notice administrator and seek an order from this Court approving the selection.

Once the administrator has been selected and approved by the Court, the administrator will distribute the class notice via email and U.S. Mail (as described above). To do so, the administrator will use the email and physical addresses Fairshare maintains for its Club Members.

For those Class Members without email addresses, or for whom E-Mail Notice is undeliverable, the administrator will use the mailing addresses Fairshare maintains for those Class Members. First, the administrator will make a reasonable effort to update the addresses Defendant has in its business records. In that regard, the administrator will check the address against the National Change of Address database. Next, for all individual notices that are returned as undeliverable, the administrator will make reasonable efforts to obtain a current mailing address, including but not limited to a “skip trace” search, and re-mail the class notice to the Class Member’s last known physical address. The administrator will use customary search protocols to

attempt to obtain current addresses for Class Members whose notices are returned to sender. These efforts will ensure that individual notice is mailed to an extremely high percentage of Class Members.

In addition, the administrator will coordinate with Class Counsel to develop a website to provide detailed information to Class Members about this litigation. This website will include copies of the class notices and relevant pleadings, filings, and orders, and Class Members will be able to pose questions about this litigation via email at links prominently displayed on the website. The administrator also will implement a dedicated toll-free telephone number that will allow Class Members to listen to recorded information or to speak with a live agent. The website will also contain Class Counsel's contact information. This notice plan will provide the best notice practicable under the circumstances of this case.

**E. To Properly Notice the Class, the Class Certification Order Should Be Unsealed**

In order to properly notice the Class, Plaintiffs request that the Court's Class Certification Order (Doc. 95) be unsealed. From Plaintiffs review, there is very little, if anything, contained in the order that is confidential or that otherwise should be protected from Class Member's review. While Plaintiffs filed portions of their class certification motion and related exhibits under seal, *see* (Doc's. 81, 82, 86, & 91), those redactions consisted of (1) Fairshare's financial information, and (2) the size of the putative class for numerosity purposes. (Doc. 82 at 1, 6-8, 12, 14, & 19). While the class size information is contained in the order (Doc. 95 at 8), none of the financial

information appears to be. Plaintiffs do not believe the number of Club Wyndham Plus members is the type of information that can or should be sealed from public view. Indeed, the approximate number of Club Wyndham Plus owners is provided in the publicly available Club Wyndham Plus Member's Directory.<sup>3</sup> Nonetheless, even assuming such class size information is protectible, only that single number should be redacted, with the remainder of the order being publicly filed, in order to permit Class Members to review the order and make an informed decision on whether to exclude themselves from the Class.

### III. CONCLUSION

Plaintiffs respectfully request that the Court grant this motion and approve the proposed class notices, attached as Exhibits A and B. Pursuant to the class notice, Class Members shall have 45 days from the date the notice is sent to opt-out of this lawsuit. Finally, in order to facilitate the proper noticing of the class, Plaintiffs request that the Court unseal its Class Certification Order (Doc. 95).

#### **Local Rule 3.01(g) Certification**

Class Counsel provided this motion and the proposed Short and Long Form notices to Defendant on Tuesday, July 27<sup>th</sup>. Defendant provided edits and comments, to the Short Form notice only, on Sunday, August 1<sup>st</sup>. The parties discussed their

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<sup>3</sup> See Club Wyndham, *Publications, Member's Directory 2018-2019 at 2, available at* <https://clubwyndham.wyndhamdestinations.com/us/en/publications>; Club Wyndham Plus *at* [https://www.nxtbook.com/nxtbooks/wyndham/plus\\_membersdirectory1819/index.php#/p/F](https://www.nxtbook.com/nxtbooks/wyndham/plus_membersdirectory1819/index.php#/p/F) ("CLUB WYNDHAM® takes pleasure in serving more than 500,000 owner families while still making your family a priority.") (last visited July 27, 2021).

differences as to the Short Form Notice on Monday August 2<sup>nd</sup>, but could not reach agreement. Principally, there is a dispute regarding how the Plaintiffs' claims should be described. Plaintiffs believe the framing of the claims in Exhibits A and B reflects the arguments and evidence set out in their Motion for Class Certification and the Court's Order granting same. Defendant has alternatively suggested multiple potential descriptions. Defendant has also proposed differing versions of the descriptions of its defense(s) in this case. As yet, Defendant has not provided edits or comments to the Long Form Notice.

The parties are continuing to discuss their differences regarding the description of the claims and defenses. However, in light of the current deadline, Plaintiffs file this motion as, at minimum, partially opposed. Plaintiffs intend to continue discussing the language of the notices with Defendant, and Defendant will either oppose by the date set by the Court, or, if agreement can be reached, the parties will file an Amended Joint Motion.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 2, 2021, I electronically filed a true and correct copy of the foregoing unopposed motion with the Clerk of the Court using the CM/ECF system, which will send notification to all attorneys of record in this matter.

*/s/ John A. Yanchunis*

Attorney

# EXHIBIT A



UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

# If You Own, or Previously Owned, a Wyndham Timeshare and Joined Club Wyndham Plus, a Class Action Lawsuit May Affect Your Rights

*Nolen et al. v. Fairshare Vacation Owners Association*, 6:20-cv-00330-PGB-EJK (M.D. Fla.)

**A FEDERAL COURT AUTHORIZED THIS NOTICE.  
THIS IS NOT A SOLICITATION FROM A LAWYER.  
YOU ARE NOT BEING SUED.**

Four Club Wyndham Plus Members—referred to here as Class Representatives—sued Fairshare Vacation Owners Association (“Fairshare”) alleging that Fairshare violated its fiduciary duties to Club Wyndham Plus Members (“Club Members”). Most Wyndham timeshare owners join Club Wyndham Plus. To join Club Wyndham Plus, Club Members assign their Timeshare Use Interests to the Fairshare Vacation Plan Use Management Trust Agreement (the “Trust”). Fairshare acts as Trustee for the Trust, and, as such, it owes fiduciary duties to Club Members. Class Representatives allege that Fairshare violated those fiduciary duties by, among other things, paying other Wyndham-related entities to perform various services for Club Members without sufficient due diligence or oversight related to those costs and without seeking competitive bids from other potential vendors, and alleging that Fairshare has maintained a multi-million-dollar surplus sum of money in the Trust’s Fund account that it should have returned to Club Members.

If the Class Representatives are successful, changes to the operations of Club Wyndham Plus could occur.

Fairshare denies the allegations against it. It does not believe it violated any fiduciary duties. Fairshare has alleged other defenses to the Class Representatives’ legal claims. The Court has not decided whether Fairshare did anything wrong. There is no money available now and no certainty there will be. However, your legal rights are affected, and you have a choice to make now:

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:</b>	
<b>DO NOTHING</b>	<b>Stay in this lawsuit. Await the outcome. Give up certain rights.</b> By doing nothing, you keep the possibility of getting money or benefits that may come from a trial or a settlement in this case. But you give up any right to sue Fairshare separately on any claim in this lawsuit.

<b>EXCLUDE YOURSELF BY</b>  <b>DATE</b>	<b>Get out of this lawsuit. Get no benefits from it. Keep your rights.</b> If you ask to be excluded from the lawsuit and money or benefits are later awarded, you won't share in those. But you keep any right to sue Fairshare separately on the claims in this lawsuit.
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**Who Is a Class Member?** – The Court certified a class consisting of all Club Wyndham Plus Members, or former members, since March 14, 2008. Specifically, the class is defined as:

All persons and entities who are citizens of the United States of America and who on or after March 14, 2008: (1) purchased a timeshare with a Property Interest (or the Use Rights therein) subject to the Fairshare Vacation Plan Use Management Trust or (2) purchased (including upgrading or refinancing) a Property Interest (or the Use Rights therein) previously subject to the Fairshare Vacation Plan Use Management Trust.

If you are receiving this notice directly to your email or physical address, Fairshare's records have identified you as potential class member.

Please note that excluded from the Class are members of the judiciary assigned to this case, entities currently in bankruptcy, entities whose obligations have been discharged in bankruptcy, and governmental entities. Also excluded from the above Class is Fairshare, including any entity in which Fairshare has a controlling interest, is a parent or subsidiary, or which is controlled by Fairshare, as well as the officers, directors, affiliates, legal representatives, heirs, predecessors, successors, and assigns of Fairshare.

**Your Rights and Options** – If you do **NOT** want to participate in this class action, you may exclude yourself from the case by submitting a written request postmarked by **DATE**. If you do not exclude yourself, you will be bound by all future decisions in this case whether favorable or unfavorable to the Class, including possibly the terms of any settlement that may be reached, and you will give up your right to individually sue Fairshare regarding the claims in this case.

**This notice is only a summary. Complete information about the lawsuit, including your rights and options are available at [www.{{NoticeWebsiteURL}}.com](http://www.{{NoticeWebsiteURL}}.com). If you do not have access to a computer, or have additional questions, you can telephone the Class Notice Administrator at **NUMBER**. Please do not call the Court. The Court authorized this notice. This is not a solicitation for a lawyer and you are not being sued.**

# EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

# **If You Own, or Previously Owned, a Wyndham Timeshare and Joined Club Wyndham Plus, a Class Action Lawsuit May Affect Your Rights**

*Nolen et al. v. Fairshare Vacation Owners Association*, 6:20-cv-00330-PGB-EJK (M.D. Fla.)

**A FEDERAL COURT AUTHORIZED THIS NOTICE.  
THIS IS NOT A SOLICITATION FROM A LAWYER.  
YOU ARE NOT BEING SUED.**

**If You Own, or Previously Owned, a Timeshare with Fairshare Vacation Owners Association, also known as Club Wyndham Plus, since March 14, 2008, you are a member of this class action lawsuit.**

On July 12, 2021, the United States District Court for the Middle District of Florida, certified this lawsuit as a class action. By certifying the case, the Court has allowed the Plaintiffs (also referred to as the Class Representatives)—Carolyn Nolen, Windy Kelley, Cara Kelley, and Paula Litton—to pursue the claims of all Class Members against Fairshare in addition to pursuing their individual claims for damages.

**What is this class action lawsuit about?** The Class Representatives sued Fairshare Vacation Owners Association (“Fairshare”) alleging that Fairshare violated its fiduciary duties to Club Wyndham Plus Members (“Club Members”). Specifically, by virtue of being members of Club Wyndham Plus, all Club Members assigned their Timeshare Use Interests to the Fairshare Vacation Plan Use Management Trust Agreement (the “Trust”). Fairshare acts as Trustee for the Trust, and, as such, it owes fiduciary duties to Club Members. Class Representatives assert that Fairshare violated those fiduciary duties by, among other things, paying other Wyndham-related entities to perform various services for Club Members without sufficient due diligence or oversight related to those costs or competitive bids from other potential vendors, and alleging that Fairshare has maintained a significant surplus sum of money in the Trust’s Fund that it should have returned to Club Members.

QUESTIONS? CALL **1-XXX-XXX-XXXX** TOLL FREE OR VISIT **WWW.XXX.COM**

The Court has not decided whether Fairshare did anything wrong, and Fairshare denies the allegations against it. There is no money available now and no certainty there will be. However, your legal rights are affected, and you have a choice to make now:

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:</b>	
<b>DO NOTHING</b>	<b>Stay in this lawsuit. Await the outcome. Give up certain rights.</b> By doing nothing, you keep the possibility of getting money or benefits that may come from a trial or a settlement in this case. But you give up any right to sue Fairshare separately on any claim in this lawsuit.
<b>EXCLUDE YOURSELF BY <span style="background-color: yellow;">DATE</span></b>	<b>Get out of this lawsuit. Get no benefits from it. Keep your rights.</b> If you ask to be excluded from the lawsuit and money or benefits are later awarded, you won't share in those. But you keep any right to sue Fairshare separately on the claims in this lawsuit.

These rights and options—and the deadlines to exercise them—are explained in this Notice.

Claims against Fairshare must be proven. If money or other benefits are obtained from Fairshare, you will be notified about how those benefits will be distributed to you.

Questions? Read this Notice and visit: [www.{{NoticeWebsiteURL}}.com](http://www.{{NoticeWebsiteURL}}.com).

QUESTIONS? CALL 1-XXX-XXX-XXXX TOLL FREE OR VISIT WWW.XXX.COM

## What this Notice Contains

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## BASIC INFORMATION

### **1. Why did I get this Notice?**

Fairshare's records indicate that you are, or were, a Fairshare Vacation Owners Association Member, also known as Club Wyndham Plus Member ("Club Member"), at some point between March 14, 2008 and the present. A Court decided to allow a class action lawsuit to proceed against Fairshare related to allegations that it, as Trustee for the Fairshare Vacation Plan Use Management Trust Agreement (the "Trust"), breached the fiduciary duties it owes Club Members. You have legal rights and options that you may exercise before trial. The trial is to decide whether the claims being made against Fairshare are correct. The case may settle or be dismissed before a trial or on appeal.

Judge Paul G. Byron, of the United States District Court for the Middle District of Florida, currently is overseeing this case. The case is known as *Nolen et al. v. Fairshare Vacation Owners Association*, 6:20-cv-00330-PGB-EJK (M.D. Fla.). The people who sued, Carolyn Nolen, Windy Kelley, Cara Kelley, and Paula Litton, are called the "Plaintiffs," and are also referred to as "Class Representatives." Fairshare is called the "Defendant."

### **2. What is the lawsuit about?**

Plaintiffs allege that Fairshare violated its fiduciary duties to Club Wyndham Plus Members ("Club Members"). Specifically, by virtue of being members of Club Wyndham Plus, all Club Members assigned their Timeshare Use Interests to the Fairshare Vacation Plan Use Management Trust Agreement (the "Trust"). Fairshare acts as Trustee for the Trust, and, as such, it owes fiduciary duties to Club Members. Plaintiffs assert that Fairshare violated those fiduciary duties by, among other things, paying other Wyndham-related entities to perform various services for Club Members without sufficient due diligence or oversight related to those costs and without seeking competitive bids from other potential vendors, and that Fairshare has maintained a multi-million-dollar surplus sum of money in the Trust's Fund that it should have returned to Club Members.

### **3. Why is this a class action?**

In a class action lawsuit one or more people, called the "Plaintiff" or "Class Representative," represents a larger group of people called "Class Members" or the "Class" who have similar claims against the "Defendant." In this case, the Class Representatives are the Plaintiffs, Carolyn Nolen, Windy Kelley, Cara Kelley, and Paula Litton. In a class action, one court resolves the issues for all Class Members, except those who exclude themselves from the Class. United States District Court Judge Paul G. Byron has jurisdiction over this case.

Here, the Court decided that this lawsuit can be a class action and move toward a trial because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. Specifically, the Court found that the Class Members are sufficiently numerous, there are questions of law and fact that are common to all Class Members that predominate over questions affecting individual Class Members, the Class Representatives' claims are typical of those of the Class, the Class Representatives and Class Counsel are adequate to represent the Class, and proceeding as a Class is superior to the alternatives.

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More information about why the Court is allowing this lawsuit to be a class action is in the Court's Order Certifying the Class, which is available at: [www.\[\]NoticeWebsiteURL\].com](http://www.[]NoticeWebsiteURL].com).

The Court may revisit this decision and decertify the Class at any time.

#### THE CLAIMS IN THE LAWSUIT

##### **4. What are the Plaintiffs' Complaints?**

As noted above, Plaintiffs assert that Fairshare violated its fiduciary duties by, among other things, paying other Wyndham-related entities to perform various tasks and services for Club Members without sufficient due diligence or oversight related to those costs, and alleging that Fairshare has maintained a multi-million-dollar surplus sum of money in the Trust's Fund account that it should have returned to Club Members. You can read Plaintiffs' Amended Complaint at [www.\[\]NoticeWebsiteURL\].com](http://www.[]NoticeWebsiteURL].com).

##### **5. How does Fairshare Answer?**

Fairshare denies any wrongdoing. Fairshare claims that it has fully complied with the terms of the Trust. You can read Fairshare's Answer to Plaintiff's Amended Class Action Complaint at [www.\[\]NoticeWebsiteURL\].com](http://www.[]NoticeWebsiteURL].com). Fairshare has also filed a motion for summary judgment, which the federal court is currently considering. Plaintiffs have filed a response. You can find these documents on the Notice Website.

##### **6. Has the Court decided who is right?**

No. The Court has not decided whether Plaintiffs or Defendant are right. By establishing the Class and issuing this Notice, the Court is not suggesting that the Plaintiffs will win or lose this case.

##### **7. What are the Plaintiffs asking for?**

Plaintiffs are asking for damages related to the alleged breaches of fiduciary duty. For all amounts shown to have been paid or retained in violation of Fairshare's fiduciary duties, Plaintiffs seek to have Class Members reimbursed their proportionate share based on their associated Program Fee payments. Plaintiffs also seek punitive damages in the Amended Complaint.

##### **8. Is there any money available now?**

No. No money or benefits are available now because the Court has not yet decided whether Fairshare did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If benefits are obtained, and you do not remove yourself from the Class, you will be compensated or be notified about how to ask for a share of the proceeds.

#### WHO IS IN THE CLASS?

##### **9. Who is in the Class?**

The Court certified a class consisting of all Club Wyndham Plus Members, or former members,

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since March 14, 2008. Specifically, Judge Byron certified the following class:

All persons and entities who are citizens of the United States of America and who on or after March 14, 2008: (1) purchased a timeshare with a Property Interest (or the Use Rights therein) subject to the Fairshare Vacation Plan Use Management Trust or (2) purchased (including upgrading or refinancing) a Property Interest (or the Use Rights therein) previously subject to the Fairshare Vacation Plan Use Management Trust.

If you received a notice directly to your email or physical address, Fairshare's records have identified you as potential class member.

The Class does *not* include members of the judiciary assigned to this case, entities currently in bankruptcy, entities whose obligations have been discharged in bankruptcy, and governmental entities. Also excluded from the above Class is Fairshare, including any entity in which Fairshare has a controlling interest, is a parent or subsidiary, or which is controlled by Fairshare, as well as the officers, directors, affiliates, legal representatives, heirs, predecessors, successors, and assigns of Fairshare.

**10. How can I confirm that I am in the Class?**

If you are not sure whether you are included in the Class, you can get free help at [www.\[NoticeWebsiteURL\].com](http://www.[NoticeWebsiteURL].com) or by calling [[1-###-###-####]]. The fact that you received this notice means that Fairshare's records indicate that you are likely a member of the Class.

**YOUR RIGHTS AND OPTIONS**

**11. What happens if I do nothing at all?**

You don't have to do anything now if you want to keep the possibility of getting money or benefits from this lawsuit. By doing nothing, you are staying in the Class, and you will be legally bound by all of the Orders the Court issues and judgments the Court makes in this class action, whether favorable or unfavorable to the Class. If you stay in the Class and the Plaintiffs obtain money or benefits, either as a result of a trial or a settlement, you will either be compensated automatically or be notified about how to apply for a share. Keep in mind that if you do nothing now, regardless of whether the Plaintiffs or Defendant win or lose the trial, you will not be able to sue Fairshare about any legal claim that is included in this lawsuit.

**12. Why would I ask to be excluded?**

If you want to bring your own action against Fairshare related to the issues presented in this case, you should exclude yourself from the Class. Unless you exclude yourself, you give up any right to sue Fairshare for the claims that are asserted in this class action. If you choose to exclude yourself, you will not get any money or benefits from this lawsuit even if the Plaintiffs obtain them from a

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trial or from any settlement between Fairshare and the Plaintiffs. If you start your own lawsuit against Fairshare after you exclude yourself, you will have to hire and pay your own lawyer for that lawsuit, and you will have to prove your claims. If you do exclude yourself so you can start your own lawsuit against Fairshare, you should talk to your own lawyer soon, because your claims may be subject to a time limit.

If this case were to be settled at some later date, you may or may not be given another opportunity to exclude yourself from this case and the associated settlement. Accordingly, this is your only guaranteed opportunity to exclude yourself from this lawsuit.

### EXCLUDING YOURSELF FROM THE CLASS

#### **13. How do I ask the Court to exclude me from the Class?**

If you don't want to be a part of this lawsuit, and you want to keep any right you may have to sue or continue to sue Fairshare regarding the claims in this lawsuit, then you must take steps to remove yourself from the Class. This is called excluding yourself — and is sometimes referred to as “opting out” of the Class. To ask to be excluded, you must send a signed letter by mail stating that you want to be excluded from *Nolen et al. v. Fairshare Vacation Owners Association*. You must include your name, address, telephone number, and your signature. You must mail your exclusion request postmarked no later than \_\_\_\_\_, 202\_, to:

Class Action Exclusion Request,  
Attn: Nolen et al. v. Fairshare Vacation Owners Association,  
P.O. Box \_\_\_\_\_,  
CITY, ST ZIP

You may also get an Exclusion Request form at the website, [www.{{NoticeWebsiteURL}}.com](http://www.{{NoticeWebsiteURL}}.com)

You cannot exclude yourself by phone, fax or email.

### THE LAWYERS REPRESENTING YOU

#### **14. Do I have a lawyer in the case?**

Yes. The Court appointed the following lawyers to represent all the members of the Class:

John A. Yanchunis  
jyanchunis@ForThePeople.com  
Patrick A. Barthle II  
pbarthle@ForThePeople.com  
**MORGAN & MORGAN**  
**COMPLEX LITIGATION GROUP**  
201 N. Franklin Street, 7th Floor  
Tampa, Florida 33602  
Telephone: (813) 223-5505

James M. Terrell  
jterrell@mtattorneys.com  
Rodney E. Miller  
Rem@mtattorneys.com  
**METHVIN, TERRELL, YANCEY,**  
**STEPHENS & MILLER, P.C.**  
The Highland Building  
2201 Arlington Ave. S  
Birmingham, AL 35205

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Facsimile: (813) 223-5402

Telephone: (205) 939-0199

Facsimile: (205) 939-0399

Bradford D. Barron  
bbarron@barronlawfirmok.com  
**The Barron Law Firm, PLLC**  
P.O. Box 369  
Claremore, Ok 74018  
Telephone: (918) 341-8402  
Facsimile: (918) 515-4691

These lawyers are called Class Counsel. You will not be charged for contacting these lawyers. If you want to be represented by your own lawyer, however, you may hire one at your own expense.

**15. Should I get my own lawyer?**

You do not need to hire your own lawyer, because Class Counsel are working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer. You can ask him or her to appear in Court for you in this case if you want someone other than Class Counsel to speak for you.

**16. How will the lawyers be paid?**

Class Counsel have not been paid or reimbursed for their time and expenses incurred in pursuing this case. You will not have to pay these fees and expenses. If Class Counsel obtains money or benefits for the Class, they will ask the Court for fees, as well as reimbursement of costs and expenses. If the Court grants Class Counsel's request, the fees, costs, and expenses would be either deducted from any money obtained for the Class or paid separately by Fairshare.

**WHAT HAPPENS NEXT?**

**17. How and when will the Court decide who is right?**

Unless the case is resolved by a settlement or otherwise, Class Counsel will have to prove the Plaintiffs' claims at a trial. Trial is currently set to take place during the trial term beginning December 6, 2021. That date is subject to change. During the trial, a Jury or the Judge will hear the evidence to help reach a decision about whether the Plaintiffs or Defendant are right about the claims in the lawsuit. The federal court is currently considering a motion for summary judgment filed by Fairshare. Plaintiffs have filed a response. You can find these documents on the Notice Website.

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**18. Do I have to come to the trial?**

No. You do not need to attend the trial. Class Counsel will present the case for the Plaintiffs and the Class, and Fairshare will present its defenses. You or your own lawyer are welcome to come to the trial at your own expense.

**GETTING MORE INFORMATION**

**19. How do I get more information?**

You can visit the settlement website at [www.{{NoticeWebsiteURL}}.com](http://www.{{NoticeWebsiteURL}}.com), where you will find answers to common questions, relevant documents filed in the case, plus other information. You may also write to: {{Notice Administrator, P.O. Box \_\_\_\_\_, CITY, ST ZIP}} or call {{1-XXX-XXX-XXXX}}.

Dated: \_\_\_\_\_, 202\_

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