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February 4, 2011

VIA EMAIL & CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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Re: Your Sands of Kahana Concerned Owners Committee

Dear Ms. Nelson and Messrs. Johnson, Cahill, Oliver, Podl and Solomon:

Our Office represents the Sands of Kahana Vacation Club (the "Vacation Club"). I am writing to you about concerns the Vacation Club has regarding (a) representations and/or statements made by *Your Sands of Kahana Concerned Owners Committee* (the "Group"), and (b) past and present use of names used by your Group.

As an initial matter, the Vacation Club recognizes and fully respects your Group's right to communicate with other owners at the Sands of Kahana resort. The

Group is certainly free to express its opinions, to comment on the performance of the Vacation Club Board, and to express dissatisfaction with how the Vacation Club is being run. The Vacation Club does, however, object to statements made by the Group that are substantially false and harm the reputation of the Vacation Club, its Board, and its members.

An example of these false statements appears in its open letter posted on the home page of one of your Group's websites¹ at www.sokco.info. The letter which begins by addressing the "Fellow Sands of Kahana Vacation Club Owners" contains the following paragraph:

Consolidated Resorts has control of our Vacation Club. They have three members on our Board, their corporate attorney, Glen Stockton, and two employees, Marcus Baricuatro and Johnnie Santiago. There are two Timeshare Owners on the Board, David Lint and Arthur (Chris) York. . . .

This excerpt contains two statements that are factually untrue. First, the Vacation Club is not under the control of Consolidated Resorts. Consolidated Resorts, Inc. ("CRI") was the selling agent for the developer of the Sands of Kahana Vacation Club. CRI is presently in the final stages of Chapter 7 bankruptcy. As such, the bankruptcy trustee controls the assets of CRI and the company has, for all intents and purposes, ceased operation. Accordingly, CRI does not control anything, much less the Vacation Club. Therefore, CRI has no control over the Vacation Club.

Second, Consolidated Resorts does not have a corporate lawyer or any employees on the Board of Directors of the Vacation Club. Mr. Stockton, Mr. Baricuatro and Mrs. Santiago have no current affiliation with CRI². Your Group's statement naming Glenn Stockton as the corporate attorney and Marcus Baricuatro and Johnnie Santiago as employees of Consolidated Resorts is therefore false and misleading.

Moreover, in looking at the website further, it becomes clear that your Group has been aware for at least fourteen months that the statements in their open letter are

¹ The Group maintains three websites located at www.sokco.info, www.sandsofkahanaowners.com and www.sands-of-kahana.com.

² Although this letter makes reference to Mr. Baricuatro as a member of the Vacation Club's board of directors, it should be noted that Mr. Baricuatro is no longer a member of the board.

untrue. In the "Current News" section of the website, under the heading, "November 2009," your Group acknowledged that CRI was in bankruptcy. In order to make its appeal to other timeshare owners who are part of the Vacation Club, your Group has taken the tack of disparaging members of the Board who have prior affiliations with CRI.

Your Group makes every effort to draw a distinction between "owners" and "management". To this end, your Group's website goes so far as to suggest that Board members with prior connections to CRI were not timeshare unit owners or Vacation Club members. This information is also wholly untrue. Every member of the Board of Directors is a timeshare unit owner.

Nonetheless, your Group's website posted the following comments, amongst others, by Charlie Johnson, your Group's Treasurer, because the Group felt they "needed to be shared with everyone." 1) "We need to have actual timeshare owners in control of OUR vacation club board;" and 2) "[w]e need to have actual timeshare, fractional, and whole owners in control of the AOA board."

Your Group's website doesn't stop there, however. Published comments by your Group's members on your website imply that the three former CRI employees on the Board were not lawfully on the Board. The statements in the "Current News" section of the website, under the heading, "April 2010," illustrate this point.

The Annual meeting was a travesty. At the very beginning Lane Amlin, Board Member and timeshare owner, made a Point of Order that there were three (3) members present on the Board of Directors who were not legally there and should be removed as they were not members of the Vacation Club because the developer had filed Chapter 7 Bankruptcy. . . .

He made a second Point of Order that he was going to take over the chairmanship of the meeting and asked the three (3) ex CRI employees to please leave. . . .

The import of these statements suggests that these individuals were on the Board merely to represent the interests of CRI and not timeshare owners; and since CRI had filed for Chapter 7 bankruptcy, the three Board members were not legally on the Board.

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These attacks clearly intend to impugn the character of the three former CRI employees who were duly elected Board members, timeshare owners and Vacation Club members.

We caution your Group about making such statements. Care needs to be taken when you publish statements on your website; the statements must be truthful and not defamatory in nature. Your right to criticize the Board does not permit you to make false statements that are intended to damage reputations. Such statements are actionable, especially when you are aware that those statements are untrue.

The Vacation Club, therefore, demands that you remove all untruthful statements from your literature, including your websites and any mailings whether electronic or otherwise, and cease and desist further dissemination of those false statements. Should you continue to disregard the cautions herein, be advised that the Vacation Club is prepared to take legal action to prevent you from damaging its reputation and those of its Board and its members.

With respect to past and present names used by your Group, the Group recently circulated an undated draft of a letter via the Internet which is signed "Your Sands of Kahana Concerned Owners Committee." (See enclosed letter). Use of this name violates state and federal trademark law. More importantly, this is not the first time your Group has been placed on notice regarding such violations. (See enclosed letter dated March 12, 2007 from the law office of Hutchison & Steffen and addressed to "Carol Nelson and Sands of Kahana Owners Committee"). Based on the foregoing facts, demand is hereby made that you cease and desist use of the name "Your Sands of Kahana Concerned Owners Committee" or any other name which infringes on the Club's trademark or implies that your Group is an authorized committee of the Club.

Very truly yours,

EKIMOTO & MORRIS, L.L.C.

By 

RICHARD S. EKIMOTO
DAN C. OYASATO

RSE:DCO:tlk

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Enclosure

Copy: Ms. Carol Nelson (via USPS first class mail)
Mr. Charlie Johnson (via USPS first class mail)
Mr. Jim Cahill (via USPS first class mail)
Mr. John Oliver (via USPS first class mail)
Mr. Tom Podl (via USPS first class mail)
Mr. Jay Solomon (via USPS first class mail)
Sands of Kahana Vacation Club (via email)

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