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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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COMMISSIONERS

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Arizona Corporation Commission

DOCKETED

SEP 02 2003

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AZ CORP COMMISSION
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In the matter of:

YUCATAN RESORTS, INC., d/b/a
YUCATAN RESORTS, S.A.,
3222 Mishawaka Avenue.
South Bend, IN 46615;
P.O. Box 2661
South Bend, IN 46680;
Av. Coba #82 Lote 10, 3er. Piso
Cancun, Q. Roo
Mexico C.P. 77500

RESORT HOLDINGS
INTERNATIONAL, INC., d/b/a
RESORT HOLDINGS
INTERNATIONAL, S.A.,
3222 Mishawaka Avenue
South Bend, IN 46615;
P.O. Box 2661
South Bend, IN 46680;
Av. Coba #82 Lote 10, 3er. Piso
Cancun, Q. Roo
Mexico C.P. 77500

WORLD PHANTASY TOURS, INC.,
a/k/a MAJESTY TRAVEL
a/k/a VIAJES MAJESTY
Calle Eusebio A. Morales
Edificio Atlantida, P Baja
APDO, 8301 Zona 7 Panama,

MICHAEL E. KELLY and LORI KELLY,
husband and wife,
3222 Mishawaka Avenue.
South Bend, IN 46615;
P.O. Box 2661
South Bend, IN 46680

Respondents.

DOCKET NO. S-03539A-03-0000

**SECURITIES DIVISION'S REPLY
IN SUPPORT OF MOTION TO AMEND
TEMPORARY ORDER TO CEASE
AND DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

1 Amendments to pleadings shall be liberally allowed. *See, e.g., Owen v. Superior Court of*
2 *State of Ariz., In and For Maricopa County*, 133 Ariz. 75 (1982) (*en banc*); *Frank v. Solomon*, 94
3 Ariz. 55 (1963); *Boyle v. Webb*, 54 Ariz. 188 (1939); *MacCollum v. Perkinson*, 185 Ariz. 179
4 (App.1996); *Schmidt v. Mel Clayton Ford*, 124 Ariz. 65 (App.1979); *Cathemer v. Hunter*, 27
5 Ariz.App. 780 (1976); *Green Reservoir Flood Control Dist. v. Willmoth* 15 Ariz.App. 406 (1971).
6 Respondents Resort Holds International, Inc, Resort Holdings International, S.A, Yucatan Resorts,
7 Inc., and Yucatan Resorts, S.A., (collectively “Objecting Respondents”), have offered nothing of
8 substance to suggest that the Securities Division’s Motion to Amend Temporary Order to Cease and
9 Desist (“Motion to Amend”) necessitates a departure from this long-standing legal principal. It
10 follows that the Securities Division’s Motion to Amend should be granted.

11 ***The Objecting Respondents’ Arguments are Baseless***

12 Objecting Respondents set forth a rambling series of reasons why the Securities Division’s
13 Motion to Amend should be denied. Their first apparent objection rests on the claim that the
14 Securities Division (“Division”) has displayed an “utter lack of investigation” into this case. Of
15 course, the Objecting Respondents are oblivious to the level and scope of investigation conducted
16 by the Division in this case. Moreover, a request for leave to amend a pleading hardly rests upon
17 the objecting party’s specious assessment as to the degree of investigation placed into a matter. *Cf.*
18 *Owen*, 133 Ariz. at 79 (trial on the merits of a claim is favored, and amendments will be permitted
19 unless there has either been undue delay, dilatory action, or undue prejudice).

20 The Objecting Respondents subsequently urge that the Motion to Amend should be denied
21 on bad-faith and futility grounds. With respect to their accusations of Division “bad faith,” the
22 Objecting Respondents entirely fail to explain how the Division’s attempt to add an additional party
23 to a Temporary Order to Cease and Desist could possibly rise to the level of bad faith. If the
24 motives for the Division’s Motion to Amend are being impugned, Objecting Respondents could at
25 least provide a single basis for reaching such an inflammatory conclusion. On this point, Objecting
26 Respondents offer nothing.

1 Objecting Respondents also challenge the Division’s Motion to Amend on the grounds of
2 “futility.” In short, this claim is premised on an alarming misapprehension that Avalon Resorts is
3 actually “non-existent.” In fact, and as discussed in greater depth below, the entity that the Division
4 has sought to add through its Motion to Amend has a Chairman, a Chief Executive Officer, over
5 150 employees, advertising literature, and a physical corporate address. In promotional literature,
6 Avalon Resorts also refers to itself as a corporation. In light of these facts, Objecting Respondents’
7 opposition to the Motion to Amend on the basis of non-existence is particularly remarkable.

8 ***Avalon Resorts is an existing entity***

9 The crux of Objecting Respondents’ opposition rests on the proposition that Avalon Resorts,
10 the entity the Division seeks to add in this matter, is actually a mere trade name. Without offering a
11 shred of evidence to support this assertion, the Objecting Respondents instead remind us that “a
12 trade name is descriptive of the manufacturer or dealer himself and applies to a business and its
13 good will.” Citing the Lantham Act, Objecting Respondents go so far as to educate us that “trade
14 names are recognized and protected intellectual property rights.” We are even advised that it is
15 legal to use a trade name. The Division does not take issue with Objecting Respondents’
16 spontaneous lesson on trade names, but this information simply has no bearing on the Division’s
17 Motion to Amend. In this instance, the single relevant question is whether Avalon Resorts is an
18 actual entity subject to service. It is readily apparent – based on the evidence amassed during the
19 Division’s investigation into this matter – that Avalon Resorts is indeed an existing entity. It is
20 equally apparent that Avalon Resorts is operating squarely within the framework of the Universal
21 Lease Program that is the subject of this entire action.

22 Avalon Resorts has generated or otherwise disseminated a number of business-related items,
23 promotional materials and other related documentation. In doing so, Avalon Resorts has plainly
24 established itself as an active business associated with the Universal Lease Program. For instance,
25 Avalon Resorts promotional literature lists Respondent Michael E. Kelly as the chairman of Avalon
26 Resorts. Elsewhere, company documents list Michael Kelly, Jr., as the company’s Chief Executive

1 Officer. In an Avalon Resorts promotional magazine, Michael Kelly, Jr., states, while referring to
2 Avalon Resorts and Bluewater Adventures: "in combining these two companies, guests will get the
3 best of both land and sea in Cancun." An Arizona recruiter of sales agents for the Universal Lease
4 program also disseminated his Avalon Resorts business card to potential agents. In other
5 documents, Avalon Resorts lists two corporate offices in the United States, one of which matches
6 the corporate address of two of the Objecting Respondents. In the winter of 2001-2202, Avalon
7 Resorts also issued a "corporate newsletter." In an "Avalon Update" section of this literature, the
8 newsletter boasts "In just a few short years, Avalon Resorts has become one of the fastest growing
9 hospitality corporations in all of Latin America." Recipients of this corporate newsletter were
10 Universal Lease investors.

11 Suffice it to say that there is compelling evidence to indicate that Avalon Resorts is an
12 existing entity with direct ties to both other Respondents in this matter and to the Universal Lease
13 program itself. Under the circumstances, it is evident that, under the liberal standards for granting
14 leave to amend pleadings, the Division should be readily allowed to amend its Temporary Order to
15 Cease and Desist to include this undoubtedly implicated party.

16 ***The Demand for "Specific Allegations" is neither Appropriate nor Ripe***

17 Objecting Respondents finally charge that the allegations in the Division's First Amended
18 Temporary Order to Cease and Desist fail to allege specific violations against Avalon Resorts. This
19 argument is misplaced on multiple levels. Instantly, Objecting Respondents have no standing to
20 challenge or object to the sufficiency of allegations against an entity that they do not represent and
21 claim not to know. Moreover, any challenge to the legal sufficiency of the Division's First
22 Amended Temporary Order is necessarily premature at this time. The Motion at issue is the
23 Division's Motion to Amend, not the veracity or sufficiency of the allegations contained in a
24 proposed amended pleading.

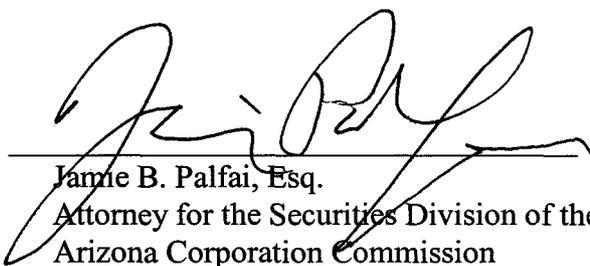
25 As a final point, the Division's Temporary Order as directed against Avalon Resorts is
26 sustainable if the allegations in this Temporary Order allege any of 1) direct securities fraud; 2)

1 indirect securities fraud; 3) securities registration violations; and/or 4) participant liability in
2 connection with the aforementioned registration violations. In this Temporary Order, Avalon
3 Resorts' conduct, as alleged, supports one if not several of these violations. Accordingly, and
4 although not relevant at this time, the factual allegations directed against Avalon Resorts in the
5 Division's First Amended Temporary Order are readily sufficient, from a legal standpoint, to
6 support the Temporary Order against Avalon Resorts.

7 ***Conclusion***

8 Objecting Respondents ultimately rely on tired "Rule 11" threats to challenge the Division's
9 Motion to Amend. Quite frankly, these harrying tactics fail to advance the Objecting Respondents'
10 position in any meaningful way. The well-recognized standard for evaluating a motion to amend a
11 pleading is based squarely on liberal considerations over undue prejudice, dilatory tactics and undue
12 delay. None of these factors are at issue in this particular instance, and as such, the Division's
13 Motion to Amend Temporary Order to Cease and Desist in this matter should be summarily
14 GRANTED.

15 RESPECTFULLY SUBMITTED this 2nd day of September, 2003.

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18 By: 
19 Jamie B. Palfai, Esq.
20 Attorney for the Securities Division of the
21 Arizona Corporation Commission
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1 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
filed this 2nd day of September, 2003, with

2 Docket Control
3 Arizona Corporation Commission
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6 COPY of the foregoing hand-delivered this
7 2nd day of September, 2003, to:

8 Mr. Marc Stern
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12 COPY of the foregoing mailed
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