

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 (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, entering into transactions with Wyndham-related entities and maintaining a significant surplus sum of money in the Trust’s Fund account (a “Fund Balance”) that it should have returned to Club Members.

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:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:	
Do Nothing	Stay in this lawsuit. Await the outcome. Give up certain rights. 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.
Exclude Yourself by January 17, 2022	Get out of this lawsuit. Get no benefits from it. Keep your rights. 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.CWPclassaction.com.

Questions? Call 1-855-675-3120 or visit www.CWPclassaction.com

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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 (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 (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, entering into transactions with Wyndham-related entities and maintaining a significant surplus sum of money in the Trust's Fund account (a "Fund Balance") 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.

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.CWPclassaction.com.

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

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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, entering into transactions with Wyndham-related entities and maintaining a significant surplus sum of money in the Trust's Fund account (a "Fund Balance") that it should have returned to Club Members. You can read Plaintiffs' Amended Complaint at www.CWPclassaction.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.CWPclassaction.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, 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.

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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.CWPclassaction.com or by calling 1-855-675-3120. 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 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

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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 January 17, 2022**, to:

Class Action Exclusion Request
Attn: Nolen et al. v. Fairshare Vacation Owners Association
P.O. Box 4778
Portland, OR 97208-4778

You may also get an Exclusion Request form at the website, www.CWPclassaction.com.

You cannot exclude yourself by phone, fax or email.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this 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, FL 33602 Telephone: (813) 223-5505 Facsimile: (813) 223-5402	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 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
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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.

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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 May 2, 2022. 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.

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 website at www.CWPclassaction.com, where you will find answers to common questions, relevant documents filed in the case, plus other information. You may also write to: Nolen v. Fairshare, Notice Administrator, P.O. Box 4778, Portland, OR 97208-4778 or call 1-855-675-3120.

Dated: December 3, 2021