

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

APR 21 2006

CLERK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

In re  
CNL HOTELS & RESORTS, INC. Case No. 6:04-cv-1231-Orl-31KRS  
Securities Litigation  
(Consolidated with 6:04-cv-1341-Orl-19JGG)

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**ORDER GRANTING PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

On April 3, 2006, the Lead Plaintiffs filed a Notice of Stipulation of Settlement and Motion for Preliminary Approval of Class Action Settlement [Doc. 239], together with a memorandum in support thereof [Doc. 240] (“Motion”).<sup>1</sup> The Stipulation of Settlement (with attached exhibits A-F) was attached to the Motion as Exhibit 1. A preliminary fairness hearing to consider the Motion was held on April 11, 2006 and continued until April 20, 2006. Plaintiffs made a Supplemental Filing in Connection with the Notice of Motion for Preliminary Approval of the Class Action Settlement and Plan of Allocation [Doc. 243] on April 17, 2006. Subsequent to the April 20, 2006 hearing, Plaintiffs filed a Supplemental Memorandum of Law Concerning Preliminary Approval of the Plan of Allocation [Doc. 246] on April 20, 2006. Upon consideration thereof, it is

**ORDERED** as follows:

1. The terms of the Stipulation of Settlement are preliminarily approved solely for the purpose of sending and publishing the Class Notice and the Summary Notice to the Class,

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<sup>1</sup> The Motion was originally filed under seal, and unsealed by Order of the Court on April 10, 2006 [Doc. 238].

subject to further consideration at the final hearing on the Settlement (“Final Settlement Hearing”) described in Paragraph 20 of this Order.<sup>2</sup>

2. The terms of the Plan of Allocation (attached to this Order as Exhibit 1) are preliminarily approved solely for the purpose of sending and publishing the Class Notice and Summary Notice to the Class, subject to further consideration at the Final Settlement Hearing.

3. The Court conditionally certifies for purposes of this Settlement only the following Classes in this Action, subject to further consideration at the Final Settlement Hearing:

- a. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), a class of all persons who were entitled to vote on the proposals presented in the proxy statement filed with the SEC by CNL Hotels & Resorts, Inc. (“CHR”), dated June 21, 2004, as amended or supplemented by the additional proxy solicitation materials filed on July 7, July 8, and July 20, 2004 (“Proxy Class”). Solely for purposes of this Settlement, the class representatives of the Proxy Class are Macomb County Employees’ Retirement System (“Macomb County ERS”) and Mary Campbell. Members of the Proxy Class shall not have the right to opt out of the Proxy Class, but may file objections to the proposed Settlement of the claims brought on behalf of the Proxy Class in accordance with Paragraph 15, herein.
- b. Pursuant to Fed. R. Civ. P. 23(a) and (b)(3), a class of all persons who purchased or otherwise acquired CHR securities issued or offered pursuant to or by means of CHR’s registration statements and/or prospectuses between August 16, 2001 and August 16, 2004, inclusive (“Purchaser

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<sup>2</sup> Capitalized terms in this Order shall have the same meaning as used in the Stipulation of Settlement unless otherwise indicated.

Class”). Solely for purposes of this Settlement, the class representatives of the Purchaser Class are Elizabeth Hawkins Barack Revocable Living Trust (“Barack Trust”), Raymond Roberts, Victor Libov, and Edwin Wong.

Members of the Purchaser Class shall be afforded an opportunity to object to the proposed Settlement of the claims brought on behalf of the Purchaser Class or opt-out of the Purchaser Class, in accordance with Paragraphs 14 and 15, herein.

The Purchaser Class and the Proxy Class are collectively referred to as the Class, which shall exclude Settling Defendants, the officers and directors of Settling Defendants, at all relevant times, members of each Individual Settling Defendant’s immediate family, any entity in which any Settling Defendant has a controlling interest, and the legal affiliates, representatives, heirs, controlling persons, successors and predecessors in interest or assigns of any such excluded person.

4. Pursuant to 15 U.S.C §§ 77z-1(a)(3)(B) and 78u-4(a)(3)(B), Plaintiff Macomb County ERS was appointed as Lead Plaintiff for the Proxy Class, the Barack Trust was appointed as Lead Plaintiff for the Purchaser Class, Chimicles & Tikellis LLP was appointed as Lead Litigation Counsel and Co-Lead Counsel, Labaton Sucharow & Rudoff LLP was appointed as Co-Lead Counsel for Macomb County ERS, and Wolf Haldenstein Adler Freeman & Herz LLP as Co-Lead Counsel for the Barack Trust.

5. Co-Lead Counsel are authorized to act on behalf of the Class with respect to all acts required by the Stipulation of Settlement or such other acts which are reasonably necessary to consummate the proposed Settlement set forth in the Stipulation of Settlement.

6. Co-Lead Counsel are hereby authorized to retain the firm of Complete Claim Solutions, Inc. as claims administrator (“Claims Administrator”) to supervise and administer the Class Notice and, if the Settlement is finally approved, to implement the Plan of Allocation.

7. CHR shall cooperate with Co-Lead Counsel and the Claims Administrator in responding to all reasonable requests for information in the possession, custody, or control of CHR, and needed to disseminate the Class Notice and Investment Data, or to prepare the Plan of Allocation.

8. CHR agrees to make available to Co-Lead Counsel and the Claims Administrator engaged by Co-Lead Counsel the person(s) most knowledgeable from CHR or CHR’s counsel, with respect to the shareholder data specified in Section VI.2 of the Stipulation of Settlement.

9. Named Plaintiffs, the Class, Plaintiffs’ Counsel, the Cash Settlement Fund, and the Claims Administrator’s reliance on such Investment Data is reasonable.

10. Named Plaintiffs, the Class, Plaintiffs’ Counsel, the Cash Settlement Fund, and the Claims Administrator shall be held harmless from any liability resulting from errors or inaccuracies in the Investment Data.

11. No later than May 12, 2006 (the “Notice Mailing Date”), Co-Lead Counsel shall cause to be mailed to all Class Members at their last known addresses, via first-class mail, the Class Notice, substantially in the form attached hereto as Exhibit 2. Class Notice will also be sent contemporaneously via electronic mail (“e-mail”) to members of the Class for which e-mail addresses are available.

12. No later than May 19, 2006 (the “Summary Notice Publication Date”), Co-Lead Counsel shall cause the Summary Notice to be published once in *The New York Times*, substantially in the form attached hereto as Exhibit 3.

13. Seven (7) days before the date fixed by this Court for the Final Settlement Hearing, Co-Lead Counsel shall cause to be filed with the Clerk of this Court affidavits or declarations of the person or persons under whose general direction the mailing of the Class Notice and publication of the Summary Notice were accomplished which affidavits shall verify that such mailing and publication were made in accordance with this Order.

14. The Court finds that dissemination of the Class Notice and Summary Notice pursuant to Paragraphs 11 and 12 above, (a) constitutes the best notice practicable under the circumstances, (b) constitutes due and sufficient notice of the Settlement and the Final Settlement Hearing to all persons entitled to receive such notice as Class Members, and (c) complies with due process and the notice requirements of the Federal Rules and any other applicable law.

15. For purposes of mailing the Class Notice, publishing the Summary Notice and processing and mailing the Investment Data, as provided in Paragraphs 11 and 12 above, the Claims Administrator or its designee shall lease and maintain one or more Post Office Boxes of adequate size for the receipt of all communications necessary for the administration of the Settlement. The Class Notice and Summary Notice shall designate the appropriate Post Office Box as the return address for the designated purposes. In addition, the Claims Administrator shall provide members of the Class with access to pertinent information via the internet.

16. For purposes of mailing the Class Notice, publishing the Summary Notice and processing and mailing the Investment Data, as provided in Paragraphs 11 and 12, CHR shall, within fifteen (15) business days from the date of entry of this Order, cause to be paid an amount not to exceed \$250,000 into the Settlement Fund Account, in accordance with Section III.6 of the Stipulation, to be used solely to cover costs and expenses relating to the printing and mailing of

the Class Notice, mailing the Investment Data form, and the publication of the Summary Notice. Such payments as are made which are consistent with this Order shall be on a non-recourse basis as to amounts actually expended or incurred so that Plaintiffs' Counsel, Named Plaintiffs and the Class shall have no responsibility or obligation to reimburse such expended amounts in the event the Effective Date does not occur.

17. The Class Notice will inform members of the Purchaser Class of their right to submit a request for exclusion from the conditionally certified Purchaser Class ("Opt-Outs"). The Class Notice will set forth that in order for a member of the Purchaser Class to be excluded from the Purchaser Class, he/she/it must send a letter by mail that: (a) includes a statement that the member of the Purchaser Class "requests exclusion from the Purchaser Class in *In re CNL Hotels & Resorts, Inc. Securities Litigation*, Case No. 6:04-cv-1231-Orl-31KRS"; (b) is signed by the CHR stockholder, and any joint purchasers; (c) includes the date(s), price(s), and number(s) of shares of all purchases and sales of CHR common stock made during the Purchaser Class Period; and (d) includes the name, address, and telephone number of the person seeking exclusion from the Purchaser Class. ("Exclusion Requests"). Exclusion Requests will not be accepted by phone or e-mail. Exclusion Requests must be postmarked on or before fourteen (14) days prior to the date fixed by this Court for the Final Settlement Hearing to:

*In re CNL Hotels & Resorts, Inc. Securities Litigation*  
c/o Complete Claim Solutions, Inc.  
EXCLUSIONS  
Claims Administrator  
P.O.Box 24706  
West Palm Beach, FL 33401  
(877) 318-6652

18. Any Class Member may appear at the Final Settlement Hearing in person or by counsel (if an appearance is filed and served as hereinafter provided) and may be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and

adequacy of the Settlement, the Plan of Allocation, the request for an award of Attorneys' Fees and Expenses of Plaintiffs' Counsel; provided, however, no person shall be heard in opposition to the Settlement and, if the Settlement is approved, the judgment entered thereon, and no papers or briefs submitted by any such person shall be accepted or considered by the Court unless, on or before fourteen (14) days prior to the date fixed by this Court for the Final Settlement Hearing, such Class Member: (a) has filed with the Clerk of the Court a notice of intention to appear together with a statement that indicates the basis for such opposition along with any supporting documentation, including proof of membership in the Class; and (b) has served copies of such notice, statement, and documentation together with copies of any other papers or briefs filed with the Court, either in person or by mail, upon the following counsel:

Lead Litigation Counsel:

CHIMICLES & TIKELLIS LLP  
Nicholas E. Chimicles, Esquire  
One Haverford Centre  
361 West Lancaster Avenue  
Haverford, PA 19041

Defendants' Counsel:

GREENBERG TRAURIG, LLP  
Kenneth A. Lapatine, Esquire  
The MetLife Building  
200 Park Avenue  
New York, NY 10166

ARNOLD & PORTER, LLP  
Scott B. Schrieber, Esquire  
555 Twelfth Street, NW  
Washington, DC 20004

19. Three (3) business days before the date fixed by this Court for the Final Settlement Hearing, Co-Lead Counsel shall cause to be filed with the Clerk of this Court: (a) a list of Opt-Outs who made timely and proper Exclusion Requests; and (b) a response to any timely filed objections to the Settlement, Plan of Allocation, or request for an award of Attorneys' Fees and Expenses of Plaintiffs' Counsel.

20. The Final Settlement Hearing shall be held before the undersigned at 1:00 p.m. on Wednesday, July 26, 2006, United States District Court for the Middle District of Florida, Courtroom No. 3, George C. Young U.S. Courthouse and Federal Bldg., 80 N. Hughey Avenue, Orlando, FL 32801, to consider: the fairness, reasonableness, and adequacy of the Stipulation of Settlement; the fairness, reasonableness, and adequacy of the Plan of Allocation; whether the Proxy Class and the Purchaser Class should be finally certified for purposes of Settlement; whether the Settlement should be finally approved; the entry of a Judgment dismissing the Action with prejudice; the request of Plaintiffs' Counsel for Attorneys' Fees and Expenses; and other related matters.

21. The Settling Defendants shall have no role in or responsibility for review or evaluation of the Plan of Allocation, but will be permitted to review the Plan of Allocation. The Settling Defendants will take no position with respect to such proposed Plan of Allocation, the Plan of Allocation being a matter separate and apart from the Settlement between the Parties, and accordingly, any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the Settlement, and the Released Persons shall have no liability with respect to any claim arising out of the Plan of Allocation.

22. Briefs in support of the Settlement and the Plan of Allocation and in support of the request for payment of Attorneys' Fees and Expenses of Plaintiffs' Counsel, claims administration costs, and all other matters (other than responses to timely filed objections) shall be filed with the Clerk of the Court on or before fourteen (14) days prior to the Final Settlement Hearing.

23. All members of the Class, except those members of the Purchaser Class who validly Opt-Out and submit timely Exclusion Requests, shall be bound by all determinations and



judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

24. Lead Litigation Counsel is hereby authorized to enter into the Escrow Agency Agreement (Exhibit B to the Stipulation of Settlement) with the Investment Agent to establish and operate the Settlement Fund, as described in the Stipulation of Settlement, in anticipation of the Final Settlement Hearing.

25. The Court reserves the right to adjourn the Final Settlement Hearing from time to time without further notice by adjournment announced in open court and to rule upon the Settlement, the Plan of Allocation or the award of Attorneys' Fees and Expenses to Plaintiffs' Counsel at any time after the Final Settlement Hearing.

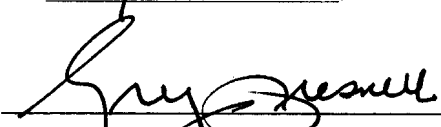
26. All proceedings in the Action, other than such as may be necessary to carry out the terms and conditions of the Stipulation of Settlement or the responsibilities related or incidental thereto, are stayed and suspended until further Order of this Court.

27. Pending resolution of these settlement proceedings, no other action now pending or hereafter filed arising out of all or any part of the subject matter of the Action shall be maintained as a class action, and, except as provided by this or further order of this Court, for good cause shown, all putative Class Members are hereby enjoined during the pendency of these settlement proceedings from filing or prosecuting purported class actions against any Released Person with respect to any of the Settled Claims.

28. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings in connection with the Settlement shall be without prejudice to the *status quo ante* rights of the Parties to the Action, except insofar as the Stipulation of Settlement expressly provides to the contrary.

29. Neither the Stipulation of Settlement nor the Settlement contained therein, nor any of the negotiations or proceedings connected with it, nor any act performed or document executed pursuant to or in furtherance of the Stipulation of Settlement or the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any Settled Claim, or of any wrongdoing or liability of the Released Persons; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

**DONE** and **ORDERED** in Chambers, Orlando, Florida on 4/21, 2006.

  
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GREGORY A. PRESNELL  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record  
Unrepresented Party