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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KYLE MILES and JASMINE MILES, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BLUEGREEN VACATIONS UNLIMITED, INC.,

Defendant.

Case No.:

CLASS ACTION

COMPLAINT FOR DAMAGES FOR VIOLATIONS OF

- 1. FLORIDA’S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (“FDUTPA”), FLA. STAT. §§ 501.201, ET.SEQ.**
- 2. FLORIDA FALSE ADVERTISING LAW, FLA STAT. §§ 817.40, ET SEQ.**
- 3. CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17500, ET SEQ,**
- 4. CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**
- 5. CONSUMERS LEGAL REMEDIES ACT, CAL. CIV. C. § 1750 ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

- 1
2 1. KYLE MILES and JASMINE MILES (“Plaintiffs”), by Plaintiffs’ attorneys,
3 brings this Class Action Complaint for damages, injunctive relief, and any other
4 available legal or equitable remedies, to challenge the illegal actions
5 BLUEGREEN VACATIONS UNLIMITED, INC. (“Defendant”) with regard
6 to Defendant’s misleading business practices, including the practice of making
7 and advertising false promises and statements with regards to its timeshare
8 contracts that it had no intention of honoring, that caused Plaintiff and other
9 consumers damages.
- 10 2. Plaintiffs make these allegations on information and belief, with the exception
11 of those allegations that pertain to Plaintiffs, or to a Plaintiffs’ counsel, which
12 Plaintiffs allege on personal knowledge.
- 13 3. While many violations are described below with specificity, this Complaint
14 alleges violations of the statutes cited in their entirety.
- 15 4. Unless otherwise stated, Plaintiffs allege that any violations by Defendant were
16 knowing and intentional, and that Defendant did not maintain procedures
17 reasonably adapted to avoid any such violation.
- 18 5. Unless otherwise indicated, the use of any Defendant’s name in this Complaint
19 includes all agents, employees, officers, members, directors, heirs, successors,
20 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of
21 that Defendant named.

JURISDICTION AND VENUE

- 22
23 6. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiffs, residents
24 of the State of California, seeks relief on behalf of a Nationwide class, which
25 will result in at least one class member belonging to a different state than that
26 of Defendant, a company whose principal place of business is in the State of
27 Florida and is incorporated in the State of Massachusetts. In addition, the matter
28 in controversy exceeds \$5,000,000 exclusive of interest of costs. Therefore,

1 both diversity jurisdiction and the damages threshold under the Class Action
2 Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3 7. Venue is proper in the United States District Court for the Eastern District of
4 California pursuant to 28 U.S.C. § 1391(c) because Defendant is deemed to
5 reside in any judicial district in which it is subject to personal jurisdiction at the
6 time the action is commenced; Defendant’s contacts with this District are
7 sufficient to subject it to personal jurisdiction; and, a substantial part of the
8 events giving rise to the claims occurred in this District.

9 **PARTIES**

10 8. Plaintiffs are both individuals who reside in the State of California and are each
11 a “person” and “consumer” as defined by Florida Deceptive and Unfair Trade
12 Practices Act, Fla. Stat. § 501.203; and are each a “person” as defined by Cal.
13 Bus. & Prof. Code § 17201.

14 9. Plaintiffs are informed and believe, and thereon allege, that Defendant is a
15 company whose State of Incorporation is in Massachusetts and whose principal
16 place of business is in the State of Florida.

17 10. Plaintiff is informed and believes, and thereon alleges, that Defendant is a
18 worldwide company that promotes and sells timeshare contracts.

19 **FACTUAL ALLEGATIONS**

20 11. At all times relevant, Plaintiffs are individuals residing within the State of
21 California.

22 12. Plaintiffs are informed and believe, and thereon allege, that at all time relevant,
23 Defendant conducted business in the State of Florida.

24 13. BlueGreen is a leader in the vacation ownership industry, and sells timeshare
25 contracts to consumers.

26 14. In or around December 2014, Plaintiffs attended a timeshare presentation in Las
27 Vegas, Nevada for BlueGreen Vacations Unlimited, Inc.

28 15. During this presentation, BlueGreen’s agent Margaret Lieberman represented

1 to all the consumers in the audience that if they were not satisfied with the
2 timeshare contracts BlueGreen was selling, BlueGreen would buy back the
3 contracts.

4 16. The presentation included other high intensity sales tactics to induce Plaintiffs
5 to enter into a timeshare contract, including claiming the presentation would
6 only last two hours when it in fact lasted over five hours in length.

7 17. Plaintiffs were told by BlueGreen that the timeshare contract would only cost
8 \$15,000 over five years at 15.99% interest.

9 18. In reality, BlueGreen's timeshare contract was for \$25,000 over ten years.

10 19. BlueGreen represented that the timeshare contract's maintenance fees would
11 never increase.

12 20. In reality, BlueGreen's maintenance fees increase on an annual basis.

13 21. Following the presentation, Plaintiffs were taken into a back room in which
14 another BlueGreen agent Stephen DOE read them the timeshare contract and
15 had them say "I agree." This entire process was audio recorded.

16 22. The terms contained within the timeshare contract are completely different from
17 the terms offered and promised during the timeshare presentation.

18 23. The timeshare contract contains a Florida Choice of Law provision.

19 24. Plaintiffs were also pressured by BlueGreen's agent to open two BlueGreen
20 credit cards, a Quorum Card and a Barclays Card, with a combined \$5,000 limit
21 and to put the entire \$5,000 down payment on the two cards.

22 25. Plaintiff alleges, on information and belief, that Defendant's representations
23 and advertisements during its timeshare presentations, in particular with regards
24 to the representation that the contract could be sold back, were propagated,
25 controlled, and/or profited from by Defendant, and that Defendant was
26 materially involved in their dissemination to the public.

27 26. Plaintiff alleges, on information and belief, that it is Defendant's common
28 practice to make these false representations and advertisements to consumers

1 as part of BlueGreen’s “hard sell” tactics to convince consumers to enter into
2 timeshare contracts.

3 27. Plaintiff alleges, on information and belief, that Defendant’s false advertising
4 causes significant and continuing harm to consumers who are unable to sell
5 back their timeshare contracts to BlueGreen despite Defendant’s
6 representations.

7 CLASS ALLEGATIONS

8 28. Plaintiffs brings this action on behalf of themselves, and on behalf of all others
9 similarly situated (“The Class”).

10 29. Plaintiffs represent, and are members of the following Class, defined as follows:

11 All persons in the United States that entered into a
12 timeshare contract with BlueGreen after Defendant made
13 representations as to the ability to sellback the timeshare
14 contract to Defendant.

15 30. Plaintiffs additionally represent, and are members of the following Sub-Class,
16 (the “Sub-Class”) defined as:

17 All persons in California that entered into a timeshare
18 contract with BlueGreen after Defendant made
19 representations as to the ability to sellback the timeshare
20 contract to Defendant.

21 31. Plaintiffs do not know the exact number of persons in the Class and Sub-Class,
22 but believes them to be in the several hundreds, if not thousands, making joinder
23 of all these actions impracticable.

24 32. The identity of the individual members is ascertainable through Defendant’s
25 and/or Defendant’s agents’ records or by public notice.

26 33. There is a well-defined community of interest in the questions of law and fact
27 involved affecting the members of The Class. The questions of law and fact
28 common to the Class predominates over questions affecting only individual
class members, and include, but are not limited to, the following:

a. Whether Defendant’s practices violate the Florida Deceptive and

1 Unfair Trade Practices Act, Fla. Stat. §§ 501.201 to 201.213
2 (“FDUPTA”);

3 b. Whether Defendant’s practices violate the Florida False Advertising
4 Law, Fla. Stat. §§ 817.40 et. seq.;

5 c. Whether Plaintiff and the Class are entitled to restitution under the
6 FDUPTA;

7 d. Whether Plaintiff and class members are entitled to declaratory relief,
8 injunctive relief and/or restitution under the FDUPTA and Florida False
9 Advertising Law, Fla. Stat. §§ 817.40 et. seq.;

10 e. The proper formula(s) for calculating and/or restitution owed to Class
11 members;

12 f. Whether members of the Class are entitled to statutory damages;

13 g. Whether members of the Class are entitled to declaratory relief; and,

14 h. Whether members of the Class are entitled to injunctive relief.

15 34. There is a well-defined community of interest in the questions of law and fact
16 involved affecting the members of The Sub-Class. The questions of law and
17 fact common to the Sub-Class predominates over questions affecting only
18 individual class members, and include, but are not limited to, the following:

19 a. Whether Defendant’s practices are “unfair” as defined by California
20 Business and Professions Code § 17200;

21 b. Whether Defendant’s practices are “illegal” as defined by California
22 Business and Professions Code § 17200;

23 c. Whether Defendant’s practices are “fraudulent” as defined by
24 California Business and Professions Code § 17200;

25 d. Whether such practices violate California Business and Professions
26 Code § 17200;

27 e. Whether Defendant violated California Bus. & Prof. Code § 17500, et
28 seq.

1 f. Whether Plaintiffs and the Sub-Class are entitled to restitution under
2 Cal. Bus. & Prof. Code §§ 17200-17203;

3 g. Whether Plaintiff and Sub-Class members are entitled to declaratory
4 relief, injunctive relief and/or restitution under Cal. Bus. & Prof. Code
5 § 17535, and,

6 h. The proper formula(s) for calculating and/or restitution owed to Sub-
7 Class members.

8 i. Whether members of the Sub-Class are entitled to statutory damages;

9 j. Whether members of the Sub-Class are entitled to declaratory relief;
10 and,

11 k. Whether members of the Sub-Class are entitled to injunctive relief.

12 35. Plaintiffs will fairly and adequately protect the interest of the Classes.

13 36. Plaintiffs have retained counsel experienced in consumer class action litigation
14 and in handling claims involving unlawful debt collection practices.

15 37. Plaintiffs' claims are typical of the claims of the Classes which all arise from
16 the same operative facts involving Defendant's practices.

17 38. A class action is a superior method for the fair and efficient adjudication of this
18 controversy.

19 39. Class-wide damages are essential to induce Defendant to comply with the
20 federal and State laws alleged in the Complaint.

21 40. The Classes members are unlikely to prosecute such claims on an individual
22 basis since the individual damages are small. Management of these claims is
23 likely to present significantly fewer difficulties than those presented in many
24 class claims.

25 41. Plaintiffs and the Classes seek injunctive relief against Defendant to prevent
26 Defendant from inducing consumers to enter into timeshare contracts with
27 terms it has no intention of honoring.

28 42. Defendant has acted on grounds generally applicable to the Classes thereby

1 making appropriate final declaratory relief with respect to the class as a whole.

2 43. Members of The Classes are likely to unaware of their rights.

3 44. Plaintiff contemplates providing notice to the putative class members by direct
4 mail in the form of a postcard and via publication.

5 45. Plaintiffs request certification of a hybrid class combining the elements of Fed.
6 R. Civ. P. 23(b)(3) for monetary damages and Fed. R. Civ. P. 23(b)(2) for
7 equitable relief.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF THE FLORIDA FALSE ADVERTISING LAW**

10 (Fla Stat. §§ 817.40 et seq.)

11 On Behalf of the Class

12 46. Plaintiffs incorporate by reference each allegation set forth above.

13 47. Pursuant to Florida Statutes § 817.40, et seq., it is unlawful to disseminate or
14 cause to be made or disseminated before the general public of the state, or any
15 portion thereof, any misleading advertisement. Such making or dissemination
16 of misleading advertising shall constitute and is hereby declared to be
17 fraudulent and unlawful, designed and intended for obtaining money or
18 property under false pretenses.

19 48. Pursuant to Florida Statutes § 817.41(4), “[t]here shall be a rebuttable
20 presumption that the person named in or obtaining the benefits of any
21 misleading advertisement or any such sale is responsible for such misleading
22 advertisement or unlawful sale.”

23 49. Defendant misled consumers by making misrepresentations and untrue
24 statements about the terms contained within its timeshare contracts and the
25 ability for those contracts to be surrendered or bought back, when in fact, the
26 written contracts contained no such terms and Defendant had no intention of
27 honoring its promises. Defendant failed to disclose to consumers, at the time
28 of the signing of the timeshare contracts, that the contracts were not able to be

1 surrendered or bought back. Defendant knew that its representations and
2 omissions were untrue and misleading, and deliberately made the
3 aforementioned representations and omissions in order to deceive reasonable
4 consumers like Plaintiffs and other Class Members into paying more for
5 something they reasonably believed they had already purchased.

6 50. As a direct and proximate result of Defendant's misleading and false
7 advertising, Plaintiff and the other Class Members have suffered injury in fact
8 and have lost money or property. Plaintiffs reasonably relied upon Defendant's
9 representations regarding the timeshare contract, namely that the timeshare
10 agreement was able to be surrendered or sold back. In reasonable reliance on
11 Defendant's false advertisements, Plaintiff and other Class Members entered
12 into the timeshare contracts. In turn, Plaintiff and other Class Members were
13 provided with a contract that turned out to be significantly different and
14 unavoidable such that they incurred long term costs, and therefore Plaintiff and
15 other Class Members have suffered injury in fact.

16 51. The misleading and false advertising described herein presents a continuing
17 threat to Plaintiffs and the Class Members in that Defendant persists and
18 continues to engage in these practices, and will not cease doing so unless and
19 until forced to do so by this Court. Defendant's conduct will continue to cause
20 irreparable injury to consumers unless enjoined or restrained. Plaintiffs are
21 entitled to preliminary and permanent injunctive relief ordering Defendant to
22 cease their false advertising, as well as disgorgement and restitution to Plaintiffs
23 and all Class Members Defendant's revenues associated with their false
24 advertising, or such portion of those revenues as the Court may find equitable.

25 **SECOND CAUSE OF ACTION**

26 **VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

27 (Fla Stat. §§ 501.201 et seq.)

28 On Behalf of the Class

1 52. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint
2 as though fully stated herein.

3 53. This cause of action is brought pursuant to the Florida Deceptive and Unfair
4 Trade Practices Act, Fla. Stat. §§ 501.201 to 201.213 (“FDUPTA”).

5 54. The express purpose of FDUTPA is to “protect the consuming public...from
6 those who engage in unfair methods of competition, or unconscionable,
7 deceptive, or unfair acts or practices in the conduct of any trade or commerce.”
8 FLA. STAT. § 501.202(2).

9 55. Section 501.204(1), FDUTPA declares as unlawful “unfair methods of
10 competition, unconscionable acts or practices, and unfair or deceptive acts or
11 practices in the conduct of any trade or commerce.”

12 56. The sale of the Products at issue in this cause was a “consumer transaction”
13 within the scope of FDUTPA.

14 57. Plaintiffs are “consumers” as defined by § 501.203, of the FDUTPA.

15 58. Defendant’s Products are goods within the meaning of FDUTPA and Defendant
16 is engaged in trade or commerce within the meaning of the FDUTPA.

17 59. Defendant’s unfair and deceptive practices are likely to mislead – and have
18 misled – reasonable consumers, such as Plaintiffs and members of the Class,
19 and therefore, violate § 500.04, of the FDUTPA.

20 60. Defendant has violated FDUTPA by engaging in the unfair and deceptive
21 practices described above, which offend public policies and are immoral,
22 unethical, unscrupulous and substantially injurious to consumers.

23 61. Defendant’s conduct has caused and continues to cause substantial injury to
24 Plaintiffs and members of the Class. Plaintiffs and members of the Class have
25 suffered injury in fact due to Defendant’s unilateral decision to not buyback its
26 timeshares. Thus, Defendant’s conduct has caused substantial injury to Plaintiff
27 and the members of the Class.

28 62. Moreover, Defendant’s conduct as alleged herein solely benefits Defendant

1 while providing no benefit of any kind to any consumer. Such deception
2 utilized by Defendant convinced Plaintiff and members of the Class that the
3 Defendant's timeshare would be cancellable or sellable back to Defendant at
4 any time. Thus, the injury suffered by Plaintiffs and the members of the Class
5 is not outweighed by any countervailing benefits to consumers.

6 63. The injury suffered by Plaintiffs and members of the Class is not an injury that
7 these consumers could reasonably have avoided. After Defendant, falsely and
8 universally represented that Defendant's timeshare contract was cancellable,
9 these consumers suffered injury in fact due to Defendant's refusal to permit
10 Plaintiff and Class members from cancelling their timeshare contracts. As such,
11 Defendant took advantage of Defendant's position of perceived power in order
12 to deceive Plaintiffs and the Class members to enter into long term binding
13 timeshare contracts with no ability to be canceled. Therefore, the injury
14 suffered by Plaintiffs and members of the Class is not an injury which these
15 consumers could reasonably have avoided.

16 64. Defendant failed to disclose to Plaintiffs or other consumers that it had no
17 intention of not honoring the representations it made in regards to the
18 cancellability of the timeshare contracts.

19 65. Here, not only were Plaintiffs and the Class members likely to be deceived, but
20 these consumers were actually deceived by Defendant. Such deception is
21 evidenced by the fact that Plaintiff agreed to enter into the timeshare contract
22 only to be surprised by Defendant's refusal to later permit cancellation or
23 sellback.

24 66. Plaintiffs' reliance upon Defendant's deceptive statements is reasonable due to
25 the unequal bargaining powers of Defendant and Plaintiff. For the same reason,
26 it is likely that Defendant's fraudulent business practice would deceive other
27 members of the public.

28 67. Defendant used false advertising, marketing, and misrepresentations, and
otherwise unlawfully induce Plaintiff and Class Members to enter into

1 timeshare contracts. Had Defendant not falsely advertised, marketed or
2 misrepresented its timeshare contracts, Plaintiffs and Class Members would not
3 have purchased the Class Products, or would have purchased an alternative and
4 appropriate product that provided the flexibility they believed they were
5 purchasing. Defendant's conduct therefore caused and continues to cause
6 economic harm to Plaintiffs and Class Members.

7 68. Plaintiffs and Class Members have been aggrieved by Defendant's unfair and
8 deceptive practices in violation of FDUTPA, in that they purchased and have
9 continued to be charged for Defendant's falsely advertised Products.

10 69. Reasonable consumers must and do rely on Defendant to honestly represent the
11 true nature of its products and services.

12 70. Defendant has deceived reasonable consumers, like Plaintiffs and the Class,
13 into believing the timeshare contracts was able to be canceled, by failing to
14 disclose it would not honor material terms made during its presentations,
15 including that the timeshare contracts would be cancellable or able to be sold
16 back.

17 71. The knowledge required to discern the true nature of the Products described
18 herein are beyond that of the reasonable consumer.

19 72. Plaintiffs and the Class suffered damages and are entitled to injunctive relief.
20 Thus, pursuant to sections 501.211(2) and 501.2105, Florida Statutes, Plaintiffs
21 and the Class make claims for damages, attorney's fees and costs.

22 73. The damages suffered by the Plaintiffs and the Class were directly and
23 proximately caused by the deceptive, misleading and unfair practices of
24 Defendant.

25 74. Pursuant to Section 501.211(1), Florida Statutes, Plaintiffs and the Class seek
26 injunctive relief for, inter alia, the Court to enjoin Defendant's above-described
27 wrongful acts and practices, and for restitution and disgorgement.

28
THIRD CAUSE OF ACTION

VIOLATION OF THE CALIFORNIA FALSE ADVERTISING ACT

(Cal. Bus. & Prof. Code §§ 17500 et seq.)

On Behalf of the Sub-Class

75. Plaintiff incorporates by reference each allegation set forth above.

76. Pursuant to California Business and Professions Code section 17500, et seq., it is unlawful to engage in advertising “which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

77. Defendant misled consumers by making misrepresentations and untrue statements about the terms contained within its timeshare contracts and the ability for those contracts to be surrendered or bought back, when in fact, the written contracts contained no such terms and Defendant had no intention of honoring its promises. Defendant failed to disclose to consumers, at the time of the signing of the timeshare contracts, that the contracts were not able to be surrendered or bought back. Defendant knew that its representations and omissions were untrue and misleading, and deliberately made the aforementioned representations and omissions in order to deceive reasonable consumers like Plaintiffs and other Sub-Class Members into paying more for something they reasonably believed they had already purchased.

78. As a direct and proximate result of Defendant’s misleading and false advertising, Plaintiff and the other Sub-Class Members have suffered injury in fact and have lost money or property. Plaintiffs reasonably relied upon Defendant’s representations regarding the timeshare contract, namely that the timeshare agreement was able to be surrendered or sold back. In reasonable reliance on Defendant’s false advertisements, Plaintiff and other Sub-Class Members entered into the timeshare contracts. In turn, Plaintiff and other Sub-Class Members were provided with a contract that turned out to be significantly different and unavoidable such that they incurred long term costs, and therefore

1 Plaintiff and other Sub-Class Members have suffered injury in fact.

2 79. The misleading and false advertising described herein presents a continuing
3 threat to Plaintiffs and the Sub-Class Members in that Defendant persists and
4 continues to engage in these practices, and will not cease doing so unless and
5 until forced to do so by this Court. Defendant's conduct will continue to cause
6 irreparable injury to consumers unless enjoined or restrained. Plaintiffs are
7 entitled to preliminary and permanent injunctive relief ordering Defendant to
8 cease their false advertising, as well as disgorgement and restitution to Plaintiffs
9 and all Sub-Class Members of Defendant's revenues associated with their false
10 advertising, or such portion of those revenues as the Court may find equitable.

11 **FOURTH CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

13 On Behalf of the Sub-Class

14 80. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
15 as though fully stated herein.

16 81. Actions for relief under the unfair competition law may be based on any
17 business act or practice that is within the broad definition of the UCL. Such
18 violations of the UCL occur as a result of unlawful, unfair or fraudulent
19 business acts and practices. A plaintiff is required to provide evidence of a
20 causal connection between a defendant's business practices and the alleged
21 harm--that is, evidence that the defendant's conduct caused or was likely to
22 cause substantial injury. It is insufficient for a plaintiff to show merely that the
23 defendant's conduct created a risk of harm. Furthermore, the "act or practice"
24 aspect of the statutory definition of unfair competition covers any single act of
25 misconduct, as well as ongoing misconduct.

26 **UNFAIR**

27 82. California Business & Professions Code § 17200 prohibits any "unfair ...
28 business act or practice." Defendant's acts, omissions, misrepresentations, and
practices as alleged herein also constitute "unfair" business acts and practices

1 within the meaning of the UCL in that its conduct is substantially injurious to
2 consumers, offends public policy, and is immoral, unethical, oppressive, and
3 unscrupulous as the gravity of the conduct outweighs any alleged benefits
4 attributable to such conduct. There were reasonably available alternatives to
5 further Defendant's legitimate business interests, other than the conduct
6 described herein. Plaintiff reserves the right to allege further conduct which
7 constitutes other unfair business acts or practices. Such conduct is ongoing and
8 continues to this date.

9 83. In order to satisfy the "unfair" prong of the UCL, a consumer must show that
10 the injury: (1) is substantial; (2) is not outweighed by any countervailing
11 benefits to consumers or competition; and, (3) is not one that consumers
12 themselves could reasonably have avoided.

13 84. Defendant's conduct has caused and continues to cause substantial injury to
14 Plaintiffs and members of the Sub-Class. Plaintiffs and members of the Sub-
15 Class have suffered injury in fact due to Defendant's unilateral decision to not
16 buyback its timeshares. Thus, Defendant's conduct has caused substantial
17 injury to Plaintiff and the members of the Sub-Class.

18 85. Moreover, Defendant's conduct as alleged herein solely benefits Defendant
19 while providing no benefit of any kind to any consumer. Such deception
20 utilized by Defendant convinced Plaintiff and members of the Sub-Class that
21 the Defendant's timeshare would be cancellable or sellable back to Defendant
22 at any time. Thus, the injury suffered by Plaintiffs and the members of the Sub-
23 Class is not outweighed by any countervailing benefits to consumers.

24 86. The injury suffered by Plaintiffs and members of the Sub-Class is not an injury
25 that these consumers could reasonably have avoided. After Defendant, falsely
26 and universally represented that Defendant's timeshare contract was
27 cancellable, these consumers suffered injury in fact due to Defendant's refusal
28 to permit Plaintiff and Sub-Class members from cancelling their timeshare
contracts. As such, Defendant took advantage of Defendant's position of

1 perceived power in order to deceive Plaintiffs and the Sub-Class members to
2 enter into long term binding timeshare contracts with no ability to be canceled.
3 Therefore, the injury suffered by Plaintiffs and members of the Sub-Class is not
4 an injury which these consumers could reasonably have avoided.

5 87. Defendant failed to disclose to Plaintiffs or other consumers that it had no
6 intention of not honoring the representations it made in regards to the
7 cancellability of the timeshare contracts.

8 88. Thus, Defendant's conduct has violated the "unfair" prong of California
9 Business & Professions Code § 17200.

10 **FRAUDULENT**

11 89. California Business & Professions Code § 17200 prohibits any "fraudulent ...
12 business act or practice." In order to prevail under the "fraudulent" prong of
13 the UCL, a consumer must allege that the fraudulent business practice was
14 likely to deceive members of the public.

15 90. The test for "fraud" as contemplated by California Business and Professions
16 Code § 17200 is whether the public is likely to be deceived. Unlike common
17 law fraud, a § 17200 violation can be established even if no one was actually
18 deceived, relied upon the fraudulent practice, or sustained any damage.

19 91. Here, not only were Plaintiffs and the Sub-Class members likely to be deceived,
20 but these consumers were actually deceived by Defendant. Such deception is
21 evidenced by the fact that Plaintiff agreed to enter into the timeshare contract
22 only to be surprised by Defendant's refusal to later permit cancellation or
23 sellback.

24 92. Plaintiffs' reliance upon Defendant's deceptive statements is reasonable due to
25 the unequal bargaining powers of Defendant and Plaintiff. For the same reason,
26 it is likely that Defendant's fraudulent business practice would deceive other
27 members of the public.

28 93. Thus, Defendant's conduct has violated the "fraudulent" prong of California
Business & Professions Code § 17200.

1 94. Defendant used false advertising, marketing, and misrepresentations, and
2 otherwise unlawfully induce Plaintiff and Sub-Class Members to enter into
3 timeshare contracts. Had Defendant not falsely advertised, marketed or
4 misrepresented its timeshare contracts, Plaintiffs and Sub-Class Members
5 would not have purchased the Class Products, or would have purchased an
6 alternative and appropriate product that provided the flexibility they believed
7 they were purchasing. Defendant's conduct therefore caused and continues to
8 cause economic harm to Plaintiffs and Sub-Class Members.

9 **FIFTH CAUSE OF ACTION**

10 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

11 (Cal. Civ. C. § 1750 et. seq.)

12 Individually

13 95. Plaintiff incorporates by reference each allegation set forth above.

14 96. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
15 California Civil Code Sections 1750 et seq. ("CLRA").

16 97. The CLRA has adopted a comprehensive statutory scheme prohibiting various
17 deceptive practices in connection with the conduct of a business providing
18 goods, property, or services to consumers primarily for personal, family or
19 household purposes. The self-declared purposes of the act are to protect
20 consumers against unfair and deceptive business practices and to provide
21 efficient and economical procedures to secure such protection.

22 98. The Defendant named herein is a "person" as defined by Cal. Civ. C. § 1761(c)
23 because it is a corporation and/or company as set forth above.

24 99. Plaintiffs are each a "consumer" within the meaning of Cal. Civ. C. § 1761(d)
25 because he and she each are an individual who purchased the services at issue
26 in this complaint for personal and/or household use.

27 100. The Timeshare Agreement is a "good" within the meaning of California Civil
28 Code § 1761 (a) in that it was a tangible products leased by Plaintiffs for
personal, family, and/or household use.

1 101. Plaintiffs' payments for the goods of the Timeshare Agreement is a
2 "transaction" as defined by Civil Code § 1761 (e) because Defendant entered into
3 an agreement to sell the product in exchange for Plaintiffs' monetary compensation.

4 102. Plaintiffs have standing to pursue this claim as both have suffered injury in fact
5 and have lost money as a result of Defendant's actions as set forth herein.
6 Specifically, Plaintiffs were induced to enter into a Timeshare Agreement with
7 Defendant. Had Defendant not falsely marketed, advertised or represented the
8 Timeshare Agreement, Plaintiffs would not have entered into the Timeshare
9 Agreement, and would have found an agreement an accurate and acceptable terms.

10 103. Section 1770(a)(9) of the CLRA prohibits anyone from "[a]dvertising goods or
11 services with intent not to sell them as advertised." Defendant falsely advertised and
12 marketed the Timeshare Agreement as inclusive of all price and terms when in fact
13 they sold, and intended to sell a Timeshare Agreement which had significantly
14 different terms and prices.

15 104. Section 1770(a)(14) of the CLRA prohibits anyone from "[r]epresenting that a
16 transaction confers or involves rights, remedies, or obligations which it does not
17 have or involve...." Defendant's acts and practices constitute misrepresentations
18 regarding the rights, remedies, or obligations of the Timeshare Agreement, namely,
19 that the agreement would be able to be surrendered at any time and was a certain
20 price.

21 105. Pursuant to section 1782 of the CRLA, Plaintiff notified Defendant in writing
22 by U.S. mail on June 10, 2016 of the particular violations of sections of the CLRA
23 and demanded that Defendant rectify the problems associated with the behavior
24 detailed above, which acts and practices are in violation of Civil Code section 1770.

25 106. Defendant has failed to adequately respond to Plaintiff's above-described
26 demands pursuant to Civil Code section 1782.

27 107. Plaintiffs have filed concurrently herewith the declaration of venue required by
28 Civil Code section 1780(d).

108. Plaintiffs seek an order enjoining the act and practices described above,

1 restitution of property, and any other relief that the court deems proper. Plaintiffs
2 additionally seek damages, restitutionary relief, punitive damages, attorneys' fees
3 and costs, and any other relief available under section 1780(a) of the CRLA.

4
5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff, and The Classes Members pray for judgment as follows:

- 7
- Certifying the Classes as requested herein;
 - Providing such further relief as may be just and proper.
- 8

9 In addition, Plaintiff, and The Classes Members pray for further judgment as
10 follows:

- 11
- restitution of the funds improperly obtained by Defendant;
 - Any and all statutory enhanced damages;
 - All reasonable and necessary attorneys' fees and costs provided by statute,
12 common law or the Court's inherent power;
 - for equitable and injunctive and pursuant to the Florida Deceptive and
13 Unfair Trade Practices Act, and California Business and Professions Code
14 § 17203; and,
 - any and all other relief that this Court deems just and proper.
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20 Dated: June 28, 2016

Law Offices of Todd M. Friedman

21 By: /s/ Todd M. Friedman
22 **Todd M. Friedman, Esq.**
23 Attorneys for Plaintiffs

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TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff and The Class are entitled to, and demand, a trial by jury.

Dated: June 28, 2016

Law Offices of Todd M. Friedman

By: /s/ Todd M. Friedman
Todd M. Friedman, Esq.
Attorneys for Plaintiffs

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