MICHAEL J. REISER, ESQ. (Bar No. 133621)
LILIA BULGUCHEVA, ESQ. (Bar. No. 291374)
REISER LAW, P.C.
1475 N. Broadway, Suite 300
Walnut Creek, California 94596
Telephone: (925) 256-0400
Facsimile: (925) 476-0304
Email: michael@reiserlaw.com
Email: lilia@reiserlaw.com

TYLER MEADE, ESQ. (Bar No. 160838)
SAMUEL FERGUSON, ESQ. (Bar No. 270957)
THE MEADE FIRM P.C.
1816 Fifth Street
Berkeley, California 94710
Telephone: (510) 843-3670
Facsimile: (510) 843-3679
Email: tyler@meadefirm.com
Email: sam@meadefirm.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

WILLIAM P. PETRICK and SHARON F. PETRICK, individually and as Trustees of the William and Sharon Petrick Revocable Trust dated August 20, 2002; HOWARD BAUTSCH and BRUCE SCHLUTER; BAYOU ST. JOHN PROPERTIES, LLC, a Louisiana limited liability company; NORMAN BIKALES and ANN BIKALES, individually and as Trustees of the Bikales Family Trust UAD October 31, 2006; GEORGE BOEDECKER, individually and as Trustee of the George B. Boedecker Trust; BRAD STOFFER; JEFFREY BOHN and BRENDA BOHN, individually and as Trustees of the Jeffrey R. and Brenda Bohn 2005 Revocable Trust; FRANK J. BONETTO and JAMIE S. BONETTO, individually and as Trustees of the Bonetto Trust Agreement dated	CASE NO. CGC 15-545987 **FOURTH AMENDED COMPLAINT FOR:** **BREACH OF FIDUCIARY DUTY;** **AIDING AND ABETTING;** **CONSTRUCTIVE FRAUD;** **PROMISSORY FRAUD;** **FOR AN ACCOUNTING;** **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**

October 28, 1991 and the 2014 Amended and Restated Bonetto Trust, dated September 26, 2014; STEPHEN BOWDEN and PAMELA BOWDEN; JAMES E. BRIGGS and IRMA T. BRIGGS, individually and as Trustees of the Briggs Family Trust dated December 18, 2004; ROBERT BRUNSWICK and KATHLEEN BRUNSWICK, individually and as Trustees of the Brunswick Revocable Family Trust dated December 16, 1998 and amended April 2, 2008; DAN V. LACKEY, individually and as Trustee of the 2004 Danny V. Lackey Living Trust; LACKEY INVESTMENTS, LLC, a North Carolina limited liability company; NANCY L. LACKEY, individually and as Trustee of the 2004 Nancy L. Lackey Living Trust; MARK P. BUTLER and CAROLYN J. BUTLER; PC Inc., a Nevada corporation; WILLIAM CAMPBELL and LINDA CAMPBELL, individually and as Trustees of the Campbell Family Trust U/D/T 03-16-1989; TIMOTHY CHENG and JUNIA CHU; SUAN C. CHEW, individually and as Trustee of the Suan Choo Chew 1997 Living Trust dated May 28, 1997 as amended and restated in 2002 and the Suan C. Chew Trust dated March 17, 2011; VIVIEN COHEN, individually and as Trustee of the Cohen Family Trust; GEORGE DAGRACA and PAULA DAGRACA; JOEL DAVIS and CYNTHIA DAVIS; LEROY DEAL and LISA DEAL; MARY DOBLEMAN and THOMAS DOBLEMAN; TOMARY LLC, a Nebraska limited liability company; THOMAS A. DOUD; MADELEINE S. FRANKEL; BERNARD FRIEDMAN and LESLIE FRIEDMAN; CRAIG S. GAINZA and SANDRA M. GAINZA, individually and as Trustees of the Gainza Family Trust, dated July 2, 2013; DENNIS A. GARDEMEYER and DENICE GARDEMEYER, individually and as

RESCISSION; and

UNJUST ENRICHMENT

JURY TRIAL DEMANDED

Trustees of the Gardemeyer Revocable Trust Dated March 10, 1993; RUPERT HALL and YVONNE HALL; KATHLEEN JANSSEN, individually and as Trustee of the KL Janssen Living Trust, UAD 7/26/2002; LYNN DIANE KARABINAS and CHRISTOS KARABINAS; CLK ENTERPRISES, LLC, an Arizona limited liability company; MICHAEL KELLY and WENDY KELLY; ROBERT LAVICHANT; WILLIAM LAWSON and CHARLENE LAWSON; SHERMAN F. LEVEY and DEBORAH RONNEN; DAVID LICHTMAN and FRANCES LICHTMAN; DAVID G. MESSERSCHMITT and DOROTHY MESSERSCHMITT, individually and as Trustees of the Messerschmitt Family Trust dated July 8, 1992; RICHARD J. METZLER, individually and as Trustee of the Richard J. Metzler Trust under agreement dated June 12, 1973; THOMAS MOORE and SUSAN MOORE, individually and as Trustees of the Moore Family Trust dated March 27, 1998; GEORGE E. MYERS and KATHLEEN H. MYERS; ROBERT A. ALTER, individually and as Trustee of the Robert A. Alter Trust; GARY PURCELL and ROSETTA PURCELL, individually and as Trustees of the Amore Trust dated May 24, 2000; THOMAS SAVARINO and GINGER BROWN, individually and as Trustees of the Savarino Brown Family Trust dated April 28, 1999; JOHN S. SEED and CATHERINE HANNA-SEED; ANDREW SISOLAK and KATHY KOBATA; JOHN A. STAFSNES and IATHAN T. ANNAND, individually and as Trustees of the John A. Stafsnes and Iathan T. Annand Living Trust dated April 25, 2005; RICHARD STRATTON; THOMAS J. SWANSON and CHRISTIE R. SWANSON, individually and as Trustees of the Swanson Enterprises Defined Benefit Pension Plan & Trust

dated January 1, 2007; SUSAN THOMAS, individually and as Trustee of the Leroy Thomas Jr. and Susan A. Thomas Trust, amended and restated in 2006, dated 11/7/2006 and the Leroy & S. A. Thomas Trust; ANDRE TOUMA and ROSELINE TOUMA, individually and as Trustees of the Touma Family Trust Agreement dated September 25, 1996; KEVIN VAUGHN and CHANDRA PASAMONTE; MISS MAE, LLC, a California limited liability company; DANIEL WEINER and LYNN GITOMER; JERALD WEINTRAUB and MELODY WEINTRAUB, individually and as Trustees of the Jerald M. Weintraub and Melody Howe Weintraub Revocable Living Trust dated February 5, 1998; PETER WELSH and SHIRLEY WELSH; JERRY WOOLF and VIRGINIA WOOLF; ARTHUR WOO and CHRISTINA A. WOO; ALAN M. ZNEIMER and ANN Y. ZNEIMER, individually and as Trustees of the Revocable Trust Declaration of Alan M. Zneimer & Ann Y. Zneimer Dated April 30, 2004; KENT R. ADAMSON and LAURIE B. ADAMSON, individually and as Trustees of the Adamson Family Trust Dated July 15, 2005; LEWIS CHEW and DIANNA L. CHEW; BRELEND C. GOWAN and STEPHANIE G. SAKAI; BRIAN L. HOEKSTRA and LORRAINE E. HOEKSTRA; EDWARD D. HON and MARY B. HON, individually and as Trustees of the Edward D. and Mary B. Hon Trust, Dated 9/21/1993; ROBERT McCORMICK and CHARLOTTE McCORMICK; KARL H. ROMERO, individually and as Trustee of the Karl H. Romero Revocable Family Trust and the Romero Family 1995 Trust; STEVEN D. SULLIVAN and SUSAN C. SULLIVAN; DOUGLAS E WEBBER and ROBIN M. WEBBER, individually and as Trustees of the Webber Family Trust Dated May 10, 2007; KENNETH A. BETHEL and JENNIFER D. BETHEL; GISELLE A.

PARRY and RAY K. FARRIS II; WESTWIND ENTERPRISES, LTD., a California limited liability company; THOMAS SULLIVAN,

Plaintiffs,

vs.

MARRIOTT VACATIONS WORLDWIDE CORPORATION, a Delaware corporation; MARRIOTT OWNERSHIP RESORTS, INC., d.b.a. MARRIOTT VACATION CLUB INTERNATIONAL, a Delaware corporation; RITZ-CARLTON DEVELOPMENT COMPANY, INC., a Delaware corporation; RITZ-CARLTON SALES COMPANY, INC., a Delaware corporation; RITZ-CARLTON MANAGEMENT COMPANY, LLC, a Delaware limited liability company; THE COBALT TRAVEL COMPANY, LLC, a Delaware limited liability company; R.C. CHRONICLE BUILDING, L.P., a Delaware limited partnership and DOES 1 THROUGH 50,

Defendants.

The following Plaintiffs, who include more than half of the remaining fractional owners at the Ritz-Carlton Club and Residences in San Francisco, bring this action based upon the investigation of counsel and information and belief: William P. Petrick and Sharon F. Petrick, individually and as Trustees of the William and Sharon Petrick Revocable Trust dated August 20, 2002; Howard Bautsch and Bruce Schluter; Bayou St. John Properties, LLC, a Louisiana limited liability company; Norman Bikales and Ann Bikales, individually and as Trustees of the Bikales Family Trust UAD October 31, 2006; George Boedecker, individually and as Trustee of the George B. Boedecker Trust; Brad Stoffer; Jeffrey Bohn and Brenda Bohn, individually and as Trustees of the of the Jeffrey R. and Brenda Bohn 2005 Revocable Trust; Frank J. Bonetto and

Jamie S. Bonetto, individually and as Trustees of the Bonetto Trust Agreement dated October 28, 1991 and the 2014 Amended and Restated Bonetto Trust, dated September 26, 2014; Stephen Bowden and Pamela Bowden; James E. Briggs and Irma T. Briggs, individually and as Trustees of the Briggs Family Trust dated December 18, 2004; Robert Brunswick and Kathleen Brunswick, individually and as Trustees of the Brunswick Revocable Family Trust dated December 16, 1998 and amended April 2, 2008; Dan V. Lackey, individually and as Trustee of the 2004 Danny V. Lackey Living Trust; Lackey Investments, LLC, a North Carolina limited liability company; Nancy L. Lackey, individually and as Trustee of the 2004 Nancy L. Lackey Living Trust; Mark P. Butler and Carolyn J. Butler; PC Inc., a Nevada corporation; William Campbell and Linda Campbell, individually and as Trustees of the Campbell Family Trust U/D/T 03-16-1989; Timothy Cheng and Junia Chu; Suan C. Chew, individually and as Trustee of the Suan Choo Chew 1997 Living Trust dated May 28, 1997 as amended and restated in 2002 and the Suan C. Chew Trust dated March 17, 2011; Vivien Cohen, individually and as Trustee of the Cohen Family Trust; George Dagraca and Paula Dagraca; Joel Davis and Cynthia Davis; Leroy Deal and Lisa Deal; Mary Dobleman and Thomas Dobleman; Tomary LLC, a Nebraska limited liability company; Thomas A. Doud; Madeleine S. Frankel; Bernard Friedman and Leslie Friedman; Craig S. Gainza and Sandra M. Gainza, individually and as Trustees of the Gainza Family Trust dated July 2, 2013; Dennis A. Gardemeyer and Denice Gardemeyer, individually and as Trustees of the Gardemeyer Revocable Trust Dated March 10, 1993; Rupert Hall and Yvonne Hall; Kathleen Janssen, individually and as Trustee of the KL Janssen Living Trust, UAD 7/26/2002; Lynn Diane Karabinas and Christos Karabinas; CLK Enterprises, LLC, an Arizona limited liability company; Michael Kelly and Wendy Kelly; Robert Lavichant; William Lawson and Charlene Lawson; Sherman F. Levey and Deborah Ronnen; David Lichtman and Frances Lichtman; David G. Messerschmitt and Dorothy Messerschmitt, individually and as Trustees of the Messerschmitt Family Trust dated July 8, 1992; Richard J. Metzler, individually and as Trustee of the Richard J. Metzler Trust under agreement dated June 12, 1973; Thomas Moore and Susan Moore, individually and as Trustees of the Moore Family Trust dated March 27, 1998; George E. Myers and Kathleen H. Myers; Robert A. Alter, individually and as Trustee

of the Robert A. Alter Trust; Gary Purcell and Rosetta Purcell, individually and as Trustees of the Amore Trust dated May 24, 2000; Thomas Savarino and Ginger Brown, individually and as Trustees of the Savarino Brown Family Trust; John S. Seed and Catherine Hanna-Seed; Andrew Sisolak and Kathy Kobata; John A. Stafsnes and Iathan T. Annand, individually and as Trustees of the John A. Stafsnes and Iathan T. Annand Living Trust dated April 25, 2005; Richard Stratton; Thomas J. Swanson and Christie R. Swanson, individually and as Trustees of the Swanson Enterprises Defined Benefit Pension Plan & Trust dated January 1, 2007; Susan Thomas, individually and as Trustee of the Leroy Thomas Jr. and Susan A. Thomas Trust, amended and restated in 2006, dated 11/7/2006 and the Leroy & S. A. Thomas Trust; Andre Touma and Roseline Touma, individually and as Trustees of the Touma Family Trust Agreement dated September 25, 1996; Kevin Vaughn and Chandra Pasamonte; Miss Mae, LLC, a California limited liability company; Daniel Weiner and Lynn Gitomer; Jerald Weintraub and Melody Weintraub, individually and as Trustees of the Jerald M. Weintraub and Melody Howe Weintraub Revocable Living Trust dated February 5, 1998; Peter Welsh and Shirley Welsh; Jerry Woolf and Virginia Woolf; Arthur Woo and Christina A. Woo; Alan M. Zneimer and Ann Y. Zneimer, individually and as Trustees of the Revocable Trust Declaration of Alan M. Zneimer & Ann Y. Zneimer Dated April 30, 2004; Kent R. Adamson and Laurie B. Adamson, individually and as Trustees of the Adamson Family Trust Dated July 15, 2005; Lewis Chew and Dianna L. Chew; Brelend C. Gowan and Stephanie G. Sakai; Brian L. Hoekstra and Lorraine E. Hoekstra; Edward D. Hon and Mary B. Hon, individually and as Trustees of the Edward D. and Mary B. Hon Trust, Dated 9/21/1993; Robert McCormick and Charlotte McCormick; Karl H. Romero, individually and as Trustee of the Karl H. Romero Revocable Family Trust and the Romero Family 1995 Trust; Steven D. Sullivan and Susan C. Sullivan; Douglas E. Webber and Robin M. Webber, individually and as Trustees of the Webber Family Trust Dated May 10, 1997; Kenneth A. Bethel and Jennifer D. Bethel; Giselle A. Parry and Ray K. Farris II; Westwind Enterprises, Ltd.; and Thomas Sullivan (collectively, “Plaintiffs”). Plaintiffs bring this action against the following Defendants: Marriott Vacations Worldwide Corporation; Marriott Ownership Resorts, Inc., d.b.a. Marriott Vacation Club International; Ritz-Carlton Development

Corporation; Ritz-Carlton Sales Company, Inc.; Ritz-Carlton Management Company, LLC; Cobalt Travel Company, LLC; and R.C. Chronicle Building, L.P. (collectively, "Defendants" or "Marriott").

INTRODUCTION AND BACKGROUND

1. This lawsuit concerns the Ritz-Carlton Club, San Francisco ("SF Ritz Residences"), a 24-story condominium project located at 690 Market Street. The building consists of mixed-use components, including 101 residential units, three commercial units, and common areas. Most of the residential units were sold as condominiums, but Defendants also marketed and sold 1/12th fractional interests in twenty[1] of the residential units known as "Club Interest Units." Plaintiffs are purchasers of fractional interests in these Club Interest Units. Each fractional interest (also known as a "Club Interest" or "Fractional Units") is worth 1/12th of a Club Interest Unit.

2. Over the last few years, Defendants, including Defendant Marriott Vacations Worldwide Corporation ("MVW") and its subsidiaries and affiliates, have unjustly enriched themselves by violating (or aiding and abetting in, or conspiring to violate) various fiduciary duties owed by certain Defendants to Plaintiffs. These violations of fiduciary duties and other wrongful conduct undercut the essential features of the fractional interests sold to Plaintiffs. This wrongful conduct has decimated the value of Plaintiffs' deeded property interests — there are no willing buyers for Club Interests.

3. Beginning in August 2007, Plaintiffs paid premium prices averaging over $250,000 for a 1/12th Club Interest at the SF Ritz Residences, based, *inter alia*, on Defendants' claims that: (a) the fractional interests were superior to mere timeshares and would, following sufficient sales to third party purchasers, be governed and operated as a member controlled residence club; (b) the fractional interests were like any other form of transferable real estate, akin to a "second home"; and (c) buyers would enjoy exclusive privileges. Then, over the

[1] Initially, Defendants contemplated selling and/or marketed fractional interests in more than 20 units, but Defendants later withdrew units from the fractional offering, and opted instead to sell the withdrawn units as non-fractionalized condominiums.

ensuing years, Defendants used their complete control over Plaintiffs' property and their homeowners association ("Club Interest Association") to self-deal and profit at Plaintiffs' expense, and took other unilateral action to render these promises and representations false, gut the value of the fractional interests that they sold to Plaintiffs, and profit at their expense.

4. The Plaintiffs are obligated to pay steadily increasing annual dues ("Annual Assessments") — now ranging from just under $20,000 per year for a one-bedroom unit and over $20,000 per year for two- and three-bedroom units. Because there are no willing buyers at any price, this liability is perpetual — that is, unless Plaintiffs relent and give their deeds back to Defendants for free. But Defendants do not always agree to take back the deeds. Several Plaintiffs have attempted to sell, found there were no buyers, and been refused when they asked Defendants to take back their deeds. Some have been sued by the Defendant-controlled Club Interest Association when they stopped paying their Annual Assessments. To paraphrase the lyrics of *Hotel California*, "you can check out anytime you like, but you can never leave [except when Marriott allows]."

5. Defendants have thwarted efforts by Plaintiffs to sell their fractional interests, driven the value of those interests to zero and otherwise breached their fiduciary duties with wrongful conduct described herein that includes, but is not limited to, the following:

a. First, despite statements to the California Department of Real Estate and the Securities & Exchange Commission ("SEC") that developer sales of the luxury Ritz-Carlton fractional units would continue, the developer, R.C. Chronicle Building, L.P. (which was itself controlled by Ritz-Carlton Development Company), opted to stop selling fractional interests at the SF Ritz Residences in order to retain control over the Club Interest Association, which allowed Marriott to perpetrate the misconduct alleged herein.

b. Second, after selling fractional interests to Plaintiffs at premium prices, Defendants unilaterally, and without a promised membership vote:[2] (i) merged the Marriott

[2] In a May 14, 2013 letter to Plaintiffs, MVW Chief Operating Officer Lee Cunningham stated: "we want to assure you that a Ritz-Carlton Club affiliation with Marriott Vacation Club Destinations will not take place unless there is an affirmative vote of each Club's membership."

Vacation Club, a competing timeshare program owned by MVW, with the Ritz-Carlton Club; and (ii) sold its unsold developer inventory to the Marriott Vacation Club. Both of these moves by the Defendants had the effect of giving hundreds of thousands of Marriott Vacation Club timeshare owners access to the same basic benefits at this San Francisco property at a fraction of what Plaintiffs paid, as well as adding luxury inventory to the Marriot Vacation Club. By paying a small fraction of the upfront costs of the Plaintiffs, as well as a small fraction of what the Plaintiffs pay in Annual Assessments, Marriott Vacation Club buyers have access to the same number of nights (21 annually) at the SF Ritz Residences at less than 20% of the cost. The affiliation also destroyed the structure of the Club, which was designed to allocate time to just a few hundred Club Members for twenty-one days over the course of the year. *See* CCRs § 1.3. The affiliation opened the club to transient usage, allowing hundreds of thousands of members of the Marriot Vacation Club to access the Club for as little as one night.

c. Third, Defendants made it impossible for Plaintiffs to list their properties through Ritz-affiliated brokers by, *inter alia*, closing the local Ritz sales office, and by ceasing altogether the sale of the Ritz fractional product, in favor of only selling the Marriott Vacation Club points product. This made it impossible for Plaintiffs to sell to a third-party buyer an integral part of what they originally purchased — membership in the Ritz-Carlton Membership Program — because Defendants informed those Plaintiffs who attempted to sell that the contractual terms that Defendants prepared and offered to Plaintiffs on a take-it-or-leave-it basis precluded third party buyers from participating in the Ritz-Carlton Membership Program unless they purchase their units from a Ritz-affiliated broker. Effectively, this allowed Defendants to control — and to prevent — all third-party sales.

d. Fourth, Defendants actively dissuaded people from buying Plaintiffs' fractional interests and instead steered them to their competing Marriott product. The experience of the Campbell Plaintiffs, who paid $255,000 for their fractional interest in 2007, is illustrative. They tried to sell their fractional interest for more than two years, engaging two separate real estate brokers, neither of whom found any willing buyers even after the Campbell Plaintiffs dropped their asking price to $150,000 and then to $90,000. When the few who inquired spoke

with Defendants about the transferability of benefits, Defendants said that they would not be able to participate in the Ritz-Carlton Membership Program unless they purchased through one of Defendants' brokers. Then, Defendants promoted the competing Marriott Vacation Points product.

6. There is nothing wrong with the condominiums themselves. They are highly desirable luxury units that, when sold as condominiums, command huge prices. In short, the fractional interests Plaintiffs purchased have lost all value not because of general trends in the market, but because of Defendants' breaches of fiduciary duties and other wrongful conduct. Luxury fractional interests at other developments in San Francisco and elsewhere have increased in value.

7. The number of fractional owners has dropped from a peak of approximately 163 to just over 100 now. While some have taken advantage of offers by Defendants to transfer their interests to other properties, many others — at least a dozen in early 2016 alone — have simply returned their deeds to Defendants for free. Others who re-financed and were unable to sell lost their units in foreclosure. Defendants benefit from this attrition because, as managed to their benefit, it allows them to regain control of luxury units for free and add units to their timeshare portfolio while continuing to receive substantial sums in Annual Assessments.

8. Defendants' business model can be summarized as follows: Sell fractional interests at premium prices; drive the value of the fractional interests to zero; regain possession of the units for free or at greatly reduced cost; do this over time while maintaining a flow of inflated Annual Assessments; and then resell the units in the booming San Francisco real estate market or subsume them in the larger Marriot Vacation Club timeshare program.

9. Plaintiffs are entitled to rescind their Purchase Contracts, whether Defendants' conduct was intentional, negligent, or entirely innocent. In rescission, Defendants must return all consideration paid to them by Plaintiffs, including the purchase price for each fractional interest and all subsequent annual fees. *See* Civ. Code § 1691(b)(1). Plaintiffs are also entitled to consequential damages in rescission, including but not limited to the loss of the time value of

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their money. Civ. Code § 1692. The filing of this complaint shall constitute an offer by Plaintiffs to return their deeds if rescission is granted.

10. In addition, Defendants acted in an unfair manner that interfered with Plaintiffs' rights to receive the benefits of their contracts with Defendants — a breach of the implied covenant of good faith and fair dealing.

11. Finally, at all times relevant herein, Defendants owed fiduciary duties to Plaintiffs arising out of Defendants' absolute control over the Club Interest Association, as well their control over the use rights of each individuals' Club Interest. Defendants breached these fiduciary duties primarily by controlling the Club Interest Association to advance their own interests at Plaintiffs' expense, as well as by using their control over the use-rights at the Club to favor their own interests rather than the interests of the Plaintiffs for whom they were acting as agents. Under standard principles of restitution, Defendants must disgorge the profits they obtained by breaching their fiduciary duties, or aiding and abetting breaches of fiduciary duties.

JURISDICTION AND VENUE

12. Jurisdiction and venue are proper in the Superior Court of the County of San Francisco, State of California pursuant to a contractual provision that requires litigation of disputes in that Court (and thus is a waiver of removal rights) and because the SF Ritz Residences is located in San Francisco, California.

DEFENDANTS

13. Defendant R.C. Chronicle Building, L.P. ("R.C. Chronicle") is a Delaware limited partnership, has a principal place of business at 6649 Westwood Boulevard, Suite 500, Orlando, Florida, and is authorized to do business in California. Defendant R.C. Chronicle is, and at all relevant times was, the primary developer and the seller of Club Interest Units at the SF Ritz Residences. The other Defendants identified herein are also developers and/or sellers by virtue of their conduct and/or the agency/alter ego/vicarious liability relationships that exist between Defendants.

14. Defendant Ritz-Carlton Development Company, Inc. ("Ritz-Carlton Development") is a Delaware corporation, has a principal place of business at 6649 Westwood

Boulevard, Orlando, Florida, and is authorized to do business in California. Defendant Ritz-Carlton Development developed the SF Ritz in a joint venture with R.C. Chronicle, and was the controlling member of the joint venture. Ritz-Carlton Development is also the sole owner, manager, and member of Defendant Cobalt and is responsible for the wrongful conduct alleged herein. Ritz-Carlton Development is a wholly-owned Marriott subsidiary.

15. Defendant Ritz-Carlton Sales Company, Inc. ("Ritz-Carlton Sales") is a Delaware corporation, has a principle place of business at 6649 Westwood Boulevard, Orlando, Florida, and is authorized to do business in California. At all relevant times, Defendant Ritz-Carlton Sales was a wholly-owned Marriott subsidiary, acted as the sales broker, and was otherwise involved in and responsible for the marketing and sale of the fractional interests at issue.

16. Defendant Ritz-Carlton Management Company, LLC is a Delaware limited liability company, has a principal place of business at 6649 Westwood Boulevard, Suite 500, Orlando, Florida, and is authorized to do business in California. At all relevant times, Defendant Ritz-Carlton Management Company was a wholly-owned Marriott subsidiary and the manager and operator of the SF Ritz Residences and the other Ritz-Carlton-branded properties included in the Ritz-Carlton Membership Programs.

17. Defendant Cobalt Travel Company, LLC ("Cobalt"), formerly known as the Ritz-Carlton Travel Company, LLC, is a Delaware limited liability company, has a principal place of business at 6649 Westwood Boulevard, Suite 500, Orlando, Florida, and is authorized to do business in California. Defendant Cobalt is a wholly-owned subsidiary of the Ritz-Carlton Development Company, Inc. Defendants R.C. Chronicle and Ritz-Carlton Management Company entered into an Affiliation Agreement with Defendant Cobalt pursuant to which the SF Ritz Residences and by extension its various owners, including Plaintiffs herein, became affiliated with and/or members of the Ritz-Carlton Membership Program. Defendant Cobalt is the Program Manager of the Ritz-Carlton Membership Program and also operates the reservation system through which Plaintiffs obtained use of their allotted number of days at the SF Ritz Residences and obtain access to the other facilities in the Ritz-Carlton Membership Program. Defendant Marriott Ownership Resorts, Inc., d.b.a. Marriott Vacation Club International

("MVCI"), is a Delaware corporation, has a principal place of business at 6649 Westwood Boulevard, Orlando, Florida, and is authorized to do business in California. Defendant MVCI was involved in and responsible for the wrongful conduct alleged herein.

18. Defendant Marriott Vacations Worldwide Corporation ("MVW") is a publicly-traded Delaware corporation with a principal place of business at 6649 Westwood Boulevard, Orlando, Florida. MVW is the parent company of the other Defendants and was involved in and responsible for the wrongful conduct alleged herein. MVW directly, and indirectly through wholly-owned subsidiaries, exerted control over the other Defendants, because, *inter alia*:

a. Ritz-Carlton Management Company and Cobalt were shell companies serviced by persons technically employed by MVW;

b. The costs and revenues generated in connection with the SF Ritz by Defendants were accounted for in MVW's consolidated financials; and

c. Employees providing services to the other Defendants were treated as MVW employees.

19. The Defendants named in this complaint purport to be independent entities, but in reality they are all related, and are owned and controlled by Defendant MVW. In particular, the injuries suffered by Plaintiffs arise from the acts of three of MVW's subsidiaries: Ritz-Carlton Development, Ritz-Carlton Management Company and Cobalt. The remaining defendants are liable as alter egos, co-conspirators, and/or aiders and abettors. Each defendant was aware that the other defendants planned to engage and were engaging in the wrongful conduct alleged in this Complaint, and agreed with the other defendants to commit that wrongful conduct.

20. The true names and capacities of the Defendants DOES 1 through 50, whether individual, corporate, associate or otherwise, are unknown to Plaintiffs at the time of filing this Complaint and Plaintiffs, therefore, sue said Defendants by such fictitious names and will ask leave of court to amend this Complaint to show their true names or capacities when the same have been ascertained. Plaintiffs are informed and believe, and therefore allege, that each of the DOE Defendants is, in some manner, responsible for the events and happenings herein set forth and proximately caused injury and damages to Plaintiffs as herein alleged.

21. Plaintiffs are informed and believe, and on that basis allege, that each Defendant named in this action, including each of the DOE defendants, was the agent, ostensible agent, servant, aider and abettor, co-conspirator, partner, joint venturer, representative and/or associate of each of the other Defendants, and was at all times relevant herein acting within the course and scope of his, her or its authority as agent, ostensible agent, servant, aider and abettor, co-conspirator, partner, joint venturer, representative and/or associate, and with the knowledge, authorization, consent, permission, and/or ratification of the other Defendants. On information and belief, all actions of each Defendant alleged herein were ratified and approved by the officers and/or managing agents of each other Defendant, whether DOE or otherwise. Each of the Defendants have interlocking or overlapping directors and/or officers with their respective principals or controlling entities, and are undercapitalized and/or spurious such that the corporate veil may be disregarded to prevent injustice and inequity to Plaintiffs.

22. Each and all of the Defendants (directly and/or indirectly through individual agents, representatives, employees, principals, officers, directors and members) (a) actively or passively participated in the conduct, acts and omissions alleged herein, (b) materially assisted, aided, abetted and/or conspired with one or more other Defendants in committing the conduct, acts, and omissions alleged herein, (c) purposely, knowingly, recklessly, or negligently planned, directed, implemented, furthered, and/or consented to conduct, acts and omissions alleged herein, and/or (d) is directly, vicariously, jointly, and/or severally liable for the conduct, acts, and omissions alleged herein.

PLAINTIFFS

23. Plaintiffs William P. Petrick and Sharon F. Petrick are competent adult residents of San Francisco County, California and Trustees of the William and Sharon Petrick Revocable Trust dated August 20, 2002 (collectively, the "Petrick Plaintiffs"). On or about September 5, 2007, the Petrick Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 302 from Defendants for $232,000.

24. Plaintiffs Howard Bautsch and Bruce Schluter are competent adult residents of New Orleans, Louisiana and managing and/or controlling members of Bayou St. John Properties,

LLC, a Louisiana limited liability company (collectively, the "Bautsch/Schluter Plaintiffs"). On or about September 12, 2007, the Bautsch/Schluter Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 404 from Defendants for $255,000.

25. Plaintiffs Norman Bikales and Ann Bikales are competent adult residents of Monterey County, California and Trustees of the Bikales Family Trust UAD October 31, 2006 (collectively, the "Bikales Plaintiffs"). The Bikales Plaintiffs purchased two fractional interests from Defendants. On or about August 24, 2007, they purchased an undivided 1/12th interest in Club Interest Unit No. 801 for $255,000. On or about November 1, 2007, they purchased an undivided 1/12th interest in Club Interest Unit No. 804 for $242,500.

26. Plaintiff George Boedecker is a competent adult resident of Boulder, Colorado and Trustee of the George B. Boedecker Trust (collectively, the "Boedecker Plaintiffs"). On or about August 24, 2007, Mr. Boedecker purchased an undivided 1/12th interest in Club Interest Unit No. 1201 from Defendants for $268,000.

27. Plaintiff Brad Stoffer is a competent adult resident of Lake Oswego, Oregon. On or about January 2, 2008, Mr. Stoffer and the Boedecker Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 804 from Defendants for $282,500.

28. Plaintiffs Jeffrey Bohn and Brenda Bohn are competent adults resident of Honolulu, Hawaii and Trustees of the Jeffrey R. and Brenda Bohn 2005 Revocable Trust (collectively, the "Bohn Plaintiffs"). On or about July 7, 2008, the Bohn Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 1002 from Defendants for $308,300.

29. Plaintiffs Frank J. Bonetto and Jamie S. Bonetto are competent adult residents of Contra Costa County, California and Trustees of the Bonetto Trust Agreement dated October 28, 1991 and the 2014 Amended and Restated Bonetto Trust, dated September 26, 2014 (collectively, the "Bonetto Plaintiffs"). The Bonetto Plaintiffs purchased two fractional interests from Defendants. On or about August 24, 2007, they purchased an undivided 1/12th interest in Club Interest Unit No. 302 for $189,500. On or about August 24, 2007, they purchased an undivided 1/12th interest in Club Interest Unit No. 405 for $249,000. The Bonettos later

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transferred title from the Bonetto Trust Agreement Dated 10/28/91 to the 2014 Amended and Restated Bonetto Trust, dated September 26, 2014.

30. Plaintiffs Stephen Bowden and Pamela Bowden are competent adult residents of San Diego County, California (collectively, the "Bowden Plaintiffs"). On or about August 24, 2007, the Bowden Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 404 from Defendants for $249,000.

31. Plaintiffs James E. Briggs and Irma T. Briggs are competent adult residents of Lone Tree, Colorado and Trustees of the Briggs Family Trust dated December 18, 2004 (collectively, the "Briggs Plaintiffs"). On or about April 21, 2008, the Briggs Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 802 from Defendants for $325,000. They had previously purchased a fractional interest in a smaller unit, but then upgraded to the fractional interest in 802.

32. Plaintiffs Robert Brunswick and Kathleen Brunswick are competent adult residents of Orange County, California and Trustees of the Brunswick Revocable Family Trust dated December 16, 1998 and amended April 21, 2008 (collectively, the "Brunswick Plaintiffs"). On or about April 21, 2008, the Brunswick Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 303 from Defendants for $239,000.

33. Plaintiff Dan V. Lackey is a competent adult resident of North Carolina, trustee of the 2004 Danny V. Lackey Living Trust, and the manager of Lackey Investments, LLC, a North Carolina limited liability company. Plaintiff Nancy L. Lackey is a competent adult resident of North Carolina, the wife of Dan Lackey, and Trustee of the 2004 Nancy L. Lackey Living Trust. (Collectively, Dan and Nancy Lackey, their respective trusts, and Lackey Investments, LLC are referred to as the "Lackey Plaintiffs.") On or about November 1, 2007, the Lackey Plaintiffs purchased two undivided 1/12th interests in Club Interest Unit No. 802 from Defendants for $309,000 each. The first was held in the name of Lackey Investments, LLC, and the second was held in the name of the two Lackey living trusts.

34. Plaintiffs Mark P. Butler and Carolyn J. Butler are competent adult residents of Napa County, California and the President and Vice-President, respectively, of PC Inc., a

Nevada corporation (collectively, the "Butler Plaintiffs"). On or about January 9, 2008, the Butler Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 302 from Defendants for $232,000. This factional interest was purchased by the Butlers individually.

35. On or about March 7, 2012, the Butler Plaintiffs (through PC Inc.) purchased an undivided 1/12th interest in Club Interest Unit No. 802 from the Lackey Plaintiffs (or more specifically, the two Lackey living trusts) for $100,000.

36. On or about May 17, 2012, the Butler Plaintiffs (through PC Inc.) purchased another undivided 1/12th interest in Club Interest Unit No. 802 from the Lackey Plaintiffs (or more specifically, Lackey Investments, LLC) for $50,000. On or about September 13, 2012, the Butler Plaintiffs resold this fractional interest to Javier Burillo and Rose Burillo.

37. Plaintiffs William Campbell and Linda Campbell are competent adult residents of Orange County, California and Trustees of the Campbell Family Trust U/D/T 03-16-1989 (collectively, the "Campbell Plaintiffs"). On or about August 24, 2007, the Campbell Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 305 from Defendants for $255,000.

38. Plaintiffs Timothy Cheng and Junia Chu are competent adult residents of Alameda County, California (collectively, the "Cheng/Chu Plaintiffs"). On or about August 24, 2007, the Cheng/Chu Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 1202 from Defendants for $288,000.

39. Plaintiff Suan C. Chew is a competent adult resident of Placer County, California, the Trustee of the Suan Choo Chew 1997 Living Trust dated May 28, 1997 as amended and restated in 2002, which was the original purchaser of a fractional interest, and Trustee of the Suan C. Chew Trust dated March 17, 2011, which is the current owner of record of that fractional interest (collectively, the "Suan Chew Plaintiffs"). On or about August 24, 2007, the Suan Chew Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 801 from Defendants for $288,000.

40. Plaintiff Vivien Cohen is a competent adult resident of Placer County, California and Trustee of the Cohen Family Trust (collectively, the "Cohen Plaintiffs"). Her husband, with

whom she originally purchased a fractional interest, is now deceased. On or about June 9, 2009, the Cohen Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 1002 from Defendants for $359,500. In 2013, Ms. Cohen transferred ownership of this fractional interest to the Cohen Family Trust.

41. Plaintiffs George Dagraca and Paula Dagraca are competent adult residents of Victor, New York (collectively, the "Dagraca Plaintiffs"). On or about August 24, 2007, the Dagraca Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 404 from Defendants for $237,000.

42. Plaintiffs Joel Davis and Cynthia Davis are competent adult residents of Boulder, Colorado (collectively, the "Davis Plaintiffs"). On or about January 2, 2008, the Davis Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 804 from Defendants for $297,000.

43. Plaintiffs Leroy Deal and Lisa Deal are competent adult residents of Reno, Nevada (collectively, the "Deal Plaintiffs"). On or about August 24, 2007, the Deal Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 302 from Defendants for $204,000.

44. Plaintiffs Mary Dobleman and Thomas Dobleman are competent adult residents of Omaha, Nebraska and managing and/or controlling members of Tomary LLC, a Nebraska limited liability company (collectively, the "Dobleman Plaintiffs"). On or about March 26, 2010, the Dobleman Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 309 from Defendants for $216,000.

45. Plaintiff Thomas A. Doud is a competent adult resident of Hong Kong. On or about August 24, 2007, Mr. Doud purchased an undivided 1/12th interest in Club Interest Unit No. 404 from Defendants for $249,000.

46. Plaintiff Madeleine S. Frankel is a competent adult resident of Santa Clara County, California. On or about July 3, 2008, Ms. Frankel purchased an undivided 1/12th interest in Club Interest Unit No. 301 from Defendants for $227,500.

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47. Plaintiffs Bernard Friedman and Leslie Friedman are competent adult residents of New York, New York (collectively, the "Friedman Plaintiffs"). On or about August 24, 2007, the Friedman Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 1202 from Defendants for $288,000.

48. Plaintiffs Craig S. Gainza and Sandra M. Gainza are competent adult residents of Fairfield, California and Trustees of the Gainza Family Trust, dated July 2, 2013 (collectively, the "Gainza Plaintiffs"). On or about August 24, 2007, the Gainza Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 1201 from Defendants for $268,000.

49. Plaintiffs Dennis A. Gardemeyer and Denice Gardemeyer are competent adult residents of El Dorado County, California and Trustees of the Gardemeyer Revocable Trust Dated March 10, 1993 (collectively, the "Gardemeyer Plaintiffs"). On or about December 1, 2008, the Gardemeyer Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 301 from Defendants for $239,000.

50. Plaintiffs Rupert Hall and Yvonne Hall are competent adult residents of San Joaquin County, California (collectively, the "Hall Plaintiffs"). On or about August 24, 2007, the Hall Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 305 from Defendants for $255,000.

51. Plaintiff Kathleen Janssen is a competent adult resident of San Joaquin County, California and Trustee of the KL Janssen Living Trust, UAD 7/26/2002 (collectively, the "Janssen Plaintiffs"). On or about August 24, 2007, the Janssen Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 1201 from Defendants for $288,000.

52. Plaintiffs Lynn Diane Karabinas and Christos Karabinas are competent adult residents of Arizona and managing and/or controlling members of CLK Enterprises, LLC, an Arizona limited liability company (collectively, the "Karabinas Plaintiffs"). Mr. Karabinas is President of CLK Enterprises. On or about January 2, 2008, the Karabinas Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 303 from Defendants for $232,000.

53. Plaintiffs Michael Kelly and Wendy Kelly are competent adult residents of Hyannis Port, Massachusetts (collectively, the "Kelly Plaintiffs"). On or about January 2, 2008,

the Kelly Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 804 from Defendants for $297,000.

54. Plaintiff Robert Lavichant is a competent adult resident of Las Vegas, Nevada and Thailand. On or about May 30, 2008, Mr. Lavichant purchased an undivided 1/12th interest in Club Interest Unit No. 803 from Defendants for $297,000.

55. Plaintiffs William Lawson and Charlene Lawson are competent adult residents of Clermont, Florida (collectively, the "Lawson Plaintiffs"). On or about August 24, 2007, the Lawson Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 405 from Defendants for $236,500.

56. Plaintiffs Sherman F. Levey and Deborah Ronnen are competent adult residents of Rochester, New York (collectively, the "Levey/Ronnen Plaintiffs"). On or about August 24, 2007, the Levey/Ronnen Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 302 from Defendants for $212,000.

57. Plaintiffs David Lichtman and Frances Lichtman are competent adult residents of Fort Worth, Texas (collectively, the "Lichtman Plaintiffs"). On or about October 19, 2010, the Lichtman Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 401 from Defendants for $127,500.

58. Plaintiffs David G. Messerschmitt and Dorothy Messerschmitt are competent adult residents of Contra Costa County, California and Trustees of the Messerschmitt Family Trust dated July 8, 1992 (collectively, the "Messerschmitt Plaintiffs"). On or about June 1, 2010, the Messerschmitt Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 404 from Defendants for $216,000. The Messerschmitt Plaintiffs were unable and/or unwilling to continue paying the substantial Annual Assessments and knew there were no willing buyers. They were also (rightfully) concerned about the impact that continued ownership would have on their heirs and/or estate. On or about December 23, 2014, Defendant R.C. Chronicle agreed to accept the Messerschmitts' deed, an accommodation not granted to all purchasers. This was achieved by means of a purchase agreement in which the purchase price was zero, such that the Messerschmitt Plaintiffs lost their entire initial investment.

59. Plaintiff Richard J. Metzler is a competent adult resident of Winnetka, Illinois and the Trustee of the Richard J. Metzler Trust under agreement dated June 12, 1973 (collectively, the "Metzler Plaintiffs"). On or about August 24, 2007, the Metzler Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 305 from Defendants for $268,000. In or about 2009, Mr. Metzler transferred his interest to the Richard J. Metzler Trust.

60. Plaintiffs Thomas Moore and Susan Moore are competent adult residents of Owls Head, Maine and Trustees of the Moore Family Trust dated March 27, 1998 (collectively, the "Moore Plaintiffs"). On or about August 24, 2007, the Moore Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 302 from Defendants for $212,000.

61. Plaintiffs George E. Myers and Kathleen H. Myers are competent adult residents of Napa County, California (collectively, the "Myers Plaintiffs"). On or about August 24, 2007, the Myers Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 404 from Defendants for $249,000.

62. Plaintiff Robert A. Alter is a competent adult resident of Orange County, California and a Trustee of the Robert A. Alter Trust (collectively, the "Alter Plaintiffs"). On or about August 24, 2007, the Alter Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 802 from Defendants for $309,000.

63. Plaintiffs Gary Purcell and Rosetta Purcell are competent adult residents of Los Angeles County, California and Trustees of the Amore Trust dated May 24, 2000 (collectively, the "Purcell Plaintiffs"). On or about March 3, 2008, the Purcell Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 401 from Defendants for $239,000.

64. Plaintiffs Thomas Savarino and Ginger Brown are competent adult residents of Santa Clara County, California and Trustees of the Savarino Brown Family Trust dated April 28, 1999 (collectively, the "Savarino/Brown Plaintiffs"). On or about August 24, 2007, the Savarino/Brown Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 301 from Defendants for $204,000.

65. Plaintiffs John S. Seed and Catherine Hanna-Seed are competent adult residents of Edmonton, Canada (collectively, the "Seed Plaintiffs"). On or about November 1, 2007, the

Seed Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 803 from Defendants for $288,000.

66. Plaintiffs Andrew Sisolak and Kathy Kobata are competent adult residents of Monterey County, California (collectively, the "Sisolak/Kobata Plaintiffs"). On or about November 1, 2007, the Sisolak/Kobata Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 803 from Defendants for $297,000.

67. Plaintiffs John A. Stafsnes and Iathan T. Annand are competent adult residents of Monterey County, California and Trustees of the John A. Stafsnes and Iathan T. Annand Living Trust dated April 25, 2005 (collectively, the "Stafsnes Plaintiffs"). On or about August 24, 2007, the Stafsnes Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 301 from Defendants for $204,000.

68. Plaintiff Richard Stratton is a competent adult resident of Reno, Nevada. On or about August 24, 2007, Mr. Stratton purchased an undivided 1/12th interest in Club Interest Unit No. 303 from Defendants for $232,000.

69. Plaintiffs Thomas J. Swanson and Christie R. Swanson are competent adult residents of Potomac, Maryland and Trustees of the Swanson Enterprises Defined Benefit Pension Plan & Trust dated January 1, 2007 (collectively, the "Swanson Plaintiffs"). On or about November 1, 2007, the Swanson Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 801 from Defendants for $297,000.

70. Plaintiff Susan Thomas is a competent adult resident of Alameda County, California, Trustee of the Leroy Thomas Jr. and Susan A. Thomas Trust, amended and restated in 2006, dated 11/7/2006, which was the original purchaser of a fractional interest, and Trustee of the Leroy & S. A. Thomas Trust, which is the current owner of record of that fractional interest (collectively, the "Thomas Plaintiffs"). Her husband, with whom she originally purchased a fractional interest, is now deceased. On or about August 24, 2007, the Thomas Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 304 from Defendants for $249,000. This purchase took place after the signatories to the Purchase Contract (Robert and Tracey Hirt) assigned their rights in that agreement to the Thomas Plaintiffs.

71. Plaintiffs Andre Touma and Roseline Touma are competent adult residents of San Mateo County, California and Trustees of the Touma Family Trust Agreement dated September 25, 1996 (collectively, the "Touma Plaintiffs"). On or about February 8, 2008, the Touma Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 802 from Defendants for $325,000. The Touma Plaintiffs had previously purchased a fractional interest in a smaller unit, but then upgraded to the fractional interest in unit 802.

72. Plaintiffs Kevin Vaughn and Chandra Pasamonte are competent adult residents of San Mateo County, California and members of (and with a controlling interest in) Miss Mae, LLC, a California limited liability company (collectively, the "Vaughn/Pasamonte Plaintiffs"). On or about September 28, 2007, the Vaughn/Pasamonte Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 405 from Defendants for $255,000.

73. Plaintiffs Daniel Weiner and Lynn Gitomer are competent adult residents of Contra Costa County, California (collectively, the "Weiner/Gitomer Plaintiffs"). Plaintiffs Jerald Weintraub and Melody Weintraub are competent adult residents of Contra Costa County, California and Trustees of the Jerald M. Weintraub and Melody R. Howe Weintraub Revocable Living Trust dated February 5, 1998 (collectively, the "Weintraub Plaintiffs"). On or about December 11, 2007, the Weiner/Gitomer Plaintiffs and the Weintraub Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 804 from Defendants for $297,000.

74. Plaintiffs Peter Welsh and Shirley Welsh are competent adult residents of Naples, Florida (collectively, the "Welsh Plaintiffs"). On or about November 1, 2007, the Welsh Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 803 from Defendants for $297,000.

75. Plaintiffs Jerry Woolf and Virginia Woolf are competent adult residents of Monterey County, California (collectively, the "Woolf Plaintiffs"). On or about April 1, 2010, the Woolf Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 405 from Defendants for $216,000.

76. Plaintiffs Arthur Woo and Christina A. Woo are competent adult residents of Santa Clara County, California (collectively, the "Woo Plaintiffs"). On or about November 1,

2007, the Woo Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 303 from Defendants for $232,000.

77. Plaintiffs Alan M. Zneimer and Ann Y. Zneimer are competent adult residents of Contra Costa County, California and Trustees of the Revocable Trust Declaration of Alan M. Zneimer & Ann Y. Zneimer Dated April 30, 2004 (collectively, the "Zneimer Plaintiffs"). On or about August 24, 2007, the Zneimer Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 1202 from Defendants for $255,000. The Zneimer Plaintiffs fell behind on their mortgage payments, and their mortgagor foreclosed in 2012, although the property remains in their name.

78. Plaintiffs Kent R. Adamson and Laurie B. Adamson are competent adult residents of Orange County, California, and Trustees of the Adamson Family Trust Dated July 15, 2005 (collectively, the "Adamson Plaintiffs"). On or about January 8, 2008, the Adamson Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 301 from Defendants for $232,000.

79. Plaintiffs Lewis Chew and Dianna L. Chew are competent adult residents of Santa Clara County, California (collectively, the "Lewis and Dianna Chew Plaintiffs"). On or about November 1, 2007, the Lewis and Dianna Chew Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 803 from Defendants for $297,000.

80. Plaintiffs Brelend C. Gowan and Stephanie G. Sakai are competent adult residents of Yolo County, California (collectively, the "Gowan/Sakai Plaintiffs"). On or about January 15, 2009, the Gowan/Sakai Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 401 from Defendants for $159,000.

81. Plaintiffs Brian L. Hoekstra and Lorraine E. Hoekstra are competent adult residents of Scottsdale, Arizona (collectively, the "Hoekstra Plaintiffs"). On or about June 25, 2010, the Hoekstra Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 401 from Defendants for $159,000.

82. Plaintiffs Edward D. Hon and Mary B. Hon are competent adult residents of Kamuela, Hawaii and Trustees of the Edward D. and Mary B. Hon Trust, Dated 9/21/1993

(collectively, the "Hon Plaintiffs"). On or about December 8, 2009, the Hon Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 304 from Defendants for $185,000.

83. Plaintiffs Robert McCormick and Charlotte McCormick are competent adult residents of Orange County, California (collectively, the "McCormick Plaintiffs"). On or about September 10, 2007, the McCormick Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 305 from Defendants for $237,000.

84. Plaintiff Karl H. Romero is a competent adult resident of Orange County, California, and was Trustee of the Romero Family 1995 Trust, which was the original purchaser of a fractional interest, and the Trustee of the Romero Karl H Family Trust, a subsequent owner of that fractional interest (collectively, the "Romero Plaintiffs"). On or about August 24, 2007, the Romero Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 305 from Defendants for $265,000. On or about July 6, 2010, the Romero Family 1995 Trust assigned the fractional interest to Karl H. Romero in his individual capacity. On or about January 15, 2015, Mr. Romero transferred the interest to the Romero Karl H. Family Trust by quitclaim deed, and on March 4, 2015, the interest was assigned to Karl H. Romero by quitclaim deed.

85. Plaintiffs Steven D. and Susan C. Sullivan are competent adult residents of Alameda County, California (collectively, the "Sullivan Plaintiffs"). On or about August 29, 2007, the Sullivan Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 405 from Defendants for $249,000.

86. Plaintiffs Douglas E. and Robin M. Webber are competent adult residents of Reno, Nevada and Trustees of the Webber Family Trust Dated May 10, 1997 (collectively, the "Webber Plaintiffs"). On or about January 2, 2008, the Webber Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 804 from Defendants for $297,000.

87. Plaintiffs Kenneth A. and Jennifer D. Bethel are competent adult residents of Stanislaus County, California (collectively, the "Bethel Plaintiffs"). On or about August 24, 2007, the Bethel Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 301 from Defendants for $199,000.

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88. Plaintiffs Giselle A. Parry and Ray K. Farris II are competent adult residents of Santa Clara County and managing and/or controlling members of Westwind Enterprises, Ltd., a California limited liability company (collectively, the "Parry/Farris Plaintiffs"). On or about August 24, 2007, the Parry/Farris Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 1201 from Defendants for $268,000.

89. Plaintiff Thomas Sullivan is a competent adult resident of San Francisco County, California and was a Trustee of the Sullivan Family Trust (collectively, the "Thomas Sullivan Plaintiffs"). On or about November 1, 2007, the Thomas Sullivan Plaintiffs purchased an undivided 1/12th interest in Club Interest Unit No. 801 from Defendants for $249,000.

90. Any releases signed and/or agreed to by any Plaintiffs (*e.g.*, the Messerschmitt Plaintiffs) are invalid because they were obtained by means of economic duress and/or were obtained without adequate disclosure of all relevant facts. Because Defendant R.C. Chronicle and/or the other Defendants controlled the Club Interest Association at the time of the releases, Defendants owed the releasing Plaintiffs a fiduciary duty that required them to disclose all material facts prior to obtaining the release. Their failure to do so gives rise to a presumption of fraud that negates the releases. *See Chung v. Johnston*, 128 Cal.App.2d 157, 163-165 (1954).

GENERAL ALLEGATIONS

A. History of Marriott's Timeshare Business.

91. In the 1980s, Marriott International, Inc. established Defendant Marriott Ownership Resorts Inc. d.b.a. Marriott Vacation Club International ("MVCI") to run Marriott's timeshare operations. In 1984, Marriott's Monarch on Hilton Head Island became the first MVCI resort. By 2009, MCVI had grown to over 400,000 timeshare owners. The evolution of this timeshare program, known as the "Marriott Vacation Club," is at the heart of this case.

92. Marriott International purchased a 49% interest in the Ritz-Carlton Hotel Company in 1995, and then purchased another 50% in 1999, giving Marriott International a 99% ownership interest in the Ritz-Carlton Hotel Company, but more importantly, ownership of the Ritz-Carlton brand. Ritz-Carlton is a highly valued brand associated with the Ritz-Carlton Hotel Company, which develops, sells, operates and manages luxury properties all over the world.

Over the years, the Ritz-Carlton has become the preferred hotel company among luxury hotel chains, based in large part on the prestige of its brand, luxurious amenities, and outstanding service.

93. In 1999, MVCI introduced "The Ritz-Carlton Club" (also known as "The Ritz-Carlton Destination Club" and the "Ritz-Carlton Membership Program"), as a luxury alternative which it described as its "luxury" product line, and which was distinct from its "Marriott Vacation Club" timeshare product, which it described as its "upscale" product line. Between 2001 and 2011, MVCI developed and sold approximately 3,200 deeded 1/12 luxury fractional interests under the Ritz-Carlton Club brand at the following nine locations: Aspen Highlands, Colorado; Bachelor Gulch, Colorado; Jupiter, Florida; North Lake Tahoe, California; St. Thomas, U.S.V.I.; Maui, Hawaii; Vail, Colorado; Abaco, Bahamas; and as relevant here, San Francisco, California.

94. Initially, the Ritz-Carlton Club and the Marriott Vacation Club were entirely distinct product lines in keeping with their differing benefits and target clientele, but Marriott could not resist using the highly valued "Ritz-Carlton" brand to increase the profitability of the Marriott Vacation Club.

95. In 2010 when MCVI began converting legacy owners of Marriott Vacation Club timeshares to a "points-based product" wherein purchasers bought interests in a land trust ("MVC Trust") set up by MVCI to own its resorts. By the end of 2011, many of the Marriott Vacation Club's over 400,000 owners at over 50 Marriott Vacation Club resorts worldwide were utilizing points purchased from MVCI to trade for use of Marriott Vacation Club resorts. Further, by the end of 2011, Marriott Vacation Club points were available for sale on the secondary market for a fraction of the cost at which MVCI sold them "new."

96. In November 2011, Marriott International, Inc. "spun-off" Defendant MVW as a separately traded public company, and MVW became the exclusive developer and manager of vacation ownership and related products under the Marriott brand and the exclusive developer of vacation ownership and related products under the Ritz-Carlton brand.

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97. In its first Annual Report filed with the SEC following the spin-off (dated March 21, 2012), MVW revealed its intent to abandon the upscale Ritz-Carlton product line, stating: "we have significantly scaled back our development of Luxury segment vacation ownership products. We do not have any Luxury segment projects under construction nor do we have any current plans for new luxury development. While we will continue to sell existing Luxury segment vacation ownership products, we also expect to evaluate opportunities for bulk sales of finished inventory and disposition of undeveloped land."

98. In a condominium without fractional units, the scope of a condominium association's fiduciary duties is circumscribed by the fact that the condominium association's authority covers only common areas and does not extend into control over the individual units. Here, however, a distinct set of governing documents establishes a *Club Interest Association.* Unlike a traditional homeowners association, which has authority only over common areas, the Club Interest Association (and by extension its designated agents, including Ritz-Carlton Management Company and Cobalt) has authority over the separately-deeded property interests (not just common areas) of each individual Club Interest owner. The scope of the fiduciary duties at issue here is, therefore, different from the normal condominium context because the scope of the Club Interest Association's authority over each Plaintiffs' fractional property interest is more extensive.[3]

99. The Developers, R.C. Chronicle and Ritz-Carlton Development assumed the Club Interest Association's fiduciary duties by retaining control over that association through the appointment of its employees or agents to a majority of the Club Interest Association board member positions.[4] Ritz-Carlton Management Company, an affiliate of Ritz-Carlton

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[3] *See Vai v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 56 Cal. 2d 329, 338 (1961) ("The key factor in the existence of a fiduciary relationship lies in control by a person over the property of another"); 34A Cal. Jur. 3d Fraud and Deceit § 13 (same); *United States v. Wilson*, 881 F.2d 596, 599 (9th Cir. 1989) ("A fiduciary relationship will 'arise[ ] when the Government assumes ... control over ... property belonging to Indians'").

[4] *See Raven's Cove Townhomes, Inc. v. Knuppe Development Co.*, 114 Cal.App.3d 783, 799-800 (1981) (holding developer owes fiduciary duties while it controls association board and

Development[5], assumed these same duties by contractually agreeing with the Club Interest Association to be the manager of the fractional units, with near absolute authority over almost every aspect of their use. These fiduciary duties are shared by Cobalt because Ritz-Carlton Management delegated its sweeping authority to Cobalt to run the Membership Program such that Cobalt became Ritz-Carlton Management's subagent.[6] The other defendants aided and abetted the breach of fiduciary duties by these three defendants.

B. Plaintiffs' Purchases of Fractional Interests at the SF Ritz Residences.

100. In the marketing materials, brochures, websites, and other sales materials that Defendants prepared and/or distributed and that Plaintiffs received and/or reviewed prior to their purchases, Defendants stressed the exclusivity and the prestige associated with ownership of fractional interests in units at the SF Ritz Residences and membership in the Ritz-Carlton Club, and their intention to undersell Club Interest Units so that Plaintiffs and other fractional buyers would have no difficulty using their contractually-allotted time. For example, one item of marketing material reads in pertinent part:

> ***For those who act decisively, the possibilities are endless.***
> ***Only a few will have the opportunity to become a Member of***
> ***The Ritz-Carlton Club, San Francisco***
>
> *The Ritz-Carlton Club is the most exclusive residence club in the world. We are building a system of Clubs in premier urban, beach, golf and ski locations. The Club*

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stating, "Thus, a developer and his agents and employees who serve as directors of an association . . . may not make decisions for the Association that benefit their own interests at the expense of the association and its members"); *Cohen v. S & S. Construction Co.*, 151 Cal.App.3d 941, 945 (1983) ("This fiduciary duty extends to individual homeowners, not just the homeowners association").

[5] The RC Development signed the management agreement on June 15, 2006 as RC Management's sole member.

[6] *See Streit v. Covington & Crowe*, 82 Cal.App.4th 441, 446, fn. 3 (2000) ("if an agent is authorized by the principal to employ a subagent, the subagent owes the same duties to the principal as does the agent"); *Sequoia Vacuum Systems v. Stansky*, 229 Cal.App.2d 281, 287 (1964) ("Every agent owes his principal the duty of undivided loyalty. During the course of his agency, he may not undertake or participate in activities adverse to the interests of his principal").

was designed by Ritz-Carlton loyalists, creating a combined vision of second home ownership with the legendary services of the Ritz-Carlton staff.

The Ritz-Carlton Club, San Francisco is an offering of one and two bedroom luxurious residences where the benefits of private second-home ownership are complimented by the legendary services of the Ritz Carlton Hotel Company. Each fractional interest is deeded in perpetuity and becomes part of your estate. Your interest may be enjoyed, willed or sold as you would with most any Real Estate.

Membership Privileges

…

- *The Club residences are intentionally undersold to accommodate for greater flexibility (16 unsold weeks in each residence-112 days per Residence)*
- *To maximize leisure-time usage, you may use your allocated time in San Francisco or any other Ritz-Carlton Club on a space available basis at no additional cost.*

…"

The Ultimate in Luxury

- *As member you will receive the legendary service of The Ritz Carlton Hotel, complimented [sic.] by the exclusive amenities for Members only.*

…

- *You will enjoy the piece [sic.] of mind knowing your residence is managed by The Ritz-Carlton; the world's premier provider of luxury assets. Our level of integrity ensures that your residence will be maintained in the style our loyalists have come to expect.*

**Current pricing from $232,000*

A true and correct copy of this document is attached hereto as Exhibit A and incorporated by reference (underlining added).

101. Like the "*intentionally undersold*" representation quoted above, the following language in another promotional document falsely implied that Plaintiffs' ability to use their contractually-allotted time would be preserved by restricting access to the SF Ritz Residences:

Will The Ritz-Carlton Club be open to the public?
No. The Ritz-Carlton Club will be operated for the use, benefit and enjoyment of the Members, their families and their guests.

A true and correct copy of this document is attached hereto as Exhibit B and incorporated herein by reference. In fact, as more fully alleged below, Defendants opened the facility to members of

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another club through a merger. Among other negative consequences alleged herein, this made it difficult for many Plaintiffs to use their allotted time at the SF Ritz Residences.

102. Indeed, the exclusivity of the Club was incorporated into the governing documents of the development. Pursuant to section 1.3 of the CCRs, use rights are allocated to Club Interest Owners for twenty-one days a year. In other words, all members of the Ritz-Carlton Club, numbering just a few hundred, committed to using the Club for twenty-one days a year. The offering was not set up as a transient hotel, but was instead limited to buyers who paid large purchase prices to secure an interest in a club where all users were expected to have a similar use-impact on the Club.

103. Consistent with intending to limit the impact and wear and tear on the club, as well as to keep the club available only to members who paid large premiums to buy into the Club, owners of fractional interests are prohibited under section 2.21 of the CCRs from subjecting their units to any exchange program, timeshare program or vacation club without the prior written consent of the Declarant. Additionally, section 2.13 of the CCRs prohibits any Club Interest from being used for any trade, business or commercial purpose.

104. During the sales process, Defendants represented to Plaintiffs and other buyers that the fractional interests marketed and sold to them were distinct from and far safer than timeshare interests, which are known for dropping in value. Among other things, Defendants claimed to Plaintiffs that these fractional interests were more likely to hold their value because Plaintiffs would obtain recorded deeds memorializing their partial interests and Plaintiffs would control the Club Interest Association (the association for owners of fractional interests). In reality, Defendants' offering is no better than a timeshare. Defendants have retained complete control over the Club Interest Association, and the supposedly positive attributes of a deeded interest are entirely illusory here. If anything, Defendants' offering is worse than a timeshare in that the fractional interests at issue here have not merely dropped in value, but have lost all or essentially all value.

105. Defendants made various other representations that were misleading and/or likely to deceive, including but not limited to the following:

a. Defendants told Plaintiffs that the three commercial units would include a health club, which never materialized, although a workout room was added.

b. Defendants represented to Plaintiffs and other buyers that there would be a "curb cutout" to allow Plaintiffs to easily and safely access the building, which is located on a busy thoroughfare. This feature never materialized. Defendants knew or should have known that the City of San Francisco was unlikely to approve a curb cutout at that location.

c. Defendants represented that they would help maintain the value of the fractional interests through buy backs. Yet when some Plaintiffs asked Defendants to buy back their fractional shares, Defendants refused.

d. Defendants represented that Plaintiffs and other buyers would have access to sought-after resorts, such as the Ritz-Carlton Club, Kapalua Bay, through the Ritz-Carlton Membership Program. But Defendants later removed some of the most desirable resorts from this program and/or caused other facilities to remove themselves from the program.

106. Based on the Defendants' representations regarding the SF Ritz Residences and the Ritz-Carlton Membership Program, which Defendants knew or should have known Plaintiffs would rely upon, Plaintiffs paid premium prices to Defendants for their fractional interests. Plaintiffs thereby obtained the contractual right to 21 days of use of a Club Interest Unit for each $1/12^{th}$ fractional interest purchased. In addition, as a condition of purchase and ownership, they were enrolled in the Ritz-Carlton Membership Program (a.k.a. Ritz-Carlton Club) pursuant to which they were allowed access to other participating resorts and clubs.

107. Defendants did not offer these fractional interests at preset prices. To the contrary, Defendants sought to obtain as much as they could possibly get from each buyer, even if the result was that buyers paid vastly different prices for the same fractional interest. For example, the Cohen Plaintiffs paid $359,500 for a fractional interest in Club Interest Unit No. 1002, while the Bohn Plaintiffs paid just $308,300 for the same fractional interest. It should also be noted that even after these significant purchase prices were paid, the per-night cost remained extremely high; if the Annual Assessment is divided by the 21 days of allotted use, this results in a per-

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night cost for most Plaintiffs of nearly $1,000. These same units have been advertised by Defendants at a fraction of that per-night cost ("from $359 / night").

108. These sales were made pursuant to a standardized contract and set of related agreements, primarily consisting of a Purchase Contract, a disclosure statement describing the Ritz-Carlton Membership Program, and an Affiliation Agreement. True and correct copies of these documents are attached hereto as Exhibits C, D, and E (without the exhibits, addenda, and other ancillary documents attached to and/or provided with them) and incorporated herein by reference. These documents (including the exhibits, addenda, and other ancillary documents attached to and/or provided with them) are collectively referred to herein as the "Purchase Contract."

109. With the Ritz-Carlton brand and legacy in mind, Plaintiffs agreed to pay and have paid significantly more than the cost of fractional ownership interests offered by less prestigious brands, such as the Marriott Vacation Club. This includes significant Annual Assessments calculated in a manner that has never been disclosed to Plaintiffs. The Purchase Contract suggests the Annual Assessment consists of property taxes, Club Assessments to cover each purchaser's share of certain vaguely defined costs, and Membership Program Dues for participating in the Ritz-Carlton Membership Program.

110. In all 68 plaintiffs (or groups of plaintiffs) paid Defendants a total of over $17 million dollars, plus years of inflated Annual Assessments thereafter, for their fractional interests and the right to participate in the Ritz-Carlton Membership Program.

C. Defendants Improperly Retain Control Over the Associations and Used That Control to Profit at Plaintiffs' Expense.

111. Defendants improperly maintained control over the Club Interest Association by ceasing sales efforts (which reduced the number of purchasers who could cast votes), and agreeing to take back units from *some* owners who simply wished to walk away (which allowed Defendants to acquire those votes). Defendants then used their expanded voting power to self-deal to Plaintiffs' detriment. In addition, Defendants have taken the position that they can cast an additional 60 votes for five units that were withdrawn from the fractional offering and left

undeveloped. In the last director's election in November 2014, Defendants cast 175 votes, far above the 122 votes allocated to Plaintiffs and other purchasers of fractional interests.

112. Defendants' exercise of absolute control has allowed them to pursue a self-serving agenda and perpetrate the wrongful conduct alleged herein. Among other things, Defendants have used their control to keep rental revenue that would otherwise have gone to Plaintiffs, and raise Annual Assessments and open the SF Ritz Residences to members of the Marriott Vacation Club. Defendants' directors have rejected measures that would have protected Plaintiffs from the harm alleged herein, and have refused open debate of the issues raised herein. This conduct is a clear violation of the fiduciary duties that Defendants assumed and retained by failing to relinquish control over the Club Interest Association.[7] In addition, Defendants have violated Business & Professions Code § 11266 by amending provisions of the declaration, articles of incorporation, bylaws, rules, and/or regulations without the requisite number of votes residing in members other than the developer.

113. Specifically, R.C. Chronicle (the declarant), together with its joint venture partner Ritz-Carlton Development, have retained majority voting power on the Club Association. Though they are supposed to act for the benefit of the Association and Club Members as members of the board, these Defendants have pursued a self-serving agenda to the detriment of Club Members. Among other things, they have: (1) failed to properly supervise their affiliates and defendants RC Management and Cobalt, who have collectively been assigned absolutely authority to conduct the affairs of the Association without proper oversight and have effectively usurped all the power of the board; and (2) conspired and/or acquiesced in a supposed "affiliation" that is more accurately described as a merger with the Marriot Vacation Club to the detriment of Club Interest Owners, as more fully discussed below.

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[7] *See Raven's Cove Townhomes, Inc. v. Knuppe Development Co.*, 114 Cal.App.3d at 799-800 (holding developer owes fiduciary duties while it controls association board and stating "Thus, a developer and his agents and employees who serve as directors of an association . . . may not make decisions for the Association that benefit their own interests at the expense of the association and its members"); *Cohen v. S & S Construction Co.*, 151 Cal.App.3d at 945 ("This fiduciary duty extends to individual homeowners, not just the homeowners association").

D. Inflated Annual Assessments.

114. Sales representatives told Plaintiffs that their Annual Assessments would decrease as additional fractional interests were sold, but Defendants decided to reduce the number of units in which they sold fractional interests. Due to this and other factors, the Annual Assessments have not decreased as promised.[8] To the contrary, once the fractional interests were sold, Defendants ratcheted up the Annual Assessments until the annual cost of the 21 days of use became exorbitant — especially when coupled with the substantial purchase prices, which in the vast majority of cases exceeded $200,000 and was as high as $359,500. The 2015 Annual Assessment for a one-bedroom unit is $18,091 (a 31% increase from the first year); for a two-bedroom unit the Annual Assessment is $20,545.21 (also a 31% increase from the first year); for a three-bedroom unit it is $23,943 (same).

E. Defendants Profit at Plaintiffs' Expense By Merging The Ritz-Carlton Club with the Marriott Vacation Club.

115. At the same time, Defendants have not only diluted the promised exclusive nature of the SF Ritz Residences and the Ritz-Carlton Membership Program but also upended the entire structure of the offering through a merger with a much larger, less exclusive program.

116. On or about July 17, 2012, Defendants announced their *intention* to "affiliate" the Ritz-Carlton Club with the Marriott Vacation Club. This announcement, which assured Class Members that "nothing about the Home Club Membership…has changed," was highly misleading in that it attempted to conceal the radical changes that were to come. For example, the July 17, 2012 letter failed to disclose that the proposed "affiliation" would allow the 400,000 Marriott Vacation Club members to access the Ritz-Carlton Club locations. Nor did it disclose that these Marriott Vacation Club members could rent Fractional Units at the SF Ritz Residences

[8] Moreover, Defendants closed the local sales office two years ago and thereby ceased any effort to sell additional fractional interests in the twenty units in which fractional interests were sold. Defendants were obligated to continue paying Annual Assessments on unsold fractional interest for only one year, but have apparently continued to pay them on a voluntary basis. If and when Defendants discontinue this, the impact on Plaintiffs' Annual Assessments would be dramatic.

on a nightly basis, even though the CCRs contemplated that all Owners would use the Club for 21 nights a year. Finally, it did not disclose that 132 units at the SF Ritz which were acquired by the Marriot Vacation Club would be converted into luxury inventory for the Marriot timeshare program, thereby placing over half the units in the Club into a timeshare program, rather than selling them to buyers to own as a Club Interest.

117. The announcement generated concern amongst the various "member controlled" Boards of Directors of the various Ritz-Carlton Destination Clubs. For instance, in a letter dated August 3, 2012, the Association Board of the Ritz-Carlton Club-St. Thomas wrote to its members:

> "We have been in frequent communications with each other and the Presidents of the other RCDC Clubs since this announcement. Our general but preliminary consensus regarding the 'evolution' of the RCDC brand as described in Eveleen Babich's letter of July 17th is that we are concerned that this may not be an enhancement to our Membership Interests. We all, as members, invested in the Ritz-Carlton brand!"

118. On August 10, 2012, the Board of the Ritz-Carlton Club, Jupiter wrote its members:

> "We were disappointed as to how Ritz Carlton, Marriott Vacations Worldwide Corporation and Cobalt Travel Company, LLC ('RCDC Parties') separately and collectively chose to characterize these matters they have defined as the 'evolution of the RCDC brand.' No input from your Board of Directors or, to our knowledge, any of the other RCDC Club Boards was ever solicited by these companies while they determined these significant changes to the RCDC system in which we all own a Membership Interest."

119. On November 5, 2012, the President of the Board of the Ritz-Carlton Bachelor Gulch, Michael Mullenix, wrote a letter to Mr. Steven Weisz, President and CEO of MVW and Lee Cunningham, Executive Vice President and COO of MVW, stating:

> "I am writing on behalf of the Board of Directors to continue our dialogue about the proposed affiliation of Ritz Carlton Bachelor Gulch Members with Lion and Crown in 2013 and beyond and to request that such proposed affiliation be canceled. At a minimum, the proposed affiliation should be delayed until January 1, 2014 and the status quo maintained until that time . . . The Board and membership of the Club have serious concerns that the Club's affiliation with Lion and Crown is contrary to the Club's

> governing documents and, in any event, will have permanent negative impacts on the club, including most importantly to the value of our residence units . . . ."[9]

120. In a May 14, 2013 letter to Plaintiffs, MVW Chief Operating Officer Lee Cunningham promised that the merger with Marriott Vacation Club would not take place without a member vote, stating: "regarding other potential affiliations, we want to assure you that a Ritz-Carlton Club affiliation with Marriott Vacation Club Destinations will not take place unless there is an affirmative vote of each Club's membership."

121. This was a lie. In an internal November 4, 2014 memo regarding the "San Francisco Affiliation," Eveleen Babich, the General Manager for Member Services of the Ritz-Carlton Destination Club, told other executives that there would be no vote but rather just a "survey," *and that the merger would go through regardless of the results*.

122. Indeed, despite promises by Defendants that no merger with the Marriott Vacation Club would occur without a vote of the membership, no vote ever occurred. Instead, in December 2014, Defendants, including MVW, Ritz-Carlton Management and Cobalt, favored Marriott's interests over Plaintiffs' interests and unilaterally imposed the merger with Marriott Vacation Club, and/or forced, agreed and/or conspired the Club Interest Association to do so. This, and the other wrongful conduct alleged herein, was committed in breach of the fiduciary duties owed to Plaintiffs.

123. The merger was directly contrary to the wishes of Plaintiffs and other owners at the SF Ritz Residences. In August 2013, two independent members of the Board of Directors at the SF Ritz Residences conducted a survey of the membership. 81% of the members surveyed indicated that they would prefer to terminate their affiliation with Ritz-Carlton Management and Cobalt, or liquidate their Ritz-Carlton Club interest rather than allow the merger with the Marriott Vacation Club.

124. The merger radically upended the offering marketed to Plaintiffs and other fractional purchasers. Now, approximately 400,000 Marriott Vacation Club members — who

[9] Later, both Jupiter and Bachelor Gulch voted to terminate its management agreement with Ritz-Carlton in response to the merger announcement.

paid a third less in purchase prices and who pay approximately a third of the annual fees — have access to resorts that were formerly only available to Plaintiffs and a few thousand other Ritz-Carlton Club members. Defendants have derived huge profits and/or cost savings through this merger while devaluing Plaintiffs' vested property interests. Worse yet, Plaintiffs have had to pay for the increased use and wear and tear resulting from the opening of the SF Ritz Residences to Marriott Vacation Club Members.

F. Marriot Violated the CCRs by Renting Unsold Inventory and then Using It for Commercial Purposes.

125. Defendants' improper conduct extended well beyond the wrongful merger of the Ritz-Carlton Membership Program with the Marriott Vacation Club. Defendants used unsold inventory in a manner that violated the CCRs, first by renting unsold inventory on a nightly basis, and then by using unsold inventory for commercial purposes after the unlawful merger.

126. Beginning in 2012 and continuing until the unlawful merger (at least), the Marriot Defendants, which acquired 132 of the Club Interests from R.C. Chronicle, offered their Club Interests on websites like Jetsetter.com, and also to members of the Marriott Vacation Club for "per night" rentals. This was a violation of section 2.13 of the CCRs for the SF Ritz Residences, which prohibits Club Interests from being used for any commercial purpose if not expressly authorized by the CCRs. Rental by Club Interest owners is not expressly authorized.

127. In 2013, a fractional owner at the SF Ritz Residences asked Defendants a telling question: "Given [that] all Club Members are treated 'equally' under the Rules, how is it that the Ritz is able to advertise and sell rooms on a per night basis to outsiders, while other club members are restricted from advertising and selling their own inventory to third parties on a per night basis?" In internal emails, MVW executive Kendra Johnson proposed to respond that Defendants were allowed to rent in connection with marketing activities — that is until MVW Senior Vice President for Global Inventor & Revenue Management Nick Rossi correctly pointed out that this justification no longer applied since Defendants had halted all efforts to sell the unsold inventory.

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128. This unlawful rental program continued for years despite Defendants' knowledge that it violated the CCRs. Defendants attempted to conceal the rental program with vague representations like the following that appeared in an August 30, 2012 "Frequently Asked Questions for Members": "Marriott Vacations Worldwide intends to sell most of its remaining unsold Ritz-Carlton Club inventory through the Marriott Vacation Club Destinations program." What Defendants should have said is "Marriott Vacations Worldwide is going to violate the CCRs by renting unsold inventory on a 'per night' basis."

129. Internal Marriott documents reveal that Defendants were aware that the transfer of unsold inventory to the NATO trust was likely to be challenged because the SF Ritz Residences was not designed for high volume of transient usage.

G. Defendants' Wrongful Conduct Drives The Value of Plaintiffs' Fractional Interests to Zero.

130. As one would expect of rational economic actors, Marriott Vacation Club Members availed themselves of the superior Ritz-Carlton facilities. If all fractional owners at the SF Ritz Residences used all twenty-one days allotted to them, the twenty Club Interest Units would have an occupancy rate of approximately 67%. In 2013, the occupancy rate for these units was approximately 90%, presumably reflecting usage by members of the Marriott Vacation Club and other non-owner guests. As a result of this dilution, some Plaintiffs have had difficulty obtaining the full twenty-one days of use they purchased for each $1/12^{th}$ interest.

131. In short, Defendants' representations that "*[t]he Club residences are intentionally undersold to accommodate for greater flexibility*" and that access to the SF Ritz Residences would be restricted were false, misleading, likely to deceive, and/or otherwise unlawful.

132. In 2009, the year that the Ritz-Carlton Club celebrated its 10th anniversary, Defendants posted The Ritz-Carlton Destination Club Frequently Asked Questions on the Ritz-Carlton website (the "2009 FAQ"), a true and correct copy of which is attached hereto as Exhibit F and incorporated herein by reference. The 2009 FAQ answered several important questions dealing with the membership and its benefits. One such question and answer (which also appeared in at least one later version of the document) reads as follows:

Is The Ritz-Carlton Destination Club open to the public?
No, The Club is operated for the exclusive use, benefit and enjoyment of the Members, their families and their guests. However, on a limited basis, guests can visit a Club location as a sponsored guest to experience the lifestyle prior to enrolling.

133. In 2012 or 2013, around the time of the Marriott merger, Defendants removed this question and answer, as is evident in the 2013 version of the FAQ. The removal of this question and answer following the 2012 merger with the Marriott club shows that the Defendants knew or should have known that the merger rendered these representations false, misleading and likely to deceive potential purchasers.

134. In or about August 2012, shortly after Defendants announced the intention to merge with the Marriott Vacation Club, Defendants sent Plaintiffs and other Ritz-Carlton Club members a letter that read in pertinent part: "First of all, we would like to assure you that nothing that you originally purchased has changed or will change as a result of the announcement mentioned above." This statement is false, as more particularly alleged above and below. A true and correct copy of this letter is attached hereto as Exhibit G and incorporated herein by reference. It was signed by Lee Cunningham, who represented himself as the Executive Vice President and COO of the Ritz-Carlton Destination Club but failed to mention that he also holds these titles at Defendant MVW.

135. Defendants knew or should have known that the merger of the Ritz-Carlton Membership Program with the Marriott Vacation Club was contrary to the representations that Defendants made to Plaintiffs in advertising and other marketing material, and further that the merger and the other conduct alleged herein would unfairly interfere with the benefits that Plaintiffs were supposed to receive under their Purchase Contracts.

136. As a result of these actions, Plaintiffs have been severely injured. Membership in the Ritz-Carlton Club has been so diluted by the merger with the Marriott Vacation Club, as well as by Marriot's conversion of its substantial holdings at the SF Ritz into additional inventory for its timeshare portfolio, that availability of the units, both at the SF Ritz Residences and at other Ritz-Carlton locations, is greatly reduced. Plaintiffs must continue to pay the Annual Assessments or lose their use privileges and face litigation. Selling is not an option. There is no

market for these units, and certainly no way to recoup anything close to the substantial purchase prices.

137. That the fractional interests have collapsed in value is clear. Plaintiffs are aware of only a handful of instances in which fractional interests have been sold, but those sales were many years ago and not the product of arms-length negotiations. In these few instances, all of which were several years ago, the sales were at fire-sale prices ranging from $20,000 to $100,000. The number of fractional owners has dropped from approximately 160 several years ago to less than 110. While some fractional owners switched to other programs run by Defendants, other buyers simply "walked away" (in the particular instances in which Defendants allowed that), something no rational economic actor would do if the fractional interests had any value in the marketplace.

138. The Messerschmitt Plaintiffs are an example of this category, opting to "sell" their unit back to Defendants for free because they were unwilling and/or unable to continue paying the Annual Assessments and they were concerned about the impact of this "asset" on their estate. Stating the latter in another way, they did not want to saddle their heirs with this perpetual liability. Even though they lost their entire purchase price — $216,000 paid in cash — they were lucky. In other instances, Defendants refused to accept deeds from Plaintiffs who could no longer afford their mortgages and/or Annual Assessments. For example, the Swanson Plaintiffs attempted to sell their fractional interest but found no willing buyers. They asked Defendants to take their deed back, but Defendants refused. They fell behind on their dues, and Defendants, acting through the Club Interest Association, sued them.

139. Perhaps most illustrative of the collapse in value is the settlement in *Benner, et al. v. R.C. Chronicle Building, L.P., et al.* (San Francisco Superior Court No. CGC-12-527401), a class case involving Defendants' failure to disclose Mello-Roos bonds and related property taxes as required by California law. Most of the Plaintiffs in the present case were members of the *Benner* Class. The settlement approved by the Court included this surprising option: the fractional buyers who comprise the class could opt to receive approximately $7,500 in the undisclosed Mello-Roos taxes that they paid and, in the words of the class settlement notice,

"execute a contract that surrenders all title, right, and interest in your timeshare to The Ritz-Carlton" for no remuneration. According to reports to the Court in the *Benner* action, a dozen buyers have elected this option.

140. To elaborate on the latter, for nothing more than a few thousand dollars in excess property taxes that Defendants should have disclosed and were therefore liable for, a dozen buyers of fractional interests were willing to return their deeds to avoid having to pay substantial sums annually for assets that, because of Defendants' conduct, have absolutely no market value. Nobody would choose this option if there were willing buyers for these fractional interests.

141. The market for these particular fractional interests is not likely to rebound. Defendants made sure that they would profit from any re-sales by representing that buyers in these secondary transactions could participate in the Ritz-Carlton Membership Program only if a Ritz-Carlton representative brokered the transaction. At least according to Defendants, buyers in secondary transactions handled by other real estate agents or brokers could not participate in the Ritz-Carlton Membership Program, meaning they would have no right to use the other participating facilities. This was unfair even when Ritz-Carlton maintained a local sales office to handle such secondary transactions. It became even more unfair when Ritz closed that sales office approximately two years ago and otherwise acted to prevent Plaintiffs from being able to engage Ritz-affiliated brokers.

142. Defendants have driven the value of Plaintiffs' fractional interests to zero by actively thwarting efforts by Plaintiffs to sell their units to third parties, including by warning potential third party buyers that they would not be able to participate in the Ritz-Carlton Membership Program, and by steering those buyers to the far cheaper, competing Marriott product. Defendants' failure to maintain the promised exclusivity of the SF Ritz Residences and the ready availability of Club Interest Units, their decision to terminate Plaintiffs' access to some of the most desirable resorts represented to be part of the Ritz-Carlton Club at the time of purchase, and their failure to live up to the other promises and representations alleged in this Complaint have also caused the value of the fractional interests that Plaintiffs purchased to

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collapse such that Plaintiffs are now locked into a perpetual liability without the benefits Defendants promised.

143. Defendants discontinued any meaningful effort to sell fractional interests at the SF Ritz, opting instead to market their competing Marriott Vacation Club product to Plaintiffs' detriment. The cessation of sales efforts was undertaken so that the "developer inventory" that Defendants could not de-annex and sell outright could be utilized by the Defendants as inventory for the benefit of Marriott Vacation Club members, thereby causing the fractional interests that Plaintiffs purchased to become obsolete and worthless.

H. As Deeded Owners of Property that Nobody is Willing to Buy, Plaintiffs are Locked Into a Perpetual, Costly Liability.

144. The promotional document attached as Exhibit A notes: "*Each fractional interest is deeded in perpetuity and becomes part of your estate.*" Likewise, Defendants have described the Membership Program as being "appurtenant" to the deed, meaning it continues for as long as the corresponding ownership interest lasts. Plaintiffs do not have the option of cancelling their membership. The Purchase Contract further provides: "membership in the [Ritz-Carlton] Membership Program may not be partitioned from ownership of a Club Interest." Thus, Plaintiffs must continue to pay their Annual Assessments (which include the Membership Program Dues) for as long as they own their property. They cannot terminate that obligation without ridding themselves of their deeds, but no one is willing to buy them. Defendants only agree to take them back when it serves their interests, and in many instances it does not serve their interests to do so.

I. Defendants Attempted to Immunize Themselves From Liability With an Ineffective Disclaimer of Fiduciary Relationships.

145. California law required the Club Interest Association to hire a professional management company. Bus. & Prof. Code § 11267. Defendants used their absolute control over the offering to make an affiliated company, Defendant Ritz-Carlton Management, the required management company. In an attempt to allow Ritz-Carlton Management to operate Club Offering for the benefit of Defendants without threat of liability, Defendants inserted a provision in the Management Agreement that purports to disclaim the creation of "a partnership, joint

venture, or any other relationship *between the parties to [the Management Agreement]*." But this could not possibly disclaim a fiduciary relationship between Defendants *and Plaintiffs* because *Plaintiffs did not sign — and thus are not parties — to the Management Agreement.*

146. In the closely related case of *Reiser v. Marriott Vacations Worldwide Corp.*, 2017 WL 569677, at *5 (E.D. Cal. Feb. 13, 2017), the Marriott and Ritz defendants relied on an essentially identical provision to argue that no fiduciary duties were owed to the plaintiff owners. The federal court squarely rejected that contention — and denied a motion to dismiss breach of fiduciary duty claims — based on the lack of privity, stating:

> Defendants counter by citing the terms of the Management Agreement itself, which contains express disclaimer provisions that bar any agency relationship from being imputed. Those provisions, however, only bar an agency relationship <u>*between the signing parties*</u>. Plaintiffs were not parties to the Management Agreement, and instead possess only an ownership agreement in fractional units governed by the Agreement. Consequently, the disclaimer language is not binding upon them.

147. To the extent this or any other provision could be interpreted to negate fiduciary duties inherent in the structure of this offering, it is void as contrary to public policy. Civ. Code § 1668 ("All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law"); Civ. Code § 1670.5(a) ("If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result").[10]

[10] Further, it would be a breach of fiduciary duty for a fiduciary, such as the Club Interest Association, to delegate all authority to an entity that disclaims any fiduciary obligations. *See Cohen v. Kite Hill Cmty. Assn.*, 142 Cal.App.3d 642, 650–51 (1983) ("in recognition of the increasingly important role played by private homeowners' associations in such public-service functions as maintenance and repair of public areas and utilities, street and common area lighting, sanitation and the regulation and enforcement of zoning ordinances, the courts have recognized that such associations owe a fiduciary duty to their members"). If the Court finds the Management Agreement negates any fiduciary duties, Plaintiffs allege, in the alternative, that Defendants violated fiduciary duties by allowing the Club Interests Association to delegate all responsibility to Ritz-Carlton Management, and then to Cobalt without ensuring that Ritz-

J. Sources of Fiduciary Duties.

148. There are multiple sources of fiduciary duties arising both as a matter of law and out of the SF Ritz "Governing Instruments," which include the CCRs and The Ritz-Carlton, San Francisco Membership Program Affiliation Agreement, ("Affiliation Agreement").[11] These duties arise because of the high degree of control that Defendants gave themselves over Plaintiffs' separately deeded property interests. *See, e.g., Reiser v. Marriott Vacations Worldwide Corp.*, 2017 WL 569677, at *5 (denying motion to dismiss fiduciary duty claims in a closely related case based on closely analogous governing instruments").

a. The Developers, R.C. Chronicle and Ritz-Carlton Development.

149. The fiduciary duties of the developers — R.C. Chronicle, its joint venture Ritz-Carlton Development, and their alter egos, co-conspirators, and/or successors — arise as a matter of law because, through all relevant times herein, they retained control over the Club Interest Association, through the appointment of developer affiliated directors to the Club Interest Association Board of Directors. *See Raven's Cove Townhomes, Inc. v. Knuppe Development Co.*, 114 Cal.App.3d at 799-800 (developer owes fiduciary duties while it controls association board and stating "Thus, a developer and his agents and employees who serve as directors of an association . . . may not make decisions for the Association that benefit their own interests at the expense of the association and its members"). Also as a matter of law, this fiduciary duty runs between the developers and Plaintiffs. *Cohen v. S & S Construction Co.*, 151 Cal.App.3d at 945 ("This fiduciary duty extends to individual homeowners, not just the homeowners association").

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Carlton Management and Cobalt would abide by the fiduciary duties imposed on the Club Interest Association as a matter of law. *Sequoia Vacuum Systems v. Stansky*, 229 Cal.App.2d at 287 ("Every agent owes his principal the duty of undivided loyalty. During the course of his agency, he may not undertake or participate in activities adverse to the interests of his principal").

[11] *See* Amended and Restated Declaration of Covenants, Conditions and Restrictions for 690 Market Club, recorded July 11, 2007, section 1.58.

b. The Management Agreement Gives Rise to a Fiduciary Duty Owed by Ritz-Carlton Management.

150. Ritz-Carlton Management owes fiduciary duties to Plaintiffs for the same reason that the Club Interest Association owes fiduciary duties to Plaintiffs. *Cohen v. Kite Hill Cmty. Assn.*, 142 Cal.App.3d at 650–51 ("in recognition of the increasingly important role played by private homeowners' associations in such public-service functions as maintenance and repair of public areas and utilities, street and common area lighting, sanitation and the regulation and enforcement of zoning ordinances, the courts have recognized that such associations owe a fiduciary duty to their members"). Indeed, Ritz-Carlton Management Agreement stepped into the shoes of the Club Interest Association pursuant to the Management Agreement.

151. Further, Ritz-Carlton Management assumed fiduciary duties by assuming a high degree of control over Plaintiffs' separately deeded property interests. *See, e.g.*, *Reiser v. Marriott Vacations Worldwide Corp.*, 2017 WL 569677, at *5 ("Plaintiffs also claim that a fiduciary duty was triggered when the Management Agreement gave RC Management control not just over the common areas, but also Plaintiffs' individually deeded property interests…. Whether or not a fiduciary duty exists depends on the surrounding facts and circumstances…. Under California law, the key factor is whether there is 'control by a person over the property of another.' … Plaintiffs have pleaded exactly that—RC Management had control over their individually deeded property interests"); *Vai v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 56 Cal.2d at 338 ("The key factor in the existence of a fiduciary relationship lies in control by a person over the property of another").

152. The CCRs, section 4.4 provides: "The Club Interest Association shall have the authority to engage and the obligation to use its best efforts to engage and maintain a reputable firm as the Management Company and Program Manager for the Club Interest Project and operation of the Membership Program." Indeed, given the complexities involved in managing fractional units, California law *mandates* that the Club Interest Association hire a professional management company, and further establishes the authority of the professional management company to hire sub-agents. *See* Bus. & Prof. Code § 11267(a)(2).

153. On June 15, 2006, the Club Interest Association entered into the "Ritz-Carlton, San Francisco Club Owners Association Operating Agreement" ("Management Agreement") with its affiliate, the Defendant Ritz-Carlton Management. Pursuant to paragraph 2 therein, captioned "Appointment and Acceptance of Operator Agency," the Ritz-Carlton Management agreed "to act on behalf of the Club Interest Association ***and its members*** as the exclusive operating entity of the Property . . . and to manage the daily affairs of the Club Interest Project and the Operating Company hereby agrees to so act." (Emphasis added.)

154. Paragraph 4 of the Management Agreement, captioned "Delegation of Authority," provides: "[Ritz-Carlton Management Company], on behalf of and at the expense of, the Club Interest Association, to the exclusion of all other persons including the Club Interest Association and its members, shall have all the powers and duties of the Board of Directors of the Club Interest Association (the "Board") as set forth in the Articles of Incorporation and the governing documents of the Club Interest Association (except such thereof as are specifically required to be exercised by the Board or its members) . . . ."

155. In addition, the Management Agreement specifically delegated to Ritz-Carlton Management Company absolute control over Plaintiffs' deeded property interests, including authority over the rules and regulations governing each plaintiffs' use of a fractional unit (¶ 4(L)), and all authority needed to maintain the Club Interest Units (¶ 4(I)). In addition, the Management Agreement gave Ritz-Carlton Management Company authority to conduct a wide range of activities on behalf of the Club Interest Association, including management of employees (¶ 4(A)); preparing the Association's budget, keeping financial records, and managing funds received on behalf of the Association (¶¶ 4(H), 4(F) and 4(J)).

156. Paragraph 4(S) of the Management Agreement provides Ritz-Carlton Management Company with the authority to:

> "Engage a Program Manager through an affiliation agreement, who shall manage and administer the reservation procedures and exchange program for the Ritz-Carlton Club Membership Program (the 'Membership Program') through which (i) all Owners of Club Interests reserve the use of accommodations at the Club Interest Project pursuant to the Procedures for Reserving Usage for the Ritz-Carlton Club, San Francisco ("Reservation Procedures") . . . The Program Manager shall have the broadest possible delegation of

> authority regarding administration of the Reservation Procedures. . . . Ritz-Carlton Management Company on behalf of the Club Interest Association shall assess the Owners of Club Interests the reasonable cost (as determined by the Program Manager) of operating such Reservation Procedures, which cost shall be included as part of the Basic Assessment"

157. Paragraph 14 of the Management Agreement provides "As compensation for its services hereunder, [Ritz-Carlton Management Company] shall receive an annual net fee, free from all charges and expenses" $554.23 (in 2007 dollars) per fractional interest from the Owners of the Club Interests in the Club Interest Units."

158. Based upon the terms of the Management Agreement and also by operation of law, Ritz-Carlton Management is the agent of the Plaintiffs, and as such, owes Plaintiffs fiduciary duties, including the duties of loyalty and the duty to avoid self-dealing. In addition, based upon the high degree of control over Plaintiffs' Fractional Units arising from its authority, as set forth in the Management Agreement, Ritz-Carlton Management Company owes Plaintiffs and Class Members fiduciary duties, including a duty of loyalty and the duty to avoid self-dealing.

c. The Affiliation Agreement Gives Rise to Fiduciary Duty Owed by Cobalt.

159. Pursuant to its contractual and statutory authority to hire subagents, Defendant Ritz-Carlton Management, in turn, delegated managerial authority and control over Plaintiffs' use of their Club Interest Units to its sub-agent, Cobalt, which is another affiliate of the developer and a wholly-owned Marriott subsidiary. This was done in the Affiliation Agreement, which was entered into by R.C. Chronicle, Ritz-Carlton Management, and the Club Interest Association. As a matter of law, all of the fiduciary duties that run between Ritz-Carlton Management and Plaintiffs also run between Cobalt and Plaintiffs. *Streit v. Covington & Crowe,* 82 Cal.App.4th at 446 n. 3 ("If an agent is authorized by the principal to employ a subagent, the subagent owes the same duties to the principal as does the agent") (citing Civ. Code § 2351 and Rest.2d, Agency, § 428).

160. Pursuant to the Affiliation Agreement, Defendant Cobalt assumed near complete control over Plaintiffs' separately deeded Club Interests. Cobalt is the Program Manager of the Ritz-Carlton Club Membership Program and also operates the reservation system through which

Plaintiffs obtain use of their allotted number of days at the SF Ritz Residences and obtain access to the sister Ritz-Carlton Destination Clubs in the Ritz-Carlton Club Membership Program. Cobalt is wholly and exclusively in charge of managing and administering Plaintiffs' use rights in their separately deeded property, with the power to place plaintiffs in units that are equivalent to their separately deeded property. Cobalt is also wholly and exclusively in charge of managing and administering the use rights of Permitted Users and Exchange Users as contemplated under the CCRs.

161. In addition, the Affiliation Agreement, paragraph 7.1(a) provides: "The Program Manager (Cobalt) may, in its sole discretion, elect to affiliate other locations with the Membership Program as Member Clubs or Associated Clubs from time to time. Neither the Developer, Association, nor Manager shall be entitled to participate in or consent to the Program Manager's decision in this regard."

162. Plaintiffs retained only two powers. The first one is limited and underscores the authority granted to Defendants: Plaintiffs retained the right to use a unit — not necessarily their own — for 21 days, but only if they followed the procedures applicable to a reservation system operated by Cobalt. Second, Plaintiffs, as members of the Club Interest Association, could vote to terminate Ritz-Carlton Management Company and with it, Cobalt. But doing so would mean the loss of the Ritz-Carlton brand attached to their fractional interests, and also result in their expulsion from the Ritz-Carlton Management Program.

163. Based upon the terms of the Management Agreement and the Affiliation Agreement, Cobalt is the agent or subagent of the Plaintiffs, and as such, owes Plaintiffs fiduciary duties, including a duty of loyalty and duty to avoid self-dealing. Alternatively, these duties arise from the near exclusive control that Cobalt exercises over Plaintiffs' Fractional Units arising from its authority as set forth in the Affiliation Agreement — including all use rights of Club Members, Permitted Users and Exchange Users.

164. By the actions described above and below and in breach of their fiduciary duties Defendants profited at the Plaintiffs' expense. Despite the destruction of the value of the Fractional Units, Plaintiffs continue to pay steadily increasing annual dues, much of which goes

directly to Defendants in the form of lucrative "management fees" and other "reimbursements" supposedly incurred by Defendants under the management contracts, including payroll related costs. Plaintiffs pay these management fees and reimbursements to the Defendants regardless of usage or occupancy.

165. Due to the conduct of the Defendants described herein, the Fractional Units owned by Plaintiffs are now virtually worthless and Defendants, including MVW; MVCI; Ritz-Carlton Management Company, LLC; Cobalt Travel Company, LLC; have been unjustly enriched by the wrongful and unlawful conduct described herein. Due to defendants' actions, MVC members can now enjoy the benefits and use of the Ritz-Carlton Club San Francisco property for a small fraction of the cost that Plaintiffs paid.

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty Against All Defendants)

166. Plaintiffs incorporate by reference the allegations contained in the preceding and subsequent paragraphs as if fully set forth in this cause of action.

167. The developers, R.C. Chronicle, its joint venture partner Ritz-Carlton Development, and their alter egos, co-conspirators, and/or successors, owed fiduciary duties to Plaintiffs for the reasons stated above, including in paragraph 150 *supra*.

168. Defendant Ritz-Carlton Management, and its alter egos, co-conspirators, and/or successors, owed fiduciary duties to Plaintiffs for the reasons stated above, including in paragraphs 151 through 159, *supra*.

169. Defendant Cobalt, and its alter egos, co-conspirators, and/or successors, owed fiduciary duties to Plaintiffs for the reasons stated above, including in paragraphs 160 through 166, *supra*.

170. Defendants, and each of them, had a duty to act with the utmost good faith in the best interests of Plaintiffs and other Club Interest owners, and not for the benefit of themselves, their affiliates, other defendants, and/or co-conspirators. This includes a duty of candor and loyalty to Plaintiffs and other Club Interest owners.

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171. As more fully alleged elsewhere in this Complaint, Defendants, and each of them, breached this duty by self-dealing and otherwise advancing Marriott's interests at the expense of Plaintiffs' interests, and/or by failing to act as a reasonably careful fiduciary/board member would have acted under the same or similar circumstances. Such breaches are more fully alleged above and include, but are not limited to, the following:

a. In addition to the other wrongful conduct alleged above, Defendants — including R.C. Chronicle and Ritz-Carlton Development — used their control of the Club Interest Association to delegate almost complete control over Plaintiffs' separately deeded property interests first to Ritz-Carlton Management and then to Cobalt in a manner that — according to Defendants — immunizes all of them from any liability for breach of fiduciary duties that they owe, as matter of law, to Plaintiffs. Assuming for purposes of argument this strategy is effective, it constitutes a breach of fiduciary duty in that a fiduciary cannot legally engineer immunity to fiduciary duties imposed as a matter of law.

b. Defendants — including R.C. Chronicle and Ritz-Carlton Development — failed to supervise Ritz-Carlton Management and Cobalt after delegating to those entities near absolute control over Plaintiffs' separately deeded property interests.

c. Defendants — including R.C. Chronicle and Ritz-Carlton Development — had a duty to act with the utmost good faith in the best interests of Plaintiffs. As more fully alleged elsewhere in this Complaint, Defendants and/or their agents on the Club Interest Association breached this duty by self-dealing and otherwise advancing Marriott's interests at the expense of Plaintiffs' interests, and/or by failing to act as a reasonably careful fiduciary/board member would have acted under the same or similar circumstances.

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d. Among other things, Defendant Cobalt and its alter egos and co-conspirators, in violation of Cobalt's fiduciary duty to Plaintiffs, and aided and abetted in said fiduciary duty violations by the other defendants, entered into an Affiliation Agreement with L&C, which allows some or all of the over 400,000 members of Defendant MVW's Marriott Vacation Club who are able to acquire sufficient points in the Marriott Vacation Club system, to use the Fractional Units at the SF Ritz Residences. This was a breach of fiduciary duty because it allowed Defendants to profit at Plaintiffs' expense. Specifically, it gutted the value of the fractional interests that Plaintiffs acquired, which Cobalt was managing for their benefit and acting as their agent.

e. Defendants promised Plaintiffs and other Club Interest owners that the merger with the Marriott Vacation Club would not take place absent a vote in favor of the merger by Club Interest owners when they had no intention of actually putting the merger to a vote or respecting the wishes of Plaintiffs and other Club Interest owners.

f. Defendants — including R.C. Chronicle and Ritz-Carlton Development, who controlled the Club Interest Association — failed to enforce the CCRs to protect the interests of Plaintiffs and other Club Interest owners, and instead allowed Marriot and its other affiliates to engage in activities that were clearly prohibited under the terms of the CCRs, such as renting Club Interests on a nightly basis in violation of CCRs section 2.13.

g. Defendants — including R.C. Chronicle and Ritz-Carlton Development, who controlled the Club Interest Association — failed to disclose to the Club Association and the Plaintiffs the true aims of their parent-company, Marriot, which always intended to (1) convert more than a hundred Club Interests into Marriot timeshare inventory, and (2) never permit the

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promised vote on whether to affiliate with Marriot, despite representations that they would do so.

h. Defendants — including R.C. Chronicle and Ritz-Carlton Development, who controlled the Club Interest Association — failed to either prevent the Marriot Merger from taking place, or firing Cobalt as the Program Manager, as an independent Board would have done.

172. Plaintiffs were harmed by Defendants' breach of the fiduciary duties they owed to Plaintiffs in the manner alleged elsewhere in this Complaint, and Defendants' conduct was a substantial factor in causing that harm.

173. Defendants, and each of them, committed the acts alleged herein maliciously, fraudulently, and/or with oppression within the meaning of Civil Code § 3294, and all such conduct was authorized and/or ratified by an owner, officer, director, or managing agent of each Defendant. Plaintiffs seek an award of punitive and exemplary damages in an amount according to proof.

SECOND CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duty Against All Defendants)

174. Plaintiffs incorporate by reference the allegations contained in the preceding and subsequent paragraphs as if fully set forth in this cause of action.

175. Defendants, and each of them, aided and abetted the remaining Defendants' scheme to commit the wrongful and unlawful conduct alleged herein, including but not limited to the breaches of fiduciary duties.

176. The aiding and abetting Defendants had prior notice of the remaining Defendants' wrongful and unlawful activities, but nonetheless acted affirmatively to help the other Defendants perpetrate their scheme against Plaintiffs.

177. Defendants' aiding and abetting the wrongful and unlawful conduct alleged herein has damaged Plaintiffs in an amount to be proved at trial that is in excess of the jurisdictional limit of this Court.

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THIRD CAUSE OF ACTION

(Constructive Fraud Against all Defendants)

178. Plaintiffs incorporate by reference the allegations contained in the preceding, and subsequent paragraphs, as if fully set forth in this cause of action.

179. Defendants R.C. Chronicle, Ritz-Carlton Development, Ritz-Carlton Management and Cobalt and each of them had a fiduciary duty of candor to the Plaintiffs to act honestly, loyally and with full disclosure.

180. On May 14, 2013, Lee Cunningham informed each Plaintiff that no affiliation of the Ritz-Carlton Club, San Francisco with the Marriott Vacation Club would occur unless a majority of the members of the Ritz-Carlton Club, San Francisco voted in favor of said affiliation.

181. Yet R.C. Chronicle, Ritz-Carlton Development, Ritz-Carlton Management and Cobalt never intended to allow the promised vote, as evidenced by the admission by the General Manager of Cobalt, Eveleen Babich, that: "This survey is similar to Aspen in that we are not looking for a majority vote. It's merely a mechanism to get feedback and the affiliation is expected to occur regardless. Please keep that information confidential."

182. Cobalt, acting in concert with R.C. Chronicle, Ritz-Carlton Development, Ritz-Carlton Management, deceptively and without informing the Plaintiffs or the non-interested members of the Club Interest Association, entered into an Affiliation Agreement between the Ritz-Carlton Club San Francisco and the Marriott Vacation Club, without holding the promised vote.

183. The Defendants knew that the Plaintiffs relied on the promises of Cunningham and others that there would be no affiliation with Marriot without a vote of the membership. Plaintiffs justifiably relied to their detriment on the aforementioned promise that a majority vote of the members would be required before the affiliation would be instituted. Had Plaintiffs known the truth, they would have taken steps to prevent the affiliation, including demanding that the majority of members vote in favor of affiliation, or suing for injunctive relief to stop the affiliation in the absence of a majority vote.

184. By virtue of the misrepresentations and non-disclosure of the material facts described above and herein, the Defendants afforded themselves the means by which to take undue advantage of Plaintiffs.

185. Defendants' conduct, including the misrepresentations and non-disclosure of the material facts described above and herein, tended to deceive.

186. As a result of the tendency of Defendants' misrepresentations and non-disclosures of the material facts described above and herein to deceive, Plaintiffs suffered damages, including the destruction of the value in their fractional units, in an amount to be proven at trial.

187. Further, R.C. Chronicle, Ritz-Carlton Development, Ritz-Carlton Management and Cobalt, aided and abetted by MVC, have profited at Plaintiffs' expense and said Defendants should be ordered to disgorge to Plaintiffs all commissions, fees and profits they received as a result of the conduct described herein; that an accounting of all commissions, fees and profits earned by MVC, R.C. Chronicle, Ritz-Carlton Development, Ritz-Carlton Management and Cobalt be ordered by the Court, and that a constructive trust be imposed upon said commissions, fees and profits for the benefit of Plaintiffs.

FOURTH CAUSE OF ACTION

(Promissory Fraud Against All Defendants)

188. Plaintiffs incorporate by reference the allegations contained in the preceding and subsequent paragraphs, as if fully set forth in this cause of action.

189. As described in detail above, MVW falsely promised that a majority vote of the membership would decide whether the affiliation of the Ritz-Carlton Club San Francisco with the Marriott Vacation Club would occur.

190. At the time the promise of a vote was made, MVW and the other Defendants, including R.C. Chronicle, Ritz-Carlton Development, Ritz-Carlton Management and Cobalt had no intention of honoring the promise, and intended to affiliate the Ritz-Carlton Club San Francisco with the Marriott Vacation Club regardless of whether a vote was held, or whether a majority voted against the affiliation.

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191. In making the false promise described above, MVC, in concert with R.C. Chronicle, Ritz-Carlton Development, Ritz-Carlton Management and Cobalt, intended to deceive Plaintiffs and to induce them not to take action to block the affiliation, such as an action for injunctive relief, or a membership vote to terminate the agreements with Ritz-Carlton Management and Cobalt.

192. Plaintiffs reasonably relied on the promise of a vote on the issue of affiliation of the Ritz-Carlton Club San Francisco with then Marriott Vacation Club in that they refrained from taking action to block the affiliation such as an action for injunctive relief, or a membership vote to terminate the agreements with Ritz-Carlton Management and Cobalt.

193. No vote was ever held, yet the MVC and the other defendants affiliated the Ritz-Carlton Club San Francisco with then Marriott Vacation Club in late 2014.

194. As a proximate result of Defendants' promissory fraud, Plaintiffs suffered damages, including the destruction of the value in their fractional units, in an amount to be proven at trial.

195. As a result of Defendants' promissory fraud described herein, Defendants MVC, R.C. Chronicle, Ritz-Carlton Development, Ritz-Carlton Management and Cobalt profited at Plaintiffs' expense and said Defendants should be ordered to disgorge to Plaintiffs all commissions, fees and profits they received as a result of the conduct described herein; that an accounting of all commissions, fees and profits earned by MVC, R.C. Chronicle, Ritz-Carlton Development, Ritz-Carlton Management and Cobalt be ordered by the Court, and that a constructive trust be imposed upon said commissions, fees and profits for the benefit of Plaintiffs.

FIFTH CAUSE OF ACTION

(Accounting Against All Defendants)

196. Plaintiffs incorporate by reference the allegations contained in the preceding and subsequent paragraphs as if fully set forth in this cause of action.

197. At all times relevant herein, Defendants were: (a) agents and/or fiduciaries of Plaintiffs; (b) alter egos of other defendants that are agents of Plaintiffs or that owe fiduciary

duties to Plaintiffs; and/or (c) aiders and abettors or co-conspirators in the breach of fiduciary duties by other defendants owing such duties to Plaintiffs.

198. The extent of the funds or property acquired by Defendants in the course of the above described agency and fiduciary relationships is not known by Plaintiffs and is ascertainable only by an accounting, and so Plaintiffs request such an accounting from this Court.

SIXTH CAUSE OF ACTION

(Breach of the Implied Covenant Against All Defendants)

199. Plaintiffs incorporate by reference the allegations contained in the preceding and subsequent paragraphs as if fully set forth in this cause of action.

200. Plaintiffs, and each of them, entered into standardized Purchase Contracts with Defendants for the purchase of fractional interests in Club Interest Units at the SF Ritz Residences and participation rights in the Ritz-Carlton Membership Program.

201. Plaintiffs performed or substantially performed all significant things that the Purchase Contracts required of them, and/or were excused from having to do those things. All conditions required for Defendants' performance have occurred or were excused.

202. An implied covenant of good faith and fair dealing is implied in the Purchase Contracts by operation of law. Pursuant to these implied duties, Defendants could not legally interfere with the rights of Plaintiffs to receive the benefits due to them under the Purchase Contracts. Nor could Defendants do anything inconsistent with any promises that a reasonable person in Plaintiffs' position would be justified in understanding were included in the Purchase Contracts.

203. Defendants breached the implied covenant of good faith and fair dealing by: (a) acting in a manner that, as more fully alleged above, unfairly interfered with Plaintiffs' right to receive the benefits of the Purchase Contracts; and/or (b) violating and/or breaching implied promises that Plaintiffs reasonably understood to be included in the Purchase Contracts.

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204. Plaintiffs reasonably believed that Defendants had agreed to continue to market and sell all fractional interests at the SF Ritz, or at least sell a sufficient number to make the fractional offering viable. Defendants breached this implied promise.

205. Plaintiffs were harmed by Defendants' breach of the implied covenant of good faith and fair dealing as more particularly alleged above, and Defendants' conduct was a substantial factor in causing that harm.

206. Defendants, and each of them, committed the acts alleged herein maliciously, fraudulently, and/or with oppression within the meaning of Civil Code § 3294, and all such conduct was authorized and/or ratified by an owner, officer, director, or managing agent of each Defendant. Plaintiffs seek an award of punitive and exemplary damages in an amount according to proof.

SEVENTH CAUSE OF ACTION

(Rescission, Cal. Civ. Code § 1689, Against All Defendants)

207. Plaintiffs incorporate by reference the allegations contained in the preceding and subsequent paragraphs as if fully set forth in this cause of action.

208. When marketing fractional interests in the Club Interest Units to Plaintiffs, Defendants intentionally, negligently, and/or mistakenly misstated material facts and/or falsely concealed material facts as more fully alleged above.

209. Plaintiffs are informed and believe and thereupon allege that Defendants, and each of them, knew of the falsity of said representations or lacked sufficient knowledge to have made the representations, and concealed the true facts from Plaintiffs.

210. As a direct and proximate result of their justifiable reliance on the material misrepresentations and omissions of the Defendants, Plaintiffs purchased the fractional interests at issue in this litigation.

211. Plaintiffs would not have purchased fractional interests had the true facts been disclosed. Plaintiffs signed their respective Purchase Contracts based on the material mistakes of fact alleged herein. Defendants knew, or should have known, that Plaintiffs were ignorant of the true facts relating to the transactions at issue.

212. Service of this Complaint and related pleadings on Defendants constitutes notice of rescission of the Contracts between Plaintiffs and Defendants. Plaintiffs are entitled to rescission of their Purchase Contracts pursuant to Civil Code § 1689, on the grounds of mutual and unilateral mistake of material fact, and also fraud in the inducement.

213. Among other remedies prayed for herein, Plaintiffs seek the restoration of the parties to their original, pre-agreement positions, including the recovery and payment of restitution of any and all monetary consideration that Plaintiffs paid to Defendants, and the nullification of any releases signed by any Plaintiffs herein.

214. Plaintiffs seek a return of the purchase price each paid, plus all other sums paid to Defendants, including but not limited to the Annual Assessments. Pursuant to Civil Code § 1692, Plaintiffs are also entitled to recover the consequential damages they sustained as a direct and proximate result of Defendants' intentional misconduct and/or negligent conduct in an amount to be determined at trial in excess of the jurisdictional threshold of this Court.

EIGHTH CAUSE OF ACTION

(Unjust Enrichment Against All Defendants)

215. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as if fully set forth in this cause of action.

216. At all times relevant herein, there has existed a res consisting of monies improperly obtained by Defendants through the wrongful conduct alleged herein, including but not limited to fees paid by Plaintiffs, and rental income obtained from others.

217. Defendants obtained these monies by means of the wrongful acts alleged elsewhere in this Third Amended Complaint. Plaintiffs have a legal right to these monies, and Defendants would be unjustly enriched if they were permitted to keep these improperly obtained monies.

218. Accordingly, pursuant to Civil Code §§ 2223, 2224 and 3517, Plaintiffs seek a declaration from this Court that all funds improperly obtained by Defendants are held in a constructive trust for the benefit of Plaintiffs, and an Order that Defendants return these improperly obtained funds to Plaintiffs in order to prevent Defendants' unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, as follows:

1. For special damages according to proof;

2. For general damages according to proof;

3. For restitution of all monies paid to the Defendants or their successors, assigns, alter egos or otherwise related parties, according to proof;

4. For an accounting of all funds and property received by Defendants in their capacities as agents and fiduciaries of Plaintiffs, and or co-conspirators or aiders and abettors of breaches of fiduciary duties owed by other defendants;

5. For an Order pursuant to Civil Code §§ 2223, 2224, and 3517 that all funds improperly obtained by Defendants are held in a constructive trust for Plaintiffs' benefit, and a further Order requiring Defendants to return such improperly-obtained funds to Plaintiffs in order to prevent Defendants' unjust enrichment;

6. For rescission of *all* agreements entered into with Defendants and the return of all consideration paid to Defendants;

7. For attorneys' fees and costs according to proof;

8. For compensatory and punitive damages according to proof;

9. For pre-judgment and post-judgment interest; and

10. For such other and further relief as the Court may deem proper.

DATED: October 16, 2017

REISER LAW, P.C.

THE MEADE FIRM P.C.

By: */s/ Tyler Meade*
Tyler Meade
Attorneys for Plaintiffs