

1 G. MARK ALBRIGHT, ESQ.  
 Nevada Bar No. 1394  
 2 CHRIS ALBRIGHT, ESQ.  
 Nevada Bar No. 4904  
 3 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**  
 4 801 South Rancho Drive, Suite D-4  
 Las Vegas, Nevada 89106  
 5 Tel: (702) 384-7111  
 Fax: (702) 384-0605  
 6 Email: [gma@albrightstoddard.com](mailto:gma@albrightstoddard.com)

7 *Attorneys for Plaintiffs*

8 *(additional counsel on signature page)*

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 Ilona Harding, an individual; Lester Thomas  
 13 Harding, an individual, all on behalf of  
 themselves and all similarly-situated individuals,

14 Plaintiffs,

15 vs.

16 Diamond Resorts Holdings, LLC; a Nevada  
 17 limited liability company; Diamond Resorts  
 International, Inc., a Delaware corporation;  
 18 Diamond Resorts U.S. Collection, L.L.C., a  
 Delaware limited liability company; Diamond  
 19 Resorts International Marketing, Inc., a  
 California corporation; Diamond Resorts  
 20 International Club, Inc., a Florida corporation;  
 Diamond Resorts Management, Inc., an Arizona  
 21 corporation; Diamond Resorts U.S. Collection  
 Members Association, a Delaware corporation;  
 22 Diamond Resorts Developer & Sales Holding  
 Company, a Delaware company; Diamond  
 23 Resorts Financial Services, Inc., a California  
 24 corporation; and Does 1 through 100, Inclusive,

25 Defendants.

No.

16 **CLASS ACTION COMPLAINT**

25 **JURY TRIAL DEMANDED**

27  
28

1 Plaintiffs, Ilona Harding and Lester Thomas Harding (hereafter “Plaintiffs” or the  
2 “Hardings”), by and through their attorneys, bring this action on behalf of themselves and all  
3 persons similarly situated, against the above-referenced Defendants (collectively, “Defendants” or  
4 “DRI”), and based on personal knowledge with respect to themselves and, on information and  
5 belief derived from, among other things, investigation of counsel and review of public documents  
6 as to all other matters, complain and allege as follows:

7  
8 **NATURE OF THE CASE**

9 1. This case arises from DRI ensnaring the Hardings and thousands of other elderly  
10 consumers in its deceptive and fraudulent scheme to sell points-based timeshare memberships  
11 (“Memberships”). DRI members, such as the Hardings, typically spent tens of thousands of dollars  
12 or more for upfront Membership fees, upsold Membership levels, and hefty annual assessments  
13 that continue in perpetuity.<sup>1</sup>

14 2. While DRI has sold Memberships to non-elderly consumers, DRI intentionally  
15 targets individuals who were retired or approaching retirement (hereafter “elderly persons”), as  
16 they often have more time to travel and are more vulnerable to DRI’s manipulative sales practices.

17 3. DRI lures consumers into purchasing Memberships by advertising certain premium  
18 or high value properties at its sales presentations. Accordingly, references herein to premium or  
19 high value properties refers to properties that are consistent with the representative sample  
20 accommodations—which are the best or most desirable accommodations—offered to consumers  
21 during the sales presentations. These properties typically represent DRI’s most luxurious  
22 properties or properties that are in prime locations. DRI showcases these properties knowing that  
23 consumers will be tempted to buy a Membership because they think they will be able to vacation  
24 there. The demand for these premium properties is high, and the competition to reserve their rooms  
25 is fierce. Members are disappointed when they cannot book reservations at these locations. DRI’s

26  
27 

---

<sup>1</sup> For purposes of this Complaint, the term “elderly” refers to individuals age 60 and older when they  
28 purchased a DRI Membership.

1 premium properties are typically booked to full-capacity a year in advance. For example, DRI  
2 properties in Hawaii are particularly popular, but DRI does not maintain an adequate supply of  
3 inventory to satisfy the reasonably expected demand of its members.

4 4. Beyond showcasing its premium properties, DRI employs manipulative sales  
5 practices to create a bond of trust between itself and elderly consumers. To do this, DRI uses  
6 licensed real estate agents and brokers to sell its Memberships. DRI's licensed real estate agents  
7 then tell their customers, whether elderly or not, that they have a duty to tell customers the truth  
8 and disclose all material facts in connection with the sale of DRI Memberships. Moreover, DRI  
9 requires purchasers in Nevada to sign a form promulgated by the State of Nevada Real Estate  
10 Division. The form is entitled "Duties Owed By A Nevada Real Estate Licensee," and it notifies  
11 consumers that DRI is under a duty to not deal with them in a manner that is deceitful, fraudulent,  
12 or dishonest. Accordingly, by design and through a uniform practice, DRI establishes a special  
13 bond of trust between itself and its elderly victims.

14 5. More particularly, DRI knows that elderly consumers are buying Memberships  
15 based upon DRI's representations. DRI abuses its purported bond of trust by withholding material  
16 information from its elderly consumers and employing high-pressure sales tactics designed to force  
17 elderly persons into buying expensive Memberships that make no economic sense for someone  
18 over the age of 60. For example, DRI's sales practices are intentionally designed to exploit elderly  
19 persons by having them attend sales presentations marketed as lasting a maximum of 90 minutes,  
20 but often lasting five or six hours, or even longer. DRI is relentless with its goal to wear down  
21 elderly persons both physically and emotionally. These elderly consumers must deal with a never-  
22 ending series of DRI sales pitches despite those customers repeatedly telling DRI that they are not  
23 interested in buying a Membership. Many of these elderly consumers who attend DRI's sales  
24 presentations eventually succumb to DRI's pressure and agree to buy a Membership. DRI's high-  
25 pressure and deceptive sales presentations are intentionally designed to accomplish one goal—to  
26 close the sale the same day the elderly person attends the sales presentation.

27 6. Despite the duty to disclose, DRI has uniformly failed and continues to fail to fully  
28

1 and fairly disclose all material information that a reasonable consumer, and particularly an elderly  
2 person, would consider to be important in deciding whether to purchase a DRI Membership. More  
3 particularly and by way of example, DRI uniformly fails to disclose to elderly persons (or its other  
4 consumers) that (a) there is no secondary market where purchasers can sell their DRI  
5 Memberships; (b) the absence of a secondary market is by intentional design; (c) the points DRI  
6 sells lack intrinsic value or pricing integrity; (d) the economics of DRI's perpetual vacation  
7 Membership do not make sense for an elderly consumer; (e) the "Closing Costs" DRI charges its  
8 members are baseless and unjust; (f) DRI has financial conflicts of interest because it also serves  
9 as the property managers for all resorts in its portfolio; (g) annual maintenance fee assessments  
10 will escalate each year at a rate higher than ordinary inflation and contain inappropriate and unjust  
11 charges; (h) despite its sales presentations, which tout DRI's premium resorts and member  
12 flexibility, most members will not be able to use their points to book vacations at DRI's premium  
13 resorts because DRI does not have sufficient inventory at its premium resorts to satisfy the  
14 reasonably expected demand of its members; (i) the majority of DRI's points sales come from  
15 upselling to its current member base; (j) DRI's sales agents have sales quotas that must be met and  
16 they are paid in the form of commissions. Sales agents who do not meet their quotas are at risk of  
17 losing their job; and/or (l) the high-interest loans DRI makes or credit cards DRI issues to elderly  
18 persons at the time of purchase to finance Memberships, are often unsuitable for those elderly  
19 persons. DRI loans or financing are not based on traditional assessment of the elderly person's  
20 repayment ability.

21 7. The above information is uniformly withheld from consumers. Moreover, DRI  
22 controls the information consumers receive about their Memberships. To ensure a consistent  
23 message is delivered during the sales presentations, DRI engages scripted sales practices and  
24 policies in addition to training each of its sales agents in how to (a) present its Membership product  
25 to consumers; (b) exercise undue influence, duress, coercion, annoyance and harassment to  
26 pressure consumers, including the elderly, into purchases; (c) overcome consumers' objections;  
27 and (d) execute and present the final contract to consumers for signing and consummating the sale.

1 8. DRI's quality control procedures include a zero-tolerance policy for sales agents  
2 who stray from its scripts and training. DRI has also issued a press release that affirmatively  
3 represented the following:

- 4 • DRI has in place a strict set of policies and practices aimed  
5 at protecting the consumer that are in-line with industry best  
6 practices.
- 7 • DRI has a zero-tolerance policy for any member of the sales  
8 team who does not follow protocol.

9 A true and accurate copy of this communication was filed with the Securities and Exchange  
10 Commission as EX-99.1 to DRI's SEC 8-K, dated January 23, 2016, which is attached to this  
11 Complaint as "Exhibit 1" and incorporated herein by reference.

12 9. Insiders within the timeshare industry, former DRI employees, and DRI's own  
13 public filings confirm that DRI's program largely focuses and relies upon on the "upsell" to both  
14 prospective and existing DRI members to purchase points. DRI sales agents are trained to  
15 convince members that, despite already having paid thousands or tens of thousands of dollars, they  
16 now need to upgrade their Membership to the next tier level or join another "collection" by paying  
17 tens of thousands of dollars more. Indeed, DRI's business model is dependent on repeatedly  
18 selling points to its existing members. Of course, DRI is happy to take money from any  
19 unsuspecting victim, regardless of whether that person is a new or existing member.

20 10. Another common tactic that DRI employs is to tell consumers who own timeshare  
21 interests in non-DRI resort properties that it is conducting an owner update event. The owner  
22 update, however, is actually a sales presentation for DRI. At these presentations, DRI typically  
23 scares the owners by telling them that, unless they convey their timeshare interests to DRI, the  
24 consumer will not be able to use their existing timeshare property. DRI offers to accept the  
25 consumer's timeshare interests in exchange for points in a DRI Membership. The same transaction  
26 also includes the consumer paying DRI monies to become a member.

27 11. As an older demographic who rely upon their social security benefits and lifetime  
28 savings, DRI's elderly customers often do not have enough cash on hand or other liquid assets to

1 spend on a DRI Membership. DRI solves this problem by offering its financial products to  
2 consumers so that they can quickly finalize sales transactions without undergoing the more  
3 traditional approaches to credit analysis, including for example, a debt to income ratio analysis to  
4 assess their elderly customers' ability to repay the loans. In fact, DRI has financed loans, at an  
5 average interest rate of 14.9%, that cover up to 75% of its customers' Membership costs—totaling  
6 nearly \$1 billion at any given time. As further detailed below, DRI's lending arm is a significant  
7 and material source of revenue and profits for the company.

8       12. After financing or paying thousands or tens of thousands of dollars from savings  
9 just to purchase their DRI Memberships, DRI's members find themselves further saddled with  
10 rapidly rising annual maintenance fees, Club dues, and other assessments, all of which DRI asserts  
11 members must pay in perpetuity or default and lose their points as well as their entire "investment."  
12 If a member fails to keep current on paying these assessments, DRI has the right to foreclose on  
13 the Membership. When that happens, the member loses his points and, therefore, his entire  
14 investment.

15       13. Many of these DRI members have been financially ruined. Others have  
16 experienced severe stress and mental anguish as they worry about how they are going to pay their  
17 ongoing DRI bills, which are usually in the thousands and sometimes tens of thousands of dollars  
18 each year. If members default on their loans or they fail to pay their annual maintenance fee  
19 assessments or Club dues, DRI will likely recapture the members' points either through surrender  
20 or foreclosure. Once that happens, DRI resells those same points to another unsuspecting customer  
21 at full retail value.

22       14. DRI likes to portray itself as conveying wonderful customer service, and touts  
23 consumer satisfaction based on self-serving consumer surveys. Unfortunately, the real world paints  
24 an ugly and often tragic picture once a DRI member discovers DRI's scam. Elderly persons who  
25 purchased DRI Memberships typically find themselves living in a never-ending nightmare. The  
26 length of time between when DRI sells a Membership to an elderly consumer and when that elderly  
27 consumer discovers that he has been defrauded is usually very long and can easily take several  
28

1 years. Once DRI members discover that they have been defrauded, it is generally too late to do  
2 anything about it. DRI members cannot sell their Memberships on the secondary market because  
3 DRI has intentionally made sure that a viable, active, and/or liquid secondary or resale market will  
4 never exist. Moreover, DRI members who want to quit DRI eventually learn that not only are they  
5 unable to sell, but they also are usually unable to give away their Memberships for free. The reason  
6 is that a DRI Membership is a liability and not an asset. As a direct consequence, there is no way  
7 for members to escape the clutches of DRI once they have joined, at least not without legal action  
8 or threat of legal action.

9 15. DRI members have filed hundreds, if not thousands, of complaints about DRI  
10 online, with governmental agencies, and with DRI itself. DRI has even received complaints from  
11 its own employees, agents, and sales people about its fraudulent and deceptive trade practices.  
12 Despite the enormous number of complaints lodged against it, DRI has done little to clean up its  
13 deceptive and fraudulent sales practices or to compensate its members for the damages they have  
14 suffered.

15 16. After receiving numerous consumer complaints, the Attorney General for the State  
16 of Arizona extensively investigated DRI's sales practices. As a result of that investigation, DRI  
17 and the Arizona Attorney General recently entered into an Assurance of Discontinuance wherein,  
18 without admitting guilt or liability, DRI agreed to stop engaging in many of the same sales  
19 practices detailed here. DRI also agreed to pay a large fine.

20 17. Based on the foregoing and the other allegations in this Complaint, the Hardings  
21 bring this action on behalf of themselves and all other elderly person victims who purchased a  
22 points-based timeshare Membership from DRI during the applicable limitations period and have  
23 not received a full refund of monies or other consideration paid to Defendants.

24 18. For the facts and reasons set forth more fully herein, the Hardings will show this  
25 Court that they, and the Class members, are entitled to a full refund of monies and other  
26 consideration each of them has paid to DRI or alternatively, recovery of actual damages they have  
27 suffered; recovery of reasonable and necessary attorney's fees; civil penalties; punitive damages;

28

1 treble damages and all other remedies to which they are justly entitled to either at law or in equity.

2 **THE PARTIES**

3 19. Plaintiffs ILONA HARDING and LESTER THOMAS HARDING are residents of  
4 the State of Arizona. They are both elderly persons who purchased DRI Memberships in the  
5 Diamond Resorts U.S. Collection and the Diamond Resorts Hawaii Collection.

6 20. Defendant DIAMOND RESORTS HOLDINGS, LLC (“DRH”) is a Nevada  
7 Limited Liability Company with a principal place of business located at 10600 West Charleston  
8 Boulevard, Las Vegas, Nevada 89135. Its manager is registered as Diamond Resorts International,  
9 Inc., which shares the principal place of business as its business address. DRH owns, *inter alia*,  
10 the *Vacations for Life*<sup>®</sup> trademark.

11 21. Defendant DIAMOND RESORTS INTERNATIONAL, INC. (“DRII”)<sup>2</sup> was a  
12 publicly traded corporation during the relevant period and has a principal place of business located  
13 at 10600 West Charleston Boulevard, Las Vegas, Nevada 89135. Its registered officers are  
14 identified as follows: (a) Director: David J. Berkman; (b) Director: Stephen J. Cloobek; (c)  
15 Director: Richard M. Daley; (d) Director: Frankie Sue Del Papa; (e) Secretary: Jared Finkelstein;  
16 (f) Director: Jeffrey Jones; (g) Treasurer: Lillian Luu; (h) President: David F. Palmer; (i) Director:  
17 David F. Palmer; (j) Director: Hope S. Taitz; (k) Director: Zachary Warren; and (l) Director:  
18 Robert Wolf, all of whom share the principal place of business as their business address. DRII is  
19 the parent corporation to each of the entities detailed below and the parent to approximately 200  
20 or more subsidiaries during the relevant period. In certain SEC filings, DRII is identified as a

21  
22 \_\_\_\_\_  
23 <sup>2</sup> On July 24, 2013, Diamond Resorts International, Inc. (“DRII”) closed the initial public offering (the  
24 “IPO”). Prior to the consummation of the IPO, DRII was a newly-formed Delaware corporation that had not conducted  
25 any activities other than those incident to its formation and the preparation of the Registration Statement and the Final  
26 Prospectus. DRII was formed for the purpose of changing the organizational structure of Diamond Resorts Parent,  
27 LLC (“DRP”) from a limited liability company to a corporation. Immediately prior to the consummation of the IPO,  
28 DRP was the parent and the sole stockholder of DRII. In connection with, and immediately prior to the completion of  
the IPO, each member of DRP contributed all of its equity interests in DRP to DRII in return for shares of common  
stock of DRII. Following this contribution, DRII redeemed the shares of common stock held by DRP and DRP was  
merged with and into DRII. DRII is now a holding company, and its principal asset is the direct and indirect ownership  
of equity interests in its subsidiaries.

1 holding company, and its principal asset is the direct and indirect ownership of equity interests in  
2 its subsidiaries.

3 22. Defendant DIAMOND RESORTS INTERNATIONAL MARKETING, INC.  
4 (“DRIM”), is a subsidiary of DRII and a California Corporation with a principal place of business  
5 located at 10600 West Charleston Boulevard, Las Vegas, Nevada 89135. Its registered officers are  
6 identified as follows: (a) Secretary: Jared Finkelstein; (b) Director: Jared Finkelstein; (c) Director:  
7 Lisa Gann; (d) Director: Keith Holmes; (e) Secretary: Howard Lanznar; (f) Treasurer: Lillian Luu;  
8 (g) Secretary: Alex Olsanksy; (h) President: David F. Palmer; (i) Secretary: Michael Shalmy, all  
9 of whom share the principal place of business as their business address. DRIM is the brokerage  
10 entity, which through its brokers and real estate agents, assists in DRI Membership sales  
11 transactions with consumers. DRIM holds itself out as the brokerage agent and licensee in the real  
12 estate transaction on behalf of Diamond Resorts U.S. Collection Development, LLC.

13 23. Defendant DIAMOND RESORTS INTERNATIONAL CLUB, INC. (“DRIC”),  
14 has been identified in certain Legal Documents issued by THE Club as a wholly owned subsidiary  
15 of Diamond Resorts Corporation and also has been identified as a subsidiary of DRII through  
16 certain Securities and Exchange Commission (“SEC”) filings. DRIC is a Florida corporation with  
17 a principal place of business located at 10600 West Charleston Boulevard, Las Vegas, Nevada  
18 89135. Diamond Resorts International Club, Inc. is a wholly owned subsidiary of Diamond Resorts  
19 Corporation. Diamond Resorts International Club, Inc. is the Operating Company for THE Club®.  
20 Its registered officers are identified as follows: (a) Secretary: Jared Finkelstein; (b) Director: Jared  
21 Finkelstein; (c) Director: Lisa Gann; (d) Director: Keith Holmes; (e) Secretary: Howard Lanznar;  
22 (f) Treasurer: Lillian Luu; (g) President: David Palmer; (h) Secretary: Michael Shalmy. Sarah  
23 Hulme has also been identified as the Vice President and principal contact for DRIC. DRIC is the  
24 Operating Company that controls and operates the Exchange Pool and Membership program  
25 referred to as “THE Club,” which is further detailed below. Membership in THE Club is mandatory  
26 for points owners in the U.S. Collection.

27 24. Defendant DIAMOND RESORTS MANAGEMENT, INC. (“DRMI”) is a  
28

1 subsidiary of DRII and an Arizona corporation with a principal place of business located at 10600  
2 West Charleston Boulevard, Las Vegas, Nevada 89135. Its registered officers are identified as  
3 follows: (a) Secretary: Jared Finkelstein; (b) Director: Jared Finkelstein; (c) Director: Lisa Gann;  
4 (d) Director: Keith Holmes; (e) Treasurer: Lillian Luu; and (f) President: David F. Palmer, all of  
5 whom share the principal place of business as their business address. Upon information and belief,  
6 there is Management Agreement in place between the U.S. Members Collection Association and  
7 DRIM, which delegates certain powers and duties to DRIM as the “plan manager” including, but  
8 not limited to, the authority to provide administrative services to the Association and the Collection  
9 and the responsibility for immediate management and operation of the Collection (other than  
10 Reservation Services) and the authority to provide financial services – including preparation and  
11 submission of annual budget to the Board of Directors for approval - for the operation of the  
12 Association and the Collection.

13 25. Defendant DIAMOND RESORTS U.S. COLLECTION DEVELOPMENT, LLC  
14 (hereafter “the U.S. Collection”) is a subsidiary of DRII and a Delaware Limited Liability  
15 Company with a principal place of business located at 10600 West Charleston Boulevard, Las  
16 Vegas, Nevada 89135. Its manager is registered as Diamond Resorts Developer & Sales Holding  
17 Company, which shares the principal place of business as its business address. The U.S. Collection  
18 sells Memberships to consumers in the form of points and those points are used in exchange for  
19 use of Collection properties, which are identified in more detail below. The U.S. Collection also  
20 finances those Memberships for certain consumers.

21 26. Defendant DIAMOND RESORTS DEVELOPER & SALES HOLDING  
22 COMPANY (“DRDS”) is a subsidiary of DRII and is organized under Delaware law. Its principal  
23 place of business is located 10600 West Charleston Boulevard, Las Vegas, Nevada 89135. Its  
24 registered officers are identified as follows: (a) Secretary: Jared Finkelstein; (b) Director: Jared  
25 Finkelstein; (c) Director: Lisa Gann; (d) Director: Keith Holmes; (e) Treasurer: Lillian Luu; (f)  
26 President: David F. Palmer, all of whom share the principal place of business as their business  
27 address. DRDS is the sole manager of Diamond Resorts U.S. Collection Development, LLC.

28



1 relevant hereto were acting within the course and scope of their authority as such alter egos, agents,  
2 partners, joint venturers, joint employers, representatives, servants, employees, successors,  
3 coconspirators and assigns, and all acts or omissions alleged herein were duly committed with the  
4 ratification, knowledge, permission, encouragement, authorization and consent of each Defendant  
5 designated herein. Defendants are, therefore, jointly and severally liable to Plaintiffs for the  
6 damages alleged herein.

7 31. DRI has over 200 subsidiaries, as reflected in current and historical SEC filings,  
8 including the other named Defendant entities. As detailed above, each of the Defendant entities'  
9 respective agents, officers, and directors substantially overlap. By way of example, but not  
10 necessarily limitation, David Palmer served as President and/or Director (and sometimes as both)  
11 for at least six of the Defendant entities; Jared Finkelstein serves as Secretary and/or Director (and  
12 often both) for at least six of the Defendant entities; and Lilian Luu serves as Treasurer and/or  
13 Director (and sometimes both) for at least six of the Defendant entities.

14 32. Each of the Defendant entities is owned and/or controlled by the other. Each entity  
15 identified above is also identified as a subsidiary on DRII's Exhibit 21.1 to its 2015 SEC 10-K  
16 filing. As recited in its 2015 SEC 10-K, DRII is holding company and its principal asset is the  
17 direct and indirect ownership of equity interests in its subsidiaries. Not inconsistent with the  
18 foregoing, DRI makes certain global representations, commingling the identity of itself with its  
19 subsidiaries. By way of example, but not necessarily limitation, a DRI SEC filing memorializes  
20 that in "North America, we hold title (via subsidiary resort developer entities) to certain intervals  
21 which have not yet been transferred to a Diamond Collection. When these intervals are transferred  
22 to a Diamond Collection, we will receive an allocation of points."

23 33. According to Secretary of State registration filings in the State of Nevada, certain  
24 of DRI's respective subsidiaries are significantly undercapitalized. By way of example, but not  
25 limitation, the Secretary of State filings reflect the following total capital amount: (a) DRIM: \$0;  
26 (b) DRIC: \$10; (c) the U.S. Collection: \$0; (d) DRDS: \$30; and (e) DRFS: \$100. Each of the  
27 Defendant entities commingle resources and operations at the same place of business, namely  
28

1 10600 West Charleston Boulevard, Las Vegas, Nevada 89135.

2 34. Each of the Defendant entities do business under the same registered trademarks,  
3 including for example DRI® and THE Club®.

4 35. Each of the Defendant entities commingle assets and dominion and control over  
5 their assets. For example, in certain SEC filings, DRI identifies the Collections and respective  
6 accommodations within the Collections as DRI's resources or assets under its control, even though  
7 each Collection is purportedly a separate entity and each property within a Collection is held in  
8 trust for the benefit of the members of that trust. As a further example of commingling, an SEC  
9 filing memorializes that in "North America, we hold title (via subsidiary resort developer entities)  
10 to certain intervals which have not yet been transferred to a Diamond Collection. When these  
11 intervals are transferred to a Diamond Collection, we will receive an allocation of points."

12 36. Each of the Defendant entities commingle their operation's responsibilities and  
13 liabilities. For example, certain SEC filings appear to obligate all subsidiaries as guarantors to  
14 certain financing arrangements.

15 37. Each of the Defendant entities comingle attributes of each individual Membership  
16 interest as between the Collection and THE Club for purposes of sales and marketing practices. In  
17 other words, when selling a Membership interest in the U.S. Collection, DRI sales representatives  
18 promote the benefits of THE Club, although written materials later disclaim any authority to make  
19 representations on behalf of THE Club.

20 **JURISDICTION AND VENUE**

21 38. This Court has subject matter jurisdiction over this action pursuant to the Class  
22 Action Fairness Act, 28 U.S.C. § 1332(d)(2), because diversity of the parties exists, the proposed  
23 Class has more than 100 Class members, and the aggregate amount in controversy exceeds \$5  
24 million.

25 39. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because acts  
26 giving rise to the claims of the Plaintiffs herein occurred within this judicial district, and all  
27 Defendants regularly conduct business in and have engaged and continue to engage in the wrongful  
28

1 conduct alleged herein—and, thus, are subject to personal jurisdiction—in this judicial district.

2 **FACTUAL ALLEGATIONS COMMON TO THE CLASS**

3 **TRADITIONAL “WEEKS” OWNERSHIP MODEL**

4 40. Traditional timeshares work on a model that allots specific weeks at a resort  
5 property to each consumer who purchased them. Timeshare owners purchase the right to reserve  
6 one week or multiple weeks at a specific resort in the year that he or she is entitled to usage of the  
7 interest. This type of timeshare model is typically categorized by such inseparable factors as  
8 providing the traditional “weeks” owner with specific and defined Unit Type (*e.g.*, one- or two-  
9 bedroom, ocean view, etc.), Ownership share (*i.e.*, the number of weeks), and Reservation and Use  
10 Rights (*i.e.*, every year, every odd year, or every even year).

11 41. When traditional “weeks” owners decide not to utilize their weeks in any given  
12 year, they can often employ an exchange program administered by a third-party entity that will  
13 exchange their weeks for reservations at destinations other than their home resort. By doing so,  
14 owners in traditional “weeks” timeshares can the use of their timeshares in order to vacation at  
15 other resorts acceptable to them.

16 42. That use right is secured through and memorialized in respective state statutes  
17 requiring a one-to-one, night-to-use requirement. For example, Nevada timeshare statutes afford  
18 consumers this same protection. *See* N.R.S. 119A.525(1)(c), 119A.307(3). The purpose of this  
19 requirement is to prohibit overselling or selling the right to use more weeks or nights than are  
20 available in a timeshare plan, and to assure the right and practical ability of each owner to use a  
21 timeshare unit for the maximum number of nights to which the owner is entitled.

22 **OVERVIEW OF DRI’S BUSINESS MODEL**

23 43. Rather than transacting business using a traditional timeshare model where  
24 investors actually own fractional interests in real estate that they can rely upon to use and enjoy,  
25 DRI has concocted a highly sophisticated and complex scheme to get elderly persons and others  
26 to buy outrageously expensive Memberships in “Collections” that DRI has created. DRI claims to  
27 have approximately 500,000 members in its Collections.

1           44.     This lawsuit arises in connection with the entity identified above as the U.S.  
2 Collection, which is DRI's largest Collection when measured by total number of members.

3           45.     The U.S. Collection is euphemistically referred to by DRI as a "right to use"  
4 vacation club. More particularly, DRI created the U.S. Collection so that a trustee can hold  
5 timeshare properties and/or interests in trust purportedly for the benefit of the U.S. Collection and  
6 its members, including the Hardings and the Class members. Depending on how much money  
7 consumers pay for their Memberships, they are then allotted a certain number of points each year  
8 and given certificates evidencing how many annual points the member has purchased. DRI  
9 members also are insured under a title policy that covers their interest in the points they bought.  
10 Points are important because they act as the currency that members use to "try to reserve" rooms  
11 at one of the resorts within the DRI network. DRI has developed a simple matrix that advertises  
12 how many points are required to reserve a room at each of its properties. More particularly, the  
13 number of points required to rent a room depends on several factors, such as location, size of the  
14 room, time of the year, and how far in advance reservations are made. There is no limit or cap on  
15 how many members can join the DRI network. DRI does not disclose all material information  
16 necessary for an elderly person to be able to calculate his chances of being able to book or reserve  
17 a room at any of the DRI properties. As such, DRI many or most members are unable to vacation  
18 where they want and when they want once they become members and try to book rooms.

19           46.     DRI claims that members do not directly own real estate. Instead, the points that  
20 consumers buy give them nothing more than the right to "try to use their points" to reserve rooms  
21 at one of DRI's resort properties. Furthermore, unlike traditional timeshares where consumers have  
22 an actual right and guaranty to use properties during a calendar year, DRI members have no such  
23 assurances. Instead, rooms are doled out on a first come first serve basis. This means that there are  
24 many disgruntled DRI members because they cannot vacation where they want and when they  
25 want despite DRI's sales pitch that a points-based model offers members greater flexibility than a  
26 traditional timeshare model. The purported flexibility is small consolation to members who paid  
27 enormous amounts of money to buy DRI Memberships and then have had to pay DRI's ever  
28

1 escalating annual maintenance fees in exchange for possibly nothing.

2 47. The points purchased by a member in a DRI Collection are automatically entered  
3 into an exchange pool run by a DRI affiliate entity called “THE Club.” THE Club does not  
4 technically sell Membership interests on behalf of each DRI Collection, but it is the reservation  
5 entity through which members ultimately reserve rooms or accommodations.

6 48. Because the number of DRI accommodations is finite and DRI has a gross shortage  
7 of high value or premium properties consistent with the representative samples DRI promoted to  
8 consumers in its sales presentations, it cannot meet the reasonably expected demand of its  
9 members, despite DRI’s representations that it offers its members much greater flexibility than a  
10 traditional “weeks” timeshare model. Accordingly, most members must use their points at less  
11 desirable properties often in off peak seasons when they do not want to travel.

12 49. DRI members are not only in competition with each other to “try to reserve” one  
13 of the rooms or accommodations in DRI’s portfolio of properties, but DRI members are also in  
14 competition with an enormous pool of other people who have the right to access the same rooms  
15 and accommodations found in the U.S. Collection. The enormous pool of other people exists  
16 because of reciprocal exchange agreements DRI has entered into with other entities. The size of  
17 these pools is in the millions and possibly tens of millions of people. By entering into reciprocal  
18 exchange agreements with Interval International and an untold number of other undisclosed third  
19 party entities, DRI has effectively devalued or diluted the points owned by members like the  
20 Hardings and Class members. In other words, the net effect of entry into the Exchange Pool is an  
21 imbalanced ratio. While the pool of competition has expanded, accommodation inventory  
22 consistent with representative samples touted by DRI remains the same or fails to increase  
23 sufficiently to meet the increasing demand. Therefore, competition is fierce and the likelihood of  
24 accessing a premium room is substantially reduced which, in turn, diminishes the perceived value  
25 of the points as represented at the point of sale. As such, the Hardings’ and Class members’ chances  
26 of booking a room at a desirable DRI property where they actually want to vacation at a convenient  
27 time has been and, continues to be, greatly diminished due to DRI’s intentional design of its  
28

1 business model. Moreover, based on the limited material information supplied by DRI to members  
2 like the Hardings, it is impossible, for elderly persons like the Hardings and the Class members to  
3 calculate with reasonable certainty what the likelihood of being able to book a room at one of the  
4 DRI properties actually is before the elderly person purchases a DRI Membership.

5 50. In summary, DRI members in general, and elderly persons in particular, are forced  
6 to trust DRI when they buy a Membership. On the one hand, DRI touts that its points based  
7 program offers tremendous flexibility to its members in choice of rooms and resort property  
8 locations. On the other hand, DRI fails to adequately disclose that there are substantial risks in  
9 purchasing a DRI Membership because there is no way for an elderly person to evaluate the  
10 reasonable probability of being able to book rooms or accommodations at a time when the elderly  
11 person wants to vacation at a location where the elderly person wants to vacation. Elderly persons  
12 are required to take a leap of faith that DRI has made full and fair disclosure of all material facts  
13 and information that a reasonably prudent investor needs to have to evaluate his purchase.

14 51. Unfortunately, as set forth throughout this Complaint, DRI has failed, and continues  
15 to fail, to make full and fair disclosure of all material facts necessary to evaluate the risks associated  
16 with purchasing Memberships in DRI before the consumer makes his purchase. This is true even  
17 though DRI uses sales people who are licensed real estate agents.

18 52. In at least the state of Nevada, elderly persons, like the Hardings and Class  
19 members, must sign a form acknowledging that the real estate agent will disclose any material  
20 facts about DRI Memberships to the elderly consumers. Moreover, these licensed DRI real estate  
21 agents are required by law not to deal with consumers, including elderly persons, in a manner that  
22 is deceitful, fraudulent, or dishonest. Alternatively, DRI's own, internal broker manual and state  
23 licensing requirements mandate that DRI sales people (who are licensed real estate agents and/or  
24 brokers) disclose all material facts to consumers about DRI Memberships prior to the  
25 consummation of a sale.

26 53. As recognized by the National Association of Realtors, DRI's Broker also has a duty to  
27 disclose material information to non-clients, such as the Hardings and Class members: "This duty  
28

1 to disclose known material facts is based upon a real estate broker's duty to treat all persons  
2 honestly and fairly. This duty of honesty and fairness does not depend on the existence of an  
3 agency relationship." National Association of Realtors, Fiduciary Duties, Risk Management &  
4 License Law Forum, dated May 15, 2013, at 2, available at [https://www.nar.realtor/sites/  
5 default/files/handouts-and-brochures/2014/nar-fiduciary-duty-032213.pdf](https://www.nar.realtor/sites/default/files/handouts-and-brochures/2014/nar-fiduciary-duty-032213.pdf).

6 54. Under the DRI business model, an elderly person who joins the U.S. Collection  
7 typically pays approximately \$25,000 to purchase enough points to rent a one-bedroom property  
8 for one week per year at a DRI resort consistent with the representative samples from its sales  
9 presentations. That enormous upfront payment is just the beginning of the price of admission to  
10 become a member in the U.S. Collection. Elderly DRI members must also pay annual maintenance  
11 fees, Club dues, Closing Costs, and a host of other fees and charges that are all designed to  
12 maximize profits for DRI. Moreover, these annual costs are billed to the DRI member in perpetuity.  
13 For example, maintenance fees for the right to "try to use" an average room in the U.S. Collection  
14 for a one week period, which DRI calls a "resort interest," average in excess of \$1,400 per calendar  
15 year according to DRI's 2015 10-K filings with the SEC. Since there are seven (7) days in a week,  
16 this means that members in the U.S. Collection are paying more than \$200 per night in maintenance  
17 fees alone just to have the right "to try to" book a room at a DRI resort, i.e. \$1,400 divided by 7  
18 days equals \$200 per day. Furthermore, DRI charges an annual fee of \$225-280 for Membership  
19 in THE Club. A member who buys enough points to rent a DRI room for one week is paying  
20 approximately an additional \$30.00 or more per day for Club dues alone. As such, DRI is collecting  
21 at least \$230 per day in maintenance fees and Club dues from that member in exchange for his  
22 right to try to use a DRI room. That calculation does not even factor in the upfront \$25,000  
23 initiation fee that the member paid DRI just to buy enough points to rent a DRI room for one week  
24 per year. To say that DRI is exploitative and a total rip-off for elderly persons in particular, is a  
25 gross understatement.

26 55. The "right to try" to book a room is essentially the equivalent of buying an  
27 expensive lottery ticket. Elderly persons are obligated to pay these maintenance fees even if they  
28

1 are unable to book or use a room through no fault of their own. It is irrelevant why an elderly  
2 member might not be able to use a resort interest. Lack of availability of accommodations, i.e., the  
3 failure of DRI to have adequate inventory to satisfy the reasonably expected demand for rooms, is  
4 not an excuse for failure to pay maintenance fees. Neither is illness, financial hardship, and other  
5 factors beyond the control of the elderly member. In fact, a lucrative portion of DRI's business  
6 model depends on its ability to recapture, through foreclosure or otherwise, a Membership when  
7 the DRI member in general, and the elderly person in particular, does not pay his or her  
8 maintenance fees. This practice allows DRI to acquire a cheap source of points or Memberships  
9 and then resell them at full retail prices to a new and unsuspecting elderly person.

10 56. DRI targets an older demographic. It is common for members in the U.S. Collection  
11 to be 60 years or older, which constitutes an elderly person under the Nevada Deceptive Trade  
12 Practices Act, Nevada Revised Statutes Annotated ("N.R.S.") 598.0933.

13 57. Memberships in the U.S. Collection are sold during sales presentations or "tours"  
14 as DRI calls them. DRI lures potential new members to its sales presentations in several different  
15 ways. For example, DRI contacts elderly persons who own existing timeshare deeds in other clubs  
16 with the promise of giving them an "owner update" in the timeshare club they belong to. This is  
17 just a thinly veiled disguise to persuade the elderly person to: (a) convey his deeded timeshare  
18 interest to DRI; and (b) purchase points and become a DRI member. DRI sometimes refers to these  
19 specific elderly consumers as legacy members.

20 58. DRI also employs telemarketers to solicit potential new members. DRI promises  
21 these elderly persons incentives, such as free gift cards, vacations, and airline tickets if they will  
22 attend a 90-minute long sales presentation. Absent these bribes, elderly persons would not attend  
23 the tours. Although DRI represents that these sales presentations will only last 90 minutes, the  
24 presentations inevitably drag on for many hours as DRI employs high-pressure sales tactics to  
25 capture new members. A January 22, 2016 article in the New York Times entitled "The Timeshare  
26 Hard Sell Comes Roaring Back" depicts just how aggressive DRI can be to consumers during these  
27 sales presentations. A true and accurate copy of this January 22, 2016 New York Times article is  
28

1 attached to this Complaint as “Exhibit 2.”

2 59. DRI claims that it has a sophisticated training program for its sales personnel. DRI  
3 also claims that it monitors its sales personnel and the sales presentations to assure uniformity,  
4 consistency, and control over what it advertises and tells prospective and existing members. DRI  
5 even issued a press release in response to the New York Times article where DRI assured the  
6 public, including the Hardings and the Class members, that it follows industry best practices in  
7 selling its Memberships and protecting consumer interests. Unfortunately, the manner in which  
8 DRI actually conducts its business affairs, including its sales presentations or tours, belies what  
9 DRI promises in its press release.

10 **DRI’s POINTS-BASED MODEL**

11 **Collection Membership**

12 60. In contrast to the traditional “weeks” ownership model where purchasers buy  
13 specific use weeks, DRI employs a points-based program that is intentionally designed to take  
14 advantage of unsuspecting elderly persons like the Hardings and the Class members. Unlike a  
15 traditional weeks-based timeshare model, DRI’s points-based timeshare plan obligates consumers  
16 in general, and elderly persons in particular, to a series of confusing Memberships and unbridled  
17 pools of competition.

18 61. In DRI’s timeshare plan, properties and/or use interests in different properties are  
19 acquired and then transferred into trust(s). Those trusts then allocate points to the respective  
20 Membership Collections for sale to purchasers. Points are intended to represent the currency that  
21 DRI members “try to use” to book accommodations. However, the dollar value of these points is  
22 not correlated to any traditional market value. The amount of points attributed to a particular  
23 accommodation or use interest within a trust is entirely arbitrary and can be manipulated at will by  
24 DRI to the detriment of the members. Similarly, the valuation of those points for purposes of sale  
25 to consumers is entirely arbitrary and set by DRI alone without input from its members.

26 62. When a consumer purchases points for the purpose of buying or upgrading a  
27 Membership, those points purportedly represent that consumer’s interest in a specific Collection  
28

1 Membership (also known as a vacation ownership interest), which is tied, on its face, to a set of  
2 properties described and identified in DRI's Nevada Public Offering Statement. DRI has a series  
3 of Collections available for Membership, including

- 4 a. U.S. Collection, which includes interests in resorts located in Arizona, California,  
5 Colorado, Florida, Indiana, Missouri, Nevada, New Mexico, South Carolina,  
6 Tennessee, Virginia, and St. Maarten;
- 7 b. Hawaii Collection, which includes interests in resorts located in Arizona,  
8 California, Hawaii, Nevada, and Utah; Premiere Vacation Collection;
- 9 c. California Collection, which includes interests in resorts located in Arizona,  
10 California, and Nevada;
- 11 d. Premiere Vacation Collection, which includes interests in resorts located in  
12 Arizona, Colorado, Indiana, Nevada, and Baja California Sur, Mexico;
- 13 e. Monarch Grand Vacations Collection, which includes interests in resorts located in  
14 California, Nevada, Utah, and the Cabo Azul Resort located in San Jose Del Cabo,  
15 Mexico;
- 16 f. European Collection, which includes interests in resorts located in Austria,  
17 England, France, Italy, Norway, Portugal, Scotland, and Spain;
- 18 g. Latin America Collection, which includes interests in resorts located in the Cabo  
19 Azul Resort located in San Jose Del Cabo, Mexico;
- 20 h. Mediterranean Collection, which includes interests in resorts located in the Greek  
21 Islands of Crete and Rhodes; and
- 22 i. Club Intrawest, which includes interests in resorts located in Canada, Mexico, as  
23 well as Florida and California, which was added to the resort network in connection  
24 with Intrawest Acquisition in January 2016.

25 63. In general, Membership in a Collection is perpetual (unless a consumer purchased  
26 term points), meaning that the Membership continues without limitation unless a Collection itself  
27 is terminated or dissolved.

28 64. A Membership in a Collection consists of the following: (a) a Membership in the  
Members Association for the respective Diamond Resorts Collection (*e.g.*, the U.S. Collection);  
and (b) an annual allocation of points for use in that Collection. The annual allotment of points to  
each member depends upon the number of points the member purchased.



1 memberships and conditions, some of which are disclosed and some of which are not disclosed to  
2 the DRI member. For example, an elderly person is neither provided with copies of DRI's  
3 agreements with affiliate entities in the Exchange Program nor does DRI disclose any material  
4 information to the elderly person about the affiliate entities or how the reciprocal exchange  
5 agreements might impact the rights of the elderly person. This failure or omission by DRI makes  
6 it impossible for a DRI member to evaluate his or her chances of using a DRI accommodation or  
7 the other risks associated with purchasing a DRI Membership.

8 71. The Exchange Pool is not limited to DRI accommodation interests. Instead, the  
9 Exchange Pool consists of an aggregation or amalgam of accommodation use interests *and* any  
10 "Other Redemption Opportunity" that DRI has contracted for to place into the Exchange Pool.  
11 DRI has defined "Other Redemption Opportunity" as anything made available for Members to  
12 obtain in exchange for their points, other than Accommodations. These may include, but are not  
13 necessarily limited to, travel, leisure, or vacation related products or benefits. In other words, any  
14 "Other Redemption Opportunity" means anything that is *not* an accommodation. For example,  
15 consumers who are unable to book rooms at a DRI accommodation are desperate not to waste their  
16 points by having them go unused while still paying exorbitant maintenance fees. Under certain  
17 strict rules, members can bank or save some or all of their points for a maximum of one year only.  
18 Otherwise, unused points are lost forever. To salvage any worth out of their points, a consumer  
19 might, for example, redeem points at a value of 7 to 10 cents on the dollar for car rentals, hotels  
20 and airline tickets. The exchange rate—meaning the exchange rate offered by DRI as between  
21 dollars and points—depends on the level of Membership such as bronze, silver, gold or platinum.  
22 Unfortunately for the consumer, DRI typically sells points for about \$4-8 each. At that exchange  
23 rate, it could take a Silver member 50 years to recoup an original \$4 per point investment if the  
24 redemption value of each point is 8 cents in today's money.

25 72. This scheme DRI has developed is particularly pernicious to elderly persons. Using  
26 the Hardings as an example, the reasonable number of years that a married couple aged 74 and 76  
27 can use a DRI Membership is decades shorter than a married couple in their mid-30s. To  
28

1 demonstrate how outrageous DRI's scheme happens to be, consider the case of a 75-year-old silver  
2 level member who paid \$4 per point and is forced to use his or her DRI points on these "Other  
3 Redemption Opportunities," and not DRI rooms or accommodations. That elderly member may  
4 have to live to be about 125 years old just to recoup his original upfront investment. In other words,  
5 it may take 50 years to recoup the \$4 per point cost of Membership using a redemption rate of 8  
6 cents per year per point. Of course, that is an actuarial impossibility. DRI knew this when it sold  
7 Memberships to the Hardings and the Class members. Moreover, the Hardings and the Class  
8 members will still be obligated to pay annual maintenance fees, Club dues, and special assessments  
9 in perpetuity (or at least for the rest of their lives) even if they are unable to book accommodations  
10 at DRI properties through no fault of their own.

11 73. DRI's failure to have adequate high value or premium inventory to satisfy the  
12 reasonably expected demand of its members to use is nothing more than a sinister form of elder  
13 abuse. More particularly, DRI knowingly played upon the emotions and dreams of its elderly  
14 members by promising "Vacations for a Lifetime" and promoting DRI to be the company of  
15 "YES" while it was conducting its sales presentation and in distributing similar advertising  
16 literature that is available to the public. These representations made by DRI had the desired effect  
17 of luring elderly persons to become DRI members. The sad reality is that by the time elderly  
18 members in DRI discover that they may never be able to book a room at one of DRI's high value  
19 or premium properties, it is too late to get out of DRI. They have been badly damaged.

### 20 **The Negative Impact of DRI's Model**

21 74. The Hardings and the Class members should be able to reserve rooms at locations  
22 where they want to vacation when they want to vacation. After all, they have paid enormous sums  
23 of money just to join DRI. Moreover, they are obligated to pay ever increasing maintenance fees,  
24 Club dues, and special assessments for the rest of their lives. Alternatively, DRI should have  
25 warned the Hardings and the Class members that there was a significant risk that they would not  
26 be able to vacation where they want when they want, rather than making some vague, general  
27 statement such as the longer a member waits to make a reservation the less likely it is that he or  
28

1 she will be able to book a room at a resort where the member wants to travel. That information,  
2 standing alone, conveys little valuable information to the elderly person.

3 75. As it is structured, the Exchange Pool consists of both accommodation interests and  
4 Other Redemption Opportunities. As a result, Collection members are competing with: (a)  
5 members in their specific DRI Collection; (b) members in any and all DRI Collections; (c)  
6 members in Interval International; and (d) any other affiliate entity with whom DRIC has  
7 contracted to enter the Exchange Pool, regardless of whether that entity has contributed “Other  
8 Redemption Opportunities” rather than usage rights in an actual accommodation.

9 76. Assignment into the Exchange Pool results in the following consequences: (a)  
10 inadequate accommodation inventory to satisfy demand of points owners; (b) significant and  
11 increased difficulty in making reservations; (c) dilution of points values as a consequence of the  
12 structure of the Exchange Pool; (d) exorbitant fees to absorb DRI’s costs for maintaining its  
13 Exchange Pool; (e) absence of fiscal stability secured by the traditional timeshare model; and (f)  
14 absence of total transparency into what the consumer is buying. More particularly, the very  
15 structure of DRI’s business model makes it impossible for a consumer to evaluate or calculate his  
16 chances of being able to book a room at an accommodation he wants to use at a time that is  
17 convenient for him and to understand the other risks associated with buying a DRI Membership.

18 77. Further, the points-based model undermines the very motivation for purchasing a  
19 Membership altogether, namely avoiding the volatility in rates for vacation accommodations, to  
20 pay in current dollars for future vacations free of inflation, and to avert the purported difficulty  
21 and uncertainty of securing accommodations at traditional hotel rooms and lodging facilities. Not  
22 only has the value of the timeshare Membership interest been substantially diminished by the  
23 limitless nature of the Exchange Pool, but also by the arbitrary valuation of points and the lack of  
24 pricing integrity.

25 78. As will be detailed below, none of this material information is fully and fairly  
26 disclosed to consumers during the sales process. The result is that elderly persons are left clueless  
27 about what they are buying, including the risks associated with purchasing a DRI Membership.  
28

**DRI's Management Fees**

1  
2 79. Beyond the revenue generated directly from sales of its Memberships and  
3 companion financial products, DRI generates revenue by charging exorbitant management fees in  
4 general, and property management fees in particular. As a consequence of their Membership,  
5 consumers pay a base assessment fee in addition to a per point fee for their Collection Membership;  
6 a base assessment fee in addition to a per point fee for THE Club® Membership; and any other  
7 special fees assessed. As recited above, THE Club® Membership fees include fees for membership  
8 in Interval International and, further, encompass obligations or costs related to any Other  
9 Redemption Opportunity included within the Exchange Program—Other Redemption  
10 Opportunities consist of points in the Exchange Program that are not tied to accommodation  
11 interests.

12 80. Among the fees assessed to consumers are costs related to DRI management  
13 contracts. As described above, DRI's management contracts operate on a cost-plus basis.  
14 Management contracts renew automatically, and require management fees generally ranging from  
15 10% to 15% of the costs of operating the applicable resort or Diamond Collection (with a weighted  
16 average of 13.9% based upon the total management fee revenue for the year ended December 31,  
17 2015). DRI's revenue from management contracts increase to the extent that (a) operating costs  
18 (including reserves for capital projects such as renovations and upgrades) at managed resorts and  
19 the Diamond Collections rise and, consequently, management fees increase proportionately under  
20 the cost-plus management contracts; (b) DRI adds services under their management contracts; or  
21 (c) DRI acquires or enters into contracts to manage resorts not previously managed by them.

22 81. In other words, each time DRI decides to add a service to its program or undertakes  
23 a new capital project, consumer members' fees increase substantially to cover the 10-15%  
24 commission owing to DRI for the management services contemplated under the management  
25 contracts. The commission based incentives for DRI included in the terms of these management  
26 contracts give rise to an inherent conflict of interest, which is not disclosed to consumers at the  
27 point of sale. Moreover, DRI maintains substantial control over these management arrangements  
28

1 because DRI maintains a presence on the board of directors for each Collection association and  
2 holds points in each respective Collection. The voting power for the class of units held by DRI is  
3 three (3) votes per unit whereas the voting power for consumer members is one (1) vote per unit.  
4 This significant disparity in voting power results in substantial dominion and control by DRI over  
5 the respective member associations.

6 82. Beyond the substantial dominion and control that DRI exercises over respective  
7 Collection Associations, fees are also assessed against members by DRI for costs related to THE  
8 Club notwithstanding the fact that members have no voting rights or other means of impacting  
9 business decisions in THE Club whatsoever. In effect, each respective Collection Membership  
10 Association is a receptacle for costs and debts associated with maintenance of THE Club, and  
11 individual members are required to absorb those costs and debts in addition to costs for its own  
12 Collection. DRI did not disclose this information to the Hardings or the Class members before they  
13 bought their DRI Memberships. Had the information been disclosed to the Hardings and the Class  
14 members, they would not have bought their Memberships or, at a minimum, would not have paid  
15 a price premium.

#### 16 **DRI Financing**

17 83. As part of its marketing and sales efforts, DRI “offers” financing for the purchase  
18 price of the points it sells to consumers (*e.g.*, to purchase a Membership or upgrade to a new level).  
19 This is an additional and lucrative source of DRI revenue from consumer sales in general, and  
20 elderly persons in particular.

21 84. DRI is equipped with 24/7 customer service centers located across the U.S. with  
22 team members able to handle loans as well as take reservations. These customer service  
23 representatives are trained, and that training includes a five-week program that educates team  
24 members on the Diamond brand and includes E-Learning and cross training. The centers are fully  
25 integrated into DRI’s phone systems and have access to customer account information allowing  
26 members to access certain automated services 24/7.

27 85. Once a consumer agrees to buy a Membership at the sales center, a sales worksheet  
28

1 is filled out and sent via fax/email to a centralized underwriting location in Las Vegas, Nevada.  
2 The information is put through the credit decision model and underwriting staff receives and  
3 reviews the applicant's credit report. Reportedly, the entire approval process only takes  
4 approximately nine minutes to complete.

5 86. Membership financing is a substantial segment of DRI's business. From January 1,  
6 2011 through December 31, 2015, DRI financed 74.5% of the total amount of its Membership  
7 sales.

8 87. Affordability measures such as debt to income criteria are not part of the  
9 underwriting matrix. Although DRI Membership financing is ultimately unsustainable for many  
10 consumers—which DRI would know if it employed simple income to debt ratio in its credit  
11 analysis—DRI continues to offer financing at credit card interest rates.

12 88. Additionally, as set forth throughout the Complaint, DRI makes loans that are  
13 inappropriate, abusive, and/or unsuitable to elderly persons. DRI fails to disclose that the interest  
14 it charges on its loans is not tax deductible, even though DRI issues 1098 forms to the borrowers  
15 showing how much the member paid in mortgage interest on the loan. This causes confusion in  
16 the minds of the elderly person who finance their Memberships through DRI.

17 89. Without these financial products or receivables, DRI would have no source of low-  
18 cost inventory. Additionally, the financial arm of DRI is a significant profit center due to the high  
19 interest rates it charges on loans and its members' inability to refinance their loans through  
20 traditional lenders. DRI failed to disclose the above material information to the Hardings or the  
21 Class members.

### 22 **DRI's Marketing and Sales Practices**

23 90. Beyond the material and adverse impact inherent to DRI's points-based model,  
24 DRI's high-pressure sales tactics coupled with its pattern and practice of non-disclosure of material  
25 information constitutes unlawful and deceptive trade practices and fraud. DRI markets and  
26 promotes its points-based product predominantly through its sales presentations at its respective  
27 sales centers. There are approximately sixty-one (61) DRI sales centers at DRI controlled or  
28

1 managed properties where consumers stay. DRI targets elderly persons who are inherently  
2 susceptible to financial and other abusive sales tactics.

3 91. DRI's sales methods and tactics arise from uniform practices and policies in the  
4 course of the sales process. According to its 2015 SEC 10-K filings, DRI's sales force is highly  
5 trained in consultative sales approaches; DRI manages its sales representatives' consistency of  
6 presentation and professionalism using a variety of sales tools and technology; and sales  
7 representatives are principally compensated on a variable basis determined by performance, i.e.,  
8 they are largely compensated by commissions. DRI touts its sales process as effective in increasing  
9 the likelihood that consumers will buy its Membership interests and increase the average  
10 transaction size.

11 92. DRI employs brokers to sell its Membership interests in the form of points, and  
12 each broker is subject to a uniform brokerage policy, which governs the practice and disclosure of  
13 material information. Pursuant to DRI's own brokerage policy, "a 'material fact' is important  
14 information relevant to the transaction that could make a difference in the terms and conditions of  
15 the transaction. It is ultimately the buyer who has the say in whether information is material, so  
16 care must be exercised in obtaining and communicating material facts." For the purposes of this  
17 lawsuit, a transaction is the sale of a Membership or points in the U.S. Collection. Additionally,  
18 DRI sales presentations are scripted to ensure uniformity. According to the press release it issued  
19 in response to the New York Times article, DRI has a zero-tolerance policy for any sales personnel  
20 who do not follow protocol. Moreover, DRI maintains quality control over its sales personnel so  
21 that consumers who attend a sales presentation, regardless of the location, will be provided the  
22 same information as all other consumers.

23 93. Beyond the duty to disclose the information memorialized in DRI's brokerage  
24 policy, Nevada real estate licensees and brokers who participated in the Membership sales  
25 transaction have a duty to disclose to all parties any material and relevant facts, data, or  
26 information, which the licensees or brokers know or should know could make a difference in the  
27 transaction. Insofar as real estate interests are implicated by Defendants' timeshare plan, that duty  
28

1 to disclose material facts is reiterated in an approved form promulgated by the Nevada Real Estate  
2 Division which is executed at the point of sale by those consumers who purchase DRI  
3 Memberships in the state of Nevada.

4 94. DRI employs high-pressure sales tactics and undue influence that is specifically  
5 designed to peddle their Memberships to elderly persons. DRI used those high-pressure sales  
6 tactics for the specific purpose of placing elderly persons like the Hardings and the Class members  
7 under duress to coerce, annoy or harass them into buying interests in DRI Memberships. More  
8 particularly, DRI has and continues to engage in the following conduct and deceptive trade  
9 practices, *inter alia*:

- 10 a. Conducting “90-minute” sales presentations that typically lasted between three (3)  
11 to six (6) hours and sometimes longer;
- 12 b. Imposing constraints and hurdles to dissuade or preclude elderly persons from  
13 leaving sales presentations;
- 14 c. Refusing to allow elderly persons to take sales materials and/or offers from the sales  
15 presentations home with them to review over a reasonable period before deciding  
16 whether the purchase is appropriate or suitable for them;
- 17 d. Failing to take the necessary time to disclose to elderly persons the details of what  
18 they are buying by rushing them through the signing of closing documents;
- 19 e. Upselling additional points to a captive audience—namely, existing members and  
20 legacy members, which is a demographic often consisting of elderly persons—  
21 under the guise of alleged DRI owner updates that are just high pressure sales  
22 pitches intended to sell more points to those members;
- 23 f. Targeting a vulnerable segment of the population, namely elderly persons, *i.e.*,  
24 persons sixty (60) years of age or older, who pursuant to statute are entitled to  
25 protections from financial abuse, price gouging, and other undue influence;
- 26 g. Offering purporting “first day” incentives such as free vacations, free airline tickets,  
27 special discounts and gift cards to encourage tour attendance. Attendees are  
28 unaware prior to the sales presentation that DRI will not permit them to receive  
their incentives or gifts without securing their DRI sales personnel’s consent to  
leave the sales presentation;
- h. Telling elderly consumers attending DRI’s sales presentations that they are  
receiving special discounted offers and other sales incentives that are only valid  
during that day’s sales presentation. DRI represents to them that its offers are time

1 sensitive and will be withdrawn if not accepted during the sales presentation. These  
2 offers are not time sensitive. DRI simply tells elderly consumers that the offers are  
3 time sensitive to place the attendees under duress and harass or annoy them into  
4 buying a DRI Membership;

- 5 i. Telling elderly consumers that DRI's points will increase in value or price, while  
6 failing to disclose that DRI's points lack pricing integrity and have no resale value;
- 7 j. Failing to adequately disclose that DRI members may not advertise online to rent  
8 their points to other; and
- 9 k. Failing to adequately disclose material information relevant to the mandatory THE  
10 Club Membership, including, *inter alia*, that Nevada law, which DRI's contracts  
11 provide as controlling, NRS 598.880 prohibits memberships such as THE Club  
12 from being perpetual in nature, and in fact limit them to a maximum two-year  
13 contract.

#### 14 **DRI's Material Omissions of Fact**

15 95. DRI knew or should have known that the Hardings and Class members would rely  
16 upon DRI to disclose all material facts in connection with the sale of Memberships in DRI's  
17 Collections. However, to avoid impeding sales, and to induce elderly persons to purchase DRI  
18 Memberships on the day of the sales presentation, DRI failed, pursuant to its sales personnel's  
19 uniform training, to disclose, *inter alia*, the following information that reasonable consumers  
20 would have wanted to know in making their purchasing decisions:

- 21 a. Despite DRI's sales presentations' focus on the elder consumers' desire to  
22 vacation at one of DRI's high value or premium accommodations, DRI fails to  
23 advise their elderly consumers, *inter alia*, that
  - 24 i. DRI's inventory of such high value or premium accommodation is  
25 inadequate to satisfy the reasonable demands of its members;
  - 26 ii. the star-ratings of most of DRI's inventory is not consistent with the  
27 representative samples promoted by DRI;
  - 28 iii. the likelihood of a new member successfully booking a desired  
accommodation is significantly low, particularly at high value or  
luxury properties in the DRI portfolio; or

1                   iv. DRI does not own all the timeshare units in some of its resort  
2                   properties, but instead only owns fractional interests in some of its  
3                   properties, which reduces DRI members' chances of securing room  
4                   reservations at these properties.

5                   b. Despite DRI telling elderly consumers that one of the benefits of purchasing  
6                   DRI Memberships is that their points can also be used to purchase "Other  
7                   Redemption Opportunities," such as flights, rental cars, hotels, or cruises, DRI  
8                   fails to advise their elderly consumers that using points to make such purchases  
9                   is economically imprudent as the cost for such purchases is not comparatively  
10                  lower, and may be more expensive, than if elderly consumers were to purchase  
11                  those same "Opportunities" outside of their Membership;

12                  c. Despite DRI's references to its Memberships as investments and a purchase in  
13                  a real estate interest, DRI fails to advise their elderly consumers that:

14                        i. no active, organized, or liquid secondary or resale market for DRI  
15                        Memberships exists or can exist, which means DRI members are  
16                        saddled with their Memberships for life;

17                        ii. they will probably not be able to sell or even give it away for free; or

18                        iii. DRI severely limits the criteria and circumstances under which it will  
19                        consent to allow Memberships to be transfer to another person;

20                  d. Despite offering to and issuing "mortgages" to elderly consumers unable or  
21                  willing to otherwise pay for a Membership, DRI fails to disclose to its elderly  
22                  consumers that

23                        i. DRI issues such loans without conducting customary due diligence or  
24                        using traditional ratios employed by banks, mortgage companies, and  
25                        other lenders to determine the suitability of the loan for a real estate  
26                        transaction; or

27                        ii. Even though it will issue to them 1098 tax forms, the high interest they  
28

1 pay on their DRI “mortgage” is not tax deductible

- 2 e. Despite explaining that DRI’s Membership program centers on the value of its  
3 points, failing to disclose to its elderly consumers how those points are valued,  
4 including, *inter alia*, that its
- 5 i. Point’s values are arbitrary and can be manipulated at will by DRI;
  - 6 ii. Point’s values are inflated in price; or
  - 7 iii. Points lack pricing integrity;
- 8 f. Despite pressuring elderly consumers to buy into DRI’s Membership  
9 “Opportunity” and referring to it as an investment and value, DRI fails to advise  
10 its *elderly consumers, inter alia*, that
- 11 i. There is no economic justification for an elderly consumer, i.e., a  
12 person 60 years of age or older, to buy a DRI Membership, as the  
13 purported value of a Membership is far outweighed by perpetual,  
14 limitless fees and costs tied to that Membership;
  - 15 ii. The Membership is a net liability rather than an asset or investment;
  - 16 iii. Anyone can easily book the same accommodations or  
17 accommodations that are substantially equivalent to the representative  
18 samples promoted by DRI through other vendors like Expedia.com or  
19 Booking.com; or
  - 20 iv. The cost of booking the same accommodations or accommodations  
21 that are substantially equivalent to the representative samples  
22 promoted by DRI through other vendors is the same or substantially  
23 less than what DRI members pay for a room on a per diem basis;
- 24 g. Despite touting the benefits as being benefits of DRI Membership, DRI fails to  
25 disclose to elderly consumers that some of those touted benefits are not actually  
26 tied to a Collection Membership, but rather are exclusive to the tied and  
27 mandatory THE Club Membership;
- 28

1 h. Despite requiring the elderly consumer to pay purported “Closing Costs” of  
2 3.5% of the price of the Membership, DRI fails to disclose to its elderly  
3 members that

4  
5 i. Such costs are not justified and do not reflect actual, out of pocket,  
6 variable expenses incurred by DRI; or

7 ii. Such costs are not associated with the sale of deeded real property;

8 i. Despite portraying annual maintenance fees as a minor expense, DRI fails to  
9 disclose to its elderly consumers that

10 i. DRI’s maintenance fees rise at a rate greater than inflation as  
11 measured by the consumer price index;

12 ii. DRI’s maintenance fees lack transparency, in that DRI includes  
13 charges in its maintenance fee assessments that would customarily be  
14 inappropriate or unjust to pass along to a timeshare member; or

15 iii. DRI (or one of its subsidiaries) is also the property manager at all of  
16 DRI’s resorts and for that additional role is paid on a cost-plus basis,  
17 which means DRI has a financial incentive to maximize maintenance  
18 fees so that it may collect its percentage of those fees as property  
19 management fees.

20 96. DRI’s material non-disclosures would impact a reasonable elderly person’s  
21 willingness to purchase a DRI Membership. Had the above material information been disclosed to  
22 elderly consumers, including the Hardings and the Class members, they would have never  
23 purchased points in DRI’s vacation club, or, at a minimum, would not have paid a price premium.

24 97. If any of the material information referenced in the preceding paragraphs and  
25 throughout this Complaint had been disclosed to the Hardings and the Class members during the  
26 sales presentations they attended, they never would have bought a DRI Membership or at least  
27 would not have paid such a premium price for it. The Hardings and the Class members relied on  
28

1 DRI to tell the truth and make full disclosure of all material facts. DRI's failure to disclose all  
2 material information was, and continues to be, a producing or proximate cause of the damages  
3 suffered by the Hardings and the Class members.

4 98. DRI's intentional or knowing failure to disclose all material facts cited in this  
5 Complaint was a producing and/or proximate cause of the damages suffered by the Hardings and  
6 the Class members.

7 **ALLEGATIONS CONCERNING THE PLAINTIFFS**

8 99. Plaintiffs are Ilona Harding, age 76, and Thomas Harding, age 74. The Hardings  
9 are consumers. They are neither sophisticated businesspeople nor attorneys.

10 **The Hardings Original DRI Membership Purchase**

11 100. On or about January 29, 2013, DRI invited the Hardings and other members of a  
12 competing vacation club, Monarch, to attend a 90-minute dinner in Scottsdale, Arizona. DRI  
13 sponsored the event under the guise of giving the attendees an update on Monarch (the "Monarch  
14 Update Dinner"). The dinner was scheduled to begin around 6:00 p.m. and only last 90 minutes.  
15 Unbeknownst to the Hardings, the dinner turned out to be a DRI sales presentation.

16 101. During that sales presentation, DRI's agents told the attendees, including the  
17 Hardings, that Monarch was in financial trouble and their Monarch memberships would eventually  
18 become useless. DRI offered to buy the attendees' interests in Monarch if the consumer- attendees  
19 bought a DRI Membership in return. By doing so, DRI created incentives for the attendees to try  
20 to salvage some value in their Monarch club memberships.

21 102. DRI told the attendees that DRI offered access to approximately 100 different resort  
22 properties in its portfolio of Collections. In comparison, Monarch only had about 10 different  
23 resort properties in its club. DRI bragged that it was one of the largest and most reputable timeshare  
24 clubs in the hospitality industry during the presentation.

25 103. The Hardings had no intention of buying a DRI Membership when they arrived at  
26 the Monarch Update Dinner, as they were satisfied with their existing Monarch membership.  
27 While the event began on time, it lasted until midnight—six hours, instead of the promised 90  
28

1 minutes. During six hours of DRI's group and individual sales presentations, DRI made numerous  
2 and repeated attempts to convince the Hardings to purchase a DRI Membership. Even though  
3 DRI, with each successive offer, lowered its asking price, the Hardings repeatedly rejected those  
4 offers and told DRI that they were not interested in buying a DRI Membership.

5 104. Despite the Hardings' repeated rejections and request for more time to consider and  
6 study DRI's offers, DRI sales agents continued to pressure them to buy a Membership. DRI made  
7 its offer time sensitive. More particularly, DRI told the Hardings that they had to accept its offer  
8 while they were still attending the event. DRI also told the Hardings that if they left the event  
9 without buying a Membership, then any of DRI's offers to sell them a Membership (including  
10 DRI's offer to buy their membership in Monarch) for the discounted prices quoted that evening  
11 would expire and automatically be withdrawn. At or around midnight—after six grueling hours—  
12 DRI was finally able to wear-down the Hardings and convince them that they “needed” to purchase  
13 a DRI Membership—*Vacations for Life*<sup>®</sup> to a couple in their 70s.

14 105. By engaging in this conduct, DRI knowingly and intentionally placed the Hardings  
15 under duress. DRI also intentionally exercised undue influence over the Hardings, harassed them,  
16 and annoyed them until the Hardings accepted DRI's offer.

17 106. As a direct result of DRI's continuing sales pressure, the Hardings eventually  
18 agreed to buy a DRI Membership. In fact, the Hardings were still signing closing documents at  
19 midnight. The final terms of the sale were as follows. DRI sold the Hardings an annual allotment  
20 of 10,500 points in the U.S. Collection. In exchange, the Hardings conveyed their Monarch  
21 membership to DRI for a \$22,812 credit. The Hardings also agreed to pay the sum of \$7,895.  
22 Lastly, the Hardings paid Closing Costs in the amount of \$319.

23 107. DRI Memberships are perpetual in nature. By joining DRI's U.S. Collection, the  
24 Hardings not only paid DRI the original purchase price of the Membership, but DRI also obligated  
25 the Hardings to pay annual maintenance fees, Club dues and special assessments and fees for the  
26 rest of their lives.

27 108. The Hardings' mandatory maintenance fees for the first year were approximately  
28

1 \$1,700, regardless of whether the Hardings could successfully book or use a DRI accommodation  
2 that they wanted to visit.

3 109. Notwithstanding DRI's purported multi-site property portfolio and flexibility, the  
4 Hardings eventually discovered that they could not book rooms at resort locations they wanted to  
5 visit. For example, the Hardings could not reserve or book properties in Washington or at  
6 California beach locations despite numerous attempts. Each time the Hardings went through  
7 DRI's reservation system, they were told that those locations were 100% booked.

### 8 **The Silver Sampler Upsell**

9 110. In August 2013, the Hardings used some of their DRI Membership points for a trip  
10 to Orlando, Florida. While they were there, DRI required the Hardings to attend another DRI sales  
11 presentation that was only supposed to last 90 minutes (the "Orlando Sales Presentation"). DRI  
12 advised the Hardings that the purpose of the presentation was to update them about all of the  
13 wonderful opportunities DRI had to offer its members. DRI did not allow the Hardings to leave  
14 the sales presentation until it was finished—a time unilaterally determined by DRI.

15 111. At the Orlando Sales Presentation, DRI recommended that the Hardings buy a  
16 "Silver Sampler" package. As an incentive, DRI offered the Hardings the use of "free rooms" in  
17 Hawaii (airfare not included) if the Hardings agreed to "upgrade" their existing DRI Membership  
18 by purchasing more annual points. DRI guaranteed a "price lock" of \$4 per point for one year if  
19 the Hardings later decided to go to "full Silver" status.

20 112. The Orlando Sales Presentation again lasted many hours longer than the 90 minutes  
21 DRI promised. Like the original DRI sales presentation that the Hardings attended in Scottsdale,  
22 Arizona, DRI unleashed numerous sales agents on the Hardings to convince them to upgrade their  
23 existing DRI Membership. Even though the Hardings repeatedly told the DRI sales agents that  
24 they were not interested in upgrading, DRI's sales agents were relentless. Each time the Hardings  
25 told DRI's sales agents that they were not interested in upgrading their Membership, DRI sent out  
26 a new set of salesmen to try to convince the Hardings that they needed to buy more points to take  
27 full advantage of the "wonderful opportunities" DRI claimed it provided its members. DRI also  
28

1 told the Hardings that the cost of DRI points would only increase over time, so the Hardings should  
2 buy more points now instead of waiting to buy them later when the points would be more  
3 expensive. Moreover, DRI offered the Hardings the use of a free room in Hawaii as an incentive  
4 to upgrade their Membership.

5 113. After several hours of listening to many DRI sales agents repeatedly trying to  
6 convince them to upgrade, the Hardings succumbed to the effects of the cumulative sales pressure.  
7 In other words, the Hardings agreed to “upgrade” their DRI Membership. The Hardings paid DRI  
8 the sum of \$15,905 to buy more points and get the use of a free room in Hawaii. Of course, this  
9 purchase also had the effect of raising the Hardings’ annual maintenance fees because DRI charges  
10 maintenance fees, in large part, based on the number of annual points a member owns.

#### 11 **The Hawaii Collection Upsell**

12 114. In May 2014, the Hardings traveled to Hawaii so that they could use the free room  
13 DRI promised them while they were in Orlando. Unfortunately, the “free” room DRI offered the  
14 Hardings was not really free. First, the Hardings had to pay for their own transportation to get to  
15 Hawaii. Second, DRI required the Hardings to attend another DRI sales presentation that DRI  
16 claimed would only last 90 minutes. The Hardings did not want to attend another one of DRI’s  
17 sales presentations, but DRI threatened to punish the Hardings by making them pay for the entire  
18 cost of their supposedly free lodging if they either (a) failed to attend the mandatory sales  
19 presentation; or (b) left the sales presentation early without DRI’s consent. DRI’s threat created a  
20 powerful incentive for the Hardings to stay for the duration of the sales presentation, even though  
21 it lasted many hours longer than DRI represented.

22 115. After attending the sales presentation for many hours beyond the time promised  
23 and dealing with numerous, high pressured sales pitches, the Hardings again broke down and  
24 agreed to buy a new Membership in DRI’s “Hawaii Collection” at \$4 per point—a price DRI’s  
25 agents claimed was an unheard-of bargain price. Although the Hardings had no intention of buying  
26 any more points from DRI, DRI’s non-stop sales pressure eventually convinced the Hardings that  
27 they would be foolish not to buy into the Hawaii Collection. More particularly, DRI told the  
28

1 Hardings that the cost of points in the Hawaii Collection was rapidly rising each year, so \$4 per  
2 point was a “steal.” Additionally, DRI advised the Hardings that by switching collections and  
3 buying the additional points, the Hardings would reach “full Silver status,” which would  
4 supposedly entitle them to preferential treatment in reserving rooms in the highly-coveted location  
5 of Hawaii.

6 116. As part of the deal, the Hardings traded in their Membership in DRI’s U.S.  
7 Collection, plus they paid DRI an additional \$10,222 for the purported privilege of joining the  
8 Hawaii Collection. As a result of this upgrade, the Hardings’ annual maintenance fees increased  
9 to \$2,257.

10 117. Despite this “upgrade” into the Hawaii Collection and reaching Silver status, the  
11 Hardings soon discovered that they still could not reserve rooms at locations they wanted to visit.  
12 For example, during their Hawaii Membership with DRI, the Hardings still could not book rooms  
13 at the Great Wolf Lodge in Washington or at DRI properties along the California coast where  
14 nearby beaches are located.

### 15 **The Palm Springs Upsell**

16 118. In August 2015, a mere three months later, the Hardings vacationed at a DRI  
17 property located in Palm Springs, California. Because the Hardings were not Gold members, DRI  
18 once again required them to attend yet another purported 90-minute, compulsory DRI sales  
19 presentation during their stay.

20 119. While they were at that Palm Springs sales presentation, DRI convinced the  
21 Hardings that they had made a big mistake by joining the Hawaii Collection. DRI explained to  
22 the Hardings that the Hawaii Collection’s maintenance fees were higher than maintenance fees in  
23 the U.S. Collection because the Hawaii Collection’s properties were more vulnerable to storm  
24 damage. Additionally, members in the Hawaii Collection are responsible for paying the cost to  
25 repair those damages. Finally, DRI told the Hardings that the Hawaii Collection was notorious for  
26 making special assessments on its members much more frequently than the U.S. Collection. DRI  
27 then “offered” the Hardings the opportunity to “get out” of the Hawaii Collection by once again  
28

1 upgrading their Membership and rejoining the U.S. Collection at an even higher and more  
2 expensive level than they were at previously.

3 120. DRI also told the Hardings that by purchasing more points at that time, they could  
4 lock in lower prices for those points. More particularly, DRI told the Hardings that it expected the  
5 value and, by extension, the cost of points to rapidly rise in the future. Also, DRI said that the  
6 amount of points the Hardings owned did not give them their full potential to take advantage of all  
7 the wonderful services that DRI had to offer, but, upgrading again would.

8 121. The Hardings trusted DRI because the sales agents repeatedly told the Hardings  
9 that they were licensed real estate brokers who had a duty to tell the truth and disclose all material  
10 facts that a consumer would deem important. The Hardings relied on the advice of the DRI sales  
11 agents and switched back to the U.S. Collection.

12 122. The Hardings believed DRI when it said that rejoining the U.S. Collection was a  
13 smart move and that the Hardings should take advantage of the opportunity to switch collections  
14 while they had the chance to do so. Once again, by upgrading their Membership, the Hardings'  
15 annual maintenance fees increased.

16 123. Even though the Hardings rejoined the U.S. Collection with an even higher number  
17 of points than before their Membership in the Hawaii Collection, the Hardings learned that they  
18 still could not book a room at a DRI property where they actually wanted to vacation. For example,  
19 after the Hardings upgraded their Membership by rejoining the U.S. Collection, while they were  
20 in Palm Springs, the Hardings still could not access the Great Wolf Lodge in Washington or  
21 California properties along the coast, which are located close to beaches.

### 22 **The Nevada Gold Upsell**

23 124. In December 2015, the Hardings attended another mandatory DRI sales  
24 presentation while they vacationed at the Polo Towers in Las Vegas, Nevada. During that sales  
25 presentation, DRI ultimately offered to give the Hardings a one-time bonus of 15,000 points if they  
26 agreed to upgrade their Membership to full Gold status. The supposed 90-minute sales presentation  
27 dragged on and on. Once again, the Hardings dealt with what seemed like a never-ending stream  
28

1 of sales agents. As had happened before at the other DRI sales presentations, each new set of DRI  
2 sales agents told the Hardings that they needed to upgrade their existing DRI Membership so they  
3 could take advantage of all the vacation opportunities that DRI had to offer. In addition to receiving  
4 15,000 bonus points, DRI told the Hardings that one advantage of upgrading to full Gold status  
5 was that they would never again have to attend a mandatory DRI sales presentation.

6 125. Based on the promises and assurances that the DRI sales agents made, the Hardings  
7 decided to upgrade their Membership one last time. The Hardings had hoped that by reaching full  
8 Gold status they could actually use their points to book rooms at the specific locations they wanted  
9 to visit when they wanted to visit, *i.e.*, Washington and California resorts near the beach.  
10 Moreover, the Hardings had already invested so much money in their DRI Memberships that they  
11 felt desperate. The Hardings found themselves in a dilemma. On the one hand, if they did not  
12 follow DRI's advice and upgrade one more time, the Hardings believed that all of the money they  
13 had expended on their DRI Memberships to date would have been wasted. On the other hand, if  
14 the Hardings did upgrade one more time, they would have to spend even more money.

15 126. The Hardings decided to trust DRI one more time and make that final upgrade in  
16 December 2015. The Hardings trusted DRI because one of its trade names and mottos are that  
17 DRI is the company of "YES!" As such, DRI touts that its corporate philosophy is to make sure  
18 that its members get what they want in reserving rooms.

19 127. Additionally, during each and every sales presentation they had attended, DRI's  
20 sales agents told the Hardings that they were licensed real estate agents who have a duty to tell the  
21 truth and disclose all material facts to consumers like them. Moreover, the DRI sales agents had  
22 repeatedly told the Hardings that full and fair disclosure of all material information was vital for  
23 consumers to have so that they could make informed decisions whether to buy a DRI Membership.  
24 The DRI's sales agents also repeatedly told the Hardings that failure to tell the complete truth or  
25 withhold material facts would expose DRI and its real estate agents to serious liability. DRI  
26 emphasized that it was on the Hardings' side and only wanted what was best for them. As such,  
27 DRI told the Hardings that they could trust DRI not to omit any material facts pertaining to owning  
28

1 a DRI Membership.

2 128. The DRI sales agents in Las Vegas had even showed the Hardings a form  
3 promulgated by the State of Nevada called “Duties Owed By A Nevada Real Estate Licensee.”  
4 That form requires real estate licensees or agents to tell the truth and make full disclosure of all  
5 material facts when selling DRI Memberships. Both the Hardings and the DRI real estate agents  
6 signed the form as part of the sales process. Signing the form reinforced the Hardings’ belief that  
7 DRI was telling the truth and not withholding any relevant or material information pertaining to  
8 the risks of owning a DRI Membership.

9 129. After seven hours of intense sales pressure, and being exhausted and beaten down  
10 emotionally, the Hardings reluctantly agreed to upgrade their Membership to full Gold status. DRI  
11 had convinced the Hardings that with this one last upgrade they finally would be able to use their  
12 points to vacation where they wanted and when they wanted.

13 130. The Hardings are not wealthy individuals. They did not have the money to pay for  
14 the upgrade by using cash or a check. As such, DRI offered to finance their purchase. Specifically,  
15 DRI told the Hardings to take out a “mortgage” through DRI’s lending arm. The principal amount  
16 of the “mortgage” was \$36,119.66. The interest rate that DRI charged on the loan was 12.2764%  
17 and the loan was for a term of 10 years. Monthly payments totaled \$524. Upon information and  
18 belief, DRI did not conduct any meaningful due diligence to see if the Hardings could reasonably  
19 afford to pay that monthly note. DRI never asked the Hardings to provide information about their  
20 income, assets, or debts before issuing the mortgage. Nor did DRI require any proof of income to  
21 approve the Hardings’ loan. DRI approved the loan in a matter of minutes. Furthermore, in  
22 upgrading their Membership in Las Vegas, DRI even issued the Hardings a pre-approved DRI  
23 Barclay credit card right there on the spot so the Hardings could even borrow the money for their  
24 down payment by charging the \$5,970 down payment in a supposedly hassle-free manner.

25 131. Even though DRI told the Hardings that by reaching full Gold status they would  
26 have an easier time booking rooms at the destinations they wanted to visit, that promise never  
27 materialized. By the end of 2015, the Hardings became increasingly frustrated with DRI. As  
28

1 discussed above, despite having paid approximately \$75,000 to DRI to purchase points plus  
2 thousands of dollars more each year in maintenance fees, the Hardings were unable to reserve  
3 rooms at resort locations they wanted to visit, such as properties in Washington and California.  
4 The Hardings' inability to reserve rooms at locations they wanted to visit at a time they wanted to  
5 visit had been an ongoing problem and source of great stress and frustration. Although the  
6 Hardings have followed the DRI reservation system instructions in trying to book accommodations  
7 in places like Washington and California, the Hardings were never able to book a room there. Each  
8 time they tried to make a reservation at one of those locations, the Hardings discovered that the  
9 properties had been 100% booked as much as a full year in advance. In other words, no vacancies  
10 ever existed at the properties that the Hardings wanted to use despite their extremely expensive  
11 full Gold status.

12         132. In January 2016, the Hardings received a bill from DRI for their annual  
13 maintenance fees. The Hardings' DRI maintenance fees for 2016 had risen more than 300% from  
14 their original fee of \$1,700 to \$5,173.

15         133. Since the primary source of the Hardings' income is their social security benefits  
16 and interest from their modest savings, the Hardings found themselves in financial trouble. Not  
17 only were the Hardings paying exorbitant maintenance fees, but they also were and still are  
18 obligated to pay off a \$36,000 loan and \$6,000 down payment, both of which charge credit card  
19 level interests. Unfortunately, the Hardings cannot refinance that loan at the lower interest rates  
20 that are customarily charged for residential properties.

21         134. By early 2016, the Hardings had lost all confidence in DRI. The Hardings decided  
22 that they needed to immediately sell their DRI Membership. When the Hardings investigated how  
23 much money they could sell their prestigious Gold Membership in the U.S. Collection for, the  
24 Hardings were shocked to learn that there was no viable secondary market where they could sell  
25 their DRI Membership, a fact DRI never told them. Additionally, the Hardings learned that they  
26 could not even give away their Membership for free. The Hardings finally realized that they had  
27 been scammed by DRI.

28

1           135. Each time the Hardings purchased a DRI Membership, they were handed a thick  
2 stack of legal documents to review and sign right there at the sales presentation. The Hardings are  
3 neither lawyers nor speed-readers. One of the documents that the Hardings were required to sign  
4 before having an opportunity to read or understand it is called a “Purchase and Security  
5 Agreement” (hereafter “PSA”). The PSA is the primary governing document between the Hardings  
6 and DRI. It is a contract of adhesion drafted solely by DRI. It is written in legalese so that elderly  
7 persons like the Hardings cannot understand what they are signing or buying, especially under the  
8 conditions under which DRI places its customers.

9           136. DRI’s practices, which are standard to the Class, placed the Hardings under duress  
10 during the signing process. Specifically, DRI did not allow the Hardings to take the closing  
11 documents home to read or study before signing them. Instead, after 6 and 7 hours of badgering  
12 the Hardings to get the upsell, DRI rushed the exhausted Hardings through the signing process  
13 before allowing them to leave the sales presentations. This coercion is standard protocol that DRI  
14 followed whenever the Hardings and others joined, upgraded, or switched a DRI Collection.  
15 Simply put, DRI did not take the necessary amount of time to disclose all material information  
16 relevant to the transaction that a reasonable consumer would want to know, nor did it explain to  
17 the Hardings or putative Class members all of the material terms and conditions of buying a DRI  
18 Membership during the signing process. The reason for DRI’s intentional conduct is simple. DRI  
19 wants the sale closed right there on the spot without any delay. Many of the terms in buying a  
20 DRI Membership are oppressive and burdensome to elderly consumers like the Hardings.  
21 Moreover, DRI does not want elderly consumers like the Hardings to know what they are signing.  
22 DRI intentionally failed at every sales presentation that the Hardings attended to disclose all  
23 material facts, which, if known by the Hardings, would have dissuaded them from ever buying a  
24 DRI Membership and/or paying a price premium for points.

25           137. Although the Hardings have used their points at some DRI resort properties, the  
26 Hardings were never able to book rooms at the luxury or premium resorts they actually wanted to  
27 go despite having paid DRI approximately \$75,000 just to buy points in DRI’s U.S. and Hawaii  
28

1 Collections. Stated differently, the Hardings did not pay DRI their hard-earned money and a  
2 portion of their life savings so that they could book rooms at a two- (2) or three- (3) star resort  
3 located a few miles from where they live in Arizona.

4 138. Unbeknownst to the Hardings, they could have booked the exact same DRI rooms  
5 (or accommodations of like kind and quality) by logging on to the internet and making room  
6 reservations on a website like Booking.com or Expedia.com for approximately \$100-\$150 per  
7 night or less. The Hardings could have done this without having to pay DRI's outrageous  
8 Membership fees. Moreover, the Hardings could have booked those exact same DRI rooms (or  
9 accommodations of like kind and quality) without obligating themselves to pay exorbitant annual  
10 maintenance fees, Club dues, and other assessments in perpetuity.

11 139. On or about October 11, 2016, the Hardings made written demand on DRI properly  
12 exercising their rights to opt-out of the ARBITRATION PROVISION found in paragraph 18 of  
13 the PSA and its attendant class action ban, ban on private attorney general actions, and ban on  
14 aggregating multiple plaintiff claims. The Hardings also demanded the return of all monies or other  
15 consideration they have paid DRI. To date, DRI has not responded to the Hardings' demand and,  
16 therefore, has refused to refund their money. Moreover, DRI ignored the Hardings' request that  
17 DRI provide them with certain documents in their file. Accordingly, all conditions precedent to  
18 filing this Complaint have now been satisfied.

19 **CLASS ACTION ALLEGATIONS**

20 140. Plaintiffs re-allege and incorporate herein by this reference all the paragraphs above  
21 in this Complaint as though fully set forth herein.

22 141. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(3), or in the alternative  
23 Rule 23(c)(4), on behalf of themselves and all others similarly situated, as representative members  
24 of the following "Proposed Class":

25 All persons who were 60 years of age or older when they  
26 purchased a Membership interest with Diamonds Resorts  
27 International through Diamond Resorts U.S. Collection  
28 Development, LLC, within the applicable statute of limitations  
period and who have not received a full refund of monies or other

1 consideration they paid the Defendants.

2 142. Excluded from the Class are (a) any consumers who relinquished and/or  
3 surrendered their Membership interest and affirmatively released DRI from liability; and (b)  
4 Defendants and any entity in which they have a controlling interest or which is a parent, subsidiary  
5 or affiliate of or is or was controlled by any Defendant entity, and their past and current officers,  
6 directors, managers, employees, affiliates, agents, legal representatives, heirs, predecessors,  
7 successors, and assigns.

8 143. Numerosity: The members of the proposed Class are so numerous and  
9 geographically dispersed that individual joinder of all members is impracticable under the  
10 circumstances of this case, and the disposition of their claims as a Class will provide substantial  
11 benefits to the parties, Class members, and the Court. Although the precise number of Class  
12 members and their names are presently unknown, this information can be readily determined from  
13 a review of DRI's records. Upon information and belief, the Class includes thousands of senior  
14 persons.

15 144. Commonality/Predominance: Common questions of law or fact are shared by the  
16 members of the proposed Class. This action is suitable for class treatment because these common  
17 questions of fact and law predominate over any questions affecting individual members. These  
18 common legal and factual questions, include, *inter alia*:

- 19 • Whether DRI's business practices constitute violations of the Nevada Time  
20 Share Statutes, N.R.S. 119A.010, *et seq.*, including:
- 21 i. Whether DRI's "Public Offering Statement" omits material information  
22 as set forth above;
- 23 ii. Whether DRI made material omissions in connection with the sales and  
24 marketing of its timeshare plan as set forth above;
- 25 • Whether DRI can be held liable for the actions of its sales agents;
- 26 • Whether Defendants are jointly and severally liable for their actions,  
27 misrepresentations, and omissions;
- 28

- 1 • Whether Defendants omitted to disclose material information to Plaintiffs and
- 2 the Class, and whether Plaintiffs and the Class have sustained injury by reason
- 3 of Defendants' actions, misrepresentations, and omissions;
- 4 • Whether consumers were fraudulently induced into purchasing a Membership;
- 5 • Whether DRI engaged in negligent misrepresentations thereby causing damage
- 6 to the Class members;
- 7 • Whether DRI breached the covenant or duty of good faith and fair dealing
- 8 thereby causing damage to the Class members
- 9 • Whether Plaintiffs and the Class are entitled to rescission and/or other equitable
- 10 relief; and
- 11 • Whether Plaintiffs and other members of the Class are entitled to recover
- 12 damages and the amount of damages that members of the Class are entitled to
- 13 recover.

14 145. Typicality: Plaintiffs' claims are typical of those of the proposed Class, and are  
15 based on and arise out of uniform misrepresentations and omissions as described above. If litigated  
16 individually, the claims of each Class member would require proof of the same material and  
17 substantive facts, rely upon the same remedial theories, and seek the same relief. There will also  
18 be no difficulty in the management of this litigation as a class action.

19 146. Adequacy: Plaintiffs are adequate representatives of the proposed Class because  
20 Plaintiffs are members of the Class they seek to represent and their interests do not conflict with  
21 the interests of the other members of the Class Plaintiffs seek to represent. Plaintiffs have retained  
22 counsel that are competent and experienced in complex class action litigation, and Plaintiffs intend  
23 to prosecute this action vigorously. The interests of the Class will be fairly and adequately  
24 protected by Plaintiffs and their counsel. Neither Plaintiffs nor their counsel have interests that are  
25 contrary to, or conflicting with, the interests of the proposed Class.

26 147. Superiority: A class action is superior to other available methods for the fair and  
27 efficient adjudication of the controversy, because, *inter alia*, it is not economically feasible for  
28

1 Class members to prosecute individual actions of their own given the amount of damages at stake  
2 for each individual relative to the substantial costs associated with litigation. Important public  
3 interests will be served by addressing the matter as a class action. The cost to the court system and  
4 the public for the adjudication of individual litigation and claims would be substantially more than  
5 if the claims were treated as a class action. Prosecution of separate actions by individual of the  
6 Class would create a risk of inconsistent and/or varying adjudications with respect to the individual  
7 members of the Class, establishing incompatible standards of conduct for Defendants and resulting  
8 in the impairment of the Class members' rights and the disposition of their interests through actions  
9 to which they were not parties. The issues in this action can be decided by means of common,  
10 class-wide proof. In addition, if appropriate, the Court can and is empowered to fashion methods  
11 to efficiently manage this action as a class action.

12 148. Because the elements of Rule 23(b)(3), or in the alternative Rule 23(c)(4), are  
13 satisfied in the case, class certification is appropriate.

14 **FIRST CLAIM FOR RELIEF**

15 **Violation of Nevada Deceptive Trade Practices Act**  
16 **Failure to Disclose and Duress**

17 149. All preceding paragraphs in this Complaint are re-alleged and incorporated by  
18 reference as though fully set forth herein.

19 150. DRI is engaged in advertising as defined in section N.R.S. 598.0905 the Nevada  
20 Deceptive Trade Practice Act.

21 151. N.R.S. 598.0933 defines an "Elderly person" to mean a person who is 60 years of  
22 age or older. Accordingly, the Hardings and all Class members are deemed to be elderly persons  
23 as defined by the Nevada Deceptive Trade Practice Act.

24 152. N.R.S. 598.0977 provides that if an elderly person suffers damage or injury as a  
25 result of a deceptive trade practice, said elderly person may commence a civil action.

26 153. DRI violated N.R.S. 598.0918(2) because DRI engaged in a "deceptive trade  
27 practice" by repeatedly or continuously conducting its sales presentations in a manner that would  
28

1 be considered by a reasonable person to be annoying, abusive or harassing. DRI's conduct caused  
2 damages to the Hardings and the Class members because DRI sold them Memberships in the U.S.  
3 Collection that the Hardings and the Class members would not have purchased but for DRI's  
4 deceptive trade practices.

5 154. DRI violated N.R.S. 598.0923(2) because DRI engaged in a “deceptive trade  
6 practice” when, in the course of its business, DRI failed to disclose one or more of the material  
7 facts identified above in connection with the sale or lease of goods and services to the Hardings  
8 and the Class members. Specifically, DRI's conduct caused damage to the Hardings and the Class  
9 members because DRI sold them Memberships in the U.S. Collection that the Hardings and the  
10 Class members would not have purchased but for DRI's deceptive trade practices.

11 155. DRI violated N.R.S. 598.0923(4) because DRI engaged in a “deceptive trade  
12 practice” when, in the course of its business, DRI knowingly used undue influence, duress,  
13 coercion or intimidation to sell DRI Memberships in the U.S. Collection to the Hardings and the  
14 Class members. More particularly, DRI's conduct caused damage to the Hardings and the Class  
15 members because DRI sold them Memberships in the U.S. Collection that the Hardings and the  
16 Class members would not have purchased but for DRI's deceptive trade practices.

17 156. DRI violated N.R.S. 598.0915(5) because DRI engaged in a “deceptive trade  
18 practice” when, in the course of its business, DRI knowingly made one or more false  
19 representations as to the characteristics, ingredients, uses, benefits, alterations, or quantities of  
20 goods or services for sale or lease or one or more false representations as to the sponsorship,  
21 approval, status, affiliation or connection of a person therewith. More particularly, DRI's conduct  
22 caused damage to the Hardings and the Class members because DRI sold them Memberships in  
23 the U.S. Collection that the Hardings and Class members would not have purchased but for DRI's  
24 deceptive trade practices.

25 157. DRI violated N.R.S. 598.0915(6) because DRI engaged in a “deceptive trade  
26 practice” when, in the course of its business, DRI knowingly represented that goods for sale or  
27 lease are original or new when DRI knew or should have known, but failed to disclose that they  
28

1 were deteriorated, altered, reconditioned, reclaimed, used or secondhand. DRI's conduct caused  
2 damage to the Hardings and the Class members because DRI sold them Memberships in the U.S.  
3 Collection that the Hardings and Class members would not have purchased but for DRI's deceptive  
4 trade practices.

5 158. DRI violated N.R.S. 598.0915(7) because DRI engaged in a “deceptive trade  
6 practice” when, in the course of its business, DRI knowingly represented that goods or services  
7 for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular  
8 style or model, when DRI knew or should have known that they are of another standard, quality,  
9 grade, style or model. DRI's conduct caused damage to the Hardings and the Class members  
10 because DRI sold them Memberships in the U.S. Collection that the Hardings and Class members  
11 would not have purchased but for DRI's deceptive trade practices.

12 159. DRI violated N.R.S. 598.0915(9) because DRI engaged in a “deceptive trade  
13 practice” when, in the course of its business, DRI advertised goods or services with intent not to  
14 sell or lease them as advertised. DRI's conduct caused damage to the Hardings and the Class  
15 members because DRI sold them Memberships in the U.S. Collection that the Hardings and Class  
16 members would not have purchased but for DRI's deceptive trade practices.

17 160. DRI violated N.R.S. 598.015(10) because DRI engaged in a “deceptive trade  
18 practice” when, in the course of DRI's business, DRI advertised goods or services for sale or lease  
19 with intent not to supply reasonably expectable public demand. DRI's conduct caused damages to  
20 the Hardings and the Class members because DRI sold them Memberships in the U.S. Collection  
21 that the Hardings and the Class members would not have purchased but for DRI's deceptive trade  
22 practices.

23 161. DRI violated N.R.S. 598.015(13) because DRI engaged in a “deceptive trade  
24 practice” when, in the course of DRI's business, DRI made false or misleading statements of fact  
25 through omission concerning the price of goods or services for sale or lease, or the reasons for,  
26 existence of or amounts of price reductions. DRI's conduct caused damages to the Hardings and  
27  
28

1 the Class members because DRI sold them Memberships in the U.S. Collection that the Hardings  
2 and the Class members would not have purchased but for DRI's deceptive trade practices.

3 162. DRI violated N.R.S. 598.0915(15) because DRI engaged in a “deceptive trade  
4 practice” in the course of DRI’s business. As recited in detail above, DRI knowingly made one or  
5 more false representation(s) and/or material omission(s) in the sale of Memberships in the U.S.  
6 Collection. More particularly, DRI’s conduct caused damages to the Hardings and the Class  
7 members because DRI sold them Memberships in the U.S. Collection that the Hardings and the  
8 Class members would not have purchased but for DRI's deceptive trade practices. DRI's  
9 violation(s) of N.R.S. 598.0915(5), (6), (7), (9), (10), (13), and (15), whether singularly or  
10 collectively caused damages to the Hardings and the Class members as set forth more fully above.

11 163. DRI violated N.R.S. 598.092(5)(c) because DRI engaged in a “deceptive trade  
12 practice” in the course of DRI’s business. More particularly, DRI made one or more untrue  
13 statements of a material fact or omitted to state one or more material facts which were necessary  
14 to make another statement, considering the circumstances under which they were made, not  
15 misleading. More particularly, DRI’s conduct caused damages to the Hardings and the Class  
16 members because DRI sold them Memberships in the U.S. Collection that the Hardings and Class  
17 members would not have purchased but for DRI’s deceptive trade practices.

18 164. The Hardings and the Class members seek to recover from DRI all actual damages,  
19 punitive damages, civil penalties, treble damages and attorney’s fees allowed by law arising out of  
20 DRI’s violations of the Nevada Deceptive Trade Practices Act, N.R.S. 598, *et seq.*

21 165. The Hardings and each putative Class member also seek to recover any and all civil  
22 penalties to which they are entitled under N.R.S. 598.0973, *et seq.*, against DRI for engaging in  
23 deceptive trade practices that were directed toward elderly persons.

24 **SECOND CLAIM FOR RELIEF**

25 **Fraud in the Inducement**

26 166. All preceding paragraphs in this Complaint are re-alleged and incorporated by  
27 reference as though fully set forth herein.

1 167. The Hardings and Class members will show that DRI committed fraud in the  
2 inducement or fraud by omission of material fact when DRI sold them Memberships in the U.S.  
3 Collection as set forth more fully above. More particularly, the Hardings and Class members will  
4 show the following: (a) DRI knew or should have known that the representations it made, and in  
5 particular, the omissions of material fact DRI made to the Hardings and Class members were false;  
6 (b) DRI intended to induce the Hardings and Class members to buy Memberships in the U.S.  
7 Collection by failing to make one or more material representations as set forth above; and (c) The  
8 Hardings and the Class members justifiably relied on DRI to make full and fair disclosure of all  
9 material facts in connection with the sale of Memberships in the U.S. Collection. The Hardings and  
10 Class members detrimentally relied on DRI's omissions of material fact thereby causing them  
11 damages. Stated differently, but for DRI's fraud in the inducement, the Hardings and the Class  
12 members would not have purchased Memberships in DRI's U.S. Collection.

13 168. The Hardings seek rescission of their DRI Memberships as well as restitution for all  
14 sums of money or other consideration paid to DRI. Alternatively, the Hardings and the Class members  
15 seek recovery of any and all monetary damages they have suffered as a result of DRI's fraud in the  
16 inducement.

17 **THIRD CLAIM FOR RELIEF**

18 **Negligent Misrepresentation**

19 169. All preceding paragraphs in this Complaint are re-alleged and incorporated by  
20 reference as though fully set forth herein.

21 170. Defendants had a duty to disclose and, at all relevant times, failed to disclose and/or  
22 concealed material facts by omitting material information known to Defendants and by making  
23 partial representations of some material facts when Defendants had knowledge of qualifying or  
24 contrary material facts.

25 171. In the absence of disclosure of relevant qualifying or contrary material facts, DRI  
26 supplied Plaintiffs and Class members with false information.

1 172. During DRI's sales presentations and transactions with elderly consumers, DRI  
2 intentionally omitted material information.

3 173. Defendants' repeated material omissions caused the Hardings and the Class  
4 members to justifiably rely upon false information.

5 174. The Hardings and the Class members justifiably relied upon and consummated  
6 transactions based on the omission of certain material information detailed above.

7 175. As a result of Defendants' negligent misrepresentation and/or failure to disclose  
8 material information, the Hardings and the Class members have suffered damages.

9 176. The Hardings seek rescission of their DRI Memberships as well as restitution for all  
10 sums of money or other consideration paid to DRI. Alternatively, the Hardings and the Class members  
11 seek recovery of any and all monetary damages they have suffered as a result of DRI's negligent  
12 misrepresentation.

13 **FOURTH CLAIM FOR RELIEF**

14 **Breach of Implied Covenant of Good Faith and Fair Dealing**

15 177. All preceding paragraphs in this Complaint are re-alleged and incorporated by  
16 reference as though fully set forth herein.

17 178. A covenant of good faith and fair dealing is implied in the timeshare contracts (also  
18 known as a Purchase and Security Agreement or PSA) entered into between DRI and the Hardings  
19 and the Class members. The Hardings and the Class members entered into such timeshare  
20 contracts in order to buy points in DRI's Memberships and to secure financing for their timeshare  
21 purchases. Implied terms in the timeshare contracts, necessary to provide the Hardings and the  
22 Class members with the benefit of their bargains, provided the Hardings and the Class members  
23 the rights guaranteed by law, required by DRI to act in good faith, and prohibited DRI's arbitrary  
24 and unfair acts that worked to the disadvantage of the Hardings and the Class members, as well as  
25 prohibited material misrepresentations and omissions.

26 179. DRI violated and breached its duties of good faith and fair dealing by the actions  
27 set forth herein, including the misrepresentations and material omissions arising in connection with  
28

1 the sales and promotional practices recited above. By way of example, but not limitation: DRI is  
2 allowed to charge maintenance fees, however, a consumer would not anticipate that DRI would  
3 have a conflict of interest creating an incentive for DRI to increase maintenance costs as much as  
4 possible because DRI receives a percentage of those maintenance fees. Moreover, a consumer  
5 would not anticipate that escalation of maintenance fees would outpace inflation. Also, a consumer  
6 would not anticipate that maintenance fees would contain unjust charges or expenses nor would a  
7 consumer anticipate that DRI would charge unjust Closing Costs in the sale of Memberships.

8 180. DRI's breach injured the Hardings and the Class members. The Hardings and the  
9 Class members are, therefore, entitled to damages, including interest, in excess of \$10,000.

10 181. The Hardings seek rescission of their DRI Memberships as well as restitution for all  
11 sums of money or other consideration paid to DRI. Alternatively, the Hardings and the Class  
12 members seek recovery of any and all monetary damages they have suffered as a result of DRI's  
13 breach of the implied covenant of good faith and fair dealing.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiffs, on behalf of themselves and all other similarly-situated  
16 members of the Class, request that this Court enter an Order:

17 A. Certifying this matter as a class action pursuant to Federal Rule of Civil Procedure  
18 23(b)(3), designating Plaintiffs as Class representatives, and appointing undersigned as Class  
19 Counsel;

20 B. Declaring the practices here complained of as unlawful under appropriate law;

21 C. Granting rescission of Membership agreements;

22 D. Granting restitution of all funds to the Plaintiffs from the Defendants;

23 E. Granting judgment to Plaintiffs and the Class members on their claims for damages,  
24 interest, attorneys' fees, and costs as applicable and appropriate;

25 F. Granting civil penalties under N.R.S.598, *et seq.*, and punitive damages against DRI  
26 under N.R.S. 598.0977; and

27 G. Ordering such other relief as the Court may deem necessary and just.

28

**JURY TRIAL DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues so triable.

DATED this 28th day of January, 2017.

**ALBRIGHT, STODDARD, WARNICK &  
ALBRIGHT**

/s/ G. Mark Albright

G. MARK ALBRIGHT, ESQ.  
Nevada Bar No. 1394  
CHRIS ALBRIGHT, ESQ.  
Nevada Bar No. 4904  
**ALBRIGHT, STODDARD, WARNICK &  
ALBRIGHT**  
801 South Rancho Drive, Suite D-4  
Las Vegas, Nevada 89106  
Tel: (702) 384-7111  
Fax: (702) 384-0605  
Email: [gma@albrightstoddard.com](mailto:gma@albrightstoddard.com)

KATHRYN HONECKER, ESQ.\*  
AUDRA E. PETROLLE, ESQ.\*  
**ROSE LAW GROUP, PC**  
7144 Stetson Drive, Suite 300  
Scottsdale, Arizona 85251  
Tel: (480) 505-3939  
Fax: (480) 505-3925  
Email: [khonecker@roselawgroup.com](mailto:khonecker@roselawgroup.com)  
[apetrolle@roselawgroup.com](mailto:apetrolle@roselawgroup.com)

ROBERT C. TARICS, ESQ.\*  
**THE TARICS LAW FIRM, P.C.**  
9810 East Thompson Peak Parkway, Unit 811  
Scottsdale, Arizona 85255  
Tel: (480) 686-9390  
Fax: (713) 682-9911  
Email: [rtarics@taricslaw.com](mailto:rtarics@taricslaw.com)

*\*pro hac vice pending*

*Attorneys for Plaintiffs*

**EXHIBIT "1"**

**EXHIBIT "1"**

1/25/2017

EX-99.1

EX-99.1 2 d127988dex991.htm EX-99.1

Exhibit 99.1

Dear Investor,

As you may be aware, and as we have previously discussed, Diamond Resorts and our industry in general have recently been the subject of rumor, speculation and innuendo. Additionally, on January 22<sup>nd</sup>, an article in the *New York Times* was published that we believe does not accurately reflect who we are as a company nor how we operate our business. We wanted to reach out to you directly and correct any misconceptions.

Diamond Resorts is well-positioned to create value for our shareholders and superior vacation experiences for our guests. We are distinguished by the strength of our resort portfolio and our commitment to delivering the best customer service in the industry.

Contrary to recent claims about Diamond Resorts, here are the facts you need to know:

- In 2015, we hosted over one million visitors, and our customer satisfaction survey results showed that 88.1% of our customers enjoyed their overall holiday experience at our resorts and 83.2% of them would recommend the resorts to others.
- Approximately 60% of our sales come from existing members and another approximately 20% come from customers of resorts where we recently acquired the management of the Home Owners Association, which is a testament to both the transparency of our HOA management and our superior customer service.
- We have in place a strict set of sales policies and practices aimed at protecting the consumer that are in-line with industry best practices.
- Every sale is subject to a 5-10 day rescission period, depending on jurisdiction.
- Our company has a zero tolerance policy for any member of the sales team who does not follow protocol.

We will continue to offer members incomparable hospitality and high quality resorts, which have always been and remain the backbone of our success. We have a great story – and all of us at Diamond are focused on telling it and making sure it is heard.

Our company is strong, and we continue to see a bright future ahead for Diamond Resorts. If you have any questions, please feel free to reach out.

We appreciate your support.

Sincerely,

Frank Acito

**EXHIBIT “2”**

**EXHIBIT “2”**

The New York Times | <http://nyti.ms/1K1GAVG>

---

BUSINESS DAY

# The Timeshare Hard Sell Comes Roaring Back

By GRETCHEN MORGENSON JAN. 22, 2016

For more than 25 years, Mary Ann Gutierrez, 77, has spent several weeks a year at on the southern shore of Lake Tahoe, Calif., often playing host to her children and grandchildren at one of two timeshare units she owns.

When she checked into one of the properties last year, she was stopped at the front desk. A \$100 gift card would be hers if she attended a presentation by Diamond Resorts International, the company that owns the resort. But first she had to fill out some papers and supply her credit card information.

The gift card came with a cost, as Ms. Gutierrez soon learned. For five hours, she said, Diamond representatives pushed her to give up both of her timeshare deeds, including one at the nearby Tahoe Beach & Ski Club, a resort that Diamond does not own. With the upgrade and membership in Diamond's ownership points system, they said, she would keep her maintenance costs low and could use her points at other resorts in the company's network. It would cost just \$30,000 upfront, they said.

Even when representatives suggested her maintenance fees would rise if she didn't switch, Ms. Gutierrez kept declining, saying that the cost was too high. Undeterred, the Diamond representatives suggested that she ask her children to pay for the upgrade. She continued to say no and, at last, they let her go.

“They weren’t going to let me out that door,” Ms. Gutierrez said. “I was shaking, I was so nervous.”

The feeling turned to shock, however, when a Diamond representative handed her a record of a voided charge in the amount of \$4,840 on her credit card. The representatives had been so certain that she would agree to the offer that they had charged her card for the down payment — even though she had not given approval.

After crashing in the financial collapse, timeshare sales are rising again, and with them high-pressure sales practices such as those Ms. Gutierrez described. Perhaps acknowledging these problems, some in the industry have cautioned in recent months that regulators from the Consumer Financial Protection Bureau could increase their oversight. New rules would affect all operators, including big players like Diamond, Interval Leisure Group, Marriott Vacations Worldwide and Wyndham Worldwide. But tighter regulation might have an especially big impact on Diamond, because its business is devoted solely to timeshare sales and management.

Interviews with timeshare owners, lawyers and other specialists in the arena, moreover, suggest that Diamond’s sales practices can be especially forceful.

Jeff Weir is a Diamond timeshare owner and journalist who writes about the industry for RedWeek, an online timeshare site, and regularly attends sales presentations to keep tabs on tactics employed by timeshare companies.

“In my experience, Diamond is much more ambitious, aggressive and downright nasty in their sales presentations compared to Marriott and Westin,” he said in an interview. “Diamond just has an amazing reputation of being tough on people.”

David F. Palmer, Diamond’s chief executive, sees its sales methods in a very different light. In an interview, Mr. Palmer described how Diamond tries to bring fun to its customer interactions, both before an initial sale and once a member buys in. “The industry didn’t quite realize that you have to engage and create intimacy and pervasiveness with somebody that you don’t really know,” he said. “Our lifetime subscription model creates a series of systems where you can track that engagement and make sure you are constantly providing a series of experiences that exceed their expectations over many, many years.”

Neither Mr. Palmer nor the company's spokeswoman would discuss Ms. Gutierrez's experience. But on the topic of high-pressure sales tactics, Mr. Palmer said, "I have belligerently zero tolerance for anyone who goes off script."

Diamond has had great success in the industry. In less than 10 years, the company's revenue reached \$845 million last year, more than double the 2010 figure. Its average timeshare transaction price was \$21,700 last year, up from \$12,510 in 2012.

But while Diamond's growth has benefited its executives — Mr. Palmer received a total of \$19 million in compensation in the most recent two years for which figures are available — the company's business practices seem to have alienated some customers.

In lawsuits and in interviews, customers complain not only of high-pressure sales, but also of sky-high maintenance fees and frustration at procedures that block club members from taking vacations where and when they want. Perhaps most distressing to owners is the fact that once you buy into a timeshare it is almost impossible to get out.

Larry Vicks, a retired engineer in upstate New York, is a disgruntled Diamond resort member who read the transcript of a Diamond conference call with Wall Street analysts and investors. "It made me laugh how they are making boatloads of money," he said in an interview. "The reason I'm laughing is that it's all at my expense."

## 'We Love to Say Yes'

About nine million households in the United States own timeshares, and sales have increased about 25 percent since 2010. In a typical timeshare deal, a buyer pays for an interval at a resort condominium, maybe one or two weeks a year, and agrees to pay homeowners' association dues covering maintenance and taxes on the property. Some buyers pay upfront, while others finance their purchases often through the company selling the units.

In the early years of timeshares, owners received deeds specifying their ownership. Now, the industry has moved to a system where buyers receive a certain number of points they can use for time and amenities, rather than a deed.

Many timeshare buyers say they like being assured time at a resort they enjoy without the hassle of owning a second home. Using their points for a vacation at a different location managed by their timeshare company is another potential benefit.

Diamond, which was created in 2007 by Stephen J. Cloobek, a veteran of the vacation ownership industry, has its headquarters in Las Vegas. The company operates 99 resorts worldwide and has associations with an additional 255 resorts and four cruise itineraries that it says its members can use. The company's tagline: "We Love to Say Yes."

But two lawsuits filed against Diamond suggest a less solicitous attitude, one that reflects the experience of Ms. Gutierrez in Lake Tahoe. One case was filed in October 2014 in California. In it, 11 timeshare owners said they had agreed to pay to upgrade their membership in the Diamond resorts. After the upgrade, the lawsuit says, the members were unable to use the resorts they had hoped to and their maintenance fees rose even though Diamond's representatives had told them they would fall.

A Florida lawsuit filed in March 2015 said that Diamond tried to pressure the plaintiffs to upgrade to what amounted to "programs to fleece more and more money out of the plaintiffs."

The two suits seek cancellation of the contracts, money back and unspecified damages.

Diamond declined to comment on the California case; it said that the litigants in the Florida suit "never made a purchase from Diamond" but were owners in a resort company it had purchased without assuming such liabilities.

Not all of Diamond's customers are unhappy, of course. Six members whose names were supplied by Diamond were all complimentary.

Walter Hunter, a retired chemist who lives in Fort Collins, Colo., is one. A member of the homeowners' association board at Daytona Beach Regency, a Diamond resort in Florida, Mr. Hunter, 94, said in an interview that he was happy with the company's management. With Diamond, "we've been more pleased, the resort is better managed," he said. Although he acknowledged that maintenance costs rose significantly after Diamond came in, he said, "We are convinced that they are doing a good job."

## A Potential Liability

Owners of timeshares in desirable resorts with unusual attributes, like a private beach, can often sell their ownership interests on the secondary market. But in areas glutted with condos for sale or rent, selling a timeshare can be almost impossible. In these cases, timeshare ownership can become an almost perpetual liability.

A recent search on eBay, for example, showed more than 700 timeshare listings for sale. Many, from Pennsylvania to Hawaii to Florida, can be purchased for \$1. In its financial filings, Diamond acknowledges that "generally, members of the clubs do not have the right to terminate their membership."

Rubén Peña's experience is a case in point. An engineering consultant with Pro Data Inc. in Jersey City, Mr. Peña has never been inside the Las Vegas timeshare he bought 15 years ago. After spending roughly \$42,000 to buy and maintain the property over those years, Mr. Peña stopped paying his loan, which had an original interest rate approaching 17 percent, and maintenance fees. He bought the timeshare from a company called Pacific Monarch Resorts, which went bankrupt. Diamond now owns and manages the resort.

"I wanted to deed back the property to Diamond and get my equity of about \$27,000 out," Mr. Peña said in an interview. "But I got no response whatsoever."

Before he stopped paying his loan in 2014, Mr. Peña was being charged \$3,262 a year in interest, taxes and maintenance fees for his ownership interest in the timeshare. Expedia.com offers a week at the property for, at most, a little over \$2,000.

Diamond declined to comment on Mr. Peña. But the company said that one reason it doesn't buy back members' stakes is that it would create accounting problems related to how Diamond had booked the revenue.

Don Nelms is a Diamond member and longtime owner of an insurance agency in Sedona, Ariz. In an interview at the company's suggestion, he said that he was pleased with Diamond's resort management. But he added that he was troubled by the company's refusal to buy back timeshare holdings from customers who can no longer afford them or just want out. Acknowledging that this practice is industrywide, he said changing it would be an "owner-friendly" move by Diamond.

"If it's paid-up on the principal, they could purchase that from an owner at maybe a reduced market value that helps the person who wants to say goodbye," he said. Not making that effort, he added, "could be something that blows up in their face."

Companies like Diamond benefit from the lack of an organized buyers' market for timeshares. The company's most recent annual financial filing noted that if such a market "were to become more organized and liquid," the resulting availability of vacation units "could adversely affect our sales and our sales prices."

And even if an owner defaults and walks away from maintenance fees, Diamond can prosper. It simply repossesses the unit at little cost and tries to resell.

This "inventory-recapture model" is industrywide and allows companies to acquire units far more cheaply than it costs to build properties or buy resorts. In a company presentation last November, Diamond said it typically pays \$1,500 to the homeowners' association to take back a timeshare week. Then it sells the space for an average of \$27,434, it said.

Last year, the company introduced a "relinquishment option" for members of its European resorts. If they agree to pay two years of maintenance costs, they can escape their obligations.

Customer complaints across the industry have grown loud, and in recent months the stocks of Diamond and other timeshare companies have fallen in the

face of market chatter that the Consumer Financial Protection Bureau might write new rules to address industry practices. Even as Diamond's earnings almost tripled in the first nine months of 2015 over the same period a year earlier, the company's shares are down 37 percent from their high of last March.

An official at the bureau declined to comment on the industry.

Aggressive sales tactics are among the most common complaints. Typically, potential timeshare buyers are invited to a free or low-cost mini-vacation at a resort if they agree to attend a sales presentation during their stay. Participants say fast-talking, commission-paid sales representatives often run these events, emphasizing the merits of timeshares as investments and downplaying their shortcomings.

Customers are told the meetings will last less than two hours, but they often go on far longer, and participants find it difficult to leave.

Michael D. Finn is a partner at the Finn Law Group in Largo, Fla., whose busy practice consists solely of helping timeshare owners walk away from their obligations. "Every timeshare contract I have ever seen contains a clause with a phrase something like 'I did not rely on any oral representations in order to make my decision to purchase this timeshare,'" Mr. Finn said in an interview. "I call that the salesman's license-to-lie clause, because that encourages them to do whatever they have to do to close that person, that day."

Speaking about the industry generally, Mr. Finn said that buyers are often led to believe they are making a real estate deal and that their holding will have a value that they can recoup in a resale or pass on to their children.

"Nothing can be further from the truth," Mr. Finn said.

In November, Diamond said that over the last 12 months it had conducted about 221,000 tours at its 53 sales offices around the world. The company says that 15.1 percent of tours result in sales.

Diamond says its innovative programs "infuse hospitality into our sales and marketing efforts." Its "Events of a Lifetime" include golf outings with a professional,

spring training with Reggie Jackson, the baseball Hall of Famer, or tickets to a show near a Diamond-owned resort.

In the interview, Mr. Palmer said he was proud that roughly 60 percent of the company's sales came from existing customers. "I wear it like a badge of honor," he said. "These people bought from us, and they want to own more."

In addition, he noted, sales are regulated by state authorities. "No one stumbles into a purchase here," he said. "People have five to 10 days to think about it."

But even fans of Diamond recognize that accusations of high-pressure sales tactics in the industry can be problematic for property managers. "There's some natural tension between management who wants to create the best experience possible, and the sales organization — they are motivated to want different things," said Terry Timm, a Diamond timeshare owner who is chief administrative officer of Thrivent, a financial services company. "The way timeshare sales are structured have really really incentivized the wrong things."

## A 100% Profit

Diamond often buys resorts that have fallen into bankruptcy, acquiring timeshare owners as part of the deals. After Diamond takes over a resort, it usually becomes the management company and often raises maintenance fees.

Some of these increases reflect the costs of necessary improvements at resorts that have fallen on hard times. But Diamond members who are critical of the company say that it typically gains control of the resort's governing board, known as the homeowners' association, giving timeshare owners little say in how money is spent.

Owners at some resorts are wary about ceding any board control to Diamond. Jacob Bercu, is a retired Silicon Valley software engineer and longtime resort owner at Tahoe Beach & Ski. A few years ago, some of the resort's roughly 7,000 owners noticed that Diamond was buying up defaulted timeshare segments at county tax auctions. Last September he won a board seat sought by a Diamond representative. "We took aggressive action to keep them away from the ownership, to convince our

owners not to sell out and, instead, to vote for us so we keep control,” Mr. Bercu said.

Timeshare owners of the Grand Beach Resort, a 192-unit property in Orlando, Fla., on the other hand, learned in a letter in September that their annual maintenance fee would rise 14.9 percent this year. Management fees paid by the resort members, the letter said, are expected to jump to a total of \$1.15 million from about \$366,000 in 2015.

Diamond said the increases at Grand Beach resulted from a new management contract, consistent with the company’s deals elsewhere, and higher operating costs and reserves for renovations.

The chief beneficiary of these cost increases is Diamond, which levies management fees at the properties it owns and operates. Diamond tells investors that it typically reaps a fee equal to as much as 15 percent more than the costs of running a resort: labor, utilities, taxes and other overhead, including the reserve funds kept for emergencies.

“Anything that is put in the budget that gets expended on an annual basis, we get our 15 percent fee,” Mr. Palmer explained to investors at a September 2014 conference, according to a transcript. “That is basically a 100 percent profit business.”

In the interview, Mr. Palmer added that the company was completely transparent with owners about its charges. “All the costs are disclosed on a private website,” he said. “There are no hidden fees.”

Diamond’s founder, Mr. Clobeck, is something of a celebrity.

He has appeared on the CBS television show “Undercover Boss” and has played golf with President Obama. Mr. Clobeck owns 22 percent of Diamond’s stock and earned \$7.4 million as a director in 2014, according to the most recent proxy.

This compensation disturbs owners faced with rising maintenance costs extracted by Diamond. Among them is Eleanor Varkel, a caterer from South Africa who has two of the company’s timeshares, one in Las Vegas and another in Hawaii.

Both were taken over by Diamond after the companies operating the resorts collapsed.

“Every year the maintenance fees go up, up, up,” Ms. Varkel said in an interview. “We were paying \$300 a year in maintenance 15 years ago, and now it’s gone up to \$2,000 a year.” Ms. Varkel said she had tried, unsuccessfully, to sell her ownership stake either to Diamond or elsewhere. “You can’t give it away, not even to charity.”

***Correction: January 23, 2016***

*Because of an editing error, an earlier version of a picture caption with this article misstated the number of resorts operated by Diamond. It is 99 resorts, not 93.*

A version of this article appears in print on January 24, 2016, on Page BU1 of the New York edition with the headline: Sand, Sun and the Hard Sell.

---

© 2017 The New York Times Company

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: