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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NERI JOCSON and FE JOCSON,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

DIAMOND RESORTS  
INTERNATIONAL CLUB, INC., dba  
DIAMOND RESORTS U.S.  
COLLECTION DEVELOPMENT, LLC  
dba DIAMOND RESORTS FINANCIAL  
SERVICES, INC., BARCLAYS BANK  
DELAWARE dba BARLCA YCARD and  
DOES 1 through 10, inclusive,

Defendants.

) CASE NO.: 2:17-cv-08214

) CLASS ACTION COMPLAINT FOR  
) DAMAGES

Plaintiffs, by and through their attorney, Amir J. Goldstein, Esq., as and for their  
complaint against the Defendants, DIAMOND RESORTS INTERNATIONAL CLUB, INC.,  
dba DIAMOND RESORTS U.S. COLLECTION DEVELOPMENT, LLC dba DIAMOND  
RESORTS FINANCIAL SERVICES, INC and BARCLAYS BANK DELAWARE dba  
BARCLAYCARD allege as follows:

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**INTRODUCTION**

1. This is an action for damages brought by individual consumers and on behalf of a class for Defendants’ violations of: (1) the Telephone Consumer Protection Act of 1991 or 47 U.S.C. §227 et seq. (“TCPA”); (2) the Truth in Lending Act or 15 U.S.C. §§1601 et seq. (“TILA”); (3) the Vacation Ownership and Time-Share Act of 2004 or California Business and Professions Code §§11210 et seq.; (4) the Rosenthal Fair Debt Collection Practices Act or California Civil Code §1788, et seq. (“Rosenthal Act”); (5) the California False Advertising Act or California Business and Professions Code §§17500, et seq.; (6) California Business and Professions Code §§17200, et seq.; (7) the Consumers Legal Remedies Act or California Civil Code §§1750 et seq. (“CLRA”); (8) California Welfare and Institutions Code §15610.70(a); (9) breach of contract; and (10) fraud in the inducement.

**PARTIES**

2. Plaintiffs are natural persons residing in Los Angeles County, California and are consumers as defined by Cal. Bus. & Prof. Code §17201.
3. Upon information and belief, Defendant Diamond Resorts International Club, Inc. dba Diamond Resorts U.S. Collection Development, LLC dba Diamond Resorts Financial Services, Inc. (“Defendant DRI”) is a “creditor” as defined by 15 U.S.C. §1602 and is company whose state of incorporation is Nevada and whose principal place of business is in the state of Nevada.
4. Upon information and belief, Defendant Barclays Bank Delaware dba Barclaycard (“Defendant Barclays”) is a “creditor” as defined by 15 U.S.C. §1602 and is a company whose state of incorporation is Delaware and whose principal place of business is in the state of Delaware.

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**JURISDICTION**

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and venue is proper in this district pursuant to 28 U.S.C. § 1391 et seq., as the Defendants conduct business, the nature of which subjects the Defendant corporations to jurisdiction in this district and the transactions that give rise to this action occurred, in substantial part, in this district.

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**FACTUAL ALLEGATIONS**

6. Plaintiffs repeat and reallege each and every allegation set forth above as if reasserted and realleged herein.
7. That upon information and belief, Defendant DRI sells timeshare contracts.
8. That on or about November 2016, Plaintiffs obtained a “membership” with Defendant DRI whereby Plaintiffs would acquire timeshare “points” which could then be redeemed in exchange for the right to use and occupy accommodations at various resorts.
9. That Plaintiffs, in order to purchase “points” and various “upgrades” with Defendant DRI, obtained financing from Defendant DRI as well as a separate line of credit in the form of a “Diamond Resorts International” credit card issued by co-Defendant Barclays.

*Count One*

10. That on or about November 2016, Defendant DRI sold Plaintiffs a “sampler” package which was comprised of 2,500 points.
11. That Plaintiffs were led to believe that their monthly payments went solely toward the purchase of timeshare “points.”

1 12. That on or about January 2017, Defendant DRI advised Plaintiffs that it shouldn't  
2 have sold the Plaintiffs the 2,500 points because 2,500 points would be  
3 insufficient to obtain any vacation privileges.

4 13. That Defendant DRI advised Plaintiffs that they needed to purchase an additional  
5 6,000 points which would get them a "silver" membership and access to vacation  
6 accommodations.

7 14. That Defendant DRI proceeded to apply hard pressure sales tactics on the  
8 Plaintiffs.

9 15. That Plaintiffs felt manipulated and intimidated into signing a new contract  
10 upgrading their membership with the Defendant DRI.

11 16. That subsequent to the January 2017 transaction, Defendant DRI urged Plaintiffs  
12 to attend an "update" meeting that would take place on or about June 2017.

13 17. That when Plaintiffs attended said "update" meeting, they were told, contrary to  
14 Defendant DRI's previous representations, that their membership was not at  
15 "silver" status.

16 18. That Defendant DRI once again advised Plaintiffs that the points they owned at  
17 that time were insufficient to obtain vacation privileges and that they needed to  
18 "upgrade" their membership again.

19 19. That Defendant DRI urged Plaintiffs to purchase another 2,500 points and use a  
20 Barclays "Diamond Resorts International" credit card to help finance the down  
21 payment for the transaction.

22 20. That on or about August 2017, Plaintiffs attempted to use their membership points  
23 for a vacation in Florida.

24 21. That during their Florida trip, Defendant DRI advised Plaintiffs that they would  
25 be able to obtain additional benefits and discounts for their trip if they purchased  
26 additional points.

- 1 22. That Defendant DRI advised Plaintiffs that a failure to purchase additional points  
2 at that time would result in the Plaintiffs losing the aforementioned benefits.
- 3 23. That upon information and belief, Defendant DRI failed to provide the Plaintiffs  
4 with adequate information regarding said benefits as required by law.
- 5 24. That as a result of Defendant DRI's representations, Plaintiffs purchased an  
6 additional 5,000 points.
- 7 25. That Defendant DRI repeatedly subjected the Plaintiffs to high-pressure situations  
8 which caused the Plaintiffs a great amount of stress, confusion and anxiety.
- 9 26. That Defendants repeatedly failed to disclose to Plaintiffs the extent of the debt  
10 they would incur as a result of upgrading their membership.
- 11 27. That upon information and belief, Defendant DRI regularly engages in a practice  
12 of subjecting consumers like the Plaintiffs to high pressure situations filled with  
13 hard sell tactics in order to coerce them into entering into timeshare memberships  
14 and upgrades.
- 15 28. That upon information and belief, the Defendants act in cahoots and use false  
16 advertising and misrepresentations to induce consumers like the Plaintiffs to enter  
17 into contracts and pay for upgrades that they never wanted.
- 18 29. That upon information and belief, Defendants regularly fail to make material  
19 disclosures in order to mislead consumers like the Plaintiffs as to the status of  
20 their accounts and membership benefits.
- 21 30. That Defendants used deceptive sales practices and made numerous oral  
22 misrepresentations and false statements during timeshare sales presentations,  
23 including, but not limited to the "update" meetings.
- 24 31. That upon information and belief, Defendants' agents are trained to make  
25 misleading sales pitches and verbal promises to consumers like the Plaintiffs in  
26 order to induce sales and upgrades, only to purposely omit said representations in  
27 their written purchase agreements.

1 32. That Defendants regularly engage in the deceptive practice of specifically  
2 disclaiming all verbal representations made by its agents in an attempt to  
3 circumvent liability.  
4

5 *Count Two*

6 33. That in reliance on Defendants' misrepresentations, Plaintiffs were now  
7 financially obligated to pay not only for their points, but for additional fees that  
8 were not clearly and fully disclosed to them at the time their purchase agreements  
9 were signed.

10 34. That Defendants' documents contain contradictory and misleading information  
11 with regard to how a down payment on a transaction is represented, i.e. "initial  
12 cash deposit" when no actual cash was ever tendered by Plaintiffs.

13 35. That Defendants' documents, when read in totality, are confusing and misleading  
14 in that certain fees and costs are listed as part of the "amount financed" in one  
15 document yet omitted in another.

16 36. That upon information and belief, Defendants' documents intentionally and  
17 materially misrepresent the character of any down payments received and the  
18 "amount financed," thereby providing consumers like the Plaintiffs with an  
19 incomplete and misleading picture of their true financial obligations.

20 37. That upon information and belief, Defendants intentionally omit various fees and  
21 terms, including but not limited to miscellaneous assessments, from what they  
22 purport would be a consumer's "total" monthly payment.

23 38. That upon information and belief, when signing up consumers like the Plaintiffs  
24 for "upgrades," Defendants neglect to disclose and fully incorporate terms and  
25 other information regarding prior contracts, thereby misleading consumers as to  
26 the status of their memberships and the financial obligations created as a result of  
27 an "upgrade."  
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1 39. That upon information and belief, Defendants work together to defraud  
2 consumers and systematically engage in a deceptive practice of offering  
3 consumers separate lines of credit in order to evade federal and state financing  
4 laws; to make money, both directly and indirectly, off of unwitting consumers;  
5 and to secure profits in situations where they would not otherwise be entitled to  
6 any financial gains.

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8 *Count Three*

9 40. That upon information and belief, when Plaintiffs advised Defendant DRI of their  
10 onerous financial burden, Defendant DRI, in reply, deceptively advised Plaintiffs  
11 that they could easily refinance their loans, knowing that neither the Defendants  
12 nor any other third party financial institutions would refinance Plaintiffs'  
13 timeshare contracts.

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15 *Count Four*

16 41. That Plaintiffs wanted to terminate their membership with the Defendant DRI.

17 42. That shortly after the August 2017 meeting with the Defendant DRI, Plaintiffs  
18 mailed Defendant DRI a written request to terminate their membership.

19 43. That in addition, Defendant DRI received a certified letter from the Plaintiffs  
20 rejecting the arbitration provision in the contract within the time allotted in the  
21 purchase agreement.

22 44. That Plaintiffs "opted out" of the arbitration clause pursuant to the most recent  
23 contract within the 30 day provision.

24 45. That Defendant DRI responded to the Plaintiffs with confusing, contradictory and  
25 ineffective information.

1 46. That upon information and belief, Defendant DRI engages in a practice whereby  
2 it purposely makes terminating membership contracts difficult, if not almost  
3 impossible, for the average consumer.

4 47. That Defendant DRI continued to mail Plaintiffs letters demanding payment  
5 without addressing Plaintiffs' request to terminate their membership contact.

6 48. That Defendants' correspondence to Plaintiffs contain confusing, conflicting and  
7 misleading information regarding Plaintiffs' membership and status of accounts.

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9 *Count Five*

10 49. That in response to Defendants' confusing and contradictory representations,  
11 Plaintiffs sent Defendants written notice disputing Defendants' claims.

12 50. That as part of said notice to Defendants, Plaintiffs also requested that all further  
13 communications from the Defendants, including any verifications, be provided to  
14 the Plaintiffs in writing and that Defendants stop all phone calls to the Plaintiffs  
15 immediately.

16 51. That upon information and belief, Defendants did not provide Plaintiffs with any  
17 verification in response to their written dispute yet continued to send Plaintiffs  
18 additional form letters containing the same, conflicting and confusing information  
19 regarding Plaintiffs' account.

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21 *Count Six*

22 52. That notwithstanding Plaintiffs' multiple requests, Defendants continued to call  
23 Plaintiffs on their telephone land lines as well as on their cell phones.

24 53. That upon information and belief, Defendants engage in the practice of placing  
25 telephone calls and sending correspondence to members that contain deceptive  
26 language in order to confuse and mislead members as to the status of their  
27 accounts.



**AS AND FOR A FIRST CAUSE OF ACTION**

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- 2 54. Plaintiffs repeat and reallege each and every allegation set forth above as if
- 3 reasserted and realleged herein.
- 4 55. That Plaintiffs revoked their consent to Defendants' placement of telephone calls
- 5 to Plaintiffs' cellular telephones by the use of an automatic telephone dialing
- 6 system or a pre-recorded or artificial voice.
- 7 56. That Defendants continued to place several dunning telephone calls to Plaintiffs'
- 8 cellular phones using an automated telephone dialing system and/or a pre-
- 9 recorded or artificial voice.
- 10 57. That none of Defendants' telephone calls placed to Plaintiffs were for "emergency
- 11 purposes" as specified in 47 U.S.C. §227(b)(1)(A).
- 12 58. That Plaintiffs were charged for the phone calls made by Defendants to their
- 13 cellular phones.
- 14 59. That Defendants willfully or knowingly violated the TCPA, by placing non-
- 15 emergency telephone calls to Plaintiffs' cellular telephones using an automatic
- 16 telephone dialing system or pre-recorded or artificial voice notwithstanding
- 17 Plaintiffs' previously revoked consent.
- 18 60. That as a result of Defendants' violations of the TCPA, Plaintiffs suffered stress,
- 19 sleepless nights, aggravation and emotional distress.
- 20 61. That as a result of Defendants' violations of the TCPA, Plaintiffs are entitled to
- 21 \$500.00 for each artificial and/or prerecorded telephone call pursuant to 47 U.S.C.
- 22 §227(b)(3)(B).
- 23 62. That as a result of Defendants' violations of the TCPA, Plaintiffs are entitled to a
- 24 maximum of treble damages pursuant to 47 U.S.C. §227(b)(3).
- 25 63. That as per 47 U.S.C. §227 et seq. and as a result of the above violations, the
- 26 Defendants are liable to the Plaintiffs for actual damages and statutory damages in
- 27 an amount to be determined at the time of trial.
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1 **AS AND FOR A SECOND CAUSE OF ACTION**

2 64. Plaintiffs repeat and reallege each and every allegation set forth above as if  
3 reasserted and realleged herein.

4 65. The Truth In Lending Act was enacted and amended over the years by Congress  
5 “to assure a meaningful disclosure of credit terms so that the consumer will be  
6 able to compare more readily the various credit terms available to him and avoid  
7 the uninformed use of credit, and to protect the consumer against inaccurate and  
8 unfair credit billing and credit card practices.” 15 U.S.C. §1601(a).

9 66. By its acts and practices as hereinabove described, the Defendants have violated  
10 the TILA as follows, without limitation:

- 11 i. Defendants have violated 15 U.S.C. §§1637-1638 by failing to provide  
12 certain disclosures clearly and conspicuously as required by law, including  
13 but not limited to the proper disclosure and computation of the “amount  
14 financed” by the Plaintiffs;
- 15 ii. Defendants have violated 15 U.S.C. §1635 by failing to completely advise  
16 Plaintiffs regarding their rights to rescind their membership contracts and  
17 the ability to recoup all monies paid, including any charges incurred on the  
18 credit lines issued by Defendants.

19 67. That the Plaintiffs have detrimentally relied on Defendants’ misrepresentations  
20 and as a result, suffered damages.

21 68. Pursuant to 15 U.S.C. §1640, Plaintiffs are entitled to recover statutory penalties  
22 from the Defendant, their actual damages sustained as a result of the Defendants’  
23 violations of TILA as well as attorneys’ fees and costs.  
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1 **AS AND FOR A THIRD CAUSE OF ACTION**

2 69. Plaintiffs repeat and reallege each and every allegation set forth above as if  
3 reasserted and realleged herein.

4 70. The purpose of the Vacation Ownership and Time-Share Act of 2004 or  
5 California Business and Professions Code §§11210 et seq. is to provide full and  
6 fair disclosure to the purchasers and prospective purchasers of time-share plans.

7 71. By its acts and practices as hereinabove described, the Defendants have violated  
8 the Vacation Ownership and Time-Share Act of 2004 as follows, without  
9 limitation:

- 10 i. Defendants have violated §11225 & §11238 by failing to provide certain  
11 documents and certain disclosures clearly and conspicuously as required  
12 by law;
- 13 ii. Defendants have violated §11237 by failing to make proper disclosures as  
14 required by law with regard to the incidental benefits offered to the  
15 Plaintiffs;
- 16 iii. Defendants have violated §11245 by making material misrepresentations,  
17 including, but not limited to misrepresentations in connection with the  
18 promotion of a time-share plan, the nature, qualities and/or characteristic  
19 of the offered time-share plan, and/or incidental benefits;
- 20 iv. Defendants have violated §11265 by charging assessments in amounts not  
21 proscribed by law, by failing to provide proper notice regarding the  
22 increase of assessments;
- 23 v. By failing to deliver on certain items within the time represented to the  
24 Plaintiffs;
- 25 vi. By including conflicting, misleading and/or unlawful provisions among  
26 the various documents provided to the Plaintiffs;
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1                   vii. By sending multiple dunning notices, (many of which contained  
2                   confusing, conflicting and misleading information) and by incessantly  
3                   placing collection calls to Plaintiffs' phones, Defendants unlawfully  
4                   continued their attempts to collect on a debt in dispute and in light of  
5                   Plaintiffs' request to terminate their contract.

6                   72. That the Plaintiffs have suffered damages as a result of the Defendants engaging  
7                   in the acts hereinabove described.

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9                   **AS AND FOR A FOURTH CAUSE OF ACTION**

10                   73. Plaintiffs repeat and reallege each and every allegation set forth above as if  
11                   reasserted and realleged herein.

12                   74. The Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act"), California  
13                   Civil Code § 1788, et seq., prohibits unfair and deceptive acts and practices in the  
14                   collection of consumer debts.

15                   75. That upon information and belief, Defendants have attempted to collect on  
16                   amounts that are falsely inflated, not authorized by agreement and/or not  
17                   permitted by law.

18                   76. By its acts and practices as hereinabove described, the Defendants have violated  
19                   the Rosenthal Act as follows, without limitation:

20                   i. By making the false representation that the consumer debt may be  
21                   increased by the addition of attorney's fees, investigation fees, service  
22                   fees, finance charges, or other charges if, in fact, such fees or charges may  
23                   not legally be added to the existing obligation, Defendants have violated  
24                   §1788.13(e);

25                   ii. By making the false representation that a legal proceeding has been, is  
26                   about to be, or will be instituted unless payment of a consumer debt is  
27                   made, Defendants have violated §1788.13(j);

- 1                   iii. By failing to include certain debt collection notices and disclosures  
2                   required by law;
- 3                   iv. By sending multiple dunning notices, (many of which contained  
4                   confusing, conflicting and misleading information) and by incessantly  
5                   placing collection calls to Plaintiffs' phones, Defendants unlawfully  
6                   continued their attempts to collect on a debt in dispute and in light of  
7                   Plaintiffs' request to terminate their contract.

8           77. Pursuant to § 1788.30 of the Rosenthal Act, Plaintiffs are entitled to recover their  
9           actual damages sustained as a result of the Defendants' violations of the  
10           Rosenthal Act. Such damages include, without limitation, statutory damages, any  
11           actual damages sustained, other resulting monetary losses and damages, and  
12           emotional distress suffered by Plaintiffs, which damages are in an amount to be  
13           proven at trial.

14           78. In addition, because the Defendants' violations of the Rosenthal Act were  
15           committed willingly and knowingly, Plaintiffs are entitled to recover, in addition  
16           to their actual damages, penalties of at least \$1,000 per violation as provided for  
17           in the Act.

18           79. Pursuant to § 1788.30(c) Rosenthal Act, Plaintiffs are entitled to recover all  
19           attorneys' fees, costs and expenses incurred in the bringing of this action.

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21                                   **AS AND FOR A FIFTH CAUSE OF ACTION**

22           80. Plaintiffs repeat and reallege each and every allegation set forth above as if  
23           reasserted and realleged herein.

24           81. The California Business and Professions Code section 17500, et seq., or the  
25           California False Advertising Act, prohibits advertising "which is untrue or  
26           misleading, and which is known, or which by the exercise of reasonable care  
27           should be known, to be untrue or misleading."

1 82. That upon information and belief, Defendants misled the Plaintiffs by making  
2 misrepresentations about fees and untrue statements about the nature of “Owners  
3 Updates” events.

4 83. That upon information and belief, Defendants knew that their representations and  
5 omissions were untrue and misleading, and deliberately made the aforementioned  
6 representations and omissions in order to deceive reasonable consumers like  
7 Plaintiffs into entering contracts that they would not have assented to but for  
8 Defendants’ misrepresentations and high pressure sales tactics.

9 84. That Plaintiffs reasonably relied upon Defendants’ misrepresentations regarding  
10 various matters, including but not limited to the nature of the “Owners Update”  
11 meetings and Plaintiffs’ membership points and in reasonable reliance on  
12 Defendants’ misrepresentations, Plaintiffs attended what they thought were mere  
13 “Owners Updates” when they were in fact sales presentations where they were  
14 pressured into making purchases.

15 85. That the Plaintiffs were coerced into obtaining lines of credit and signing up for  
16 various upgrades that they had no interest in, but for Defendants’ false  
17 representations, deceptive language and high pressure sales tactics.

18 86. That as a result of Defendants’ misleading and false advertising, Plaintiffs have  
19 suffered injury in fact and have lost money or property.

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21 **AS AND FOR A SIXTH CAUSE OF ACTION**

22 87. Plaintiffs repeat and reallege each and every allegation set forth above as if  
23 reasserted and realleged herein.

24 88. That Defendants, by engaging in the acts hereinabove described, have committed  
25 violations of California Civil Code § 1750 et seq., or The Consumers Legal  
26 Remedies Act, which prohibits various deceptive practices in connection with the  
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1 conduct of a business providing goods, property, or services to consumers  
2 primarily for personal, family or household purposes.

3 89. That the Plaintiffs have suffered injury in fact and have lost money as a result of  
4 the Defendants engaging in the acts hereinabove described.

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6 **AS AND FOR A SEVENTH CAUSE OF ACTION**

7 90. Plaintiffs repeat and reallege each and every allegation set forth above as if  
8 reasserted and realleged herein.

9 91. The California Business and Professions Code §17200, et seq., prohibits unfair  
10 competition, which includes any unlawful, unfair or fraudulent business act.

11 92. That Defendants, by engaging in the acts hereinabove described, have committed  
12 violations under the aforementioned statutes and codes; that said acts are therefore  
13 per se violations of the California Business and Professions Code Section 17200  
14 et seq.

15 93. That the harm caused by Defendants' conduct outweighs any benefits that  
16 Defendants' conduct may have.

17 94. That consumers like the Plaintiffs are likely to be deceived, and that the Plaintiffs  
18 were in fact deceived, by Defendants' conduct.

19 95. That the Defendants have been unjustly enriched by committing said acts.

20 96. That as a result of Defendants' conduct, Plaintiffs have been harmed and have  
21 suffered damages in the form of monetary losses, extreme embarrassment,  
22 humiliation, shame, stress, anxiety, aggravation and sleepless nights.

23 97. That as a direct and proximate result of Defendants' unlawful, unfair and  
24 fraudulent business practices as alleged herein, Plaintiffs have suffered substantial  
25 injury in fact and lost money and/or property.

26 98. That pursuant to California Business and Professions Code § 17200, et seq.,  
27 Plaintiffs are entitled to recover their actual damages and restitution.

1 **AS AND FOR A EIGHTH CAUSE OF ACTION**

2 99. Plaintiffs repeat and reallege each and every allegation set forth above as if  
3 reasserted and realleged herein.

4 100. California Welfare and Institutions Code §15610.70(a) defines undue  
5 influence generally as “excessive persuasion that causes another person to act or  
6 refrain from acting by overcoming that person’s free will and results in inequity.”

7 101. That the Plaintiffs were particularly vulnerable due to their age, emotional  
8 distress and impaired health. That upon information and belief, Defendants knew  
9 or should have known of the Plaintiffs’ vulnerability.

10 102. That the Defendants exercised apparent authority over the Plaintiffs.

11 103. That the Defendants used intimidation and/or coercion to initiate changes  
12 in Plaintiffs’ personal and/or property rights, effected changes at inappropriate  
13 times and places, and claimed of expertise in effecting changes.

14 104. That as a result of Defendants’ conduct, the Plaintiffs suffered dire  
15 economic consequences and were forced to forgo their prior intent or course of  
16 conduct or dealing.

17 105. That pursuant to California Welfare & Institutions Code § 15657.5,  
18 Plaintiffs are entitled to attorneys fees and costs in addition to compensatory  
19 damages and all other remedies otherwise provided by law.

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21 **AS AND FOR A NINTH CAUSE OF ACTION**

22 106. Plaintiffs repeat and reallege each and every allegation set forth above as  
23 if reasserted and realleged herein.

24 107. That Defendants breached its contracts with the Plaintiffs by the following  
25 acts which include, but are not limited to: by engaging in further collection  
26 activity on a disputed account and by making various misrepresentations  
27 regarding the status of Plaintiffs’ accounts.



1           108.       That the Plaintiffs have suffered damages as a result of the Defendants  
2                   engaging in the acts hereinabove described.

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4                                   **AS AND FOR AN TENTH CAUSE OF ACTION**

5           109.       Plaintiffs repeat and reallege each and every allegation set forth above as  
6                   if reasserted and realleged herein.

7           110.       That Defendants committed fraud in the inducement through the following  
8                   acts, which include but are not limited to:

- 9                   i.    Defendants repeatedly represented that the points Plaintiffs had purchased  
10                   were insufficient to obtain any vacation privileges; advised Plaintiffs that  
11                   they would easily qualify for refinancing on their loans; and failed to  
12                   disclose the full extent of the Plaintiffs' financial obligations;
- 13                   ii.   That Defendants knew its respective representations to the Plaintiffs were  
14                   not in fact true;
- 15                   iii.   The Defendants used said representations to persuade the Plaintiffs into  
16                   signing up for a membership upgrades and additional lines of credit;
- 17                   iv.   That the Plaintiffs were persuaded to and reasonably relied upon  
18                   Defendants' representations to signing up for a membership upgrades and  
19                   additional lines of credit; and
- 20                   v.   Plaintiffs would not have signed up for the membership upgrades and  
21                   additional lines of credit if they had known Defendants' representations  
22                   were false and misleading.

23           111.       That the Plaintiffs have suffered damages as a result of the Defendants  
24                   engaging in the acts hereinabove described.

**CLASS ALLEGATIONS**

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2 112. Plaintiffs repeat and reallege each and every allegation set forth above as  
3 if reasserted and realleged herein.

4 113. The first cause of action is brought on behalf of Plaintiffs and the  
5 members of a class.

6 114. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(2) and  
7 23(b)(3) on behalf of a class (the “Class”) defined as follows:

8  
9 All persons in the United States whose cell phone number, at any time  
10 between the date that is four years prior to the filing of this action and the present,  
11 Defendants or some person on Defendants’ behalf caused to be called using an  
12 artificial or prerecorded voice and/or equipment with the capacity to dial numbers  
13 without human intervention.

14 115. Plaintiffs are members of the Class. Plaintiffs received autodialed and/or  
15 artificial or prerecorded voice calls to their cell phones from or on behalf of  
16 Defendants.

17 116. The Class is so numerous that joinder of all members is impracticable. On  
18 information and belief, Defendants caused more than 100 cell phone numbers to  
19 be called in the four years prior to the filing of this action using an autodialer  
20 and/or artificial or prerecorded voice. While the total number and identity of the  
21 Class members is at this point unknown, such information is, on information and  
22 belief, readily obtainable through the records of Defendants or its carrier(s), and  
23 could number in the thousands.

24 117. Common questions of law or fact exist as to all members of the Class and  
25 predominate over any questions solely affecting any individual members. Such  
26 questions common to the Class include but are not limited to:

27 a. Whether Defendants used an “automatic telephone dialing system” or  
28 “artificial or prerecorded voice” as such terms are defined or understood under the

1 TCPA and applicable Federal Communications Commission (“FCC”) regulations  
2 and orders;

3 b. Whether Defendants’ conduct and policy of calling the cell phones of  
4 Plaintiff and the other members of the Class using equipment with the capacity to  
5 dial numbers without human intervention and/or an artificial or prerecorded voice  
6 constitutes unfair, unconscionable, and/or harassing conduct in connection with  
7 the attempted collection of a debt;

8 c. Damages, which can be calculated by a mechanical formula, as well as  
9 whether Defendants’ violations were performed willfully or knowingly such as to  
10 warrant treble damages under Section 227(b)(3) of the TCPA.

11 118. Plaintiffs’ claims are typical of the claims of the other members of the  
12 Class. The factual and legal bases of Defendants’ liability to Plaintiffs and the  
13 other members of the Class are the same: Defendants violated the TCPA by  
14 causing the cellular telephone number of each member of the Class, including  
15 Plaintiffs, to be called using an automatic telephone dialing system and/or  
16 artificial or prerecorded voice, in connection with the attempted collection of  
17 debts.

18 119. Plaintiffs and their attorney will fairly and adequately protect the interests  
19 of the Class. Plaintiffs have no interests that might conflict with the interests of  
20 the Class. Plaintiffs will vigorously pursue their claims, and they have retained  
21 counsel competent and experienced in class and complex litigation, including  
22 cases under the Telephone Consumer Protection Act.

23 120. A class action is superior to other available methods for fairly and  
24 efficiently adjudicating the controversy alleged herein. Class treatment will permit  
25 a large number of similarly situated persons to prosecute their common claims in  
26 a single forum simultaneously, efficiently, and without the duplication of effort  
27 and expense that numerous individual lawsuits would entail. Absent a class  
28

1 action, many members of the Class will likely not even obtain relief, whether  
2 because they are unaware of their right to relief from the harm caused by  
3 Defendants' illegal practices, due to the prohibitive time and monetary cost  
4 inherent in individual litigation, or otherwise. Courts nationwide frequently grant  
5 class certification in cases brought under the TCPA; no difficulties are likely to be  
6 encountered in the management of this case as a class action. If the class is  
7 certified under Rule 23(b)(3), Plaintiffs anticipate the distribution of mail notice  
8 to each class member at their last-known address, or by such other practicable  
9 means as circumstances permit.

10 121. That Defendants—in making prerecorded autodialer calls to the cell  
11 phones of Plaintiffs and the other members of the Class—have acted and failed to  
12 act on grounds generally applicable to Plaintiffs and the other members of the  
13 Class, warranting injunctive or corresponding declaratory relief for the Class as a  
14 whole. Prosecution of separate, piecemeal actions by individual members of the  
15 Class, should they even realize that their rights have been violated, would create  
16 the risk of inconsistent results for the same unlawful conduct and practices.

17  
18  
19 **WHEREFORE**, Plaintiffs respectfully pray that judgment be entered against Defendants in the  
20 amount of:

- 21 (a) An order certifying the Class defined above, appointing Plaintiffs as class  
22 representatives, and appointing their attorney as class counsel;
- 23 (b) Statutory damages and actual damages pursuant to 47 U.S.C. §227 in an amount  
24 to be determined at the time of trial on behalf of the class on the first cause of action.
- 25 (c) Statutory damages and actual damages provided by statute, including, but not  
26 limited to: 47 U.S.C. §227et seq., 15 U.S.C. §§1601 et seq., California Business and  
27  
28

1 Professions Code §§17500, et seq., California Business and Professions Code  
2 §§17200, et seq., California Civil Code §§1750 et seq.

3 (d) Treble damages pursuant to 47 U.S.C. §227.

4 (e) Treble damages pursuant to California Civil Code § 3345.

5 (f) Equitable and injunctive relief.

6 (g) Restitution.

7 (h) Costs and reasonable attorney's fees provided by statute, (including California  
8 Welfare & Institutions Code § 15657.5), common law and/or the Court's inherent power.

9 (i) For such other and further relief as may be just and proper.

10  
11 Plaintiffs request trial by jury on all issues so triable.

12  
13 Dated: November 10, 2017

AMIR J. GOLDSTEIN, ESQ.

14           /S/ Amir J. Goldstein            
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