

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

Civil Action No. 1:20-cv-500

DEBRA KURTZ, individually,  
and as representative of a Class of Participants  
and Beneficiaries, on Behalf  
of the Vail Resorts 401(k) Retirement Plan;

Plaintiff,

v.

THE VAIL CORPORATION,

Defendant

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**CLASS ACTION COMPLAINT FOR CLAIMS UNDER 29 U.S.C. § 1132(a)(2)**

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Plaintiff Debra Kurtz, individually and as representative of a Class of Participants and Beneficiaries on Behalf of the Vail Resorts 401(k) Retirement Plan, hereby asserts to the best of her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the following class claims against defendant The Vail Corporation:

**INTRODUCTION**

1. ERISA's "essential remedial purpose" is "to protect the beneficiaries of private pension plans." *Nachwalter v. Christie*, 805 F.2d 956, 962 (11th Cir. 1986). See also *Sweda v. Univ. of Pa.*, 923 F.3d 320, 327 (3d Cir. 2019) ("ERISA furthers 'the

national public interest in safeguarding anticipated employee benefits' upon which individuals' livelihoods depend.”<sup>1</sup> To advance that essential purpose, ERISA places fiduciary duties on persons responsible for administering pension plans that are the “highest known to law.” *ITPE Pension Fund v. Hall*, 334 F.3d 1011, 1013 (11th Cir. 2003). ERISA’s duty of loyalty requires a fiduciary to “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries” and “for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan.” 29 U.S.C. §1104(a)(1)(A). Further, ERISA’s duty of prudence requires a fiduciary to discharge his duties “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of a like character and with like aims.” 29 U.S.C. § 1104(a)(1)(B).

2. The law is settled that ERISA fiduciaries have a duty to evaluate fees and expenses when selecting investments *as well as* a continuing duty to monitor fees and expenses of selected investments and remove imprudent ones. *See Tibble v. Edison Int’l*, 135 S. Ct. 1823, 1828 (2015) (“a trustee has a continuing duty to monitor trust investments and remove imprudent ones” where plaintiff alleged defendants imprudently offered higher-priced funds when materially identical lower-priced mutual funds were available); *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 595 (8th Cir. 2009) (claim that fiduciary selected higher-cost investments when identical lower-cost

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<sup>1</sup> Unless indicated otherwise, cited and quoted cases are omitted.

options were available stated claim for breach of fiduciary duty). *See also e.g.*, 29 U.S.C. §1104(a)(1)(A) (fiduciary duty includes “defraying reasonable expenses of administering the plan”); 29 C.F.R. § 2550.404a-1(b)(i) (ERISA fiduciary must give “appropriate consideration to those facts and circumstances” that “are relevant to the particular investment”). Indeed, a fiduciary’s duty to evaluate and monitor investment fees and expenses is “derived from the common law of trusts,” a body of law that defines “the contours of an ERISA fiduciary’s duty...” *Tibble*, 135 S. Ct. at 1828. A trustee is to “incur only costs that are reasonable in amount and appropriate to the investment responsibilities of the trusteeship.” Restatement (Third) Of Trusts § 90(c)(3); *see also id.* § 88, cmt. a (“Implicit in a trustee’s fiduciary duties is a duty to be cost-conscious.”). And it is for good reason that ERISA requires fiduciaries to be cost-conscious:

Expenses, such as management or administrative fees, can sometimes significantly reduce the value of an account in a defined-contribution plan,” *Tibble*, 135 S. Ct. at 1826, by decreasing its immediate value, and by depriving the participant of the prospective value of funds that would have continued to grow if not taken out in fees.

*Sweda*, 923 F.3d at 328.

**3.** Defendant The Vail Corporation is an ERISA fiduciary as it exercises discretionary authority or discretionary control over the 401(k) defined contribution pension plan – known as the Vail Resorts 401(k) Retirement Plan (the “Plan”) - that it sponsors and provides to its employees.

**4.** For at least 18 of the 27 mutual fund share classes available within the Plan, the same issuer offered a different share class from that selected by the Plan that

charged lower fees, and consistently achieved higher returns; the Plan, however, inexplicably failed to select these lower fee-charging and better-return producing share classes.

5. These investment options and unreasonable fees cannot be justified. Their presence confirms more than simply sloppy business practice; their presence is the result of a breach of the fiduciary duties owed by Vail to Plan participants and beneficiaries. Prudent fiduciaries of 401(k) plans continuously monitor administrative fees against applicable benchmarks and peer groups to identify unreasonable and unjustifiable fees. To remedy Dy, Plaintiff brings this action on behalf of the Plan under 29 U.S.C. § 1132(a)(2) to enforce Vail's liability under 29 U.S.C. § 1109(a) to make good to the Plan all losses resulting from Vail's breaches of fiduciary duty.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction in this ERISA matter via 28 U.S.C. § 1331.

7. Venue is appropriate in this district because the Defendant's headquarters are located within this judicial district within the meaning of 29 U.S.C. § 1132(e)(2).

8. In conformity with 29 U.S.C. §1132(h), Plaintiff will serve the original Complaint by certified mail on the Secretary of Labor and the Secretary of the Treasury.

#### **PARTIES**

9. Plaintiff Debra Kurtz lives in and is a citizen of Ossining, New York, and during the Class period, participated in the Plan under 29 U.S.C. § 1002(7).

**10.** The named Plaintiff and all participants in the Plan suffered financial harm as a result of the imprudent or unreasonable investment and fee options in the Plan. Vail's selection and retention of these options resulted in higher administrative fees than the Plan and its participants and beneficiaries should have paid, as well as poorer net investment performance, had Vail satisfied its fiduciary obligations. All participants and the Plan continue to be harmed by the ongoing inclusion of these investment options.

**11.** The Vail Corporation, which does business as Vail Associates, Inc., ("Vail") is a Colorado corporation with its principal headquarters located at 390 Interlocken Crescent, Broomfield, Colorado. Vail is a citizen of the state of Colorado. In this Complaint, "Vail" refers to the named defendant and all parent, subsidiary, related, predecessor, and successor entities to which these allegations pertain. Vail is the Plan sponsor of the Vail Resorts 401(k) Retirement Plan.

**12.** Vail is a fiduciary with ultimate authority and responsibility for the control, management, and administration of the Plan in accordance with 29 U.S.C. § 1102(a). Vail has exclusive responsibility and complete discretionary authority to control the operation, management, and administration of the Plan, with all powers necessary to properly carry out such responsibilities.

**13.** The Plan is a "defined contribution" pension plan under 29 U.S.C. § 1102(2)(A) and 1002(34), meaning that Vail's contribution to the payment of Plan costs is guaranteed but the pension benefits are not.

**14.** The Plan is established and maintained under a written document in accordance with 29 U.S.C. § 1102(a)(1). The Plan provides for retirement income for eligible Vail employees and their beneficiaries.

**ERISA's FIDUCIARY STANDARDS**

**15.** ERISA imposes strict fiduciary standards of duty and loyalty and prudence on Vail as a Plan fiduciary. 29 U.S.C. § 1104(a)(1) provides in relevant part:

[A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries;

and

(ii) defraying reasonable expenses of administering the plan;

[and]

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

**16.** With certain exceptions not relevant here, 29 U.S.C. § 1103(c)(1) provides in relevant part:

the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

**17.** 29 U.S.C. § 1109 provides in relevant part:

Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

**18.** Under ERISA, fiduciaries that exercise any authority or control over plan assets, including the selection of plan investments and service providers, must act prudently and for the exclusive benefit of participants in the plan, and not for the benefit of third parties including service providers to the plan such as recordkeepers and those who provide investment products. Fiduciaries must ensure that the amount of fees paid to those service providers is no more than reasonable. DOL Adv. Op. 97-15A; DOL Adv. Op. 97-16A; *see also* 29 U.S.C. §1103(c)(1) (plan assets “shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan”).

**19.** “[T]he duty to conduct an independent investigation into the merits of a particular investment” is “the most basic of ERISA’s investment fiduciary duties.” *In re Unisys Savings Plan Litig.*, 74 F.3d 420, 435 (3d Cir. 1996); *Katsaros v. Cody*, 744 F.2d 270, 279 (2<sup>nd</sup> Cir. 1984) (fiduciaries must use “the appropriate methods to investigate the merits” of plan investments). Fiduciaries must “initially determine, and continue to monitor, the prudence of each investment option available to plan participants.” *DiFelice v. U.S. Airways, Inc.*, 497 F.3d 410, 423 (4<sup>th</sup> Cir. 2007); (emphasis original); *see also* 29 C.F.R. § 2550.404a-1; DOL Adv. Opinion 98-04A; DOL Adv. Opinion 88-16A. Thus, a defined contribution plan fiduciary cannot “insulate itself from liability by the simple expedient of including a very large number of investment alternatives in its portfolio and then shifting to the participants the responsibility for choosing among them.” *Hecker v. Deere & Co.*, 569 F.3d 708, 711 (7<sup>th</sup> Cir. 2009). Fiduciaries have “a continuing duty to monitor investments and remove imprudent ones[.]” *Tibble*, 135 S. Ct. at 1828-29.

**20.** “Congress intended the term ‘fiduciary’ to be construed broadly.” *Patten v. N. Trust Co.*, 703 F.Supp.2d 799, 808 (N.D. Ill. 2010). “Although Plan documents may expressly name fiduciaries for certain purposes, a person may also be considered a ‘functional fiduciary’ if he falls within ERISA’s definition of the term. *Id.*, citing, *Plumb v. Fluid Pump Serv., Inc.*, 124 F.3d 849, 855 (7<sup>th</sup> Cir. 1997). Under ERISA,

a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. 29 U.S.C. §1002(21)(A).

The determination of a defendant’s fiduciary status is a fact intensive one, making it premature for disposition at the Rule 12(b)(6) dismissal stage. *Patten*, 703 F. Supp.2d at 808-09.

**21.** 29 U.S.C. § 1132(a)(2) authorizes plan participants to bring a civil action for appropriate relief under 29 U.S.C. § 1109.

### **THE PLAN**

**22.** At least since 2013, the Vail Plan had more than 5,000 participants and assets exceeding \$170 million. At the end of 2018, the Plan had 8,276 participants with account balances, and \$309,822,304 in assets. The Vail Plan offered about 27 different investment choices to its participants.

**23.** At all relevant times, the Vail Plan’s fees were excessive when compared with other comparable 401k plans offered by other sponsors that had similar numbers of



plan participants, and similar amounts of money under management. The excessive fees led to lower net returns than participants in comparable 401k plans enjoyed.

**24.** There are commercially available programs commonly used by financial advisors and plan fiduciaries to analyze plans' performance, comparative costs and other key indicators.

**25.** The commercially available programs require validated information because financial information submitted to the federal government is often incomplete or contains errors. The program used for the analysis below contains validated financial information from more than 55,000 financial plans of all types. The benchmarking analysis is of the type employed by fiduciaries and financial advisors to determine the productivity and efficiency of financial programs and is appropriately used here.

**26.** A benchmarking analysis of the type often employed by fiduciaries and financial advisors shows that the administrative fees charged to Plan participants is greater than over 90 percent of its comparator fees when fees are calculated as cost per participant, or as a percent of total assets. In 2017, the Plan's expenses amounted to .73% of assets under management, or \$314 per participant. The Plan's expenses are nearly double those of the mean among 19 comparator plans with 5-10,000 participants of \$179 per participant, and .2% of assets under management. Similarly, among a per group of 21 Plans with an asset range between \$250 million and \$500 million, the mean expenses were .43% of assets under management, which again compared unfavorably with the Plan's fees representing .73% of assets. Comparisons in

prior years show similar variances between the Vail Plan and comparator groups, with the Vail Plan always more costly to participants.

**27.** These excessive fees cannot be justified. An examination of the investment options the Plan fiduciaries chose, and available alternatives they either did not consider or did not choose, provides telling examples of why they breached their fiduciary duties.

**28.** The Plan Fees that follow are expressed as a percentage of assets under management, or “expense ratio.” For example, if the mutual fund share class deducts 1% of fund assets each year in fees, the fund’s expense ratio would be 1%, or 100 basis points (or bps). (One basis point is equal to 1/100th of one percent (or 0.01%). The fees deducted from a mutual fund’s assets reduce the value of the shares owned by fund investors. As of December 31, 2018, the Plan offered participants share classes from 27 investment selections in which they could invest. The issuers of 18 of these investments offered different share classes that charged lower fees, and had materially better rates of return. The holders of different share classes held the same investments, and were subject to the same restrictions concerning deposits and withdrawals. The only difference between share classes was that the lower-cost share classes were available only to Plans that had larger investments – but in all cases, Vail’s Plan, with more than \$250 million in assets, was large enough to qualify for the lower cost share class. For example, the T. Rowe Price Class Share Class I have been open to Plans with aggregate assets greater than \$1 million since they were created in

2015, a threshold easily met by the Vail Plan. The Plan could have, but did not, offer the lower cost share classes to participants.

29. Data regarding fees and performance in the charts that follow are taken from Morningstar.com as of December 23, 2019.

### **2017**

<b>Plan Fund and Share Class</b>	<b>Vail's Plan Fee</b>	<b>Identical Lower Cost Available Share Class</b>	<b>Identical Lower-Cost Share Class Fee</b>	<b>Plan's Excess (%)</b>
T. Rowe Price Retirement 2005 (TRRFX)	53bps	T. Rowe Price I 2005 I (TRPFX)	41 bps	<b>29%</b>
T. Rowe Price Retirement 2010 (TRRAX)	53 bps	T. Rowe Price I 2010 I (TRPAX)	40 bps	<b>32%</b>
T. Rowe Price Retirement 2015 (TRRGX)	56 bps	T. Rowe Price I 2015 I (TRFGX)	43 bps	<b>30%</b>
T. Rowe Price Retirement 2020 (TRRBX)	59 bps	T. Rowe Price I 2020 I (TRBRX)	46 bps	<b>28%</b>
T. Rowe Price Retirement 2025 (TRRHX)	63 bps	T. Rowe Price I 2025 I (TRPHX)	50 bps	<b>26%</b>
T. Rowe Price Retirement 2030 (TRRCX)	66 bps	T. Rowe Price I 2030 I (TRPCX)	53 bps	<b>25%</b>
T. Rowe Price Retirement 2035 (TRRJX)	70 bps	T. Rowe Price I 2035 I (TRPJX)	56 bps	<b>25%</b>
T. Rowe Price Retirement 2040 (TRRDX)	70 bps	T. Rowe Price I 2040 I (TRPDX)	58 bps	<b>21%</b>

T. Rowe Price Retirement 2045 (TRRKX)	71 bps	T. Rowe Price I 2045 I (TRPKX)	59 bps	<b>20%</b>
T. Rowe Price Retirement 2050 (TRRMX)	72 bps	T. Rowe Price I 2050 I (TRPMX)	59 bps	<b>22%</b>
T. Rowe Price Retirement 2055 (TRRNX)	72 bps	T. Rowe Price I 2055 I (TRPNX)	59 bps	<b>22%</b>
T. Rowe Price Equity Income (PRFDX)	64 bps	T. Rowe Price Equity Income I (REIPX)	54 bps	<b>19%</b>
Vanguard 500 Index Admiral (VFIAX)	4 bps	Vanguard 500 Index Inst. (VFFSX)	1 bps	<b>300%</b>
T. Rowe Price Growth Stock (PRGFX)	66 bps	T. Rowe Price Growth Stock I (PRUFX)	52 bps	<b>27%</b>
Vanguard Extended Market Index Adm. (VEXAX)	7 bps	Vanguard Extended Market Index Inst. (VIEIX)	6 bps	<b>17%</b>
T. Rowe Price Mid-Cap Growth (RPMGX)	75 bps	T. Rowe Price Mid-Cap Growth I (RPTIX)	62 bps	<b>21%</b>
T. Rowe Price Small-Cap Value (PRSVX)	85 bps	T. Rowe Price Small-Cap Value I (PRVIX)	73 bps	<b>16%</b>
Vanguard Total Bond Market Index Adm. (VBTLX)	5 bps	Vanguard Total Bond Market Index I (VBTIX)	3.5 bps	<b>30%</b>

30. The lower cost share classes offered approximately the same savings in earlier years as well. In all cases, the lower-cost shares had higher 3-year rates of return than the higher-priced shares that Vail offered to Plan participants:

**2017**

<b>Plan Mutual Fund Share Class</b>	<b>Vail's 3 Year Return</b>	<b>Identical Lower-Cost Share Class</b>	<b>3 Year Return</b>
T. Rowe Price Retirement 2005 (TRRFX)	7.11%	T. Rowe Price I 2005 I (TRPFX)	7.22%
T. Rowe Price Retirement 2010 (TRRAX)	7.61%	T. Rowe Price I 2010 I (TRPAX)	7.74%
T. Rowe Price Retirement 2015 (TRRGX)	8.29%	T. Rowe Price I 2015 I (TRFGX)	8.38%
T. Rowe Price Retirement 2020 (TRRBX)	9.29%	T. Rowe Price I 2020 I (TRBRX)	9.43%
T. Rowe Price Retirement 2025 (TRRHX)	10.07%	T. Rowe Price I 2025 I (TRPHX)	10.20%
T. Rowe Price Retirement 2030 (TRRCX)	10.80%	T. Rowe Price I 2030 I (TRPCX)	10.91%
T. Rowe Price Retirement 2035 (TRRJX)	11.33%	T. Rowe Price I 2035 I (TRPJX)	11.46%
T. Rowe Price Retirement 2040 (TRRDY)	11.79%	T. Rowe Price I 2040 I (TRPDY)	11.90%
T. Rowe Price Retirement 2045 (TRRKX)	11.96%	T. Rowe Price I 2045 I (TRPKX)	12.10%
T. Rowe Price Retirement 2050 (TRRMX)	11.97%	T. Rowe Price I 2050 I (TRPMX)	12.09%
T. Rowe Price Retirement 2055 (TRRNX)	11.93%	T. Rowe Price I 2055 I (TRPNX)	12.08%

T. Rowe Price Equity Income (PRFDX)	9.56%	T. Rowe Price Equity Income I (REIPX)	9.67%
Vanguard 500 Index Admiral (VFIAX)	14.58%	Vanguard 500 Index Inst. (VFFSX)	14.62%
T. Rowe Price Growth Stock (PRGFX)	19.31%	T. Rowe Price Growth Stock I (PRUFX)	19.48%
Vanguard Extended Market Index Adm. (VEXAX)	10.49%	Vanguard Extended Market Index Inst. (VIEIX)	10.51%
T. Rowe Price Mid-Cap Growth (RPMGX)	16.52%	T. Rowe Price Mid-Cap Growth I (RPTIX)	16.67%
T. Rowe Price Small-Cap Value (PRSVX)	7.68%	T. Rowe Price Small-Cap Value I (PRVIX)	7.80%
Vanguard Total Bond Market Index Adm. (VBTLX)	4.26%	Vanguard Total Bond Market Index I (VBTIX)	4.28%

Similar performance differential occurred in earlier years also.

31. Plaintiff had no knowledge of Defendant's process for selecting investments and monitoring them to ensure they remained prudent. Plaintiff also had no knowledge of how the fees charged to and paid by Vail Plan participants compared to any other funds. Nor did Plaintiff know about the availability of lower-cost and better-performing (and other essentially identical) investment options that Vail did not offer because Vail provided no comparative information to allow Plaintiff to evaluate and compare Vail's investment options.

32. By selecting and retaining the Plan's unreasonably expensive cost investments while failing to adequately investigate the use of lower cost share classes, offered by the same investment companies, or superior, lower-cost mutual funds from other fund companies that were readily available to the Plan, Vail caused Plan participants to lose millions of dollars of their retirement savings through unreasonable fees and poorly performing investments.

**THE OVERCHARGES BREACHED**  
**DEFENDANT'S FIDUCIARY OBLIGATIONS TO THE PLAN**

33. The administrative fees of the investment offerings were paid for by the Plan participants. Vail, as fiduciary, was responsible for ensuring that these administrative fees were reasonable.

34. A plan's fiduciaries have control over defined contribution plan expenses. The fiduciaries have exclusive control over the menu of investment options to which participants may direct the assets in their accounts. Those selections each have their own fees, which are deducted from the returns that participants receive on their investments.

35. At retirement, employees' benefits are limited to the value of their own individual investment accounts, which is determined by the market performance of employee and employer contributions, less expenses. Accordingly, unreasonable fees can impair the value of a participant's account. Over time, even small differences in fees and performance can result in large differences in the amount of savings available at retirement.

36. Prudent fiduciaries exercising control over administration of a plan and the selection and monitoring of designated investment alternatives will take steps to minimize plan expenses by hiring low-cost service providers and by curating a menu of low-cost investment options. See Restatement (Third) of Trusts § 90 cmt. b (“[C]ost-conscious management is fundamental to prudence in the investment function. . . .”).

37. In fact, the duty of prudence imposed under 29 U.S.C. § 1104(a)(1)(B) is a codification of the common law prudent investor rule found in trust law.

38. Given the significant variation in total plan fees attributable to plan size, the reasonableness of administrative expenses and investment management expenses should be determined by comparison to other similarly-sized plans. See, 29 U.S.C. § 1104(a)(1)(B) (requiring ERISA fiduciaries to discharge their duties in the manner “that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character”).

39. A fiduciary must initially determine, and continue to monitor, the prudence of each investment option available to plan participants. A plan fiduciary cannot assume that an investment that began as a prudent one will remain so, particularly when the original circumstances change or the investment reveals itself to be deficient. An ERISA fiduciary's investment decisions also must account for changed circumstances and a trustee who simply ignores changed circumstances that have increased the risk of loss to the trust's beneficiaries is imprudent.

40. As illustrated above, the Vail Plan's administrative fees could in many cases be significantly reduced simply by electing a different share class offered by the



same issuer, or substantially identical fund from a different issuer, and are consistently well above the 90<sup>th</sup> percentile among its comparator peers, regardless whether the comparison is based on cost per participant or percentage of assets.

**41.** Prudent fiduciaries of large defined contribution plans must conduct an analysis to determine whether investments will outperform their benchmark net of fees. Prudent fiduciaries then make a reasoned decision as to whether it is in participants' best interest to offer specific funds or share classes for the particular investment style and asset class.

**42.** Prudent fiduciaries of defined contribution plans continuously monitor the investment performance of plan options against applicable benchmarks and peer groups to identify underperforming investments. Based on this process, prudent fiduciaries replace those imprudent investments with better-performing and reasonably priced options.

**43.** Vail is not a prudent fiduciary of the Plan because it did not make a reasoned decision to offer specific funds or share classes to the Plan participants as described herein.

**44.** Vail is not a prudent fiduciary because it failed to continuously monitor the investment performance of its plan options against applicable benchmarks and peer groups, and it failed to identify and replace underperforming investments with better-performing and reasonably priced options.

### **CLASS ACTION ALLEGATIONS**

45. 29 U.S.C. § 1132(a)(2) authorizes any participant or beneficiary of the Plan to bring an action individually on behalf of the Plan to enforce a breaching fiduciary's liability to the Plan under 29 U.S.C. § 1109(a).

46. In acting in this representative capacity, Plaintiff seeks to certify this action as a class action on behalf of all participants and beneficiaries of the Plan. Plaintiff seeks to certify, and to be appointed as representatives of, the following Class:

*All participants and beneficiaries of the Vail Resorts 401(k) Retirement Plan beginning six years before the commencement of this action through the date of judgment, excluding the Defendant or any participant/beneficiary who is a fiduciary to the Plan.*

47. The Class includes more than 8,276 members and is so large that joinder of all its members is impracticable, pursuant to Federal Rule of Civil Procedure 23(a)(1).

48. There are questions of law and fact common to this Class pursuant to Federal Rule of Civil Procedure 23(a)(2), because Vail owed fiduciary duties to the Plan and took the actions and omissions alleged as the Plan and not as to any individual participant. Common questions of law and fact include but are not limited to the following:

- Who are fiduciaries liable for the remedies provided by 29 U.S.C. § 1109(a);
- Whether the fiduciaries of the Plan breached their fiduciary duties to the Plan;
- What are the losses to the Plan resulting from each breach of fiduciary duty; and
- What Plan-wide equitable and other relief the Court should impose in light of Vail's breach of duty.

49. Plaintiff's claims are typical of the claims of the Class pursuant to Federal Rule of Civil Procedure 23(a)(3), because Plaintiff was a participant during the time period at issue and all participants in the Plan were harmed by Vail's misconduct.

50. Plaintiff will adequately represent the Class pursuant to Federal Rule of Civil Procedure 23(a)(4), because she was a participant in the Plan during the Class period, has no interest that conflicts with the Class, is committed to the vigorous representation of the Class, and has engaged experienced and competent lawyers to represent the Class.

51. Certification is appropriate under Federal Rule of Civil Procedure 23(b)(1), because prosecution of separate actions for these breaches of fiduciary duties by individual participants and beneficiaries would create the risk of (1) inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendant concerning its discharge of fiduciary duties to the Plan and personal liability to the Plan under 29 U.S.C. § 1109(a), and (2) adjudications by individual participants and beneficiaries regarding these breaches of fiduciary duties and remedies for the Plan would, as a practical matter, be dispositive of the interests of the participants and beneficiaries who are not parties to the adjudication, or would substantially impair those participants' and beneficiaries' ability to protect their interests.

52. Certification is also appropriate under Federal Rule of Civil Procedure 23(b)(2) because Vail has acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

53. Plaintiff's attorneys are experienced in complex commercial and class litigation and will adequately represent the Class.

54. The claims brought by the Plaintiff arise from fiduciary breaches as to the Plans in its entirety and do not involve mismanagement of individual accounts. The claims asserted on behalf of the Plan in this case fall outside the scope of any exhaustion language in individual participants' plans. Exhaustion is intended to serve as an administrative procedure for participants and beneficiaries whose claims have been denied and not where a participant or beneficiary brings suit on behalf of a plan for breaches of fiduciary duty.

55. Under ERISA, an individual "participant" or "beneficiary" are distinct from an ERISA plan. A participant's obligation – such as a requirement to exhaust administrative remedies – does not, by itself, bind the plan.

56. Moreover, any administrative appeal would be futile because the entity hearing the appeal (the Plan Administrator) is the same Plan Administrator that made the decisions that are at issue in this lawsuit. So too, policy supporting exhaustion of administrative remedies in certain circumstances – that the Court should review and where appropriate defer to a plan administrator's decision – doesn't exist here because courts will not defer to plan administrator's legal analysis and interpretation.

**LEGAL CLAIMS**

**Count 1 – Breach of Duties of Loyalty and Prudence  
29 U.S.C. § 1104(a)(1)(A)–(B), (D)**

57. Plaintiff restates the above allegations as if fully set forth.

58. Vail is a fiduciary of the Plan under 29 U.S.C. §§ 1002(21) and/or 1102(a)(1). It is responsible for selecting prudent investment options, ensuring that those options charge only reasonable fees, and taking any other necessary steps to ensure that the Plan's assets are invested prudently. Vail had a continuing duty to evaluate and monitor the Plan's investments on an ongoing basis and to "remove imprudent ones" regardless of how long a fund has been in the plan. *Tibble*, 135 S. Ct. at 1829.

59. 29 U.S.C. § 1104 imposes fiduciary duties of prudence and loyalty upon defendants in their administration of the Plan. The scope of the fiduciary duties and responsibilities of defendants include managing the assets of the Plan for the sole and exclusive benefit of Plan participants and beneficiaries, defraying reasonable expenses of administering the Plan, and acting with the care, skill, diligence, and prudence required by ERISA. These duties further required Defendant to independently assess whether each option was a prudent choice for the Plan. *DiFelice*, 497 F.3d at 423; see *Braden*, 588 F.3d at 590, 595–96.

60. Defendant was directly responsible for ensuring that the Plan's fees were reasonable, selecting investment options in a prudent fashion in the best interest of Plan participants, prudently evaluating and monitoring the Plan's investments on an ongoing basis and eliminating funds or share classes that did not serve the best interest of Plan participants, and taking all necessary steps to ensure that the Plan's assets were invested prudently and appropriately.

61. Defendant failed to employ a prudent and loyal process by failing to critically or objectively evaluate the cost and performance of the Plan's investments and fees in comparison to other investment options. Defendant selected and retained for years as Plan investment options' mutual funds with high expenses relative to other investment options that were readily available to the Plan at all relevant times.

62. Defendant failed to engage in a prudent process for monitoring the Plan's investments and removing imprudent ones within a reasonable period. This resulted in the Plan continuing to offer unreasonably expensive funds and share classes compared to equivalent and/or comparable low-cost alternatives that were available to the Plan. Through these actions and omissions, Defendant failed to discharge its duties with respect to the Plan in violation of its fiduciary duty of loyalty under 29 U.S.C. § 1104(a)(1)(A).

63. Defendant failed to discharge its duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would have used in the conduct of an enterprise of like character and with like aims, breaching its duties under 29 U.S.C. § 1104(a)(1)(B).

64. Defendant is liable under 29 U.S.C. §§ 1109(a) and 1132(a)(2) to make good to the Plan the losses resulting from the breaches, to restore to the Plan any profits defendants made through the use of Plan assets, and to restore to the Plan any profits resulting from the breaches of fiduciary duties alleged in this Count. In addition,

Defendant is subject to other equitable relief pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(3).

### **JURY TRIAL DEMANDED**

Plaintiff demands a trial by jury for all issues so triable.

**WHEREFORE**, Plaintiff, on behalf of the Plan, requests the following:

- A declaration that Defendant breached its fiduciary duties as described above;
- An order that requires Defendant make good to the Plan all losses resulting from each breach of fiduciary duty, and to otherwise restore the Plan to the position it would have occupied but for the breaches of fiduciary duty;
- An order for an accounting to determine the amounts that Defendant must make good to the Plan;
- An order removing the fiduciaries who have breached their fiduciary duties;
- An order certifying the Class and appointing the named Plaintiff as a class representative and undersigned counsel as Class Counsel;
- A declaration awarding to Plaintiff and the Class their attorneys' fees and costs under 29 U.S.C. § 1132(g)(1);
- A declaration awarding interest to the extent it is allowed by law; and
- A declaration awarding any other equitable and/or remedial relief the Court deems appropriate.

DATED this 24<sup>th</sup> day of February, 2020

Respectfully Submitted,

BAIRD QUINN LLC DATED:

/s/ J. Mark Baird

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Beth Doherty Quinn, #26016  
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***Attorneys for Plaintiff***



# 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**  
 Debra Kurtz, individually, and as representative of a Class of Participants and Beneficiaries, on behalf of the Vail Resorts 401(k) Retirement Plan

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

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
 J. Mark Baird, Baird Quinn, LLC  
 2036 East 17th Avenue  
 Denver, Colorado 80206 Telephone: 303-813-4500

**DEFENDANTS**  
 The Vail Corporation

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

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**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 (specify)   
 6 Multidistrict Litigation - Transfer   
 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**Employment Retirement Income Security Act, 29 U.S.C. Section 1132**

Brief description of cause:  
**To enforce Defendant's liability under 29 U.S.C. Section 1109 as a result of Defendant's breaches of fiduciary duty**  AP Docket

**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 **1:20-cv-500**

DATE **02/24/2020** SIGNATURE OF ATTORNEY OF RECORD **J. Mark Baird**

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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.

AO 440 (Rev. 06/12) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**

for the

District of Colorado

DEBRA KURTZ, individually, and as representative  
of a Class of Participants and Beneficiaries, on behalf  
of The Vail Resorts 401(k) Retirement Plan

*Plaintiff(s)*

v.

THE VAIL CORPORATION

*Defendant(s)*

Civil Action No. 1:20-cv-500

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* THE VAIL CORPORATION  
c/o Registered Agent  
CORPORATION SERVICE COMPANY  
1900 West Littleton Boulevard  
Littleton, CO 80120

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

J. Mark Baird  
BAIRD QUINN LLC  
2036 East 17th Avenue  
Denver, Colorado 80206

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: 02/24/2020

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. 1:20-cv-500

**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 \$ \_\_\_\_\_ 0.00 .

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:

**Print**

**Save As...**

**Reset**

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Mismanagement of Vail's Retirement Plan Cut Participants' Savings by Millions](#)

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