

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

MICHAEL McAULIFFE, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

Trial by Jury Demanded

THE VAIL CORPORATION d/b/a Vail
Resorts Management Company,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff MICHAEL McAULIFFE (“Plaintiff”), individually and on behalf of all others similarly situated, by and through counsel, against Defendant THE VAIL CORPORATION d/b/a/ Vail Resorts Management Company (“Defendant”), allege as follows based on information and belief except as to allegations specifically pertaining to Plaintiff, which are made upon personal knowledge:

NATURE OF THE CASE

1. This is a class action lawsuit brought by Plaintiffs on behalf of themselves and a class of individuals who purchased season passes or Epic Passes for the 2019-2020 ski season. After Defendant closed its ski resorts early due to the COVID-19 pandemic, class members were unable to use the remaining value in their passes, and Defendant has refused to refund Plaintiffs and Class members for the unusable portion of the passes.

2. Unsurprisingly, activities such as skiing and snowboarding—and especially using lifts to access the ski and snowboard routes—are difficult, if not impossible, to safely participate in while social distancing to help avoid contracting the virus. As such, beginning on March 15,

2020, Defendant suspended operations at all of its resorts in North America, and, within the following five days, closed all of its resorts.

3. Unfortunately for Plaintiff and the Class, however, Defendant has shifted the financial burden of this extraordinary crisis onto its customers, who paid hundreds or thousands of dollars for lift tickets and passes to ski or snowboard at Defendant's properties.

4. Specifically, Defendant has refused to refund to its customers any portion of the money paid for tickets and passes they cannot use; money that they need to provide for themselves and their families during this crisis.

5. Defendant's conduct breaches its contract with passholders, is unfair, unlawful, and unconscionable, and unjustly enriches it at the expense of its customers. Plaintiff brings this action in order to secure partial refunds for each and every similarly situated consumer that Defendant has wronged by refusing to issue refunds for season passes and Epic Daily Passes with unused days, when Defendant closed its resorts starting between March 15 and March 20, 2020.

JURISDICTION

6. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2), the Class Action Fairness Act of 2005, because: (i) there are 100 or more Class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and one defendant are citizens of different States. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

7. This Court has personal jurisdiction over Defendant because Defendant is a resident of, and is headquartered in, this judicial district.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant is a citizen of and headquartered in this district, transacts business in this district, and is subject to personal jurisdiction in this district, and because a substantial part of the events giving rise to the claims occurred in this district.

PARTIES

9. Plaintiff Michael McAuliffe is a resident and citizen of Colorado.

10. On September 24, 2019, Plaintiff purchased an Epic Pass from Defendant, which gave him unlimited access to Defendant's ski areas for the entire 2019-20 ski season. Plaintiff McAuliffe paid \$969.00 for his 2019-20 Epic Pass. Plaintiff McAuliffe used the Epic Pass at Defendant's ski areas during part of the 2019-20 ski season, and planned to use the Epic Pass after March 15, 2020. Due to the suspension and closure of Defendant's ski areas, Plaintiff McAuliffe was not able to use the Epic Pass for the 2019-20 ski season after March 15, 2020. Defendant did not provide Plaintiff McAuliffe a refund of the unused portion of the Epic Pass after Defendant closed all of its ski areas and rendered the Epic Pass unusable.

11. Defendant the Vail Corporation d/b/a Vail Resorts Management Company is a Colorado corporation with its principal place of business located at 390 Interlocken Crescent, Broomfield, Colorado 80021.

GENERAL ALLEGATIONS

Defendant's Ski Areas and Ski Passes

12. Defendant operates 37 "mountain ski resorts and urban ski areas" (collectively, "ski areas") across the world, the majority of which are located in the United States. In the United States, Defendant owns and operates ski areas in Colorado, Utah, California, Nevada, Vermont, New York, New Hampshire, Washington, Pennsylvania, Ohio, Missouri, Wisconsin, Minnesota,

Michigan, and Indiana. Internationally, Defendant owns and operates resorts in Canada, Australia, Japan, Switzerland, Italy, and France.

13. Individuals obtain access to the ski areas by purchasing either a lift ticket or an “Epic Pass.” Generally, lift tickets may only be used for the ski area associated with the ticket. Lift tickets provide access to the ski area for 1 to 14 days, depending on the number of days purchased.

14. Defendant also sells numerous types of “Epic Passes.” The Epic Pass provides passholders unlimited access to most of Defendant’s ski areas, and limited access to the remainder of Defendant’s ski areas. Defendant advertises that Epic Passes provide “Unlimited, Unrestricted Skiing at our Best Resorts,” “Unlimited, unrestricted skiing or riding,” have “no restricted dates,” and Epic Passes are “without limits.”¹

15. In addition to the Epic Pass, Defendant also sells the Local Epic Pass. The Local Epic Pass provides passholders “unlimited, unrestricted access” to many of Defendant’s ski areas, and limited access—either a limited number of days or holiday-restricted access—to the remainder of Defendant’s ski areas.²

16. Additionally, Defendant sells season passes to specific ski areas. The regional Epic Passes provide passholders “unlimited, unrestricted access” to the specific ski area(s).³ Defendant’s regional Epic Passes include the following: Summit Value Pass, Keystone Plus Pass, Tahoe Local Pass, Tahoe Value Pass, Kirkwood Pass, Northeast Value Pass, Northeast Midweek

¹ *Epic Season Pass*, EPIC PASS, available at: <https://www.epicpass.com/passes/epic-pass.aspx> (last accessed Apr. 24, 2020).

² *Epic Local Pass*, EPIC PASS, available at: <https://www.epicpass.com/passes/epic-local-pass.aspx> (last accessed Apr. 24, 2020).

³ See e.g., *Kirkwood Pass*, EPIC PASS, available at: <https://www.epicpass.com/Passes/Kirkwood-Pass.aspx> (last accessed Apr. 24, 2020).

Pass, Afton Alps Pass, Mt. Brighton Pass, Wilmot Pass, Ohio Pass, Paoli Peaks Pass, Snow Creek Pass, and Hidden Valley Pass.

17. Defendant also sells “specialty” passes for specific groups of people. Defendant’s specialty passes include the following: Military Pass Active, Military Pass Active Dependent, Military Pass Retired, Military Pass Retired Dependent, Military Pass Veteran, Military Pass Veteran Dependent, Liberty Pass, Liberty Pass Dependent, Local College Pass, Summit Value College Pass, Park City Youth Pass, Tahoe Local College Pass, Tahoe Value College Pass, Kirkwood College Pass, Afton Alps College Pass, Afton Alps College Night Pass, Mt. Brighton College Pass, and Mt. Brighton College Night Pass.

18. Defendant’s regional Epic Passes may be limited to specific ski areas or particular days of the week, but otherwise provide access to ski areas for the entire 2019-20 season. Similarly, while some of Defendant’s specialty passes may be limited to particular ski areas or to certain days of the week, the passes otherwise provide access to the ski areas for the entire 2019-20 season. Defendant’s Epic Pass, Epic Local Pass, regional Epic Passes, and specialty Epic Passes are full season passes (hereinafter, collectively, “Season Epic Passes”).

19. Defendant also sells Epic Day Passes. The Epic Day Pass provides passholders with between 1 and 7 days of access to the majority of Defendant’s ski areas. Multi-day Epic Day Passes are not required to be used on consecutive days or at the same ski area.⁴

20. Defendant permitted consumers to purchase a 2019-20 Season Epic Pass or Epic Day Pass by making an initial payment of \$49.00. The remaining balance for the pass was then charged to the purchaser’s credit card in September 2019. Defendant’s Epic Pass website states that, by making the \$49.00 initial payment, the purchaser is “committing to buy the Pass(es)” and

⁴ *Epic Day Pass*, EPIC PASS, available at: <https://www.epicpass.com/passes/epic-day-pass.aspx?days=7> (last accessed Apr. 24, 2020).

that once the purchaser makes the \$49 initial payment neither the initial payment nor the pass purchase can be cancelled or refunded.⁵

21. Defendant also offers Pass Insurance for the Epic Passes. Passholders who purchase Pass Insurance will receive a refund of the cost of the Epic Pass, but only for certain covered events. The covered events are limited to the following: (a) injury or sickness of the insured (passholder); (b) injury, sickness, or death of a family member of the insured; (c) if the insured is subpoenaed, required to serve on a jury, hijacked, or quarantined; (d) if the insured is involuntarily laid off, terminated, or transferred; (e) if the insured is called for active military service or had military leave canceled; (f) if the insured has a pregnancy or childbirth; or (g) if the insured is a student and transfers schools. The Epic Pass website provides that, unless the passholder purchases Pass Insurance, the purchaser “will not be eligible for a refund of any kind” for the season or Epic Pass.⁶

22. Epic Passes are popular for skiers and snowboarders, as the Passes provide access to the ski areas for most of the year. Halfway through the 2018-19 ski season, Defendant had sold over 900,000 passes to its ski areas for that season.⁷ The ski/snowboard season typically begins in mid to late October, and usually lasts through April, and, for some ski areas, can last through June.

23. Lift tickets and Epic Passes may be purchased either at one of Defendant’s resorts or ski areas, or from Defendant’s websites, such as www.snow.com and www.epicpass.com. The Terms & Conditions for use of all of Defendant’s websites provide that the use of the website is

⁵ See *Deposit and Cancellation Policy*, EPIC PASS, available at: <https://www.epicpass.com/info/deposit-and-cancellation-policy.aspx> (last accessed Apr. 24, 2020).

⁶ See *Epic Season Pass*, *supra*, footnote 1.

⁷ See Scott Miller, *Vail Resorts has Sold about 925,000 passes of all kinds for 2018-19 Season*, VAIL DAILY NEWS (Dec. 8, 2018), available at: <https://www.skyhinews.com/news/vail-resorts-has-sold-about-925000-passes-of-all-kinds-for-2018-19-ski-season/>.

governed by the laws of the State of Colorado, and any legal proceedings against Defendant shall be commenced in state or federal court in Denver, Colorado.

The COVID-19 Pandemic and Response

24. COVID-19 has proven capable of spreading silently through communities, steadily increasing its reach before its existence is detected. On February 29, 2020—the same day the U.S. government issued a “do not travel” warning and prohibited travel between the United States and several countries with COVID-19 outbreaks—the State of Washington became the first state to declare a state of emergency due to COVID-19. It would not be the last to do so.

25. On March 11, 2020, the WHO reclassified COVID-19 as a worldwide pandemic and, two days later, the President declared a “National Emergency.”

26. On March 11, 2020, in response to the COVID-19 pandemic, Jared Polis, Governor of Colorado, issued Executive Order D 2020 003, which declared COVID-19 a disaster emergency. On March 14, 2020, Governor Polis issued Executive Order D 2020 004, which directed all downhill ski resorts in the State of Colorado to suspend operations from March 15-22, 2020. On March 18, 2020, Governor Polis issued Executive Order D 2020 006, which ordered all downhill ski resorts to suspend operations from March 23-April 6, 2020, which was later extended to April 30, 2020. Some or all of Defendant’s resorts, including Defendant’s Colorado resorts are subject to these orders. On March 25, 2020, Governor Polis issued Executive Order D 2020 017, which ordered all residents of Colorado to stay at home.

Defendant's Actions

27. As COVID-19 began to spread across the United States, reports linked the spread of the disease to ski resorts around the country, especially the resorts in Colorado.⁸

28. On or about March 15, 2020, Defendant suspended operation at all of its ski areas in North America until March 22, 2020. Defendant stated that it would refund all lift tickets that were valid for March 15-22, 2020. However, Defendant refused to provide refunds of any portion of the monies passholders paid to purchase a Season Epic Pass or Epic Daily Pass.

29. On March 17, 2020, Defendant stated that it would close all of its ski areas in North America beginning March 20, 2020. Again, Defendant refused to provide refunds for any Season Epic Pass or Epic Daily Pass.

30. On April 27, 2020, Defendant announced for the first time that it would issue credits—varying in amount based on the type of pass and the usage prior to the shutdowns—to impacted 2019-2020 passholders.⁹ However, those credits may only be applied toward the purchase of new passes for the 2020-2021 season and Defendant continues to refuse to offer refunds of any kind for the Season Epic Pass or Epic Daily Pass for the 2019-2020 season.

31. Because Defendant refused to provide refunds for individuals who purchased any Season Epic Pass or Epic Daily Pass with unused days, many consumers made claims on their Pass Insurance, seeking a refund due to the closure of Defendant's ski areas. Passholders' claims under the Pass Insurance have consistently been denied.¹⁰

⁸ See e.g., Vincent Del Giudice, *Colorado Suspects Virus Cluster in Ski-Resort Region*, BLOOMBERG (Mar. 16, 2020), available at: <https://www.bloomberg.com/news/articles/2020-03-17/colorado-suspects-virus-cluster-in-ski-resort-region-of-state> (updated Mar. 17, 2020).

⁹ *Vail Announces 19/20 Pass Holder Credits and 'Epic Coverage' for 20/21 Season*, VAIL RESORTS (Apr. 27, 2020), available at: <http://news.vailresorts.com/corporate/vailresorts/vail-resorts-announces-1920-pass-holder-credits-and-epic-coverage-for-2021-season.htm>.

¹⁰ See e.g., Epic Pass Facebook, FACEBOOK, available at: <https://www.facebook.com/pg/epicpass/posts/> (Apr. 8, 2020, 8:50 A.M.) (comment from stating that his claim for a refund under the Pass Insurance was

32. No Season Epic Pass or Epic Daily Pass passholder is bound by Defendant's self-serving attempts to limit its own liability for closing its ski areas. Even if Defendant's limitation of liability applied by its terms—which it arguably does not—Defendant cannot disclaim liability for loss or damage by closing its ski areas and preventing consumers from being able to use the Season Epic Passes or Epic Daily Passes with unused days, without any compensation for the unused portion of the passes. Any attempt by Defendant to limit or disclaim liability for preventing passholders from using the Season Epic Passes or Epic Daily Passes with unused days, while retaining the fees that passholders paid to purchase the passes, is unconscionable and unenforceable, and unjustly enriches Defendant to the detriment of the passholders.

CLASS ALLEGATIONS

33. Plaintiff brings this action, individually, and on behalf of a nationwide class, pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2) and/or 23(b)(3), defined as follows:

All persons in the United States who purchased a 2019-20 Season Epic Pass, or 2019-20 Epic Daily Pass that had unused days after March 15, 2020.

34. Excluded from the Class are: (a) Defendant; (b) Defendant's affiliates, agents, employees, officers and directors; and (c) any judge assigned to this matter, the judge's staff, and any member of the judge's immediate family.

35. **Numerosity**: Upon information and belief, the Class is so numerous that joinder of all members is impracticable. While the exact number and identity of individual members of the Class are unknown at this time, such information being in the sole possession of Defendant and obtainable by Plaintiff only through the discovery process, Plaintiff believes, and therefore alleges,

denied); *id.* (Apr. 8, 2020, 6:55 A.M.) (same); Joyce and Doug Paff, *Letter: So Much for Epic Pass Insurance*, *Vail Daily* (Apr. 17, 2020), *available at*: <https://www.vaildaily.com/opinion/letter-so-much-for-epic-pass-insurance>.

that the Class consists of hundreds of thousands of people. The number of Class members can be determined based on Defendant's records.

36. **Commonality**: Common questions of law and fact exist as to all members of each Class. These questions predominate over questions affecting individual Class members. These common legal and factual questions include, but are not limited to:

- a. Whether Defendant breached the contract with Plaintiff and Class members;
- b. Whether Defendant was unjustly enriched by its conduct;
- c. Whether Defendant violated the Colorado Consumer Protection Act;
- d. Whether Defendant unlawfully converted Plaintiff's and Class members' property for its own use; and
- e. Whether Defendant breached the covenant of good faith and fair dealing.

37. **Typicality**: Plaintiff has the same interest in this matter as all Class members, and Plaintiff's claims arise out of the same set of facts and conduct as the claims of all Class members. Plaintiff's and Class members' claims all arise out Defendant's uniform conduct, statements, and unlawful, unfair, and deceptive acts and practices.

38. **Adequacy**: Plaintiff has no interest that conflicts with the interests of the Class, and is committed to pursuing this action vigorously. Plaintiff has retained counsel competent and experienced in complex consumer class action litigation. Accordingly, Plaintiff and his counsel will fairly and adequately protect the interests of the Class.

39. **Superiority**: A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiff and members of the Class. The injury suffered by each individual Class member is relatively small compared to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to effectively redress the wrongs

done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of this case. Individualized rulings and judgments could result in inconsistent relief for similarly-situated individuals. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

COUNT I
BREACH OF CONTRACT

40. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint.

41. Plaintiff and the Class entered into a contract with Defendant when purchasing a 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass.

42. The contract was offered by Defendant and was formed at the time Plaintiff and the Class accepted it by purchasing their 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass.

43. Plaintiff and the Class performed their obligations under the contract by providing payment in consideration for the 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass.

44. Defendant breached its contracts with Plaintiff and the Class by retaining the consideration received by Plaintiff and the Class while closing their ski resorts for the remainder of the season, rendering useless and void the 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass for a substantial portion of the ski season.

45. Defendant's decision to retain the fees paid by Plaintiff and the Class while closing the resorts deprived Plaintiff and the Class the benefit of their bargains.

46. Due to the closure of Defendant's ski areas for a substantial portion of the 2019-20 season while refusing to provide refunds for Season Epic Passes or Epic Daily Passes renders those contracts illusory and void.

47. As a direct and proximate result of Defendant's breaches, Plaintiff and the Class have suffered monetary damages.

48. Plaintiff and the Class seek the return of amounts paid to Defendant for their 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass, as well as attorneys' fees, costs and interest.

COUNT II
UNJUST ENRICHMENT
(In the alternative to Count I)

49. Plaintiff incorporate by reference each of the allegations contained in the foregoing paragraphs of this Complaint.

50. Plaintiff and the Class conferred a direct benefit on Defendant by purchasing a 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass.

51. Defendant knowingly and willingly accepted and enjoyed the benefits conferred on it by Plaintiff and the Class.

52. Defendant's retention of these benefits is unjust and inequitable under the circumstances.

53. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to recover the amount each paid to Defendant for their 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass, as well as attorneys' fees, costs and interest.

COUNT IV
CONVERSION

54. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint.

55. Plaintiff and the Class purchased passes that granted them the right to services that were promised in exchange for the purchase price of the passes.

56. Defendant intentionally interfered with Plaintiff's and the Class' rights granted through those passes when Defendant closed all of its facilities and retained the purchase price of the passes.

57. Defendant exercised control over Plaintiff's and Class members' property by closing its ski areas and refusing to issue partial refunds for the unusable portion of the 2019-20 Season Epic Passes and Epic Daily Passes, and the rights granted by those passes.

58. Defendant's closure of its ski areas and its refusal to refund the unusable portion of the 2019-20 Season Epic Passes or Epic Daily Passes to Plaintiff and Class members are unauthorized.

59. Plaintiff and Class members have, through the filing of this lawsuit or otherwise communicating with Defendant, demanded that Defendant issue refunds for the unusable portion of the 2019-20 Season Epic Passes or Epic Daily Passes.

60. Defendant has uniformly and consistently refused to issue refunds for the unusable portion of the 2019-20 Season Epic Passes or Epic Daily Passes.

61. Plaintiff and the Class seek a partial return of the price paid to Defendant for their passes.

COUNT V
BREACH OF WARRANTY

62. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint.

63. Defendant created an express warranty through its advertising statements that the passes would provide “unlimited, unrestricted access” to its ski areas through the 2019-20 season, that the Season Epic Passes provide access for the entire 2019-20 season, and that Epic Daily Passes provide access to Defendant’s ski areas for the number of days purchased until the end of the 2019-20 season.

64. This warranty became part of the basis of the bargain between the parties. Plaintiff and the Class relied on this warranty in deciding to purchase a pass from Defendant.

65. Defendant breached this warranty by failing to provide access to its resorts throughout the 2020 ski season and by failing to issue partial refunds to Plaintiff and the Class after shutting down access to its ski areas.

66. Plaintiff and the Class would not have purchased the passes, or would have paid substantially less for them, had Defendant disclosed that it would not honor the warranty and not refund any portion of the monies that Plaintiff and the Class paid to purchase a Season Epic Pass or Epic Daily Pass.

67. Plaintiff and the Class performed their obligations under the warranty, including paying in full for their passes.

68. Plaintiff and the Class were injured as a direct and proximate result of Defendant’s breach of warranty.

COUNT VI
**BREACH OF IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING**

69. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint.

70. Every contract in Colorado contains an implied covenant of good faith and fair dealing. The implied covenant is an independent duty and may be breached even if there is no breach of a contract's express terms.

71. Defendant breached the covenant of good faith and fair dealing by failing to refund to Plaintiff and the Class a portion of the purchase price of their Season Epic Passes or Epic Daily Passes after Defendant terminated access to its facilities.

72. Defendants acted in bad faith and/or with a malicious motive to deny Plaintiff and the Class members some benefit of the bargain originally intended by the parties, thereby causing them injuries in an amount to be determined at trial.

COUNT VII
VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT¹¹

73. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint.

74. Colorado's Consumer Protection Act (the "CCPA") prohibits a person from engaging in a "deceptive trade practice," which includes "advertis[ing] goods, services, or property with intent not to sell them as advertised." § 6-1-105(1)(g), (i), C.R.S.

75. Defendant is a "person" within the meaning of § 6-1-102(6), C.R.S.

¹¹ Plaintiff does not seek certification under Federal Rule of Civil Procedure 23(b)(3) for Defendant's violation of the CCPA. Instead, Plaintiff seeks certification under Rule 23(b)(2)—seeking declaratory relief—and Rule 23(c)(4)—regarding the issue of whether Defendant's conduct alleged herein violates the CCPA.

76. In the course of Defendant's business, it advertised that the purchasers of its passes would have unlimited access to skiing and snowboarding until the end of the 2019-20 season, which may last through June. Defendant knew, however, that if it closed all of its resorts before the end of 2019-20 season that it would retain 100% of the revenue generated from sales of the passes. As described above, Defendant engaged in unfair and deceptive trade practices as defined under Colorado law.

77. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

78. Defendant's unfair practices significantly impacted the public as actual or potential consumers of Defendants' goods, services or property.

79. Defendant's actions proximately caused injuries to Plaintiff and the Class members.

80. Plaintiff and the Class members have suffered an injury in fact, including the loss of money or property, as a result of Defendant's unfair, unlawful, and/or deceptive practices. In purchasing their passes, Plaintiff and the other Class members relied on the misrepresentations and/or omissions of Defendant with respect to their ability to access Defendant's locations without restriction. Had Plaintiff and the other Class members known this, they would not have purchased their passes and/or paid as much for them. Accordingly, Plaintiffs and the other Class members overpaid for their passes and did not receive the benefit of their bargain.

81. Plaintiff and the Class Members injuries are the direct and natural consequence of Defendant's misrepresentations and omissions.

82. Plaintiffs and the Class Members demand a jury as to all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, respectfully requests that this Court:

- A. Determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying the Class as defined above;
- B. Appoint Plaintiff as the representatives of the Class and his counsel as Class Counsel;
- C. Award actual damages, exemplary and equitable monetary relief to Plaintiff and the Class and/or order Defendant to return to Plaintiff and the Class the amount each paid to Defendant as allowed by applicable law;
- D. Award pre-judgment and post-judgment interest on such monetary relief;
- E. Grant appropriate injunctive and/or declaratory relief, including, without limitation, an order that requires Defendant to issue refunds to any member of the Class who requests a refund;
- F. Award reasonable attorneys' fees and costs; and
- G. Grant such further relief that this Court deems appropriate.

JURY DEMAND

Plaintiffs, on behalf of themselves and the putative Class, demands a trial by jury on all issues so triable.

Dated: April 27, 2020

Respectfully submitted,

/s/ Katherine Varholak
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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

MICHAEL McAULIFFE, on behalf of himself and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Sherman & Howard L.L.C.
633 17th Street, Suite 3000, Denver, CO 80202
303-297-2900

DEFENDANTS

THE VAIL CORPORATION d/b/a Vail Resorts Management Company

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)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 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 checked="" 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 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)

CONTRACT	TORTS	FORFEITURE/PENALTY	LABOR	IMMIGRATION	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 checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <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	PERSONAL INJURY <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 PERSONAL PROPERTY <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 <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 type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <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 type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <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))	<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 (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <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 Constitutionality of State Statutes
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <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 Other: <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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <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 type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <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))	<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 (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <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 Constitutionality of State Statutes	

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

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 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):
28 USC 1332

Brief description of cause:
Breach of contract action related to ski passes

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 Jackson, Mix, Crews DOCKET NUMBER 20-1121; 20-1134; 20-1163

DATE
04/27/2020

SIGNATURE OF ATTORNEY OF RECORD
Melissa Kerin Reagan

Digitally signed by Melissa Kerin Reagan
DN: cn=Melissa Kerin Reagan, o=Sherman & Howard L.L.C., ou, email=mreagan@shermanhoward.com, c=US
Date: 2020.04.27 21:38:35 -0600

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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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.
 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

Michael McAuliffe, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

Vail Corporation d/b/a Vail Resorts Management
Company

Defendant(s)

Civil Action No. 1:20-cv-01176

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Vail Corporation d/b/a Vail Resorts Management Company
390 Interlocken Crescent
Broomfield, Colorado 80021

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: Katherine D. Varholak, Esq.
Melissa Kerin Reagan, Esq.
Sherman & Howard L.L.C.
633 17th Street, Suite 3000
Denver, CO 80202

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: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 1:20-cv-01176

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

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