

**DISTRICT COURT, PITKIN COUNTY,  
COLORADO**

506 E. Main Street, Suite 300  
Aspen, Colorado 81611

---

**Plaintiff:** RCHFU, LLC, on behalf of itself and all  
others similarly situated

vs.

**Defendants:** MARRIOTT VACATIONS  
WORLDWIDE CORPORATION; MARRIOTT  
OWNERSHIP RESORTS, INC., d/b/a MARRIOTT  
VACATION CLUB INTERNATIONAL; RITZ-  
CARLTON MANAGEMENT COMPANY, LLC;  
COBALT TRAVEL COMPANY, LLC; ASPEN  
HIGHLANDS CONDOMINIUM ASSOCIATION,  
INC.; ASPEN HIGHLANDS TOURIST  
ACCOMMODATION BOARD; and THE LION &  
CROWN TRAVEL CO., LLC

---

***Attorneys for Plaintiff:***

Michael J. Reiser, A.R. # 16161  
LAW OFFICE OF MICHAEL J. REISER  
961 Ygnacio Valley Road  
Walnut Creek, CA 94596  
Telephone: (925) 256-0400  
Facsimile: (925) 476-0304  
E-mail: [reiserlaw@gmail.com](mailto:reiserlaw@gmail.com)

Matthew C. Ferguson, A.R. #25687  
THE MATTHEW C. FERGUSON LAW FIRM, P.C.  
119 South Spring Street, Suite 201  
Aspen, Colorado 81611  
Telephone: (970) 925-6288  
Facsimile: (970) 925-2273  
E-mail: [matt@matthewfergusonlaw.com](mailto:matt@matthewfergusonlaw.com)

Michael L. Schrag (*Pro Hac Vice to be filed*)  
GIBBS LAW GROUP LLP  
1 Kaiser Plaza, Suite 1125  
Oakland, CA 94612  
Telephone (510) 350-9718  
Facsimile: (510) 350-9701  
E-mail: [mls@classlawgroup.com](mailto:mls@classlawgroup.com)

DATE FILED: December 31, 2015 7:21 PM  
FILING ID: 40100FBDD0636  
CASE NUMBER: 2015CV30160

---

**COURT USE ONLY**

**Case Number:**

**Division:**

**CLASS ACTION COMPLAINT AND JURY DEMAND**

Plaintiff RCHFU, LLC (“Plaintiff”) on behalf of itself and all other similarly situated entities and/or individuals (“Class Members” or the “Class”), brings this action based upon the investigation of counsel and information and belief against the following Defendants: Marriott Vacations Worldwide Corporation; Marriott Ownership Resorts, Inc. d/b/a Marriott Vacation Club International; Ritz-Carlton Management Company, LLC; Cobalt Travel Company, LLC; Aspen Highlands Condominium Association, Inc.; Aspen Highlands Tourist Accommodation Board; and The Lion & Crown Travel Co., LLC (collectively, “Defendants”). Plaintiff demands a jury trial as to all claims so triable.

**INTRODUCTION AND BACKGROUND**

1. This lawsuit concerns Defendants’ unlawful acts that decimated the value of deeded 1/12 fractional interests that Class Members purchased in the Ritz-Carlton Club Aspen Highlands, located in Aspen, Colorado. Over the last few years, Defendants, including Defendant Marriott Vacations Worldwide Corporation (“MVW”) and its subsidiaries and affiliates, have unjustly enriched themselves by violating (or aiding and abetting in, or conspiring to violate) various fiduciary duties owed by certain Defendants to Class Members. These violations undercut the essential features of the fractional interests sold to Class Members.

2. Defendant Marriott Ownership Resorts Inc. d.b.a. Marriott Vacation Club International (“MORI” initially and then “MVCI”) was established as a subsidiary of Marriott International, Inc. in 1984, when Marriott’s Monarch on Hilton Head Island became the first MORI resort.<sup>1</sup> By 1993, MORI had more than 50,000 owners of fractional interests in its units and more than 19 resorts across three countries. In 1995, MORI became known by the aforementioned fictitious Marriott Vacation Club International, and by 1997 it had grown to over 100,000 owners.

3. In 1999, MVCI introduced The Ritz-Carlton Club (otherwise known as “The Ritz-Carlton Destination Club”), which it described as “an equity-based, luxury vacation program” that sold deeded 1/12 fractional ownership interests, and was distinct from MVCI’s “Marriott Vacation Club” product line due to its higher-end nature.

4. In 2001, Aspen Highlands was established as the first fractional ownership property for The Ritz-Carlton Club brand. Thereafter, between 2001 and 2012, the Defendants developed

---

<sup>1</sup> Since November 2011, when Marriott International, Inc. spun off MVW as a separately traded public company, MVCI has been a wholly owned subsidiary of Defendant MVW.

and sold approximately 3,000 of the deeded 1/12 luxury fractional interests under The Ritz Carlton Club brand at the following nine locations: Aspen Highlands, Colorado; Bachelor Gulch, Colorado; Jupiter, Florida; North Lake Tahoe, California; St. Thomas, U.S.V.I.; San Francisco, California; Vail, Colorado; Abaco, Bahamas; and Maui, Hawaii.

5. Meanwhile, in 2010, MVCI had introduced sales of and was converting legacy owners of timeshares at its resorts to a “points-based product” wherein purchasers bought interests in a land trust (“MVC Trust”) set up by MVCI to own its resorts. By 2012, the Marriott Vacation Club had grown to over 400,000 owners at over 50 Marriott Vacation Club resorts worldwide, many of who were utilizing points purchased from MVCI to trade for use of Marriott Vacation Club resorts. Further, by 2012, Marriott Vacation Club points were available for sale on the secondary market for a fraction of the cost at which MVCI sold them.

6. Between 2001 and 2012, approximately 800 Class Members paid premium prices, ranging from \$200,000 to \$400,000, for their deeded 1/12 fractional interest at the Ritz Carlton Club in Aspen Highlands, (known as “Tourist Accommodation Units” or “Fractional Units”). These Fractional Units were sold based on Defendants’ claims that the Fractional Units were superior to MVCI’s other timeshare offerings in that the Ritz Carlton Club Aspen Highlands would be exclusive and operated for the use, benefit and enjoyment of Ritz Carlton Club Members, their family and guests “like a second home” (warranting the highly expensive purchase prices for the Fractional Units as compared to other MVCI timeshare offerings), and that the Fractional Units were transferrable like any other form of deeded real estate.

7. However, beginning in 2013, MVW, Ritz-Carlton Management Company, LLC and the other Defendants used their complete control over Defendant Aspen Highlands Condominium Association, Inc. and Defendant The Cobalt Travel Company, LLC to eliminate the very features for which Class Members paid premium prices, thereby destroying the value of the Fractional Units sold to Class Members. By these actions Defendants profited at the Class’s expense. Despite the destruction of the value of the Fractional Units, Class Members continue to pay steadily increasing annual dues, much of which goes directly to Defendants in the form of lucrative “management fees” and other “reimbursements” supposedly incurred by Defendants under the management contracts, including payroll related costs. These management fees and reimbursements are paid solely by Fractional Unit owners at the Ritz Carlton Club Aspen Highlands to the Defendants regardless of usage or occupancy.

8. Due to the conduct of the Defendants described herein, the Fractional Units owned by Class Members are now worth less than 20% of the original purchase prices, and Defendants, including MVW; MVCI; Ritz-Carlton Management Company, LLC; Cobalt Travel Company, LLC; and The Lion & Crown Travel Co., LLC have been unjustly enriched by the wrongful and unlawful conduct described herein. Due to defendants actions MVC members can now enjoy the benefits and use of the Ritz-Carlton Club Aspen Highlands property for a fraction of the cost that Class Members paid. For example a MVC member can buy MVC points sufficient to stay at the

Ritz Carlton Club Aspen Highlands for approximately twenty percent of what it costs Class Members, who paid \$200-400k for substantially similar rights and benefits.

### **JURISDICTION**

9. This Court has jurisdiction over the subject matter at issue because this is a civil action for damages and/or equitable relief. Colo. Const. Art. VI, § 9(1).

10. Venue is proper in this Court under C.R.C.P. 98(a) and (c) as this action arises from the sale of Fractional Units located in Pitkin County, Colorado, and certain of Defendants' wrongful and illegal conduct was committed in Pitkin County. In addition, jurisdiction and venue are proper in this court pursuant to the terms of the uniform Purchase Contract and other agreements or instruments executed in connection therewith.

### **PARTIES**

#### **A. Plaintiff**

11. Plaintiff **RCHFU, LLC** is organized under the laws of Colorado. Its only members, Jennifer Kaplan and Alexander Busansky, are citizens of California. Pursuant to a uniform Purchase Contract Ms. Kaplan and Mr. Busansky signed in 2003, they purchased and obtained title to Residence Unit No. 12 consisting of an undivided 1/12 interest in Residence No. 8314 of Aspen Highlands Condominiums, ("Ritz Aspen Highlands"), according to the Declaration of Condominium for Aspen Highlands Condominiums, recorded January 11, 2001, Reception No. 450454.

12. Pursuant to an Assignment of Claims, Ms. Kaplan and Mr. Busansky transferred all of their claims and all interests in claims arising out of ownership or under the Purchase Contract or otherwise and pertaining to the undivided 1/12 interest in Residence Unit No. 8314 at the Ritz Aspen Highlands to RCHFU, LLC.

#### **B. Defendants**

13. Defendant **Marriott Vacations Worldwide Corporation** ("MVW") is a publicly traded Delaware corporation with its principal place of business at 6649 Westwood Boulevard, Orlando, Florida. MVW is the parent and/or an affiliate company of the other Defendants and was involved in and responsible for the wrongful conduct alleged herein. Marriott Vacations Worldwide Corporation is sometimes referred to herein as Marriott.

14. Defendant **Marriott Ownership Resorts, Inc., d.b.a. Marriott Vacation Club International** ("MORI" or "MVCI") is a Delaware corporation, and a wholly owned subsidiary

of Marriott. Its principal place of business is at 6649 Westwood Boulevard, Orlando, Florida, and it is authorized to do business in Colorado. MVCI was involved in and responsible for the wrongful conduct alleged herein.

15. Defendant **Aspen Highlands Condominium Association, Inc.** (“AH Condominium Association”) is a Colorado non-profit corporation that serves as the official “Owners Association” for buyers of Fractional Units, including Class Members. Defendant AH Condominium Association owed and owes fiduciary duties to buyers of Fractional Units, including Class Members, including but not limited to a duty of loyalty and duty to enforce restrictive covenants set forth in the Declaration of Condominium for Aspen Highlands Condominiums.

16. Defendant **Aspen Highlands Tourist Accommodation Board** (“AH Condominium Association Board”) is an entity acting pursuant to the authority set forth in the Declaration of Condominium for Aspen Highlands Condominiums. The AH Condominium Association Board owed and owes fiduciary duties to buyers of Fractional Units, including Class Members, and including but not limited to a duty of loyalty and duty to enforce restrictive covenants set forth in the Declaration of Condominium for Aspen Highlands Condominiums.

17. Defendant **Ritz-Carlton Management Company, LLC** (“RC Management”) is another wholly owned MVW subsidiary, and a Delaware limited liability company. Defendant RC Management has a principal place of business at 6649 Westwood Boulevard, Suite 500, Orlando, Florida, and is authorized to do business in Colorado. At all relevant times, Defendant RC Management was the manager and operator of the Ritz-Aspen Highland. In addition, RC Management provides “property association governance” services to Defendant AH Condominium Association, and Defendant AH Condominium Association Board, including preparing association budgets, facilitating association meetings, billing and collecting the annual assessments. On information and belief, Defendant RC Management and AH Condominium Association entered into a written agreement, designated “Operating Agreement” wherein the AH Condominium Association agreed to delegate to RC Management “all of the power and authority” of the AH Condominium Association, including the authority to “engage a Program Manager through an Affiliation Agreement.” This delegation of authority to RC Management created fiduciary duties on the part of RC Management towards Class Members, including the duty of loyalty and the duty to enforce restrictive covenants set forth in the Declaration of Condominium for Aspen Highlands Condominiums.

18. Defendant **The Cobalt Travel Company, LLC** (“Cobalt”) (formerly known as the Ritz-Carlton Travel Company, LLC) is a Delaware limited liability company, has a principal place of business at 6649 Westwood Boulevard, Suite 500, Orlando, Florida, and is authorized to do business in Colorado.

19. Defendant Cobalt entered into “The Ritz-Carlton Club Membership Program Affiliation Agreement” (“Affiliation Agreement”) with the Ritz-Carlton Development Company (“RC Development”) (the seller of the fractional interests at issue, a wholly owned subsidiary of MVW, and the sole manager and member of Defendants RC Management and Cobalt) and Defendants RC Management and the AH Condominium Association. Pursuant to the Affiliation Agreement, the Ritz-Aspen Highlands (and by extension its various fractional owners, including Class Members) became affiliated with and/or members of the Ritz-Carlton Membership Program.

20. Defendant Cobalt is the Program Manager of the Ritz-Carlton Club Membership Program and also operates the reservation system through which Class Members obtain use of their allotted number of days at the Ritz Aspen Highlands and obtain access to the sister Ritz-Carlton Destination Clubs in the Ritz-Carlton Club Membership Program. The Affiliation Agreement provides: “The Program Manager (Cobalt) may, in its sole discretion, elect to affiliate other locations with the Membership Program as Member Clubs or Associated Clubs from time to time. *Neither the Developer (RC Development), Members Association (AH Condominium Association), nor Club Manager (RC Management) shall be entitled to participate in or consent to the Program Manager’s decision in this regard.*” (Emphasis added.) A copy of the Affiliation Agreement is attached hereto as **EXHIBIT A**.

21. Defendant **The Lion & Crown Travel Co., LLC** (“L&C”) is a Delaware limited liability company formed in 2008 and is authorized to do business in Colorado. L&C is a wholly owned subsidiary of RC Development. Defendant Cobalt, in violation of its fiduciary duties to Class Members, and aided and abetted in said fiduciary duty violations by the other Defendants, entered into an Affiliation Agreement with L&C, which allows some or all of the over 400,000 members of Defendant MVW’s Marriott Vacation Club who are able to acquire sufficient points in the Marriott Vacation Club Destinations system, to use the Fractional Units at the Ritz-Aspen Highlands. These breaches of fiduciary duty caused a great diminution in the value of Class Members’ Fractional Units, and unjustly enriched the other Defendants, including MVW, at the expense of Class Members.

22. MVW directly, and indirectly through wholly owned subsidiaries, exerted control over Ritz Aspen Highlands and the other Defendants, because, *inter alia*: 1) MVW’s lawyers drafted the Management Agreement that provided its wholly owned subsidiary, RC Management full control of the operation of the AH Condominium Association and the AH Condominium Association Board at the Ritz Aspen Highlands; 2) RC Management and Cobalt were shell companies serviced by persons technically employed by MVW and/or MVCI; 3) the costs and revenues generated in connection with Ritz Aspen Highlands by MVW, MVCI, RC Management and Cobalt were accounted for in MVW’s consolidated financials; 4) employees providing services to MVCI, RC Management, and Cobalt were treated as MVW employees.

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

24. Each of the Defendants are (a) are the agents, representatives, alter egos, and/or instrumentalities of their respective principals or controlling entities, (b) have interlocking or overlapping directors and/or officers with their respective principals or controlling entities, (c) are undercapitalized and/or spurious or disregarded corporate form, (d) and for which “piercing the corporate veil” is or may be necessary and appropriate to prevent injustice and inequity to Class Members.

### **GENERAL ALLEGATIONS**

25. On July 17, 2012, Ms. Eveleen Babich, General Manager of Defendant Cobalt wrote Class Members a letter (on Ritz Carlton Destination Club letterhead), stating that “Based on the Ritz-Carlton Destination Club member feedback, additional benefits and experiences will be available through a new affiliation with Marriott Vacation Club Destinations . . . Affiliation will extend to you the opportunity to deposit your Reserved Allocation on an annual basis. Once you deposit, the following will be available for you: . . . Secure any of the 51 worldwide Marriott Vacation Club Resorts . . .” A copy of the July 17, 2012 Letter from Eveleen Babich is attached hereto as **EXHIBIT B**.

26. Eveleen Babich’s July 17, 2012 letter did not specify whether this proposed affiliation would allow the 400,000 Marriott Vacation Club members to access the Ritz Carlton Club locations and in fact assured Class Members that “nothing about the Home Club Membership...has changed” as a result of this affiliation.

27. This announcement proposing a new affiliation agreement with Defendant MVW’s Marriott Vacations Club Destinations program generated concern amongst the various “member controlled” Boards of Directors of the various Ritz-Carlton Destination Clubs. For instance, in a letter dated August 3, 2012, the Association Board of the Ritz Carlton Club-St. Thomas wrote to its members:

We have been in frequent communications with each other and the Presidents of the other RCDC Clubs since this announcement. Our general but preliminary consensus regarding the ‘evolution’ of the RCDC brand as described in Eveleen Babich’s letter of July 17<sup>th</sup> is that we are concerned that this may not be an

enhancement to our Membership Interests. We all, as members, invested in the Ritz-Carlton brand!

A copy of the August 3, 2012 Letter from the association board of the Ritz Carlton Club-St. Thomas is attached hereto as **EXHIBIT C**.

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

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

A copy of the August 10, 2012 Letter from the association board of the Ritz Carlton Club-St. Thomas is attached hereto as **EXHIBIT D**.<sup>2</sup>

29. On August 17, 2012, Lee Cunningham, the Executive Vice President and Chief Operating Officer of Defendant MVCW, wrote a letter (on Ritz Carlton Destination Club letterhead) to all Ritz Carlton Destination Club Members, including Class Members, "to provide you further information regarding certain changes announced on July 17<sup>th</sup> to the Lion and Crown Travel Company and The Ritz-Carlton Destination Club system" and to assure the Ritz-Carlton Vacation Club members that "nothing... has changed or will change as a result of the announcement." The August 17<sup>th</sup> notice also stated that the original affiliation notice on July 17<sup>th</sup> had generated questions from the members, which would be addressed in an upcoming Webinar on August 28, 2012. A copy of the August 17, 2012 Letter from Lee Cunningham is attached hereto as **EXHIBIT E**.

30. In the meantime, Defendant AH Condominium Association Board, which has a fiduciary duty to the Class Members, wrote a letter to Class Members on August 17, 2012, notifying them that the Board was working with MVW executives to better understand the proposed affiliation. The letter states that "[f]rankly, it has been our position that our members bought into a Ritz-Carlton brand and do not want that brand diluted. The Board has concerns that

---

<sup>2</sup> Ultimately the announced intention to affiliate the Marriot Vacation Club Destinations program, with its over 400,000 members, caused the Condominium Association Boards of Ritz-Bachelor Gulch and Ritz-Jupiter Clubs to put a vote to their members as to whether to terminate their management agreements with RC Management and Cobalt. In 2013 and 2014, respectively, both of these clubs' memberships voted to terminate the management agreements with Defendant RC Management, and both clubs have since left the system.



... the nature of our club will change by opening the club to MVW timeshare/points members who have a much lower cost of entry.”

31. The August 17<sup>th</sup> letter from the AH Condominium Association Board states that “[t]he Board is also concerned that there are specific provisions in our Association documents which the Board believes does not permit MVW to conduct a separate program as they currently intend.” A copy of the August 17, 2012 Letter from the AH Condominium Association Board is attached hereto as **EXHIBIT F**.

32. One of the provisions that the AH Condominium Association Board was referring to is Section 19.8 of the Declaration of Condominium for Aspen Highlands Condominiums, entitled “Limit on Timesharing,” which states as follows:

Each Owner acknowledges that Declarant intends to create Fractional Ownership Interests with respect to Tourist Accommodation Units within Aspen Highlands Condominiums and Aspen Highlands Village. Other than the right of Declarant” (sic) or a Successor Declarant and their respective officers, agents, employees, and assigns to create Fractional Ownership Interests in accordance with Article 23 of this Declaration (specifically including, without limitation, the Plan of Fractional Ownership), *no Unit shall be used for the operation of a timesharing, fraction-sharing, interval ownership, private residence club, membership program, vacation club, exchange network or system or similar program whereby the right to exclusive use of the Unit is alternated or scheduled among participants in the program on a fixed or floating time schedule over a period of years whether by written, recorded agreement or otherwise.* (Emphasis added.)

A copy of the Declaration of Condominium for Aspen Highlands Condominiums is attached hereto as **EXHIBIT G**.<sup>3</sup>

33. On August 30, 2012, the Ritz-Carlton Destination Club released a new “Frequently Asked Questions for Members” pamphlet, wherein it stated, among other things, that “Marriott Vacations Worldwide intends to sell most of its remaining unsold Ritz-Carlton Club inventory through the Marriott Vacation Club Destinations program.”<sup>4</sup> A copy of the August 30, 2012 pamphlet “Frequently Asked Questions for Members” is attached hereto as **EXHIBIT H**.

---

<sup>3</sup> The Declaration for Aspen Highlands Village which created the “Master Association”, and which also govern the Class Members’ Fractional Units, sets forth a similar use restriction, labeled “No Timeshare” at Section 8.25.

<sup>4</sup> The August 28, 2012 pamphlet stated: “Marriott Vacations Worldwide is paying club dues on these unsold fractions in excess of eleven million dollars a year, plus continues to subsidize the operating costs at a number of clubs for an additional four million dollars a year.”

34. On October 2, 2012, the AH Condominium Association Board issued another letter to the Class Members that purported to update its members on the discussions with the MVW on this pressing issue. The letter revealed, *inter alia*, that “MVW has been advised that it is the view of the Board and its counsel, that in order for MVW to move towards the points based system it is planning on, that the underlying Association documents would need to be revised as it is in our view that the documents prohibit what MVW is planning.” A copy of the October 2, 2012 Letter from the AH Condominium Association Board is attached hereto as **EXHIBIT I**.

35. While the AH Condominium Association Board was conducting its discussions with MVW, on November 5, 2012, the President of the Board of the Ritz-Carlton Bachelor Gulch, Michael Mullenix, wrote a letter to Mr. Steven Weisz, President and CEO of MVW and Lee Cunningham, Executive Vice President and COO of MVW, stating:

I am writing on behalf of the Board of Directors to continue our dialogue about the proposed affiliation of Ritz Carlton Bachelor Gulch Members with Lion and Crown in 2013 and beyond and to request that such proposed affiliation be canceled. At a minimum, the proposed affiliation should be delayed until January 1, 2014 and the status quo maintained until that time . . . The Board and membership of the Club have serious concerns that the Club’s affiliation with Lion and Crown is contrary to the Club’s governing documents and, in any event, will have permanent negative impacts on the club, including most importantly to the value of our residence units . . .

36. The letter from the Board of the Ritz-Bachelor Gulch to Steven Weisz and Lee Cunningham ended as follows: “Please advise no later than Thursday, November 15, 2012, whether MVW will agree to this requested delay of affiliation. If MVW will not voluntarily agree to this delay and insists on permitting affiliation with Lion and Crown now, the Board may have no alternative but to enforce the Club Declarations prohibition on timesharing through formal legal action. We do not believe that should be necessary given our aligned interests on this issue.” A copy of the November 5, 2012 Letter from the Board of the Ritz-Bachelor Gulch to Steven Weisz and Lee Cunningham is attached hereto as **EXHIBIT J**.

37. Between April 5, 2013 and April 8, 2013, the AH Condominium Association Board wrote letters to all Class Members that:

Positive discussions were held today between the Board of Directors and representatives of the Ritz/Marriott including Lee Cunningham, COO of the Ritz-Carlton Destination Club. ***Ritz Marriott representatives agree that unless a majority of Aspen Highlands Members (excluding the Marriott interests and Members not in good standing) vote in favor of doing so, the Ritz/Marriott will not include Aspen Highlands in the Marriott Vacation Club affiliation/exchange/point program.*** Discussions continue on other important

issues affecting Aspen Highlands, including alternatives for divesting the current inventory of Aspen Highlands units owned by Ritz/Marriott. ***Such inventory will not be sold through the Marriott Vacation Club trust without an additional vote of the Members.***

Copies of letters dated April 5, 2013 and April 8, 2013 from the AH Condominium Association Board to Class Members are attached hereto as **EXHIBIT K**. (Emphasis added)

38. No vote of the Members of Ritz-Aspen Highlands, including by Class Members, in favor of allowing the Defendants to include Ritz-Aspen Highlands in the Marriott Vacation Club affiliation/exchange/point program, ever occurred. Likewise, no vote of the Members of Ritz-Aspen Highlands in favor of allowing the Defendants to sell their unsold inventory of Aspen Highlands units through the Marriott Vacation Club trust ever occurred.

39. However, in April 2014, Defendant AH Condominium Association and Defendant AH Condominium Association Board, acting in concert with and/or aided and abetted by the other Defendants, including MVW, RC Management, and Cobalt, unilaterally decided to impose the affiliation with Marriott Vacation Club Destinations onto the Class Members' Fractional Units; and agreed and conspired with Defendants to have the AH Condominium Association and the AH Condominium Association Board breach their fiduciary duties to Class Members by, *inter alia*, 1) agreeing not to and failing to enforce the covenant against further timesharing, as set forth in paragraph 19.8 of the Declaration of Condominium for Aspen Highlands Condominiums; and 2) agreeing to act and acting in a disloyal manner towards Class Members by favoring the interests of the Defendants over the interests of the Class Members.

40. In April 2014, the AH Condominium Association Board wrote a letter to all Class Members updating them on "your Board of Directors' efforts on your behalf . . ." On page 2 of the letter, the Board dropped a bombshell under the heading "Marriott Vacation Club Destination Exchange Program: In response to the Members' wishes - both past and present, the Board has crafted a very unique program which would allow Aspen Club Members to exchange a week of their reserved allocated time for points within the Marriott Vacation Club Destinations exchange program." A copy of the April 2014 Letter from the AH Condominium Association Board to Class Members is attached hereto as **EXHIBIT L**

41. Plaintiff alleges that sometime in 2014, in contravention of the promises made to Class Members on April 5, 2013 (that Defendants' unsold inventory of fractionals "will not be sold through the Marriott Vacation Club trust without an additional vote of the Members"), Defendant MVW, pursuant to an agreement it made with Defendant AH Condominium Association Board not to enforce Section 19.8 of Declaration of Condominium for Aspen Highlands Condominiums, sold a portion of its remaining unsold Ritz-Carlton Club inventory to the Marriott Vacation Club trust.

42. The actions of the Defendants described above were knowingly made in violation of Section 19.8 and other provisions of the Declaration of Condominium for Aspen Highlands Condominiums, as well as the promises made to Class Members on April 5 and April 8, 2013 that unless a majority of Aspen Highlands Member vote in favor of doing so, Defendants would not include Aspen Highlands Fractional Units in the Marriott Vacation Club affiliation/exchange/point program.

### **CLASS ACTION ALLEGATIONS**

43. Pursuant to Rule 23(b) of the Colorado Rules of Civil Procedure, Plaintiff brings this action on behalf of itself and the following proposed class:

*All entities and individuals (including their assignees) who, at any time from January 1, 2001 to the present, purchased a 1/12 fractional interest in the Ritz-Carlton Aspen Highlands development.*

44. Excluded from the proposed class are Marriott Vacations Worldwide Corporation; Marriott Ownership Resorts, Inc., d/b/a Marriott Vacation Club International; Ritz Carlton Development Company, Inc.; Ritz-Carlton Management Company, LLC; Cobalt Travel Company, LLC; Aspen Highlands Condominium Association, Inc.; Aspen Highlands Tourist Accommodation Board; The Lion & Crown Travel Co., LLC; any affiliate, parent, or subsidiary of any Defendant or Ritz Carlton Development Company, Inc.; any entity in which any Defendant or Ritz Carlton Development Company, Inc. has a controlling interest; any officer, director, or employee of any Defendant or Ritz Carlton Development Company, Inc.; any successor or assign of any Defendant or Ritz Carlton Development Company, Inc.; anyone employed by counsel in this action; any judge to whom this case is assigned, his or her spouse; and members of the judge's staff.

45. Members of the proposed class are readily ascertainable because the class definition is based upon objective criteria.

46. **Numerosity**. Defendants sold over 800 1/12 fractional interests in the Ritz-Carlton Aspen Highlands development from 2001 to the present. Members of the proposed class are thus too numerous to practically join in a single action. Class members may be notified of the pendency of this action by mail, supplemented by published notice (if deemed necessary or appropriate by the Court).

47. **Commonality and Predominance**. Common questions of law and fact exist as to all proposed class members and predominate over questions affecting only individual class members. These common questions include whether:

- a. Defendants AH Condominium Association, AH Condominium Association Board, RC Management, and Cobalt owed fiduciary duties to Class Members;
- b. Defendants, including MVW, MVCI, RC Management and Cobalt, aided and abetted any breaches of fiduciary duties owed to Class Members;
- c. Defendants, including MVW, MVCI, RC Management and Cobalt conspired with other Defendants to breach fiduciary duties owed to Class Members;
- d. Any breaches of fiduciary duty caused a diminution in value of the Class Members' Fractional Units and if so, by how much;
- e. Any Defendant was unjustly enriched by the conduct described herein, and if so, by how much;
- f. Plaintiff and Class Members are entitled to damages, including compensatory or statutory, and the amount of such damages;
- g. Plaintiff and Class Members are entitled to equitable relief, including restitution or injunctive relief;
- h. Plaintiff and Class Members are entitled to an award of reasonable attorneys' fees, pre-judgment and post-judgment interest, and/or costs of suit.

48. **Typicality.** Plaintiff's claims are typical of the claims of the proposed class. Ms. Kaplan and Mr. Busansky, who assigned their claims to Plaintiff, and the members of the proposed class all purchased 1/12 fractional interests in the Ritz-Carlton Aspen Highlands development, giving rise to substantially the same claims.

49. **Adequacy.** Plaintiff is an adequate representative of the proposed class because its interests do not conflict with the interests of the members of the proposed class it seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation, and will prosecute this action vigorously on class members' behalf.

50. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each Class Member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Defendants economically feasible. Even if Class Members themselves could afford such individualized litigation, the court system could not. In addition to the burden and expense of managing many actions arising from Defendants' conduct, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized

litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

51. In the alternative, the proposed class may be certified because:

a. the prosecution of separate actions by the individual members of the proposed class would create a risk of inconsistent adjudications, which could establish incompatible standards of conduct for Defendants;

b. the prosecution of individual actions could result in adjudications, which as a practical matter, would be dispositive of the interests of non-party class members or which would substantially impair their ability to protect their interests; and

**FIRST CAUSE OF ACTION**  
**(BREACH OF FIDUCIARY DUTY)**  
**(Against AH Condominium Association, AH Condominium Association Board, RC Management, and Cobalt)**

52. Plaintiff and Class Members incorporate by reference the allegations contained in the preceding paragraphs 1 through 51, and subsequent paragraphs, as if fully set forth in this cause of action.

53. Defendants AH Condominium Association, AH Condominium Association Board, RC Management, and Cobalt had a duty to act with the utmost good faith and loyalty in the best interests of Class Members. These Defendants breached this duty by advancing their own interests and the interests of third parties, including the interests of MVW and MVCI, at the expense of Class Members' interests, and/or by failing to act as a reasonably prudent fiduciary would have acted under the same or similar circumstances.

54. Defendants AH Condominium Association, AH Condominium Association Board, and RC Management owed Class Members a fiduciary duty that required them to, among other things, enforce the restrictive covenants of the Declaration of Condominium for Aspen Highlands Condominiums, including Section 19.8 thereof, as well as section 8.25 of the Declaration for Aspen Highlands Village. These Defendants failed to enforce Section 19.8, Section 8.25 and other provisions, thereby breaching their fiduciary duty, by: (1) failing to enforce these restrictive covenant against timesharing, as set forth in Section 19.8 and Section 8.25; and/or (2) allowing the affiliation of the Marriott Vacation Club with Class Members' Fractional Units.

55. Defendants AH Condominium Association, AH Condominium Association Board, and RC Management also owed Class Members a fiduciary duty of loyalty requiring that they act in the best interests of Class Members, which includes refraining from any actions that would destroy the value of the Fractional Units that Class Members purchased. These Defendants breached that duty by, *inter alia*: (1) failing to enforce restrictive covenants, including the restrictive covenant against further timesharing, as set forth in Section 19.8 of the Declaration of Condominium for Aspen Highlands Condominiums; and Section 8.25 of the Declaration for Aspen Highlands Village and/or (2) allowing the affiliation of the Marriott Vacation Club with Class Members' Fractional Units.

56. Defendant Cobalt owed fiduciary duties, (including a duty of loyalty), to Class Members arising out of Cobalt's high degree of control over Class Members' Fractional Units and Cobalt's exclusive control of Class Members' rights under the appurtenant Ritz Carlton Membership Program. Defendant Cobalt breached these fiduciary duties by advancing their own interests and the interests of third parties, including the interests of MVW and MVCI at the expense of Class Members' interests, in allowing the affiliation of the Marriott Vacation Club with the Ritz Carlton Club Aspen Highlands and with Class Members' Fractional Units.

57. As a result of Defendants' breach of fiduciary duties, Class Members suffered damages in an amount to be proven at trial.

**SECOND CAUSE OF ACTION**  
**(AIDING AND ABETTING BREACH OF FIDUCIARY DUTY)**  
**(Against All Defendants)**

58. Plaintiff and Class Members incorporate by reference the allegations contained in the preceding paragraphs 1 through 57, and subsequent paragraphs, as if fully set forth in this cause of action.

59. Defendants, and each of them, aided and abetted the breaches of fiduciary duty by AH Condominium Association, AH Condominium Association Board, RC Management and Cobalt.

60. As described above, AH Condominium Association, AH Condominium Association Board, RC Management and Cobalt owed fiduciary duties to Class Members to enforce restrictive covenants, including but not limited to Section 19.8 of the Declaration of Condominium for Aspen Highlands Condominiums and Section 8.25 of the Declaration for Aspen Highlands Village. AH Condominium Association, AH Condominium Association Board, RC Management and Cobalt also owed fiduciary duties of loyalty to Class Members, requiring them to act in the best interests of Class Members.

61. AH Condominium Association, AH Condominium Association Board and RC Management breached their fiduciary duties to enforce the restrictive covenants described above; and AH Condominium Association, AH Condominium Association Board, RC Management and Cobalt breached their duty of loyalty by allowing the affiliation of the Marriott Vacation Club with Class Members' Fractional Units.

62. Defendants knowingly aided and abetted and participated in the breaches of fiduciary duty by, *inter alia*, participating in further timesharing (prohibited by, *inter alia*, Section 19.8 of the Declaration of Condominium for Aspen Highlands Condominiums and Section 8.25 of the Declaration for Aspen Highlands Village) and by participating in, intermeddling, forcing and otherwise improperly influencing the decision by Cobalt to affiliate the Ritz Carlton Club Aspen Highlands with the Marriott Vacation Club and with Class Members' Fractional Units, thus destroying the value of the Fractional Units that Class Members purchased.

63. Defendants' aiding and abetting the breach of fiduciary duties alleged herein has damaged Class Members in an amount to be proven at trial.

**THIRD CAUSE OF ACTION**  
**(CONSPIRACY)**  
**(Against All Defendants)**

64. Plaintiff and Class Members incorporate by reference the allegations contained in the preceding paragraphs 1 through 63, and subsequent paragraphs, as if fully set forth in this cause of action.

65. Defendants, and each of them, conspired with the remaining Defendants' scheme to commit the wrongful and unlawful conduct alleged herein.

66. As described in detail above, MVW and RC Management, in furtherance of their own financial gain, conspired with Defendants Cobalt, AH Condominium Association, and the AH Condominium Association Board in breaching their fiduciary duties by agreeing to the affiliation of Class Members' Fractional Units with the Marriott Vacation Club, in violation of promises made by Defendants both in April 2013, in the Affiliation Agreement, and in the Declaration of Condominium at Aspen Highlands.

67. All Defendants agreed on an object to be accomplished – the affiliation of Class Members' Fractional Units with the Marriott Vacation Club. There was a meeting of the minds among all Defendants on that object. The Defendants, working together, accomplished the unlawful overt act of aiding and abetting AH Condominium Association, AH Condominium Association Board, RC Management, and/or Cobalt in breaching their fiduciary duties to Class Members by participating in said affiliation, in violation of promises made by Defendants in



April 2013, the Affiliation Agreement, and the Declaration of Condominium at Aspen Highlands.

68. As a proximate result, Class Members suffered damages in an amount to be proven at trial.

**FOURTH CAUSE OF ACTION**  
**(UNJUST ENRICHMENT)**  
**(Against All Defendants)**

69. Plaintiff and Class Members incorporate by reference the allegations contained in the preceding paragraphs 1 through 68, and subsequent paragraphs, as if fully set forth in this cause of action.

70. Defendants acted in a wrongful manner that unfairly caused detriment to Class Members.

71. Defendants, and each of them, unilaterally imposed the Marriott Vacations Club affiliation on Class Members, in order to rid themselves of a poor financial investment with the Ritz-Carlton Club as well as to increase the attractiveness, value and price of timeshares sold by the MVW and MVCI through the affiliation with the Ritz Carton Club Aspen Highlands, despite knowing that such an affiliation would devalue Class Members' Fractional Units, while at the same time making Marriott Vacation Club Destinations more attractive, valuable and expensive, all to the unjust enrichment of Defendants, including but not limited to MVW and MVCI.

72. Under these circumstances, it would be unjust for Defendants, including but not limited to MVW and MVCI, to retain the benefit without commensurate compensation to Class Members.

**RESERVATION OF RIGHTS**

73. Plaintiff and Class Members expressly reserve all rights accorded under Colorado law, including but not limited to the right to amend this pleading as may be necessary in light of new or additional factual information gathered throughout the disclosure and discovery phases of this litigation and the right to plead exemplary damages in accordance with C.R.S. § 13-21.102.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and Class Members pray for relief as follows:

- a. That the Court determine that this action may be maintained as a class action under Rules 23(a), 23(b)(2), and (b)(3) of the Colorado Rules of Civil Procedure, that Plaintiff be certified as class representative and Plaintiff's counsel be appointed as counsel for the Class;
- b. That Plaintiff and Class Members recover damages, as provided by law, determined to have been sustained as to each of them;
- c. That Plaintiff and Class Members receive pre-judgment and post-judgment interest as allowed by law;
- d. That Plaintiff and Class Members recover their costs of the suit, and attorneys' fees as allowed by law; and
- e. For all other relief allowed by law and equity.

**DEMAND FOR JURY TRIAL**

Plaintiff and Class Members demand a trial by jury on all issues so triable.

DATED this 31<sup>st</sup> day of December, 2015.

Respectfully submitted,

LAW OFFICE OF MICHAEL J. REISER

/s/ Michael J. Reiser  
Michael J. Reiser, A.R. # 16161  
961 Ygnacio Valley Road  
Walnut Creek, CA 94596  
Telephone: (925) 256-0400  
Facsimile: (925) 476-0304  
E-mail: [reiserlaw@gmail.com](mailto:reiserlaw@gmail.com)

Matthew C. Ferguson, #25687  
THE MATTHEW C. FERGUSON LAW FIRM, P.C.  
119 South Spring, Suite 201  
Aspen, Colorado 81611  
Telephone: (970) 925-6288  
Facsimile: (970) 925-2273  
E-mail: [matt@matthewfergusonlaw.com](mailto:matt@matthewfergusonlaw.com)

*RCHFU, LLC v. Marriott Vacations Worldwide Corporation, et al.*

Pitkin County District Court Case No.

**CLASS ACTION COMPLAINT AND JURY DEMAND**

Page 19

**GIBBS LAW GROUP LLP**

Michael L. Schrag (CA SBN 185832)

(Motion for Pro Hac Vice Admission to be Filed)

1 Kaiser Plaza, Suite 1125

Oakland, CA 94612

Telephone (510) 350-9718

Facsimile: (510) 350-9701

E-mail: [mls@classlawgroup.com](mailto:mls@classlawgroup.com)

**THE MEADE FIRM P.C.**

Tyler R. Meade (CA SBN 160838)

(Motion for Pro Hac Vice Admission to be Filed)

1816 Fifth Street

Berkeley, CA 94710

Telephone (510) 843-3670

Facsimile: (510) 843-3679

E-mail: [tyler@meadefirm.com](mailto:tyler@meadefirm.com)

*Attorneys for Plaintiff*

Plaintiff's Address:

520 Cotton Ranch Drive

Gypsum, CO 81637