

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

DEBBIE ADAIR; PHILLIP ALVEY AND )  
 JANICE ALVEY; JUSTIN BALTIMORE AND )  
 DAISY BALTIMORE; JOSHUA BUNN AND )  
 CHELCIE CALLANTA; PHILLIP CAMPAGNA )  
 AND HEIDE DEMORRIS; ARLYSE DELOYOLA )  
 AND TEOFILO DELOYOLA; JOHN DENTEN )  
 AND DIANA ZINK DENTEN; SABRINA )  
 HAMILTON AND ANDERSON HAMILTON; )  
 DEEANN JONES AND ADAM JONES; )  
 JEFFREY LAXA AND KERRI AITKEN; MARC )  
 LUCAS AND KIMBERLY WALLACE; JOANNE )  
 MACALINO AND FERNEY ZULUAGA; JEFFREY )  
 MCALISTER AND ALISON LENTZ MCALISTER; )  
 MORRIS PLATER AND LORRELL PLATER; )  
 PETER RYCKEBOSCH AND KIMBERLY )  
 RYCKEBOSCH; JUSTINE SMALLEY )  
 AND ELLIOTT SMALLEY; TAMEKA STARKS )  
 AND ALLEN STARKS; LAYMON WILSON )  
 AND WENDY WILSON )

**Plaintiffs,**

**v.**

BLUEGREEN VACATION UNLIMITED, INC., )  
 dba "BLUEGREEN RESORTS", "BLUEGREEN )  
 VACATION CLUB" and "PINNACLE )  
 VACATIONS, INC."; and BPS DIRECT, LLC )  
 dba "BASS PRO SHOPS" )

**Defendants.**

**Civil Action No. 3:19-cv-54**

Removed From Sevier County  
 Chancery Court  
 Case No. 19-1-003

**JURY DEMAND**

**PLAINTIFFS' THIRD AMENDED COMPLAINT**

Comes now the Plaintiffs, by and through counsel, pursuant to Fed. R. Civ. P. 15(a)(2), and with the written consent of Defendants, file this Third Amended Complaint, against DEFENDANT BLUEGREEN VACATION UNLIMITED, INC. which includes its officers, agents, dba entities and subsidiaries, including its Gatlinburg, Tennessee resort (collectively,

“Bluegreen” herein), and BPS DIRECT, LLC dba “Bass Pro Shops”, seeking contract rescission, damages, and any other available legal or equitable remedies, against Defendants Bluegreen Vacations Unlimited, Inc. and BPS Direct, LLC for their illegal, deceptive and misleading business and sales practices, statutory violations and fraudulent conduct. Unless otherwise indicated, the use of either Defendant’s names throughout this Complaint includes all of their respective dba entities, affiliates, subsidiaries, agents, employees, officers, directors, principals, trustees, and representatives.

## **I. PARTIES**

1. Plaintiffs are natural persons combining resources as co-Plaintiffs to face a billion-dollar time-share industry conglomerate, where consolidation is judicially efficient because of shared facts and claims, where many Plaintiffs share almost all of the fraud claim categories (see ¶41(a) through ¶41(i) below) and have highly similar fact patterns due to Defendant Bluegreen’s systemic unlawful conduct that occurs in its many sales facilities located across the country, including those in Tennessee. Plaintiffs all have substantially similar sub-claims, with repeated patterns of fraud schemes, and each are pled with particularity for each Plaintiff in the accompanying Amended Plaintiffs’ Facts Supplement, as well as herein.
2. Individual Plaintiffs are identified as follows:
  - (a) Debbie Adair is a resident of the State of California with a mailing address of 1513 Entrada Way, Modesto, CA 95344.
  - (b) Phillip Alvey and Janice Alvey are residents of the state of Louisiana with a mailing address of P.O. Box 1115, Zwolle, LA 71486.

- (c) Justin Baltimore and Daisy Baltimore are residents of the State of Virginia with a mailing address of 985 Devine Drive, Strasburg, VA 22657.
- (d) Joshua Bunn and Chelcie Callanta are residents of the State of California with a mailing address of 1770 Gamay Dr., Oakley, CA 94561.
- (e) Phillip Campagna and Heide DeMorris are residents of the State of New York with a mailing address of 9 Great Oaks Lane, North Salem, NY 10560.
- (f) Arlyse DeLoyola and Teofilo DeLoyola are residents of the State of Oregon with a mailing address of P.O. Box 1465, Cave Junction, OR 97523.
- (g) John Denten and Diana Zink Denten are residents of Illinois with a mailing address of 5721 Circle Dr. #204, Oak Lawn, IL 60453.
- (h) Sabrina Hamilton and Anderson Hamilton are residents of the State of Washington with a mailing address of 12623 107th Ave, Ct. E., Puyallup, WA 98374.
- (i) Deeann Jones and Adam Jones are residents of the State of Georgia with a mailing address of 194 Thompson Rd., Tyrone, GA 30290.
- (j) Jeffrey Laxa and Kerri Aitken are residents of the State of Illinois with a mailing address of 8923 Knight Ave., Unit 202, De Plaines, IL 60016.
- (k) Marc Lucas and Kimberly Wallace are residents of the State of Louisiana with a mailing address of 14 Mustang Lane, St. Rose, LA 70087.
- (l) Joanne Macalino and Ferney Zuluaga are residents of the State of California with a mailing address of P.O. Box 599, Mentone, CA 92359.
- (m) Jeffrey McAlister and Alison Lentz McAlister are residents of the State of Georgia with a mailing address of 1153 Staples Dr. SW, Lilburn, GA 30047.

- (n) Morris Plater and Lorrell Plater are residents of the State of Maryland with a mailing address of 615 Crosby Rd., Baltimore, MD 21228.
  - (o) Peter Rykebosch and Kimberly Rykebosch are residents of the State of South Carolina with a mailing address of 208 Park Shore Drive E., Columbia, SC 29223.
  - (p) Justine Smalley and Elliott Smalley are residents of the State of Missouri with a mailing address of P.O. Box 232, Butler, MO 64730.
  - (q) Tameka Starks and Allen Starks are residents of the State of Tennessee with a mailing address of 933 Bordeaux Pl., Nashville, TN 37207.
  - (r) Laymon Wilson and Wendy Wilson are residents of the State of Mississippi with a mailing address of 1647 Enondale Rd., Porterville, MS 39352.
3. Defendant BLUEGREEN VACATION UNLIMITED, INC. is a Florida corporation that goes by numerous assumed names, including: “BLUEGREEN RESORTS”, “BLUEGREEN VACATIONS”, and “BLUEGREEN VACATION CLUB”. All references herein to “Defendant Bluegreen” or “Bluegreen” refer to the above identified corporation and include all of its assumed names, as well as its subsidiaries, such as the time-share resale corporation, wholly owned by Defendant Bluegreen, called “Pinnacle Vacations, Inc.”.
  4. Defendant Bluegreen has its principal place of business at: 4960 Conference Way N Ste 100, Boca Raton, FL 33431-3311.
  5. Defendant Bluegreen is registered to do business in the State of Tennessee, bearing Secretary of State control number 000354527, and can be served through its registered agent at the following address: The Prentice-Hall Corporation System, Inc., 2908 Poston Ave., Nashville, Tennessee 37203-1312.

6. At all times relevant to this lawsuit, Defendant Bluegreen operated the Bluegreen Vacations Mountain Loft, Ascend Resort Collection Resort at Gatlinburg, a time-share resort located at 110 Mountain Loft Dr., Gatlinburg, TN 37738.
7. Defendant “BPS DIRECT LLC dba BASS PRO SHOPS” (hereinafter referred to as “Defendant BPS”). is a single member limited liability company registered to do business in the State of Tennessee, bearing Secretary of State control number 000633569.
8. Defendant BPS maintains its principal place of business at 2500 E Kearney St, Springfield, MO, and may be served through its registered agent, CT Corporation System at 300 Montvue Road, Knoxville, TN 37919.
9. At all times relevant to this lawsuit, Defendant BPS operated its “Bass Pro Shop” retail business, partially in conjunction with Bluegreen, at its Tennessee-based facilities in Kodak and Nashville, along with 67 other locations across the United States.

## **II. JURISDICTION**

10. This Court has jurisdiction over this dispute because Defendants Bluegreen and BPS, in collusion with one another, carried out fraudulent schemes that occurred while both entities were operating as registered Tennessee businesses, within Tennessee’s borders.
11. Both of Defendants' unlawful conducts which occurred in Tennessee were repeated in highly similar ways elsewhere across the country, and Plaintiffs seek to adjudicate the matter in one judicially efficient action.
12. Due to the shared law and high similarity of facts, judicial efficiency is maximized in this Complaint as pled herein.
13. Jurisdiction is proper in Tennessee because both Defendants have registered their respective businesses with the Tennessee Secretary of State and designated an agent for

service of process in this state. Thus, Defendants have sufficient contacts with this forum and have waived their due process objection and cannot now object to being hauled into court here.

14. Tennessee courts have subject matter jurisdiction in this case because Tennessee law is implicated and some Plaintiffs' transactions occurred in this state.
15. Venue is proper in Sevier County Tennessee because, at all times relevant hereto, both Defendants operated businesses in this jurisdiction and, the events which give rise to some Plaintiffs' claims occurred in this jurisdiction.
16. Plaintiffs further assert that even if BPS is somehow found to lack sufficient contacts with the forum, its involvement in the recruiting of people for Bluegreen's fraud scheme through misrepresentations about the nature and duration of sales presentations for the purpose of earning profits subjects it to the personal jurisdiction of this forum.

### **III. BACKGROUND FACTS**

#### ***Bluegreen's Business***

17. Bluegreen is a leader in the time-share ownership industry and earns profits by selling what it refers to as a "VOI", which stands for "Vacation Ownership Interest."
18. This product is often represented to consumers as being a combination of deeded property interests and "vacation points" which are to be used to book vacations at Bluegreen resort accommodations and component sites.
19. Bluegreen does not earn its profits from its owners' use and enjoyment of the VOI they have already purchased, but from their down payments, monthly payments, and annual fees. Thus, Bluegreen gains its profits by creating more owners and upgrading existing owners; not by allowing its existing owners to actually exercise their use rights.

20. While Bluegreen and its component resorts possess a finite number of units, their sales strategy involves continuously selling time-share points packages to different (or sometimes the same) buyers over and over again, while knowing full well that a sizable portion of them will not be able to actually use their points in the manner contemplated at the time they bought the VOI.
21. These circumstances (described immediately above) result in owners being unable to book vacations using their points at the properties in Bluegreen's inventory.
22. Furthermore, most Bluegreen points packages expire, and thus, if there is no booking availability (a condition created by Bluegreen), consumers simply lose the entire benefit of their bargain, but are still required to pay ever-increasing maintenance fees each and every year.
23. Bluegreen also relies on owners' inability to resell their VOI, despite telling prospective buyers that they are purchasing an asset that will only appreciate in value.
24. In addition to inducing purchases through fraudulent sales tactics, once Bluegreen convinces owners to purchase a time-share interest, it traps them in a valueless resale market, leaving them with few options but to continue paying their monthly mortgage and maintenance fees.
25. Bluegreen is the sole owner of a subsidiary corporation housed within its corporate headquarters in Boca Raton, called "Pinnacle", which is devoted exclusively to keeping Bluegreen owners forever trapped in the resale marketplace void.
26. Bluegreen also profits from charging every owner significant maintenance fees that perpetually increase year after year. Most purchasers are not made aware that such fees must still be paid after the mortgage is satisfied until long after the contract that forever

binds them to such obligations is signed.

27. Bluegreen sells time-share interests to consumers through “front-line” and “in-house” sales teams.
28. “Front-line sales” representatives conduct initial time-share presentation meetings, with the aim of selling time-share points packages to individuals who do not already own Bluegreen time-share interests (i.e., first-time buyers), through high pressure sales tactics and deception.
29. People are lured into attending such presentations, through entities such as Defendant BPS, who’s agents advertise tickets, gift cards, free vacation stays and the like, in exchange for attending what Defendants’ agents represent will be a quick presentation (but never is).
30. “In-house sales” representatives also conduct what Bluegreen calls “Owners Meetings” (sometimes called “Owner Classes”), which aim to sell existing owners either additional time-share interests or “upgrades” of their existing interests, through high-pressure sales tactics and deception.
31. People often attend the Owners Meetings because Bluegreen staff tells them it is mandatory for owners to attend, and that the purpose is to learn how to navigate Bluegreen’s reservation booking system.
32. However, the true purpose of Owners Meetings is always to get more contract commitments from existing owners.
33. In-house sales representatives try to convince existing Bluegreen owners to “upgrade” their VOI to higher tiers in exchange for increased benefits, such as increased booking availability, lower out of pocket costs, or to fix issues with the owner’s existing interest (which were created by Bluegreen in the first place). Such promised benefits are rarely, if

ever, realized, as alleged by each Plaintiff herein (see Plaintiffs' Amended Facts Supplement).

34. Bluegreen sales representatives are paid based on commission and they are trained by Bluegreen management in fraud schemes, tactics, and strategies to induce prospective purchasers to buy into Bluegreen's vacation time-share program, while avoiding disclosure of material and legally required information to consumers.

#### **IV. PLAINTIFFS' COMMON FACTUAL ALLEGATIONS**

35. All Plaintiffs named herein share highly similar encounters with Defendants: Plaintiffs were on vacation at or near a Bluegreen Resort, some were approached at Bass Pro Shop and each Plaintiff was enticed in some manner, often with nights to stay at a Bluegreen resort (many through "Bass Pro Shops"), to attend a sales presentation often represented to be "90 minutes" or less.
36. What ensued was typically four (4) to eight (8) hours of deceitful sales tactics (actual hour examples of Plaintiffs herein: 8, 6, 6, 5, 7, 5, 6, 5, 7, and 8 hours). Some presentations are timed with the presentation beginning only after completion of a known driving tour that lasts at least three hours, and in some cases, such as for two Plaintiffs herein, the drive lasts up to 8 or 9 hours).
37. After four (4) to eight (8) hours of high-pressure sales sessions, only 10 to 15 minutes was spent, on average, for the entire contract signing process, which harbored unknown obligations and lacked the use rights, amenities and features that were promised to purchasers.
38. Bluegreen engaged in tactics designed to manipulate consumers, such as Plaintiffs, to make a purchase that open disclosure would have prevented, by keeping them for horrendously

long hours and not allowing them to eat a meal, or have any time alone to discuss the presentation.

39. False promises and concealment of known facts (such as true market values, availability of use, costs of fees, etc.) were made by Defendant Bluegreen through its sales staff and its management with the intention of inducing Plaintiffs to make a purchase that day, which all Plaintiffs herein aver never would have happened, had the true contract terms been disclosed in an open light (see Plaintiffs' Amended Facts Supplement).
40. With open disclosure of material facts, not one of the Plaintiffs that is a party to this suit would have contracted with Defendant Bluegreen. Instead, Plaintiffs were deceived and believed the statements made by Bluegreen's staff, and they reasonably relied upon such statements to their unfortunate detriment as victims of fraud and deceit, as set forth in specific detail in later Counts herein.
41. To induce a sale that disclosure in an open light would not have produced, Plaintiffs were given false and/or misleading information as listed by categories in (a) through (i) below (where the later Discovery by Plaintiffs is denoted by corresponding bold headers):
  - (a) Bluegreen's time-shares are good "investments" always going up in value (appreciation).
  - (b) Bluegreen's time-shares are valuable as a long-term asset that can be resold for a "profit"  
**Value (a-b):** No market value; resales are practically impossible; thousands have failed to sell on eBay for \$1.00.
  - (c) Time-share "maintenance fees" either do not exist, do not go up at all, or only very little.

**Fees (c):** Regular escalations of yearly maintenance fees are commonplace.

- (d) Bluegreen's time-shares are a valuable asset and "a legacy" the owner "could" put in a Will.
- (e) Owners (Plaintiffs) "can" decide (optional) who will receive the time-share in their Will.
- (f) Plaintiffs were not told about "successors" clause in the Contract invoked after they die.

**Wills (d-f):** Plaintiffs did not know the truth that, despite any possible future contract to make a Will (or Codicil if a Will exists), the Bluegreen time-shares being executed that day would bind all their children as "successors" that are jointly and severally liable for ever-increasing inter-generational debt.

- (g) Plaintiffs will have access to anytime, anywhere "easy booking" at 5-Star resorts and hotels worldwide.

**Use (g):** Bookings are restricted to 11 months in advance (Expedia is one day), but promised destination locations and 5-star resorts are not available, as evidenced by actual and repeated attempts to get what Plaintiffs paid for.

- (h) Plaintiffs can make "rental" income to pay the mortgage, fees and sometimes earn a profit.

**Rental (h):** Plaintiffs cannot book their own stays; rental is impossible as represented.

- (i) Promises related to "Upgrades" (costing \$1000s to \$10,000s) to resolve a prior sale's deficiencies created by Defendant (often repetitive, where the problem is never fixed).

**Upgrades (i):** Upgrades always increase yearly maintenance fees (often double), and add thousands to mortgage balances, but never seem to solve the problem, thus requiring future upgrades.

42. All the Plaintiffs to this action have a strong correlation of similar fraud schemes, along with these 4 rescission-based commonalities:

- (a) **Plaintiffs did not receive Public Offering Statement prior to signing.**
- (b) **Plaintiffs did not receive proper Statutory Rescission notice.**
- (c) **Plaintiffs were deceived about a Will Asset (vs. Successor Liability).**
- (d) **With high-interest and rising fees, Plaintiffs spend up to \$21,000 for a one-week vacation, which is an objectively unconscionable amount, representing over 1000% of the time-share's market value online.**

43. Defendant Bluegreen did not provide proper legal disclosures (see (a) and (b) immediately above) required under applicable laws, and it charged all Plaintiffs herein unconscionable fees (see (c) and (d) immediately above) for use rights that some never even got. These are independent grounds for rescission, which should be granted in addition to any remedies available for common law fraud or other statutory relief.

44. Attached hereto is a document titled *Plaintiffs' Amended Facts Supplement*, which includes the specific details of each Plaintiff's experience with Defendants. Said document is an integrated part of this Complaint and is hereby incorporated by reference as though fully set forth herein.

## V. CAUSES OF ACTION

### COUNT ONE

#### VIOLATIONS OF THE TENNESSEE TIME-SHARE ACT OF 1981

##### *AGAINST DEFENDANT BLUEGREEN*

45. All Plaintiffs incorporate by reference all the preceding paragraphs, and all paragraphs in their Amended Facts Supplement, as though fully set forth herein.
46. The Tennessee Time-share Act governs those in the business of selling time-share interests in Tennessee, which includes Defendant Bluegreen, who operated as a “developer” as such term is defined in Tenn. Code Ann. § 66-32-102(5) at all times relevant to this Complaint.
47. Tenn. Code Ann. §66-32-102, defines “advertisement” to include “any...verbal... offer by an individual...”
48. Tenn. Code Ann. §66-32-132(1) provides that no advertising for the sale of a time-share shall contain any representation regarding the availability of a resale or rental program.
49. Bluegreen made specific representations regarding the availability of a resale program to all Plaintiffs, except Mr. and Mrs. Jones, Laxa/Aitkin, and Macalino/Zuluaga. (See Amended Facts Supplement).
50. Bluegreen made specific representations regarding the availability of a rental program to all Plaintiffs, except Laxa/Aitkin, and Macalino/Zuluaga. (See Amended Facts Supplement).
51. Tenn. Code Ann. §66-32-132(3) provides that no advertising for the sale of a time-share shall contain any statement regarding the investment merit or profit potential of a time-share interval unless it has been approved by the State.

52. Bluegreen made specific representations regarding the invest merit and profit potential of its time-share interest to all Plaintiffs herein without exception (see Amended Facts Supplement).
53. Tenn. Code Ann. §66-32-132(11) provides that no advertising for the sale of a time-share shall make any misleading or deceptive representation with respect to the contents of the time-share program, the purchase contract, the purchaser's rights, privileges, benefits, or obligations under the purchase contract or the Time-share Act.
54. Bluegreen represented to all Plaintiffs herein, except Hamilton, Jones, and Laxa/Aitkin, that Plaintiffs were purchasing deeded interests in real estate, when in fact, all deeded interests remained with Bluegreen, held by its Vacation Club Trust.
55. Bluegreen also concealed the existence of the successor's clause in the Plaintiffs' purchase contracts, among multiple other misrepresentations incorporated by reference from Counts Two, Three, and Four herein.
56. Thus, Bluegreen violated §66-32-132(11) of the Tennessee Time-share Act through the actions described in this Count One and detailed more specifically in from Counts Two, Three, and Four herein and Plaintiffs' Amended Facts Supplement.
57. Bluegreen additionally: (a) utilized strategies that quickly glazed over important documents and key contract provisions without accurately addressing them or allowing Plaintiffs to inspect or read such items for themselves; (b) compensates its sales and closing agents on a commission basis; (c) trains its sales staff to conceal material facts from consumers regarding the lack of unit availability (which is due to Bluegreen's widespread practice of overselling interests); and (d) fails to disclose consumers' statutory rights

(including their rights to read the Public Offering Statement and rescind the contract within a certain period), and other material facts as alleged herein.

58. Bluegreen representatives made the statements identified herein in the course and scope of their employment with Bluegreen, and for Bluegreen's benefit. Accordingly, Defendant Bluegreen is liable for their actions pursuant to the doctrine of respondeat superior.
59. All Plaintiffs were harmed by at least one of Bluegreen's violations of the Tennessee Time-Share Act as set forth in this Count One.

*Public Offering Statement*

60. The Tennessee Time-share Act, at Tenn. Code Ann. § 66-32-112, also requires Bluegreen to provide every purchaser with a Public Offering Statement (hereinafter referred to as "POS"), which "must contain" or "fully and accurately disclose" fifteen (15) different categories of factual information including, but not limited to, the name and address of the developer, a description of the building units (including completion dates), the type and number of units, a budget and information regarding fees that will be charged, and lists of liens and encumbrances.
61. Tenn. Code Ann. § 66-32-114(a) requires the POS be provided to purchasers "before transfer of time-share interval and no later than the date of any sales contract", and that the contract is voidable until the purchaser has received the POS.
62. In the instant matter, not one of the named Plaintiffs received the required POS from Defendant Bluegreen before signing the purchase contract, as each has averred in the Amended Facts Supplement.
63. Accordingly, and pursuant to Tenn. Code Ann. §66-32-118(a), Bluegreen is liable to all Plaintiffs for its violations of the Tennessee Time-share Act, and Plaintiffs respectfully

request that they be granted rescission of their contracts, compensatory damages, punitive damages for Bluegreen's intentional misrepresentations and concealments, attorneys' fees, and any or all other appropriate relief.

**COUNT TWO**  
**CALIFORNIA VACATION OWNERSHIP & TIME-SHARE ACT**  
**(IN THE ALTERNATIVE TO TENNESSEE TIME-SHARE ACT)**  
*AGAINST DEFENDANT BLUEGREEN*

64. Plaintiffs incorporate by reference all preceding paragraphs, as though fully set forth herein.
65. The purpose of the “Vacation Ownership and Time-Share Act of 2004” or California Business and Professions Code §§11210 et. seq. (hereinafter referred to in this Count Two as “the Act”) is to provide full and fair disclosure to the purchasers and prospective purchasers of time-share plans.
66. The Act, at §11211.5(a)(1) explains that the chapter applies to “time-share plans with an accommodation or component site in this state [California].”
67. The Act defines “accommodation” at §11212(a), to mean “any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room [. . .] available to individuals [. . .], which is included in the offering of a time-share plan.”
68. The Act defines “component site” at §11212(g) as “a specific geographic location where accommodations of a multisite time-share plan are located.”
69. Defendant Bluegreen sells time-shares under a marketing system known under California law to be a “multisite time-share plan”. The Act at §11212(z)(2)(B) provides:

(z) “Time-share plan” means any arrangement, plan, scheme, or similar devise... [with] the right to use accommodations.... A timeshare plan may be either of the following:

...

(2) A “multisite time-share plan,” which includes either of the following:

...

(B) A “nonspecific time-share interest,” which is the right to use accommodations at more than one component site created by or acquired through the time-share plan’s reservation system, but including no specific right to use any particular accommodations.

70. The Act can apply in the case at bar (to the extent where perhaps some Plaintiffs do not qualify for protections under the Tennessee Time-share Act), because Defendant Bluegreen owns a time-share property (“an accommodation”) in California, located at Bluegreen Vacations Big Bear Village, Ascend Resort Collection, 40671 Village Drive, Big Bear Lake, CA 92315, and it sells access to hundreds more “component sites” in California as part of its multi-state time-share plan, which it sold to all Plaintiffs herein.
71. The Act provides, at §11285: “[a]n action for damages... may be brought by any time-share interest owner.... Relief under this section does not exclude other remedies provided by law.”
72. By its acts and practices as herein described, Defendant Bluegreen violated the Act as follows, and without limitation:
  - a) Defendant violated §11225 & §11238 by failing to provide certain documents and certain disclosures clearly and conspicuously as required by law; namely, by failing to

deliver to any Plaintiff herein a copy of its Public Offering Statement or notice of Plaintiffs' applicable rescission rights.

- b) Defendant violated §11245 by making material misrepresentations, including, but not limited to misrepresentations in connection with the promotion of a time-share plan, the nature, qualities and/or characteristic of the offered time-share plan, and/or incidental benefits; Defendants' misrepresentations are set forth in detail in later Counts herein and are hereby incorporated by reference in this part, to all Plaintiffs herein that its inventory was comprised of five-star accommodations all over the world, that booking was flexible and easy, that Plaintiffs (excluding two identified in the Amended Facts Supplement) were to receive deeded property rights, among other false representations set forth elsewhere herein and in the facts supplement.
- c) Defendant violated §11265 by failing to provide proper notice regarding the increase of maintenance fee assessments, because Bluegreen did not disclose to any Plaintiff except two that its annual fees would increase; and it also expressly informed at least three individual Plaintiffs (Adair, and Mr. and Mrs. Jones) that such fees would never increase, which was false.

73. Plaintiffs herein have suffered great financial losses and have been harmed by Bluegreen's intentional and deceptive acts, which comprise precisely the type of conduct the California Legislature sought to protect all consumers from when it enacted the Vacation and Ownership Time-Share Act of 2004.

74. Plaintiffs have suffered damages as a result of Defendant Bluegreen engaging in the acts herein described, in violation of the California Vacation Ownership and Time-Share Act

of 2004 which, by its terms, does in fact apply to any transaction wherein a party owns a component site in that state (in California), as Bluegreen does.

75. Based on the foregoing, Plaintiffs request damages, including punitive damages, and any other available remedies permitted by law.

### **COUNT THREE**

#### **INTENTIONAL MISREPRESENTATION**

##### ***First Basis: Deeded Property Ownership Misrepresentation***

76. Each Plaintiff made at least one down payment to Bluegreen and incurred a mortgage obligation pursuant to a transaction for the purchase of a VOI from Defendant Bluegreen (see Amended Facts Supplement for amounts).
77. In exchange for the payments made and debts incurred by Plaintiffs, Bluegreen was to transfer to each Plaintiff real estate deeds conferring time-limited use and occupancy rights for a portion of real property located in specific states, as set forth in the Plaintiffs' Facts Supplement.
78. Bluegreen represented to all Plaintiffs, except two that their VOI purchase would result in them receiving a deed conferring property ownership rights.
79. In actuality, upon taking Plaintiffs' purchase monies, while Bluegreen did initiate a deed transfer, in every case, the Grantee to whom the property was transferred was the "Vacation Club Trust", not individual Plaintiffs.
80. Upon information and belief, the "Vacation Club Trust" was created and exists for the benefit of Bluegreen.
81. Contrary to Bluegreen's representations to individual Plaintiffs, not one of them would ever be listed as an owner on a deed executed by Bluegreen, even upon fully satisfying all financial obligations associated with the transaction.

82. Bluegreen knew or should have known at the time the deeded property rights representation was made to Plaintiffs that none of them would ever be individually named as deeded property owners as a result of their respective transactions with Bluegreen.
83. Thus, Bluegreen either intentionally or recklessly misrepresented the nature of the deeded property ownership rights to Plaintiffs, or, Bluegreen negligently failed to disclose, to all Plaintiffs (except two) that they would not actually be granted any deed rights as a result of the VOI transaction, at any point in time.
84. Plaintiffs relied on Bluegreen's false representations about the deeded property rights to their detriment, and they have suffered harm as a result, as set forth in greater detail (on a per Plaintiff-basis) in the Amended Facts Supplement.

***Intentional Misrepresentation - Second Basis: Buy Back Program Representation***

85. Bluegreen represented to every Plaintiff, except Jones, Laxa/Aitkin and perhaps Macalino/Zuluaga, that in the event they later wanted to dispose of the VOI, they could do so through a program operated by Bluegreen that buys back unwanted VOIs.
86. In actuality, Bluegreen has never operated a program that buys back unwanted VOIs.
87. However, Bluegreen does have a wholly owned subsidiary corporation named Pinnacle that sells services to VOI owners which purport to help owners sell unwanted VOIs.
88. But, because a resale market for timeshare interests does not exist anywhere or in any form (i.e., there are no buyers and thus no market), Bluegreen's Pinnacle corporation is actually a scam designed to keep owners locked into their Bluegreen timeshares as long as possible.
89. Bluegreen's false representations about the existence of a Bluegreen buy-back program materially misled all Plaintiffs, except those identified in the Amended Facts Supplement, and fraudulently induced their entry in a purchase contract.

90. All Plaintiffs who received this misrepresentation by Bluegreen reasonably relied upon it because they had no other sources of information on the subject aside from Bluegreen itself
91. And all such Plaintiffs were harmed as a result, suffering actual damages in the amounts alleged in the Amended Facts Supplement.

***Intentional Misrepresentation - Third Basis: Points Value Representation***

92. Before execution of their contracts, Bluegreen represented to Plaintiffs Bunn, Callanta, Campagna, Demorris, Mr. and Mrs. McAlister, Mr. and Mrs. Smalley, and Mr. and Mrs. Starks, and perhaps others, that the number of points included in their respective VOI purchases would be enough to book vacations at the locations they each identified to Bluegreen during their respective presentation meetings.
93. Specific examples of the locations Plaintiffs identified to Bluegreen include: Bunn and Callanta's desire to stay in Fiji and Bora Bora, Lucas and Wallace's desire to stay in Hawaii and Tennessee (The Smokies), and Hamilton's desire to stay in castles in Scotland and France, among others (Plaintiff couples: Smalley, Starks, and McAlister).
94. Upon these Plaintiffs identifying such places to Bluegreen during their meetings, Bluegreen confirmed to each of them that completing the transaction would allow them to book vacations at those specific locations.
95. Plaintiffs who received the misrepresentation identified above each considered the ability to book at their specified destination of choice to be a material inducement underlying their decision to proceed with the purchase.
96. The only source of information available to Plaintiffs about Bluegreen's inventory options, the requisite point values needed for certain stays, and how the booking process worked

(such as applicable time frames for making reservations, booking restrictions, blackout dates, etc.), was Bluegreen itself.

97. No Plaintiff had access to Bluegreen's inventory system until after they were contractually-bound as Bluegreen owners for life.
98. All Plaintiffs to whom Bluegreen represented that specific locations would be available for booking, later discovered, upon actually attempting to book vacations at such locations, that such was impossible due to availability constraints, insufficient point values, or other cost prohibitions they were never made aware of (i.e., trade fees), in direct contradiction to Bluegreen's specific prior representations.
99. Bluegreen knew or could have easily obtained the approximate point values needed for certain trips as specified by Plaintiffs (identified above), and any applicable restrictions or extra fees, because Bluegreen retains control over its booking system and had full access thereto.
100. However, Bluegreen represented that such locations would be available to book to these Plaintiffs without identifying any such possible issues, and said Plaintiffs reasonably relied thereon.
101. These Plaintiffs (identified above) were harmed by the way Bluegreen led them to believe their points would be sufficient to book stays at their specific desired locations or that such locations would be accessible when in fact their points were not sufficient or such locations were not accessible.

***Intentional Misrepresentation - Fourth Basis: Use and Booking Rights and Availability***

102. Bluegreen represented to all Plaintiffs, except Adair, Baltimore, Lucas/Wallace, Smalley and Wilson, that it maintained a vast inventory of accommodations at which Plaintiffs

could use their points, and that, as a result, booking would be easy, flexible, and rarely, if ever, pose a problem in terms of availability.

103. When Plaintiffs tried to book stays through Bluegreen's reservation system, they experienced significant issues that rendered booking impossible, including a lack of available dates and a lack of desirable locations.
104. Furthermore, if Plaintiffs ever needed to cancel their reservation, they would be forced to forfeit their points, which Plaintiffs aver does not match Bluegreen's description of a "flexible" booking system.
105. The only source of information about Bluegreen's inventory options and how the reservation process worked (such as applicable time frames, restrictions, stay durations, navigating the system, etc.) that was available to Plaintiffs at the time they entered their respective contracts, was Bluegreen itself.
106. Bluegreen was aware of the booking and availability restrictions at the time it made such representations to Plaintiffs, which turned out to be false.
107. This falsity is evidenced by the fact fourteen (14) Plaintiffs have never been able to book a stay anywhere since the time of purchase, and seven (7) more have only been able to book one stay, ever (see Plaintiffs' Amended Facts Supplement).
108. These Plaintiffs were harmed by Bluegreen's false representations about the booking system, because it led them to enter a contract and pay money that they would not have otherwise.

***Intentional Misrepresentation - Fifth Basis: Fees***

109. Before executing the contracts, Bluegreen disclosed the existence of annual maintenance fees to every Plaintiff, except Laxa/Aitkin and Lucas/Wallace.

110. Plaintiffs Laxa/Aitkin and Lucas/Wallace were never informed that annual maintenance fees existed at all until receiving a bill therefor much later.
111. While Bluegreen did disclose the existence of the maintenance fees to most Plaintiffs, Bluegreen never explained to any Plaintiff how annual maintenance fees are calculated or assessed, either before or after contract signing.
112. Bluegreen also never disclosed to any Plaintiff that annual maintenance fees could increase, with the exception of Hamilton and Smalley, who were told such fees "might" increase slightly.
113. Bluegreen was aware, at the time it made such representation, that annual maintenance fees generally do increase because regularly increasing such fees has been a common practice of Bluegreen for many years, and such fees have historically increased at Bluegreen throughout the last decade.
114. The only source Plaintiffs could look to for information about Bluegreen's annual maintenance fees at the time of contract entry was Bluegreen itself, and thus, their reliance there upon was reasonable.
115. Bluegreen's negligent omission or intentional concealment of the fact maintenance fees would perpetually increase affected the price of the transaction, which Plaintiffs considered to be a material term to the transaction.
116. All Plaintiffs, except Hamilton and Smalley, were harmed by Bluegreen's omission or concealment of the fact maintenance fees would increase, and most would not have entered the contract had they known about such fact.

***Intentional Misrepresentation - Sixth Basis: Rental Option***

117. Before execution of the contracts, Bluegreen represented to every Plaintiff, except Macalino/Zuluaga, that the VOI could easily be rented out to others.
118. Every Plaintiff herein who received this representation relied upon it, believing such would reduce their ownership costs.
119. The only source Plaintiffs could access for information about Bluegreen's VOI rental process prior to entering the contract was Bluegreen itself, and thus such reliance was reasonable.
120. In actuality, to offer a Bluegreen VOI for rent, the owner must pay Bluegreen a hefty fee, and the owner must risk losing their points, in the event the interest does not attract a renter, or the rental reservation falls through.
121. Bluegreen concealed or otherwise failed to disclose such facts (immediately above) to Plaintiffs (except Macalino/Zuluaga) prior to the contract signing.
122. Bluegreen was aware of the restrictions on rentals (i.e., because Bluegreen created such restrictions), at the time its sales staff made the representation and omissions concerning VOI rental ability to Plaintiffs.
123. Said representation and omissions affected Plaintiff's purchase price and future costs, and thus was material to the transaction.
124. All Plaintiffs (except Macalino/Zuluaga) relied on such representation and omissions by Bluegreen to their detriment, and suffered harm as a result thereof, as set forth in detail in the Amended Facts Supplement.

***Intentional Misrepresentation - Seventh Basis: Succession Planning***

125. At the time all Plaintiffs entered a purchase contract with Bluegreen, they were unaware they were assuming multi-generational successor liability for the debt and ever-increasing maintenance fees.
126. Bluegreen concealed the fact identified immediately above from all Plaintiffs and in many cases represented that Plaintiffs "could" leave the VOI to their children or grandchildren or that it would be a good legacy to leave behind to them.
127. Bluegreen failed to disclose the truth through the representation and omissions above, which is that Plaintiffs would actually have no choice in selecting a recipient for their VOI upon their demise; i.e., because the VOI, its corresponding debt, and ever increasing fee obligations would pass on to Plaintiffs' heirs whether they devised such in their Last Will or not.
128. All Plaintiffs, without exception, were unaware of this fact (immediately above) because Bluegreen intentionally concealed it or, in the alternative negligently failed to disclose it to them.
129. All Plaintiffs learned about this fact only upon the initiation of this lawsuit.
130. All Plaintiffs were harmed by this fact and aver they would not have entered the contracts with Bluegreen, had they been made aware of the successor liability clause.

**COUNT FOUR**

**MISREPRESENTATION BY CONCEALMENT**

***AGAINST DEFENDANT BLUEGREEN***

***First Basis: Concealment of Rescission Rights and Public Offering Statement Information***

149. Plaintiffs incorporate by reference all preceding paragraphs, as though fully set forth herein.

150. Because Defendant Bluegreen represented that it was a time-share seller in Tennessee, it had an affirmative duty under the Tennessee Time-Share Act, Tenn. Code Ann. § 66-32-101, et seq., to make certain disclosures, as described in Count Two above (i.e., the POS and the notice of rescission rights).
151. Defendant Bluegreen was required to fully and accurately disclose factual information about the interest and the purchaser's rights with respect thereto, including but not limited to: reasonable arrangements for managing and operating the time-share program, the type and number of units, a budget and information regarding fees that will be charged, specific language informing the purchaser of his, her, or their right to rescind the agreement, and a Public Offering Statement.
152. By utilizing a scheme to avoid making the above-described disclosures and/or intentionally hiding them so that the Plaintiffs would not see them, Defendant Bluegreen fraudulently omitted material information, fraudulently induced the Plaintiffs to remain in the contract through the rescission period, and generally defrauded the Plaintiffs.
153. Each Plaintiff's specific facts in support of the above claim are set forth in detail in the accompanying Amended Facts Supplement.
154. Furthermore, despite Bluegreen's legal duty to provide a copy of its Public Offering Statement to Plaintiffs, not one Plaintiff herein recalls receiving a copy of such document.
155. Despite Bluegreen's legal duty to provide notice of Plaintiffs' rescission rights, such rights were also concealed from all Plaintiffs.
156. Upon information and belief, Bluegreen sales representatives (i.e., the Bluegreen employees with which all Plaintiffs had direct contact) do not receive their commission-based compensation unless the VOI sale goes through.

157. Upon information and belief, Bluegreen sales representatives lose any compensation previously earned on a sale if the purchasers later rescind the contract.
158. Therefore, Bluegreen's representatives had strong incentives to conceal Plaintiffs' rescission rights and limit their access to the information contained in the Public Offering Statement, which might have tipped them off to Bluegreen's many misrepresentations about their transactions.
159. Plaintiffs were not aware they had a right of rescission or that they were entitled to review the Public Offering Statement prior to entering the contract.
160. Plaintiffs aver they would have rescinded the contracts with Bluegreen if they had knowledge of such a right, and such was not concealed by Bluegreen.

***Misrepresentation by Concealment - Second Basis: Annual Maintenance Fees***

161. Plaintiffs incorporate by reference all preceding paragraphs, as though fully set forth herein.
162. All Plaintiffs assert that price was a material term underlying their transactions with Bluegreen.
163. Hamilton and Smalley were the only Plaintiffs notified that maintenance fees could possibly increase, and all other Plaintiffs were wholly unaware of such fact when they signed their contracts.
164. Plaintiffs' lack of knowledge about this fact is the result of Bluegreen's intentional, reckless, or, in the alternative negligent, concealment.
165. Bluegreen had a duty to disclose material facts about the costs of the transaction to Plaintiffs, including how annual maintenance fees are calculated, assessed, and the fact they are subject to perpetual increases.

166. This duty referred to above arises because such material facts were within Bluegreen's exclusive control and Bluegreen knew such facts were not readily available to Plaintiffs.
167. Bluegreen concealed such facts from Plaintiffs with the intent to deceive them into thinking they were getting a good deal for their money, when in fact they were not.
168. Plaintiffs (except Hamilton and Smalley) aver they would not have entered their transactions with Bluegreen had the truth about the fees been revealed.
169. Plaintiffs have sustained actual damages as a result of Bluegreen's concealment.

***Misrepresentation by Concealment - Third Basis: Successor Liability Clause***

170. Plaintiffs incorporate by reference all preceding paragraphs, as though fully set forth herein.
171. Every Plaintiff asserts that the successor liability clause they recently discovered (see Plaintiffs' Facts Supplement for more details) was material to them, in that they would not have entered the transactions with Bluegreen had they known about the existence of such clauses.
172. Every Plaintiff asserts they were wholly unaware of such fact when they signed their contracts with Bluegreen because Bluegreen concealed the existence of such a clause, and in fact made affirmative representations to the contrary.
173. Plaintiffs' lack of knowledge about the existence of this clause in their contracts is the direct result of Bluegreen's concealment thereof.
174. Bluegreen knew or should have known that Plaintiffs would be opposed to assuming debt that would pass on to their children and grandchildren, and it knew Plaintiffs would not otherwise be aware of such a clause, so it carefully conducted the contract signing in a way

that prevented the Plaintiffs from seeing the clause or having time to read it (see Amended Facts Supplement).

175. Thus, Bluegreen, through its sales representatives, concealed the existence of the successor liability clause with the intent to deceive Plaintiffs and achieve their ultimate goal of closing the sale.
176. And such concealment led to Plaintiffs entering contracts they would not have otherwise.

***Misrepresentation by Concealment - Fourth Basis:***

***Duty to Disclose Pursuant to Tennessee Time-share Act***

177. Pursuant to the Tennessee Time-share statutes, Bluegreen was statutory required to disclose to each Plaintiff any adverse facts of which they had actual notice or knowledge, and timely and accurate information regarding market conditions that might affect the transaction; and they were required to provide services to each party to the transaction with honesty and good faith.
178. All Plaintiff's assert that the Bluegreen's representations to them concerning market conditions for Vacation Ownership Interests as being lucrative and a good investment (see Plaintiffs Facts Supplement for more details about the misrepresentations concerning market conditions) were false and misleading, and that in actuality, there is no "market" for time-share interests, contrary to Bluegreen's express representations.
179. Unlike Bluegreen, Plaintiffs were not regular actors in the VOI/time-share industry and thus Plaintiffs were reliant on Bluegreen to convey accurate information and act in good faith as the law requires, which it did not do.
180. Had Plaintiffs known the VOI they were buying had no value whatsoever, or no market for resale, they would not have gone through with the transaction.

181. And Plaintiffs were harmed by the fact such facts were not disclosed despite Bluegreen's duty to disclose them (see Amended Facts Supplements for amounts of actual damages).

***General Averment Concerning All Misrepresentation-Based Claims***

182. At all times relevant, Defendant's sales representatives, management, and other individuals described herein, were acting as agents of Bluegreen, and their actions, which were performed in the scope of their employment with Bluegreen, are attributable to Bluegreen pursuant to the doctrine of respondeat superior.

***Damages For All Misrepresentation by Concealment Claims***

183. The concealments of material fact cited above in this Count, combined with Bluegreen's duty to disclose such facts to Plaintiffs and its failure to do so, resulting in harm to Plaintiffs establishes the claim for Misrepresentation by Concealment for every Plaintiff named in this suit by one or more of the subsections identified in this Count.

184. As such, the sale, and any contract between the parties, should be rescinded, with all sums paid returned to the Plaintiffs and with the time-share interest returned to Bluegreen.

185. In addition, the Plaintiffs should recover all damages and other relief to which they each may be entitled, including punitive damages, which are warranted for the intentional deceptive, unfair, and fraudulent conduct of Defendant Bluegreen.

**MISREPRESENTATION BY CONCEALMENT**

***AGAINST DEFENDANT BPS***

186. Plaintiffs incorporate by reference all preceding paragraphs, as though fully set forth herein.

187. Defendant BPS, through collusion with Defendant Bluegreen, lured Plaintiffs into attending sales presentations by Defendant Bluegreen by offering promotions and gifts in

exchange for Plaintiffs agreeing to attend a “presentation” that Defendant BPS knew or should have known was a platform for employing deceitful, high-pressure sales tactics aimed at inducing Plaintiffs to make a significant financial decision based upon false information provided by Defendants.

188. Defendant BPS represented to certain Plaintiffs that the presentation would be a certain length of time when it was often much longer.
189. Defendant BPS represented to certain Plaintiffs that they could vacation anywhere through Defendant Bluegreen’s time-share ownership program, which was false and misleading.
190. Plaintiffs were injured and damaged by virtue of their reasonable reliance on Defendant BPS’s representations containing omissions about the true nature of the time-share presentation they were induced to attend through BPS.
191. Defendant BPS’s omissions were intentionally made for the purpose of inducing the Plaintiffs to attend Defendant Bluegreen’s sales presentation. In the alternative, if Defendant BPS’s omissions were not intentional, they were grossly negligent, as Defendant BPS has a long standing relationship with Defendant Bluegreen, and knew or should have known the truth regarding Bluegreen’s manipulation tactics, fraud schemes, high-pressure selling techniques, and the often disastrous consequences such activities produce for unwitting individuals who are lured into their sales presentations.
192. At all times relevant, Defendant BPS was involved in the offering of a promotion for attending a time-share presentation, which was solicited through representations made from within Defendant BPS’s Bass Pro Shop, through agents of Defendant BPS, or at

least individuals who appeared to consumers to be acting as agents of BPS, and thus, such actions are attributable to Defendant BPS.

193. Had Defendant BPS disclosed the true nature of the presentation in an open light, or otherwise took steps to ensure the protection of its in-store patrons, some Plaintiffs herein would not have attended and would have avoided injury as a result.
194. For all of the reasons set forth herein, the Plaintiffs were induced to purchase a time-share interest from Bluegreen by fraud, sometimes while at a sales presentation they were induced to attend by Defendant BPS without knowing its true nature because material information was either intentionally or negligently concealed from them through Defendant BPS's actions.
195. Plaintiffs should recover all damages and other relief to which they each may be entitled, including punitive damages, which are warranted for the intentional, unfair, and fraudulent conduct of Defendant BPS.

**COUNT FIVE**  
**NEGLIGENT MISREPRESENTATION**  
*AGAINST DEFENDANT BLUEGREEN*

196. Plaintiffs incorporate by reference all preceding paragraphs, as though fully set forth herein.
197. To the extent it is determined that Bluegreen's actions in the prior Counts were not intentional or reckless, Plaintiffs aver, in the alternative that such actions were negligent.
198. All other supporting facts remain as set forth in Counts Three and Four.

**COUNT SIX**  
**CIVIL CONSPIRACY**  
*AGAINST ALL DEFENDANTS*

199. Plaintiffs incorporate by reference all the preceding paragraphs, as though fully set forth herein.
200. Defendants Bluegreen and BPS agreed to join a conspiracy related to defrauding consumers in the purchase of time-share property seemingly, but not actually, in compliance with the law of Tennessee.
201. The conspiracy had a common design, jointly and knowingly established by Defendants acting through their agents and employees, and those of their subsidiary entities.
202. Defendants knew that the object of this conspiracy was to market and sell time-share interests to Plaintiffs, without disclosing, among other material facts described herein, that Plaintiffs would not be able to use their points as described by Bluegreen's sales representatives when desired due to Bluegreen's business model of overselling interests which results in a restriction of availability, and that Plaintiffs had a right to the Public Offering Statement disclosures and to rescind their time-share purchase. The objects of the conspiracy were fraud (intentional misrepresentation), breach of contract, unjust enrichment, negligent misrepresentation, and/or violations of the Tennessee Time-Share Act or the Tennessee Consumer Protection Act (and California equivalents), as described more fully elsewhere herein.
203. Defendants knew that these objects were unlawful and would be accomplished by unlawful means such as fraud, misrepresentations, and omissions.
204. Defendants had a meeting of the minds on the object of or course of action for this conspiracy. Defendants knew and agreed upon the unlawful object or course of action for

this conspiracy. Defendants also knew that their wrongful actions would inflict injury upon the targets of the conspiracy, including Plaintiffs.

205. As described above, Defendants committed multiple unlawful and overt acts to further the object or course of action for this conspiracy as described above.
206. These unlawful acts proximately caused the damages suffered by Plaintiffs. Accordingly, Plaintiffs are entitled to recover their actual damages, plus costs, attorneys' fees, and pre-judgment interest and post-judgment interest.

**COUNT SEVEN**  
**UNJUST ENRICHMENT**

*AGAINST DEFENDANT BLUEGREEN*

207. Plaintiffs incorporate by reference all the preceding paragraphs, as though fully set forth herein.
208. Plaintiffs conferred benefits upon Defendant Bluegreen in the form of down payments, monthly mortgage payments, recurring maintenance fee payments, and additional fee and membership dues for their time-share interests and membership in Bluegreen's time-share program and its affiliates.
209. Those payments were made with the reasonable expectation that Bluegreen was selling time-share interests that could be used and enjoyed by Plaintiffs as represented, and that Bluegreen was complying with applicable consumer protection laws.
210. It would be unjust to permit Bluegreen to keep the payments made by Plaintiffs because Bluegreen induced Plaintiffs to make those payments by failing to disclose the facts material to the transactions and/or misrepresenting such facts.
211. Based on the foregoing, Plaintiffs seek the remedy of restitution, as an alternative to other requested relief herein (namely, contract rescission, general damages and punitive

damages) should any of those remedies be deemed unavailable to any particular Plaintiff.

**COUNT EIGHT (IN THE ALTERNATIVE)**

**BREACH OF CONTRACT**

*AGAINST DEFENDANT BLUEGREEN*

212. Plaintiffs incorporate by reference all the preceding paragraphs, as though fully set forth herein.
213. Only to the extent that any Plaintiff's claim cannot stand based on tort or statutory relief previously set forth, such Plaintiffs of this multi-party action, are entitled to a finding of breach of contract by Defendant Bluegreen.
214. As pled herein with specificity for fraud, Defendant Bluegreen enticed Plaintiffs by promising each that owning a time-share would allow them to enjoy specific use benefits (use rights), to plan vacations easily, and to make money, which all formed the basis for the bargain.
215. Most if not all Plaintiffs experienced great difficulty planning vacations and reserving accommodations, and Bluegreen time-shares are valueless in the common marketplaces; they also carry significant debt and high recurring fees.
216. Since Plaintiffs never received the performance they were promised from Defendant Bluegreen, and after delivering payment as their required performance, Defendant Bluegreen is in breach.
217. As such, Plaintiffs should be entitled to an award of damages or cancellation and restitution (in cases where other remedies identified herein are not available).

## VI. UNAUTHORIZED PRACTICE OF LAW BY DEFENDANT BLUEGREEN

### *AS SUPPLEMENTAL SUPPORT FOR ALL CLAIMS*

218. Plaintiffs incorporate by reference all preceding paragraphs, as though fully set forth herein.
219. Unauthorized Practice of Law (hereinafter “UPL”) violations are an independent cause of action and can also support other causes of action where conduct that violates UPL is intermeshed with fraud and deceit. In the instant matter, UPL conduct on the part of Defendant Bluegreen supports Plaintiffs’ other causes of actions set forth herein.
220. UPL acts came in two forms:
- a. **Contracts Law:** a *de facto* lawyer explains the legal terms of a contract and states what it really means as opposed to reading the terms of the contract aloud, providing copies, and/or permitting the consumers to read the contract.
  - b. **Wills and Estates Law:** Consumers are told about how they can plan their Estate with this new “asset” to leave a “legacy” to their child or children (or anyone they choose) using a “Will” while fraudulently concealing a known “successor” clause that forces obligations upon future generations who are all jointly and severally liable for the ever-rising debt.
221. The signing is orchestrated by a *Closer* called a Loan Officer, Finance Officer, Quality Assurance Specialist, or Compliance Director.
222. After often five (5) to eight (8) hours of mentally and physically wearing the consumers down in the sales room, there is a rapid signing of many documents that lasts only about ten (10) to fifteen (15) minutes.

223. The entire process is controlled from start to finish by the Closer, and consumers are not permitted to read the contract, leave the room, or to discuss the contract alone, and they are not permitted to review the contract with an attorney.
224. Consumers are also not permitted to take the contract and come back the next day; they are forced to sign that day or will be deprived of many thousands of dollars.
225. The Closer artfully says “this means this” and “sign here” and “initial here” to get these hungry, physically tired and mentally drained consumers back to their vacation.
226. Because Defendant Bluegreen’s non-lawyer employee’s interpretations were untruthful, these statements concerning interpretations of contract terms were used to deceive the Plaintiffs herein.
227. In the end, the Plaintiffs believed they were signing and initialing a document that conforms with everything that they were told by Bluegreen’s agents during the many hours spent in sales-related activity; however, verbal interpretation of the contract terms by non-lawyers at Bluegreen, did not, at all, conform with the actual, written terms of the contract which Plaintiffs were signing.
228. As a result of Bluegreen’s representatives’ unlawful practice of law, overlaid with fraud and deceit, there never was a meeting of the minds, and there was no meaningful disclosure of the contract terms, thereby forming appropriate grounds for all such contracts to be rescinded.
229. The Defendant’s violations of UPL prohibitions serve to evidence the legal grounds as well as the deserved need for providing relief for fraud and/or statutory relief claims provided in Counts One through Six herein.

230. The other form of UPL conduct, Wills and Estates Law ((b) above), which was also performed upon the Plaintiffs herein, occurred when Bluegreen staff interpreted state law as it applies to Wills and Estates, and thereby deceived Plaintiffs herein, when Bluegreen knew that a standard Bluegreen contract feature is the “successors liability” clause that defeats all of their staffs’ discussions with Plaintiffs about assets and optional Will bequests.
231. Plaintiffs herein were advised that they “can” put the time-share in their Will, when familial [forced] obligations were already in the Contract.
232. Plaintiff-Owners were told they “could” or “can” do whatever they want with the time-share with regard to their estate such as leave it to one or more of their children.
233. However, due to the “successors” clause in the contract, the Plaintiffs were fraudulently induced to sign a contract for the purchase of a time-share which inherently forms joint and several liability to all those same family members who are in the lines of succession to assume the time-share obligations upon the final owner’s demise.
234. This successor liability was an express term of the parties’ Contracts for each of the Plaintiffs herein, and yet not a single one of the Plaintiffs had any disclosure of this everlasting generational debt obligation.
235. The actual word “successors” was buried in a boilerplate sentence with heirs and assigns and other potential future parties, however, Plaintiffs were unwittingly and by surreptitious design of Defendant Bluegreen, signing an instrument that transfers escalating debt to the owners successor children (if no children, siblings) and to future generations.

236. None of the Plaintiffs herein had any idea they were obligating their children or their future generations of family, and in all cases this information would have prevented the signing of the contract.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, in light of the foregoing, Plaintiffs respectfully request:

- i. That they be given leave to amend this Complaint as additional facts are discovered;
- ii. That a jury of twelve (12) be empaneled as the trier of fact in this action;
- iii. That judgment be entered for Plaintiffs and against Defendant Bluegreen, and Defendant BPS, (including the subsidiaries, agents and affiliates of each);
- iv. That the contracts between Bluegreen and each Plaintiff be rescinded, with any monies paid returned to the Plaintiffs, and the time-share interest being canceled and returned, and/or deeded-back as appropriate, to Defendant Bluegreen;
- v. That Plaintiffs be awarded compensatory damages, in an amount to be proven at trial;
- vi. That Plaintiffs be awarded punitive damages in an amount not less than \$500,000 each under Tennessee Law, and that any Plaintiffs not qualified for such an award, be awarded other available remedies (including those under California law) as described herein;
- vii. That Plaintiffs be awarded their attorneys' fees, expenses, and discretionary costs; and
- viii. That Plaintiffs be awarded any and all further relief to which this Honorable Court may deem they are justly entitled.

Respectfully submitted 04/08/2019,

By: s/ Jessica Stewart

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### **CERTIFICATE OF SERVICE**

I hereby certify that this 8th day of April 2019, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

By: s/ Jessica Stewart

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