

***IN THE COMMON PLEAS COURT  
OF OTTAWA COUNTY, OHIO***

CARL R. GORDON )  
5503 MAPLE AVENUE )  
CASTALIA, OHIO 44824 )

-and- )

GERRI L. GORDON )  
5503 MAPLE AVENUE )  
CASTALIA, OHIO 44824 )

on behalf of themselves and all )  
other similarly situated )

PLAINTIFFS )

-V- )

ERIE ISLANDS RESORT & MARINA )  
An Ohio general partnership )  
4495 WEST DARR-HOPFINGER ROAD )  
PORT CLINTON, OHIO 43452 )

-and- )

ERIE ISLANDS RESORT & MARINA, )  
INC., individually and as general partner )  
c/o John M. Gronvall, statutory agent )  
237 E. FRONT STREET )  
YOUNGSTOWN, OHIO 44503 )

-and- )

ERIE ISLANDS HOLDING COMPANY )  
An Ohio limited liability corporation )  
c/o John M. Gronvall, statutory agent )  
237 E. FRONT STREET )  
YOUNGSTOWN, OHIO 44503 )

DEFENDANTS )

CASE# 2010-CV-\_\_\_\_\_

JUDGE BRUCE WINTERS

**CLASS ACTION COMPLAINT**

(Jury demand endorsed hereon)

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Thomas R. Lucas (Bar#0071916)  
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ATTORNEYS FOR PLAINTIFFS

## **CLASS COMPLAINT**

NOW COME THE PLAINTIFFS, Carl R. Gordon and Gerri L. Gordon, on behalf of themselves and all other similarly situated Plaintiffs, by and through counsel, D. Jeffery Rengel and Thomas R. Lucas, and for their Complaint against Defendants state and aver as follows:

1. Defendant Erie Islands Resort & Marina, Inc. is an active Ohio corporation doing business individually in Ohio and as Erie Island Resort & Marina, an Ohio general partnership.

2. Defendant Erie Islands Resort & Marina, Inc. is the sole general partner of Erie Islands Resort & Marina, an Ohio general partnership.

3. Defendant Erie Islands Resort & Marina is an Ohio general partnership with Erie Islands Resort & Marina, Inc. as the sole general partner.

4. Defendant Erie Islands Holding Company is an Ohio limited liability corporation doing business in Ohio as Erie Islands Resort & Marina.

5. Defendants are jointly and severally engaged in a joint enterprise known as "Erie Islands Resort & Marina" or substantially similar names.

6. Defendants are related and/or interlocking corporations, partnerships and/or other entities with common interests and common control.

7. This Court has jurisdiction over each Defendant named herein because each Defendant is either a corporation that conducts business in and maintains operations in Ottawa County, or is a legal entity which has sufficient minimum contacts with Ottawa County so as to render the exercise of jurisdiction by the Ohio courts, and this Court in particular, permissible under traditional notions of fair play and substantial justice. This action is not removable.

8. Venue is proper in this Court because one or more of the Defendants either conduct business in, have the business enterprise in, or maintain executive offices in Ottawa County, a substantial portion of the transactions and wrongs complained of herein, including the Defendants' primary participation in the wrongful acts detailed herein in violation of Ohio law occurred in Ottawa County, and Defendants have received substantial compensation in Ottawa County by doing business here and engaging in numerous activities that had an effect in Ottawa County.

### **FACTUAL ALLEGATIONS**

#### **The 1989 Agreement**

9. On or about August 25, 1989, Plaintiffs entered into a contractual transaction with Defendants.

10. The transaction between Plaintiffs and Defendants on or about **August 15, 1989** (Aug 25th, 1989) consisted of Plaintiffs' purchase of an "A-1 Harbor Admiral" undivided One Fifteen Thousandth (1/15,000) fee simple ownership interest **as tenants in common** in property located in Bay Township, Ottawa County, Ohio as further referenced and described at Volume 332, Page 667 of records on file at the Ottawa County Recorder's Office and commonly known as "Erie Islands Resort & Marina." The property consisted of campsite parcels, cottage site parcels and resort recreational parcels. Attached Exhibit 1.

11. On information and belief, similarly situated Plaintiffs also purchased undivided fee simple ownership interests as tenants in common to Erie Islands Resort & Marina.

12. These undivided fee simple ownership interests as tenants in common to Erie Islands Resort & Marina were sold together with the right to reserve and occupy a campsite or cottage site on a first-come, first-served, space available basis within Erie Islands Resort & Marina under certain rules and conditions, commonly referred to as a "time share interest," and to use of certain recreational and common facilities commonly referenced by Defendants as "The Product."

13. "The Product" was represented to Plaintiffs in various documents, in addition to that set forth at paragraphs 10 through 12 inclusive and 15, included the following;

a. Accommodations of up to 500 rental cottages and 500 R.V. sites with total hook-ups;

- b. Facilities consisting of a “Nine hole Professional Golf Course”, tennis courts, golf pro shop, outdoor swimming pool for R.V. Villages, two “Tot Lot/Playgrounds”, R.V. storage;
- c. A marina consisting of 300 boat slips, year round boat storage, utilities and hook-ups at boat docks, fuel pumps and boat rental fleet;
- d. A recreational center consisting of indoor-outdoor heated swimming pool, racquetball courts, health club with saunas, jacuzzi and locker rooms, universal weight room, snack bar and eating area, adult lounge area, teen lounge area and meeting room;
- e. A shopping complex including a restaurant and lounge, retail shops and camping and boating supplies.

14. Plaintiffs were required to pay to Defendants annual dues of One Hundred and Ninety-two Dollars (\$192.00) together with an annual “maintenance fee” of an undisclosed amount.

15. Plaintiffs had the right to occupy a campsite or cottage from the date of the signing of the agreement under reservation procedures “established by the then-current Rules and Regulations established by Seller.”

16. Plaintiffs paid defendant Erie Islands Resort & Marina, an Ohio general partnership the sum of Ten Thousand Two Hundred Dollars (\$10,200) by executing a promissory note and purchase money mortgage in favor of and to seller in the amount of Nine Thousand One Hundred and Eighty Dollars (\$9,180) and paying the balance due in cash. Attached Exhibits 2 & 3.

17. The terms of the promissory note were equal monthly installment payments for One Hundred and Twenty (120) months at Fifteen Percent (15%) interest per annum for total payments equal to \$18,814.40 (\$17,773.20) to Defendants.

18. No resale penalty or fee was imposed by Exhibits 1, 2 or 3.

19. Upon information and belief, no deed was issued to Plaintiffs.

**The 1992 “Priority Gold Membership” Agreement**

20. On or about September 27, 1992, Plaintiffs entered into an “Installment Sales Agreement and Disclosure Statement”, a “Priority Gold Membership and Special Stipulations Addendum,” and a “Resale Agreement” for which Plaintiffs paid an additional Two Thousand Four Hundred and Ninety-Five Dollars (\$2495) to Defendants. Attached as Exhibit 4.

21. Said Exhibit 4 “Priority Gold Membership” attached provided, in part, that Plaintiffs were limited and guaranteed to use of all of Defendants’ facilities, set forth *supra*, to “an overnight basis for up to twenty-one (21) consecutive nights” on a “first-come, first-served” basis.

22. Exhibit 4 “Priority Gold Membership” imposed a seven (7) day waiting period before Plaintiffs could resume overnight accommodations following a stay of one (1) or more nights.

23. Exhibit 4 “Priority Gold Membership” committed Defendants to provide Plaintiffs with accommodations at the same location as previously available to Plaintiffs (as those existing on the date membership commenced) or comparable accommodations in the same general area.

24. Exhibit 4 “Priority Gold Membership” imposed a “use charge” upon plaintiff for use of cottages, rental trailers, recreational vehicle storage, guest usage of accommodations, incidental recreation equipment and facility usage even though all or a portion were previously included in Plaintiffs’ 1989 deed and agreements.

25. Exhibit 4 “Priority Gold Membership” imposed transfer limitations and additional rights to the Defendants in the event that Plaintiffs attempted transfer of Plaintiffs’ interests, including:

- (a) limiting the sale price between Plaintiffs and Plaintiffs’ prospective buyer; and,
- (b) prohibiting sale between Plaintiffs and Plaintiffs’ prospective buyer until all payments due under Exhibit 4 are brought current; and,
- (c) prohibiting sale between Plaintiffs and Plaintiffs’ prospective buyer unless Defendants deem the prospective buyer’s credit to be “satisfactory”; and,
- (d) allowing Defendants to arbitrarily increase the finance charge on any remaining installment payments due from Plaintiffs to a rate “acceptable to [Defendants]”; and,
- (e) allowing the Defendants to refuse the transfer unless the buyer is “satisfactory” to Defendants; and,
- (f) allowing the Defendants to require that the prospective buyer enter into a new membership agreement with Defendants upon terms as specified solely by Defendants; and,

(g) requiring the prospective buyer to pay a “transfer fee” to Defendants equal to Five percent (5%) of the “total” membership fee; and,

(h) failure of Plaintiffs to comply with any of these limitations results in a complete forfeiture to Defendants of all of Plaintiffs’ right, title and interest;

26. Exhibit 4 “Priority Gold Membership and Special Stipulations Addendum, Exhibit B” “froze” Plaintiffs’ maintenance fees at the current amount as of 9-27-1992 of Two Hundred and Ten Dollars (\$210) per annum.

27. Exhibit 4 “Resale Agreement” imposed a resale fee payable to Defendants equal to 15% of the resale price.

28. Exhibit 4 “Resale Agreement” imposed a requirement that all timeshare interests be held for a minimum of four (4) years before they could be resold by Plaintiffs.

#### **The 1994 “Priority Gold Modification” Agreement**

29. On or about February 18, 1994, Plaintiffs entered into a “Priority Gold Modification Agreement” and “Priority Gold Option Agreement Exhibit A” for which Plaintiffs paid an additional Four Hundred and Ninety-Five Dollars (\$495) to Defendants. Attached Exhibit 5.

30. Said Exhibit 5, “Priority Gold Modification Agreement” attached provided, in part, that Plaintiffs pay the \$495 and quitclaim to Defendants, at no cost to Defendants, all of Plaintiffs’ rights, titles and interests purchased in 1989 and 1992 from Defendants.

31. Exhibit 5, “Priority Gold Modification Agreement” attached provided, in part, that if Plaintiffs quitclaimed all their rights, title and interests to Defendants that Plaintiffs “can obtain” membership in Coast to Coast or RPI subject to their rules and regulations. Plaintiffs, if quitclaim made, would further be allowed “fourteen (14) days of usage \*\*\* per annum” at Defendants’ Resort in Ottawa County “with reservations for accommodations, to be made up to forty-five (45) days in advance.”

32. Exhibit 5, "Priority Gold Option Agreement Exhibit A" attached provided, in part, that Defendants would have a twenty (20) year option to purchase all of Plaintiffs' rights, titles and interests for the sum of 85% of Twelve Thousand Six Hundred and Ninety-Five Dollars (\$12,695).

#### **The 2003 "Platinum Club A-1 Admiral Membership" Agreement**

33. In late 2002, Defendants sent to Plaintiffs a communication requesting that Plaintiffs meet with Defendants' representatives at which meeting Defendants would make a package available to Plaintiffs which would permanently eliminate future maintenance and assessments fees.

34. Plaintiffs met with Defendants and, on or about March 22, 2003, Plaintiffs entered into "Platinum Club Membership Agreement #4139" "A-1 Admiral Membership" with Defendants. Attached Exhibit 6.

35. Plaintiffs paid approximately Four Thousand Dollars (\$4000) to obtain said "Platinum Club Membership Agreement #4139" "A-1 Admiral Membership" from Defendants.

36. The "Platinum Club Membership Agreement #4139" "A-1 Admiral Membership" failed to reference any payment from Plaintiffs to Defendants.

37. Said Exhibit 6, "Platinum Club Membership Agreement #4139" attached provided, in part, that Plaintiffs were limited and guaranteed to use of all of Defendants' facilities, set forth *supra*, to "an overnight basis for up to twenty-one (21) consecutive nights" on a "first-come, first-served" basis.

38. Said Exhibit 6, "Platinum Club Membership Agreement #4139" attached imposed a seven (7) day waiting period before Plaintiffs could resume overnight accommodations following a stay of one (1) or more nights.

39. Said Exhibit 6, "Platinum Club Membership Agreement #4139" attached provided for "no pre-assignment of or exclusive rights over specific accommodations or distribution among [users] of usage periods."

40. Said Exhibit 6, "Platinum Club Membership Agreement #4139" attached entitled Plaintiffs to "reserve an accommodation on a one-night stay basis, without penalty."

41. Said Exhibit 6, "Platinum Club Membership Agreement #4139", at Paragraph 5(e) thereof, again "waived permanently" all "maintenance fees and assessments."

42. Plaintiffs paid an additional Four Thousand Dollars (\$4000) for said rights set forth in said Exhibit 6, "Platinum Club Membership Agreement #4139" attached.

43. Said Exhibit 6, "Platinum Club Membership Agreement #4139", at Paragraph 7 thereof, imposed transfer limitations and additional rights to the Defendants in the event that Plaintiffs attempted transfer of Plaintiffs' interests, including:

- (a) limiting the sale price between Plaintiffs and Plaintiffs' prospective buyer; and,
- (b) prohibiting sale between Plaintiffs and Plaintiffs' prospective buyer until all payments due under Exhibit 4 are brought current; and,
- (c) prohibiting sale between Plaintiffs and Plaintiffs' prospective buyer unless Defendants deem the prospective buyer's credit to be "satisfactory"; and,
- (d) allowing Defendants to arbitrarily increase the finance charge on any remaining installment payments due from Plaintiffs to a rate "acceptable to [Defendants]"; and,
- (e) allowing the Defendants to refuse the transfer unless the buyer is "satisfactory" to Defendants; and,
- (f) allowing the Defendants to require that the prospective buyer enter into a new membership agreement with Defendants upon terms as specified solely by Defendants; and,
- (g) requiring the prospective buyer to pay a "transfer fee" to Defendants equal to Five percent (5%) of the "total" membership fee; and,
- (h) failure of Plaintiffs to comply with any of these limitations results in a complete forfeiture to Defendants of all of Plaintiffs' right, title and interest (by paragraph 8);

#### **1992 to Present**

44. Periodically, Plaintiffs have received billing statements from Defendants for maintenance fees, "points", special assessments, "use" charges, "energy" and other "surcharges," "ad valorem tax" charges, and re-sale and transfer penalties and charges. See Exhibits 4, 5 and 7 attached.

45. No governmental authority or entity has assessed a single or annual "ad valorem" tax upon any right, title or interest of Plaintiffs.

46. Plaintiffs made payments to Defendants for various charges set forth at paragraph 40 herein at times when said charges were either "frozen" or "permanently waived". If frozen, Defendants billed and charged Plaintiffs with charges in excess of the "frozen" amount.



### Class Allegations

47. Plaintiffs bring this action individually and as a class action, pursuant to Rule 23, Ohio R. Civ. P., on behalf of all holders or purchasers of undivided One Fifteen Thousandth (1/15,000) fee simple ownership interests as tenants in common in property located in Bay Township, Ottawa County, Ohio as further referenced and described at Volume 332, Page 667 of records on file at the Ottawa County Recorder's Office and commonly known as "Erie Islands Resort & Marina"; as well as those purchasers or holders of variously named or designated membership interests in "Erie Islands Resort & Marina" granting such purchasers or holders rights of use and various privileges (the Class). Excluded from the Class are Defendants who have previously brought suit and either voluntarily or involuntarily dismissed their actions with prejudice against the Defendants or otherwise settled or obtained a verdict.

48. This action is properly maintainable as a class action.

49. The Class is so numerous that joinder of all members is impracticable.

50. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. All Plaintiffs entered into substantially similar agreements with one, some or all Defendants relating to rights, titles and interests in the same "Erie Islands Resort & Marina" complex in Ottawa County, Ohio.

51. The common legal questions include, *inter alia*, the following:

(a) whether the Defendants have breached their contracts with Plaintiffs and the other members of the Class by failing to provide all represented goods and services to said Plaintiffs and the other members of the Class;

(b) whether the Defendants have engaged in fraud and/or breached their contracts with Plaintiffs and the other members of the Class by periodically changing the name of various assessments, charging, prosecuting and/or collecting maintenance fees, usage fees, "points", service fees, "energy" surcharges, "ad valorem" taxes and other surcharges to said Plaintiffs and the other members of the Class while representing that maintenance fees and assessments were either "frozen" or permanently eliminated;

(c) whether the Defendants engaged in fraud and/or breach of contract by selling more timeshares and “memberships” than the resort could reasonably accommodate to enable Plaintiffs and the other members of the Class to reasonably exercise their “membership” rights;

(d) whether the Defendants are engaging in unfair, deceptive and unconscionable acts and practices in violation of the Ohio Consumer Sales Practices Act, R.C. § 1345, et. seq.;

(e) whether the Product sold by Defendants constituted an “unavailability of goods” due to Plaintiffs and the other members of the Class being unable to exercise their right to use of the goods as specified in the Agreements with Defendants and as represented by Defendants;

(f) whether the Defendants have breached their fiduciary duties to Plaintiffs and the other members of the Class;

(g) whether the Defendants engaged in unfair, deceptive and unconscionable acts and practices in light of prior decisions contained in the Public Information Files of the Ohio Attorney General’s Office and prior lawsuits against Defendants.

52. Plaintiffs’ claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class.

53. Plaintiffs are committed to prosecuting this action and are adequate representatives of the Class. Plaintiffs have retained competent counsel experienced in litigation of this nature and will fairly and adequately protect the interests of the Class.

54. The prosecution of separate actions by individual members of the Class will create a risk of inconsistent or varying adjudications with respect to individual members of the Class which will establish incompatible standards of conduct for the party opposing the Class.

55. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

56. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

## CAUSES OF ACTION

### Causes of Action Common Allegations

57. Plaintiffs are persons and consumers as defined in the Ohio Consumer Sales Practices Act, R.C. §1345.01(B) & (D).

58. Defendants are “suppliers” as defined by R.C. §1345.01(C) engaged in the solicitation, consummation and/or effectuation of “consumer transactions” within the meaning of R.C. §1345.01(A).

59. Defendants are in a business of providing a service and the Product to consumers, managing the timeshares and providing related goods and services referenced herein.

60. The agreements referenced hereinabove between Plaintiffs and Defendants were consumer transactions as defined in R.C. §1345.01(A) with Defendants.

61. The agreements and transactions between Plaintiffs and Defendants herein referenced were mixed transactions involving both the transfer of personal property, goods or services and the transfer of an interest in real property and such agreements and transactions for such transfers of personal property, goods and/or services are required to comply with the Ohio Consumer Sales Practices Act, R.C. §1345.01, et. seq.

62. One, some or all of Defendants acts and practices have previously been declared to be unfair, deceptive, and unconscionable by the Ohio Attorney General and by provisions of the Ohio Administrative Code, §109:4:3:03 and by PIF#10001652, 10001448, 10001009, 10002016, 10001020, 1436, 1106, 1940, 867, and *Fine v. U.S. Erie Islands Co, Ltd* 2009-Ohio-1531.

63. Such actions are ongoing as Defendants continue to exercise purported rights under the Agreements, charge and collect funds from Plaintiffs, continue to misrepresent and deceive Plaintiffs and deny Plaintiffs’ their rights under the Agreements and Ohio law.

64. Plaintiffs have suffered damages as a direct and proximate consequence of Defendants acts and omissions set forth herein.

### **FIRST CAUSE OF ACTION**

65. For Plaintiffs' first cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 64 inclusive as if the same were fully restated herein, and further state that:

66. Defendants, as suppliers, used unfair, deceptive and misleading contracts and related documents attached herewith containing terms that:

- (a) permitted Defendants, as suppliers, to unreasonably alter terms or the contracts by terminating the membership without just cause; and,
- (b) permitted Defendants, as suppliers, to unreasonably amend the rules which govern use of the resort Product facilities, or add or delete amenities to/from the resort Product facilities without using its best efforts to promptly provide equal or similar amenities for any amenity it removes from the resort Product facilities; and,
- (c) provided that Defendants, as suppliers, had no liability under any circumstances to a Plaintiff-member if a campsite, cottage, boat slip or R.V. site in the resort Product facilities is not available for the Plaintiff-members' use; and,
- (d) imposed onerous procedures and preconditions upon a Plaintiff-member's ability to transfer the membership in the resort Product facilities;
- (e) limited the sale price between Plaintiffs and Plaintiffs' prospective buyer; and,
- (f) prohibited sale between Plaintiffs and Plaintiffs' prospective buyer until all payments due under Exhibits 4 and 6 are brought current; and,
- (g) prohibited sale between Plaintiffs and Plaintiffs' prospective buyer, under Exhibits 4 and 6, unless Defendants deemed the prospective buyer's credit to be "satisfactory"; and,
- (h) allowed Defendants, under Exhibits 4 and 6, to arbitrarily increase the finance charge on any remaining installment payments due from Plaintiffs to a rate "acceptable to [Defendants]"; and,
- (i) allowed Defendants, under Exhibits 4 and 6, to require that Plaintiffs' prospective buyer enter into a new membership agreement with Defendants upon terms as specified solely by Defendants; and,

- (j) requiring the prospective buyer to pay a “transfer fee” to Defendants equal to Five percent (5%) of the “total” membership fee;
- (k) failed to stated the monetary consideration paid by Plaintiffs as part of the agreement (See Exhibit 6 attached );
- (l) does not limit Defendants’ rights to sue Plaintiffs for non-payment in any manner;
- (m) charges a “use charge” for use of cottages, R.V. storage, guest usage accommodations, incidental recreation equipment and facility usage which is 50% of a fee which may be established at the discretion of Defendants (Exhibit 6, ¶12); and,
- (n) state that Plaintiffs’ failure to comply with any stated limitations results in a complete forfeiture to Defendants of all of Plaintiffs’ right, title and interest;

67. Defendants engaged in acts and practices set forth hereinabove which were unfair, deceptive, and unconscionable acts and practices, in violation of Ohio’s Consumer Sales Practices Act, including but not limited to, R.C.§§1345.02(A) and (B)(1), (2), (5) and (8); Failure to Deliver Rule OAC §109:4-3-09(A).

### **SECOND CAUSE OF ACTION**

68. For Plaintiffs’ second cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 67 inclusive as if the same were fully restated herein, and further state that:

69. Defendants, as suppliers, committed unfair, deceptive and unconscionable acts and practices by

70. Defendants knew, or had reason to know, at the time the Plaintiffs entered into the consumer transactions and agreements referenced herein that Plaintiffs would be unable to receive a substantial benefit from the subject of each consumer transaction referenced herein this Complaint.

71. Defendants sold and/or offered for sale substantially more memberships and/or interests in the resort Product facilities than could reasonably utilize the resort Product facilities, including but not limited to, the cottages, campsites, R.V. sites and boat slips.

72. Defendants represented to Plaintiffs that the resort Product facilities had or would have recreational facilities and features which it does not and that the resort Product facilities would be available to

Plaintiffs, as consumers, and their family members and guests to a greater extent than they actually would be or were available so as to induce Plaintiffs to purchase and otherwise enter into the agreements and memberships set forth above.

73. Defendants engaged in acts and practices set forth hereinabove which were unfair, deceptive, and unconscionable acts and practices, in violation of Ohio's Consumer Sales Practices Act, including but not limited to, R.C. §§ 1345.03(A) and (B)(1), (B)(2), (B)(3), (B)(5), and (B)(6).

### **THIRD CAUSE OF ACTION**

74. For Plaintiffs' third cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 73 inclusive as if the same were fully restated herein, and further state that:

75. Defendants' utilized consumer transaction agreements attached herewith as Exhibits 1, 4, 5 & 6.

76. Defendants' agreements and transactions with Plaintiffs permits the Defendants, as suppliers, in the event that Defendants terminate a membership in the resort Product facilities or the Defendant(s) suspend a membership without just cause, to retain all payments the Plaintiff-member, as consumer, has made to date.

77. Exhibit 1 provides, at paragraph 9, that a default by Plaintiffs immediately terminates the agreement and allows Defendants to retain all sums already paid by Plaintiffs as purchasers as liquidated damages.

78. Exhibit 4 provides, at paragraphs 6 and 7, that a default by Plaintiffs may be caused by any breach of the rules and regulations established by Defendants and allows Defendants to immediately and permanently terminate Plaintiffs' rights and membership thereunder and "declare immediately due and payable the entire principal amount due under the Agreement \*\*\* plus charges" and allows Defendants to "retain all amounts paid prior to such termination as liquidated damages."

79. Further, Exhibit 4 provides, at paragraph 7, that in the event of termination that Defendants shall be entitled to all collection fees and expenses together with attorneys' fees in the amount of 15% of the principal and interest then due and owing regardless of the true amount of attorneys' fees incurred by Defendants.

80. Exhibit 6, at paragraphs 14 and 15, provides that a default by Plaintiffs may be caused by any breach of the rules and regulations established by Defendants and allows Defendants to permanently terminate Plaintiffs' rights and membership thereunder and "declare the entire unpaid principal balance of the Initiation Fee

due under the membership together with the finance charge and dues accrued to the date of default, immediately due and payable, with interest on the unpaid balance..." and allows Defendants to "keep all the money Member has paid Resort up to the time of default as liquidated damages."

81. Defendants' practice of contracting with Plaintiffs, as consumers, to terminate or suspend membership and retain all payments of price and dues made prior to termination of membership as liquidated damages constitutes a penalty and is an unfair and unconscionable act or practice prohibited by and in violation of Ohio's Consumer Sales Practices Act, including but not limited to, R.C. §§1345.03(A) and (B)(1), (2) and (5).

#### **FOURTH CAUSE OF ACTION**

82. For Plaintiffs' fourth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 81 inclusive as if the same were fully restated herein, and further state that:

83. Defendants froze Plaintiffs Carl and Gerri Gordon's maintenance, assessment and other fees as of September 27, 1992 when Plaintiffs entered into Exhibit 4.

84. On information and belief, Defendants also froze class Plaintiffs maintenance, assessment and other fees when said Plaintiffs entered into agreements substantially similar to Exhibit 4.

85. Defendants permanently waived all maintenance, assessments and other fees and when Plaintiffs Gordon entered into Exhibit 6 on March 22, 2003.

86. On information and belief, Defendants also permanently waived class Plaintiffs maintenance, assessment and other fees when said Plaintiffs entered into agreements substantially similar to Exhibit 6.

87. Defendants continued to attempt to collect and/or collected for additional maintenance, assessments and other fees from Plaintiffs in excess of the frozen amount after entering into the agreement with Plaintiffs to freeze such amounts.

88. Defendants continued to attempt to collect and/or collected for additional maintenance, assessments and other fees from Plaintiffs after entering into the agreement with Plaintiffs to permanently waive all maintenance, assessments and other fees.

89. Defendants, as suppliers, engaged in unfair, deceptive and unconscionable acts and practices by attempting to collect and/or collecting for additional fees by designating said fees under various names such as:

maintenance fees, “points”, special assessments, “use” charges, “energy” and other “surcharges,” “ad valorem tax” charges, and re-sale and transfer penalties and charges.

90. Defendants, as suppliers, engaged in unfair, deceptive and unconscionable acts and practices by attempting to collect and/or collecting for additional fees by designating said fees under various names such as: maintenance fees, “points”, special assessments, “use” charges, “energy” and other “surcharges,” “ad valorem tax” charges, and re-sale and transfer penalties and charges after representing to Plaintiffs that such fees were either “frozen” or eliminated.

91. Defendants, as suppliers, engaged in unfair, deceptive and unconscionable acts and practices by charging and collecting a payment or series of payments for freezing or eliminating future fees and then not freezing or eliminating such future fees as represented.

92. Defendants engaged in acts and practices set forth hereinabove which were unfair, deceptive, and unconscionable acts and practices, in violation of Ohio’s Consumer Sales Practices Act, including but not limited to, R.C. §§1345.03(A) and (B)(6) and R.C. §§1345.02(A) and (B)(1), (4), (5) and (8).

#### **FIFTH CAUSE OF ACTION**

93. For Plaintiffs’ fifth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 92 inclusive as if the same were fully restated herein, and further state that:

94. Defendants obtained money and other valuable consideration pursuant to Exhibits 4 and 6.

95. Defendants represented to Plaintiffs that, among other things, Exhibit 4 had value in that Plaintiffs’ maintenance, assessments and other fees would be permanently frozen at a particular amount.

96. Defendants represented to Plaintiffs that, among other things, Exhibit 6 had value in that Plaintiffs’ maintenance, assessments and other fees would be permanently waived and that Plaintiffs would never incur any further future maintenance, assessments and other fees.

97. Defendants prohibited Plaintiffs from transferring any right to frozen or permanently waived maintenance, assessment and other fees to Plaintiffs’ transferee which right had been sold to Plaintiffs under Exhibits 4 and 6.



98. Defendants engaged in acts and practices set forth hereinabove which were unfair, deceptive, and unconscionable acts and practices, in violation of Ohio's Consumer Sales Practices Act, including but not limited to, R.C. §§1345.03(A) and (B)(6) and R.C. §§1345.02(A) and (B)(1), (4), (5) and (8); OAC 109:4:3:03.

#### **SIXTH CAUSE OF ACTION**

99. For Plaintiffs' sixth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 98 inclusive as if the same were fully restated herein, and further state that:

100. Plaintiffs signed resale agreements in conjunction with Exhibit 4 and 5.

101. Defendants failed to perform and/or deliver promised resort Product facilities membership resale services.

102. Defendants failed to possess and/or produce substantiating documentation that proved Defendants' representations that a resale market existed for ownership/membership interests as held by Plaintiffs in the resort Product facilities.

103. Defendants expressly or impliedly represented to Plaintiffs that there was a resale market for those resort Product facilities interests held by Plaintiffs when there was no such market.

104. Defendants solicited Plaintiffs, as holders of undivided interests in the resort Product facilities, or as deed holders, or as purchasers of a contract which purports to sell or otherwise transfer an interest in real property and other resort Products without being licensed by the Ohio Department of Real Estate.

105. Defendants accepted payment or payment in kind from Plaintiffs in connection with an agreement to sell or resell Plaintiffs' right, title or interest in the resort Product facilities prior to the right, title or interest being sold or all the resale services being performed.

106. Defendants misrepresented the existence or size of resale market for Plaintiffs' right, title or interest in the resort Product facilities.

107. Defendants failed to include a date that the resale agreement would terminate absent a resale of Plaintiffs right, title or interest in the resort Product facilities.

108. Defendants' resale agreement included a minimum time period that Plaintiffs right, title or interest in the resort Product facilities must be held before the resale agreement would take effect.

109. Defendants' resale agreement included a provision in the resale agreement granting Defendants the right to sell Plaintiffs' right, title or interest in the resort Product facilities on an installment basis.

110. Defendants' resale agreement failed to include a minimum three (3) day right-to-cancel for Plaintiffs' right, title or interest in the resort Product facilities.

111. Defendants included a provision in the resale agreement that granted Defendants the right to set the sale price, sale terms and when Plaintiffs right, title and interest in the resort Product facilities would be sold by Defendants.

112. Defendants terminated the resale agreement by Exhibit 5 which required Plaintiffs to pay Defendants Four Hundred and Ninety-Five Dollars (\$495).

113. Defendants committed unfair, deceptive, and unconscionable acts and practices in violation of OAC §109:4-3-09(A)(1) and R.C. §1345.02(A) and (B)(1) by failing to perform and/or deliver the promised resale listing agreement services.

114. Defendants promotion, sale, and utilization of the resale listing agreement constitutes an unfair, deceptive, and unconscionable acts and practices in violation of OAC §109:4-3-02(A)(1); R.C. §1345.02(A); §1345.03(A); §1345.03(B)(1), (5) and (6).

115. Defendants engaged in acts and practices set forth hereinabove which were unfair, deceptive, and unconscionable acts and practices, in violation of Ohio's Consumer Sales Practices Act, including but not limited to, R.C. §§1345.02(A); §§1345.03(A) and (B)(1), (4), (5), (6) and (8); and OAC §§109:4-3-02(A)(1).

#### **SEVENTH CAUSE OF ACTION**

116. For Plaintiffs' seventh cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 115 through inclusive as if the same were fully restated herein, and further state that:

117. Exhibit 5 provided that Plaintiffs were entitled to obtain a membership in Coast to Coast and/or Resort Properties International and fourteen (14) days usage per year at Defendants' Erie Islands Resorts & Marina resort Product facilities provided Plaintiffs granted Defendants a twenty (20) year option to purchase Plaintiffs real estate and membership interest at 85% of its current stated value.

118. Exhibit 5 also required that Plaintiffs immediately transfer to Defendants their interests in the resale agreement, attached as Exhibit A to Exhibit 4.

119. Exhibit 5 required Plaintiffs to pay Defendants Four Hundred and Ninety-Five Dollars (\$495).

120. Exhibit 5 allowed Plaintiffs to quitclaim their real property and membership interests to Defendants for no consideration.

121. Defendants' practice of collecting a fee, by reducing the sale price by Fifteen Percent (15%), in addition to collection a Four Hundred and Ninety-Five Dollars (\$495) fee for entering into the agreement is an unfair, deceptive and unconscionable act and practice in violation of R.C. §§1345.02(A) and (B)(4); R.C. §§1345.03(A) and (B)(2),(3),(5) and (6).

122. Defendants engaged in acts and practices set forth hereinabove which were unfair, deceptive, and unconscionable acts and practices, in violation of Ohio's Consumer Sales Practices Act, including but not limited to, R.C. §§1345.02(A); §§1345.03(A) and (B)(1), (4), (5), (6) and (8); and OAC §§109:4-3-02(A)(1) and 109:4:2:22.

#### **EIGHTH CAUSE OF ACTION**

123. For Plaintiffs' eighth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 122 inclusive as if the same were fully restated herein, and further state that:

124. Exhibits 1, 4 and 6 all contain provisions for allowing Defendants to terminate Plaintiffs' rights and membership and keep all payments made by Plaintiffs to Defendants as wells as require Plaintiffs to continue to make all payments and fees until paid in full.

125. Defendants engaged in acts and practices set forth hereinabove which were unfair, deceptive, and unconscionable acts and practices, in violation of Ohio's Consumer Sales Practices Act, including but not limited to, R.C. §§1345.03(A) and (B)(5).

#### **NINTH CAUSE OF ACTION**

126. For Plaintiffs' ninth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 125 inclusive as if the same were fully restated herein, and further state that:

127. Defendants sale to Plaintiffs of rights, titles and interests in real estate and memberships in the resort Product facilities by Exhibits 1, 4 and 6 included rights to use the resort Product facilities.

128. Defendants' assesses a "use charge" for use of cottages, R.V. storage, guest usage accommodations, incidental recreation equipment and facility usage.

129. Defendants' Exhibit 6 membership assesses a fee of 50% of use fees which are established solely at the discretion of Defendants (Exhibit 6, ¶12).

130. Defendants' assessment of use charges for use of cottages, R.V. storage, guest usage accommodations, incidental recreation equipment and facility usage is an unfair, deceptive and unconscionable act or practice in light of Defendants' ability to establish the use charge and in light of payments made by Plaintiffs for their memberships by Exhibits 1, 4, and 6.

131. Defendants' use charge violates R.C. §§1345.03(A) and (B)(3), §§1345.02(A) and (B)(1), (2) and (8).

#### **TENTH CAUSE OF ACTION**

132. For Plaintiffs' tenth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 131 inclusive as if the same were fully restated herein, and further state that:

133. Defendants' fraudulent, actual or implied, misrepresentations and concealments to Plaintiffs, where there was a duty to disclose, regarding the billing, collection and payment of maintenance, assessments and other fees were material to the transactions between the parties.

134. Defendants made such misrepresentations and/or concealments of material fact to Plaintiffs with knowledge of their falsity or with such utter disregard and recklessness toward the truth or falsity of the representations and/or concealments such that knowledge may be inferred.

135. Defendants intended to mislead Plaintiffs.

136. Plaintiffs reasonably, actually and justifiably relied upon said false and fraudulent representations and concealments by Defendants regarding the billing, collection and payment of maintenance, assessments and other fees.

137. Plaintiffs were, and continue to be, proximately and directly harmed and otherwise damaged by Defendants acts and omissions regarding the billing, collection and payment of maintenance, assessments and other fees.

138. Defendants acts and omissions were so intentional, wanton and willful or made with such conscious disregard for the rights and safety of Plaintiffs that has a great probability of causing substantial harm such that punitive damages are awardable.

#### **ELEVENTH CAUSE OF ACTION**

139. For Plaintiffs' eleventh cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 138 inclusive as if the same were fully restated herein, and further state that:

140. Defendants knew, or had reason to know, at the time the Plaintiffs entered into the consumer transactions and agreements referenced herein that Plaintiffs would be unable to receive a substantial benefit from the subject of each consumer transaction referenced herein this Complaint.

141. Defendants sold and/or offered for sale substantially more memberships and/or interests in the resort Product facilities than could reasonably utilize the resort Product facilities, including but not limited to, the cottages, campsites, R.V. sites and boat slips.

142. Defendants represented to Plaintiffs that the resort Product facilities had or would have recreational facilities and features which it does not and that the resort Product facilities would be available to Plaintiffs, as consumers, and their family members and guests to a greater extent than they actually would be or were available so as to induce Plaintiffs to purchase and otherwise enter into the agreements and memberships set forth above.

143. Defendants intended to, and did, so use its right to amend the Rules and Regulations of the resort Product facilities so as to deny Plaintiffs their reasonably ability to use the resort Product facilities in the manner represented by Defendants.

144. Plaintiffs use of, and the features and amenities that the resort Product facilities would have, was and were material to the transactions between the parties.

145. Defendants fraudulently and falsely misrepresented to, and/or concealed from, Plaintiffs the true availability of the resort Product facilities.

146. Defendants fraudulently and falsely misrepresented to, and/or concealed from, Plaintiffs that the resort Product facilities would not be available to Plaintiffs in the manner anticipated by Plaintiffs or in the manner as represented by Defendants or that it would not have the amenities and features as represented by Defendants.

147. Defendants made such misrepresentations and/or concealments of material fact to Plaintiffs with knowledge of their falsity or with such utter disregard and recklessness toward the truth or falsity of the representations and/or concealments such that knowledge may be inferred.

148. Defendants intended to mislead Plaintiffs.

149. Plaintiffs reasonably, actually and justifiably relied upon said false and fraudulent representations and concealments by Defendants.

150. Plaintiffs were, and continue to be, proximately and directly harmed and otherwise damaged by Defendants acts and omissions regarding use of the resort Product facilities.

151. Defendants acts and omissions were so intentional, wanton and willful or made with such conscious disregard for the rights and safety of Plaintiffs that has a great probability of causing substantial harm such that punitive damages are awardable.

#### **TWELFTH CAUSE OF ACTION**

152. For Plaintiffs' twelfth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 151 inclusive as if the same were fully restated herein, and further state that:

153. Defendants misrepresented and/or concealed from Plaintiffs that no appreciable market existed for the resale of Plaintiffs' right, title and interests in the resort Product facilities and/or Plaintiffs' membership interests.

154. Defendants made such misrepresentations and/or concealments of material fact to Plaintiffs with knowledge of their falsity or with such utter disregard and recklessness toward the truth or falsity of the representations and/or concealments such that knowledge may be inferred.

155. Defendants intended to mislead Plaintiffs.

156. Plaintiffs reasonably, actually and justifiably relied upon said false and fraudulent representations and concealments by Defendants regarding a market for resale of Plaintiffs' right, title and interests in the resort Product facilities and/or Plaintiffs' membership interests.

157. The market for resale, and Plaintiffs ability and likelihood of resale, was material to the transaction between the parties.

158. Plaintiffs were, and continue to be, proximately and directly harmed and otherwise damaged by Defendants acts and omissions regarding use of the resort Product facilities.

159. Defendants acts and omissions were so intentional, wanton and willful or made with such conscious disregard for the rights and safety of Plaintiffs that has a great probability of causing substantial harm such that punitive damages are awardable.

#### **THIRTEENTH CAUSE OF ACTION**

160. For Plaintiffs' thirteenth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 159 inclusive as if the same were fully restated herein, and further state that:

161. Defendants attempted to collect and/or collected for additional fees from Plaintiffs when such fees were either frozen or permanently waived.

162. Defendants designated said fees under various names such as: maintenance fees, "points", special assessments, "use" charges, "energy" and other "surcharges," "ad valorem tax" charges, and re-sale and transfer penalties and charges.

163. No such charges, surcharges or tax existed.

164. Defendants designation of such fees under such names as specified above was an attempt to mislead and/or deceive Plaintiffs into paying such fees.

165. Such misrepresentations were material to the transactions between Plaintiffs and Defendants.

166. Defendants made such misrepresentations and/or concealments of material fact to Plaintiffs with knowledge of their falsity or with such utter disregard and recklessness toward the truth or falsity of the representations and/or concealments such that knowledge may be inferred.

167. Defendants intended to mislead Plaintiffs.

168. Plaintiffs reasonably, actually and justifiably relied upon such misrepresentations and either believed that they were required to make such payments, vote in favor of such payments and/or were legally responsible to pay such fees to their detriment.

169. Plaintiffs were, and continue to be, proximately and directly harmed and otherwise damaged by Defendants' acts and omissions regarding these fees and assessments.

170. Defendants acts and omissions were so intentional, wanton and willful or made with such conscious disregard for the rights and safety of Plaintiffs that has a great probability of causing substantial harm such that punitive damages are awardable.

#### **FOURTEENTH CAUSE OF ACTION**

171. For Plaintiffs' fourteenth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 170 inclusive as if the same were fully restated herein, and further state that:

172. Defendants misrepresented and otherwise concealed the true cost and expenses of the attached Agreements to Plaintiffs.

173. Such misrepresentations and concealments of the true costs and expenses of the attached Agreements were material to the transactions between Plaintiffs and Defendants.

174. Defendants made such misrepresentations and/or concealments of material fact to Plaintiffs with knowledge of their falsity or with such utter disregard and recklessness toward the truth or falsity of the representations and/or concealments such that knowledge may be inferred.

175. Defendants intended to mislead Plaintiffs.

176. Plaintiffs reasonably, actually and justifiably relied upon such misrepresentations and concealments to their detriment.

177. Plaintiffs were, and continue to be, proximately and directly harmed and otherwise damaged by Defendants' acts and omissions.

178. Defendants acts and omissions were so intentional, wanton and willful or made with such conscious disregard for the rights and safety of Plaintiffs that has a great probability of causing substantial harm such that punitive damages are awardable.



### **FIFTEENTH CAUSE OF ACTION**

179. For Plaintiffs' fifteenth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 178 inclusive as if the same were fully restated herein, and further state that:

180. Defendants fraudulently induced Plaintiffs to enter into the Platinum Club Membership Agreement, attached as Exhibit 6, which did not provide any appreciable rights in addition to rights, title or interest already owned by Plaintiffs.

181. Defendants had the ability, under the Platinum Club Membership Agreement, attached as Exhibit 6, to amend the Rules and Regulations for use of the resort Product facilities in any manner at Defendants' sole discretion.

182. Defendants had the ability to amend the Rules and Regulations for use of the resort Product facilities to cause a default of the Platinum Club Membership Agreement, attached as Exhibit 6, by Plaintiffs.

183. Upon default of the Platinum Club Membership Agreement, attached as Exhibit 6,, Defendants had the right and ability to terminate Plaintiffs' right, title and interests in said Agreement and still collect or retain any and all sums due from or paid by Plaintiffs for the Platinum Club Membership Agreement.

184. The rights, title and interest of Plaintiffs in the Platinum Club Membership Agreement, attached as Exhibit 6, were illusory rights.

185. Plaintiffs ability to obtain valuable rights, title and interest not otherwise held by Plaintiffs was material to the Platinum Club Membership Agreement transaction.

186. Defendants made such misrepresentations and/or concealments of material fact to Plaintiffs with knowledge of their falsity or with such utter disregard and recklessness toward the truth or falsity of the representations and/or concealments such that knowledge may be inferred.

187. Defendants intended to mislead Plaintiffs.

188. Plaintiffs reasonably, actually and justifiably relied to their detriment upon such misrepresentations and concealments that they were to obtain valuable rights, title and interest by entering into the Platinum Club Membership Agreement.

189. Plaintiffs were, and continue to be, proximately and directly harmed and otherwise damaged by Defendants' acts and omissions.

190. Defendants acts and omissions were so intentional, wanton and willful or made with such conscious disregard for the rights and safety of Plaintiffs that has a great probability of causing substantial harm such that punitive damages are awardable.

#### **SIXTEENTH CAUSE OF ACTION**

191. For Plaintiffs' sixteenth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 190 inclusive as if the same were fully restated herein, and further state that:

192. Defendants agreed to freeze all billing fees and assessments at the current rate by Exhibit 4 and agreed to permanently waive and otherwise eliminate any and all fees and assessments by Exhibit 6.

193. Defendants continued to attempt to collect and/or collected for additional maintenance, assessments and other fees from Plaintiffs in excess of the agreed frozen amount after entering into the agreement with Plaintiffs to freeze such amounts.

194. Defendants continued to attempt to collect and/or collected for additional maintenance, assessments and other fees from Plaintiffs after entering into the agreement with Plaintiffs to permanently waive all maintenance, assessments and other fees.

195. Defendants breached their contract with Plaintiffs by: (a) requiring Plaintiffs to pay fees and charges beyond the contracted amount; (b) requiring Plaintiffs to pay fees and charges when the contracted amount was set at zero; (c) creating or re-naming fees and charges beyond those contracted for by Plaintiffs; and (d) billing, charging and exercising collection efforts to obtain fees and charges from Plaintiffs which were not authorized by contract.

196. Defendants' actions were a breach of the contract between Plaintiffs and Defendants which proximately and directly caused harm to Plaintiffs.

### **SEVENTEENTH CAUSE OF ACTION**

197. For Plaintiffs' seventeenth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 196 inclusive as if the same were fully restated herein, and further state that:

198. Defendants and Plaintiffs entered into a contract and subsequent contract modifications culminating in a modification to their agreement in 2003. Exhibits 1, 4 and 6.

199. Defendants breached the agreement with Plaintiffs by the following:

(a) failing to build, maintain and make available the resort Product facilities for Plaintiffs' use as contracted and represented by Defendants; and

(b) failing to provide the resort Product facilities in a form, standard, quality, grade and style as represented and contracted; and

(c) unreasonably amending the rules which govern use of the resort Product facilities, or add or delete amenities to/from the resort Product facilities without using its best efforts to promptly provide equal or similar amenities for any amenity it removes from the resort Product facilities; and

(d) selling more memberships than the resort Product facilities could accommodate thereby preventing Plaintiffs from utilizing the resort Product facilities in the manner contracted.

200. As a direct and proximate result thereof, Plaintiffs were proximately and directly harmed and otherwise damaged.

### **EIGHTEENTH CAUSE OF ACTION**

201. For Plaintiffs' eighteenth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 200 inclusive as if the same were fully restated herein, and further state that:

202. Exhibits 1, 4 and 6 all contain acceleration clauses allowing Defendants to accelerate the entire principal balance together with all finance charges, dues accrued and interest.

203. Exhibits 1, 4 and 6 are in violation of Ohio Retail Installment Sales Act R.C. §§1317.06(C).

204. Plaintiffs have been proximately and directly harmed by such violation.

### NINETEENTH CAUSE OF ACTION

205. For Plaintiffs' nineteenth cause of action, plaintiffs restate each and every, all and singular, the averments and allegations contained in paragraphs 1 through 204 inclusive as if the same were fully restated herein, and further state that:

206. Defendants engaged in a systematic, predatory scheme of selling illegal timeshares and "memberships" beginning in 1989 which Defendants then modified to a "Priority Gold Membership" with subsequent modification agreements which Defendants then changed to a "Platinum Club Membership."

207. Defendants entire pattern and practice has been to defraud unsophisticated persons, as consumers, by selling interests of one sort or another in the resort Product facilities.

208. Defendants defrauded Plaintiffs Carl and Gerri Gordon of \$10,221.20 in August 1989, \$2495 in September, 1992, \$495 in February, 1994, \$4000 in March, 2003 and numerous other amounts for fees, charges and assessments.

209. Defendants breached their duties and implied warranties of good faith and fair dealing and other fiduciary duties to Plaintiffs.

188. Plaintiffs reasonably, actually and justifiably relied to their detriment upon such representations and duties that they were to obtain valuable rights, title and interest by entering into the Platinum Club Membership Agreement.

189. Plaintiffs were, and continue to be, proximately and directly harmed and otherwise damaged by Defendants' wrongful acts and omissions.

190. Defendants acts and omissions were so intentional, wanton and willful or made with such conscious disregard for the rights and safety of Plaintiffs that has a great probability of causing substantial harm such that punitive damages are awardable.

**WHEREFORE**, Plaintiffs pray for:

1. Class action status determination;
2. Judgment against Defendants, jointly and severally, in an amount in excess of \$25,000;
3. Costs and reasonable attorneys fees pursuant to R.C. §§1345.09(F) and common law;

4. A declaration that Defendants' acts and practices defined and complained of herein are unfair, deceptive and otherwise unconscionable and a permanent injunction against the acts and practices so found to be unfair, deceptive and unconscionable pursuant to R.C. §1345.09(D);
5. An award of punitive damages in an amount in excess of \$25,000;
6. An award of treble damages pursuant to R.C. §§1345.09(B) if no class action is determined;
7. Such other and appropriate relief as this Court may determine.

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D. Jeffery Rengel (Bar#0029069)  
Thomas R. Lucas (Bar#0071916)  
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JURY TRIAL DEMANDED

Plaintiff hereby demands trial by jury on all issues triable to a jury.

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D. Jeffery Rengel (Bar#0029069)