

**FILED**

**FEB 06 2015**

EL DORADO CO. SUPERIOR COURT  
BY Y. RUI  
(DEPUTY CLERK)

Assigned to Judge  
STEVEN C. BAILEY

**FEB 06 2015**

**FOR ALL PURPOSES**

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9 DIAMOND RESORTS TAHOE BEACH & SKI  
10 DEVELOPMENT, LLC, DIAMOND RESORTS U.S.  
11 COLLECTION MEMBERS ASSOCIATION, and  
12 DIAMOND RESORTS CALIFORNIA  
13 COLLECTION MEMBERS ASSOCIATION

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF EL DORADO

16 Case No.: SC20150025

17 DIAMOND RESORTS TAHOE BEACH &  
18 SKI DEVELOPMENT, LLC, a Delaware  
19 limited liability company; DIAMOND  
20 RESORTS U.S. COLLECTION MEMBERS  
21 ASSOCIATION, a Delaware non-profit  
22 corporation; and DIAMOND RESORTS  
23 CALIFORNIA COLLECTION MEMBERS  
24 ASSOCIATION, a Delaware non-profit  
25 corporation,

26 Plaintiffs,

27 v.

28 THE TAHOE BEACH AND SKI CLUB  
OWNERS ASSOCIATION, a California non-  
profit corporation; ALFRED FONG; JACOB  
BERCU; SEDRIC KETCHUM; and DOES  
ONE through TEN, inclusive,

Defendants.

**PLAINTIFFS' VERIFIED COMPLAINT  
FOR:  
(1) DECLARATORY RELIEF;  
(2) INJUNCTIVE RELIEF;  
(3) BREACH OF FIDUCIARY DUTY;  
AND  
(4) APPOINTMENT OF RECEIVER**

**By Fax**

29 Plaintiffs DIAMOND RESORTS TAHOE BEACH & SKI DEVELOPMENT, LLC  
30 ("Tahoe Development"), DIAMOND RESORTS U.S. COLLECTION MEMBERS  
31 ASSOCIATION (the "U.S. Collection Association"), and DIAMOND RESORTS CALIFORNIA  
32 COLLECTION MEMBERS ASSOCIATION (the "California Collection Association")  
33 (collectively, "Plaintiffs") allege as follows for their Verified Complaint against Defendants THE  
34 TAHOE BEACH AND SKI CLUB OWNERS ASSOCIATION (the "Association"), ALFRED

BAKER & HOSTETLER LLP  
ATTORNEYS AT LAW  
LOS ANGELES

1 FONG ("Fong"), JACOB BERCU ("Bercu"), and SEDRIC KETCHUM ("Ketchum") (Fong,  
2 Bercu, and Ketchum are collectively referred to herein as the "Defendant Board Members"):

3 **THE PARTIES**

4 1. Tahoe Development is a Delaware limited liability company with its principal  
5 place of business in Las Vegas, Nevada.

6 2. The U.S. Collection Association is a non-profit Delaware corporation with its  
7 principal place of business in Las Vegas, Nevada.

8 3. The California Collection Association is a non-profit Delaware corporation with  
9 its principal place of business in Las Vegas, Nevada.

10 4. Upon information and belief, the Association is a California non-profit corporation  
11 that was created to operate the Tahoe Beach & Ski Club timeshare resort located at 3601 Lake  
12 Tahoe Boulevard, South Lake Tahoe, California (the "Resort"). Plaintiffs further allege, upon  
13 information and belief, that the Association's principal place of business is located at the Resort.

14 5. Alfred Fong is an individual residing in Long Beach, California.

15 6. Jacob Bercu is an individual residing in Alamo, California.

16 7. Sedric Ketchum is an individual residing in Roseville, California.

17 8. Plaintiffs are unaware of the true names and capacities of Defendants sued as  
18 "DOES ONE through TEN, inclusive," and therefore sue those defendants by such fictitious  
19 names pursuant to California Code of Civil Procedure Section 474. Plaintiffs will subsequently  
20 amend this Complaint to allege their true names and capacities when they have been ascertained.  
21 Upon information and belief, each such fictitiously named defendant has, or claims to have, some  
22 right, title to, or interest in the subject matter of this action or is responsible in some manner for  
23 the occurrences herein alleged, and the harm alleged herein was proximately caused by the  
24 fictitiously named Defendants' actions or failures to act.

25 9. Each reference in this Complaint to "Defendants" refers to all of the defendants  
26 named herein, including those fictitiously named defendants, DOES ONE through TEN,  
27 inclusive.

28

1 VENUE

2 10. Venue is proper in El Dorado County, California pursuant to Section 392,  
3 California Code of Civil Procedure, because this is an action for the determination of interests in  
4 real property located at the Resort in South Lake Tahoe, El Dorado County, California.  
5 Additionally, substantially all of the acts and events giving rise to this action occurred in South  
6 Lake Tahoe, California.

7 11. All conditions precedent to the filing of this action have occurred, have been  
8 performed, or have been waived.

9 FACTS COMMON TO ALL CAUSES OF ACTION

10 12. The Resort is a timeshare resort on Lake Tahoe consisting of 140 units and other  
11 common areas within the Resort. Each unit comprises fifty-one (51) timeshare unit weeks. The  
12 unit weeks are known as "Vacation Plans."<sup>1</sup>

13 A. The Governing Documents and Governance of the Resort

14 13. The Resort operates and is subject to various governing documents, including the  
15 Declaration of Vacation Plan and the Amendments thereto, the Association's Bylaws, and its  
16 Rules and Regulations (collectively, the "Governing Documents"). True and correct copies of the  
17 Governing Documents are collectively attached hereto as **Exhibit "A."**

18 14. Pursuant to the First Amended and Restated Declaration of Vacation Plan  
19 ("Declaration of Vacation Plan"), the Association is responsible for managing and operating the  
20 units and common areas of the Resort, and for assessing and collecting annual and special  
21 assessments ("Assessments") from Vacation Plan owners ("Owners") at the Resort. Comp.  
22  
23  
24

25 <sup>1</sup> Vacation Plans comprise Original, Regular, and Biennial Vacation Plans as described in Article  
26 1.43 of the First Amended and Restated Declaration of Vacation Plan of the Tahoe Beach and Ski  
27 Club. Comp. Exh. A, p. 7 of the First Amended and Restated Declaration of Vacation Plan.  
28 While Original and Regular Vacation Plans entitle their owners to use of their respective unit for  
one week each year, Biennial Vacation Plans entitle their owners to use of their respective unit for  
one week every other year. All references to Vacation Plans herein include Original, Regular,  
and Biennial Vacation Plans, however, each Biennial Vacation Plan is counted as 1/2 of a  
Vacation Plan since, pursuant to the Declaration of Vacation Plan, Biennial Vacation Plans "carry  
exactly one-half the rights and obligations of an Original or Regular Vacation Plan." *Id.*

1 Exh. A, p. 14<sup>2</sup> of Declaration of Vacation Plan. The Association is responsible for operating the  
2 Resort as a timeshare resort.

3 15. The Association operates and manages the Resort through its Board of Directors  
4 (the "Board"). The Board is currently comprised of five individuals, including the Defendant  
5 Board Members. Comp. Exh. A, p. 8 of the Bylaws.

6 **B. The U.S. Collection, the California Collection, and Their Members**

7 16. The U.S. Collection Association and the California Collection Association  
8 (collectively, the "Collection Associations") are both associations consisting of thousands of  
9 members. Both the U.S. Collection Association and the California Collection Association offer  
10 their respective members the opportunity to reserve timeshare interests at timeshare resorts  
11 located throughout the United States.

12 17. Essentially, from time to time, Tahoe Development conveys timeshare interests to  
13 the trusts for the benefit of the Collection Associations in return for points representing an interest  
14 in the applicable Collection Association, and those timeshare interests are then held in the  
15 applicable trust by the trustee, First American Trust, FSB (the "Trustee").

16 18. The Collection Associations manage the beneficial ownership interests of Vacation  
17 Plans at the Resort held by the Trustee for the use and benefit of their respective members, and  
18 hold the power of direction over the Trustee with respect to the use and disposition of such  
19 Vacation Plans. The Collection Associations are billed Assessments for their respective Vacation  
20 Plans at the Resort, and have timely remitted payment of these Assessments to the Association.  
21 The Collection Associations are responsible for the payment of their respective Assessments to  
22 the Association and are also responsible for bringing and defending lawsuits relating to their  
23 respective Vacation Plans at the Resort on behalf of their members.

24 19. The U.S. Collection Association currently holds 315 and 1/2 Vacation Plans for  
25 the use and benefit of its members at the Resort.

26  
27  
28 <sup>2</sup> For ease of reference in locating the Declaration of Vacation Plan and the Bylaws, a blue-  
colored title page has been inserted in front of each of these documents found in Exhibit A.

1           20.    The California Collection Association currently holds 287 and 1/2 Vacation Plans  
2 for the use and benefit of its members at the Resort.

3           21.    As such, the Collection Associations have a considerable interest in the  
4 management and operations of the Resort as a whole, as well as in the vacation experience of all  
5 of the Collection Associations' respective members and guests who stay at the Resort.

6           **C.    The Association and Its Actions Regarding Delinquent Owners**

7           22.    Pursuant to the Governing Documents, the Association is responsible for levying,  
8 collecting, and enforcing Assessments from the Owners at the Resort and for operating,  
9 managing, and maintaining the Resort as a timeshare resort.

10          23.    Upon information and belief, when an Owner fails to timely pay its Assessments,  
11 it has been the standard practice of the Association to "lock out" such Owners until the  
12 delinquency is cured. Upon information and belief, prior to 2015 and at all other times relevant to  
13 the allegations herein, the Association did not have a standard practice or policy to foreclose upon  
14 or otherwise obtain ownership of delinquent Vacation Plans, nor did the Association generally  
15 undertake initial collection efforts against delinquent Owners, and any such efforts eventually  
16 ceased on legacy uncollected Owners.

17          24.    In addition to paying Assessments, Owners are separately responsible for paying  
18 annual property taxes relating to their respective Vacation Plans directly to El Dorado County.  
19 For Vacation Plans where the Owners fail to pay the applicable property tax, those Vacation  
20 Plans become eligible to be sold to the public at tax sales.

21          25.    Upon information and belief, prior to 2013, such Vacation Plans were sold to new  
22 Owners through tax sales. The Association would then begin collecting future Assessments from  
23 the new Owners.

24          26.    However, in 2013, upon realizing that Tahoe Development was purchasing  
25 Vacation Plans at the public tax sales, the Association, to preclude Tahoe Development from  
26 obtaining additional Vacation Plans at the Resort, began paying the delinquent property taxes on  
27 Vacation Plans in advance of the tax sales to preempt El Dorado County from conducting public  
28 tax sales for the delinquent weeks. The Association never budgeted for the significant expense of

1 paying delinquent property taxes for these Vacation Plans,<sup>3</sup> nor did the Association subsequently  
2 impose liens on or foreclose on such Vacation Plans in order to obtain ownership of these  
3 Vacation Plans.

4 27. The Association cured the delinquent property taxes on these Vacation Plans  
5 despite the fact that the Owners of these Vacation Plans were not paying their Assessments,  
6 despite the fact that the Association had no method to ensure the payment of past or future  
7 Assessments on these Vacation Plans, despite the fact that the Association was diverting funds  
8 needed for other important budgeted activities to this unbudgeted purpose, and despite the fact  
9 that the Association received absolutely nothing in return for payment of the delinquent taxes,  
10 other than furtherance of its goal of preventing Tahoe Development from acquiring additional  
11 Vacation Plans. Critically, upon information and belief, the Association's payment of the  
12 delinquent property taxes on these Vacation Plans was not part of any sort of comprehensive  
13 strategy by the Association to actually take ownership of these Vacation Plans and re-sell them to  
14 Owners that would be likely to pay future Assessments. Simply put, it provided no benefit to the  
15 Association and the Owners at the Resort.

16 28. These actions by the Association were designed solely to prevent Tahoe  
17 Development from purchasing additional Vacation Plans at the Resort and were taken at a known  
18 and obvious detriment to the Association and the Resort, i.e. the wasteful expenditure of the  
19 Association's money and forfeiture of what would otherwise be future collected maintenance  
20 fees. These actions also had the consequence of preventing purchasers, other than Tahoe  
21 Development, who may have purchased Vacation Plans at tax sales from doing so and precluding  
22 any possibility of Assessments being collected on those Vacation Plans.

23 29. Plaintiffs and Vacation Internationale, Inc. ("VI") (collectively, the "Block  
24 Owners"), in the aggregate, comprise approximately 21% of the Owners at the Resort.<sup>4</sup> Owners  
25

26 <sup>3</sup> The Association undertook to pay delinquent property taxes for these Vacation Plans at least in  
27 two consecutive years, 2013 and 2014. Thus, the Association lacks any justification for failing to  
28 budget for the 2014 expenditures.

<sup>4</sup> This is exclusive of the Vacation Plans owned by Tahoe Development that were acquired in  
December 2014, the ownership of which is a basis of certain allegations in this action.

1 other than the Block Owners are responsible for 100% of the Resort's bad debt. According to the  
2 audited Financial Statements of the Association for years ended 2012 and 2013, the bad debt at  
3 the Resort was \$340,998 and \$377,440, respectively. Upon information and belief, the audited  
4 bad debt at the Resort will be higher again in 2014. The Plaintiffs and VI make up a significant  
5 portion of the Owners who timely and dutifully pay their Assessments to the Association.  
6 Furthermore, the Block Owners remit their maintenance fees in a lump sum cash payment versus  
7 tendering fees due by using a credit card, which results in credit card fees to the Association.

8 30. The Association has, from time to time, taken ownership of Vacation Plans, mostly  
9 through deeds in lieu of foreclosure, when the Vacation Plans' Owners fail to pay Assessments or  
10 otherwise meet their obligations ("Association Owned Vacation Plans").

11 31. If the Association Owned Vacation Plans are not resold, then the Association, and  
12 the Owners, are forced to bear the burden of unpaid Assessments for such Vacation Plans.

13 32. Thus, the timely resale of Association Owned Vacation Plans to parties who will  
14 likely meet their obligations is in the best interest of all Owners to ensure that there are as many  
15 Assessment paying Owners as possible. Otherwise, each Vacation Plan owned by the  
16 Association leaves Vacation Plans without Owners to pay assessments, thereby reducing the  
17 funds available to the Association to properly manage the Resort or increasing the burden on the  
18 other Owners. Unpaid Assessments for various Vacation Plans cause the common burden of  
19 Assessments to be spread among fewer Owners, resulting in Assessments to Owners that are  
20 higher than they would otherwise be if the Association Owned Vacation Plans were sold to  
21 Assessment paying Owners.

22 33. As more and more Vacation Plans are owned by the Association, the Association  
23 and the Owners are required to take increased related risks associated with such ownership,  
24 including the risk of additional Owner defaults as a result of higher assessments, further  
25 accelerating Assessment increases and additional defaults. The Association also runs the risk of  
26 holding Vacation Plans available for rental in the marketplace in competition with other rental  
27 sources, making it increasingly difficult for the Association to effectively fulfill its core function  
28

1 of operating and maintaining the Resort as a timeshare resort as required by the Governing  
2 Documents.

3 **D. The Association Grants VRI, and its Affiliates, the Authority to Sell**  
4 **Association Owned Vacation Plans**

5 34. In 2004, the Association contracted with Vacation Resorts International, Inc.  
6 ("VRI"), a California corporation, to manage the Resort.

7 35. Additionally, in July of 2006, the Association entered into a Sales Management  
8 Agreement ("Sales Agreement") with VRI's affiliate, VRI Development & Sales ("VDS"). A  
9 true and correct copy of the Sales Agreement is attached hereto as **Exhibit "B."** According to the  
10 Sales Agreement, under the provision titled "Sale of Intervals," the Association expressly gave  
11 VDS the "exclusive right to: (1) All unsold timeshare units now owned, or which may become  
12 owned by the Association during the term of this Agreement." *See* Exh. B ¶ 3(b)(1).

13 36. On September 19, 2009, the Association further formalized VRI's, and its  
14 affiliates'; authority to sell Association Owned Vacation Plans on its behalf by, at a duly noticed  
15 and convened meeting of the Board, issuing a corporate resolution authorizing the execution and  
16 delivery of a limited power of attorney from the Association to VRI that authorized VRI to sell  
17 Association Owned Vacation Plans (the "Power of Attorney"). A true and correct copy of the  
18 Power of Attorney is attached hereto as **Exhibit "C."** Specifically, in the Power of Attorney, the  
19 Association granted VRI the power and authority to "sign all title and escrow documents and  
20 deeds of sale of the Association owned intervals on behalf of the Association." *See* Exh. C. Such  
21 authority granted under the Power of Attorney was granted until such time as it is revoked by the  
22 Association. *See* Exh. C.

23 37. For approximately five years after the execution of the Power of Attorney, VRI  
24 sold Association Owned Vacation Plans on behalf of the Association without issue or objection  
25 from the Association.

26 38. Indeed, the Association accepted the benefit of each and every sale of Association  
27 Owned Vacation Plans from September 2009 through December 2014. During that time, the  
28 Association never objected to any sale of an Association Owned Vacation Plan made by VRI and



1 always accepted the benefit – i.e., the proceeds of all such sales and the subsequent payment of  
2 Assessments by the new Owners – without question.

3 **E. The Association Announces Its Intent to Sell Additional Vacation Plans**

4 39. On September 27, 2014, at an annual meeting of Vacation Plan Owners at the  
5 Resort, the Board reaffirmed its commitment to sell Association Owned Vacation Plans, through  
6 VRI, to any and all Owners who were in good standing. The Board, in response to questions  
7 from Owners at the Resort who were interested in purchasing additional Vacation Plans,  
8 specifically directed VRI to sell Association Owned Vacation Plans to any and all Owners who  
9 were interested in purchasing such Vacation Plans. A true and correct copy of the Minutes of the  
10 September 27, 2014 Annual Meeting is attached hereto as **Exhibit “D.”**

11 40. Upon information and belief, at the time of the September 27, 2014 Annual  
12 Meeting, the Association owned approximately 250 to 300 Vacation Plans that it directed VRI to  
13 sell on its behalf.

14 41. Following the annual meeting of September 27, 2014, Frank Goeckel, a  
15 representative of Tahoe Development, contacted VRI to inquire about purchasing a number of the  
16 Association Owned Vacation Plans. Mr. Goeckel advised that Tahoe Development was  
17 interested in purchasing Association Owned Vacation Plans from VRI on the same terms afforded  
18 to other Owners. A true and correct copy of Mr. Goeckel’s November 24, 2014 email is attached  
19 hereto as **Exhibit “E.”**

20 42. Upon information and belief, on December 11, 2014, after VRI sold several  
21 Association Owned Vacation Plans on the Association’s behalf to Owners without issue or protest  
22 from the Association, consistent with Mr. Goeckel’s November 24, 2014 email, Tahoe  
23 Development purchased the remaining Association Owned Vacation Plans (the “241 1/2 Vacation  
24 Plans”) from VRI for an aggregate purchase price of \$228,200.

25 43. The check from Tahoe Development payable to the Association was deposited,  
26 cleared, and to the knowledge of Tahoe Development, was accepted by the Association.

27  
28

1           44.     Subsequent to Tahoe Development's purchase of the 241 1/2 Vacation Plans,  
2 Tahoe Development timely remitted its 2015 Assessments on these Vacation Plans in the total  
3 amount of \$139,187.78.

4           45.     During its purchase of the 241 1/2 Vacation Plans, Tahoe Development sought to  
5 confirm that VRI had the requisite authority to convey the 241 1/2 Vacation Plans on the  
6 Association's behalf. VRI represented that it had been duly authorized to convey Association  
7 Owned Vacation Plans, and at Tahoe Development's request, VRI presented the Power of  
8 Attorney to Tahoe Development.

9           46.     Subsequently, and as part of the closing on Tahoe Development's purchase of the  
10 241 1/2 Vacation Plans, Tahoe Development's title insurance company, First American Title  
11 Insurance Company ("First American"), notified Tahoe Development that it would only insure  
12 title to the 241 1/2 Vacation Plans if the Power of Attorney were reaffirmed by the Association.

13           47.     Tahoe Development notified VRI that it would not purchase the 241 1/2 Vacation  
14 Plans unless, as First American requested, the Power of Attorney were reaffirmed.

15           48.     Thereafter, upon information and belief, the Association reaffirmed the Power of  
16 Attorney. VRI subsequently presented Tahoe Development with an Affidavit of Continuing  
17 Authority executed on behalf of the Association declaring that the Power of Attorney was "in full  
18 force and affect (sic), and has not been withdrawn or rescinded." A true and correct copy of the  
19 Affidavit of Continuing Authority executed on behalf of the Association is attached hereto as  
20 **Exhibit "F."**

21           49.     With the Power of Attorney having been reaffirmed, Tahoe Development closed  
22 on the purchase of the 241 1/2 Vacation Plans from VRI and received title to the 241 1/2  
23 Vacation Plans via Grant Deed on December 11, 2014 (the "Grant Deed"). The Grant Deed was  
24 recorded on December 22, 2014. A true and correct copy of the Grant Deed is attached hereto as  
25 **Exhibit "G."**

26           **F.     The Association's Repudiation of the Grant Deed**

27           50.     On January 9, 2015, the President of the Board, Alfred Fong, wrote a letter to  
28 David Palmer, the Chief Executive Officer of the parent of Tahoe Development, advising that the

1 Association "does not recognize the Grant Deed as a valid conveyance and will not recognize the  
2 transfers of the intervals in its records for any purpose, including reservations." A true and  
3 correct copy of Mr. Fong's January 9, 2015 letter is attached hereto as **Exhibit "H."**

4 51. On January 16, 2015, Tahoe Development and the Collection Associations  
5 responded to Mr. Fong's letter, explaining that Tahoe Development had purchased the 241 1/2  
6 Vacation Plans "from the Association through the Association's duly authorized agent on the  
7 terms established by the Association and timely tendered both the purchase price and the related  
8 2015 common expense assessments to the Association," and that, as such, the 241 1/2 Vacation  
9 Plans were the lawful property of Tahoe Development. Tahoe Development and the Collection  
10 Associations advised that the Association would be liable for damages, including lost rental  
11 revenues and lost sales profits and attorneys' fees, resulting from the Association's repudiation of  
12 the Grant Deed, and that the Association's inexplicable refusal to accept the funds tendered for  
13 the purchase of the 241 1/2 Vacation Plans and the associated maintenance fees constituted a  
14 breach of the fiduciary duty owed by the Association to the Owners and the Resort because the  
15 Association was rejecting funds for Association Owned Vacation Plans without any immediate  
16 ability to generate revenue from the Association Owned Vacation Plans. Tahoe Development  
17 also demanded that the Association rescind its repudiation of the Grant Deed and lift its block on  
18 Tahoe Development's usage of the 241 1/2 Vacation Plans on or before the close of business on  
19 January 20, 2015. A true and correct copy of Plaintiffs' January 16th response letter is attached  
20 hereto as **Exhibit "I."**

21 52. Tahoe Development wrote a subsequent letter to the Association on January 29,  
22 2015, confirming that it would initiate the instant lawsuit if the Association did not acknowledge  
23 the validity of the Grant Deed.

24 53. As of the date of the filing of this Complaint, the Association has refused to  
25 rescind its repudiation of the Grant Deed or allow Tahoe Development use of the 241 1/2  
26 Vacation Plans.<sup>5</sup> This continuous and deliberate interference with Tahoe Development's property  
27

28 <sup>5</sup> Notably, the Association has not questioned the validity of any other sale of Association Owned  
Vacation Plans by VRI to any other Owner besides Tahoe Development.

1 rights has irreparably harmed Tahoe Development. Moreover, the Association's actions in  
2 dereliction of its fiduciary duty, including its refusal to recognize the valid sale of the 241 1/2  
3 Vacation Plans by its authorized agent, VRI, have damaged and will continue to damage all  
4 Owners, including Tahoe Development and the Collection Associations.

5 54. Tahoe Development and the Collection Associations have hired the law firm of  
6 Baker & Hostetler LLP and are obligated to pay it a reasonable fee for its services.

7 **FIRST CAUSE OF ACTION**  
8 **DECLARATORY RELIEF**

9 **(By Plaintiffs Against Defendants The Association and Does One through Ten)**

10 55. Tahoe Development realleges and incorporates paragraphs 1 to 54 of this  
11 Complaint herein as if set forth in full by this reference.

12 56. This is an action for declaratory relief pursuant to Section 1060, California Code  
13 of Civil Procedure.

14 57. A dispute has arisen and an actual and present controversy now exists as between  
15 Tahoe Development and the Association pertaining to the ownership of and the rights in the 241  
16 1/2 Vacation Plans and the validity of the Grant Deed.

17 58. Tahoe Development contends that it is the lawful owner of the 241 1/2 Vacation  
18 Plans and that the Grant Deed executed and delivered by VRI to Tahoe Development on behalf of  
19 the Association was effective to immediately transfer title to the 241 1/2 Vacation Plan from the  
20 Association to Tahoe Development.

21 59. Tahoe Development further contends that the Grant Deed is valid as it satisfies all  
22 requirements of an effective deed, and is binding on the Association because it was executed by  
23 the Association's duly authorized agent, VRI, who specifically had written authority to "sign all  
24 title and escrow documents and deeds of sale of the Association owned intervals on behalf of the  
25 Association." See Exhs. D and G.

26 60. The Association contends that the Grant Deed was not a valid conveyance, refuses  
27 to recognize Tahoe Development's interests in the 241 1/2 Vacation Plans, and is currently  
28 unlawfully refusing to allow Tahoe Development to use the 241 1/2 Vacation Plans.

1           61.     The Grant Deed clearly meets the requirements of a valid deed, as it is in writing,  
2 signed by VRI – an authorized agent of the Association – and was delivered to and accepted by  
3 Tahoe Development.

4           62.     Within the Grant Deed, it is clear that:

- 5           •       The Association is conveying title to the 241 1/2 Vacation Plans to Tahoe  
6                    Development, as grantee;
- 7           •       Tahoe Development is receiving title to the 241 1/2 Vacation Plans from  
8                    the Association, as grantor; and
- 9           •       The legal description for each of the specifically transferred Vacation Plans  
10                   is attached to the Grant Deed.

11           63.     To the extent that the Association challenges VRI's authority to convey the 241  
12 1/2 Vacation Plans to Tahoe Development, not only did VRI have express written authority to do  
13 so pursuant to the Sales Agreement and the Power of Attorney, but in November of 2014, the  
14 Association reaffirmed that the Power of Attorney was "in full force and affect (sic), and has not  
15 been withdrawn or rescinded." Exh. F. Additionally, the Association expressly authorized VRI to  
16 sell Association Owned Vacation Plans at the September 2014 meeting of the Owners.

17           64.     Based on the foregoing, Tahoe Development is entitled to a declaration that:

- 18           •       The Grant Deed is valid and enforceable;
- 19           •       The Grant Deed properly and effectively conveyed ownership of the 241  
20                    1/2 Vacation Plans to Tahoe Development;
- 21           •       The Association must immediately cease and desist from unlawfully  
22                    preventing Tahoe Development from using the 241 1/2 Vacation Plans; and
- 23           •       Tahoe Development is entitled to an award of its attorneys' fees, costs, and  
24                    expenses incurred in response to the Association's wrongful conduct  
25                    described herein in an amount to be determined by the Court.

1 **SECOND CAUSE OF ACTION**  
2 **PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**  
3 **(By Plaintiffs Against Defendants The Association and Does One through Ten)**

4 65. Tahoe Development realleges and incorporates paragraphs 1 to 54 of this  
5 Complaint herein as if set forth in full by this reference.

6 66. This is an action for preliminary and permanent injunctive relief pursuant to  
7 California Code of Civil Procedure Section 526.

8 67. The Association authorized VRI, and its affiliates, to sell Association Owned  
9 Vacation Plans. Not only did the Association expressly do so in writing when it executed the  
10 Power of Attorney and Sales Agreement, but the Association's conduct in continuously accepting  
11 the benefit of sales of Association Owned Vacation Plans shows that VRI had full authority to  
12 make such sales.

13 68. Additionally, the Association reaffirmed in a public meeting its commitment to  
14 sell Association Owned Vacation Plans through VRI, specifically including the 241 1/2 Vacation  
15 Plans at issue, at the September 27, 2014 annual meeting of Vacation Plan Owners.

16 69. Based upon the announcement at the 2014 annual meeting, Tahoe Development  
17 purchased the 241 1/2 Vacation Plans from VRI and tendered both the purchase price set by the  
18 Association for these Vacation Plans, as well as payment in full of the related 2015 Assessments.

19 70. The purchase price was – at least initially – accepted by the Association.

20 71. Nevertheless, the Association now refuses to recognize Tahoe Development's  
21 ownership of and rights to the 241 1/2 Vacation Plans, and has continued to interfere with such  
22 ownership and rights by unlawfully preventing Tahoe Development from using the 241 1/2  
23 Vacation Plans, including refusing to accept reservations for any of the 241 1/2 Vacation Plans.

24 72. As a result of the aforesaid transfer of ownership of the 241 1/2 Vacation Plans to  
25 Tahoe Development via the Grant Deed, the Association should be prohibited from unlawfully  
26 preventing Tahoe Development from using and enjoying the 241 1/2 Vacation Plans.

27 73. Tahoe Development is suffering irreparable damages as a result of the  
28 Association's continuous interference with Tahoe Development's presumptively unique real  
property rights.



1 sold at tax sales solely in an effort to prevent Tahoe Development from purchasing such Vacation  
2 Plans at such tax sales, despite the fact that the Association had no method to ensure the payment  
3 of past or future Assessments on these Vacation Plans, despite the fact that the Association was  
4 diverting funds needed for other important budgeted activities to this unbudgeted purpose, despite  
5 the fact that the Association received absolutely nothing in return for payment of the delinquent  
6 taxes, other than furtherance of its goal of preventing Tahoe Development from acquiring  
7 additional Vacation Plans, and despite the fact that Tahoe Development has dutifully and timely  
8 remitted any and all Assessments owed on its Vacation Plans.

9       80. The Association and the Defendant Board Members have also violated their  
10 fiduciary duties by baselessly refusing to accept the funds tendered by Tahoe Development for  
11 the purchase of the 241 1/2 Vacation Plans and the funds tendered by Tahoe Development for the  
12 2015 maintenance fees for these Vacation Plans, especially since the Association has no  
13 immediate or future prospects of collecting these funds from another source while maintaining the  
14 Resort as a timeshare project.

15       81. Finally, the Association and the Defendant Board Members also appear to have  
16 adopted amendments to the Governing Documents designed solely to improperly and unlawfully  
17 discriminate against Block Owners despite the fact that these Block Owners timely and dutifully  
18 pay their Assessments.

19       82. These discriminatory acts – mostly directed at the Block Owners – have been  
20 taken despite the full and timely remittance of Assessments by the Plaintiffs.

21       83. Such actions taken by the Association and the Defendant Board Members  
22 constitute a willful and wanton mismanagement of the Resort's finances and a gross dereliction of  
23 the fiduciary duties owed by the Association and the Defendant Board Members to the Owners of  
24 the Resort, including Tahoe Development and the Collection Associations, and have unjustifiably  
25 increased the risks and burdens on the Association to effectively fulfill its core function of  
26 operating and maintaining the Resort as a timeshare resort as required by the Governing  
27 Documents.





1 from purchasing such Vacation Plans, even though Tahoe Development has dutifully and timely  
2 remitted any and all Assessments owed on its Vacation Plans.

3 91. The Association has also mismanaged the finances of the Resort by refusing to  
4 accept the funds paid by Tahoe Development for the purchase of the 241 1/2 Vacation Plans and  
5 the 2015 maintenance fees for these Vacation Plans, especially since the Association has no  
6 immediate or future prospects of collecting these funds from another source. The Association has  
7 refused to accept these funds without justification in law or fact.

8 92. The Association's conduct has decreased the revenue that the Association should  
9 be using to properly manage and operate the Resort. Ultimately, this willful and wanton  
10 mismanagement of the finances of the Resort will result in unjustifiably higher assessments and  
11 greater risks to Owners, including Tahoe Development and the Collection Associations.

12 93. The Association's actions have also unjustifiably increased the risks and burdens  
13 on the Association to effectively fulfill its core function of operating and maintaining the Resort  
14 as a timeshare resort as required by the Governing Documents.

15 94. Given the high rate of delinquency at the Resort, especially when considered  
16 without Assessments paid by the Block Owners, such actions by the Association, through the  
17 Board, appear to be nothing short of dealing solely in self-interest by the Defendant Board  
18 Members without consideration for the Association, the Resort, and the Owners.

19 95. Based on the unlawful and indefensible conduct of the Association and Defendant  
20 Board Members described herein, Tahoe Development and the Collection Associations request  
21 that a receiver be appointed to take charge of, manage, and administer the affairs of the  
22 Association. The appointment of a Receiver is also necessary to ensure that the Association is  
23 properly managed on a prospective basis.

24 96. The Receiver would relieve the Association and Defendant Board Members from  
25 their duties and obligations and would properly manage the finances of the Resort until such time  
26 as the Court deems it just and proper to discharge the Receiver. The Receiver would also fully  
27 investigate all past financial decisions of the Association to ensure that the Association has  
28 complied with all of its duties and obligations to the Owners of the Resort, and to ensure that the

1 Board has not engaged in past acts of self-dealing. Finally, the Receiver would relieve the Board  
2 of all decisions regarding sales of Association Owned Vacation Plans and would develop a plan  
3 for acquiring and selling Vacation Plans from delinquent Owners.

4 97. Pursuant to Sections 564(b)(1) and (9), California Code of Civil Procedure, the  
5 Court may appoint a receiver in "an action . . . between partners or others jointly owning or  
6 interested in any property or fund . . . where it is shown that the property or fund is in danger of  
7 being lost, removed, or materially injured" and "[i]n all other cases where necessary to preserve  
8 the property or rights of any party."

9 98. The above-described conduct of the Association in expending unbudgeted  
10 Association funds to prevent certain Vacation Plans from being sold at tax sales solely in an effort  
11 to prevent Tahoe Development from purchasing such Vacation Plans, and in refusing to recognize  
12 the sale of Association Owned Vacation Plans made by its authorized agent to Tahoe  
13 Development, shows that Resort property is in danger of being materially injured.

14 99. The Association's conduct is likely to damage the Resort property by increasing  
15 the risks and burdens on Owners of maintaining and repairing the Resort property.

16 100. The Association's actions are particularly likely to damage the Resort property  
17 given that the Association is refusing to recognize the sale of Association Owned Vacation Plans  
18 to a well-capitalized Owner, Tahoe Development, at a time when there is already a high  
19 percentage of Owners delinquent in the payment of required Assessments, and when the  
20 Association has no immediate prospects of collecting the funds for the purchase of the 241 1/2  
21 Vacation Plans, or the related ongoing common expense Assessments, from another source.

22 101. The appointment of a receiver is also necessary to preserve the property rights of  
23 Tahoe Development, as the Association has repudiated the Grant Deed and is continuously  
24 interfering with Tahoe Development's use of the 241 1/2 Vacation Plans.

25 102. Based on the foregoing, Tahoe Development and the Collection Associations are  
26 entitled to the appointment of a receiver to take charge of, manage, and administer the affairs of  
27 the Association.  
28

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants as follows:

1. That the Court enter a preliminary injunction and a permanent injunction enjoining the Association and all persons acting in concert with the Association from:

- Doing, threatening, or attempting to do, or causing to be done, either directly or indirectly, by any means, methods or devices, any acts that repudiate the Grant Deed or otherwise challenge its validity;
- Doing, threatening, or attempting to do, or causing to be done, either directly or indirectly, by any means, methods or devices, any acts that restrict Tahoe Development's use of the 241 1/2 Vacation Plans; and
- Refusing to accept reservations for any of the 241 1/2 Vacation Plans.

2. For a judicial declaration that:

- (a) the Grant Deed is valid and effectively transferred ownership of the 241 1/2 Vacation Plans to Tahoe Development; and
- (b) the Association immediately cease and desist from unlawfully preventing Tahoe Development from using the 241 1/2 Vacation Plans.

3. For damages and interest thereon in an amount to be determined at trial;

4. For the appointment of a Receiver to immediately take control of the duties and obligations of the Association, relieving the Board of its duties and obligations, and to ensure the continued financial stability of the Association and the proper acquisition and sale of delinquent Vacation Plans;

5. For costs of suit herein incurred, including, but not limited to, reasonable attorneys' fees, expert witness fees, and costs;

6. For prejudgment interest;

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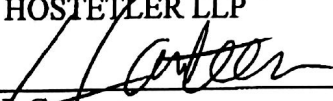
1           7.     For post-judgment interest at the legal rate on all sums found to be due to  
2 Plaintiffs; and

3           8.     For such other and further relief as the Court may deem proper, just and equitable.  
4

5 Dated: February 6, 2015

Respectfully submitted,

BAKER & HOSTETLER LLP

By:   
Lisa I. Carleen

Attorney for Plaintiffs  
DIAMOND RESORTS TAHOE BEACH &  
SKI DEVELOPMENT, LLC, DIAMOND  
RESORTS U.S. COLLECTION MEMBERS  
ASSOCIATION, and DIAMOND RESORTS  
CALIFORNIA COLLECTION MEMBERS  
ASSOCIATION

BAKER & HOSTETLER LLP  
ATTORNEYS AT LAW  
LOS ANGELES

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VERIFICATION

I, Kathleen Wheeler, state:

I am the Secretary Treasurer of Diamond Resorts U.S. Collection Members Association, Plaintiff in the above-entitled action, and I am authorized to make this verification on its behalf.

I have read the foregoing PLAINTIFFS' VERIFIED COMPLAINT FOR: (1) DECLARATORY JUDGMENT; (2) INJUNCTIVE RELIEF; (3) BREACH OF FIDUCIARY DUTY; AND (4) APPOINTMENT OF RECEIVER ("Complaint"), and know its contents. The matters stated in the Complaint are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 5, 2015, at Las Vegas, Nevada.



\_\_\_\_\_  
Kathleen Wheeler

BAKER & HOSTETLER LLP  
ATTORNEYS AT LAW  
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VERIFICATION

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I, Jason Toste, state:

I am the Vice Present of Diamond Resorts California Collection Members Association, Plaintiff in the above-entitled action, and I am authorized to make this verification on its behalf.

I have read the foregoing PLAINTIFFS' VERIFIED COMPLAINT FOR: (1) DECLARATORY JUDGMENT; (2) INJUNCTIVE RELIEF; (3) BREACH OF FIDUCIARY DUTY; AND (4) APPOINTMENT OF RECEIVER ("Complaint"), and know its contents. The matters stated in the Complaint are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 6, 2015, at Las Vegas, Nevada.

  
\_\_\_\_\_  
Jason Toste

BAKER & HOSTETLER LLP  
ATTORNEYS AT LAW  
LOS ANGELES

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**VERIFICATION**

I, Frank Goeckel, state:

I am the Authorized Representative of Diamond Resorts Tahoe Beach & Ski Development, LLC. Plaintiff in the above-entitled action, and I am authorized to make this verification on its behalf.

I have read the foregoing PLAINTIFFS' VERIFIED COMPLAINT FOR: (1) DECLARATORY JUDGMENT; (2) INJUNCTIVE RELIEF; (3) BREACH OF FIDUCIARY DUTY; AND (4) APPOINTMENT OF RECEIVER ("Complaint"), and know its contents. The matters stated in the Complaint are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 6, 2015, at Windermere, Florida.



Frank Goeckel

BAKER & HOSTETLER LLP  
ATTORNEYS AT LAW  
LOS ANGELES

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