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Review Clerk: Karen Frederick

District Court, Eagle County, Colorado
P. O. Box 597, Eagle, Colorado 81631

Plaintiffs:

CHERYL M. FOLEY, THOMAS WILNER, JANE WILNER,
CHARLES JACKSON and MARY JACKSON, individually
and on behalf of all others similarly situated,

Defendants:

CORDILLERA GOLF CLUB, LLC, a Delaware limited
liability company; WFP CORDILLERA, LLC, a Delaware
limited liability company; DAVID A. WILHELM,
individually; and PATRICK WILHELM, individually

Attorney for Plaintiffs
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COURT USE ONLY

Case Number: 2011CV552

Div./Ctrm.:

AMENDED VERIFIED CLASS ACTION COMPLAINT

Plaintiffs, through counsel, bring this class action under Col. R. Civ. P. 23 on behalf of Members of The Club at Cordillera (the "Club"), and complain against defendants as follows:

FIRST CLAIM FOR RELIEF
(Breach of Contract)

1. Plaintiff Cheryl M. Foley is a resident of Edwards, Colorado.
2. Plaintiff Thomas Wilner is a resident of Washington, D.C.
3. Plaintiff Jane Wilner is a resident of Washington, D.C.
4. Plaintiff Charles Jackson is a resident of Lincolnshire, Illinois.
5. Plaintiff Mary Jackson is a resident of Lincolnshire, Illinois.

6. Upon information and belief, defendant Cordillera Golf Club, LLC (“CGC”) is a Delaware limited liability company with its principal place of business in Edwards, Colorado.

7. Upon information and belief, defendant WFP Cordillera, LLC (“WFP”) is a Delaware limited liability company with its principal place of business in Edwards, Colorado.

8. Upon information and belief, defendant David A. Wilhelm resides in Basalt, Colorado.

9. Upon information and belief, defendant Patrick Wilhelm at pertinent times resided in Edwards, Colorado.

10. CGC owns and operates The Club at Cordillera (the “Club”). The Club is comprised of four golf courses and the “Trailhead” and “Summit” Facilities. The Mountain, Summit and Valley Courses are each 18-hole championship golf courses with clubhouses, locker rooms, golf shops and grille rooms. The Mountain and Valley Course facilities each also have restaurants. The Valley Course facilities include two tennis courts. The Short Course is a ten-hole golf course with a driving range and putting greens. The Trailhead Facility is comprised of a family lodge including a great room, exercise area, locker rooms and swimming pools. The Summit Club Facility includes a meeting room, an exercise room, two tennis courts and a swimming pool and jacuzzi. The foregoing are referred to collectively as the “Club Facilities.”

11. Upon information and belief, WFP is the manager and sole member of CGC.

12. Upon information and belief, David A. Wilhelm and Patrick Wilhelm are members of WFP and share management responsibilities for the Club. David A. Wilhelm and Patrick Wilhelm are referred to collectively as “the Wilhelms.”

13. Plaintiffs are members of the Club. Plaintiffs and all members of the Club (“Club Members”) paid membership deposits upon joining the Club. Upon acceptance into the Club, each Club Member was required to sign an agreement (the “Membership Agreement”) and deposit funds in amounts as large as \$175,000 (“Membership Deposits”) with the promise and expectation of being provided the highest quality amenities and use of all Club Facilities. Pursuant to membership documents, the Membership Deposits are refundable and as such are liabilities of defendants and, upon information and belief, exceed \$100 million.

14. The rights of Club Members are stated in the “Membership Plan,” which the Club Members relied upon in joining the Club and paying the substantial deposits that were required for them to join. The Club and the Club Members are bound by the terms and conditions of the Membership Plan.

15. The Membership Plan explicitly provides that Club Members, such as plaintiffs “are entitled to use the Club Facilities, including the Mountain Course, Summit and Valley Courses and the Short Course an unlimited number of times each year...”

16. On or about June of 2009, the Wilhelms and entities under their direction and control acquired ownership of the Club and the Club Facilities.

17. On July 30, 2010, David Wilhelm sent Club Members a letter entitled "Restructuring the Club at Cordillera" in which he announced that he was losing money operating the Club and would "immediately" take "steps to lessen the shortfall." He announced that he was planning a 25 percent reduction of expenditures for 2011.

18. The Cordillera Property Owners Association ("CPOA") appointed an informal group of property owners to study the alternatives that were available and to explore solutions with the Wilhelms. On October 20, 2010 this group incorporated as the Cordillera Transition Corporation ("CTC").

19. In December of 2010, the Wilhelms indicated to the CTC that they did not intend to open all the golf courses and Club Facilities during 2011 unless they were assured of sufficient revenues, and that they intended to open only the number of golf courses and other Club Facilities in 2011 that they believed they could afford.

20. Annual membership dues for 2011 were payable in February, 2011. Before paying those dues, Club Members sought assurances from the Wilhelms and CGC that, in accordance with the Membership Plan, all of the golf courses and other Club Facilities would be open for use in 2011.

21. On January 10, 2011, CGC sent an e-mail to Club Members expressly providing those assurances. The e-mail stated, among other things, as follows:

"2011 Dues: Club Facilities Open in 2011.

This has been a hot topic over the past couple of months. Here is our official position on the subject.....

"(a) We will open and provide Members access to all four golf courses, clubhouses and related facilities in 2011. We understand this has been a concern for many of you and we trust that this will allay any fears or reservation you may have. This serves as a response to the Members who have requested assurances of services.

"(b) The annual dues for 2011 will be \$18,000 for each golf membership.... As in years past, we are offering an early payment discount....[and] the golf Annual Dues are \$13,800 if the Member pays before February 4, 2011."

The "discounted" golf member dues of \$13,800 represented a 25 percent increase over the 2010

dues. The e-mail further assured Club Members as follows:

- “• A special annual dues account is established at a local bank . . .
- “• All FY 2011 dues will be deposited in this account.
- “• [N]o portion of the dues or other Club revenues shall be used for any purpose other than to pay for valid Club expenditures.
- “• An independent CPA will review and confirm to the Club on a monthly basis that all funds . . . [are] used for valid Club purposes.

22. On January 20, 2011 David Wilhelm and Patrick Wilhelm in their individual capacities sent another e-mail to “Fellow (Club) Members” stating, among other things, “We are . . . committed to open all the facilities in 2011.”

23. Based on those assurances, the plaintiffs and, upon information and belief, approximately 586 other Club Members paid their 2011 annual dues. Upon information and belief, the revenue received by CGC for the 2011 dues exceeds \$8 million.

24. Despite those assurances, on May 24, 2011, after he had collected the annual dues for 2011, David Wilhelm announced in an e-mail to Club Members that he would not open all the golf courses but would close three of the four golf courses and their associated clubhouses, the Club’s main restaurant (the “Timberhearth”), and the Trailhead facility to “preserve cash flow.” Wilhelm openly acknowledged that this action “is particularly unfair and burdensome to our loyal members who have paid dues in expectation of having access to all facilities.”

25. Plaintiffs and the other Club Members performed their obligations under the Membership Plan and otherwise by paying their 2011 dues and did so based on the express entitlement under the Membership Plan to use all four golf courses and other Club Facilities and on the express commitments of CGC and the Wilhelms that all four golf courses and other Club Facilities would remain open in 2011.

26. In violation of the Membership Plan and their January 2011 commitments, CGC and the Wilhelms have failed to provide plaintiffs with the use of three of the four golf courses, the Timberhearth, the Trailhead facility, and related Club facilities and amenities.

27. Plaintiffs were damaged as stated below.

SECOND CLAIM FOR RELIEF
(Promissory Estoppel)

28. Paragraphs 1 through 27 are incorporated herein.

29. Plaintiffs reasonably relied to their detriment on the January 10, 2011 e-mail from CGC and the January 20, 2011 e-mail from the Wilhelms and paid their 2011 annual dues.

30. Plaintiffs were damaged as stated below.

THIRD CLAIM FOR RELIEF
(False Representation)

31. Paragraphs 1 through 30 are incorporated herein.

32. The Wilhelms and CGC made false representations making the firm commitment that all four golf courses and Club Facilities would be open in 2011 to induce Club Members to pay their 2011 dues to the Club.

33. The said representations were material to plaintiffs.

34. The Wilhelms and CGC made the said representations knowing them to be false or aware that they did not know whether the representations were true or false inasmuch as they at all times intended to retain the discretion (which they did not possess) to close all or some of the golf courses and Club Facilities.

35. The plaintiffs relied on the representations.

36. Plaintiffs' reliance was justified.

37. Plaintiffs were damaged as stated below.

FOURTH CLAIM FOR RELIEF
(Constructive Trust)

38. Paragraphs 1 through 37 are incorporated herein.

39. Upon information and belief, CGC is insolvent.

40. The three golf courses which have been closed by the Club are unique and impossible of duplication.

41. Upon information and belief, the said three golf courses, if not properly maintained, will be irreparably damaged.

42. Upon information and belief, the said \$8 million or what is left of it will be dissipated if not immediately protected by the Court.

CLASS ALLEGATIONS

43. Paragraphs 1 through 42 are incorporated herein.

44. **Class Definition.** Plaintiffs bring this action pursuant to Col. R. Civ. P. 23(b)(1)(A) and (2), on behalf of themselves and the following Class:

All Club Members who paid Membership Deposits upon joining the Club and who also paid their 2011 annual dues.

45. **Numerosity.** The members of the Class are so numerous that joinder of all members is not practicable or necessary. As set forth above, there are at least 586 Club Members who paid their 2011 annual dues.

46. **Commonality.** As to the members of the Class, this case presents the following common questions of law and fact, among them:

a. Did the defendants breach their contractual obligations, reasserted in uniform publications by defendants to all Club Members in January 2011, to make all Club facilities available to Club Members in 2011 for Club Members who paid 2011 dues.

b. Are defendants estopped from renegeing on their contractual obligation to make all Club facilities available to Club Members in 2011.

c. Did the defendants falsely represent to the plaintiff class that all Club facilities would be open in 2011 if they paid their 2011 dues.

d. Should the Court impose a constructive trust on the \$8 million in dues paid by Club Members to prevent defendants from dissipating monies paid by Club Members.

47. **Typicality.** Plaintiffs' claims are typical of those of the Class they seek to represent because (a) to the extent that plaintiffs seek relief for defendants' breaches of contract and on estoppel grounds, their claims are not only typical of, but the same as any claim that might be brought by any other Club Member; (b) defendants made uniform, false statements to the plaintiff class as a whole upon which the class reasonably relied in deciding to pay their 2011 dues; (c) to the extent that plaintiffs seek equitable relief, that relief would affect all class members equally; (d) all of the Class members were injured and continue to be injured in the

same manner by defendants' breaches of contract and other violations.

48. **Adequacy.** Plaintiffs will fully and adequately protect the interests of all members of the Class. Plaintiffs have retained counsel who is experienced in the claims presented, certain name plaintiffs themselves have experience in class action and plaintiffs have no interests antagonistic to or in conflict with the interests of the Class. In addition, plaintiffs have already obtained a Temporary Restraining Order which the Court entered on June 24, 2011 against defendants.

49. **Rule 23(b) (1) Requirements.** Class action status is warranted and appropriate under Rule 23(b)(1) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for defendants and create a risk of adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

50. **Rule 23(b) (2) Requirements.** Class action status is also warranted under the Rule 23(b)(2) because defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole;

51. **Rule 23(b) (3) Requirements.** If the Class is not certified under Rule 23(b)(1) or (b)(2), then certification under (b)(3) is appropriate because questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

RELIEF REQUESTED

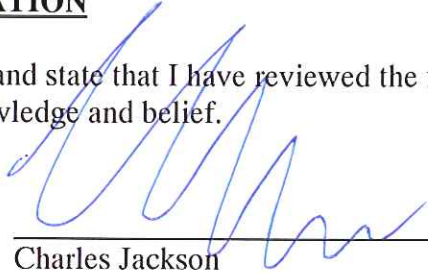
WHEREFORE, plaintiffs request the following relief:

- a. a refund of the 2011 dues paid by the class;
- b. a refund of the Membership Deposits paid by the class;
- c. specific performance of the Membership plan, *i.e.*, that the Club maintain, and the Club Members be provided use of, all Club Facilities;
- d. imposition of a constructive trust or equitable lien upon the 2011 dues;
- e. prejudgment interest and all interest allowable by law;
- f. costs, expert witness fees and attorney fees;

g. and such other relief as the court deems proper.

VERIFICATION

I, Charles Jackson, being sworn do depose and state that I have reviewed the foregoing and that it is true and correct to the best of my knowledge and belief.



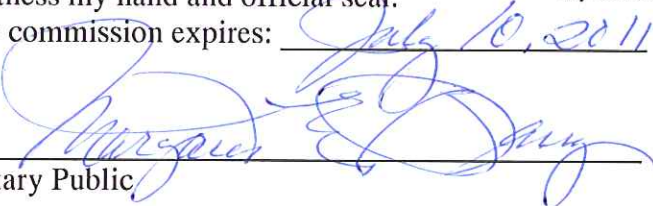
Charles Jackson

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me
this 1st day of July , 2011
by Charles Jackson

Margaret E. Barry
Notary Public
State of Colorado
My Commission Expires: 07/10/2011

Witness my hand and official seal.
My commission expires: July 10, 2011



Notary Public

HECKMAN & O'CONNOR, P.C.
/s/ Brett Steven Heckman
Signature on File
By: _____
Brett Steven Heckman

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Cheryl M. Foley
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of July, 2011, I served the foregoing document via Lexis Nexis to:

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/s/ Margaret E. Barry
Signature on file

Margaret E. Barry, Legal Assistant