

CAUSE NO. DC-11-10333-J

JOHN AND CATHY WALKINSHAW, § IN THE DISTRICT COURT FOR
MARK MATHISEN, JAMES DRAKE, §
GLENN CHRISTOPHER, GERALDINE §
CLARK, STEPHEN CLARK, WEBSTER §
CLARKE, TERRY WADE, JAMES AND §
KATHY WALDROP, ROBERT WALKER, §
KELLY PARKS CORSO, KEVIN COX, §
RICHARD CROW, ERIC CUMMINGS, §
LEROY CURRY, REDDY DASARI, JAMES §
AND SHARON DAVENPORT, SCOTT §
DAVENPORT, ARGUSTA DAVIS, §
DOUGLAS DAVIS, SAM AINTABLIAN, §
RIMA MELILEYAN, VICTOR AND ROSA §
ALARCON, JAMES ALDRIDGE, PETE §
ALVARADO, ADRIANA ALVAREZ, §
DARRELL AMSDEN, WYATT ANDREWS, §
GARY AND RUBY ANTHONY, GARY AND § DALLAS COUNTY, TEXAS
PAMELA AQUILINA, DEBORAH ARNOLD, §
JAMES RUMAGE, BETTY ARNSTINE, §
LARRY AND KAREN ATKINS, JIMMY §
AUGUSTINO, ELIZABETH ABEL, ANAS §
ARNOUS, GLORIA ARRIAGA, BUDDY §
ABLES, JOSE ACHONDO, MIKE ADAMS, §
ARMANDO AGUILAR, PAUL GASSNER, §
SCOTT GAST, BERNARD AND SANDRA §
GEIGER, EUGENE AND ANNA GENDEL, §
EDWARD GERKEN, DOUGLAS §
GLASPELL, MICKEY GLASS, EDWARD §
MICHAEL GOLUBIC, RAMON GOMEZ, §
GINA GONZALES, LANNY GOUGE, JOHN §
GOUGH, BEVERLY GRAHAM, MARVIN D. §
GRAHAM, JR., MONTY GRAHAM, §
LAN TRAN, MELVIN TRAYLOR, DAVID §
TUCKER, IDA UNGER, JAMES USSERY, §
CHARLES VANDERWOOD, FRANCISCO §
VAZQUEZ, MARCIA AND ROBERT §
VERHAGEN, DAN BANKS, ROBERT §
BARRE, ULI & BRENDA BAUMERT, §
DONALD BEAL, ROBERT AND SHERI §
BENNETT, TERRENCE BENTON, SOKOL §
BIBERAJ, ROBERT AND NANCY BIRTH, §
A. ROBERT BONNEFIL, RICHARD §
BONNER, DEBBIE BRASHEAR, WILLIAM §
BRAY, ROY AND JOYCE BREAKER, §
SHERIDAN BREWER, JESSIE BRICE, JOE § 191st JUDICIAL DISTRICT

BRITO, ELSIE SPENCER, CARL AND §
LYNETTE BRITTON, MICHAEL BROOKS, §
GILBERT BROWN, MICO BROWN, ALAN §
BRYANT, MICHAEL AND CHARLOTTE §
BURGESS, KIRBY BUSH, BILL §
CAMPBELL, LARRY CAMPBELL, RALPH §
CAMPOS, ALFREDO CANLAS, DEREK §
CARILLO, RONALD CAWTHON, §
DOUGLAS CHALMERS, PAUL §
CHANDLER, SHIHAO CHARLES CHANG, §
ADALBERTO CHAVEZ, ABDEL AND §
RAMZIE CHEHADE, MIRIAM §
CHIAVERINI, DANIEL AND DEBORAH §
DAWE, DANIEL DE ORIAN, JEFF §
DEARMAN, RICHARD DEMAREST, §
JOSEPH DEPALMA, ALICE DEROUX, §
RUEL DIXON, DAVID DOST, MICHAEL §
EDWARDS, ARTHUR FRAUSTO, VALORIS §
FORSYTHE, ROBERT AND PEGGY KELLY, §
STEVE DREILING, CARROLL EDWARDS, §
GLENN EISELIN, ELDOR AND DOROTHY §
EISEN, RICARDO ELIZALDA, TOMMY §
RAY ELLISON, DEAN ELYOSSRI, CHRIS §
ENSENBERGER, BOBBY EVANS, DANIEL §
EVANS, LINDA AND GARY FAIR, GARY §
FARMER, CHARLES FIKE, CURTIS FINK, §
FARRELL FISHER, ELIZABETH JANE §
FLEMING, WALTER FOSTER, LINDA §
FOUNTAIN, THOMPSON FOY, FELIX §
FRANCIS, ROBERT FINDLEY, KENT §
FREDERICK, DAVID FREMDER, JERRY §
FULLER, WILLIAM GALLE, RAMON §
GARDNER, RAYMOND AND SHARON §
GARDNER, PERRY GARMAN, WILLIAM §
GRAHAM, MARK GREENLEE, CHIQUITA §
GRICE, JAMES GROSS, JACOB GROVE, §
KENNETH GRUNEWALD, MARK AND §
CATHERINE HALL, DENIS M. HANLEY, §
DENNIS E. HARMS, RUTH HARRIS, JAY §
HARVEY, FRANCES HATTER, TRACY §
HAYNES, TONY HELTON, CHARLES §
HENDERSON, DWAYNE HENDERSON, §
JAMES HENICKE, DAVID HENSON, §
LEROY HERNANDEZ, JANET AND JERRY §
HERT, MARC HINKLEY, WILLIAM §
HOLDER, ELIZABETH MERRELL, ROBERT §

HOLLAND, RONALD HORAN, LORI §
HORSTMAN, DONALD HORTON, ROBERT §
AND DIANE HOYLE, VINCE HRABAL, §
LEON HSU, DONNY HUDDLESTON, §
ROBERT HUFF, CHERYL IMRIE, LARRY §
JACKSON, ALLEN JAHN, CURTIS JAMES, §
DONNIE JENNINGS, EDWARD JESONEK, §
JIMMY JOHNSON, ROBERT JOHNSON, §
CHARLES LODATTO, §
ALAN LUKER, BILLY DON LYNCH, §
GEORGE MACINTYRE, MIKE MADIGAN, §
KAREN MALONEY, LLOYD MARQUIS, §
TED MARTIN, MICHAEL MARTIN, DAVID §
AND LIBIA MARTINEZ, PEGGY §
MASTERS, DONNA MATTHEWS, SHARON §
MATHEWS, THOMAS MATTS, GARY §
MCALISTER, WARREN MCCAUSLAND, §
WALTON MCDERMETT, DARRELL §
MCDONALD, ANNE THORNTON MCGEE, §
MICHAEL MCGINNIS, GREGG MERRILL, §
DONALD METTICA, DAVID MEYER, §
MICHAEL AND MARY MIKULA, JAMES §
MILBURN, CAROL MILLER, ELIZABETH §
MILLER, CESAR MIRANDA, TERRY §
MOORE, KAREN MOSHER, J. FRANK §
MURPHY, JAMES MURPHY, JONADAB §
NACAR, DARSHAN AND VINIT NANGIA, §
VINIT AND SHELLY NANGIA, LOIS AND §
EDWARD NEAL, VERNON LEE §
NECESSARY, ERIN NEEDHAM, DON AND §
MARILYN NEELY, BOBBY RAY NELMS, §
JERRY NEWMAN, GAYLON NEWMANN, §
LEROY DYAS, MAI NGUYEN, ANDREWS §
NGUYEN, MARTY NITZ, STEVE ODELL, B. §
NEAL ODLE, ROSEMARY ODOM, §
VALERIE OLIVER, FRANCES AND R. §
SCOTT OLSON, JORGE AND JOCELYN §
OLVERA, DONNA ORR, ROGER SHANK, §
JOANNE PARE, RONALD AND CARMEN §
PARKER, DELTON PARKER, DEANNE §
AND LARRY PARKS, CARL PARSONS, §
ALLEN PATTERSON, KURT L. §
PENNINGTON, MICHAEL PERRINE, DALE §
AND TERRY PETTER, JANIE MARIE §
PETTER, HOMAS PEZANOSKY, ERICH §
PFANZELT, DUC TRAN AND JUDY PHAM, §

DEBORIS PHELAN, RALPH PHILLIPS, §
WAYNE PILIP, ROBERT POLLOCK, §
NANDOO POORAN, EFRAIN PORTALES, §
CRAIG PORTZ, LARRY PRATHER, §
ANDREW PRESTWOOD, CHARLES AND §
MOLLIE SUE PROWANT, JOHN §
QUARELLO, RICHARD RADYKOWSKI, §
LEA REAMER, FLOYD REECE, DONNA §
REED, KEVIN AND ALICIA REMBACKI, §
B.R. RESPESS, GLENN RICHARDSON, §
JENNIFER HALLIBURTON ROBERTS, §
MICKEY ROBERTS, ROGER AND LINDA §
ROBERTSON, DEBBIE ROCKET, ROBERT §
ROGERS, HERMAN ROJO, DARYL §
ROLLINGS, ARTHUR ROSENBERG, §
CHARLES ROSS, STEVEN ROSSI, DAVID §
AND ROBIN ROWE, STEVEN RUMER, §
ROSA RUS THROUGH, REGINALD AND §
BETTY RUTLEDGE, GARY RYAN, LARRY §
SALISBURY, JAMES SANCHEZ, CARY §
AND NANCY SANDE, CLARENCE §
SANDLES, DANIEL SATURN, DANIEL §
SCOTT, ALBERT SELMERON, MARY ANN §
SHARP, DARLENE ANN SHAW, JULIA §
SHEEHAN, RICHARD AND CAROL §
SHIMER, JOHNNIE SHOWALTER, DANIEL §
SIDES, JUDITH SINDER, RON AND ANNE §
SINENI, MIKE AND KAREN SKRABACZ, §
JEFF AND MILISSA SLADECEK, JOE AND §
JANIS SLADECEK, ROBERT SLADECEK, §
LESLIE SMITH, PHILIP SMITH, JUDY §
SMITHEY, CHARLES SPEARS, RONALD §
SPEARS, JOHN STEPHENS, WARREN §
STEWART, CHARLES STONE, LOUIS AND §
BARBARA STORM, BILL STOWE, §
MATTHEW STUART, HENRY §
SUMMERFORD, STEPHEN SUMMERS, §
DANIEL AND INEZ SUTTON, DENNIS §
AND ROSITA SVAB, BELVA SWANNER, §
ROBIN AND BRENDA TALLEY, KENNETH §
AND JOYCE TAYLOR, DELORIS §
TERRELL, THELMA LONG, DONALD §
TELLER, THEODORA THOMAS, §
SALVADOR TORRES, JULIA WENSEL AS §
GUARDIAN FOR DORIS R THOMASON, §
JAMES TOLBERT, SHARON WALRATH, §

LIANGHSIUNG AND HSIUYUN WANG, §
 JEFF WANG, RICK WARDEN, MICHAEL §
 AND PAULA WASSON, TERRY AND §
 MARNI WATTS, CHRISTOPHER WEIDES, §
 GENE WEST, RITA WHATLEY, MARY §
 WHEELOCK, N. CAROLYN WICKER, §
 VIRGIL WIESNER, TIM WIGGINS, JIMMY §
 WILLIAMS, KELLY AND SHAREE §
 WILLIAMS, DUANE AND TINA WILLMAN, §
 GREGORY K. WOOD, MICHAEL §
 WORCESTER, JOAN WRIGHT, KEVIN §
 WRIGHT, FRANKE WYNNE, TIM AND §
 STEPHANIE YOUNG, JOHN AND JOY §
 ZIMMER, AND WES ZMOLIK, BRUCE AND §
 JUDY JOINER, CLARICE JONES, THOMAS §
 EVERETT JONES, ROBERT MORRIS JUDD, §
 SANFORD JUDKINS, MADAN KAUSHAL, §
 KIRK AND JAMIE KEEL, ARTHUR §
 KELLEY, ROBERT AND PEGGY KELLEY, §
 RICHARD KELLY, MURARI KHANNA, §
 CARLA KIDD, HERSHEL KIME, DAMON §
 KING, KEVIN KOESTNER, JOHN LANG, §
 MARCUS LAWRENCE, MAX LEE, JOHN §
 LEMLEY, RAY AND PATRICIA LEWIS, §
 RONALD LEWIS, PAM LIEF, VENUS M. §
 LILLYBRIDGE, VENUS J. LILLYBRIDGE, §
 ANTHONY ABRANTES, ANTHONY §
 ACOSTA, LUIS GARY ACOSTA, TRISHA §
 ADAMS, WILLIAM K. ADAMS, §
 CONSUELA MEDRANO ALEJANDRO, §
 ANTHONY W. & SHARLEEN M. ALLEN, §
 CHARLES G. ALLEN, DARIN ANDERSON, §
 TODD & KATERINA ANDERSON, MARCIA §
 ARCHIBALD, MICHAEL ARCHULETA, §
 STEVE ASBILL, ADELA Q. ASHA, JESUSA §
 & JOHN ASHBY, JERRY H. BAILEY, §
 ANTHONY BALCHUNAS, JERRY §
 BALLARD, WILFREDO BATISTA, CEASAR §
 & LISA BELSER, CYNTHIA L. BERRY, §
 JANICE A. BERRY, KELLY R. BEYER, §
 DAVIN BICKFORD, TIM BISHOP, §
 BERNIE BLACK, KENNETH R. & MARY §
 SUE BLANKENSHIP, DIDIER BOIVIN, §
 CELAH BOLDON, III, MARVIN BONNER, §
 JR., HARVEY A. BRADEN, DAVID §
 BRANHAM, DONALD W. BREI, BRAD §

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| BROWN, DAVID G. BROWN, FRED E. | § |
| BROWN, JAMES C. & JEROLENE | § |
| BUEHRIG, DARKO & PIEDAD BURMAZ | § |
| REV. TRUST, ROBERT C. BURNS, | § |
| CHARLES H. BUSEY, MARISSA CALICA, | § |
| BRYCE K CAMERON, JEFFREY A. | § |
| CARTER, RALPH E. CASEY, ALBERTO | § |
| CASTILLO, LLOYD & WENDI CHARLES, | § |
| ANTHONY CHEN, CARLOS E. CHILDS, | § |
| DENNIS CIHACEK, KATHY CIKANEK, | § |
| KENNETH L. CLARK, DWAYNE & AMY J. | § |
| CLEVELAND, BRUCE COLTHARP, | § |
| ERLENE COLVIN, WILLIAM B. & CLAIRE | § |
| ANN COPELAND, JOANNE B. CORBET, | § |
| DAVID CORONA, GILBERT COTA, | § |
| ROBERT & JUDITH CRANSHAW, JAMES | § |
| RAY CREED, MARIKO CROSS, JAMES | § |
| CURRAN, JOHN DALFONSO, ALTON W. | § |
| DANIEL, HENRY DASARI, WILLIAM H | § |
| DEAN, MARTIN & DEBORAH DEAVER, | § |
| DIPAK B. DESAI, ANA M. & SANCHEZ | § |
| AND ANGEL L. DIAZ, CANDIS (ESSEX) | § |
| DICKEY, STEVEN DILLON, MAR DIMES, | § |
| LARRY DIX, PEGGY DOLEZALIK, BENNY | § |
| DOLLAR, JOHN P. DONLIN, RAYMOND | § |
| DUCHSCHERER, MARTIN W. DUNBAR, | § |
| ROBERT E. DUNIGAN, HYL A EMERY, | § |
| ROGER ENGLAND, RICHARD C | § |
| ENRIQUEZ, JOHN B ERICKSON, HAZEL | § |
| ESKRIDGE, DAVID FAIN, DAVID O. | § |
| FALLERT, CHRIS FARISH, HOMA | § |
| FERDOWSI, VITO FERRARA, THOMAS W. | § |
| FERRELL, SR., JEREMY FLEMING, H. RAY | § |
| FODDER, PAT FOGERSON, CHARLSY | § |
| FORD, PATRICK & LINDA FOSTER, FAYE | § |
| FREDERICK & DON YOST, C. BUCK & | § |
| YVONNE FULLER, ANTONIA GALINDO, | § |
| MARIA J & CHRISTOPHER GARCIA, | § |
| JAMES & MARLA GARNER, RODNEY K. | § |
| GASKILL, PAUL S. GEATER, DAVID A. | § |
| GILMORE, SR., GERMAN M. GIRON, | § |
| ANDREW & CAROL GLEN, ROBERT | § |
| GLENN, MARGARITO GONZALEZ, MARK | § |
| S GONZALEZ, RICHARD GONZALEZ, | § |
| RUDOLPH & MARIA GONZALEZ, PAUL | § |
| GOOLSBY, TIMOTHY GOOLSBY, | § |

MARTHA GORDON, CAROLE GRAFF, §
BOB J. GRAHAM, PHILLIP GRAVATT, §
GAIL B. GRAY, RICHARD & HELEN §
GRIFFIN, JULIA GROMATZKY, & KAREN §
D. PECK, GEORGE C. GROMECKI, §
PETER GROSSERHODE, APOLINAR §
GUEVARRA, JR., KARL R. GUTZKE, §
ENRIQUE GUZMAN, NADEEM A. §
HADDAD, ERNEST SCOTT HAILE, §
KEITH HALL, RONALD C. HALVERSON, §
MICHAEL HANCOCK, GERALD A. HARE, §
JOHN G. HARVEY, GERALD E. HATFIELD, §
SAM & BEVERLY HATTON, RIKKI §
HEMEL, GERALD & DONNA §
HENDERSON, JULIAN & APRIL §
HERNANDEZ, WILLIAM S. HERRIDGE, §
JAMES D. HILGER, ANGELA HILLIN, §
HEROLD & JACQUELINE HINDS, JOHN C. §
HOBSON, ASBERRY & PATRICIA HODGE, §
DARYL HOELSCHER, JOAN L. §
HOLBROOK, JOSEPH M. HOLLEY, §
WADE HOOVER, LISA C. HOUDEK, §
GARY M. HOUSE, CAROLYN & ROBERT §
HOWARD, KIRK HULL, WYNNE & PAULA §
HUNKLER, TIMOTHY HUTCHENS, DAVID §
W. HUTTON, MICHAEL HUTYRA, MARY §
ICE, WILLIAM C. JACKSON, JAY & §
ANDRZEJ JAGIELLO, JOHN R. JARMA, §
DANIEL L. JAMORA, EDWARD J. & MARY §
K. JASEK, BRENT JONES, BRIAN JONES, §
GLENN E. & JENNIFER JONES, JERRY L. & §
VIVIAN D JORDAN, JERRY L. JOYNER, §
JEFF KAUFMAN, JOHN H. & §
MARGUERITE KELLY, D. W. KIEFF, §
BOBBY L. KING, ALAN & HELEN KIRBY, §
CYNTHIA D. KIRK, MARK KOON, §
BALDEV KRISHAN, EDWARD R. & PENNY §
LANE, AMBER & RONALD LAPP, JASON §
LASH, ANTHONY LEDESMA, CAROLYN §
E. LEDFORD, JEFF LEMLEY, GRENVILLE §
LEWIS, IV, ARTHUR & SHARON LEYHE, §
JERRY LITTMAN, BOBBY G LIVELY, §
RODOLFO "RUDY" LOPEZ, THOMAS R. §
MABRY, JR., STEVEN J. MACDONALD, §
IRVIN R. MACK, KIRAN MAHAJAN, §
HAROLD MAPES, DAVID N MARINELLI, §

BRUCE MARLIN, L. DAVID MARSCHALL, §
EARL D. & BEULAH MARTIN, JOHN E. §
MARTIN, MICHAEL & SHARON MARTIN, §
ELISA MARTINEZ, WILLIAM & §
MARYANN MASON, PAUL H. MASSEY, §
PATRICK H. MATHESON, DAVID §
MCCOLLOUGH, RANDY & KAREN §
MCCOLLUM, J. B. MCCRUM, II, ROBERT §
L. MCCULLOUGH, BRUCE MCCORMACK, §
MICHAEL T. & PAMELA MCCULLY, §
BILLIE SUE MCDONALD, GLEN §
MCDONALD, JAMES MCDONALD, JOHN §
K. MCDONALD, CARROL SNOW §
STRICKER MCDUGAL, LISA MCGEE, §
LISA R MCLEAN, PATRICIA MCMANN, §
PHILLIP MCNEEL, ROSE MELO §
REVOCABLE TRUST, PEDRO HUERTA §
MENDOZA, GERARD METZLER, DONALD §
L. MODE, FRANK MONTGOMERY, §
MOONS ENTERPRISES INC., BILL §
MORRIS, T. J. MOXON, GENEVA MULL, §
MICHAEL MULLINS, HENRY MURRAY, §
WILLIAM J. NAUGHTON, STEPHEN §
NAVICKY, TIA KIM NGO, BENJAMIN §
NOGUERAS, MARK NOLEN, PHIL R. §
NORMAN, JULIE A. NORTON, JOE §
NOVAK, JOE M. OLDHAM, DAVID R. §
OLGUIN, PHYLLIS (MRS. ROLAND) §
OLSON, REX ONDRACEK, GUSTAVO §
ARACELI ORTIZ, JOHN & BEVERLY §
OSBORNE, ROSA OVALLE, VIRGIE §
PAJARILLO, DAVID PANNONE, DIANA §
PAPMEDER, DENNIS & ROXANNE PARKS, §
ROY PAXTON, BARBARA PEEBLES, §
CHARLES E. PEEL, DAVID E. PETERS, §
JAMES PETERS, ALBIN L. PICHA, RILEY §
G. PIERCE, BRUCE A. & CLAUDIA V. §
PLASKET, WILIAM A. POMEROY, §
SAMUEL PRAGER, SATHYA PRASAD, §
NICANOR PROFETA, STACY PRUORN, §
GERALD & WENDY PRYNE, RUFINO N. §
QUICHO, JR., JANICE K. RAGLAND, §
RICHARD & NINA RAGSDALE, DAVID §
RAINES, LARRY & JULIE A. §
RAMPENTHAL, ROBERT J. RAY, §
ARTHUR J. REINKING, MALCOLM D. REX, §

RUDOLF REYES, CHARLES C. RHODES, §
 LELAND D. RIDLING, KENT & SUSAN §
 ROBBINS, JOHN A. ROBERTS, III, LOUIS E. §
 ROBICHAUX, ARMANDO N. ROCHA, §
 EDWARD RODEHEAVER, STEDROY §
 RODNEY, ANTONIO RODRIGUEZ, §
 PAMELA RODRIGUEZ, JAMES & §
 MARILYN ROSE, JOSEPH & LINDA ROSS, §
 MARGARET A. RUIZ, RONNIE & SHEILA §
 RUSHING, STEPHEN V. RUSSELL, §
 WILBERTO SAN LUIS, JOE V. SANCHEZ, §
 STEVEN SANDERS, ALAN DEAN §
 SANNER, JERRY & FRANCES SATHER, §
 MARK A. SCHAFER, BRENDA W. §
 SCHERTZ, KENNETH SCHOEN, LEE & §
 ANNABETH LEE SCHUCH, STACI SCOTT, §
 RALPH & MARGARET SEARS, STEFAN §
 SELECKY, CHRIS SELL, CHERRIE §
 SELMAN, DAVE & SHASHI SHARMA, §
 TOMMY LEON SHAW, LAURIE SHELLEY, §
 KEITH A SHIVELY, VICTORIA §
 SHOEMAKER, MICHAEL SIEGEL, §
 HOSHIAR SINGH, DEBORAH D. SMITH & §
 DEBORAH A. DORR, MIKE E. SMITH, §
 ROGER K. SMITH, GARY N. SNOW, §
 CHRISTOPHER J. SOANES, ADESH §
 SOODEEN, RANDY SPARKS, ELEANOR W. §
 STANDEFER, JEANNINE STARR, MELISSA §
 & ALAN STEELE, BART STEFFEN, §
 GORDON STEGER, ROBERT E. STEPHENS, §
 JR. RANDY STEWART, TERRENCE I. §
 TELLIGMAN, ALEXANDER TELLO, §
 PAMELA TERRELL, BARRY THOMBS, §
 AMY TINDOY, GREGORY S. TONIAN, §
 ANGELA RENEE TRUJILLO, ROBERT R. §
 TULEY, ROBERT D. & KAREN K. §
 TURECHEK, DANNY TURRENTINE, §
 MICHAEL & NANCY VANCE, JOANNA §
 COOPER VANDERPOOL, DAVID §
 VANDIVER, TIM VANLARE, JERRY §
 VAUGHN, JOE VEACH, NELSON R. §
 VILLALOBOS, BLAKE VOGLER, JIMMIE J. §
 WADE, FRED I. WAGNER, MICKEY §
 WALKER, RICHARD WALKER, MARY A. §
 WALLACE, PEGGY WARD, H. ROGER §
 WARWICK, JIM WATSON, MICHAEL F. §

WEATHERLY, DARREN WEIRICH, §
 KERRY & MARIS WELCH, TIMOTHY L. §
 WELCH, JAMES B. WELLING, JANICE §
 WENTWORTH, GEORGE WHEELER, §
 FRANK & MARY WHITVER, LARRY §
 WILLIAMS, NEVIL WILLIAMSON, §
 JEFFREY A. WILSON, JEFFREY S. §
 WOLDER, FRANCES R. WOLF, STEPHEN §
 L. WOOD, DEBRA DAVIS WOODS, §
 ROBERT E. & SHARON S. WRIGHT, GREG §
 WYNN, DAVID YACKER, PEIJING YANG, §
 MARNA YERIGAN, JOHN YEVCAN, MICK §
 & VALERIE YOUNG, ROLAND YOUNG, §
 MAYEZ ZEINE, JOEL C. ZIMMERMANN, §
 JOSE & GEMMA I. ABELLA, SERGIO M. §
 & ELSA R. AGUIRRE, PEGGY ALLEN, §
 JOSE H. ARDON, ROSA & ANTONIO §
 ARMIJOS, RUSSELL BACK, ROBERT & §
 SANDRA BAKER FAMILY TRUST, §
 FRANK BALKE, THOMAS BARNES, §
 CATHY & JOE BARTOLOWITS, ROY A. & §
 LORI BASA, KYLE BECKER, JAKLIN §
 BENJEMIN, B. DANIEL BERGENHAGEN, §
 DARLENE BESHEAR, PAT A. BLAKELY, §
 CHARLOTTE A. BOOTH, FRED BOWLDEN, §
 A. J. BOWMAN, STERLING BOWMAN, §
 MICHAEL H. BRAUN, LARRY BROWN, §
 ROBERT L. BROWN, ERNIE BROWN, §
 TUAN BUI, RITA B. BURNETT, JANET §
 MCWHORTER CAOQUETTE, JOSEPH V. §
 CARROCCIA, LARRY CARVER, ELLIE §
 NELIDA CHAPPEL TRUST, PAMELA S. §
 CHELETTE, SCOTT CHESHIRE, SANG §
 CHEL CHUNG, PAUL CLAMPITT, JEFFREY §
 B. CLEARY, SCOTT A. COBERN, RONALD §
 B. & BARBARA A. COKER, ROBERT §
 COMEAU, DAVID CONE, JOSE CORTES, §
 HENRY CRAWLEY III, MARTIN L. §
 CRISSEY, CALVIN O. CROSBY, STEFANO §
 D'AMICO, GARY & LINDA DANDOY, §
 HENRY C. DAVIS, ROBERT GLENN §
 DAVIS, CLAUDE S. DEAN, JEFFREY §
 DEAN, LEE J. DEGROOT, LEVI & SONIA §
 DELEON, ROBERT DEVERNA, ROSELIS §
 DIAZ, GARY & KATHY DOOLEY, JEFF §
 DOSSETT, ELKE B. DROZD-WILLIAMS, §

EDWARD W. DURHAM, DALE EATON, §
 STEWART M. EDINGER, TERRY §
 EHRHARDT, BILL ELLIS, CYNTHIA §
 ENGELHARDT, JAMES L. ERBY, AILLEN §
 JOY ESCOLAR, LARRY D. ESTES, §
 BUTCH EUSTICE, EXCELLENCE CUSTOM §
 HOMES, LLC, ROBERT & JOANALYN §
 FAGARAGAN, STEVE FEHMEL, BOB §
 FEIDLER, JOSEPH & PENNI FEIL, HARRY §
 N. FINDOR, RICHARD M. FISHER, §
 RICHARD & DEBRA FLATT, ELOY & §
 PEGGY FLOREZ, STEPHEN R. FOXX, §
 SCOTT FRANKS, KEVIN FREUND, §
 DAHLIA J. C. FULGENCE, EMMETT §
 FUNDERBURK, BOBBY LEE GERMANY, §
 JAY GIMPLE, BERNARD A. GOBAR, JR., §
 KIM JAMES GORUM, TIMOTHY §
 GOTTLBER, NEIL R. GOVE, SANDRA §
 GRAHAM, GILBERT GRANADO, GORDON §
 K. GREEN, CARMEN A. GREEN, W. E. §
 GUINN, ESTER GULTOM, FRANK A. §
 HABERL, MICHAEL R. HALL, T. COLLIN §
 HAMPTON-KELLY, DONNA HANCOCK, §
 PAULA HANDRUP, ODIE L. HARRIS JR., §
 OLLIE E. HARTGROVES JR., BERNIE R. §
 HARTIS, MATTHEW HAYDEN, DEBBIE §
 HAYS, STEVEN HEIFETZ, JERRY HELTON, §
 ISRAEL HERNANDEZ, JESUS HERRERA, §
 DORIS A. HILL, JOHN HINCHMAN, §
 TAMI HOGAN, ROBERT HOLLEMAN, §
 CHARLSEY L. HOLLER, JAMES HOLLEY, §
 IRA G. HOOD TRUST C/O HELEN HOOD, §
 BOB W. HORTON, RUDOLF & MARIANNE §
 HOUDTZAGERS, PHILLIP L. HOULTON, §
 SR., SHAWNE HUNTINGFORD, THOMAS §
 & JANICE HYMAN, JORGE IBARRA, §
 ROBERT WAYNE INZER, B. R. ISRAEL, §
 JOE W. IVIE, TOMMIE HOPE JACKSON, §
 JOHN R. JARMA, ROBIN JENTZEN, §
 GARY & GEORGIANA JOHANSEN, GARY §
 & CAROL JOHNSON, FRANCES M. §
 JOHNSON, JEFF JONES, RICHAEAL M. §
 JONES, CATHY JOSEPH, DAVID KALISKI, §
 TERRY & BARBARA KERR, ANTHONY §
 CHADWICK KESTLER, SABRA KHAN & §
 MOHAMED KHALID, ABDUL M. & HUMA §

J. KHAN, JAMES & DEBRA KILGORE, §
 THERESA & DAVID L. KING, JR., DONALD §
 R. KNIGHT, CHESTER KOWALSKI, §
 KENTON KRAFT, ARTHUR R. KRULL, §
 JOSEPH K. LAYTON, JOHN P. LEE, §
 TERRY R. LEE, DAVID P. LEWIS, §
 MICHAEL LOBMEYER, JAMES E. LOCK, §
 DANIEL LOPEZ, WESLEY T. LOWERY, §
 GAIL A. MADISON, MATTHEW S. & §
 KELLY A. MARTIN, ALEJANDRO §
 MAURICIO, MICHELE MCCA, CARL R. §
 MCCORKLE, BRUCE MCCORMACK, §
 DONALD MCCRACKIN, VICKIE §
 MCDONALD, MICHAEL E. MEAD, BOYD §
 L. MELBOURNE, DARRELL D. MILIAN, §
 JOHN & JUDY MITCHELL, CATHERINE S. §
 MOLAVI, JOHN & CAROLYN §
 MONTGOMERY, RANDALL MOORE, §
 TONY MORRIS, DAVID R. MOSES, §
 JEFF MOULDER, ROBERT MUNSON III, §
 JOEY MURTHIL, BRADY NELSON, §
 WARREN D. & MAUREEN Q. NICHOLS, §
 RICKY L. NOBLE, RAYMOND §
 NOTTINGHAM, JR., RICHARD W. DNEAL, §
 JAMES E. OLIVER, LEROY & LILLIE R. §
 OLIVER, OLSON LIVING TRUST C/O §
 GEORGE & CAROL OLSON, JAMES L. §
 OWENS, H. WAYNE OWSLEY, LESLIE §
 PAIS, DONALD R. & MARY LU §
 PATTERSON, TANYA PAYNE, JAMES §
 STEVEN PEACOCK, AUSTIN PEMPESELL, §
 BOBBY PESCHEL, RICHARD C. PETERS, §
 VALERIE PETERSON, JAMES PHELAN, §
 RANDY & CHARLES P. POLAK, JR., §
 JOSLYN V. PORTMANN, ROSA POTTER, §
 VAL V. PRATHER, MARK PRINCE, §
 DOMINIC C. QUARTIER, 1993 RAMBAJAN §
 TRUST, ANTHONY N. & CARMELITA D. §
 RAMBAJAN TRUSTEES, DAVID RAMSEY, §
 MICHAEL E. REITER, SAM REYNOLDS, §
 ROBERT RHINE, PAUL W. RICHARDS, §
 DON RIDENOUR, CHRIS RIFFE, WILLIAM §
 RISK, TOMMY RITTER & SUSAN §
 GOLDEN, RON ROBINSON, GUSTAVO §
 RODRIGUEZ, RICHARD ROMAN, §
 MICHAEL E. ROPER, MICHAEL C. §

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| ROWAN, MICHAEL R. RUCKMAN, | § |
| JULIETE SATCHELL, MARVIN | § |
| SAUNDERS, CRAIG SCHACHERER, | § |
| GREGORY C. SCHAECHER, JEFF | § |
| SCHMUCKER, BARBARA SCHREIB, | § |
| RONALD SCHULZE, LEWIS & | § |
| CHARLOTTE SEALES, JAMES SEARS, | § |
| WAYNE SIBLEY, ERVIN & BARBARA | § |
| SIEMONEIT, JACK SIMMONS, GURJEET | § |
| SINGH, GEOFFREY SLOMA, JOHN L. | § |
| SMITH, MARIA A. SNELL, DORIS | § |
| SPANGLER, ROYCE A. & ANA M. SPARKS, | § |
| JOHN R. SPEER, DAVID P. STAPP, LARRY | § |
| B. STEVENSON, DAVID STEWARD, | § |
| ELMER SUMMERS, MARVIN SWAIN, | § |
| WILLIAM F. TAYLOR III, KERRY | § |
| THERWHANGER, EULA THOMAS, | § |
| SANDRA GREENE THOMPSON & | § |
| FERNANDO THOMPSON, ROSA L. TORO | § |
| & RAFAEL MONTALV, LUANN B. | § |
| TUCKER, MICHAEL URESTI, RENE | § |
| VICUNA, DOMINGO VILLAFANA, | § |
| DELFINA VILLARREAL, GAIL | § |
| VOELCKER, LARRY VUNCANNON, | § |
| MARILU & WILLIAM WALKER, JR., | § |
| MICHAEL H. WALLACE, PHIL WALLIN, | § |
| DAVID WALLS, MICHAEL WALSH, | § |
| DOUG WALTHER, RISSIE WALTON, | § |
| JOHN & LAURA WARREN, RANDY | § |
| WATTENWORTH, RUSSELL N. WEILER, | § |
| S. SCOTT WEIMER, ALLAN P WELCH, | § |
| ROD L. WELLS, EUPHEMIA WERNLI, | § |
| GLORIA WEST, JOHN R. WHITE, CLIFTON | § |
| WHITING, GEORGIA S. WIGINTON, | § |
| DANIEL & AMBER WILLIAMS, N. DOUG | § |
| WILLIAMS, LARRY R. & WENDI L. | § |
| WILSON, STEPHEN I. WINARICK, | § |
| RODNEY SCOTT WINGER, JAY E. | § |
| WINTERS, DICK & TERIL WOODWARD, | § |
| TOLBERT H. WORLEY, JR., KEN YAKO, | § |
| DWAYNE YAMBRA, DAVID A. YOCUM, | § |
| MICHAEL G. YOUNG, SIMON & DILI | § |
| YUAN, ROSIE ZAIZAR, RAYMOND & | § |
| VIRGINIA L. ZAMARIPPA, WILLIAM L. | § |
| ZILLMAN, JOHN ZUCHA, TROY | § |
| ANDREWS, TRINA HALL, KELLY A. | § |

CRANE, WILLIAM & LINDA DORSEY, §
MICHELLE MCMANUS, MICHAEL F. §
MILLER, LAURA RODRIGUEZ, §
CHRIS SPROLES, KEVIN M WALCZYK, §
DIANA WILSON, AND WESLEY ZMOLIK, §
LARRY BROWN, RODNEY & ACIA §
CASTLE, ANTHONY DARWIN, FRANCES §
& LYNDA KELLEY JOHNSON, BRET & §
ANGELA OLTJEN, MICHAEL E. REITER, §
LAURA RODRIGUEZ, CHRIS SPROLES, and §
JUDITH BROWN, MONICA INNES CRAIN, §
LEONEL M. DOMINGUEZ, ERIK & AFRICA §
D. JOHNSON, WAYNE J. KARNIS, §
KAMINIE RAMAUTAR, WILLIAM STARR, §
JACK WALL, ROBERT & SANDRA BAKER, §
DARKO & PIEDAD BURMAZ, ELLIE §
NELIDA CHAPPEL, YEUGENIY & ANNA §
GENDEL , IRA G. HOOD, ROSE MELO, §
GEORGE & CAROL OLSON, ANTHONY N. §
& CARMELITA D. RAMBAJAN, VISION §
LANDSCAPE MANAGEMENT CO. §

Plaintiffs, §

V. §

DOUBLE DIAMOND-DELAWARE, INC., §
DOUBLE DIAMOND, INC., WHITE BLUFF §
PROPERTY OWNERS ASSOCIATION, INC., §
WHITE BLUFF CLUB CORP., NATIONAL §
RESORT MANAGEMENT CO., R. MICHAEL §
WARD, FRED CURRAN, GEORGE §
COLLINS, LARRY GROPPPEL, RANDY §
GRACY, CLARK WILLINGHAM, DONALD §
FRITZ and MILT BERGMAN, §

Defendants. §

PLAINTIFFS' FIFTH AMENDED PETITION
AND ANSWER TO COUNTERCLAIM

Plaintiffs file their Fifth Amended Petition and Answer to Counterclaim against Defendants Double Diamond-Delaware, Inc., Double Diamond, Inc., White Bluff Club Corp., National Resort Management Co., R. Michael Ward, Fred Curran, George Collins, Larry

Groppel, Randy Gracy, Clark Willingham, Donald Fritz, and Milt Bergman (collectively “Defendants”) and the White Bluff Property Owners Association, Inc. (“WBPOA”) as follows:

I. PARTIES

1. Plaintiffs are all current or former property owners at White Bluff Resort at Lake Whitney, Texas. As a condition of property ownership, they are required to become members of the WBPOA.

2. Defendant Double Diamond-Delaware, Inc. is a Delaware corporation with its principal place of business in Dallas County, Texas and has filed an Answer in this case.

3. Defendant Double Diamond, Inc. is a Texas corporation and a wholly owned subsidiary of Double Diamond-Delaware, Inc. Double Diamond, Inc. has its principal place of business in Dallas County, Texas and has filed an Answer in this case.

4. Defendant National Resort Management Corp. (“NRMC”) is a wholly owned subsidiary of Double Diamond-Delaware, Inc. NRMC has its principal place of business in Dallas County, Texas and has filed an Answer in this case.

5. Defendant R. Michael Ward is a resident of Dallas County, Texas and has filed an Answer in this case.

6. Defendant Fred Curran is a resident of Dallas County, Texas and has filed an Answer in this case.

7. Defendant George Collins is a resident of Hill County, Texas and has filed an Answer in this case.

8. Defendant Larry Groppel is a resident of Hill County, Texas and has filed an Answer in this case.

9. Defendant Randy Gracy is a resident of Collin County, Texas and has filed an Answer in this case.

10. Defendant Clark Willingham is a resident of Dallas County, Texas and has filed an Answer in this case.

11. Defendant Donald Fritz is a resident of Hill County, Texas and has filed an Answer in this case.

12. Defendant Milt Bergman is a resident of Hill County, Texas and has filed an Answer in this case.

13. Defendant White Bluff Property Owners Association, Inc. (“WBPOA”) is a Texas non-profit corporation and has filed an Answer in this case.

III. JURISDICTION AND VENUE

14. Venue is proper in Dallas County, Texas pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(2) and (a)(3) because one or more natural person Defendants reside in Dallas County, and, with respect to the Defendants that are not natural persons, their principal offices are in Dallas County. Because the allegations in this suit arise out of the same series of transactions or occurrences, venue is proper as to all Defendants pursuant to Tex. Civ. Prac. & Rem. Code §15.005.

15. This Court has jurisdiction over this action by virtue of the relief sought herein, and because the amount in controversy exceeds the minimum jurisdictional requirements of this Court. This Court has jurisdiction over Defendants because they reside and do business in Texas.

IV. BACKGROUND FACTS

16. Plaintiffs all have at least one thing in common—they were all duped into purchasing what they believed would be world class resort property at White Bluff Resort at

Lake Whitney, Texas (“White Bluff” or “White Bluff Resort”), with an active property owners’ association in place to protect their collective interests. In reality, they bought into a facility created and marketed for the sole purpose of generating profits at their expense, with a property owners’ association controlled by the developer and utilized for the purpose of enforcing illegal assessments by threat of foreclosure. This lawsuit is Plaintiffs’ attempt to recover their losses, and to stop Defendants from victimizing more unsuspecting consumers.

Defendants create White Bluff and its Property Owners’ Association. The White Bluff Property Owners’ Association is controlled by Defendants Ward and Double Diamond.

17. White Bluff Resort is one of seven communities acquired, marketed and managed by Double Diamond-Delaware, Inc. (“DD Delaware”), and its complex web of subsidiaries, including DD Delaware, Double Diamond, Inc., and its wholly owned subsidiaries National Resort Management Corp. and White Bluff Club Corp. as well as its sister company United Equitable Mortgage Co. For ease of reference, these corporate defendants will be referred to collectively herein as “Double Diamond.” Double Diamond is owned and controlled by Defendant Ward, who owns more than ninety (90) percent of the stock in DD Delaware and Double Diamond, all for-profit companies.

18. Double Diamond’s business model is to purchase large tracts of undeveloped property, subdivide the property, then promote and sell lots to individual consumers as investment and/or retirement property. The purchasers of the lots are not required to immediately build on their lots. They are, however, required, as a condition of ownership, to become a member of the property owners association (POA). Consistent with its business model, in 1990, the White Bluff Property Owners’ Association, Inc. (“WBPOA”) was formed. The WBPOA was formed as a non-profit association, and is governed by the Texas Non-Profit Corporation Act. All members of the WBPOA are subject to mandatory annual dues and assessments.

19. In theory, the WBPOA should have been controlled by property owners whose primary focus would have been the well being of the community. In reality, however, the WBPOA is currently, and always has been, controlled by Defendants Ward and Double Diamond, whose primary focus is profit.

The Entirety Of the WBPOA Board Neglects their Fiduciary Duties to the Property Owners and the Association by Acting in the Individual Directors' Best Interests or that of Double Diamond

20. The WBPOA board is comprised of six members. Until 2010, three of them were Double Diamond executives. When White Bluff was started, Double Diamond created a "management contract," where it would provide a bevy of services for the WBPOA – everything from payroll to billing to cleaning supplies. The WBPOA board has always renewed that contract with Double Diamond without question. The WBPOA board never has considered whether another resort operator could provide services better or more cheaply than Double Diamond. As a result, for 22 years, the WBPOA has been beholden to Double Diamond, who forces the WBPOA to pay excessive fees to support its for-profit operations.

21. Furthermore, the WBPOA board has failed to implement appropriate accounting controls to ensure that the fees and assessments entrusted to them by property owners are spent in an appropriate manner. The WBPOA again cedes all control to Double Diamond. Double Diamond writes all the checks for bills for the WBPOA and "sweeps" the account with no detailed accounting. All of the employees used by the WBPOA or elsewhere at White Bluff are employed by Double Diamond subsidiary NRMC. There is no competitive bidding for work. Everything is awarded to Double Diamond without question.

22. At the time they purchased their properties, Plaintiffs were not told the full extent of Double Diamond's control over the WBPOA. Upon information and belief, Double

Diamond instructed its sales agents to intentionally conceal these facts from Plaintiffs. Had they known the truth, Plaintiffs would not have purchased their properties.

23. Furthermore, since this lawsuit has been filed, it has become apparent to the WBPOA board that a large percentage – over 1,200 – property owners dispute the *status quo* enough to file suit. Yet, the board has failed to undertake *any* steps to investigate or otherwise question whether they could run the WBPOA more efficiently or more in keeping with the desires of *all* property owners. This is because the so-called “disinterested” directors are not “disinterested.” The non Double Diamond executive board members are long-time associates of Mike Ward and/or home owners at White Bluff. The plans and programs the board has implemented unfairly benefit not only Double Diamond but also those that live at White Bluff, which is a small minority of all property owners.

24. The board members have a duty to act in the best interests of *all* property owners. Instead, by siding with Double Diamond, it is apparent that the Board is only looking out for themselves and for Double Diamond.

WBPOA’s Negligent Supervision of Double Diamond’s Activities

25. The limited oversight that *is* provided by the WBPOA board is sub-standard. For example, under Texas law, a POA can foreclose on a property when the owner fails to pay his POA dues. Until 2012, this foreclosure could take place without a court appearance (“non-judicial foreclosures”). This law recently changed. The WBPOA minutes indicate that, in fall 2011, the board decided to place a hold on foreclosures while they investigated the changes in the POA laws. Yet, at the same time, the WBPOA, which uses Double Diamond affiliates, as collections agent for Double Diamond, continued foreclosure proceedings against property owners.

26. In addition, throughout the time that Double Diamond and its affiliates have provided collections “services” to the WBPOA, property owners have had consistent issues with their bills – everything from payments not being applied to frustrations with not being able to sell food and beverage credits. The WBPOA board has completely failed in its duties to the property owners by ceding complete control to Double Diamond on these issues, particularly where Double Diamond has bungled the job.

27. Double Diamond has also engaged in unfair collection practices. Double Diamond harasses property owners at home regarding payment of WBPOA assessments. These practices have included contacting property owners directly even after they have indicated that they have retained counsel and want future communications to proceed through counsel. Again, the WBPOA board has failed to supervise Double Diamond, in violation of Texas law.

Double Diamond targets Plaintiffs and subjects them to deceptive sales practices designed to trap them into ownership at White Bluff.

28. Double Diamond targets prospective purchasers, including many Plaintiffs, through mailers “inviting” them to “tour” White Bluff in exchange for a stay at the Inn and promises of free golf clubs.

29. In reality, Double Diamond’s “tour” was a heavy handed sales pitch designed to wear Plaintiffs down until they buckled and agreed to buy property. Among other things, Double Diamond’s policy was to sequester consumers such as Plaintiffs in a “closing room” where Double Diamond would monitor the sales presentation. The sales people were given a script by Double Diamond which they had to memorize verbatim and present to Plaintiffs. After giving the presentation, the salesperson would leave the room so that the potential owners could talk in “private.” Unbeknownst to them, however, Double Diamond and its sales people would listen to the private conversations among potential owners (e.g., husband and wife) regarding

the purchase, and would then return to the room and modify the presentation based upon the information learned from having eavesdropped on those private conversations.

30. Potential purchasers would be confined in the “closing room” for hours. The Double Diamond sales force was instructed that a potential purchaser must make ten separate refusals to buy property before they are released from the room. This heavy-handed sales program was designed not only to force the sale, but also to induce the property owners to finance their purchase through their private mortgage company at higher-than-market interest rates.

31. Those sequestered in the “closing room” were basing their purchase decisions on false information. There is no market for property at White Bluff. Potential purchasers were told that properties are worth tens of thousands of dollars, when they were worth much less than that. Potential purchasers were given “comparables,” but those “comparables” were, upon information and belief, created by a Double Diamond executive. At best, they were the sale values not on the open market but rather of those who were similarly coerced into buying property. Double Diamond has been able to get away with these misrepresentations because its captive mortgage company, which is wholly-owned by Defendant Mike Ward, finances virtually all lot sales. Were property owners able to obtain independent appraisals, as would be required with other lenders, they would have learned that their property is worth 1/10th (or less) than what Double Diamond was asking them to pay.

32. In addition to subjecting plaintiffs to physical and emotional coercion, Double Diamond also made numerous misrepresentations to Plaintiffs, including, but not limited to, the following:

- *A property owner has to pay a \$12,000 initiation fee to join the Golf Club, receives three free rounds; and has no monthly dues.* In reality, the golf courses are open to the public; the “free golf” has restrictions on usage time and requires a fee for cart rental; and all property owners are required to pay for the maintenance of the golf course (upwards of \$1.6 million per year, and which the POA doesn’t own in any amount whatsoever). This \$12,000 “fee” is really nothing more than inflation of the purchase price.
- *The WBPOA is “owner controlled” and POA dues are paid to the WBPOA, not to the developer.* The WBPOA’s mailing address is Double Diamond; Double Diamond considers the WBPOA to be an “affiliated company;” all WBPOA monies are transferred to Double Diamond-owned White Bluff Club Corp (WBCC); and all WBPOA funds are spent by and for the benefit of Double Diamond, whether directly subsidizing their property (i.e., golf courses and restaurant) or benefitting their sales operations (i.e., pools, tennis courts, roads, and security).
- *That Double Diamond will continue to make improvements.* White Bluff had a hotel that burned down in a fire several years ago. Double Diamond represents to property owners that plans to rebuild the hotel along with a conference center are in the works and even goes so far as to say that construction will commence soon. However, Double Diamond has no plans to rebuild the hotel.
- *All lots have the same maintenance fees.* The sales force does not disclose that all lots do *not* have the same maintenance fees. In fact, Double Diamond, as the largest property owner at White Bluff, only has to pay \$1/lot in maintenance fees

for most of its lots, which is dramatically less than the \$1,000/year per lot that single lot owners pay.

- *The purchaser will never lose money on the investment.* The sales person will represent that lot prices have gone up an average of 15% per year over the past five years with an increase of 10% in the past year. The sales person goes on to represent that while the lot value could fluctuate, it certainly would not shrink to half or vanish. In reality, property owners like Plaintiffs cannot even give their lots away. As discussed above, the market for the lots is much less than the purchase price, and supply exceeds demand. When coupled with the ever-increasing POA fees and high interest rates, a property owner can easily spend tens of thousands of dollars on a lot they cannot even give back to Double Diamond.
- *Participation in referral or “trade in” programs:* Double Diamond induces property owners to send referrals by promising cash, televisions, and luxury cars to property owners who refer others, provided those referrals make property purchases of a certain amount. Likewise, Double Diamond will allow property owners to “trade in” their property for either property at other resorts or other types of ownership (i.e., timeshares). The obligations tied to such “trade ins” are not fully explained to property owners.

33. Double Diamond’s deceptive and improper sales practices are not unique to White Bluff. Double Diamond, upon information and belief, employs the same scheme at all of its resorts. In fact, in 2011, the Attorney General for the State of Kentucky commenced litigation against Double Diamond and NRMC for, inter alia, deceptive trade practices, including making

misrepresentations about plans for further development at The Falls, a Double Diamond resort located in Kentucky.

34. In addition, Double Diamond's Eagle Rock Resort in Pennsylvania was the subject of a lawsuit by a former sales agent, who alleged that Eagle Rock ordered him to provide different services to customers of a certain minority group and to direct those potential customers toward less desirable lots, and categorized customers of that group as a "Large Investment Group" so as to mask its discriminatory practices. Upon information and belief, some Plaintiffs in this lawsuit fall within the group that were allegedly discriminated against by Double Diamond at its Eagle Rock development, and this will be an additional focus of discovery in this case.

Illegal Assessments Relating to Golf Course Maintenance Expenses.

35. The WBPOA is obligated to pay for all of the maintenance expenses associated with the two 18-hole golf courses at White Bluff, which it does not own and for which it receives zero of the revenue. The two 18 hole golf courses are instead owned by White Bluff Golf, Inc., a for-profit corporation and a wholly owned subsidiary of Double Diamond. Double Diamond has the exclusive right to manage and operate the White Bluff golf courses. Those course are open to the general public; available to the public for private golf tournaments; and a key selling point in Double Diamond's land sales business plan.

36. While Double Diamond owns the golf courses and receives 100% of the revenue generated by them, the WBPOA is saddled with 100% of the maintenance expenses, which in 2009 exceeded \$1.5 million. This counts for almost one half of the WBPOA's expenses each year.

37. Furthermore, in January 2010, the WBPOA directors, again without notice to or input from the WBPOA membership at large, amended the WBPOA by-laws to expressly require the WBPOA to pay for golf course maintenance. Such an amendment is arbitrary, capricious, and not in the best interest of the WBPOA, as pled below.

38. In order for the WBPOA income to be exempt, both state and federal law require that at least 90 percent of the expenditures of a non-profit property owners' association be spent on the acquisition, maintenance and preservation of association property. The golf courses do not fall within the definition of "association property" under federal or state law. Significantly more than one-half of the expenditures of the WBPOA are for the improvement and maintenance of property not owned by the Association, but owned by one or more of the Double Diamond Defendants. This is allowed because Double Diamond controls the WBPOA board. With that control, the WBPOA board, at Double Diamond's direction, has caused the WBPOA not to function as a non-profit, which all property owners' associations are required to be under Texas law.

The Mandatory Food and Beverage Assessments a/k/a the "Hospitality Program"

39. The food and beverage a/k/a "hospitality" operations at White Bluff are owned and operated by Double Diamond. The inn, spa, restaurant, golf courses, and marina at White Bluff are open to the general public. They are not owned by the WBPOA; the WBPOA receives none of the revenue generated by these facilities. Again without consulting or notifying the property owners, in December 2003, the WBPOA Board adopted a mandatory food and beverage assessment program applicable to Plaintiffs and all members of the Class. Initially, the assessment was \$100.00 per year, and currently it is \$200.00 per year. Double Diamond refers to this assessment as a "food and beverage credit" or "hospitality credit" because, upon payment of

the \$200, the member is issued a “credit” in the amount of \$250 to be redeemed for the purchase of services at the Double Diamond amenities at White Bluff, e.g. the golf course, the restaurants, the hotel, or the spa. If a property owner does not use the pre-paid food and beverage credit in a given year, then the property owner loses the credit, and the sums are retained by Double Diamond, even though no services were ever provided.

40. This “hospitality program” was announced to the property owners through a letter enclosed with the January 2004 invoice for semi-annual assessments.

41. The representations set forth in this letter were false. Nothing in the sales contracts or bylaws of the WBPOA required property owners to support or subsidize Double Diamond’s hospitality operations. The hospitality operations – whether profitable or not – were the responsibility of Double Diamond, not the WBPOA. The “hospitality operations” are not even a profit focus for Double Diamond. It is in the business of land sales, and “hospitality” is a “loss leader” used to drive land sales. Even without the WBPOA subsidy, Double Diamond would keep these operations running so it could continue to sell land at White Bluff.

42. The mandatory assessments for the “hospitality program” for services to be purchased at resort facilities owned by Double Diamond, which are open to the general public, is not a legal or proper use of assessments. Specifically, passing such a “program” was an arbitrary and capricious exercise of board authority; was not permitted by the WBPOA’s governing documents or deed restrictions; and is not permissible under restrictive covenant common law. Further, it is a breach of the board’s fiduciary duties for them to allow the WBPOA to assess these fees – under penalty of foreclosure no less – and then turn the money over to Double Diamond.

43. The food and beverage assessments in 2004 and 2005 were \$100 per year, per property owner. The assessments were made semi-annually in January and July of each year.

44. Sometime in 2006, Defendant Curran, as Vice President of the WBPOA, and Defendant Ward, as President of Double Diamond, entered into a “Capital Improvement Agreement” wherein the WBPOA agreed to continue the practice of assessing the food and beverage fees for ten years and paying these assessments to Double Diamond. The Capital Improvement Agreement was ratified by Defendant Curran, and other WBPOA directors Gracy, Groppe, Fritz and Willingham. The Capital Improvement Agreement extending the food and beverage assessment program for ten years was not discussed at the May 2006 members’ meeting, and was not announced to the membership.

45. Pursuant to the Double Diamond-drafted and endorsed Capital Improvement Agreement, the food and beverage assessment increased year after year. Specifically, the agreement provided the assessment would increase to \$150 per year in 2006, \$175 per year in 2007, and \$200 in 2008. In addition, the WBPOA agreed to forego the \$50,000 annual payment from Double Diamond for golf course maintenance. In exchange, Double Diamond agreed to provide \$1 million in “capital improvements.” Again, the types and scope of improvements were decided by Double Diamond, who acted as general contractor. There is no evidence that the projects were competitively bid. Most troubling, however, is the WBPOA board of directors agreeing to a contract that would require property owners to pay Double Diamond and its affiliates close to \$10 million over the life of the agreement, forego \$500,000 of revenue, and only receive \$1 million of improvements in exchange.

Defendants' Misconduct Has Damaged Plaintiffs

46. As a result of the fraudulent and deceptive scheme perpetrated by Defendants, Plaintiffs have been damaged. Among other things, Plaintiffs were promised at the time of purchase that WBPOA fees would not dramatically increase, yet they have gone up by double digit percentages since 2004. Plaintiffs who have pleaded financial difficulty (in many cases, the elderly and infirm) are not only rebuffed but have been faced with adverse credit reports and collection proceedings. Defendants' actions have caused extreme mental anguish to Plaintiffs. People have been forced into bankruptcy and financial ruin, and marriages and families have been ruined as a result of Defendants' predatory conduct.

47. This suit is Plaintiffs' last hope for relief. Plaintiffs have tried to sell their property, but there is no market. Plaintiffs have tried to give the property back to Double Diamond, who refuses to take it. Plaintiffs have walked away from the property, which has a catastrophic impact on their credit, only to have Double Diamond buy the property out of foreclosure; move the property back into its inventory; and start the dreadful process over again.

48. Plaintiffs have even tried to replace the WBPOA board with members who represent their point of view, and Defendants rigged the election and amended the bylaws to ensure they would stay in power. The judicial system is Plaintiffs' last alternative.

Fraudulent Concealment

49. Many of the fraudulent acts and improper assessments occurred within four years of filing this lawsuit. Prior to that time, and despite the fiduciary obligations the WBPOA board members owed to the WBPOA and its members, the board fraudulent and deliberately concealed from Plaintiffs the truth about their deceptive operations and the fraud alleged in this Petition. Double Diamond is not a publically held corporation, further limiting the information available

to Plaintiffs. Until the filing of a putative class action in 2009, for which documents were not produced until 2010, Plaintiffs did not and could not have the ability to fully understand the extent of Defendants' self dealing.

50. Further, until 2007, when another property owner, Dan Saturn, began speaking out against Double Diamond's practices, few Plaintiffs knew that Double Diamond continued to control the WBPOA board. Rather, Plaintiffs, based on representations made during the property sale, thought that the WBPOA was an independently run organization.

51. In fact, to this day, all Defendants falsely contend that their actions are legal, proper, in the best interest of White Bluff, and supported by the covenants, restrictions, bylaws, and other governing documents.

52. Plaintiffs did not have knowledge sufficient to discover, or which should have enabled them to discover, through the exercise of reasonable diligence, the fraudulent and improper conduct of Defendants. To the extent applicable to the claims asserted herein, Defendants are estopped from asserting any statute of limitations defense by virtue of their own acts of fraudulent concealment. Further, the actions of Defendants constitute a "continuing violation" in that each time an improper budget is approved, an illegal assessment is made or an illegal payment is accepted, Defendants have engaged in a separate tort.

53. The applicable statutes of limitations for Plaintiffs' claims are tolled by Defendants' fraudulent concealment of their actions as alleged in this Petition.

V. DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS¹

54. Plaintiffs bring this action both individually and derivatively in the right and for

¹ The WBPOA is a non-profit. Texas Non-Profit law does not mandate that a suit for breach of directors' fiduciary duties to the non-profit has to be asserted derivatively. Plaintiffs have individual causes of action against the Directors and also have the right to recover for the Directors' breaches to the WBPOA. While Plaintiffs do not believe that derivative pleading is required, they plead this claim derivatively out of an abundance of caution.

the benefit of the WBPOA to redress injuries suffered and to be suffered by the WBPOA as a result of the Directors' breaches of fiduciary duty.

55. Plaintiffs will adequately and fairly represent the interests of the WBPOA and its members in enforcing and prosecuting its rights.

56. Plaintiffs are current or former WBPOA members and have been members in whole or in part during all times relevant to the Defendants' wrongful course of conduct.

57. As a result of the facts set forth herein, Plaintiffs have not made any demand on the WBPOA's Board of Directors to institute this action. Such demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action because:

- a. Each of the Defendants participated in, approved or recklessly disregarded the wrongs complained of herein, which could not have been an exercise of good faith business judgment;
- b. Defendants Ward, Curran and Gracy are Double Diamond executives and are therefore on both sides of virtually all disputed transactions;
- c. None of the remaining directors are disinterested due to Double Diamond's (particularly Ward's) power and control over the WBPOA, as detailed *supra*;;
- d. All Defendants unanimously approved all budgets, contracts and transactions, discussed *supra*, which have damaged the WBPOA;
- e. All but two of the Directors named as defendants in this suit continue to serve as directors of the WBPOA. All current Directors have been named in this suit. Thus, in order to bring this action for breaching their fiduciary duties, the directors would be required to sue themselves and/or their fellow directors, who

are their friends and neighbors, and with whom they have entangling alliances and interlocking business relationships, interests, and dependencies; and

Despite their knowledge of the wrongdoing alleged herein, the WBPOA Directors have not taken action to correct the harm to the WBPOA.

VI. CAUSES OF ACTION

Count One: Declaratory Relief

(Against All Defendants)

58. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

59. Plaintiffs who have been billed WBPOA maintenance fees and assessments have a justiciable controversy as to their obligations to pay certain WBPOA fees. The controversy will be resolved by the declaration sought.

60. Pursuant to Section 37.001 et seq. of the Texas Civil Practices and Remedies Code, Plaintiffs seek a declaratory judgment that neither the WBPOA, nor anyone acting on its behalf, including all Defendants, are permitted to assess, bill, collect or deposit any fees or funds that relate to (a) the “food and beverage” program commenced in January 2004; or (b) maintenance of the two golf courses at White Bluff.

61. Plaintiffs also seek a declaration that any board action authorizing assessments or fees (including the collection of said fees) relating to (a) the “food and beverage program” or (b) golf course maintenance are void *ab initio* because they:

- a. are an arbitrary and capricious exercise of WBPOA board authority in violation of Tex. Prop. Code §202.004;

- b. violate Tex. Bus. Or. Code §§22.0253 and 22.0254, which provide that a dividend may not be paid to, and no part of the income of a non-profit corporation may be distributed to, the corporation's members, directors, or officers and that a corporation may only pay compensation in a reasonable amount to the members, directors or officers of the corporation for services provided;
- c. violate the applicable Covenants and Restrictions of White Bluff, which do not provide for the WBPOA to levy or spend money on golf course maintenance and capital improvements or to subsidize the "hospitality" operations owned and operated by Double Diamond; and²
- d. violate restrictive covenant common law.

62. Plaintiffs also seek a declaration that the 2010 Amendment of the WBPOA By Laws to provide that a 'purpose' of the WBPOA is "to fund the maintenance of the golf courses" is an arbitrary and capricious exercise of board authority, in further violation of Tex. Prop. Code §202.004.

63. Section 528 of the Internal Revenue Code, which provides that homeowners' associations are not subject to taxation, provides that (among other provisions not at issue) (a) 90 percent or more of the expenditures of the organization for the taxable year are for the expenditures of the acquisition, construction, management, maintenance, and care of **association**

² In the past, Defendants rely on Article 6(g) of the Bylaws as supporting this assessment scheme. That provision states, "insofar as permitted by law, [the specific purpose for which the WBPOA is formed is] to do any other thing that, in the opinion of the Board of Directors of the Association, will promote the common benefit and enjoyment of the Owners and residents of the properties; provided, however, that no part of the net earnings of the Association shall inure to the benefit of or be distributable to any Member, director or officer of the Association, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Association related or pertaining to one or more of its purposes); and provided further that no part of the activities of the Association shall include carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution or statements) any political campaign on behalf of any candidate for public office." Not only are these assessments NOT "permitted by law" but also, "net earnings" of the Association are inuring to the benefit of Double Diamond, its CEO/owner Ward, and its owners Curran and Gracy, who are all members, directors and/or officers of the WBPOA.

property (26 U.S.C. § 528(c)(1)(C)); and (b) no part of the net earnings of such organization inures (other than by acquiring, constructing, or providing management, maintenance and care of association property, and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual (26 U.S.C. § 528(c)(1)(D)).

64. This sentiment is echoed in TEX. TAX CODE §23.18(d), which provides that an organization qualifies as a nonprofit homeowners' association if "90% or more of the expenditures of the organization is made for the purpose of acquiring, construction, managing, maintaining, and caring for the property nominally held by the organization" and "net earnings of the organization do not inure to the benefit of any member of the organization or individual, other than acquiring, constructing, or providing management, maintenance, and care of the organization's property or by a rebate of excess membership dues, fees, or assessments."

65. Because the assessment scheme here violates applicable tax law, the WBPOA's non-profit status is jeopardized. Under Texas law, a POA must be a non-profit. TEX. PROP. CODE §204.004(b). The POA's conduct and failure to act as a non-profit is at the direction and for the benefit of Double Diamond. Accordingly, Plaintiffs seek a declaration that Double Diamond, who ordered and benefitted from this illegal scheme, should be responsible for a refund of these improper assessments.

66. Plaintiffs also seek a declaration that the actions of the WBPOA board of directors is *ultra vires*. The decisions (a) to allow the WBPOA to pay golf course maintenance expenses when the WBPOA does not own the courses and does not receive any revenue, and (b) to pass and continue the food and beverage program, which goes directly into Double Diamond's bank account was all done at the behest of and for the benefit of Double Diamond and its owners. For the reasons discussed above, this exceeded the board's authority because the

WBPOA, as a non-profit organization, is not allowed to levy these sorts of assessments that inure to the benefit of others. Because these acts are *ultra vires*, Plaintiffs seek a declaration that the fees should be disgorged from the recipient of them, Double Diamond

67. Plaintiffs also seek recovery of their attorneys' fees and expenses pursuant to Chapter 37 of the Texas Civil Practices and Remedies Code.

Count Two: Permanent Injunctive Relief

(Against All Defendants)

68. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

69. Plaintiffs request that the Court issue a permanent injunction prohibiting Defendants from undertaking any action to assess, bill, or collect fees for the "food and beverage program," "resort credit program" or any successor program that bills WBPOA members for funds that are passed through to Double Diamond or any agent, subsidiary, or affiliate of Double Diamond.

70. Plaintiffs also request the Court issue a permanent injunction prohibiting Defendants from taking any action to assess, bill or collect fees that are used in any capacity to maintain the golf courses as White Bluff, including paying for equipment and personnel used in connection therewith.

Count Three: Constructive Trust

(Against Double Diamond, Inc., Double Diamond-Delaware, Inc., White Bluff Club Corp., National Resort Management Co. Ward, Curran and Gracy)

71. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

72. Plaintiffs plead for the specific equitable remedy of constructive trust. Plaintiffs will show that the WBPOA funds that were misappropriated and misapplied by the named Defendants were used to improve and enhance the personal and real property owned by Double Diamond, which ultimately inured to the benefit of Ward, Curran and Gracy, who are shareholders of Double Diamond. Plaintiffs seek a constructive trust on those properties resulting from the illegal fees and assessments used to maintain and improve those properties for years. These funds should be disgorged from Double Diamond and reimbursed to Plaintiffs.

Count Four: Violation of the Texas Deceptive Trade Practices Act

(Against Double Diamond, Inc., Double Diamond-Delaware, Inc., White Bluff Club Corp., National Resort Management Co. (collectively “Double Diamond”))

73. Plaintiffs incorporate the allegations above and below by reference.

74. Plaintiffs are consumers pursuant to the Texas Deceptive Trade Practices Act (“DTPA”), Tex. Bus. & Com. Code §17.46 et seq. Plaintiffs entered contracts with Double Diamond for the purchase of goods and services, including, but not limited to, real estate and the amenities at White Bluff.

75. As discussed above, Double Diamond’s actions were false, misleading, and deceptive, in violation of the following sections of the DTPA:

- a. Tex. Bus. & Com. Code §17.46(b)(3): confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- b. Tex. Bus. & Com. Code §17.46(b)(5): representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities they do not have;
- c. Tex. Bus. & Com. Code §17.46(b)(7): representing that goods or services are of a particular standard, quality, or grade;

- d. Tex. Bus. & Com. Code §17.46(b)(9): advertising goods or services with intent not to sell them as advertised;
- e. Tex. Bus. & Com. Code §17.46(b)(11): making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
- f. Tex. Bus. & Com. Code §17.46(b)(12): misrepresenting that an agreement confers or involves rights, remedies or obligations which it does not have or involve, or which are prohibited by law;
- g. Tex. Bus. & Com. Code §17.46(b)(19): using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods; and
- h. Tex. Bus. & Com. Code §17.46(b)(24): failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

76. Plaintiffs relied on these false, misleading and deceptive practices to their detriment.

77. As a result of Double Diamond's actions, Plaintiff have sustained damages in an amount to be determined by a trier of fact.

78. Because Double Diamond's actions were knowing and/or intentional, pursuant to Tex. Bus. & Com. Code §17.50, Plaintiffs are entitled to recover up to three times their economic damages. Plaintiffs are also entitled to recover their reasonable and necessary attorneys' fees and related costs, in addition to pre and post-judgment interest.

Count Five: Fraud in a Real Estate Transaction (Tex. Bus. & Com. Code §27.01)

(Against Double Diamond, Inc., Double Diamond-Delaware, Inc. (collectively "Double Diamond"))

79. Plaintiffs incorporate the allegations above and below by reference.

80. As set forth above, Double Diamond made untrue representations of fact to induce Plaintiffs to purchase property at White Bluff.

81. Double Diamond made the statements with the intent that Plaintiffs rely on such statements.

82. Plaintiffs reasonably relied upon those statements to their detriment by purchasing and continuing to own property at White Bluff.

83. As a direct and proximate result of those false representations, Plaintiffs have suffered actual damages. They are also entitled to recover attorney's fees as provided by statute.

84. Defendants' acts are fraudulent and malicious. Accordingly, pursuant to Tex. Civ. Prac. & Rem. Code § 41.001 et seq., Plaintiffs request punitive damages in an amount to be determined by the Court.

Count Six: Breach of Fiduciary Duty

(Asserted by Plaintiffs both in their Individual Capacity and on behalf of the WBPOA against Ward, Curran, Collins, Groppe, Gracy, Willingham, Fritz, and Bergman (collectively “Directors”))

85. Plaintiffs incorporate the allegations above and below by reference.

86. By reason of their positions as past or current directors of the WBPOA, Ward, Curran, Gracy, Collins, Willingham, Groppe, and Bergman (the “Directors”) owe the WBPOA fiduciary obligations of good faith, trust, loyalty, and due care, and were and continue to be required to use their utmost ability to control and manage the WBPOA in a fair, just, honest and equitable manner.

87. The Directors were and continue to be required to act in furtherance of the best interest of ALL WBPOA members and not in furtherance of their personal interest or benefit. The Directors, because of their positions of control and authority, were able to and did exercise control over the wrongful acts complained of herein.

88. The Directors violated the fiduciary duties of loyalty, good faith, and due care by, inter alia, (a) allowing Ward to maintain control over the WBPOA Board; (b) failing to consider whether other companies could operate White Bluff better, instead continuing to approve using Double Diamond and its affiliates for all management, work, and projects at White Bluff without competitive bidding; (c) failing to investigate and consider whether the budgets prepared by Double Diamond were competitive and reasonable; (d) approving budgets and approving assessments that are excessive and not in the best interest of all property owners; (e) failing to adequately supervise Double Diamond/UEMC in the billing and collection of WBPOA dues; (e) failing to implement and execute proper accounting controls over the WBPOA accounts; (f) unilaterally changing bylaws without WBPOA membership notification or approval; and (g)

implementing ad hoc proxy vote rules that were unfairly beneficial to Ward and Double Diamond.

89. In the alternative, to the extent these duties can only be owed to the WBPOA, Plaintiffs plead that Defendants, as collectors and distributors of money paid by Plaintiffs, owe Plaintiffs independent duties of loyalty, good faith and due care to spend those funds in a reasonably prudent manner and to account for expenditures. The Directors have breached those duties by (a) failing to investigate and consider whether the budgets prepared by Double Diamond were competitive and reasonable; (b) approving budgets and approving assessments that are excessive and not in the best interest of all property owners; (c) failing to adequately supervise Double Diamond/UEMC in the billing and collection of WBPOA dues; (d) failing to implement and execute proper accounting controls over the WBPOA accounts;.

90. As a direct and proximate result of Directors' failure to perform their fiduciary obligations, Plaintiffs and the WBPOA have sustained damages, as alleged herein.

91. Directors' acts are fraudulent and malicious. Accordingly, pursuant to Tex. Civ. Prac. & Rem. Code § 41.001 et seq., Plaintiffs request punitive damages in an amount to be determined by the Court.

Count Four: Common Law Fraud/Fraudulent Inducement

(Against All Defendants)

92. Plaintiffs incorporate the allegations above and below by reference.

93. As set forth above, Defendants made untrue representations of fact, including failing to disclose and/or making partial disclosure material facts, to induce property owners to continue to pay WBPOA fees.

94. Defendants made the statements with the intent that Plaintiffs rely on such statements.

95. Plaintiffs reasonably relied upon those statements to their detriment by paying WBPOA fees and assessments.

96. As a direct and proximate result of those false representations, Plaintiffs have suffered actual damages.

97. Defendants' acts are fraudulent and malicious. Accordingly, pursuant to Tex. Civ. Prac. & Rem. Code § 41.001 et seq., Plaintiffs request punitive damages in an amount to be determined by the Court.

Count Five: Aiding and Abetting Breach of Fiduciary Duty

(Against All Defendants)

98. Plaintiffs incorporate the allegations above and below by reference.

99. Defendants knowingly participated in the Directors' individual and collective breaches of their fiduciary duties owed to the WBPOA and its members, including submitting budgets and taking money that belonged to the WBPOA membership and using the money in a manner that was not in the best interest of the majority of property owners at White Bluff. As a result of Defendants' knowing inducement of and participation in these breaches, Plaintiffs sustained damages for which Defendants are jointly and severally liable.

Count Six: Conspiracy to Commit Breach of Fiduciary Duty

(Against All Defendants)

100. Plaintiffs incorporate the allegations above and below by reference.

101. Defendants are aware that they have used Double Diamond to the exclusion of anyone else to perform all functions at White Bluff and that doing so unfairly benefits Double Diamond and those that live at White Bluff full time. Defendants also know of Double Diamond's and Ward's efforts to ensure that the WBPOA board remained under the control of Double Diamond.

102. Each Defendant formed the specific intent to assist the other in breaching their fiduciary duties. A meeting of the minds existed between the conspirators, including Defendants, on the object of the conspiracy and the course of action to accomplish the object.

103. Defendants' objective in pursuing this course of action was unlawful in that the Directors breached their fiduciary duties to the WBPOA and Plaintiffs.

104. As set forth above, Directors are guilty of the underlying breach of fiduciary duty.

105. As a direct and proximate result of Defendants' conspiracy, Plaintiffs have suffered damages in an amount to be determined by the trier of fact.

106. In consummating their conspiracy, Defendants' acts are fraudulent and malicious. Accordingly, pursuant to Tex. Civ. Prac. & Rem. Code § 41.001 et seq., Plaintiffs request punitive damages in an amount to be determined by the Court.

Count Seven: Conspiracy to Commit Fraud

(Against All Defendants)

107. Plaintiffs incorporate the allegations above and below by reference.

108. Defendants are aware that Double Diamond makes a number of misrepresentations to property owners, as described above, from misrepresenting the facilities and amenities at the resort, to the value of the property at White Bluff, to the amount, type and increase of WBPOA fees. Defendants were also aware of one another's failures to competitively bid projects and to rubber stand all expenditures suggested by Double Diamond. Defendants also knew of Double Diamond's and Ward's efforts to ensure that the WBPOA board remained under the control of Double Diamond.

109. Each Defendant formed the specific intent to assist the other in breaching their fiduciary duties. A meeting of the minds existed between the conspirators, including Defendants, on the object of the conspiracy and the course of action to accomplish the object.

110. Defendants' objective in pursuing this course of action was unlawful in that the Directors breached their fiduciary duties to the WBPOA and Plaintiffs.

111. As set forth above, Directors are guilty of the underlying breach of fiduciary duty.

112. As a direct and proximate result of Defendants' conspiracy, Plaintiffs have suffered damages in an amount to be determined by the trier of fact.

113. In consummating their conspiracy, Defendants acted fraudulently and maliciously. Accordingly, pursuant to Tex. Civ. Prac. & Rem. Code § 41.001 et seq., Plaintiffs request punitive damages in an amount to be determined by the Court.

Count Eight: Aiding and Abetting Fraud

(Against All Defendants)

114. Plaintiffs incorporate the allegations above and below by reference.

115. Defendants knowingly participated in the Double Diamond's misrepresentations to Plaintiffs, described in detail above. Directors approved Double Diamond's budgets, made assessments accordingly, and handed over all assessment money to Double Diamond, even though those assessments not negotiated at arm's length or competitively bid. As a result of Defendants' knowing inducement of and participation in the fraud, Plaintiffs sustained damages for which Defendants are jointly and severally liable.

116. Defendants' acts are fraudulent and malicious. Accordingly, pursuant to Tex. Civ. Prac. & Rem. Code § 41.001 et seq., Plaintiffs request punitive damages in an amount to be determined by the Court.

Count Nine: Negligent Misrepresentation

(Against All Defendants)

117. Plaintiffs incorporate the allegations above and below by reference.

118. As set forth above Defendants supplied false information to Plaintiffs regarding, inter alia, property ownership at White Bluff and the dues and obligations of the WBPOA.

119. Defendants did not exercise reasonable care in communicating this information.

120. With respect to representations made to them, Plaintiffs reasonably relied upon these misrepresentations to their detriment.

121. As a direct and proximate result of Defendants' false representations, Plaintiffs have suffered actual damages.

122. Accordingly, Plaintiffs are entitled to monetary damages in an amount sufficient to compensate them for the harm sustained.

Count Ten: Negligent Hiring and Supervision

(Against the Directors)

123. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

124. The Directors have employed Double Diamond to act as the billing and collections agents for WBPOA dues.

125. The Directors have breached their duty of ordinary care in continuing to retain and supervising Double Diamond as set forth above.

126. As a proximate cause of the Directors' negligent conduct, Plaintiffs have suffered actual damages.

127. Accordingly, Plaintiffs are entitled to monetary damages in an amount sufficient to compensate them for the harm sustained.

VII. REQUEST FOR JURY TRIAL

128. Plaintiffs request a trial by jury.

VIII. ANSWER TO COUNTERCLAIM

129. Pursuant to Rule 92, Texas Rules of Civil Procedure, each Defendant generally denies each and every allegation contained in Plaintiff's Original Petition and demands strict proof thereof as required by Texas law.

IX. REQUEST FOR RELIEF

Wherefore, Plaintiffs demand judgment in their favor against Defendants for:

- a. Declaratory and injunctive relief;
- b. Actual and compensatory damages;
- c. Additional statutory and exemplary damages;
- d. Pre-judgment and post-judgment interest;
- e. Court costs;
- f. Attorney's fees; and,

All other relief to which Plaintiffs are entitled.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on the following counsel for Defendants on February 19, 2013 via certified mail, return receipt requested, in accordance with the Texas Rules of Civil Procedure:

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