

IN THE CIRCUIT COURT OF VAN BUREN COUNTY, ARKANSAS  
CIVIL DIVISION

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**GORDON JACKSON,**  
**On behalf of himself and all others similarly situated,**

**Plaintiff,**

**vs.**

**Case No. 71CV-19-36**

**WYNDHAM DESTINATIONS, INC.,  
WYNDHAM WORLDWIDE CORPORATION,  
WYNDHAM VACATION RESORTS, INC.,  
WYNDHAM WORLDWIDE OPERATIONS, INC.,  
FAIRFIELD COMMUNITIES, INC.,  
FAIRFIELD COMMUNITIES LAND COMPANY,  
FAIRFIELD GLADE COMMUNITY CLUB,  
FAIRFIELD BAY COMMUNITY CLUB, INC., and  
COMPANIES X, Y, and Z,**

**Defendants.**

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**DEFENDANTS WYNDHAM DESTINATIONS, INC.'S, WYNDHAM WORLDWIDE CORPORATION'S, WYNDHAM VACATION RESORTS, INC.'S, WYNDHAM WORLDWIDE OPERATIONS, INC.'S, FAIRFIELD COMMUNITIES, INC.'S, AND FAIRFIELD COMMUNITIES LAND COMPANY'S MOTION TO DISMISS, OR ALTERNATIVE MOTION FOR MORE DEFINITE STATEMENT, WITH MEMORANDUM OF LAW IN SUPPORT THEREOF**

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**COME NOW** these Defendants, Wyndham Destinations, Inc., Wyndham Worldwide Corporation, Wyndham Vacation Resorts, Inc., Wyndham Worldwide Operations, Inc., Fairfield Communities, Inc., and Fairfield Communities Land Company (hereinafter, collectively, "Wyndham Entities" or "these Defendants"), by and through the undersigned counsel, and, pursuant to Rule 12 of the Arkansas Rules of Civil Procedure, submits this Motion to Dismiss, or Alternative Motion for More Definite Statement, with Memorandum of Law in Support Thereof, and presents to the Court as follows:

## I. INTRODUCTION

On March 19, 2019, Plaintiff, Gordon Jackson, on behalf of himself and all others similarly situated (hereinafter, “Plaintiff”), filed the present lawsuit against eight (8) specifically-identified entities and three (3) unknown companies (collectively, “All Defendants”). (*See generally* Class Action Complaint (“Complaint”)). Plaintiff’s claims and allegations are all related to the so-called fraudulent collection of dues and assessments from owners who purchased real property at Fairfield Bay Ozark Mountain Lake Resort & Community (“Fairfield Bay Resort”). (*Id.*). Plaintiff’s Complaint broadly alleges that “Defendant,” singularly and generically, is liable for each and every one of their allegations. (*Id.*).

Notably, however, Plaintiff’s Complaint fails to state any claim for which relief can be granted, and, for multiple reasons, it must be dismissed.<sup>1</sup> First, the Complaint makes no distinction as to which Defendants are liable for which actions or claims alleged, and the allegations raised by Plaintiff are so vague that they are insufficient to state a cause of action. Second, while the Complaint asserts claims for both constructive fraud and common law fraud, neither of these claims were pleaded with the appropriate particularity as required by law, and they therefore fail to state a cause of action. Third, the allegations in the Complaint are barred by the applicable statute of limitations and by the doctrines of waiver, laches, and estoppel. Accordingly, Plaintiff’s claims against these Defendants must be dismissed as a matter of law.

In the alternative, if Plaintiff’s cause of action survives the present Motion to Dismiss, these Defendants move for relief in accord with Rule 12(e) of the Arkansas Rules of Civil Procedure and ask that Plaintiff be required to file an Amended Complaint that sets forth a more

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<sup>1</sup> This Motion to Dismiss is being filed by these Defendants in lieu of filing an Answer to Plaintiff’s Complaint in accord with Ark. R. Civ. P. 12. If necessary, in the event that this Motion to Dismiss is denied, these Defendants request the opportunity to file an Answer and raise defenses that are applicable to them in accord with Ark. R. Civ. P. 12(a)(2).

definite statement of the facts and allegations against each of them so that they will individually know what they have been accused of and what actual facts support the allegations against each of them.

## II. LAW AND ARGUMENT

### A. *These Defendants Move to Dismiss Plaintiff's Complaint for Failure to State a Claim Upon Which Relief May Be Granted*

#### 1. The Standard of Review for Rule 12(b)(6) Dismissal.

Rule 12(b)(6) of the Arkansas Rules of Civil Procedure states that the defense of “failure to state facts upon which relief may be granted” may be “made by motion” and may be made “at the option of the pleader.” Ark. R. Civ. P. 12(b)(6). If a trial court finds, after accepting all facts contained in the complaint as true and in a light most favorable to the non-moving party, that the complaining party *either* failed to state general facts upon which relief could have been granted *or* failed to include specific facts pertaining to one or more of the elements of one of its claims, dismissal under Rule 12(b)(6) is appropriate. See *Bethel Baptist Church v. Church Mut. Ins. Co.*, 54 Ark. App. 262, 924 S.W.2d 494 (1996). A trial court’s ruling on a Rule 12(b)(6) motion to dismiss is reviewed based on an abuse of discretion standard. *Worden v. Kirchner*, 2013 Ark. 509, 431 S.W.3d 243, 247 (2013); *St. Vincent Infirmary Med. Ctr. v. Shelton*, 2013 Ark. 38, 425 S.W.3d 761 (2013).

#### 2. Plaintiff's Allegations are Vague and Insufficient to State a Cause of Action.

In comparison to federal courts, which require “notice” pleadings, Arkansas courts require “fact” pleadings. *NCS Healthcare of Ark., Inc. v. W.P. Malone, Inc.*, 350 Ark. 520, 88 S.W.3d 852 (2002). Rule 8(a)(1) of the Arkansas Rules of Civil Procedure requires that a complaint state facts, not mere conclusions, in order to entitle the pleader to relief. Ark. R. Civ.

P. 8(a)(1); *Born v. Hosto & Buchan, PLLC*, 2010 Ark. 292, 372 S.W.3d 324 (2010). Arkansas law specifically requires that facts constituting a cause of action be pled in direct and positive allegations, and not in the form of argument, inference, or belief. *Big A Warehouse Distributors, Inc. v. Rye Auto Supply, Inc.*, 19 Ark. App. 286, 719 S.W.2d 716 (1986). Statements of generalities and conclusions of law are not sufficient to state a cause of action. *Id.* In order to be sufficient, a complaint must provide actual facts to give defendants fair notice of plaintiff's claims and the bases for such claims. *Ragar v. Brown*, 332 Ark. 214, 964 S.W.2d 372 (1998). A pleading is deficient on its face if it fails to set forth actual facts that pertain to the essential elements of a cause of action. *Thomas v. Pierce*, 87 Ark. App. 26, 184 S.W.3d 489 (2004).

Moreover, only the facts that are alleged in a complaint are to be treated as true – not the plaintiff's theories, speculations, or statutory interpretations. *Dockery v. Morgan*, 390 S.W.3d 377 (2011). Thus, Rules 8(a)(1) and 12(b)(6) must be read together in order to test the sufficiency of a complaint. *Id.* When determining whether a cause of action has been sufficiently pled to survive a motion to dismiss, trial courts are to look to the allegations of actual facts that the plaintiff contends support the cause of action – and, when a complaint only states conclusions without facts, a trial court's dismissal of a complaint will be affirmed by the appellate court. *See Rippee v. Walters*, 73 Ark. App. 111, 40 S.W.3d 823 (2001).

Here, Plaintiff's Complaint merely states broad conclusions – without providing underlying factual support. In fact, the majority of factual allegations in Plaintiff's Complaint reference only "Defendant," and there is no further specificity as to how the allegations actually apply to the 8 named entities and 3 unnamed companies. Thus, these Defendants are unable to determine which allegations and claims are being asserted against them in comparison to the other named Defendants. According to case law precedent, where facts specific to claims against

each of the several parties in a multi-party lawsuit are absent, the suit fails under Arkansas fact pleading requirements. *See, e.g., Ark. Dep't of Envtl. Quality v. Brighton Corp.*, 352 Ark. 396, 408-09, 102 S.W.3d 458, 466 (2013) (holding that the mere recitation that the 15 different defendants were “generators” or “transporters” who brought hazardous substances or hazardous waste to the USI site “for disposal,” without any further facts to support a conclusion that the defendants came within the meanings of these terms, simply fails to comport with Arkansas’s fact-pleading requirements). In the case at bar, Plaintiff fails to differentiate any actions of the 11 Defendants with any actual facts that are specific to their claims. As such, these Defendants are unable to determine which the allegations are alleged as to them – either collectively or individually, or if at all.

The only “factual allegation” in Plaintiff’s Complaint that is specific to any Defendant is Paragraph 14, which states only that Defendant Wyndham Worldwide Corporation indicated net revenues in its “most recent” Securities and Exchange Commission Form 10-K filings, but that Plaintiff has not received any financial information regarding the assessments they have paid “to Defendant.” Notably, however, Defendant Wyndham Worldwide Corporation is not the entity to which Plaintiff paid any assessments (or which collects any such assessments), and Defendant Wyndham Worldwide Corporation is not the entity from which Plaintiff sought financial accountings or information (or which provides financial accountings or information regarding these assessments).<sup>2</sup> In fact, none of these Defendants collect the assessments upon which Plaintiff’s claims are based, and none of these Defendants provide financial information regarding the assessments. This example alone shows that the facts and allegations in Plaintiff’s

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<sup>2</sup> In its Answer, Defendant Fairfield Bay Community Club, Inc. admitted that it is the entity that assesses dues to its members for various amenities and for roads. (*See Answer of Separate Defendant Fairfield Bay Community Club, Inc.*, at ¶ 4).

Complaint have not been pleaded with sufficient specificity as to give these Defendants fair notice of Plaintiff's claims against each of them, individually, and the bases for such claims. As a result, because Plaintiff's claims and allegations are so vague, these Defendants are not able to properly answer Plaintiff's Complaint or effectively defend the present lawsuit.

In sum, Plaintiff's Complaint simply fails to provide direct and positive allegations of facts that would constitute a cause of action that entitles Plaintiff to relief. Because Plaintiff's Complaint fails to set forth actual and specific facts that pertain to the essential elements of his cause of action, it is deficient on its face. As such, Plaintiff's Complaint fails to state a claim for which relief may be granted and must be dismissed as a matter of law.

### 3. Plaintiff's Fraud Claims are Not Pleaded with Particularity.

Under Arkansas law, when alleging fraud claims, a complainant must satisfy a heightened standard for pleading. Rule 9(b) of the Arkansas Rules of Civil Procedure provides that, "[i]n all averments of fraud, mistake, duress or undue influence, the circumstances constituting fraud, mistake, duress or undue influence shall be stated with particularity." Ark. R. Civ. P. 9(b). When alleging fraud, a plaintiff must specifically allege such fraud, and a complaint must state something more than mere conclusions; it must clearly set forth the actual facts relied upon that constitute the alleged fraud. *See Watkins v. Ark. Dept. of Agriculture*, 560 S.W.3d 814 (2018). As the Arkansas Supreme Court has held,

To plead a cause of action for fraud, a plaintiff must prove the existence of the following elements: (1) a false representation, usually of a material fact, (2) knowledge or belief by the defendant that the representation is false, (3) intent to induce reliance on the part of the plaintiff, (4) justifiable reliance by the plaintiff, and (5) resulting damage to the plaintiff.

*Woodend v. Southland Racing Corp.*, 337 Ark. 380 at 385, 989 S.W.2d 505 at 507-08 (1999), *citing Hames v. Cravens*, 332 Ark. 437, 966 S.W.2d 244 (1998). Not only must each of these

five elements be specifically plead, but “the complaint must state something more than mere conclusions and must clearly set forth the facts relied upon as constituting fraud.” *Id.* In the very early case of *McIlroy v. Buckner*, 35 Ark. 555 (1880), the Arkansas Supreme Court held:

It is not sufficient to plead fraud generally, or merely to characterize actions as fraudulent. The facts and circumstances constituting the fraud should be set forth. There should be some concealment, misrepresentation, craft, finesse, or abuse of confidence, by which another is misled, to his detriment; and these, or some of them, must be alleged and proved. Mere epithets, or adverbs characterizing conduct, which, in itself, may be innocent, amount to nothing.

*Id.* at 558-59.

Here, Plaintiff’s Complaint alleges what Plaintiff purports to be a misrepresentation by “Defendant,” generally and singularly, in ownership documents and sales agreements, but Plaintiff never factually alleges that any of the Defendants knew or believed that they had made a misrepresentation of fact, that any of the Defendants intended that Plaintiff rely on such misstatements, or that Plaintiff justifiably relied on any misrepresentations. Instead, Plaintiff’s Complaint broadly asserts conclusory claims of fraud that are mere recitations of the elements for pleading a cause of action for fraud, with no supportive factual assertions as to the required elements of a fraud claim. Specifically, Plaintiff’s Complaint fails to provide the “who, what, when, where, and how” of a cause of action for fraud. Importantly, Plaintiff failed to provide any indication of who actually made the alleged false representations, what the alleged false representations were, when these alleged false representations were made, how these alleged false representations were made, who has knowledge of what representations that were alleged as false, who intended to induce alleged reliance by the Plaintiff, or what justifiable reliance was made by the Plaintiff. Without this specificity, Plaintiff’s allegations are insufficient to the extent that it would be impossible for these Defendants to effectively respond and prepare defenses. Accordingly, Plaintiff’s Complaint simply fails to clearly set forth any actual facts

relied on that would demonstrate any actions that might constitute fraud. As such, Plaintiff's claims for fraud fail to state a claim for which relief may be granted and must be dismissed as a matter of law.

4. Plaintiff's Claims are Barred by the Statute of Limitations and by the Doctrines of Waiver, Laches, and Estoppel.

Plaintiff's Complaint brings causes of action for unjust enrichment, constructive fraud, and common law fraud, as well as for an accounting. The statute of limitations for unjust enrichment is three years. *See* Ark. Code Ann. § 16-56-105; *and see Crutchfield v. Tyson Foods, Inc.*, 2017 Ark. App. 121, 514 S.W.3d 499 (2017). In addition, the statute of limitations for both constructive fraud and for common law fraud is likewise three years. *See id.* A cause of action accrues when the right to commence an action comes into being, and the statute of limitations commences to run from that time. *See Crutchfield*, 2017 Ark. App. 121, *citing Quality Optical of Jonesboro, Inc. v. Trusty Optical, LLC*, 365 Ark. 106, 225 S.W.3d 369 (2006).

Notably, and while not specifically pleaded as such, Plaintiff's allegations appear to create a cause of action for breach of contract, as the collection of assessments on the real property at issue is based on a written agreement entered into by purchasers of property at Fairfield Bay Resort for membership in the Fairfield Bay Community Club. Arkansas law applies a five-year statute of limitations for an alleged breach of a written contract. *See* Ark. Code Ann. § 16-56-111; *Ray & Sons Masonry Contractors, Inc. v. U.S. Fidelity & Guar. Co.*, 353 Ark. 201, 114 S.W.3d 189 (2003). For contract actions, the statute of limitations begins to run upon the occurrence of the last element essential to the cause of action. *Shelter Mut. Ins. Co. v. Nash*, 357 Ark. 581, 184 S.W.3d 425 (2004); *Phillips v. Union Pacific R.R. Co.*, 89 Ark. App. 223, 201 S.W.3d 439 (2005).



A statute of limitations is tolled only when the party seeking to invoke the statute of limitations has caused the plaintiff ignorance by affirmative and fraudulent acts of concealment. *First Pyramid Life Ins. Co. of America v. Stoltz*, 311 Ark. 313, 312 Ark. 95, 843 S.W.2d 842 (1992). In order for fraud to toll the statute of limitations, the fraud perpetrated must be concealed. *Russenberger v. Thomas Pest Control, Inc.*, 2012 Ark. App. 86, 394 S.W.3d 303 (2012). “[F]raud suspends the running of the statute of limitations until the party having the cause of action discovers the fraud, or should have discovered it by the exercise of reasonable diligence.” *Floyd v. Koenig*, 101 Ark. App. 230, 233, 274 S.W.3d 339, 342 (2008), citing *Delanno, Inc. v. Peace*, 366 Ark. 542, 545, 237 S.W.3d 81, 84 (2006).

Here, Plaintiff asserts that he purchased property at Fairfield Bay Resort in 1983, from Defendant Fairfield Communities, Inc., and, when doing so, he agreed to become a member of the Fairfield Bay Community Club and to pay monthly assessments in exchange for promised “rights, privileges, and benefits.” (See Complaint at ¶¶ 3, 7). Plaintiff alleges that, although assessments have been paid, “there are neither rights, privileges, nor benefits pertaining to any of the real property parcels at the [Fairfield Bay Resort].” (*Id.* at ¶ 11). Plaintiff further alleges that, “[a]t the time of sale of the lots at the [Fairfield Bay Resort], the Plaintiff and the Class Members were induced to make their purchase decisions by statements made by Defendant’s sales representatives to the effect that roads, water, electricity, and other improvements were planned and would be made. None were made.” (*Id.* at ¶ 12).

Taking these allegations as true for the purposes of this Motion to Dismiss only, this so-called “fraud” has been known by Plaintiff since the time of his purchase of the property at issue. Despite his purchase in 1983 and the lack of land improvements that were made ***since the time of his purchase***, Plaintiff failed to take any action regarding his membership rights until he filed

the present lawsuit, on March 19, 2019. Thus, even though it was alleged that no rights, privileges, or benefits were ever conferred from the payment of assessments to Fairfield Bay Community Club, Plaintiff nonetheless took no action on the alleged breach of contractual membership rights for approximately *36 years* after he purchased the property and began paying assessments to the Fairfield Bay Community Club.

Plaintiff's Complaint asserts that, "[w]henver the Plaintiff or the Class members attempt to stop paying the monthly assessments on their [Fairfield Bay Resort] real property, they are threatened by Defendant with various economic harm, including injury to their credit ratings. This continuing behavior on the part of Defendant makes the fraud continuing and tolls the running of any otherwise applicable statute of limitations." (See Complaint at ¶ 15). Plaintiff is simply wrong on this assertion: an alleged broad threat of credit ruination does not establish tolling. A statute of limitations is only tolled upon the affirmative concealment of fraudulent acts. Here, however, there was no concealment of the fact that improvements had not been made to the property since the time of Plaintiff's purchase in 1983. Moreover, in the event that Plaintiff is asserting a so-called "continuing tort" based on these alleged threats of various economic harm, we note that the Arkansas Supreme Court has repeatedly held that Arkansas does not recognize a "continuing tort" theory. See *Quality Optical of Jonesboro, Inc. v. Trusty Optical, LLC*, 365 Ark. 106, 110, 225 S.W.3d 369, 372 (2006), citing *Chalmers v. Toyota Motor Sales, USA, Inc.*, 326 Ark. 895, 935 S.W.2d 258 (1996), *Tulloch v. Eck*, 311 Ark. 564, 845 S.W.2d 517 (1993), *Owen v. Wilson*, 260 Ark. 21, 537 S.W.2d 543 (1976). As a result, the applicable 5-year statute of limitations was not tolled, no actions of these Defendants can be considered a "continuing tort," and Plaintiff's present cause of action is now time barred.

Plaintiff not only delayed beyond the applicable 5-year statute of limitations, but he also sat on any rights he had for so long that any such rights are now invalidated by the doctrines of waiver, laches, and estoppel. The doctrines of waiver, laches, and estoppel are well-defined in Arkansas law. “Waiver is the voluntary abandonment or surrender by a capable person of a right known to him to exist, with the intent that he shall forever be deprived of its benefits, and it may occur when one, with full knowledge of the material facts, does something which is inconsistent with the right or his intention to rely upon it.” *Cochran v. Bentley*, 369 Ark. 159, 169, 251 S.W.3d 253, 262 (2007), *citing Goforth v. Smith*, 338 Ark. 65, 991 S.W.2d 579 (1999). Laches “is based on the equitable principle that an unreasonable delay by the party seeking relief precludes recovery when the circumstances are such as to make it inequitable or unjust for the party to seek relief.” *Felton v. Rebsamen Medical Center, Inc.*, 373 Ark. 472, 484, 284 S.W.3d 486, 495 (2008), *citing Royal Oaks Vista, LLC v. Maddox*, 372 Ark. 119, 271 S.W.3d 479 (2008). “The laches defense requires a detrimental change in the position of the one asserting the doctrine, as well as an unreasonable delay by the one asserting his or her rights against whom laches is invoked.” *Id.* “[E]stoppel is merely the manner ... where when one party, or one group of parties sit idly by and do not speak when, in good conscience, they should speak, they will not later be heard to speak when they should in good conscience, remain silent.” *Jaramillo v. Adams*, 100 Ark. App. 335, 342, 268 S.W.3d 351, 357 (2007), *citing Ueltzen v. Roe*, 242 Ark. 17, 411 S.W.2d 894 (1967).

“Laches or estoppel does not arise merely by delay, but by delay that works a disadvantage to another.” *Id.* at 341. “So long as the parties are in the same condition, it matters little whether one presses a right promptly or slowly within limits allowed by law.” *Id.* “But where one, knowing his rights, takes no steps to enforce them until the condition of the other

party has, in good faith, become so changed that he cannot be restored to his former state if the right be enforced, delay becomes inequitable and operates to estop the asserted right.” *Id.* “This disadvantage may come from loss of evidence, change of title, intervention of equities, the making of substantial improvements to the land, and other causes, for where the court sees negligence on one side and injury therefrom on the other, it is a ground for denial of relief.” *Id.*

“[T]he right to enforce a restrictive agreement may be lost by laches or acquiescence, especially when one incurs expenditures.” *Cochran v. Bentley*, 369 Ark. 159, 170, 251 S.W.3d 253, 263 (2007), *citing Goforth v. Smith*, 338 Ark. 65, 991 S.W.2d 579 (1999). “The doctrine of laches is based on a number of equitable principles that are premised on some detrimental change in position made in reliance upon the action or inaction of the other party.” *Id.* “It is based on the assumption that the party to whom laches is imputed has knowledge of his rights and the opportunity to assert them, that by reason of his delay some adverse party has good reason to believe those rights are worthless or have been abandoned, and that because of a change of conditions during this delay it would be unjust to the latter to permit him to assert them.” *Id.* “Laches requires a demonstration of prejudice to the party alleging it as a defense resulting from a plaintiff’s delay in pursuing a claim.” *Id.*

Here, Plaintiff allegedly purchased property at Fairfield Bay Resort in 1983, and, at that time, he agreed to become a member of the Fairfield Bay Community Club and to pay monthly assessments in exchange for promised rights, privileges, and benefits. (*See* Complaint at ¶¶ 3, 7). From 1983 until 2019, Plaintiff was aware that no land improvements were made to the property. Plaintiff took no steps to enforce his contractual rights for the alleged promised benefits until this lawsuit was filed. Thus, 36 years went by without any assertion of rights. After all this time, these Defendants appropriately believed that Plaintiff’s alleged rights became

valueless or had been abandoned. Moreover, documents and evidence at issue may no longer exist, witnesses to the transactions may be unavailable, and various entities involved may no longer exist. As such, it would be unjust for Plaintiff to be able to now, after doing nothing for all this time, assert his claims against these Defendants. Thus, in accord with the doctrines of waiver, laches, and estoppel, Plaintiff's claims are now barred and must be dismissed in accord with Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.

**B. *In the Alternative, these Defendants Move for More Definite Statement in Order to Be Able to Properly Respond to Plaintiff's Allegations***

If this matter proceeds beyond the present Motion to Dismiss, these Defendants would still not be able to properly respond to the Complaint or otherwise defend themselves in this matter. As shown herein, given the Plaintiff's allegations, it is impossible for any particular Defendant to know what it is individually being accused of such that it could properly formulate an answer and prepare a defense. Accordingly, these Defendants are entitled to a more definite statement of Plaintiff's allegations so that they individually know what they are being accused of and what they are answering for. The remedy for Plaintiff's deficiencies is provided by Rule 12(e) of the Arkansas Rules of Civil Procedure, which states, "[i]f a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading." Ark. R. Civ. P. 12(e).

As indicated above, Plaintiff's Complaint merely states broad conclusions, without providing the requisite underlying factual support, and with no specificity as to which allegations are directed to which of the named Defendants. (*See generally* Complaint). Notably, however, these Defendants have a due process right to know the accusations against them, both collectively and individually. Despite this right, these Defendants are unable to determine which

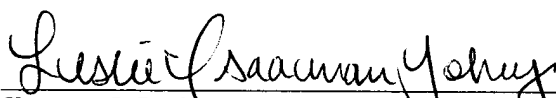
allegations are alleged against them, collectively or individually, verses which allegations are alleged against the other named Defendants. Plaintiff's Complaint lumps all Defendants together and does not sufficiently allege who did what to whom. The Complaint is completely silent as to the "who, what, when, where, and how" of the factual assertions and allegations. As such, it does not provide fair notice of the grounds for the claims made against any particular Defendant, and it does not allow any of these Defendants to establish a proper defense or to respond to the Plaintiff's allegations. Thus, if this cause of action proceeds beyond the present Motion to Dismiss, these Defendants respectfully request that this Court order the Plaintiff, pursuant to Rule 12(e), to file an Amended Complaint that clearly identifies the causes of action against each individual Defendant and clearly identifies the actual facts that apply to each cause of action against each Defendant.

### **III. CONCLUSION**

For the foregoing reasons, Defendants Wyndham Destinations, Inc., Wyndham Worldwide Corporation, Wyndham Vacation Resorts, Inc., Wyndham Worldwide Operations, Inc., Fairfield Communities, Inc., and Fairfield Communities Land Company respectfully request that this Court dismiss Plaintiff's claims against them, and award costs to these Defendants in accordance with Rule 12(b)(6) of the Arkansas Rules of Civil Procedure. In the alternative, these Defendants respectfully request that Plaintiff be required to file an Amended Complaint that sets forth a more definite statement of the facts and allegations against them, in accord with Rule 12(e) of the Arkansas Rules of Civil Procedure, so that they will individually know what they have been accused of and what actual facts support the allegations against them.

Respectfully submitted,

BAKER, DONELSON, BEARMAN, CALDWELL &  
BERKOWITZ, P.C.



Eugene J. Podesta, Jr. (*Pro Hac Vice* to be filed)

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### CERTIFICATE OF SERVICE

I hereby certify that, on this day, the 28th of May, 2019, a copy of the foregoing pleading has been served on the following counsel of record by U.S. Mail and/or by FedEx and/or by electronic mail and/or by electronic filing:

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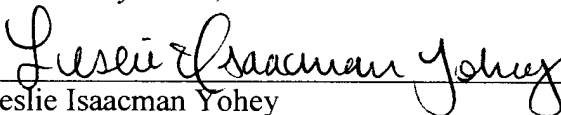
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