

**UNITED STATES DISTRICT COURT**

**Middle District of Florida**

**Case No. \_\_\_\_\_**

JEFFREY SLAYTER, THOMAS  
TEDESCO, DAVID & ANN CLARK,  
KYLE SMITH, PETER GILLIS &  
MARY PISCITELLI, DONALD &  
CAMILLE GILLIS, WARREN MERLINO,  
MICHAEL GIANFORTE, PAUL CORBIN,  
JOHN LAPADULA & CHRISTINE KOVACS,  
JAMIE LYNN CASTAGNA, R BA R, LLC.,  
LENARD & BONNIE RODGERS, PLGC  
VENTURES, LLC., ROSE MCGAHEE,  
ALEXANDER & JENNIFER HERWIG, and  
THE TERRY HERWIG REVOCABLE TRUST;

Plaintiffs

v.

DC 701, LLC, A Florida Limited Liability  
Company, DC 703, LLC, A Florida Limited Liability  
Company, CAY CLUBS RESORTS, LLC,  
A Florida Limited Liability Company, CAY  
CLUBS INTERNATIONAL, LLC,  
a Florida Limited Liability Company,  
CC 701, LLC, A Florida Limited Liability  
Company, RICKY STOKES, DAVE CLARK,  
and DAVE SCHWARZ;

Defendants

**COMPLAINT**

Plaintiffs, JEFFREY SLAYTER (“Slayter”), THOMAS TEDESCO (“Tedesco”), DAVID  
& ANN CLARK (collectively the “Clarks”), KYLE SMITH (“Smith”), PETER GILLIS &  
MARY PISCITELLI (collectively “Gillis and Piscitelli”), DONALD & CAMILLE GILLIS  
(collectively the “Gillis”), WARREN MERLINO (“Merlino”), MICHAEL GIANFORTE  
(“Gianforte”), PAUL CORBIN (“Corbin”), JOHN LAPADILA & CHRISTINE KOVACS

(“LaPadula & Kovacs”), JAMIE LYNN CASTAGNA (“Castagna”), R B A R, LLC. (“RBAR”), LENARD & BONNIE RODGERS (the “Rodgers”), PLGC VENTURES, LLC. (“PLGC”), ROSE MCGAHEE (“McGahee”), ALEXANDER and JENNIFER HERWIG (collectively the “Herwigs”), and THE TERRY HERWIG REVOCABLE TRUST (“Terry Herwig”) (collectively the “Clearwater Unit Owners” or “Plaintiffs”), by and through undersigned counsel, hereby file this Complaint against Defendants, DC 701, LLC. (“DC 701”), a Florida Limited Liability Company; DC 703, LLC. (“DC 703”), a Florida Limited Liability Company; CAY CLUBS RESORTS, LLC. (“Resorts”) a Florida Limited Liability Company, CAY CLUBS INTERNATIONAL, LLC. (“International”) a Florida Limited Liability Company, CC 701, LLC. (“CC 701”), a Florida Limited Liability Company (hereinafter, DC 701, DC 703, CC 701, Resorts and International shall be collectively referred as the “Cay Clubs Defendants”), RICKY STOKES (“Stokes”), individually; DAVE CLARK (“Clark”), individually, and DAVE SCHWARZ (“Schwarz”), individually, and state as follows:

## **I. GENERAL ALLEGATIONS**

### **A. INTRODUCTION**

1. The present action arises from a scheme created and implemented by Schwarz and Clark through the Cay Clubs Defendants and a number of their agents, including Stokes, to sell securities in the form of investment contracts ostensibly centered around purchase and sale agreements for converted condominium units and membership fees, coupled with leaseback agreements relating to a condominium called the Clearwater Cay Clubs Resort in Clearwater, Florida (the “Clearwater Resort”) (the “Clearwater Investment Contract”).

2. The investment scheme involved the Defendants enticing Plaintiffs to reserve “specially priced” units at the Clearwater Resort, become a member of the Defendants’

supposed network of resorts, and thereafter close on the purchase and membership fee using borrowed funds from Cay Clubs' list of "preferred lenders." The Cay Clubs Defendants represented that they would use their expertise to create income and capital appreciation for investors through the development of their "network" of high end resorts – including the Clearwater Resort. Exemplifying this investment/development plan, Defendants promised to develop the Clearwater Resort into a "world class resort" complete with a newly constructed water park, high-end galleria shopping center, an expansive spa and fitness center, luxury hotel, additional recreational facilities and gondola-traveled canals (the "Amenities"). The development of the resort (and thus the promised profits) rested entirely upon the expertise and efforts of the Cay Clubs Defendants.

3. In order to induce Plaintiffs to invest in the scheme, Defendants intentionally and/or in reckless disregard for the truth made numerous material false and misleading statements and omitted material facts. Significantly, the Cay Club Defendants omitted to disclose or misrepresented critical facts going to the very feasibility of the grandiose development plan they promoted, including, among other misrepresentations, facts concerning: a) the effect of zoning ordinances which substantially impinged on the ability to realize those profits promised from short-term rentals; b) the true financial impact of the proposed Community Development District upon which the development plans apparently rested; c) their ability to construct the as-promised amenities; and d) exaggerated past profits earned by investors in other Cay Club resorts and e) the true market value of the units being sold. These misrepresentations/omissions, and others as outlined herein, were relied on by Plaintiffs in investing in the Clearwater Investment Contract. As a result of these misrepresentations,

Plaintiffs invested in a substantially overvalued real estate development and suffered significant monetary losses.

**B. JURISDICTION, VENUE AND THE PARTIES**

4. This action arises under Section 10(b) of the Exchange Act (15 USC §§ 78j(b) and 78t(a)) and regulations promulgated thereunder by the Securities and Exchange Commission (Rule 10b-5, 17 C.F.R. § 240.10b-5); Sections 5(a) and 5(c) of the Securities Act (15 U.S.C.A. §77l(e)(a), 77e(c)) pursuant to Section 12(a)(1) of the Securities Act (15 U.S.C.A. §77l(a)(1)); the Florida Securities and Investor Protection Act Fla. Stat. ch. 517 et. seq. Fla. Stat, (2007); §718.506 Fla. Stat, (2007); and the common law of the State of Florida.

5. As to the claims brought under the Federal Securities Laws, this Court has original jurisdiction pursuant to 28 U.S.C. §1331 and, as to the remaining state law claims, Plaintiffs invoke this Court's supplemental jurisdiction under 28 U.S.C. §1367(a) as the state law claims asserted herein arise from the same nucleus of common facts.

6. Venue is appropriate under 28 U.S.C. §1391(b) as a substantial part of the claims raised occurred in this District and DC 701, DC 703, CC 701, Resorts and International all have their principal places of business here.

**THE PLAINTIFFS**

7. The Plaintiffs join in this action as their claims arise from the same series of occurrences and share common questions of law and fact.

8. Plaintiffs, the Clarks executed a sales agreement in Monterey County, California, reside in Monterey County, California and are otherwise sui juris.

9. Plaintiff, Smith executed a sales agreement in Summit County, Utah, resides in Summit County, Utah and is otherwise sui juris.

10. Plaintiffs, Gillis and Piscitelli executed a sales agreement in Pinellas County, Florida, reside in Contra Costa County, California and are otherwise sui juris.

11. Plaintiffs, the Gillis' executed a sales agreement in Alameda County, California, reside in Alameda County, California, and are otherwise sui juris.

12. Plaintiff, Slayter executed a sales agreement in Santa Clara County, California, resides in Santa Clara County, California and is otherwise sui juris

13. Plaintiff, Tedesco executed a sales agreement in Essex County, New Jersey, resides in Essex County, New Jersey and is otherwise sui juris.

14. Plaintiff, Merlino executed a sales agreement in Boulder County, Colorado, resides in Boulder County, Colorado and is otherwise sui juris.

15. Plaintiff, Gianforte executed a sales agreement in Spotsylvania County, Virginia, resides in Spotsylvania County, Virginia and is otherwise sui juris.

16. Plaintiffs, LaPadula and Kovacs executed a sales agreement in Westchester County, New York, reside in Westchester County, New York and are otherwise sui juris.

17. Plaintiff, Castagna executed a sales agreement in Lee County, Florida, resides in Lee County, Florida and is otherwise sui juris.

18. Plaintiff, RBAR, a Florida Limited Liability Company, executed a sales agreement in Broward County, Florida, and is otherwise sui juris.

19. Plaintiffs, the Rodgers executed a sales agreement in Brevard County, Florida, reside in Brevard County, Florida and are otherwise sui juris.

20. Plaintiff, PLGC, a Florida Limited Liability Company, executed a sales agreement in Sarasota County, Florida and is otherwise sui juris.

21. Plaintiff, McGahee, executed a sales agreement in Collier County, Florida, resides in Collier County, Florida, and is otherwise sui juris.

22. Plaintiffs, the Herwigs, executed a sales agreement in Collier County, reside in Collier County, Florida and are otherwise sui juris.

23. Plaintiff, The Terry Herwig Revocable Trust, executed a sales agreement in Lee County, resides in Lee County, Florida and is otherwise sui juris.

### **THE DEFENDANTS**

24. Defendant, DC 703, a Florida Limited Liability Company with its principal place of business in Clearwater, Florida, was the vendor under the various sales agreements of the subject units located at the Clearwater Cay Clubs Resort comprised of the Grand Venezia at Baywatch and the Grand Bellagio at Baywatch and was also represented to act as or on behalf of the “developer” of the world class resort which has never commenced.

25. Defendant, DC 701, a Florida Limited Liability Company with its principal place of business in Clearwater, Florida, acted as the entity receiving “membership” fees paid by Plaintiffs as reflected in their settlement closing statements.

26. Defendant, CC 701, a Florida Limited Liability Company with its principal place of business in Clearwater, Florida, acted as the “Tenant” in the Plaintiffs’ Leaseback Agreements.

27. Defendants, International and Resorts are Florida limited liability companies duly organized and existing under the laws of the state of Florida with their principal places of business in Clearwater, Florida.

28. At all times pertinent to this complaint, the Cay Club Defendants acted as a single entity having differing roles in the enterprise. These entities – often times referred to themselves as “Cay Clubs Resorts & Marinas” – purported to be the developer of what they claimed would be a condo conversion combined with a world class resort facility and solicited sales from offices in the State of Florida.

29. Clark and Schwarz are the principals of each of the Cay Club Defendants and orchestrated the scheme outlined herein and used those entities in furtherance of their scheme. Each entity assumed a different role in the implementation of the scheme to sell unregistered investment contracts through a series of knowing and intentional material misrepresentations. As such, Clark and Schwarz are subject to joint and several liability as controlling persons under § 20 (a) of the Exchange Act, 15 USC § 78t (a) and § 15 (a) of the Securities Act, 15 USC § 77o.

30. Defendant, Stokes resides in Lee County, Florida and is otherwise sui juris.

31. Defendant, Clark resides in Pinellas County, Florida and is otherwise sui juris.

32. Defendant, Schwarz resides in Pinellas County, Florida and is otherwise sui juris.

### **B. FACTS COMMON TO ALL COUNTS**

33. Plaintiffs all became aware of the investment scheme promoted by Defendants in or about early to mid 2005. During that that time period the Plaintiffs received nearly identical scripted multi-media presentations and accompanying brochures designed by the Cay Clubs Defendants with input from Stokes and salespersons, Jodi Zartman, George Zartman, and Suzy Combs to induce them to invest in the Clearwater Cay Clubs.

34. The investment scheme created by the Cay Clubs Defendants promised substantial profits from the investment through: a) a guaranteed income stream via a “leaseback” (sometimes prepaid at closing) from a pool of short-term rental units purchased by investors<sup>1</sup> and b) capital appreciation as a result of what the Cay Clubs Defendants represented would be a large scale conversion/development of the Clearwater Resort to feature the Amenities. The investment sales presentation(s) promised profits through the managerial and developmental efforts of the Cay Clubs Defendants.

35. In implementing the scheme, DC 701, DC 703 and CC 701 were used to fashion different components of what made up the Clearwater Investment Contract as follows: DC 703 served as the vendor and acted as a conduit for consideration paid by each Plaintiff; DC 701 received and was responsible for the membership fee component which was misrepresented to have a separate value that would appreciate; and CC 701 administered the pre-paid the rentals under the leaseback program and administered the rental pool program. Resorts and International served as the sales arm actively engaged in promoting and marketing the investment. These entities served as mere instrumentalities of the ubiquitous “Cay Clubs Resorts and Marinas” created and directed by Schwarz and Clark.

36. As part of the Defendants’ presentation, Plaintiffs received a tour of the Clearwater Resort and were given sales brochures and multimedia DVD’s. During this tour, the Cay Clubs Defendants, by and through their staff – including but not limited to Stokes, Jodi Zartman, George Zartman, and Suzy Combs – described in detail the significant investment return and substantial income to be realized from the new development..

---

<sup>1</sup> “Short Term” constitutes rentals for a period of thirty (30) days or less and is more profitable on a per-diem basis.

37. Further substantiating these promises, Cay Clubs' promotional literature given to the Plaintiffs, stated that "Cay Clubs seeks to provide investors with tangible and unparalleled investment opportunities. With a three-tiered approach to resort development, Cay Clubs investors enjoy a unique combination of benefits, including the appreciation realized through the creation of our world-class properties, our optional leaseback program, and in many cases, tax benefits." Indeed, this promotional folder boasted Cay Clubs' promise to "provide our clients with the caliber of real estate investment opportunities that will allow them to build long-term relationships with us... our real estate investment strategy has no equal."

38. In addition to the representations contained in the promotional materials, each investor received schedules reflecting supposed profits earned by investors and other Cay Club resorts which overstated the sales in these resorts in order to further induce Plaintiffs to invest.

39. As outlined herein, each Plaintiff likewise was subjected to various forms of high pressure sales tactics that caused them to invest in the Clearwater Investment Contract created and promoted by the Cay Clubs Defendants.

40. Touting his own financial success, Stokes (the "Director of Cay Club Investor Relations" acting on behalf of both International and Resorts) induced the Plaintiffs to invest in the Clearwater Resort by stating that he was one of the "top ten largest investors in the company" and had purchased and sold various condominium units in several of Cay Clubs' other resorts and achieved significant personal wealth often by holding the units only two years or less.

41. Stokes explained the investment potential of the Clearwater Resort as an "exclusive" opportunity to purchase investment contracts at "wholesale pricing" offered to a

select few. Stokes indicated that the “wholesale” pricing level would enable investors to purchase a unit at the Clearwater Cay Clubs Resort for at least \$100/sq. ft. below the “retail” value prior to sales opening to the general public – sales which were to commence soon thereafter. However, Stokes indicated that while not all interested investors were allowed the opportunity to purchase at the “wholesale” level in Clearwater, he had been able to get some of his personal friends with good credit accepted into this group by personally vouching for their character.

42. Specific false representations by Stokes concerning this investment potential were as follows:

- a. “Once the renovations are completed, the sales team then resells our units to the end retail buyers. For the investor, these units are always made available to us at \$100/SF below replacement cost which equals about .70 on the dollar. You have to close/own when investing in conversions. Please don’t let closing scare you because it is very low risk and is more of a paper shuffle than anything else.”
- b. “First the conversion is offered to you at below replacement cost. Since you are purchasing for below cost, their lenders will give you 100% financing. Conversions do require a 10% deposit which is given back to you at closing if you choose the 100% financing option. Here is the kicker....**at closing to the investor, you get a 15% kick back they call a “guaranteed lease back”.**”
- c. “Your profit taking is when the unit is sold to the end retail buyer and it is quite substantial. There are sizeable tax advantages owning investment property. You may sell your unit at anytime, however I would play their game and let them sell it for me after 18 months.”

43. Stokes even offered to arrange 100% financing for Plaintiffs with high credit scores as part of the “exclusive” deal if they used the Cay Clubs Defendants’ “preferred lenders.” Further, he told investors that they need not worry about the Cay Clubs membership dues and closing costs as these additional fees would be rolled into the final purchase price. Financing for these additional costs was possible – according to Stokes – because each unit was guaranteed to appraise for much more than the purchase price. In fact, Stokes stated that current

appraisals valued the units at \$100 more per square foot than the contract price. The investment described by Stokes was entirely passive and touted profits that would be earned contingent upon the efforts of the Cay Clubs Defendants. The above outlined representations were made by Stokes (among others) despite his knowledge of the falsity of these representations and for the exclusive purpose of generating high commissions/profits from the sale of the investments.

44. Stokes, along with Zartman, and Combs made these representations in the context of a solicitation to sell the Clearwater Investment Contract to serve their own financial interests and those of the Cay Clubs Defendants and in breach of their fiduciary duty in their assumed role as unregistered investment advisors.

45. In reality, the Cay Clubs Defendants sold each of the units based upon a “level” system wherein each “level” carried an associated price per square foot. Further, there was no set manner of determining whether a unit would be sold at Level 1, 2, or 3 pricing and thus units were sold at random “levels” seemingly based on none other than a whim.

46. The Cay Clubs Defendants further represented that once closing took place, they or entities controlled by them, would manage a short-term (nightly and weekly) occupancy rental pool to distribute revenue to the investors to provide them a guaranteed rate of return sufficient to cover any mortgage payments. As examples of their expertise in resort development, the Cay Clubs Defendants – in writing – highlighted a number of other resorts developed and the attendant substantial profits earned by investors. However, the Clearwater Resort was never zoned for short-term rentals and in fact was legally only allowed to accommodate long-term rentals, i.e. beyond thirty (30) days. The legal process required to seek

a variance from the restrictive “long term rental” zoning was never undertaken by the Cay Clubs Defendants.

47. The Cay Clubs Defendants further emphasized during the sales presentations that one of the key components of the investment was a sale/leaseback guaranty. That leaseback allowed investors to cover their mortgage payments after closing because the Cay Clubs Defendants would “rent” their units for them while the construction of the “world class resort” took place; with a guaranteed lease payment as a percentage of the contract price, often paid as a lump sum at closing. Pursuant to the plan outlined by Cay Clubs once construction of the renovation was completed, the Cay Clubs Defendants would then assist in selling the units for a substantial profit to the public and/or new subsequent “level” investors further down the slope of the pyramid.

48. Pursuant to the plan outlined by the Cay Clubs Defendants, once construction of the renovations and amenities was completed, they would then assist in selling the units for a substantial profit by providing their expertise supposedly gained in other successful Cay Clubs ventures.

49. Further, Stokes – among other Cay Clubs sales personnel – explained to the Plaintiffs that for \$25,000, they would acquire a membership in the Clearwater Cay Clubs entitling them to use the world-class facilities of all the Cay Clubs resorts from DC 701 and that the membership would increase in value. As stated in the promotional question and answer brochure: “[j]oining the Club is mandatory because membership goes with that unit.” Indeed, as set forth in the promotional literature given to Plaintiffs prior to contract, “Members can actually make money on their Club Membership. The value of memberships at each location will

continue to rise. When a member sells their unit, the membership will be sold also. Members get 80% of the new value. For example, at Clearwater Cay Club, members joined the Club for \$15,000 initially and now the membership is \$25,000. Anyone selling now would get 80% of the \$25,000 which is \$20,000.” Further, this membership fee would be credited against the purchase price only for those investors who secured their units immediately and all that was required was a \$5,000.00 reservation deposit to do so.

50. Lastly, the Cay Clubs Defendants indicated that Clearwater Cay Clubs worked with the most trusted and respected lenders to offer their investors easy closings with great terms. These “preferred lenders” included Fifth Third Bank, Chase and other large respected banks.

51. At all times throughout the presentation (as later confirmed by Cay Clubs own “Ocean Breeze” newsletter of April - June, 2006) Cay Clubs continually reiterated the investment nature of the units being sold. In fact, the Ocean Breeze newsletter promises that the “Cay Clubs developers have designed an investment and lifestyle opportunity” that would create a “fundamental income generating potential for those members who... become involved at the predevelopment level.” These representations were all false and designed to induce Plaintiffs to invest in the Clearwater Investment Contract.

52. Some time after each closing, the Plaintiffs were sent an Agreement to Lease (the “Leaseback”) wherein the Cay Clubs Defendants used CC 701 as an instrumentality to purport to “lease” the Plaintiffs’ units for a period of two years. During this two-year period, the Cay Clubs Defendants would purportedly take all action necessary to keep each unit leased to generate funds for the rental pool. In exchange for allowing the Cay Clubs Defendants to lease

out their units, the Plaintiffs received a “leaseback” payment in an amount anywhere between 8% and 15% of the purchase price serving as a prepayment of the pooled rental income. This leaseback payment was offered in one of two methods – Plaintiffs could choose to be paid in one lump sum or in two installment payments. This leaseback was touted by the Cay Clubs Defendants as one of the main selling points for the Clearwater Resort units as the leaseback period would cover the time for all the renovations and new construction to take place. Once the unit would be returned back to the Plaintiffs’ control, all of the Amenities would be in place and the Plaintiffs would then start to see the promised short-term rental income stream or be able to sell the unit through the Cay Clubs Defendants efforts to reap the promised profits.

**B(1). DAVID AND ANN CLARK**

53. Plaintiff, David Clark, a pilot like Stokes, met Ricky Stokes while in the jump seat on an American Airlines 777 flying from Los Angeles to Miami. Stokes, all the while dressed in his pilot’s uniform, proceeded to tell the two working pilots and Clark of how he lost his home and ALL of his family’s belongings (becoming homeless) due to a North Carolina Hurricane. Stokes then went on to relate how he had been “brought in” under the wings of members of his church in Florida (who worked for the Cay Clubs Defendants), and how he became a multimillionaire, owning high end condos, a twin-engine airplane, and several strip malls. As part of his “jump seat” sales pitch, Stokes touted how easy it was to invest with this group of “exclusive wholesale property developers” since investors never incurred out-of-pocket expenses due to the special Leaseback program being offered.

54. Thereafter, in or about late February, 2005, Stokes and Clark had telephone conversations concerning Clark’s involvement in not only the Clearwater Resort, but Cay Clubs

development in Las Vegas where further and greater profits could be realized. However, Stokes emphasized that “he (Clark) won’t be allowed to invest in Las Vegas unless you multi unit invest in Clearwater first.” The next month in early March, 2005, Stokes forwarded to Clark - via overnight delivery - a large packet of conceptual drawings of the finished Clearwater project complete with the Amenities described infra, and current photos of the units. Stokes’ March 5, 2005 cover letter described the purchase price of \$350 per square foot as being “well below value” and that the “company says will be sold for \$600 per square foot.” Stokes emphasized the “exclusivity” of the investment, by stating he will “grease the skids at Barry’s (Grahams) office to see if there are any openings.” Further, the letter encouraged leveraging borrowed funds by stating: “Please don’t let closing scare you because it is very low risk and is more of a paper shuffle than anything else.”

55. On or about March 11, 2005, Stokes flew Clark to Clearwater to describe in person from--an aerial perspective--all the future Amenities described herein. Lastly, Stokes emphasized that the \$2,000 to \$4,000 monthly rents will jump to \$5,000 to \$7,000 once all the Amenities were finalized. Stokes and Jody Zartman (the sales manager) for the Clearwater property represented that the Clarks, as wholesale buyers, would be “getting in” at a price that was \$100 a square foot under the true appraised market value for each unit purchased. Stokes also represented that any deposits made on the Clarks’ units would be refunded at closing and by using the Cay Clubs preferred lenders, they would get 100% financing. Once again, the Clarks were showed artists’ renderings of the Amenities described infra, modeled after the Venetian hotel in Las Vegas. Unit owners/members were also going to receive reciprocal use rights to the golf course across the waterway with a water taxi service.

56. Relying on these representations made by Stokes – including the leaseback – David and Ann Clark obtained a \$500,000 line of credit on their primary residence in order to have the startup capital necessary to continue to invest in the Cay Clubs network of resorts, and also brought in other members of their family in order to meet the “minimum units purchased” requirement insisted upon by Stokes.

57. The Clarks closed on their units in the total amount of \$1.2 million. Only after the Clarks’ closed was it discovered that the unit’s interior is also not the ultra-luxurious interior that was represented by the Cay Clubs Defendants prior to closing, but rather contained basic lower level appliances and fixtures. Despite extensive assurances that their leaseback would cover the two-year renovation period, the Clarks are now forced to pay for their mortgage out of their own pocket due to the total inadequacy of the leaseback amount given.

58. Moreover, during October, 2007, the Clarks inquired about their severely overdue monthly rental payments on their units for the months of August and September, 2007 since their leaseback already expired. They were dismissively told that while there was money owed to them and available (the checks had been cut), Cay Clubs would not be making payment and they should thus not expect any checks to arrive in the mail.

**B(2). KYLE SMITH**

59. Plaintiff, Kyle Smith also an airline pilot at American Airlines, met Stokes a fellow pilot through his employment in mid-2004. Stokes told him that he was transitioning from his career as a pilot and had in fact become an “insider” with an investment organization that granted “wholesale prices for a resort-based investment” to a select group. Indeed, in correspondence to Smith dated January 20, 2005, Stokes stated “the minimum amount any

investor has made per year in the last 7 years is 48%, the most anyone has made is over 300% and the average year over year for everyone is 164%. To show you how secure this investment is, you may use your IRA or 401 account to do the investing for you tax deferred (at least until you retire). To do this, one needs to transfer the portion needed to invest of their IRA to do a different, self directed custodian.” Explaining the soundness of the investment using borrowed funds, Stokes goes on to state: “Since you are purchasing for below cost, their lenders will give you 100% financing. Conversions do require a 10% deposit which is given back to you at closing if you choose the 100% financing option. Here is the kicker...**at closing to the investor, you get a 15% kick back they call a “guaranteed lease back”**.”

60. Stokes represented that as a result of this wholesale real estate investing, he had personally made millions – and any average investor could earn over 150% return (and up to 300%) in a single year. Enticed by Stokes’ written and oral promises of large guaranteed returns on his investment, Smith traveled to the Clearwater “Resort” in order to secure his position as an investor.

61. Once at the Clearwater premises, Smith received the standard Cay Clubs Defendants high pressure sales presentation and was directed to purchasing a particular unit by Jodi Zortman. The presentation likewise included a description of the guaranteed Leaseback described herein. Stokes advised Smith to “let her (Zortman) pick the unit” based on her sales expertise – however, Smith was not permitted to go inside as “the unit was occupied.” As a result of the Cay Clubs Defendants representations – including the leaseback payment – Smith closed on his unit in May of 2005 for the total price of \$625,000, with the \$25,000 membership fee rolled into his total purchase price.

62. Indeed, based on the Cay Clubs Defendants' representations that day, Smith believed he was purchasing a five-star luxury condo unit, in a resort that would include the Amenities described in paragraph 2, *infra*. Eventually, Smith – after several visits to the Clearwater premises – discovered that none of these Amenities for the unit he purchased and in the development were even planned, let alone completed.

63. Further, Smith's Leaseback – despite prohibiting him from attempting to lease his unit on his own – did not cover the two years of expenses as promised but rather was exhausted in part by unexpected additional assessments never disclosed by the Cay Clubs Defendants prior to closing.

**B(3). PETER GILLIS AND MARY PISCITELLI**

64. Plaintiff, Gillis (Clark's brother-in-law) and his wife, Piscitelli received nearly identical representation as Clark and Smith on the benefits of investing with the Cay Clubs group of "exclusive wholesale property developers" and the potential for earning stellar returns on their investments during an extensive series of telephone conversations with Stokes in early to mid 2005 and through written brochures.

65. Gillis and Piscitelli closed on their unit in June of 2005 – at the premium price of \$677,000—since that time they have been forced to supplement the leaseback from their personal savings in order to cover all of the assessments and extra costs for their unit.

**B(4). DONALD AND CAMILLE GILLIS**

66. Just as Plaintiffs, David and Ann Clark, and Peter Gillis and Mary Piscitelli; Donald and Camille Gillis were sold on the Cay Clubs Clearwater "resort" based upon

assurances of the incredible deal they were being granted. The Gillis' were assured first-class resort condo units, complete with a family-friendly water park, high-end galleria shopping center, an expansive spa and fitness center, luxury hotel, additional recreational facilities, and gondola-traveled canals. Moreover, their unit was to take advantage of the nightly rentals and high occupancy rate in the area, which would guarantee a positive cash flow for as long as they owned their unit. They were also offered the "exclusive wholesale property" special of 100% financing on their unit – with the exception that this purported full financing would not cover the Cay Clubs membership fee.

67. The Gillis' indebted themselves in the amount of \$728,700 when they closed on their unit (2715 via Capri, Apt. 728, Venezia) during the month of August, 2005. Further, their purported "two-year" Leaseback was spent a little past the one year mark as the property taxes and extra assessments on their unit greatly increased the monthly expenses.

**B(5). JEFFREY SLAYTER**

68. Beginning in August, 2006, Slater began receiving oral and written representations from Stokes similar to those received by the other Plaintiffs referenced herein. Based upon the above – and as prompted by numerous promises made by Stokes, (the self described director of investor relations) Slayter invested in a total of three (3) units at the Clearwater "resort," compelled by both the promised appreciation as well as the guaranteed leaseback described above. Indeed, Slayter was told to move quickly by Stokes because he was assured that the membership fee for each of the three units he purchased would be waived if he closed on all three units within a two month period. Slayter ultimately made an investment of nearly \$2.5 million dollars in the Cay Clubs.

69. Contrary to the Cay Club Defendants' relied on representations, each unit's \$20,000 membership fee, characterized as a "reservation deposit" in the HUD, and closing costs were rolled into the total purchase price of the units, thereby substantially increasing each respective purchase price.

70. To induce his investment in Cay Clubs, Slayter was assured by Stokes that at the conclusion of his leaseback period he would be able to receive the benefit of more profitable future "nightly" rentals on each of his units – thus resulting in positive cash flow and thereby justifying the feasibility of the investment. In reality, the Cay Clubs Clearwater resort could never have offered a nightly rental as zoning did not permit a short term rental market, and as a result, Slayter's units remained unoccupied with no income generation.

71. Slayter was also assured that he would not have to pay any utilities payments on his units during the leaseback period. To bolster this assurance, one of Slayter's leaseback contracts specifically calls for the "[t]enant" (the Cay Clubs rental agency) to contract for and pay any utilities on the unit.

72. Further, Stokes' main selling promise of an investment group – further down the pyramid – purchasing the units at \$100 per square foot over and above Slayter's purchase price not only never materialized, it never existed.

73. Additionally, Slayter's leaseback payment was not enough to cover the purported two years' time indicated in the Agreement but rather fell short – forcing Slayter to pay for his unit's mortgage out of his own pocket during the "renovation" period.

**B(6). THOMAS TEDESCO**

74. Plaintiff, Tedesco, first learned of the new “resort” in Clearwater and the investment opportunities being promoted by the Cay Clubs Defendants during late 2005. Like most Plaintiffs, Tedesco was put in contact with Stokes and informed by Stokes that he was the “Director of Investor Relations” at Cay Clubs. During his negotiations and dealings with Cay Clubs Defendants’ staff, they assured him that the Clearwater resort Amenities described in paragraph 2 infra, for which he was paying premium pricing would be constructed at the same time as his unit’s renovation. Additionally, his premium-price purchase would include reciprocal membership benefits at all other Cay Clubs resorts and locations. Lastly, the leaseback guaranty as represented by the Cay Clubs Defendants would create a fund from which Tedesco could pay his mortgage. His unit was purchased for the total price of \$1,050,000.00 in February 2006.

75. One of the promises made to Tedesco in an attempt to induce his investment in Cay Clubs, rested on assurances that the more profitable “nightly” rentals on his unit and the resulting positive cash flow would be available shortly, thereby justifying the feasibility of the investment. In reality, the Cay Clubs Clearwater resort could never have offered a nightly rental as zoning did not permit short term rentals and as a result Tedesco’s units remained unoccupied with no income generation after the leaseback period ended.

76. Additionally, a recent visit to the Cay Clubs Clearwater resort by Tedesco revealed that not only was his unit not a “luxury” rental unit – but that none of the Amenities promised had ever commenced beyond artists’ renderings of same, let alone been implemented.

Due to the unexpected and ever-increasing assessments and additional charges on his unit, Tedesco's Leaseback payments only covered approximately 16 months.

**B(7). WARREN MERLINO**

77. Plaintiff, Merlino learned of the investment opportunities in the Cay Clubs Clearwater "resort" during the Spring of 2005 through salesperson, Suzy Combs. As part of a sales presentation by Combs, Merlino was assured that the purchase price of the Clearwater units would help to finance several major property improvements such as a water park, high-end galleria shopping center, an expansive spa and fitness center, luxury hotel, additional recreational facilities, and gondola-traveled canals. The Cay Clubs Defendants represented that these improvements would be commenced within a matter of months and completed in as little as two years. In fact, he was told that construction bonds were already on file with all the necessary government agencies in order ensure that construction would start "soon." Recent inquiries by Merlino have revealed that not even preliminary architectural/structural plans for any of the promised amenities have been filed.

78. Plaintiff, Merlino, paid a total of \$715,300 for his two Clearwater units (Grand Bellagio, building 4, unit 434B - \$275,000 in March 2005; and Grand Venezia, unit 1114 - \$440,300) – in May 2005, which, despite all assurances and statements by Cay Clubs sales personnel, have no rental market. Moreover, Merlino's leaseback barely covered a year and a half of his mortgage.

**B(8). MICHAEL GIANFORTE**

79. Plaintiff, Michael Gianforte was introduced to Cay Clubs Clearwater by Stokes – who continuously touted the money-making potential of the Clearwater "resort" by flaunting his

personal “success story.” As a result of Stokes’ sales pitch, Gianforte purchased two Clearwater units (2721 Via Murano, unit 329 and 2715 Via Capri, Unit 723), both of which he was assured would be rented nearly full-time. Gianforte received substantially the same correspondence from Stokes as had been received by Clark and Smith, as well as the promotional literature. As part and parcel of the Stokes sales pitch, Gianforte was also assured that a large investment group would sweep in and purchase a large number of units for at least \$100/sq. ft. more than Gianforte had paid, and thus he would realize an instant profit on his units even before the “leaseback” period was over.

80. Consequently, Gianforte purchased not just one, but two Clearwater units on or about April 2005 for \$677,200 and \$553,522 respectively. He, like other owners, was offered 100% financing. Not only did this investment group never offer to purchase Gianforte’s unit, but his leaseback money ran out long before the two years that the Cay Clubs Defendants had offered in the Agreement.

#### **B(9). PAUL CORBIN**

81. Plaintiff, Paul Corbin, purchased his Cay Clubs Clearwater unit (2705 Via Murano, Unit 136) on October 21, 2005 based on a similar standard sales pitch and written marketing materials mirroring the representations relied on by other Plaintiffs. Indeed, only a few months prior to his purchase, on August 12, 2005, Stokes composed an email to Corbin containing substantially the exact representations made in his letters to the Clarks, Smith, and Gianforte discussed herein. Once again Stokes, as director of investor relations for the Cay Clubs corporate Defendants, stated “the minimum amount any investor has made per year in the last 7 years is 48%, the most anyone has made is over 300% and the average year over year for

everyone is 164%.” Emphasizing that his own money was at stake, Stokes stated “I am an investor, just like you, I am taking the risk just like you.” Additionally, the Cay Clubs Defendants provided Corbin with a brochure and floor plan that assured Corbin that he was purchasing a 1085 sq. ft. unit. This representation also turned out to be untrue as his unit actually contains 980 sq. ft. Corbin also received literature that touted nearly full yearly rental occupancy producing \$5,000 a month or more in income.

82. Corbin’s unit was priced at \$450,520 and he incurred indebtedness in the amount of \$457,087 to purchase the unit. This unit price was also to include a \$30,000 furniture package – as the supposed perfect compliment to a luxury rental property. Upon inspection of his unit, Corbin discovered that the furniture provided by the Cay Club defendants could more accurately be valued at between \$5,000 - \$7,000, with no new countertops or appliances and merely a coat of paint constituting his unit’s “renovation.” Further expenses were incurred when Corbin’s Leaseback payment was exhausted long before the promised two-year mark.

**B(10) JOHN LAPADULA & CHRISTINE KOVACS**

83. Plaintiffs, LaPadula and Kovacs, after being taken on the standard Cay Clubs sales pitch tour, purchased their Clearwater unit (2731 Via Capri, Apt. 923) at the Grand Venezia in November of 2005. Throughout the sales tour, LaPadula and Kovacs were continually assured by Cay Clubs sales persons that a large investment group would sweep in and purchase a large number of units for at least \$100/sq. ft. more than the purchase price being offered to them and thus, they had to act immediately! Because of this group’s interest in the Clearwater resort, they were assured by Cay Clubs sales staff that they would realize an instant profit on their unit even before the “leaseback” period was over.

84. Using leveraged funds – at the customary 100% financing usually promised by Stokes – LaPadula and Kovacs purchased their unit for the total price of \$512,300. Like all other Clearwater owners, astronomical increases in the property taxes and assessments meant that LaPadula and Kovacs’ leaseback payment was used up long before the two years they were promised.

**B(11) JAMIE LYNN CASTAGNA**

85. Plaintiff, Castagna, and her husband were approached by a co-worker (and Cay Clubs sales personnel) Colin Brechbill in early 2005. Colin – using the usual Cay Clubs tactics – touted all of the promised renovations and Amenities at the Clearwater “resort” such as health center and spa, butterfly garden, hotel, water park and a whole host of other high-end amenities. An investment in the Clearwater Cay Clubs was, according to Colin, a “no-brainer” because Dave Clark of Earthmark, a developer with a very successful track record, was slated to join the Cay Clubs organization. Castagna was lured with the customary promises of 100% financing, extensive membership benefits, a leaseback during the renovation period and assured nightly/weekly rentals.

86. In addition to the purchase price of her unit (2731 Via Capri, Apt. 1130), Castagna was forced to roll in all closing costs and membership fees into her loan, effectively increasing her loan by twenty thousand dollars – for a total of \$473,900.00. Castagna has since been forced to pull further monies for the payment of the increased property taxes and assessments since the promised leaseback ran out long before the duration of the Agreement for same.

**B(12) RBAR, LLC.**

87. Plaintiff, RBAR's principals, purchased its Clearwater unit (2731 Via Murano, Apt. 539) based upon oral representations by the in house sales persons at the Clearwater Resort that there was a guaranteed continuous income stream that was going to be generated by the volume of short-term rentals being booked at the Clearwater resort. RBAR's principals subsequently quit claimed the unit to a corporate entity controlled by them. In substantially the same manner described above, the principals of RBAR received both oral and written representations concerning the investment, artists renderings showing the soon to be constructed Amenities and assurances that the short term rental program was only weeks away. Using highly leveraged funds, RBAR closed on its unit on September 26, 2005 at what RBAR was assured to be a very special, discounted price. The total purchase price of \$1,150,000.00 however, actually included not only the unit price, but the \$30,000 Cay Clubs membership fee and over \$19,000 in closing costs. The leaseback period – in reality – was also much shorter than the purported two-year period that the leaseback payment was to cover.

**B(13) LENARD & BONNIE RODGERS**

88. In or about May of 2005, Plaintiffs, the Rodgers, were informed by a business partner about real estate investments being sold at the Cay Clubs Clearwater resort. Soon thereafter, the Rogers visited the site and received the standard Cay Clubs sales presentation pitch from "David" (last name unknown at this time). They were told, similar to other investors, that a number of high-powered real estate investors were getting in on the ground floor, that this was the perfect investment choice for anyone that was approved and that the zoning would soon thereafter be approved to allow for daily rentals. These representations proved to be false.

89. Using leveraged funds, the Rodgers purchased their unit (2731 Via Capri, Apt. 1036) for \$519,900. Indeed, the Rodgers have been forced to borrow further funds in order to cover their unit's expenses that were far too high to be covered by the leaseback – which had been purportedly “calculated” to cover all of their unit's expenses for two years. Unbeknownst to the Rodgers, their unit was barely being rented out by the Cay Clubs agency in charge of the rentals. In fact, upon request the occupancy report for their unit, they discovered that in an entire year, their unit had only been rented for the total sum of \$3,500, confirming that the promised income does not exist. Further, the Rodgers have been unable to rent out their own unit since it was turned over to them at the end of the leaseback period due to the complete lack of any sort of rental market in the Clearwater area whatsoever.

**B(14) PLGC VENTURES, LLC.**

90. Based on the representations he received as set forth above, Rogers also purchased a unit (2731 Via Capri, Apt. 1220) invested through a family owned company, Plaintiff, PLGC which borrowed funds to purchase a unit for \$599,900. PLGC was counting on the promised amenities in order to realize a positive gain from this investment. In reality, the Cay Clubs Defendants never planned to move forward with any of the promised construction and renovations. Further, since Cay Clubs never attempted to change the zoning variance that prohibited short-term rentals in the Cay Clubs Clearwater resort, the PLGC unit is un-rentable due to the weak of rental market in the Clearwater area. A further setback was the short period that the leaseback payment covered the mortgage, since this was rendered much higher than expected by an increase in property taxes and condominium assessments.

**B(15) ROSE MCGAHEE**

91. In August, 2005, McGahee attended an informal sales presentation given by Mark Engledow (“Engledow”) on the Clearwater premises, who represented that he was the Sales Manager/Sales Associate for Waterfront Resort Reality, an unregistered d/b/a or fictitious name used by the sales arm of the Cay Clubs Defendants. Engledow provided McGahee with promotional material including floor plans and artist renditions of the proposed development of the Cay Club Clearwater which was to include a water park, upscale shopping center and hotel. He also stated that he personally too owned a Cay Club Clearwater unit and thought it to be an excellent investment. Engledow explained that the monthly rentals would be replaced with weekly rentals and that the increase in turn-over would create more rental income. Persuaded by Engledow’s representations and sales pitch, McGahee gave Engledow \$5,000 that same day and eventually closed on her purchase of unit 1111 in Grand Venezia for \$656,522 thereafter.

92. Despite her understanding of the promised Leaseback arrangement, McGahee was forced to make payments on her unit’s utilities for the entire duration of her ownership when Cay Clubs Defendants failed to do so. These payments were contradictory to both representations made to her concerning the leaseback and the language of the contract that stated: “[t]enant agrees to arrange for hook up of all utilities in Tenant’s name and to pay all cost, if any, for telephone services and charges, including, without limitation, all deposits, connection and order changes, during the term of the lease. Tenant shall pay all cost for electric, water, sewer, and gas for the term of the lease.” After bringing the issue up with Engledow in February 2007 and his replacement, Jay Dempsey in June 2007, they both agreed that McGahee was owed the money and stated that they would send the information to the corporate office for

instruction on how to proceed. To date, McGahee has neither received any word regarding the corporate office's decision on how to handle the matter and the monies owed.

93. When McGahee – who is disabled and utilizes a wheelchair for mobility – originally attended the sales presentation, she was looking to purchase a one or two bedroom unit. She voiced her concerns over accessibility and was told that in order to accommodate her first-floor request, she would have to purchase a higher priced three bedroom first-floor unit. The Cay Clubs Defendants also refused to address any accessibility issues with McGahee during the “renovation.” Only later she was told that she would be responsible for addressing any solution to her mobility issues.

94. Further, McGahee has been forced to borrow funds in order to pay her unit's mortgage – even during the purported leaseback period – since astronomical assessments quickly exhausted her leaseback payment.

**B(16) ALEXANDER & JENNIFER HERWIG**

95. Plaintiffs, Alexander and Jennifer Herwig were also introduced to the Cay Club Defendants and the potential for purchasing a unit in Clearwater by Stokes. Colin Brechbill, as assistant director of investor relations, invited the Herwigs in January 2005 to meet with him at First Watch for breakfast to talk about this great investment opportunity with the Cay Clubs – they were joined at the meeting by Stokes, who assured the Herwigs that he was one of the top ten largest investors in Cay Clubs and in charge of investor relations for the whole company. Stokes explained how the Herwigs could invest with no money down and 100% financing on these condos in Clearwater, complete with deep water and marina access on Tampa Bay. Further, Stokes assured the Herwigs that if their credit scores were above 700, Cay Clubs would

lease the property back for a period of two years and give them 15% of the purchase price to make the payments.

96. The Herwigs were told that if they purchased quickly, they were guaranteed to purchase at Phase I, which was \$350/sq ft. Stokes and Brechbill both stated that current property appraisals were already valued at \$450/sq ft. The Herwigs were admonished, however, to keep these prices confidential, as Cay Clubs was going to advertise to the general public at higher prices and didn't want these "investor pricing" figures to get out. During the two year Leaseback period, Cay Clubs represented that they were going to put \$30,000 worth of upgrades such as granite countertops, a plasma TV, crown molding etc. and a luxurious furniture package into the condos. The \$30,000 was to be included in the contract price. Stokes stated this would be a "world class resort" and they were upgrading the whole property which including tearing down the strip mall in front of the property to make high class hotel/shopping/restaurants. Stokes touted the planned Amenities, including 250 memberships at the existing county club next to the property for Cay Club members to use.

97. Stokes assured the Herwigs that he would "hold their hand" to flip/sell their units to the next Phase II investor some 18 months after their purchase. Stokes and Brechbill indicated that the Cay Clubs Defendants would be responsible for bringing in the Phase II investor. As part and parcel of the Cay Clubs sales pitch, the Herwigs were shown brochures showcasing the rate of return on a recently closed Cay Club property which showed percentage returns ranging from 90-150%.

98. Based upon Stokes' personal sales pitch and the corresponding marketing literature provided by the Cay Clubs Defendants, the Herwigs purchased two units at the Clearwater Resort, paying \$574,100 and \$471,100, respectively.

**B(17). THE TERRY HERWIG REVOCABLE TRUST**

99. Plaintiff, Terry Herwig learned of the potential to invest in the Clearwater Resort through his son, co-plaintiff Alexander Herwig and accompanied Alexander to the sales meeting with Stokes described in paragraph 95 above. Once again, numerous benefits of purchasing a unit at the Clearwater Resort were related to all the Herwigs not only orally, but in marketing brochures. Terry Herwig went on to close on his Clearwater Resort unit, (1119 at Grand Venezia) indebting himself in the amount of \$903,800 in February 2005.

100. Terry Herwig's leaseback period has since expired, but he has been unable to secure any renters for his unit, despite the promise of a steady income stream from short term rentals that had been a major selling point of the Cay Clubs Defendants.

**C. SUMMARY OF WHAT THE CAY CLUBS DEFENDANTS DID WRONG**

101. The Cay Clubs Defendants promised to incorporate numerous Amenities discussed infra, and reciprocal membership benefits in a nearby championship golf course in accordance with the brochures and other information furnished to the plaintiffs. The individual units were to contain interior amenities consistent with a five star resort (i.e. plasma televisions and granite countertops). These representations proved to be false and were designed for the sole purpose of attracting investors and their funds.

102. The Plaintiffs all relied on the literature, brochures and representations made by the Cay Clubs Defendants and closed on their units using leveraged funds often times borrowed

from the “preferred lenders.” All Plaintiffs undertook a financial commitment of thousands of dollars per month for the next thirty years or until their unit was sold. The Cay Clubs Defendants were aware that the Plaintiffs did not intend to ever reside in the condominiums and only intended to sell their units once the conversion of the Clearwater facilities into a high end resort was complete. In fact, the program as designed and promoted did not contemplate that the units were to be occupied for the investors’ personal use, but rather simply as a means to realize profits based on the Cay Clubs Defendants’ efforts.

103. The Cay Clubs Defendants represented to the Plaintiffs that the purchase and closing on the units was purely an investment; that this was essentially a way for the Cay Clubs Defendants to pool funds generated from the investors to commence the construction/renovations needed to create a world class resort, while each unit’s mortgage was paid for by short-term rental proceeds. The Plaintiffs were assured by the Cay Clubs Defendants that once the construction related to the creation of the resort depicted in the drawings commenced, prices would increase dramatically as they were contracting at a bargain price and that Plaintiffs would be able to resell their “high end” resort units at a substantial profit. It was also promised that an “investment group” was likely to step in even before all the construction was finalized in order to purchase a large number of units for at least \$100/sq. ft. over and above what the Plaintiffs paid.

104. The Cay Clubs Defendants’ represented that the leaseback payments were essentially pre-payments from an anticipated rental pool. However, the leaseback payments bore no relation to the actual rental proceeds from each unit and Plaintiffs had no control over the rental of the units they had purchased.

105. The Cay Clubs Defendants (through CC 701) received two year leases from Plaintiffs at or near the time of closing allowing the Cay Club Defendants to assume complete control over the rental of units in the rental pool, including the actual rental, accounting of proceeds and payment of required amounts.

106. The above-mentioned representations were not true, the true facts being as follows:

- a. The investment opportunity presented to the plaintiffs did not represent a valuable financial opportunity, which was guaranteed to produce significant profit while minimizing out of pocket costs through the leaseback program. Rather, the leaseback payments simply gave the false illusion that the resort development was and would be profitable, while in reality it was not generating income and the promised amenities that were to enhance value never materialized,
- b. The Cay Club Defendants misrepresented that the Clearwater Cay Club was intended to be (and even capable of being) converted into a high end resort destination featuring a water park, high-end galleria shopping center, an expansive spa and fitness center, luxury hotel, additional recreational facilities, and gondola-traveled canals. Thus, no basis existed for the premium pricing that the Cay Club Defendants solicited and Plaintiffs ended up paying. The Clearwater Development remains virtually the same apartment complex in an isolated area that it was when it was “converted” into condominiums by the Cay

Club Defendants--thereby negating any appreciation that the Cay Club Defendants represented would take place as a result of their efforts.

- c. The Cay Clubs Defendants leaseback was not based on actual rentals which would have allowed for the feasibility of the development.
- d. The Clearwater Resort was never zoned for short-term rentals but rather long-term (monthly or more) rentals and the re-zoning process was never commenced by the Cay Clubs Defendants, thus insuring that the income and appreciation that the Cay Club Defendants represented was never feasible and could never come to fruition. No resort condominium could ever be successful if the minimum stay allowed for guests would be thirty days. Absent short term rentals, the proposed amenities in the resort and individual units, the units in the Clearwater Cay Club constituted, at best, a run of the mill apartment complex converted into a condominium.
- e. The units the Plaintiffs agreed to purchase were refurbished/renovated in accordance with the Agreement, brochures, and other information furnished to the Plaintiffs, including not containing the represented square footage, and not containing the promised “upgraded” countertops, plasma televisions, and furniture packages.
- f. Schedules showing profits earned by investors at other Cay Club resorts that were used as inducements to invest were not accurate depictions of the sales in those other resorts.

g. Funds derived from the sales of the units to Plaintiffs were not used for the development of the “world class resort” that would produce the promised income and appreciation. The Cay Clubs Defendants have now pulled up their stakes and abandoned the project with Plaintiffs’ investment proceeds in hand--but with none of the promises that induced them to invest having been met. Far from being a vibrant first class “resort”; the Clearwater Cay Clubs is a virtual ghost town with no amenities, very few renters, little income being generated and apartment style units now worth one-half what Plaintiffs paid for them.

107. Some of the Plaintiffs gave notice of the above described failures on the part of the Cay Clubs Defendants, but these Defendants have failed to correct those deficiencies or take any other measures to rectify Plaintiffs’ losses. Some of the Plaintiffs further gave written notice of their right to rescind the purchase/sale agreement with a demand for monies paid to the Cay Clubs Defendants, which have gone ignored.

108. All or substantially all of the above-listed facts, as well as many other material facts evidencing the misrepresentations made to Plaintiffs, were known to the Cay Clubs Defendants at the time they made such misrepresentations. These Defendants knowingly concealed and withheld such material facts from Plaintiffs, which facts were necessary to make the representations made to Plaintiffs not misleading.

109. Plaintiffs did not know that the misrepresentations alleged herein were untrue at the time they were made. In reliance on the misrepresentations of the Cay Clubs Defendants and in ignorance of the true facts, Plaintiffs executed the Sales Agreements and closed on their units.

110. The Cay Clubs Defendants continuously concealed and withheld the material facts from Plaintiffs so as to prevent Plaintiffs from discovering the true facts in attempting to recover their investment and to protect their investment in the Clearwater Resort.

111. The program created by the Cay Clubs Defendants did not generate sufficient income to provide a return to Plaintiffs and the pool of funds invested by Plaintiffs were never used to make required renovations.

112. The scheme created by the Cay Clubs defendants constituted a security (as that term is defined under Chapter 517 Fla. Stat. and Securities and Exchange Commission v. W.J. Howey, 328 U.S. 293 (1946)) sold through the instrumentalities of interstate commerce.

113. The Cay Clubs Defendants did not register the Clearwater Investment Contract with any applicable regulatory authority and did not provide a prospectus of these securities to Plaintiffs.

114. Upon information and belief, none of the Defendants possess a license to sell securities in any jurisdiction.

**COUNT I: VIOLATION OF THE SECURITIES  
EXCHANGE ACT OF 1934: §10(B) AND RULE 10B-5**

115. Plaintiffs re-allege as if fully set forth each and every allegation contained in paragraphs 1 through 114 of this Complaint.

116. This Count seeks relief against the Cay Club Defendants and Stokes, directly, and Clark and Schwarz as controlling persons.

117. The Clearwater Investment Contract is a security under the Securities Exchange Act of 1934 and the regulations promulgated thereunder.

118. The Cay Club Defendants and Stokes knew, or recklessly disregarded the truth, in utilizing material misrepresentations of fact to induce Plaintiffs to invest in the Clearwater Investment Contract.

119. Clark and Schwarz are the principals of each of the Cay Club Defendants and orchestrated the scheme outlined herein through their control of those entities to further their scheme to induce Plaintiffs to invest in the Clearwater Investment Contracts. Each entity assumed a different role in the implementation of the scheme to sell unregistered investment contracts through a series of knowing and intentional material misrepresentations. As such, Clark and Schwarz are subject to joint and several liability as controlling persons under § 20 (a) of the Exchange Act, 15 USC § 78t (a).

120. Plaintiffs reasonably relied on the misrepresentations alleged herein in making their decisions to invest in the Clearwater Investment Contract.

121. The offering of the condominium units at issue here involved both a rental arrangement and a sales emphasis on the economic benefits to the Plaintiffs from the managerial/development efforts and represented experience of the Cay Club Defendants.

122. The investments made by Plaintiffs in the Clearwater Investment Contract involved a common enterprise in which the fortunes of all investors were inextricably tied to the efficacy of common management and promotion by the Cay Club Defendants.

123. If Plaintiffs had known the true facts and if the Cay Club Defendants and Stokes had not misrepresented, concealed, and/or withheld material facts, Plaintiffs would not have made any investment in the Clearwater Investment Contracts and would not have executed any documents in connection with such investment.

124. By virtue of the forgoing, the Cay Club Defendants and Stokes violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated there under in that they, directly or indirectly, by use of means and instrumentalities of interstate commerce and/or mails; engaged in a continuous course of conduct whereby they knowingly and/or recklessly made material misrepresentations and failed to correct misrepresentations which were materially false and misleading in light of the circumstance under which they were made. Clark and Schwarz are liable for these acts as controlling persons.

125. These misrepresentations and omissions constituted a device, scheme and artifice to defraud that operated as a fraud upon Plaintiffs in connection with their purchase of the Clearwater Investment Contract.

126. As a direct and proximate result of the misrepresentations, concealment, and fraud of the defendants, and of Plaintiffs' investing in the Cay Club Resort, and executing the agreements in reliance on such misrepresentations, concealment, and fraud, Plaintiffs suffered substantial losses and damage.

WHEREFORE, Plaintiffs demand judgment against DC 703, LLC., DC 701, LLC., CC 701, LLC., CAY CLUBS RESORTS, LLC., CAY CLUBS INTERNATIONAL, LLC., Ricky Stokes, Dave Clark and Dave Schwarz jointly and severally for damages, attorneys fees

pursuant to the referenced statute, court costs, and interest, and such other relief as this Court deems appropriate.

**COUNT II: VIOLATION OF THE  
SECURITIES ACT OF 1933 §77(E) AND §12**

127. Plaintiffs re-allege as if fully set forth each and every allegation contained in paragraphs 1 through 114 of this Complaint.

128. This Count seeks relief against the DC 701, DC 703 and CC 701 entities, as issuers of Clearwater Investment Contract, and Resorts, International, Stokes, Clark and Schwarz as controlling persons.

129. This Count seeks relief against the DC 701, DC 703 and CC 701 defendants that were used to fashion different components of what made up the Clearwater Investment Contract as follows: DC 703 served as the vendor and acted as a conduit for consideration paid by each Plaintiff; DC 701 received and was responsible for the membership fee component which was misrepresented to have a separate value that would appreciate; and CC 701 administered the pre-paid the rentals under the leaseback program and administered the rental pool program.

130. The Clearwater Investment Contract is a Security.

131. No registration statement was filed with the Securities and Exchange Commission or was in effect with respect to the Clearwater Investment Contract.

132. By reason of the foregoing, the DC 701, DC 703 and CC 701 violated Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C.A. §771e(a), 77e(c) and are subject to liability under Section 12(a)(1) of the Securities Act, 15 U.S.C.A. §771(a)(1).

133. DC 701, DC 703 and CC 701 served as issuers subject to the direction and oversight of Resorts and International. Clark and Schwarz controlled all of these entities. As such, Resorts, International, Schwarz and Clark are subject to joint and several liability as controlling persons under § 15 (a) of the Securities Act, 15 USC § 77o by virtue of their direct and indirect control and domination of the issuers. Stokes is subject to controlling person liability as an officer of Resorts and International.

134. The Cay Club Defendants, Stokes, Schwarz and Clark, by engaging in the conduct described above, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or other mails, offered to sell or sold securities, or, directly or indirectly, carried or caused such securities to be carried through the mails or in interstate commerce for the purpose of sale or delivery after sale.

135. As a direct and proximate result of DC 701, DC 703 and CC 701 issuing unregistered securities under the control of the remaining defendants, Plaintiffs suffered substantial losses and damage.

WHEREFORE, Plaintiffs demand judgment against DC 703, LLC., DC 701, LLC., CC 701, LLC., CAY CLUBS RESORTS, LLC., CAY CLUBS INTERNATIONAL, LLC., Ricky Stokes, Dave Clark and Dave Schwarz jointly and severally for damages, attorneys fees pursuant to the referenced statute, court costs, and interest, and such other relief as this Court deems appropriate.

**COUNT III: VIOLATION OF §517.301, FLA. STAT.**  
**(FLORIDA SECURITIES INVESTOR PROTECTION ACT)**

136. Plaintiffs re-allege as if fully set forth each and every allegation contained in paragraphs 1 through 114 of this Complaint.

137. This Court seeks relief against the Cay Club Defendants, Stokes, Clark and Schwarz.

138. Pursuant to § 517.301 (1), Fla. Stat. (2007) :

It is unlawful and in violation of the provisions of this chapter for a person

(a) In connection . . . with the offer [or] sale of any . . . security . . . directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;
2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

139. Defendants directly or indirectly: a) employed a device or scheme to defraud the Plaintiffs; b) made untrue statements of material facts; c) omitted to state material facts necessary to make the statements that Defendants made to Plaintiffs, in light of the circumstances under which they were made, not misleading; and d) engaged in acts, practices, and a course of business that operated as a fraud and deceit on Plaintiffs, which led them to expect profits from the efforts of the Cay Clubs Defendants in connection with the offer and sale of this security.

140. The Clearwater Investment Contract is a type of security for purposes the Florida Securities Investor Protection Act (See e.g. § 517.021(21) (q) and (s) Fla. Stat.).

141. The offering of the condominium units at issue here involved both a rental arrangement and a sales emphasis on the economic benefits to the Plaintiffs from the managerial/development efforts of the Cay Clubs Defendants.

142. The investments made by Plaintiffs in the Clearwater Cay Clubs involved a common enterprise in which the fortunes of all investors were inextricably tied to the efficacy of common management and promotion by the Cay Clubs Defendants.

143. If Plaintiffs had known the true facts and if the Defendants had not misrepresented, concealed, and/or withheld material facts, Plaintiffs would not have made any investment in the Clearwater Resort and would not have executed any documents in connection with such investment.

144. As a direct and proximate result of the misrepresentations, concealment, and fraud of the Defendants, and of Plaintiffs' investing in the Clearwater Resort, and executing the agreement in reliance on such misrepresentations, concealment, and fraud, Plaintiffs suffered loss and damage in an amount exceeding the jurisdictional requirements of this Court. Plaintiffs do not know the exact amount of their losses and damages.

145. Each of the Defendants, including Stokes, Schwarz and Clark personally aided in the fraud underlying the sales of the Clearwater Investment Contract.

146. As a result of the willful fraud and malice practiced on Plaintiffs by the Defendants, Plaintiffs are entitled to punitive damages.

WHEREFORE, Plaintiffs demand judgment against DC 703, LLC., DC 701, LLC., CC 701, LLC., CAY CLUBS RESORTS, LLC., CAY CLUBS INTERNATIONAL, LLC., Ricky Stokes, Dave Clark and Dave Schwarz, jointly and severally for damages, punitive damages, attorneys fees pursuant to the referenced statute, court costs, and interest, and such other relief as this Court deems appropriate.

**COUNT IV: VIOLATION OF §517.307, FLA. STAT.**  
**(FLORIDA SECURITIES INVESTOR PROTECTION ACT)**

147. Plaintiffs re-allege as if fully set forth each and every allegation contained in paragraphs 1 through 114 of this Complaint.

148. This Count seeks relief against the Cay Club Defendants and Stokes.

149. The Clearwater Investment Contract is a type of security for purposes the Florida Securities Investor Protection Act (See e.g. § 517.021(21) (q) and (s) Fla. Stat.).

150. Section 517.07 provides: “It is unlawful and a violation of this chapter for any person to sell or to offer to sell a security within this state unless the security is exempt under § 517.051, is sold in a transaction exempt under § 517.061, is a federal covered security, or is registered pursuant to this chapter.”

151. The Clearwater Investment Contract does not meet any of the exceptions set forth in § 517.07.

152. The Cay Club Defendants and Stokes, and each of them, promoted and sold unregistered securities to Plaintiffs.

153. As a direct and proximate result of the Cay Club Defendants and Stokes’ sale of unregistered securities, Plaintiffs suffered loss and damage in an amount exceeding the jurisdictional requirements of this Court. Plaintiffs do not know the exact amount of their losses and damages.

154. As a result of the willful fraud and malice practiced on Plaintiffs by the Cay Clubs Defendants, Plaintiffs are entitled to punitive damages.

WHEREFORE, Plaintiffs demand judgment against DC 703, LLC., DC 701, LLC., CC 701, LLC., CAY CLUBS RESORTS, LLC., CAY CLUBS INTERNATIONAL, LLC. and Ricky Stokes, jointly and severally for damages, punitive damages, attorneys fees pursuant to the referenced statute, court costs, and interest, and such other relief as this Court deems appropriate.

**COUNT V: VIOLATION OF §517.12, FLA. STAT.**  
**(FLORIDA SECURITIES INVESTOR PROTECTION ACT)**

155. Plaintiffs re-allege as if fully set forth each and every allegation contained in paragraphs 1 through 114 of this Complaint.

156. This Count seeks relief against Resorts, International and Stokes.

157. The Clearwater Investment Contract is a type of security for purposes the Florida Securities Investor Protection Act (See e.g. § 517.021(21) (f) (q) and (s) Fla. Stat.).

158. Section 517.12 provides: “No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state . . . unless the person has been registered with the department pursuant to the provisions of this section.”

159. Resorts, International and Stokes were not at the time of the sales outlined in this Complaint registered to sell securities within the state of Florida.

160. Resorts, International and Stokes were engaged in the sale of securities and acted as dealers. Specifically, the Clearwater Investment Contract and other similar investments.

161. At all times pertinent to this complaint, Resorts, International and Stokes acted as unregistered dealers for the sale of the Clearwater Investment Contracts.

162. As a direct and proximate result of the Resorts, International and Stokes sale of securities as unregistered dealers, Plaintiffs suffered loss and damage in an amount exceeding the jurisdictional requirements of this Court.

WHEREFORE, Plaintiffs demand judgment CAY CLUBS RESORTS, LLC., CAY CLUBS INTERNATIONAL, LLC. and Ricky Stokes, jointly and severally for damages, punitive damages, attorneys fees pursuant to the referenced statute, court costs, and interest, and such other relief as this Court deems appropriate.

**COUNT VI: VIOLATION OF §718.506, FLA. STAT.**

163. Plaintiffs re-allege as if fully set forth each and every allegation contained in paragraphs 1 through 114 of this complaint.

164. This Count seeks relief against the Cay Club Defendants.

165. The Cay Club Defendants published advertising and promotional material which provided that the property would be converted into a high end resort complete with water park, high-end galleria shopping center, an expansive spa and fitness center, luxury hotel, additional recreational facilities, gondola-traveled canals, and a championship golf course.

166. The advertisement and promotional materials were false and misleading.

167. Plaintiffs reasonably relied upon that information and believed that because such a high-end conversion would take place and that the developers' representations as to the value of the units were true.

168. Plaintiffs purchased these units based on these representations.

169. As a result of the advertisement and promotional material not being true, Plaintiffs have the right to rescind the Sales Agreements and collect damages from against the Cay Club Defendants pursuant to section 718.506, Florida Statutes.

WHEREFORE, Plaintiffs demand judgment against DC 703, LLC., DC 701, LLC., CC 701, LLC, CAY CLUBS RESORTS, LLC. and CAY CLUBS INTERNATIONAL, LLC. for rescission of the Sales Agreements, return of their deposits, damages, attorneys fees and all further relief this Court deems just.

### **COUNT VII – FRAUDULENT INDUCEMENT**

170. Plaintiffs re-allege as if fully set forth each and every allegation contained in paragraphs 1 through 114 of this Complaint.

171. This Count seeks relief against the Cay Club Defendants and Stokes.

172. As set forth herein, in order to induce Plaintiffs to enter into the sales agreements the Cay Clubs Defendants made numerous misrepresentations of material facts relating to the construction/renovations that would turn the Clearwater Resort into a “world class resort” that the individual units would be renovated and that Plaintiffs would remain part of the “leaseback program” until such time as the new construction/renovations were completed.

173. The representations were false and known by the Cay Clubs Defendants and Stokes to be false at the time the misrepresentations were made and were solely designed to induce Plaintiffs to, among other things, enter into the Sales Agreements to purchase units at the Clearwater Resort and/or invest funds with Cay Clubs Defendants.

174. Plaintiffs reasonably relied on the misrepresentations in, among other things, entering into the Sales Agreements to purchase units at the Clearwater Resort; investing funds with Cay Clubs Defendants and incurring substantial obligations in obtaining large loans to purchase the units/fund the investment.

175. As a result of the Cay Clubs Defendants' misrepresentations, the Plaintiffs suffered substantial damages.

WHEREFORE, the Plaintiffs request judgment against DC 703, LLC., DC 701, LLC., CC 701, LLC, CAY CLUBS RESORTS, LLC. and CAY CLUBS INTERNATIONAL, LLC., and Ricky Stokes jointly and severally for costs, interest damages together with such further relief as the Court deems proper.

**COUNT VIII – NEGLIGENT MISREPRESENTATION**

176. Plaintiffs re-allege as if fully set forth each and every allegation contained in paragraphs 1 through 114 of this Complaint.

177. This Count seeks relief against the Cay Club Defendants and Stokes.

178. As set forth herein, the Cay Clubs Defendants and Stokes made numerous misrepresentations of material facts relating to the construction/renovations that would turn the Clearwater Resort into a "world class resort" that the individual units would be renovated and that Plaintiffs would remain part of the "leaseback program" until such time as the new construction/renovations were completed.

179. Plaintiffs reasonably relied on the misrepresentations in, among other things, entering into the Sales Agreements to purchase units at the Clearwater Resort; investing funds

with Cay Clubs Defendants and incurring substantial obligations in obtaining large loans to purchase the units/fund the investment.

180. The Cay Clubs Defendants and Stokes knew or should have known that the representations made to Plaintiffs were false and/or negligent when made.

181. The Cay Clubs Defendants and Stokes intended that the representations induce the Plaintiffs to act on them.

182. The Plaintiffs suffered damages in justifiable reliance on the representations.

WHEREFORE, the Plaintiffs request judgment against DC 703, LLC., DC 701, LLC., CAY CLUBS RESORTS, LLC., CAY CLUBS INTERNATIONAL, LLC., and Ricky Stokes, jointly and severally for costs, interest damages together with such further relief as the Court deems proper.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES IN THE COMPLAINT.

DATED this 18 day of October, 2007.

**HOWARD R. BEHAR, PA.**

Attorneys for Plaintiff  
The Harbour Centre at Aventura  
18851 N.E. 29th Avenue, Suite 900  
Aventura, Florida 33180  
(786) 279-0034  
(786) 279-0033

By: 

HOWARD R. BEHAR, ESQ.  
Florida Bar No. 054471  
(Trial Counsel)

**HARALSON & TOME, LLP.**

Attorneys for Plaintiff  
15500 New Barn Road, Suite 104  
Miami Lakes, Florida 33014  
(305) 403-0125

By: 

PAUL HARALSON, ESQ.  
Florida Bar No. 835271