

**CLASS ACTION LAWSUITS HAVE BEEN FILED AGAINST VAIL RESORTS AND ITS AFFILIATES, CONTRACTORS, REPRESENTATIVES, OR AGENTS REQUESTING REFUNDS AND OTHER COMPENSATION IN CONNECTION WITH RESORT CLOSURES DUE TO COVID-19. THE COMPLAINTS AND CONTACT INFORMATION FOR PLAINTIFFS' COUNSEL IS LINKED BELOW. SIMILAR SUITS MAY BE PENDING OR FILED IN THE FUTURE.**

**CONSOLIDATED CLASS ACTIONS**

**(All consolidated into *Han v. Vail Resorts Inc.* Case No 1:20-cv-01121)**

1. *Bellafatto v. The Vail Corporation*; United States District Court for the District of Colorado, Case No 1:20-cv-01585 ([complaint](#)) and ([contact for attorneys](#))
2. *Clarke v. The Vail Corporation*; United States District Court for the District of Colorado, Case No 1:20-cv-01163 ([complaint](#)) and ([contact for attorneys](#))
3. *Connolly v. The Vail Corporation*; United States District Court for the District of Colorado, Case No 1:20-cv-01881 ([complaint](#)) and ([contact for attorneys](#))
4. *DiPirro v. Vail Resorts, Inc.*; United States District Court for the District of Colorado, Case No. 1:20-cv-01468 ([complaint](#)) and ([contact for attorneys](#))
5. *Faydenko v. Vail Resorts, Inc.*; United States District Court for the District of Colorado, Case No. 1:20-cv-01134 ([complaint](#)) and ([contact for attorneys](#))
6. *Gasman v. The Vail Corporation*; United States District Court for the District of Colorado, Case No. 1:20-cv-01475 ([complaint](#)) and ([contact for attorneys](#))
7. *Han v. Vail Resorts, Inc.*; United States District Court for the District of Colorado, Case No. 1:20-cv-01121. ([complaint](#)) and ([contact for attorneys](#))
8. *Malachowsky v. Vail Resorts, Inc.*; United States District Court for the District of Colorado, Case No. 1:20-cv-01529 ([complaint](#)) and ([contact for attorneys](#))
9. *McAuliffe v. The Vail Corporation*; United States District Court for the District of Colorado, Case No. 1:20-cv-01176 ([complaint](#)) and ([contact for attorneys](#))
10. *Rarick v. The Vail Corporation*; United States District Court for the District of Colorado, Case No. 1:20-cv-01364 ([complaint](#)) and ([contact for attorneys](#))

**OTHER CLASS ACTIONS**

1. *Bradley v. United Specialty Insurance Company ("USIC")*; United States District Court for the Eastern District of Arkansas, Central Division, Case No. 4:20-cv-00520 ([complaint](#)) and ([contact for attorneys](#))
2. *Hoak v. USIC*; United States District Court for the District of Colorado, Case No. 1:20-cv-01152 ([complaint](#)) and ([contact for attorneys](#))
3. *Kodama v. American Claims Management*; United States District Court for the Northern District of California, Case No. 4:20-cv-02463 ([complaint](#)) and ([contact for attorneys](#))
4. *Mair v. USIC*; United States District Court for the Central District of Utah, Summit Division, Case No. 2:20-cv-00531 ([complaint](#)) and ([contact for attorneys](#))
5. *Muller v. USIC*; United States District Court for the Eastern District of New York, Case No. 2:20-cv-03407-SJF-ST ([complaint](#)) and ([contact for attorneys](#))
6. *Tourgee v. USIC*; United States District Court Western District of Texas, Case No. 1:20-cv-00902 ([complaint](#)) and ([contact for attorneys](#))
7. *IN RE: National Ski Pass Litigation*; United States Judicial Panel on Multidistrict Litigation, MDL No. 2955 ([motion](#))

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

AMANDA BELLAFATTO, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

**Trial by Jury Demanded**

THE VAIL CORPORATION d/b/a Vail  
Resorts Management Company, and DOES 1  
THROUGH 10, INCLUSIVE,

Defendant.

**CLASS ACTION COMPLAINT**

Plaintiff Amanda Bellafatto ( “Plaintiff”), brings this action against Defendant The Vail Corporation d/b/a/ Vail Resorts Management Company (“Defendant” or “Vail”), by and through her attorneys, individually and on behalf of all others similarly situated, and alleges as follows based on information and belief except as to allegations specifically pertaining to Plaintiff, which are made upon personal knowledge:

**INTRODUCTION**

1. Plaintiff brings this action on behalf of herself and all other similarly situated individuals who purchased season passes or Epic Passes for the 2019-2020 ski season (the “Class”). Class members were unable to use the remaining value in their passes after Alterra closed its ski resorts early due to the COVID-19 pandemic. Defendant has refused to refund Plaintiff and Class members for the unusable portion of the passes.

2. Activities such as skiing, snowboarding, and using lifts to access the ski and snowboard routes, are difficult to safely participate in while social distancing to help avoid

contracting the virus. As such, beginning on March 15, 2020, Defendant suspended operations at all of its resorts in North America, and, within the following five days, closed all of its resorts.

3. By refusing to refund to customers the monies paid for passes they can no longer use – money that they need to provide for themselves and their families during the crisis – Defendant shifted the financial burden of the crisis onto Plaintiff and the Class who paid hundreds or thousands of dollars for lift tickets and passes to ski or snowboard at Alterra’s resorts.

4. Defendant’s conduct breaches its contract with passholders, is unfair, unlawful, and unconscionable, and unjustly enriches it at the expense of its customers. Plaintiff brings this action in order to secure partial refunds for all similarly situated customers that Defendant has wronged by refusing to issue refunds for season passes and Epic Daily Passes with unused days when Vail closed its resorts starting between March 15 and March 20, 2020.

### **JURISDICTION & VENUE**

5. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2), the Class Action Fairness Act of 2005, because: (i) there are 100 or more Class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and one defendant are citizens of different States. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over Defendant because Defendant is a resident of, and is headquartered in, this judicial district, and has conducted substantial business in this judicial district, and intentionally and purposefully sold its season passes and Epic Passes into the stream of commerce within this judicial district and throughout the United States.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant is a citizen of and headquartered in this district, transacts business in this district, and is subject to personal jurisdiction in this district, and because a substantial part of the events giving rise to the claims occurred in this district.

### **PARTIES**

8. Plaintiff Amanda Bellafatto (“Plaintiff”) is a citizen of the State of Colorado, and at all times relevant to this action has resided in Lakewood, Colorado.

9. On December 2, 2019, Plaintiff purchased a Summit Value College Pass from Defendant, which gave her unlimited access to Defendant’s ski area in Keystone, Colorado, and limited restricted access to its ski are in Breckenridge, Colorado for the 2019-20 ski season. Plaintiff paid \$489.00 for her 2019-2020 Summit Value College Pass. Plaintiff used the Summit Value College Pass at Defendant’s ski areas during part of the 2019-2020 ski season, and planned to use the Summit Value College Pass after March 15, 2020. Due to the suspension and closure of Defendant’s ski areas, Plaintiff was not able to use the Summit Value College Pass for the 2019-2020 ski season after March 15, 2020. Defendant did not provide Plaintiff a refund of the unused portion of the Summit Value College Pass after Defendant closed all of its ski areas and rendered the Summit Value College Pass unusable.

10. Had Plaintiff known that the 2019-2020 season was going to end on March 15, 2020, she would either have not purchased the pass, or would not have paid the full purchase price for the pass.

11. Defendant The Vail Corporation d/b/a Vail Resorts Management Company is a Colorado corporation with its principal place of business located at 390 Interlocken Crescent, Broomfield, Colorado 80021.



12. The true names and capacities of Defendants sued in this Complaint as Does 1 through 10, inclusive, are currently unknown to Plaintiff, and therefore Plaintiff sues such Defendants by such fictitious names.

13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, shareholders, managers, or employees of Vail at all relevant times.

14. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants was in some manner legally responsible for the actionable and unlawful actions, policies and practices as alleged herein. Plaintiff will amend this Complaint to set forth the true names and capacities of said Defendants, along with the appropriate charging allegations, when the same have been ascertained, as may be necessary. Each reference in this Complaint to “Vail” or “Defendant” is also a reference to all Defendants sued as Does 1 through 10.

15. Plaintiff reserves the right to expand, limit, modify, or amend these allegations at any time, based upon, inter alia, changing circumstances and/or new facts obtained during discovery.

### **GENERAL ALLEGATIONS**

16. Defendant operates 37 “mountain ski resorts and urban ski areas” (collectively, “ski areas”) across the world, the majority of which are located in the United States. In the United States, Defendant owns and operates ski areas in Colorado, Utah, California, Nevada, Vermont, New York, New Hampshire, Washington, Pennsylvania, Ohio, Missouri, Wisconsin, Minnesota, Michigan, and Indiana. Internationally, Defendant owns and operates resorts in Canada, Australia, Japan, Switzerland, Italy, and France.

17. Individuals purchase either a lift ticket or an “Epic Pass” to obtain access to the ski areas. Generally, lift tickets may only be used for the ski area associated with the ticket. Lift tickets provide access to the ski area for 1 to 14 days, depending on the number of days purchased.

18. Defendant also sells several other types of “Epic Passes” that provide passholders unlimited access to most of Defendant’s ski areas, and limited access to the remainder of Defendant’s ski areas. Defendant advertises that Epic Passes provide “Unlimited, Unrestricted Skiing at our Best Resorts,” “Unlimited, unrestricted skiing or riding,” have “no restricted dates,” and that Epic Passes are “without limits.”<sup>1</sup>

19. In addition to the Epic Pass, Defendant also sells the Local Epic Pass, which provides passholder “unlimited, unrestricted access” to many of Defendant’s ski areas, and limited access—either a limited number of days or holiday-restricted access—to the remainder of Defendant’s ski areas.<sup>2</sup>

20. Additionally, Defendant sells regional Epic Passes to specific ski areas, which provide passholders “unlimited, unrestricted access” to the specific ski area(s).<sup>3</sup> Defendant’s regional Epic Passes are the: Summit Value Pass, Keystone Plus Pass, Tahoe Local Pass, Tahoe Value Pass, Kirkwood Pass, Northeast Value Pass, Northeast Midweek Pass, Afton Alps Pass, Mt. Brighton Pass, Wilmot Pass, Ohio Pass, Paoli Peaks Pass, Snow Creek Pass, and Hidden Valley Pass.

21. Defendant also sells “specialty” passes for specific groups of people, which include: Military Pass Active, Military Pass Active Dependent, Military Pass Retired, Military

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<sup>1</sup> *Epic Season Pass*, EPIC PASS, available at: <https://www.epicpass.com/passes/epic-pass.aspx> (last accessed June 2, 2020).

<sup>2</sup> *Epic Local Pass*, EPIC PASS, available at: <https://www.epicpass.com/passes/epic-local-pass.aspx> (last accessed June 2, 2020).

<sup>3</sup> See e.g., *Kirkwood Pass*, EPIC PASS, available at: <https://www.epicpass.com/Passes/Kirkwood-Pass.aspx> (last accessed June 2, 2020).

Pass Retired Dependent, Military Pass Veteran, Military Pass Veteran Dependent, Liberty Pass, Liberty Pass Dependent, Local College Pass, Summit Value College Pass, Park City Youth Pass, Tahoe Local College Pass, Tahoe Value College Pass, Kirkwood College Pass, Afton Alps College Pass, Afton Alps College Night Pass, Mt. Brighton College Pass, and Mt. Brighton College Night Pass.

22. Defendant's regional Epic Passes may be limited to specific ski areas, or particular days of the week, but otherwise provide access to ski areas for the entire 2019-2020 season. Similarly, while some of Defendant's specialty passes may be limited to particular ski areas, or certain days of the week, the passes otherwise provide access to the ski areas for the entire 2019-2020 season. Defendant's Epic Pass, Epic Local Pass, regional Epic Passes, and specialty Epic Passes are full season passes (hereinafter, collectively, "Season Epic Passes").

23. Defendant also sells Epic Day Passes which provide passholders with from 1 to 7 days of access to the majority of Defendant's ski areas. Multi-day Epic Day Passes do not need to be used on consecutive days or at the same ski area.<sup>4</sup>

24. Defendant permitted consumers to purchase a 2019-2020 Season Epic Pass, 2019-2020 Summit Value College Pass, or 2019-20 Epic Daily Pass by making an initial payment for \$49.00 and pay the remaining balance for the pass by the purchaser's credit card in September 2019. Defendant's Epic Pass website states that, by making the \$49.00 initial payment, the purchaser is "committing to buy the Pass(es)" and that once the purchaser makes the \$49 initial payment neither the initial payment nor the pass purchase can be cancelled or refunded.<sup>5</sup>

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<sup>4</sup> *Epic Day Pass*, EPIC PASS, available at: <https://www.epicpass.com/passes/epic-day-pass.aspx?days=7> (last accessed June 2, 2020).

<sup>5</sup> See *Deposit and Cancellation Policy*, EPIC PASS, available at: <https://www.epicpass.com/info/deposit-and-cancellation-policy.aspx> (last accessed June 2, 2020).

25. Defendant also offers Pass Insurance for the Epic Passes, which provides for a refund of the cost of the Epic Pass for covered events. The covered events are limited to: injury or sickness of the insured; injury, sickness, or death of a family member of the insured if the insured is subpoenaed, required to serve on a jury, hijacked, or quarantined; if the insured is involuntarily laid off, terminated, or transferred; if the insured is called for active military service or had military leave canceled, if the insured has a pregnancy or childbirth; or if the insured is a student and transfers schools. The Epic Pass website provides that, unless the consumer purchases Pass Insurance, the purchaser “will not be eligible for a refund of any kind” for the season or Epic Pass.<sup>6</sup>

26. Lift tickets and Epic Passes may be purchased either at one of Defendant’s resorts or ski areas, or from Defendant’s websites, such as [www.snow.com](http://www.snow.com) and [www.epicpass.com](http://www.epicpass.com). The Terms & Conditions for use of all of Defendant’s websites provide that the use of the website is governed by the laws of the State of Colorado, and any legal proceedings against Defendant shall be commenced in state or federal court in Denver, Colorado.

27. The Epic Passes are popular for skiers and snowboarders, as the Passes provide access to the ski areas for most of the year. Halfway through the 2018-2019 ski season, Defendant had sold over 900,000 passes to its ski areas for that season.<sup>7</sup> The ski/snowboard season typically begins in mid to late October, and usually lasts through April, and, for some ski areas, can last until June.

28. COVID-19 spreads through communities without detection. On February 29, 2020 the U.S. government issued a “do not travel” warning and prohibited travel between the United States and several countries with COVID-19 outbreaks. On March 11, 2020, the World Health

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<sup>6</sup> See *Epic Season Pass*, *supra*, footnote 1.

<sup>7</sup> See Scott Miller, *Vail Resorts has Sold about 925,000 passes of all kinds for 2018-19 Season*, VAIL DAILY NEWS (Dec. 8, 2018), available at: <https://www.skyhineews.com/news/vail-resorts-has-sold-about-925000-passes-of-all-kinds-for-2018-19-ski-season/>.

Organization classified COVID-19 as a worldwide pandemic and, two days later, the President declared a “National Emergency.” On March 11, 2020, the WHO reclassified COVID-19 as a worldwide pandemic and, two days later, the President declared a “National Emergency.”

29. On March 11, 2020, in response to the COVID-19 pandemic, Jared Polis, Governor of Colorado, issued Executive Order D 2020 003, which declared COVID-19 a disaster emergency. On March 14, 2020, Governor Polis issued Executive Order D 2020 004, which directed all downhill ski resorts in the State of Colorado to suspend operations from March 15-22, 2020. On March 18, 2020, Governor Polis issued Executive Order D 2020 006, which ordered all downhill ski resorts to suspend operations from March 23-April 6, 2020, which was later extended to April 30, 2020. On March 25, 2020, Governor Polis issued Executive Order D 2020 017, which ordered all residents of Colorado to stay at home.

30. As COVID-19 began to spread across the United States, reports linked the spread of the disease to ski resorts around the country, especially the resorts in Colorado.<sup>8</sup>

31. On or about March 15, 2020, Defendant suspended operation at all of its ski areas in North America until March 22, 2020 and stated that it would refund all lift tickets that were valid for March 15-22, 2020. However, Defendant refused to provide refunds of any portion of the money passholders paid to purchase a Season Epic Pass, including the Summit Value College Pass, or Epic Daily Pass.

32. On March 17, 2020, Defendant stated that it would close all of its ski areas in North America beginning March 20, 2020 but refused to provide refunds for any Season Epic Pass, including the Summit Value College Pass, or Epic Daily Pass.

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<sup>8</sup> See e.g., Vincent Del Giudice, *Colorado Suspects Virus Cluster in Ski-Resort Region*, BLOOMBERG (Mar. 16, 2020), available at: <https://www.bloomberg.com/news/articles/2020-03-17/colorado-suspects-virus-cluster-in-ski-resort-region-of-state> (updated Mar. 17, 2020).

33. On April 27, 2020, Defendant announced for the first time that it would issue credits—varying in amount based on the type of pass and the usage prior to the shutdowns—to impacted 2019-2020 passholders.<sup>9</sup> However, those credits are good only toward the purchase of passes for the 2020-2021 season, and Defendant continues to refuse to offer refunds of any kind.

34. Because Defendant refused to provide refunds for individuals who purchased any Season Epic Pass or Epic Daily Pass with unused days, many consumers made claims on their Pass Insurance, seeking a refund due to the closure of Defendant's ski areas. Passholders' claims under the Pass Insurance have been denied.<sup>10</sup>

35. No season or Epic Pass passholder is bound by Defendant's attempts to limit its own liability for closing its ski areas. Even if Defendant's limitation of liability applied by its terms—which it arguably does not—Defendant cannot disclaim liability for loss or damage by closing its ski areas and preventing consumers from being able to use the Season Epic Passes or Epic Daily Passes with unused days, without any compensation for the unused portion of the passes. Any attempt by Defendant to limit or disclaim liability for preventing passholders from using the Season Epic Passes or Epic Daily Passes with unused days, while retaining the fees that passholders paid to purchase the passes, is unconscionable and unenforceable, and unjustly enriches Defendant.

### CLASS ALLEGATIONS

36. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

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<sup>9</sup> *Vail Announces 19/20 Pass Holder Credits and 'Epic Coverage' for 20/21 Season*, VAIL RESORTS (Apr. 27, 2020), available at: <http://news.vailresorts.com/corporate/vailresorts/vail-resorts-announces-1920-pass-holder-credits-and-epic-coverage-for-2021-season.htm>.

<sup>10</sup> See e.g., Epic Pass Facebook, FACEBOOK, available at: <https://www.facebook.com/pg/epicpass/posts/> (Apr. 8, 2020, 8:50 A.M.) (comment from user stating that his claim for a refund under the Pass Insurance was denied); *id.* (Apr. 8, 2020, 6:55 A.M.) (same); Joyce and Doug Paff, *Letter: So Much for Epic Pass Insurance*, Vail Daily (Apr. 17, 2020), available at: <https://www.vaildaily.com/opinion/letter-so-much-for-epic-pass-insurance>.

37. Plaintiff brings this action, individually, and on behalf of a nationwide class, pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2) and/or 23(b)(3), defined as follows:

All persons in the United States who purchased a 2019-2020 Season Epic Pass, 2019-2020 Summit Value College Pass, or 2019-2020 Epic Daily Pass that had unused days after March 15, 2020.

38. Excluded from the Class are: (a) Defendant; (b) Defendant's affiliates, agents, employees, officers and directors; and (c) the judge assigned to this matter, the judge's staff, and any member of the judge's immediate family.

39. **Numerosity**: As required by Fed. R. Civ. P. 23(a)(1), upon information and belief, the Class is so numerous that joinder of all members is impracticable. While the exact number and identity of individual members of the Class are unknown at this time, such information being in the sole possession of Defendant and obtainable by Plaintiff only through the discovery process, Plaintiff believes, and therefore allege, that the Class consists of hundreds of thousands of people. The number of Class members can be determined based on Defendant's records.

40. **Commonality**: As required by Fed. R. Civ. P. 23(a)(2) and (b)(3), there are common questions of law and fact exist as to all members of each Class. These questions predominate over questions affecting individual Class members. These common legal and factual questions include, but are not limited to:

- a. Whether Defendant breached the contract with Plaintiff and Class members;
- b. Whether Defendant was unjustly enriched by its conduct;
- c. Whether Defendant violated the Colorado Consumer Fraud Act;
- d. Whether Defendant unlawfully converted Plaintiff's and Class members' property for its own use; and
- e. Whether Defendant breached the covenant of good faith and fair dealing.

41. **Typicality**: As required by Fed. R. Civ. P. 23(a)(3), Plaintiff has the same interest in this matter as all Class members, and Plaintiff's claims arise out of the same set of facts and conduct as the claims of all Class members. Plaintiff's and Class members' claims all arise out Defendant's uniform conduct, statements, and unlawful, unfair, and deceptive acts and practices.

42. **Adequacy**: As required by Fed. R. Civ. P. 23(a)(4), Plaintiff has no interest that conflicts with the interests of the Class and is committed to pursuing this action vigorously. Plaintiff has retained counsel competent and experienced in complex consumer class action litigation. Accordingly, Plaintiff and her counsel will fairly and adequately protect the interests of the Class.

43. **Superiority**: As required by Fed. R. Civ. P. 23(a)(4), Plaintiff class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiff and members of the Class. The injury suffered by each individual Class member is relatively small compared to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to effectively redress the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of this case. Individualized rulings and judgments could result in inconsistent relief for similarly-situated individuals. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

**FIRST CLAIM FOR RELIEF**  
**Breach of Contract**

44. Plaintiff re-alleges and incorporates by reference each allegation set forth above.



45. Plaintiff and the Class entered into a contract with Defendant when purchasing a 2019-2020 Season Epic Pass, 2019-2020 Summit Value College Pass, or 2019-2020 Epic Daily Pass. The contract was offered by Defendant and was formed at the time Plaintiff and the Class accepted it by purchasing their 2019-2020 Season Epic Pass, 2019-2020 Summit Value College Pass, or 2019-2020 Epic Daily Pass.

46. Plaintiff and the Class performed their obligations under the contract by providing payment in consideration for the 2019-2020 Season Epic Pass, 2019-2020 Summit Value College Pass, or 2019-2020 Epic Daily Pass.

47. Defendant breached its contracts with Plaintiff and the Class by retaining the consideration received by Plaintiff and the Class while closing their ski resorts, making the 2019-2020 Season Epic Pass, 2019-2020 Summit Value College Pass, or 2019-2020 Epic Daily Pass useless and worthless for a substantial portion of the ski season. Defendant's decision to retain the fees paid by Plaintiff and the Class without providing them with what was promised deprived Plaintiff and the Class the benefit of their bargains.

48. Due to the closure of Defendant's ski areas for a substantial portion of the 2019-2020 season, Defendant is unable to perform the remainder of the contract. Defendant's closure of all of its ski areas for the remainder of the 2019-2020 ski season, while a substantial portion of the ski season remained, renders Defendant's representations that it will not provide refunds for Season Epic Passes, Summit Value College Passes, or Epic Daily Passes illusory and void.

49. As a direct and proximate result of Defendant's breach, Plaintiff and the Class have suffered monetary damages. Plaintiff and the Class seek the return of amounts paid to Defendant for their 2020 Season Epic Pass, 2019-2020 Summit Value College Pass, or 2019-2020 Epic Daily Pass, as well as attorneys' fees, costs and interest.

**SECOND CLAIM FOR RELIEF**

**Unjust Enrichment**

**(Plead in the alternative to the First Claim for Relief for Breach of Contract)**

50. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

51. Plaintiff and the Class conferred a direct benefit on Defendant by purchasing a 2019-2020 Season Epic Pass, 2019-2020 Summit Value College Pass, or 2019-2020 Epic Daily Pass.

52. Defendant knowingly and willingly accepted and enjoyed the benefits conferred on it by Plaintiff and the Class.

53. Defendant's retention of these benefits is unjust and inequitable under the circumstances. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to recover the amount each paid to Defendant for their 2019-2020 Season Epic Pass, 2019-2020 Summit Value College Pass, or 2019-2020 Epic Daily Pass, as well as attorneys' fees, costs and interest.

**THIRD CLAIM FOR RELIEF**

**Conversion**

54. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

55. Plaintiff and the Class purchased passes that granted them the right to services that were promised in exchange for the purchase price of the passes.

56. Defendant intentionally interfered with Plaintiff's and the Class' rights granted through those passes when Defendant closed all of its facilities and retained the purchase price of the passes.

57. Defendant exercised control over Plaintiff's and Class members' property by closing its ski areas and refusing to issue partial refunds for the unusable portion of the 2019-2020

Season Epic Pass, 2019-2020 Summit Value College Pass, or 2019-2020 Epic Daily Pass, and the rights granted by those passes.

58. Defendant's closure of its ski areas and refusal to refund the unusable portion of the 2019-2020 Season Epic Passes, 2019-2020 Summit Value College Passes, or 2019-2020 Epic Daily Passes to Plaintiff and Class members is unauthorized.

59. Plaintiff and Class members have, through the filing of this lawsuit or otherwise communicating with Defendant, demanded that Defendant issue refunds for the unusable portion of the 2019-2020 Season Epic Passes, 2019-2020 Summit Value College Passes, or 2019-2020 Epic Daily Passes.

60. Defendant has uniformly and consistently refused to issue refunds for the unusable portion of the 2019-2020 Season Epic Pass, 2019-2020 Summit Value College Pass, or 2019-2020 Epic Daily Pass. Plaintiff and the Class seek a partial return of the price paid to Defendant for their passes.

#### **FOURTH CLAIM FOR RELIEF** **Breach of Warranty**

61. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

62. Defendant created an express warranty through its advertising statements that the passes would provide "unlimited, unrestricted access" to its ski areas through the 2019-2020 season, that the Season Epic Passes and Summit Value College Passes provide access for the entire 2019-2020 season, and that Epic Daily Passes provide access to Defendant's ski areas for the amount of days purchased until the end of the 2019-2020 season. Plaintiff and the Class relied on this warranty in deciding to purchase a pass from Defendant. This warranty became part of the basis of the bargain between the parties. Plaintiff and the Class relied on this warranty in deciding to purchase a pass from Defendant.

63. Defendant breached this warranty by failing to provide access to its resorts throughout the 2020 ski season and by failing to issue partial refunds to Plaintiff and the Class after shutting down access to its facilities.

64. Plaintiff and the Class would not have purchased the passes, or would have paid substantially less for them, had Defendant disclosed that it would not honor the warranty and not refund any portion of the monies that Plaintiff and the Class paid to purchase a Season Epic Pass or Epic Daily Pass.

65. Plaintiff and the Class performed their obligations under the warranty, including paying in full for their passes.

66. Plaintiff and the Class were injured as a direct and proximate result of Defendant's breach of warranty.

**FIFTH CLAIM FOR RELIEF**  
**Breach of Implied Covenant Of**  
**Good Faith and Fair Dealing**

67. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

68. Every contract in Colorado contains an implied covenant of good faith and fair dealing. The implied covenant is an independent duty and may be breached even if there is no breach of a contract's express terms.

69. Defendant breached the covenant of good faith and fair dealing by failing to refund to Plaintiff and the Class a portion of the purchase price of their Season Epic Passes or Epic Daily Passes after Defendant terminated access to its facilities.

70. Defendant acted in bad faith and/or with a malicious motive to deny Plaintiff and the Class members some benefit of the bargain originally intended by the parties, thereby causing them injuries in an amount to be determined at trial.

**SIXTH CLAIM FOR RELIEF**  
**Violations of The Colorado Consumer Protection Act<sup>11</sup>**

71. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

72. Colorado’s Consumer Protection Act (the “CCPA”) prohibits a person from engaging in a “deceptive trade practice,” which includes “advertis[ing] goods, services, or property with intent not to sell them as advertised.” Colo. Rev. Stat. § 6-1-105(1)(g), (i).

73. Defendant is a “person” within the meaning of Colo. Rev. Stat. § 6-1-102(6).

74. In the course of Defendant’s business, it advertised that the purchasers of its passes would have unlimited access to skiing and snowboarding until the end of the 2019-2020 season, which typically lasts until May or June. Defendant knew, however, that if it closed all of its resorts before the end of 2019-2020 season that it would retain 100% of the revenue generated from sales of the passes.

75. Defendant’s actions as set forth above occurred in the conduct of trade or commerce.

76. Defendant’s actions proximately caused injuries to Plaintiff and the Class members.

77. Plaintiff and the Class members have suffered an injury in fact, including the loss of money or property, as a result of Defendant’s unfair, unlawful, and/or deceptive practices. In purchasing their passes, Plaintiff and the other Class members relied on the misrepresentations and/or omissions of Defendant with respect to their ability to access Defendant’s locations without restriction. Had Plaintiff and the other Class members known this, they would not have purchased

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<sup>11</sup> Plaintiff does not seek certification under Federal Rule of Civil Procedure 23(b)(3) for Defendant’s violation of the CCPA. Instead, Plaintiff seeks certification under Rule 23(b)(2)—seeking declaratory relief—and Rule 23(c)(4)—regarding the issue of whether Defendant’s conduct alleged herein violates the CCPA.

their passes and/or paid as much for them. Accordingly, Plaintiff and the other Class members overpaid for their passes and did not receive the benefit of their bargain.

78. Plaintiff and the Class Members injuries are the direct and natural consequence of Defendant's misrepresentations and omissions.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and the Class, respectfully requests that this Court:

- (a) Determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying the Class as defined above;
- (b) Appoint Plaintiff as the representative of the Class and her counsel as Class Counsel;
- (c) Award actual damages and equitable monetary relief to Plaintiff and the Class and/or order Defendant to return to Plaintiff and the Class the amount each paid to Defendant;
- (d) Award pre-judgment and post-judgment interest on such monetary relief;
- (e) Grant appropriate injunctive and/or declaratory relief, including, without limitation, an order that requires Defendant to issue refunds to any member of the Class who requests a refund;
- (f) Award reasonable attorneys' fees and costs;
- (g) Grant leave to amend the Complaint to conform to the evidence produced at trial; and
- (h) Grant such further relief that this Court deems appropriate.

**JURY DEMAND**

Pursuant to Federal Rules of Civil Procure, Rule 38(b), Plaintiff hereby demands a trial by jury as to all claims so triable.

Dated: June 2, 2020

Respectfully submitted,

**POMERANTZ LLP**

By: /s/ Jordan L. Lurie

Jordan L. Lurie (Admitted to Colorado Bar)

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Attorneys for the Plaintiff and the Putative Class

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Case No.:

DYLAN CLARKE, Individually and on behalf of all others similar situated,

Plaintiff

v.

THE VAIL CORPORATION, d/b/a VAIL RESORTS MANAGEMENT COMPANY,

Defendant

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**CLASS ACTION COMPLAINT**

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1. Defendant Vail Resorts sold thousands of annual, weekly and multiday ski passes to consumers. Many consumers had weeks if not months of time remaining on their passes when on March 14, 2020, Vail Resorts announced that it was shutting down all its ski resorts for one week and then, on March 17, 2020, confirmed that its resorts would remain closed for the entire season.<sup>1</sup> Yet, to date, Vail Resorts has not yet refunded Plaintiff and class members money equal to the prorated time remaining on their passes.

## **I. PARTIES**

2. Defendant The Vail Corporation (“Vail Resorts”) is a Colorado corporation and the operator of more than 34 North American ski resorts throughout the United States. Vail Resorts is headquartered in Broomfield, Colorado and, according to its website, all its “corporate offices” are located in Broomfield, Colorado. Customers access Defendant’s resorts by purchasing lift tickets also called ski passes from Defendant which give customers access to Defendant’s slopes. Although Defendant sells one day lift tickets, many customers prefer to purchase multi-day, weekly or full season access passes that Defendant markets as “Epic Passes.” On information and belief, decisions regarding the nationwide marketing of Epic Passes are made at Defendant’s corporate offices in Colorado. In addition, on information and belief, the decision not to offer compensation to consumers for their inability to use their Epic Passes was also made at corporate offices in Colorado. Specifically, the decision was ultimately made by Vail Resorts CEO Robert Katz, who is located in Broomfield Colorado.

3. Dylan Clarke purchased an Epic Pass to ski at the Vail Resorts owned resorts in the 2019-2020 ski season. He was not permitted to ski using his Epic pass, including during a long-planned family vacation during the week of Mar. 16, 2020.

## **II. JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in

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<sup>1</sup> <https://www.snow.com/info/vail-resorts-covid-19-resort-closing-update.aspx> (last accessed April 24, 2020).

excess of \$5,000,000, exclusive of interest and costs, and most members of the proposed nationwide class are citizens of states different from the states of Defendant.

5. This Court has personal jurisdiction over Defendant because Defendant is a Colorado corporation and conducts substantial business within Colorado and because Plaintiff resides in Colorado.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this District and a substantial part of the events giving rise to Plaintiff's claims took place within this District.

### **III. COMMON FACTUAL ALLEGATIONS**

1. Defendant Vail Resorts heavily markets multi-day, weekly and full season ski passes that it brands as "Epic" passes. Specifically, to visit Defendant's mountain resorts, consumers can purchase (1) annual passes for prices ranging from \$319 to \$979; (2) weekly passes from \$391 to \$766; (3); or day/multi-day passes from \$67 to \$766 (collectively "EPIC passes"). For customers that buy Epic Day Passes, they have the option to buy passes in packages for "1 to 7 total days." Vail also offers various discounted Epic Passes for promotional and marketing purposes, but that do not differ from full price Epic Passes in any other respect.

2. Defendant sells "Epic Passes" promising "unlimited, unrestricted skiing at [its] best resorts."<sup>2</sup> Defendant also promises that its passes are the "best way to ski ... 7 days a week."<sup>3</sup> Defendant also markets together with the passes certain pass insurance together with its passes. This pass insurance provides coverage under certain circumstances when a customer cannot utilize his or her pass. The pass insurance and Defendant's website provide an express ski season duration which, on information and belief, for the 2019-2020 season was October 15, 2019 to April 15, 2020. This pass insurance is marketed to every consumer at the point of sale directly before the purchase of his or her Epic Pass.

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<sup>2</sup> <https://www.vail.com/plan-your-trip/lift-access/passes/epic-pass.aspx> (last accessed April 9, 2020).

<sup>3</sup> <https://www.epicpass.com/passes/tahoe-local-pass.aspx> (last accessed April 9, 2020).

3. At the time of purchase, Plaintiff and class members are forced to sign a general release. However, this release is expressly limited to claims “ARISING IN WHOLE OR IN PART OUT OF THE PASS HOLDER’S PARTICIPATION IN THE ACTIVITY.”

4. The season dates provided on Defendant’s website are consistent with the reasonable expectations of its customers based on historic closing dates. Specifically, in the prior five ski seasons, Vail resort was open for skiing through middle-to-late April.<sup>4</sup> Breckenridge has been open through late May.<sup>5</sup>

5. On March 14, 2020, Defendant announced that it was closing all of its mountain resorts for one week in light of the COVID-19 pandemic. Subsequently, Defendant announced that its “North American resorts and retail stores will remain closed for the 2019-20 winter ski season.”<sup>6</sup>

6. To date, Defendant has not refunded any consumers for their lost mountain resort access. Rather, for annual pass-holders, Defendant has simply deferred all auto-renewal charges and spring deadlines (for those people that did not pre-pay for the entire season). Further, for Epic Day Pass customers, Defendant has explicitly stated that, despite Defendant’s closures, the passes are “non-refundable and non-transferable to another season.”<sup>7</sup> Accordingly, customers who did not have a chance to use all of their purchased passes under the Epic Day Pass program get zero consideration or compensation for their inability to use those unused, purchased days, even if they wanted to.

7. Defendant’s conduct clearly breached the contract between Plaintiff’s and class members, which promised Plaintiff and class members access to Defendant’s resorts for the entire ski season, which Defendant itself defined as lasting until at least April 15, 2020.

8. Resultingly, Defendant has breached its contracts with class members, as well as unjustly enriched itself by retaining passholder fees of hundreds of thousands of consumers – while denying passholders all access to all of Defendant’s mountain resorts.

9. Plaintiff was one of these customers. He and his family, including his parents, sister, and children had planned a ski trip during the week of Mar. 16. Plaintiff’s extended family came from out

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<sup>4</sup> <https://www.snowpak.com/colorado/vail/opening-dates> (last accessed April 23, 2020).

<sup>5</sup> <https://www.snowpak.com/colorado/breckenridge/opening-dates> (last accessed April 23, 2020).

<sup>6</sup> <https://www.snow.com/info/covid-19-update> (last accessed April 24, 2020).

<sup>7</sup> <https://www.snow.com/info/message-to-our-guests.aspx> (last accessed April 24, 2020).

of state for the ski trip. Plaintiff was going to ski at Breckenridge and Keystone resorts using his Epic Pass during this trip. Plaintiff's father was going to ski at Breckenridge and Keystone using the "buddy pass" given to purchasers of the Epic Pass. Plaintiff and his family were not permitted to ski during this trip due to the closure of Defendant's ski resorts.

#### **IV. CLASS ACTION ALLEGATIONS**

1. Plaintiff seeks relief in this action individually, and on behalf of all of Defendant's customers nationwide that purchased Epic passes for the 2019-2020 season who, as of March 15, 2020, had not used up all of the days remaining on their Epic Passes. Plaintiff brings this action as a class action under Federal Rule of Civil Procedure 23 on behalf of a Class consisting of all of Defendant's customers nationwide that purchased Epic Passes and, as of March 15, 2020, had not used up all of the days remaining on their Epic Passes.

2. Plaintiff reserves the right to amend or modify the Class definition with greater specificity or further division into subclasses or limitation to particular issues as discovery and the orders of this Court warrant.

3. Excluded from the Class are the Defendant, the officers and directors of the Defendant at all relevant times, members of its immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendant has or had a controlling interest.

4. Plaintiff is a member of the Class he seeks to represent.

5. Defendant has hundreds of thousands of customers nationwide that purchased resort passes that cannot be used. Accordingly, members of the Class are so numerous that their individual joinder herein is impracticable. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant.

6. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Such common questions include but are not limited to the following:

- Whether Defendant's conduct is unfair, unconscionable, or otherwise violates C.R.S. § 6-1-105.
- Whether Defendant's statements that it was not required to compensate Plaintiff and Class members for the unused portions of their Epic Passes because the passes were "nonrefundable" was a false or misleading statement.
- Whether Plaintiff and Class members are entitled to statutory or treble damages.
- Whether an enforceable contract exists between Defendant and Class members and, if so, the terms of such contract.
- Whether Defendant's conduct breached the terms of any contract.
- Whether, in the absence of an enforceable contract, Defendant may justly retain 100% of the monies paid by Class members for their Epic passes.
- The amount of money paid by Class members to Defendant.

7. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff was paid for his resort pass promising mountain access but was denied entry and suffered losses as a result.

8. Plaintiff is an adequate representative of the Class because Plaintiff's interests do not conflict with the interests of the Class members Plaintiff seeks to represent, Plaintiff has retained competent counsel experienced in prosecuting class actions, and Plaintiff intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

9. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of the Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability

issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

**COUNT I**  
**COLORADO CONSUMER PROTECTION ACT**  
**(COLORADO REVISED STATUTE 6-1-113)**

10. Plaintiff hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

11. Plaintiff brings this claim individually and on behalf of members of the proposed Class against Defendant. Plaintiff and class members are actual consumers of Defendant's Epic Passes.

12. In the course of its business, Defendant has knowingly refused to refund to Plaintiff and Class members any portion of the monies paid for Epic Passes.

13. Defendant has no legal right to retain such money.

14. Defendant's action, which deprive Plaintiff and class members of significant sums of money without legal justification, are unfair and unconscionable.

15. Defendant's assertions to Plaintiff and Class members that Plaintiff and Class members are not entitled to be compensated for the unused portions of their Epic Passes because Epic passes are "non-refundable" is a false statement or, at least, intentionally misleading statement.

16. As a result of Defendant's false statements and unfair and unconscionable conduct, Plaintiff and class members have been injured.

**COUNT II**  
**BREACH OF EXPRESS WARRANTY**

17. Plaintiff hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

18. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendant.

19. In connection with the sale of passes, Defendant issues an express warranty that customers would have unlimited access to its mountain resorts for the entire season, which Defendant defined as lasting until at least April 15, 2020, or for the Epic Day or Weekly Passes, that they would have access to Defendant's mountain resorts for a specified number of days or a stated or established time.

20. Defendant's affirmation of fact and promise in Defendant's marketing and signage became part of the basis of the bargain between Defendant and Plaintiff and Class members, thereby creating express warranties that the services would conform to Defendant's affirmation of fact, representations, promise, and description.

21. Defendant breached its express warranty because Defendant does not provide unlimited access to its mountain resorts, and, for the Epic Day or Weekly Passes, does not provide access to resorts even for customers who still have unused Epic Day or Weekly Passes left for the 2019-2020 season. In fact, Defendant has retained the full amount of its pass fees while 100 percent of its mountain resorts are closed.

22. Plaintiff and the Class members were injured as a direct and proximate result of Defendant's breach because: Plaintiff and the Class suffered injuries caused by Defendant because: they would not have purchased or paid for Defendant's passes absent Defendant's representations and omission of a warning that it would retain members' passholder fees while all mountain resorts nationwide are closed; (b) they would not have purchased passes on the same terms absent Defendant's representations and omissions; (c) they paid a price premium for Defendant's passes based on Defendant's misrepresentations and omissions; and (d) Defendant's passes did not have the characteristics, benefits, or quantities as promised.

### **COUNT III BREACH OF CONTRACT**

23. Plaintiff hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

24. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendant.

25. Defendant entered contracts with Plaintiff and Class members to provide access to its mountain resorts for specified periods of time in exchange for the payment of pass fees. For weekly or multiday Epic Passes, this period of time is the number of days of the pass. For season Epic Pass holders, this period of time is, at minimum, the dates specified and advertised on Defendants own website in conjunction with the sale of insurance, namely October 15, 2020 to April 15, 2020. In the alternative, a "season," by longstanding custom, is defined as the maximum amount of time during

which skiable snow conditions exist. Such conditions existed at all Defendants North American resorts through at least April 15, 2020.

26. Defendant has breached these contracts by retaining and Class members' full pass fees while 100 percent of its mountain remain closed. Plaintiff and Class members have suffered an injury through the payment of pass fees while not having access to Defendant's mountain resorts.

27. Plaintiff and Class members are entitled to damages or restitution equal to a pro-rated amount determined by the days remaining on their Epic Pass.

**COUNT IV  
UNJUST ENRICHMENT  
(IN THE ALTERNATIVE)**

28. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint. Plaintiff brings this claim, in the alternative in the event, the Court determines no enforceable contract exists or that Plaintiff's contractual remedies are inadequate.

29. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendant, alternatively to relief claimed in the other causes of action.

30. Plaintiff and members of the Class conferred benefits on Defendant by paying, and being charged, pass fees while 100 percent of Defendant's mountain resorts were and remain closed.

31. Defendant has knowledge of such benefits.

32. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff and Class members' pass fees. Retention of those moneys under these circumstances is unjust and inequitable because Defendant is retaining its customers' full pass fees while 100 percent of its mountain resorts remain closed. These misrepresentations and charges caused injuries to Plaintiff and members of the Class because they would not have paid Defendant's pass fees had the true facts been known.

33. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and members of the Class is unjust and inequitable, Defendant must pay restitution to Plaintiff and members of the Class for their unjust enrichment, as ordered by the Court.



## **V. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- (a) For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent the Class members;
- (b) For an order declaring that Defendant's conduct violates the statutes and laws referenced herein;
- (c) For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- (d) For compensatory and statutory damages in amounts to be determined by the Court and/or jury;
- (e) For prejudgment interest on all amounts awarded;
- (f) For an order of restitution and all other forms of equitable monetary relief;
- (g) For injunctive relief as pleaded or as the Court may deem proper; and
- (h) For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit.

## **VI. JURY DEMAND**

34. Plaintiff demands a trial by jury on all causes of action and issues so triable.

Dated: April 24, 2020.

By: **NORTON FRICKEY, P.C.**  
s/ Craig R. Valentine  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

MCKENNA CONNOLLY, individually and on  
behalf of a class of similarly situated individuals,

*Plaintiff,*

v.

THE VAIL CORPORATION d/b/a Vail Resorts  
Management Company, a Colorado Corporation

*Defendant.*

Case No.:

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

Plaintiff McKenna Connolly (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her undersigned attorneys, brings this Class Action Complaint against Defendant The Vail Corporation d/b/a Vail Resorts Management Company, a Colorado Corporation (“Defendant” or “Vail”), for its negligent, reckless, and/or intentional practice of effectively canceling Plaintiff’s and Class Members’ ski and snowboard passes without issuing any refund. Plaintiff seeks both injunctive and monetary relief on behalf of the proposed Class (defined below), including relief requiring Defendant to refund Plaintiff and Class Members for the unused portions of their passes. Plaintiff alleges the following upon personal knowledge as well as investigation by their counsel and as to all other matters, upon information and belief.

**NATURE OF THE CASE**

1. This is a nationwide class action brought by Plaintiff on behalf of herself and all Class Members who purchased an Epic Pass.<sup>1</sup>

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<sup>1</sup> Epic Pass is defined as any of the following season passes for the 2019-2020 season that have unused days remaining after March 15, 2020: season passes to any of Defendant’s resorts, Epic Passes, Local Epic Passes, Regional Epic Passes, “Specialty” Passes, and Epic Day Passes (collectively, “Epic Passes”).

2. Defendant sells hundreds of thousands of their popular Epic Passes throughout the country, many of which cost hundreds of dollars or as much as a thousand dollars.<sup>2</sup> In March of 2020 and in the face of the spreading COVID-19 pandemic, Defendant initially suspended operations at all of its ski areas in North America from March 15, 2020 until March 22, 2020. Defendant stated that it would refund all lift tickets that were valid for March 15-22, 2020; however, Defendant refused to provide refunds of any portion of the monies passholders paid to purchase Epic Passes. On March 17, 2020, Defendant stated that it would close all of its ski areas in North America beginning March 20, 2020.

3. Unfortunately for Plaintiff and Class Members, Defendant refused to refund to customers any of the monies paid for the Epic Passes, including the portion of the Epic Passes that Plaintiff and Class Members are no longer able to use. By Defendant's failure to refund the unused portions of its Epic Passes, Defendant has shifted its financial burden caused by COVID-19 to its customers—consumers who are even more vulnerable and need whatever resources are available to provide for themselves and their families.

4. On April 27, 2020, Defendant announced for the first time that it would issue credits—varying in amount based on the type of pass and the usage prior to the shutdowns—to impacted 2019-2020 passholders.<sup>3</sup> However, those credits may only be applied toward the purchase of new passes for the 2020-2021 season and Defendant continues to refuse to offer refunds of any kind for the Epic Passes for the 2019-2020 season.

5. Not only is Defendant's conduct immoral and unfair—it is illegal. Defendant's

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<sup>2</sup> See Scott Miller, *Vail Resorts has Sold about 925,000 passes of all kinds for 2018-19 Season*, VAIL DAILY NEWS (Dec. 8, 2018), available at: <https://www.skyhinevents.com/news/vail-resorts-has-sold-about-925000-passes-of-all-kinds-for-2018-19-ski-season/> (last accessed June 24, 2020).

<sup>3</sup> *Vail Announces 19/20 Pass Holder Credits and 'Epic Coverage' for 20/21 Season*, VAIL RESORTS (Apr. 27, 2020), available at: <http://news.vailresorts.com/corporate/vailresorts/vail-resorts-announces-1920-pass-holder-credits-and-epic-coverage-for-2021-season.htm> (last accessed June 24, 2020).

sale of its Epic Passes to consumers and failure to issue any refund despite the passes being effectively canceled gives rise to Plaintiff's and Class Members' claims for breach of contract, unjust enrichment, breach of the implied covenant of good faith and fair dealing to consumers, conversion, breach of warranty, and violations of the Colorado Consumer Protection Act. Plaintiff seeks for herself and Class Members monetary and injunctive relief compensating consumers on a pro-rata basis for the unused portions of their Epic Passes.

### **JURISDICTION AND VENUE**

6. This Court has original jurisdiction over all causes of action asserted herein under the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs and more than two-thirds of the Class reside in states other than the states in which Defendant is a citizen and in which this case is filed, and therefore any exemptions to jurisdiction under 28 U.S.C. §1332(d) do not apply. This Court has supplemental jurisdiction over the related state-law claims under 28 U.S.C. §1367.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because many of the acts and transactions giving rise to this action occurred in this district, Defendant conducts substantial business in this district, Defendant is headquartered in this district, Defendant is subject to personal jurisdiction in this district, and Defendant has intentionally availed themselves of the laws and markets of this district.

### **PARTIES**

8. Plaintiff McKenna Connolly is, and at all times relevant hereto has been, a citizen of the state of Colorado, Boulder County. Plaintiff Connolly purchased the Epic Local Pass on October 12, 2019 for \$719.00. Plaintiff Connolly's Epic Pass was for the 2019-2020 ski season, granting her unlimited access to Defendant's ski areas. Plaintiff Connolly purchased her Epic Pass

because it provided access to a wide variety of locations over the entire 2019 and 2020 seasons. Prior to the suspension and closure of Defendant's ski areas, Plaintiff was able to use her pass once during the 2019-2020 season but was unable to use her Epic Pass after March 15, 2020. Despite Plaintiff Connolly's repeated requests for a refund of the purchase price paid for her Epic Pass, Defendant has not refunded her the unused portion of her pass after they closed all of their ski areas, rendering the pass unusable. Instead, Defendant has offered Plaintiff a credit applied towards a season pass for the 2020 and 2021 seasons, which season pass Plaintiff has no desire or ability to purchase. Had Plaintiff Connolly known that she would not have been able to use her pass throughout the 2019 and 2020 seasons, she would not have purchased her Epic Pass.

9. Defendant the Vail Corporation d/b/a Vail Resorts Management Company is a corporation organized and existing under the laws of the State of Colorado, with its principal place of business located at 390 Interlocken Crescent, Broomfield, Colorado 80021. Defendant operates thirty-seven "mountain ski resorts and urban ski areas" (collectively, "ski areas") across the world, the majority of which are located in the United States. In the United States, Defendant owns and operates ski areas in Colorado, Utah, California, Nevada, Vermont, New York, New Hampshire, Washington, Pennsylvania, Ohio, Missouri, Wisconsin, Minnesota, Michigan, and Indiana. Internationally, Defendant owns and operates resorts in Canada, Australia, Japan, Switzerland, Italy, and France.

## **FACTUAL ALLEGATIONS**

### **Defendant's Obligations and its Epic Passes**

10. Defendant sells a variety of different passes which obligate it to provide various forms of access to a number of ski and snowboard resorts for the 2019-2020 ski and snowboard seasons. The Epic Passes sold by Defendant that are at issue in this complaint are:

- a. The Epic Pass, which provides passholders with unlimited access to most of Defendant's ski areas, and limited access to the remainder of Defendant's ski areas. Defendant advertises that Epic Passes provide "Unlimited, Unrestricted Skiing at our Best Resorts," "Unlimited, unrestricted skiing or riding," have "no restricted dates," and Epic Passes are "without limits;"<sup>4</sup>
- b. The Epic Local Pass, which provides passholders "unlimited, unrestricted access" to many of Defendant's ski areas, and limited access—either a limited number of days or holiday-restricted access—to the remainder of Defendant's ski areas;<sup>5</sup>
- c. Regional Epic Passes, which provide passholders "unlimited, unrestricted access" to the specific ski area(s), including the Summit Value Pass, Keystone Plus Pass, Tahoe Local Pass, Tahoe Value Pass, Kirkwood Pass, Northeast Value Pass, Northeast Midweek Pass, Afton Alps Pass, Mt. Brighton Pass, Wilmot Pass, Ohio Pass, Paoli Peaks Pass, Snow Creek Pass, and Hidden Valley Pass.<sup>6</sup> Defendant's regional passes may be limited to specific ski areas or particular days of the week, but otherwise provide access to ski areas for the entire 2019-20 season;
- d. "Specialty" passes for specific groups of people, including the Military Pass Active, Military Pass Active Dependent, Military Pass Retired, Military Pass Retired Dependent, Military Pass Veteran, Military Pass Veteran Dependent,

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<sup>4</sup> *Epic Season Pass*, EPIC PASS, available at: <https://www.epicpass.com/passes/epic-pass.aspx> (last accessed June 24, 2020).

<sup>5</sup> *Epic Local Pass*, EPIC PASS, available at: <https://www.epicpass.com/passes/epic-local-pass.aspx> (last accessed June 24, 2020).

<sup>6</sup> *See e.g., Kirkwood Pass*, EPIC PASS, available at: <https://www.epicpass.com/Passes/Kirkwood-Pass.aspx> (last accessed June 24, 2020).

Liberty Pass, Liberty Pass Dependent, Local College Pass, Summit Value College Pass, Park City Youth Pass, Tahoe Local College Pass, Tahoe Value College Pass, Kirkwood College Pass, Afton Alps College Pass, Afton Alps College Night Pass, Mt. Brighton College Pass, and Mt. Brighton College Night Pass. Defendant's "specialty" passes may be limited to particular ski areas or to certain days of the week, but otherwise provide access to the ski areas for the entire 2019-20 season;

- e. Epic Day Passes, which provide passholders between one and seven days of access to the majority of Defendant's ski areas. Multi-day Epic Day Passes are not required to be used on consecutive days or at the same ski area;<sup>7</sup> and
- f. Any other season passes that permit purchasers unlimited access to a single ski area for the entire season.

11. Defendant sells these passes at its resorts and ski areas, or from its websites, such as [www.snow.com](http://www.snow.com) and [www.epicpass.com](http://www.epicpass.com). When Plaintiff purchased the Epic Local Pass, she formed a contract with Defendant The Vail Corporation d/b/a Vail Resorts Management Company. Specifically, Defendant operated under the business name Vail Resorts Management Company; when individuals purchased Epic Passes they formed a contract with Defendant, and the Terms of Use on [epicpass.com](http://epicpass.com) indicate that "The Vail Corporation and its affiliates ("Vail Resorts", "we", "us", or "our") provide these websites."<sup>8</sup> The Terms & Conditions for all Defendant's websites provide that the use of the website(s) is governed by the laws of the State of Colorado, and any legal proceedings against Defendant shall be commenced in state or federal court in Denver,

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<sup>7</sup> *Epic Day Pass*, EPIC PASS, available at: <https://www.epicpass.com/passes/epic-day-pass.aspx?days=7> (last accessed June 24, 2020).

<sup>8</sup> *Terms and Conditions*, EPIC PASS, available at: <https://www.epicpass.com/footer/terms-and-conditions.aspx> (last accessed June 24, 2020).

Colorado.

12. Defendant permitted consumers to purchase a 2019-20 Season Epic Pass or Epic Day Pass by making an initial payment of \$49. The remaining balance for the pass was then charged to the purchaser's credit card. Defendant's Epic Pass website states that, by making the \$49 initial payment, the purchaser is "committing to buy the Pass(es)" and that once the purchaser makes the \$49 initial payment neither the initial payment nor the pass purchase can be canceled or refunded.<sup>9</sup> Defendant sells its Epic Pass for approximately \$979; its Epic Local Pass for approximately \$729; its Epic 1-to-7 Day Passes for between approximately \$129 and \$766; its Summit Value Pass for approximately \$589; its Keystone Plus Pass and Park City Youth Pass for approximately \$389; its Tahoe Local Pass and Kirkwood Pass for approximately \$619; its Tahoe Value pass for approximately \$529; its Northeast Value Pass for approximately \$599; its Northeast Midweek Pass for approximately \$449; its Afton Alps Pass for approximately \$479; its Mt. Brighton Pass for approximately \$539; its Wilmot Pass for approximately \$429; its Epic Military Pass Active and Epic Military Pass Active Dependent for approximately \$169; its Epic Military Pass Veteran for approximately \$559; its Ohio Pass for approximately \$349; its Paoli Peaks Pass and Snow Creek Pass for approximately \$319; and its Hidden Valley Pass for approximately \$379.<sup>10</sup>

13. Plaintiff and Class Members purchase these Epic Passes specifically because they provide wide access to an array of Defendant's ski resorts and because the Epic Passes provide frequent, flexible, and sustained use of the resorts for most of the year and for the entire ski and snowboard season. Each ski and snowboard season typically begins in October and can last

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<sup>9</sup> See *Deposit and Cancellation Policy*, EPIC PASS, available at: <https://www.epicpass.com/info/deposit-and-cancellation-policy.aspx> (last accessed June 24, 2020).

<sup>10</sup> *2020/21 Season Passes*, EPIC PASS, available at: <https://www.epicpass.com/pass-results/passes.aspx> (last accessed June 24, 2020).



through June. Plaintiff and Class Members benefit from the Epic Passes because they receive a discount for the increased and usually unlimited access to the ski areas when compared to having to buy individual lift tickets each time they visit a ski area.

14. Plaintiff's and Class Members' expectations and benefits in purchasing their Epic Passes were effectively the same regardless of which of the Epic Passes they purchased, and all have been treated similarly by Defendant and have suffered the same type of harm from Defendant's actions—the inability to use their expensive ski passes as promised.

#### **Defendant's COVID-19 Shutdown**

15. On March 11, 2020, the World Health Organization reclassified COVID-19 as a worldwide pandemic and, two days later, the President declared a "National Emergency."

16. On March 11, 2020, in response to the COVID-19 pandemic, Jared Polis, Governor of Colorado, issued Executive Order D 2020 003, which declared COVID-19 a disaster emergency. On March 14, 2020, Governor Polis issued Executive Order D 2020 004, which directed all downhill ski resorts in the State of Colorado to suspend operations from March 15-22, 2020. On March 18, 2020, Governor Polis issued Executive Order D 2020 006, which ordered all downhill ski resorts to suspend operations from March 23-April 6, 2020, which was later extended to April 30, 2020. On March 25, 2020, Governor Polis issued Executive Order D 2020 017, which ordered all residents of Colorado to stay at home. Spread of the disease has reportedly been linked to ski resorts around the country, including those in Colorado.

17. As a result of this COVID-19 pandemic, on or about March 15, 2020, Defendant suspended operation at all of its ski areas in North America until March 22, 2020. Defendant stated that it would refund all lift tickets that were valid for March 15-22, 2020. However,

Defendant refused to provide refunds of any portion of the monies passholders paid to purchase an Epic Pass.

18. On March 17, 2020, Defendant stated that it would close all of its ski areas in North America beginning March 20, 2020. Again, Defendant refused to provide refunds for any Epic Pass.

19. On April 27, 2020, Defendant announced for the first time that it would issue credits—varying in amount based on the type of pass and the usage prior to the shutdowns—to impacted 2019-2020 passholders.<sup>11</sup> However, those credits may only be applied toward the purchase of new passes for the 2020-2021 season and Defendant continues to refuse to offer refunds of any kind for the Epic Pass for the 2019-2020 season. The credit is woefully insufficient to compensate Plaintiff because it is only a fraction of the unused value on her Epic Pass, because it is a credit rather than cash, and because receipt of the credit requires advancing another large sum of payment to Defendant, which sum Plaintiff is unwilling to advance.

20. Simultaneously with its refusal to issue any refund for the unused portions of the Epic Passes, Defendant has refused access to or use of their shuttered ski areas for the duration of the 2019-2020 season.

21. Defendant also offers Pass Insurance for the Epic Passes. Passholders who purchase Pass Insurance will receive a refund of the cost of the Epic Pass, but only for certain covered events. The covered events are limited to the following: (a) injury or sickness of the insured (passholder); (b) injury, sickness, or death of a family member of the insured; (c) if the insured is subpoenaed, required to serve on a jury, hijacked, or quarantined; (d) if the insured is

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<sup>11</sup> *Vail Announces 19/20 Pass Holder Credits and 'Epic Coverage' for 20/21 Season*, VAIL RESORTS (Apr. 27, 2020), available at: <http://news.vailresorts.com/corporate/vailresorts/vail-resorts-announces-1920-pass-holder-credits-and-epic-coverage-for-2021-season.html> (last accessed June 24, 2020).

involuntarily laid off, terminated, or transferred; (e) if the insured is called for active military service or had military leave canceled; (f) if the insured has a pregnancy or childbirth; or (g) if the insured is a student and transfers schools. The Epic Pass website provides that, unless the passholder purchases Pass Insurance, the purchaser “will not be eligible for a refund of any kind” for the season or Epic Pass.<sup>12</sup>

22. Because Defendant refused to provide refunds for individuals who purchased an Epic Pass with unused days, many consumers made claims on their Pass Insurance, seeking a refund due to the closure of Defendant’s ski areas. Passholders’ claims under the Pass Insurance have consistently been denied.<sup>13</sup>

23. All of this this underscores the inherent wrongfulness of Defendant’s efforts to escape liability for loss or damage caused by its closure of its ski areas, preventing Plaintiff and Class Members from being able to use the Epic Passes, without providing any refund whatsoever for the unused portion of the passes. Any attempt by Defendant to limit or disclaim liability for preventing passholders from using the Epic Passes, while retaining the fees that passholders paid to purchase the Epic Passes, is unconscionable and unenforceable, and unjustly enriches Defendant.

### **CLASS ACTION ALLEGATIONS**

24. Plaintiff brings this action individually and on behalf of the following Classes pursuant to Rules 23(a), 23(b)(2) and/or 23(b)(3) of the Federal Rules of Civil Procedure, defined as follows:

All persons in the United States who purchased any 2019-20 Epic Passes that had

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<sup>12</sup> See *Epic Season Pass*, *supra*, footnote 1.

<sup>13</sup> See e.g., Epic Pass Facebook, FACEBOOK, available at: <https://www.facebook.com/pg/epicpass/posts/> (Apr. 8, 2020, 8:50 A.M.) (comment stating that claim for a refund under the Pass Insurance was denied); *id.* (Apr. 8, 2020, 6:55 A.M.) (same); Joyce and Doug Paff, *Letter: So Much for Epic Pass Insurance*, VAIL DAILY (Apr. 17, 2020), available at: <https://www.vaildaily.com/opinion/letter-so-much-for-epic-pass-insurance>.

unused days after March 15, 2020.

25. Excluded from the Classes are the Defendant, any parent companies, subsidiaries, and/or affiliates, officers, directors, legal representatives, employees, co-conspirators, all governmental entities, and any judge, justice, or judicial officer presiding over this matter.

26. This action is brought and may be properly maintained as a class action. There is a well-defined community of interests in this litigation and the members of the Class are easily ascertainable.

27. The members of the proposed Class are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of the members of the Class in a single action will provide substantial benefits to the parties and Court.

28. Questions of law and fact common to Plaintiff and the Class include, but are not limited to, the following:

- a. Whether Defendant is required to provide partial refunds to Plaintiff and Class members who purchased Epic Passes;
- b. Whether Defendant breached its contracts with Plaintiff and Class members;
- c. Whether Defendant was unjustly enriched by its conduct;
- d. Whether Defendant breached its implied and express warranties; and
- e. Whether Defendant violated the Colorado Consumer Fraud Act.

29. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff individually and on behalf of the other members of the Class. Individual questions, if any, are not prevalent in comparison to the numerous questions that dominate this action.

30. Plaintiff's claims are typical of those of the members of the Class in that they are based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

31. Plaintiff will fairly and adequately represent and protect the interests of the Class, has no interest incompatible with the interests of the Class, and has retained counsel competent and experienced in class action, consumer protection, and false advertising litigation.

32. Class treatment is superior to other options for resolution of the controversy because the relief sought for each member of the Class is small such that, absent representative litigation, it would be infeasible for members of the Class to redress the wrongs done to them.

33. Questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class.

34. As a result of the foregoing, class treatment is appropriate.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Breach of Contract and Implied Covenant of Good Faith and Fair Dealing**

35. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

36. Plaintiff and the Class entered into a contract with Defendant when purchasing Epic Passes.

37. The contract was offered by Defendant and was formed at the time Plaintiff and the Class accepted it by purchasing their 2019-20 Epic Pass.

38. Plaintiff and the Class performed their obligations under the contract by providing payment in consideration for the 2019-20 Epic Pass.

39. Defendant breached its contracts with Plaintiff and the Class by retaining the consideration received by Plaintiff and the Class while closing their ski resorts, making the 2019-20 Epic Passes useless for a substantial portion of the ski season.

40. Defendant's decision to retain the fees paid by Plaintiff and the Class without

providing them with what was promised deprived Plaintiff and the Class of the benefit of their bargain.

41. Due to the closure of Defendant's ski areas for a substantial portion of the 2019-20 season, Defendant is unable to perform the remainder of the contract. Defendant's closure of all of its ski areas for the remainder of the 2019-20 ski season, while a substantial portion of the ski season remained, renders Defendant's representations that it will not provide refunds for 2019-20 Epic Passes illusory and void.

42. For all of these reasons, Defendant acted in bad faith and/or with a malicious motive to deny Plaintiff and the Class Members the benefit of the bargain originally intended by the parties, thereby constituting a breach of their implied covenant of good faith and fair dealing, which is implied into every contract in Colorado.

43. As a direct and proximate result of Defendant's breaches of its contract and of its implied covenants, Plaintiff and the Class have suffered monetary damages.

44. Plaintiff and the Class seek the return of amounts paid to Defendant for their 2019-20 Epic Passes, as well as attorneys' fees, costs, and interest.

## **COUNT II** **Conversion**

45. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

46. Plaintiff and the Class purchased Epic Passes that granted them the right to services that were promised in exchange for the purchase price of the passes.

47. Defendant intentionally interfered with Plaintiff's and the Class' rights granted through those passes when Defendant closed all of its ski areas and retained the purchase price of the passes.

48. Defendant exercised control over Plaintiff's and Class members' property by closing its ski areas and refusing to issue partial refunds for the unusable portion of the 2019-20 Epic Passes, and the rights granted by those passes.

49. Defendant's closure of its ski areas and refusal to refund the unusable portion of the 2019-20 Epic Passes to Plaintiff and Class members is unauthorized.

50. Plaintiff and Class members have, through the filing of this lawsuit or otherwise communicating with Defendant, demanded that Defendant issue refunds for the unusable portion of the 2019-20 Epic Passes.

51. Defendant has uniformly and consistently refused to issue refunds for the unusable portion of the 2019-20 Epic Passes.

52. Plaintiff and the Class seek a partial return of the price paid to Defendant for their 2019-20 Epic Passes.

**COUNT III**  
**Breach of Warranty**

53. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

54. Defendant created an express warranty through their advertising statements that the Epic Passes would provide unlimited, unrestricted access to its resorts through the 2019-2020 season.

55. This warranty became part of the basis of the bargain between Plaintiff and the Class and Defendant. Plaintiff and the Class relied on this warranty in deciding to purchase a pass from Defendant.

56. Defendant breached this warranty by failing to provide unlimited access to its ski areas throughout the 2020 ski season and by failing to issue partial refunds to Plaintiff and the Class after shutting down access to its facilities.

57. Plaintiff and the Class would not have purchased the Epic Passes, or would have paid substantially less, had Defendant disclosed that it would not honor the warranty and not refund Plaintiff and Class members any portion of the purchase price paid for the passes.

58. Plaintiff and the Class performed their obligations under the warranty, including paying in full for their passes.

59. Plaintiff and the Class were injured as a direct and proximate result of Defendant's breach of warranty.

**COUNT IV**  
**Violations of the Colorado Consumer Protection Act**

60. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

61. Colorado's Consumer Protection Act (the "CCPA") prohibits a person from engaging in a "deceptive trade practice," which includes "advertis[ing] goods, services, or property with intent not to sell them as advertised." Colo. Rev. Stat. § 6-1-105(1)(g), (i).

62. Defendant is a "person" within the meaning of Colo. Rev. Stat. § 6-1-102(6).

63. In the course of Defendant's business, it advertised that the purchasers of its Epic Passes would have unlimited access to skiing and snowboarding until the end of the 2019-20 season, which typically lasts until May or June. Defendant knew, however, that if it closed all of its resorts before the end of June 2020 that it would retain 100% of the revenue generated from sales of the passes.



64. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

65. Defendant's unfair practices significantly impacted the public as actual or potential consumers of Defendant's goods, services, or property.

66. Defendant's actions proximately caused injuries to Plaintiff and Class members.

67. Plaintiff and Class members have suffered an injury in fact, including the loss of money or property, as a result of Defendant's unfair, unlawful, and/or deceptive practices. In purchasing their passes, Plaintiff and the other Class members relied on the misrepresentations and/or omissions of Defendant with respect to their ability to access Defendant's ski areas without restriction. Had Plaintiff and the other Class members known this, they would not have purchased their passes and/or paid as much for them. Accordingly, Plaintiff and the other Class members overpaid for their passes and did not receive the benefit of their bargain.

68. Plaintiff does not seek certification under Federal Rule of Civil Procedure 23(b)(3) for Defendant's violation of the CCPA, instead Plaintiff seeks certification under Rule 23(b)(2)—seeking declaratory relief—and Rule 23(c)(4) regarding the issue of whether Defendant's conduct alleged herein violates the CCPA.

69. Plaintiff's and the Class Members' injuries are the direct and natural consequence of Defendant's misrepresentations and omissions.

**COUNT V**  
**Unjust Enrichment**  
**(In the Alternative to Count I)**

70. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

71. Plaintiff and the Class conferred a direct benefit on Defendant by purchasing 2019-20 Epic Passes.

72. Defendant knowingly and willingly accepted and enjoyed the benefits conferred on it by Plaintiff and the Class.

73. Defendant's retention of these benefits is unjust and inequitable under the circumstances.

74. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to recover the amount each paid to Defendant for their 2019-20 Epic passes, as well as attorneys' fees, costs, and interest.

75. Plaintiffs and the Class Members demand a jury as to all issues so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, pray for judgment against the Defendant as to each and every count, including:

A. An order declaring this action to be a proper class action, appointing Plaintiff and her counsel to represent the Class, and requiring Defendant to bear the costs of class notice;

B. An order awarding actual damages to Plaintiff and the Class and returning to Plaintiff and the Class the portion of each Epic Pass that was unused;

C. An injunctive order compelling Defendant to issue refunds for the unused portion of any Epic Pass to any member of the Class who requests such a refund;

D. An order awarding declaratory relief, and any further retrospective or prospective injunctive relief permitted by law or equity, including enjoining Defendant from continuing the unlawful practices alleged herein, and injunctive relief to remedy Defendant's past conduct;

E. An order requiring Defendant to pay restitution to restore all funds acquired by

means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, or a violation of Colorado law, plus pre- and post-judgement interest thereon;

F. An order requiring Defendant to disgorge or return all monies, revenues, and profits obtained by means of any wrongful or unlawful act or practice;

G. An order requiring Defendant to pay all actual and statutory damages permitted under the counts alleged herein;

H. An order requiring Defendant to pay punitive damages on any count so allowable;

I. An order awarding attorney fees and costs, including the costs of pre-suit investigation, to Plaintiff and the Classes; and

J. An order for all other such equitable relief as may be just and proper.

### **JURY DEMAND**

Plaintiff hereby demands a trial by a jury of her peers on all issues so triable.

Respectfully submitted,

Dated: June 25, 2020

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*Counsel for Plaintiff and the Putative Class*

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

TIMOTHY DIPIRRO, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

VAIL RESORTS, INC. and THE VAIL  
CORPORATION d/b/a VAIL RESORTS  
MANAGEMENT COMPANY,

Defendants.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMAND**

Plaintiff Timothy DiPirro, on behalf of himself and all others similarly situated, brings this class action against Vail Resorts, Inc., and The Vail Corporation d/b/a Vail Resorts Management Company (collectively, “Defendants” or “Vail Resorts”). Plaintiff alleges the following based upon his personal knowledge and upon information and belief, including investigation conducted by its attorneys.

**INTRODUCTION**

1. Vail Resorts touts itself as “the premier mountain resort company in the world” and to ski Vail, its premier resort, is “like nothing on earth™.” Vail Resorts sold a variety of daily and season passes for the 2019-20 season, including the Epic Pass, which it marketed as “the best value and variety for unlimited skiing and riding.”<sup>1</sup>

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<sup>1</sup> <https://www.epicpass.com/info/epic-for-everyone-release.aspx> (last accessed on May 20, 2020).

2. Vail Resorts announced in mid-March that due to the spread of COVID-19 it had closed all of its North American ski resorts for the remainder of the 2019-20 ski season (“Vail Closure”). Vail Resorts told its customers that “all season pass and Epic Day Pass products...are non-refundable and non-transferable to another season.”<sup>2</sup>

3. Plaintiff brings this class action suit on behalf of himself and all others similarly situated to seek redress for Defendants’ refusal to refund fees after it closed all of its North American ski resorts, well short of the promised duration of the ski season. Vail Resorts collected fees from skiers, snowboarders (referred to herein as “riders”), and others, but then deprived them of the promised “unlimited skiing and snowboarding” from October 2019 to June 2020.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this controversy pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because (a) the proposed Class, defined below, consists of more than one hundred members; (b) the parties are minimally diverse, as members of the proposed Class are citizens of states different than Defendants’ home state; and (c) the aggregate amount in controversy exceeds \$5 million, exclusive of interests and costs.

5. This Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over Defendants because Defendants’ principal places of business are within this District.

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<sup>2</sup> <https://www.snow.com/info/message-to-our-guests.aspx> (last accessed April 17, 2020).

7. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants maintain their principal place of business within the District and a substantial part of the events giving rise to Plaintiff's claims occurred here.

### **PARTIES**

8. Plaintiff Timothy DiPirro is a citizen of Colorado and resides in Centennial, Colorado. Mr. DiPirro purchased an Epic Local Pass from Defendants for the 2019-20 season. Due to the Vail Closure, Plaintiff DiPirro was prevented from receiving the full benefit of his Epic Local Pass.

9. Defendant Vail Resorts, Inc. is a Delaware corporation, with its principal place of business in Broomfield, Colorado. Vail Resorts, Inc., among other things, owns and operates mountain resorts and urban ski areas.

10. Defendant The Vail Corporation d/b/a Vail Resorts Management Company, is a Colorado corporation, with its principal place of business in Broomfield, Colorado. The Vail Corporation is a wholly-owned subsidiary of Vail Resorts, Inc.

### **FACTUAL ALLEGATIONS**

11. Vail Resorts, Inc. through its subsidiaries operates 37 destination mountain resorts and regional ski areas, 34 of which are located in North America ("North America ski resorts"). Vail Resorts touts itself as "the premier mountain resort company in the world."<sup>3</sup>

12. For the 2019-20 ski season, Defendants sold the Epic Pass, Epic Local Pass, and Epic 4-Day Pass. Defendants represented that "the Epic Pass and Epic Local Pass continue to offer

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<sup>3</sup> <http://www.vailresorts.com/Corp/info/who-we-are.aspx> (last accessed May 20, 2020).

the best value and variety for unlimited skiing and riding.”<sup>4</sup> Defendants advertised that the Epic Pass “provides unlimited, unrestricted access to all of the Company’s owned resorts and additional access to partner resorts around the world.” Defendants sold the Epic Pass for \$939 for the 2019-20 season.

13. According to Defendants, the Epic Local Pass offered “[s]kiers and riders willing to navigate around a few peak dates...access to many of the same destinations.” Defendants sold the Epic Local Pass for prices starting at \$699 for the 2019-20 season. The Epic Local Pass carried certain blackout dates and limited the purchaser’s use at Vail Resort and Beaver Creek Resort to a cumulative total of ten days.

14. Because the individual daily rates for ski and snowboard passes are high – for instance at Vail resort over \$200 – customers who anticipate skiing or riding a number of days will assess their own needs and purchase the appropriate Epic Pass. Many people take Spring Break ski vacations in March and April. For them, the cost effective way to purchase lift tickets was to purchase one type of the Epic Pass.

15. However, to solidify its cash flow, Defendants required customers to purchase the Epic Pass or Epic Local Pass no later than September 2019. Thus, Defendants received nearly 100% of their 2019-20 season lift ticket revenue from Plaintiff and Class Members before the ski season even began.

16. Defendants also offered the Epic Day Pass for sale in 2019-20. Defendants sold the Epic Day Pass to customers who could select the number of days, from one to seven, and whether

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<sup>4</sup> <https://www.vail.com/plan-your-trip/lift-access/passes/epic-pass.aspx> (last accessed April 17, 2020)

or not to add holiday access. Purchasers “can use their customized Epic Day Pass anytime through the season at any of the Company’s North American owned resorts” and would be given access to other resorts if they purchased four or more days. Defendants’ prices for Epic Day Passes for adults ranged from \$106 to \$731 and for children from \$55 to \$380, depending on the number of days and holiday restrictions.

17. On June 3, 2019, Defendants published an article on its website titled “Earlier Openings, Longer Season, and Enhanced Guest Experience for the 2019-20 Winter Season.” In the article, Defendants stated that they were “providing Epic Pass holders and all skiers and snowboarders in Colorado with one of the longest ski and snowboard seasons in the country.” Moreover, Defendants stated, “With Keystone opening earlier and Breckenridge extending its winter seasons into June, Epic Pass holders can enjoy skiing and snowboarding in Colorado from October through May.”<sup>5</sup>

18. On March 14, 2020, without any prior notification to Plaintiff or Class Members, Defendants initiated the Vail Closure by abruptly suspending all operations at their North America ski resorts and retail stores for one week promising an update in the next few days. Two days later, on March 17, 2020, Defendants announced “that all of its North American resorts and retail stores will remain closed for the 2019-20 winter ski season amidst the continued challenges associated with the spread of coronavirus (COVID-19).”<sup>6</sup>

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<sup>5</sup> <http://blog.vail.com/capital-improvements-underway-at-vail-beaver-creek-breckenridge-keystone-and-crested-butte-leading-to-earlier-openings-longer-season-and-enhanced-guest-experience-for-the-2019-2020-winter-season/> (last accessed May 20, 2020).

<sup>6</sup> <https://www.snow.com/info/vail-resorts-covid-19-resort-closing-update.aspx> (last accessed May 20, 2020)



19. By closing all of their North American ski resorts effective March 15, 2020, Defendants deprived Plaintiff and Class Members of over 30% of the ski and snowboard season.

20. Defendants also published a list of Frequently Asked Questions in connection with the Vail Closure. One of the questions asked, “How does the closure impact my season pass or Epic Day Pass?” Defendants answered, “To the extent that any of our resorts re-open during the season, your pass will be valid. Pursuant to the terms of all season pass and Epic Day Pass products, they are non-refundable and non-transferable to another season. We will be reviewing these policies and providing any updated guidance in the coming weeks.”<sup>7</sup>

21. Furthermore, while the Defendants’ Epic Pass website at [www.snow.com](http://www.snow.com) provided a “Refund” tab, once clicked, it reiterates that there are no refunds for the Epic Passes. Additionally, Defendants maintain a Call Center for its Epic Pass customers. Defendants shuttered that Call Center concurrent with their shutdown of the ski resorts. Consequently, no holder of an Epic Pass can even discuss their situation or get details of why Defendants are not providing any refunds for the Passes.

22. As part of the North America ski resort shutdown, Defendants eliminated virtually all employees to greatly reduce their operating costs.

23. Thus, Defendants have eliminated virtually all of their costs of operating their North American ski resorts, yet have refused to refund the costs paid for the Epic Passes by Plaintiff and the Class Members, which Passes were purchased with Defendants’ representations they could be used for the full duration of the ski and snowboard season through June 2020.

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<sup>7</sup> <https://www.snow.com/info/message-to-our-guests.aspx> (last accessed April 17, 2020).

24. Instead, Defendants have retained the fees paid by Plaintiff and Class Members for their Epic Passes even after Defendants closed their resorts after only about two-thirds of the ski season had occurred. Defendants have not refunded the Pass fees.

25. Defendants offered 2019-20 Pass holders a so-called “Credit,”—a discount of between 20-80%, depending on the number of days the Pass holder used the 2019-20 Pass—to be applied towards the price of 2020-21 Pass. Defendants offered the maximum Credit of an 80% discount on the price of a 2020-21 Pass only if the Pass holder used their Pass zero days during the 2019-20 season, and the minimum Credit of a 20% discount if the Pass holder used their Pass five or more days during the 2019-20 season. Defendants stated that Pass holders must purchase a 2020-21 Pass by September 7, 2020 in order to redeem this offer.<sup>8</sup>

26. Defendants included the following “Release of Claims” in their Terms and Conditions connected to the Credit:

If you choose to use your Credit toward the purchase of a 2020/2021 pass, you are thereby voluntarily and knowingly agreeing, to the maximum extent permitted by applicable law, to waive, release, and forfeit any and all claims and actions you have or may have against Vail Resorts, or any of its resorts, subsidiaries, affiliates, or Partner Resorts and any of our or their respective officers, directors, employees, contractors, representatives, or agents (collectively, the “Vail Resorts Parties”) and any associated losses, damages and expenses (including attorneys’ fees), that relate to, arise out of, or may arise out of the operation or closure of one or more of our resorts during the 2019/2020 season, including claims you may have for any other or additional form of refund, credit, or compensation for your inability to use your 2019/2020 pass as a result of the closure of any of our resorts during the 2019/2020 season. We hereby advise that class action lawsuits have been filed against the Vail Corporation on behalf of certain pass holders in connection with resort closures during the 2019/2020 ski season seeking refunds and other alleged damages. These

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<sup>8</sup> <https://www.epicpass.com/info/2019-2020-pass-holder-credit.aspx> (last accessed May 14, 2020).

Terms and this release in connection with the Credit will affect any rights you have in connection with those lawsuits and any similar lawsuits that may be filed.<sup>9</sup>

27. The proposed “Release of Claims” is uninformed, unenforceable and unlawful because Defendants failed to describe any information about the class action lawsuits, the relief sought, counsel identity or contact information, and other details to make a full disclosure.

28. On their website, Defendants stated that Pass holders would receive an email on May 13, 2020 containing their individualized Credit offer information. On information and belief, Defendants delivered the emails to Plaintiff and Class Members on May 13, 2020, and in the emails Defendants provided the Credit amount offered and a code that the Pass holder was to use to receive the discount when he or she purchased a Pass for the 2020-21 season.

29. In order to obtain the alleged “benefit” of a Credit for the Passes, Plaintiff and Class Members must spend additional money to buy a separate Pass that they may neither want nor use. If Plaintiff and Class Members do not spend additional money to purchase a 2020-21 Pass, then they will receive no “benefit” or Credit at all. Amidst unprecedented unemployment and economic uncertainty, Defendants are refusing to refund the amount of money that Plaintiff and Class Members overpaid for their Passes and, instead, continue to retain the full price that Plaintiff and Class Members paid for their 2019-20 Passes.

30. Plaintiff seeks relief in this action individually, and on behalf of all of Defendants’ customers nationwide that purchased annual Epic and Epic Local Passes for the 2019-2020 season or Epic Day Passes for the 2019-2020 season who, as of March 15, 2020, had not used all of the days remaining on their Epic Day Passes. Plaintiff seeks relief for himself and all Class Members

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<sup>9</sup> <https://www.epicpass.com/info/2019-2020-pass-holder-credit.aspx> (last accessed May 14, 2020).

for Defendants' breach of contract, breach of express warranties, negligent misrepresentation, and unjust enrichment, as well as violations of state consumer protection statutes.

### **CLASS ALLEGATIONS**

31. Plaintiff brings this action on behalf of himself and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages on behalf of himself and Class Members nationwide:

All persons in the United States who purchased for the 2019-20 season an Epic Pass, or an Epic Local Pass, or who purchased an Epic Day Pass with days remaining on the Day Pass for use at a Vail North American ski resort.

32. Excluded from the Class are: a) any Judge or Magistrate presiding over this action and members of their families; b) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest and their current or former employees; c) persons who properly execute and file a timely request for exclusion from the Class; d) the legal representatives, successors or assigns of any such excluded persons; and e) all persons who have previously had claims finally adjudicated or who have released their claims against Defendants similar to those alleged herein.

33. If necessary or alternatively, Plaintiff also seeks to represent a subclass of individuals residing in Colorado who purchased passes from Defendants (the "Colorado Subclass").

34. Collectively, unless otherwise so stated, the above-defined class and subclass are referred to herein as the "Class."

35. Plaintiff reserves his right to amend the Class definitions if discovery or further investigation reveals that any Class should be expanded or narrowed, divided into additional subclass under Rule 23(c)(5), or modified in any other way

36. While the exact number and identities of the Class Members are unknown at this time, and can only be ascertained through appropriate discovery, on information and belief, the Class is so numerous that joinder of all Class Members is impracticable. Also, on information and belief, Vail Resorts maintains electronic records of all Epic Pass holders.

37. Common questions of law and fact exist as to all members of the Class. Such questions of law and fact common to the Class include, but are not limited to, whether Defendants breached their contract and/or their warranty with their customers, whether Defendants negligently made misrepresentations, whether Defendants were unjustly enriched, and whether Defendants violated certain state consumer protection statutes.

38. Plaintiff's claims are typical of the claims of all Class Members because such claims arise from the Defendants' wrongful conduct, as alleged above. Plaintiff has no interests that conflict with the interests of the other Class Members.

39. Questions of law and fact common to both Plaintiff and Class Members predominate over any questions affecting only individual Class Members, including legal and factual issues relating to liability and damages.

40. Plaintiff will fairly and adequately represent and protect the interests of the Class Members. Plaintiff has retained competent counsel experienced in complex commercial litigation and class actions to represent himself and the Class.

41. Class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress for claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in management of this class action.

42. Absent a class action, most Class members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class members' claims compared to the anticipated costs of the litigation, it is likely that only a few, if any, Class members could afford to seek legal redress for the harms caused by Defendants' actions.

### **CLAIMS FOR RELIEF**

#### **COUNT I Nationwide Class Breach of Contract**

43. Plaintiff hereby repeats and realleges the allegations contained in paragraphs 1 through 40 above of this complaint, as if fully alleged herein.

44. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendants.

45. Defendants offered the Epic Passes to Plaintiff and Class Members to provide access, including skiing and snowboarding, to its North America ski resorts for the entire season to June 2020 in exchange for Plaintiff and Class Members payment in full of Pass fees.

46. Each Plaintiff and all Class Members accepted Defendants' contractual offer and fully performed and complied with all conditions precedent including full payment to Defendants for the Passes. For the Epic Pass and Epic Local Pass, Defendants received all Pass revenue by the end of September 2019 for the 2019-20 ski and snowboard season.

47. Defendants breached these contracts by retaining Plaintiff's and Class Members' Pass fees while all of their North America ski resorts remain closed, terminating over 30% of the ski and snowboard season that Defendants contractually promised. Plaintiff and Class Members have suffered an injury through the payment of Pass fees, without a refund, while not having the contractually promised duration of access to Defendants' North American ski resorts.

**COUNT II**  
**Nationwide Class**  
**Breach of Express Warranty**

48. Plaintiff hereby repeats and realleges the allegations contained in paragraphs 1 through 40 above of this complaint, as if fully alleged herein.

49. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendants.

50. In connection with its sale of Epic Passes, Defendants made an express warranty that customers would have unlimited access to their North America ski resorts, or for the Epic Day Passes, that they would have access to Defendants' North America ski resorts for a specified number of days from October 2019 to June 2020.

51. Defendants' affirmation of fact and promise in their marketing and signage became part of the basis of the bargain between Defendants and Plaintiff and Class Members, thereby creating express warranties that the services would conform to Defendants' affirmation of fact, representations, promise, and description.

52. Plaintiff and all Class Members fully performed and complied with all conditions precedent including full payment to Defendants for the Passes.

53. Defendants breached their express warranty by failing to provide unlimited access for the duration of the warranted ski and snowboard season to their North America ski resorts, and, for the Epic Day Passes, by failing to provide access to those resorts when customers had days remaining on their Epic Day Passes.

54. Plaintiff and the Class Members were injured as a direct and proximate result of Defendants' breach because: (a) they would not have purchased or paid for Defendants' Passes absent Defendants' representations and omission of a warning that they would retain Class Members' Pass holder fees while all of their North America ski resorts are closed; (b) they would not have purchased Passes on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' Passes based on Defendants' misrepresentations and omissions; and (d) Defendants' Passes did not have the characteristics, benefits, or quantities as promised.

**COUNT III**  
**Nationwide Class**  
**Negligent Misrepresentation**

55. Plaintiff hereby repeats and realleges the allegations contained in paragraphs 1 through 40 above of this complaint, as if fully alleged herein.



56. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendants.

57. Defendants misrepresented that customers would have unlimited access to its North America ski resorts for the duration of the represented ski and snowboard season to June 2020, or, for the Epic Day Passes, that they would have access to Defendants' North America ski resorts for a specified number of days during that entire season.

58. Defendants made these representations without knowledge of their truth or veracity.

59. Defendants negligently misrepresented and/or negligently omitted material facts about its Passes and services that its North America ski resorts would unconditionally be available for the entire 2019-20 ski and snowboard season to June 2020.

60. The negligent misrepresentations and omissions made by Defendants, upon which Plaintiff and Class Members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class Members to purchase Defendants' Epic Passes.

61. As a result of Defendants' misrepresentations, Plaintiff and all Class Members made full payment to Defendants for Epic Passes.

62. Plaintiff and Class Members would not have purchased Defendants' Epic Passes, or would not have purchased the services on the same terms, if the true facts had been known.

63. The negligent actions of Defendants caused damage to Plaintiff and Class Members, who are entitled to damages and other legal and equitable relief as a result.

**COUNT IV**  
**Nationwide Class**  
**Unjust Enrichment**

64. Plaintiff hereby repeats and realleges the allegations contained in paragraphs 1 through 40 above of this complaint, as if fully alleged herein.

65. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendant.

66. Plaintiff and Class Members conferred benefits on Defendants by paying in advance and in full for the Epic Passes they purchased from Defendants.

67. Defendants have knowledge of such benefits and accepted those in full payments knowing the representations they made and services they were to provide in consideration for those payments, namely, (a) for the Epic Pass holders, unlimited skiing and riding at all North America ski resorts to June 2020; (b) for the Epic Pass holders, unlimited skiing and riding at all North America ski resorts to June 2020 with certain limitations at premier resorts and blackout dates irrelevant to this claim; and (c) for the Epic Day Pass, skiing and riding at the specified North America ski resorts for the number of days, from one to seven, paid for the duration of the 2019-20 season to June 2020. Defendants developed the Epic Pass program with the specific purpose to obtain nearly 100% of its ski revenues by the end of September, before the ski season began.

68. As a result of the Vail Closure, Defendants received 100% of the revenues for their Passes sold to Plaintiff and Class Members, but Defendants cancelled over 30% of the ski season depriving Plaintiff and Class Members of benefits for which they paid Defendants in full.

69. Defendants eliminated the vast majority of their employees and cut other operating costs that they otherwise would have incurred had Defendants kept their North America ski resorts

open for the full 2019-20 ski and snowboard season to June 2020, as they represented. Defendants have been unjustly enriched in retaining the revenues derived from Plaintiff and Class Members' Epic Pass fees, while eliminating the services purchased by Plaintiff and Class Members with those Pass fees. Retention of those moneys under these circumstances is unfair, unjust and inequitable because Defendants are retaining its customers Pass fees while all of their North America ski resorts remain closed.

70. Because Defendants' retention of the non-gratuitous benefits conferred on it by Plaintiff and Class Members is unfair, unjust, and inequitable, Defendants must pay restitution to Plaintiff and Class Members for their unjust enrichment, as ordered by the Court.

**COUNT V**  
**Nationwide Class**  
**Violation of Colorado Consumer Protection Act,**  
**Colo. Rev. Stat. §§ 6-1-101, *et seq.***

71. Plaintiff hereby repeats and realleges the allegations contained in paragraphs 1 through 40 above of this complaint, as if fully alleged herein.

72. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendants or, alternatively, a Colorado Subclass.

73. Defendants are each a "person" as defined by Colo. Rev. Stat. § 6-1-102(6).

74. Plaintiff and Class Members, as well as the general public, are actual or potential consumers of the products and services offered by Defendants or successors in interest to actual consumers.

75. Defendants engaged in deceptive trade practices in the course of their business, in violation of Colo. Rev. Stat. § 6-1-105(1), including, but not limited to, by advertising nationwide

that purchasers of their Epic Passes have unlimited, unrestricted skiing and snowboarding at Defendants' North America ski resorts for the entire 2019-20 ski season to June 2020.

76. By engaging in deceptive trade practices in the course of their business and vocation, directly or indirectly affecting the people of Colorado and all other states where Epic Passes were sold, Defendants violated Colo. Rev. Stat. § 6-1-105(g) by representing that goods and services are of a particular standard or quality when they knew or should have known that they are of another.

77. In particular, Defendants represented that the purchasers of Epic Passes would obtain "the best value and variety for unlimited skiing and riding" at their North America ski resorts for the entire ski season through at least May 2020, when in fact Defendants knew or should have known that in the event that they closed all of their North America ski resorts before the end of the ski season they would retain fees paid to Defendants for the Passes.

78. Defendants' representations and omissions were material because they were likely to deceive reasonable consumers if Defendants failed to keep their North America ski resorts open for the duration of the ski and snowboard season as promised.

79. Plaintiff and the Class Members acted reasonably when they purchased Defendants' Passes based on their belief that Defendants' representations were true and lawful.

80. Defendants' actions violate Colorado's Consumer Protection Act, and recklessly disregarded Plaintiff and Class Members' rights by accepting Plaintiff's and Class Members' payments for the Epic Passes, which were represented to allow Pass holders the ability to ski and snowboard to June 2020, but by prematurely closing its resorts and refusing to refund the full fees paid by Plaintiff and Class Members.

81. As a direct and proximate result of Defendants' deceptive trade practices, Plaintiff and the Class Members suffered injuries to their legally protected interests, including because: (a) they would not have purchased or paid for Defendants' Passes absent Defendants' representations and omission of a warning that they would retain Class Members' Pass holder fees while all Vail North America ski resorts are closed; (b) they would not have purchased Passes on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' Passes based on Defendants' misrepresentations and omissions; and (d) Defendants' Passes did not have the characteristics, benefits, or quantities as promised.

82. Defendants' deceptive trade practices significantly impact the public because Defendants operate at least 34 North American ski resorts and, on information and belief, sell a large number of ski passes to consumers located in Colorado and every other state.

83. Plaintiff and the Class Members seek all monetary and non-monetary relief allowed by law, including the greater of: (a) actual damages, or (b) \$500, or (c) three times actual damages (for Defendants' bad faith conduct); injunctive relief; and reasonable attorneys' fees and costs.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendants, as follows:

- a) For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representatives of the Class and Plaintiff's attorneys as Class Counsel to represent the Class Members;

- b) For an order certifying the Colorado Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Colorado Subclass, and Plaintiff's attorneys as Class Counsel to represent the Colorado Subclass's Members.
- c) For an order declaring that Defendants' conduct violates the statutes and laws referenced herein;
- d) For an order finding in favor of Plaintiff, the Class, and the Colorado Subclass, on all counts asserted herein;
- e) For compensatory damages in an amount to be determined by the Court and/or jury;
- f) For prejudgment interest on all amounts awarded;
- g) For an order of restitution and all other forms of equitable monetary relief;
- h) For injunctive relief as pleaded or as the Court may deem proper; and
- i) For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit.

**JURY TRIAL DEMAND**

Plaintiff demands a trial by jury on all causes of action and issues so triable.

Dated: May 22, 2020

/s/ Daniel E. Gustafson  
Daniel E. Gustafson (MN #202241)  
Daniel C. Hedlund (MN #258337)  
Joshua J. Rissman (MN #391500)  
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***Attorneys for Plaintiff Timothy DiPirro and the  
Proposed Class***

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 20-cv-01134-RBJ  
(Consolidated and filed in lead case number 1:20-cv-01121-RBJ)

JIM FAYDENKO, STEPHEN CONTI, CHAD  
HIXON, ENYINNAYA OKWULEHIE,  
GRZEGORZ WALUKANIS, TERRY  
CHECHAKLI, KATHLEEN KIMMEL,  
BROOKELLE BOLF, DAVID BYCZEK, and  
CHRISTOPHER WHITCOMB, individually and  
on behalf of all others similarly situated,

Plaintiffs,

v.

VAIL RESORTS, INC. and THE VAIL  
CORPORATION d/b/a VAIL RESORTS  
MANAGEMENT COMPANY,

Defendants.

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**AMENDED CLASS ACTION COMPLAINT**

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Plaintiffs JIM FAYDENKO, STEPHEN CONTI, CHAD HIXON, ENYINNAYA OKWULEHIE, GRZEGORZ WALUKANIS, TERRY CHECHAKLI, KATHLEEN KIMMEL, BROOKELLE BOLF, DAVID BYCZEK, and CHRISTOPHER WHITCOMB, individually and on behalf of all others similarly situated, bring this class action against VAIL RESORTS, INC. and THE VAIL CORPORATION d/b/a VAIL RESORTS MANAGEMENT COMPANY (collectively, “Defendants” or “Vail Resorts”) and respectfully allege the following:



## NATURE OF ACTION

1. Vail Resorts touts itself as “the premier mountain resort company in the world” and to ski Vail, its premier resort, is “like nothing on earth™.” Vail Resorts sold a variety of multiday and season passes for the 2019-20 season (collectively, “the Passes”), including the Epic Pass, which was marketed as “the best value and variety for unlimited skiing and riding.”<sup>1</sup>

2. Defendants represented on their website that the 2019-20 ski season would commence in October 2019 and last into June 2020 (the “2019-20 Ski Season”). The article was titled “Earlier Openings, Longer Season, and Enhanced Guest Experience for the 2019-20 Winter Season.” In the article, Defendants stated that they were “providing Epic Pass holders and all skiers and snowboarders in Colorado with one of the longest ski and snowboard seasons in the country.” Moreover, Defendants stated, “With Keystone opening earlier and Breckenridge extending its winter seasons into June, Epic Pass holders can enjoy skiing and snowboarding in Colorado from October through May.”<sup>2</sup>

3. However, Defendants announced in mid-March that due to COVID-19 they were closing all of their North American ski resorts for the remainder of the 2019-20 Ski Season (“Vail Closure”). Defendants refused to provide refunds to purchasers of their Passes (“Pass Holders”) due to the Vail Closure, which eliminated approximately one-third of the 2019-20 Ski Season; instead Vail Resorts retained all payments made by Pass Holders.

4. Plaintiffs bring this class action suit on behalf of themselves and all others similarly situated to seek redress for Defendants’ refusal to refund fees after they closed all of

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<sup>1</sup> <https://www.epicpass.com/info/epic-for-everyone-release.aspx> (accessed on June 23, 2020).

<sup>2</sup> <http://blog.vail.com/capital-improvements-underway-at-vail-beaver-creek-breckenridge-keystone-and-crested-butte-leading-to-earlier-openings-longer-season-and-enhanced-guest-experience-for-the-2019-2020-winter-season/> (last accessed June 23, 2020).

their North American ski resorts, well short of the promised duration of the ski season. Defendants collected fees from skiers, snowboarders (referred to herein as “riders”), and others, but then deprived them of the promised “unlimited skiing and snowboarding” from October 2019 into June 2020.

### **PARTIES**

5. Plaintiff Jim Faydenko is a citizen of Colorado and resides in Morrison, Colorado. Mr. Faydenko purchased an Epic Pass for himself and an Adult Epic 4-Day Pass for his wife from Defendants for the 2019-20 Ski Season. Due to the Vail Closure, Plaintiff Faydenko was prevented from using the entire value of his Epic Pass, and his wife was prevented from using the entire value of her Adult Epic 4-Day Pass.

6. Plaintiff Stephen Conti is a citizen of California and resides in San Diego, California. Mr. Conti purchased an Adult Epic 4-Day Pass from Defendants for the 2019-20 Ski Season. Due to the Vail Closure, Plaintiff Conti was prevented from using the entire value of his Adult Epic 4-Day Pass.

7. Plaintiff Chad Hixon is a citizen of Massachusetts and resides in Lynnfield, Massachusetts. Mr. Hixon purchased an Epic Local Pass from Defendants for the 2019-20 Ski Season. Due to the Vail Closure, Plaintiff Hixon was prevented from using the entire value of his Epic Local Pass.

8. Plaintiff Enyinnaya Okwulehie is a citizen of Minnesota and resides in Brooklyn Center, Minnesota. Mr. Okwulehie purchased an Epic Local Pass from Defendants for the 2019-20 Ski Season. Due to the Vail Closure, Plaintiff Okwulehie was prevented from using the entire value of his Epic Local Pass.

9. Plaintiff Grzegorz Walukanis is a citizen of Illinois and resides in Bloomingdale, Illinois. Mr. Walukanis purchased an Epic Local Pass from Defendants for the 2019-20 Ski Season. Due to the Vail Closure, Plaintiff Walukanis was prevented from using the entire value of his Epic Local Pass.

10. Plaintiff Terry Chechakli is a citizen of Illinois and resides in Batavia, Illinois. Mr. Chechakli purchased an Epic Pass from Defendants for the 2019-20 Ski Season. Due to the Vail Closure, Plaintiff Chechakli was prevented from using the entire value of his Epic Pass.

11. Plaintiff Kathleen Kimmel is a citizen of Illinois and resides in Batavia, Illinois. Ms. Kimmel purchased an Epic Pass from Defendants for the 2019-20 Ski Season. Due to the Vail Closure, Plaintiff Kimmel was prevented from using the entire value of her Epic Pass

12. Plaintiff Brookelle Bolf is a citizen of Colorado and resides in Lakewood, Colorado. Ms. Bolf purchased an Epic Local Pass from Defendants for the 2019-20 Ski Season. Due to the Vail Closure, Plaintiff Bolf was prevented from using the entire value of her Epic Local Pass.

13. Plaintiff David Byczek is a citizen of Wisconsin and resides in Oconomowoc, Wisconsin. Mr. Byczek purchased Epic Local Passes for himself and his son from Defendants for the 2019-20 Ski Season. Due to the Vail Closure, Plaintiff Byczek and his son were prevented from using the entire value of their Epic Local Passes.

14. Plaintiff Christopher Whitcomb is a citizen of Washington and resides in Spokane, Washington. Mr. Whitcomb purchased 5-Day Whistler Blackcomb EDGE Cards for himself and his wife from Defendants for the 2019-20 Ski Season. Due to the Vail Closure,

Plaintiff Whitcomb and his wife were prevented from using the entire value of their 5-Day Whistler Blackcomb EDGE Cards.

15. Defendant Vail Resorts, Inc. is a Delaware corporation, with its principal place of business in Broomfield, Colorado. Vail Resorts, Inc., among other things, owns and operates mountain resorts and urban ski areas.

16. Defendant The Vail Corporation d/b/a Vail Resorts Management Company is a Colorado corporation, with its principal place of business in Broomfield, Colorado. The Vail Corporation is a wholly-owned subsidiary of Vail Holdings, Inc., which in turn is a wholly owned subsidiary of Vail Resorts, Inc.

### **FACTUAL ALLEGATIONS**

17. Vail Resorts, Inc., through its subsidiaries, operates 37 destination mountain resorts and regional ski areas, 34 of which are located in North America (“North America Ski Resorts”). Vail Resorts touts itself as “the premier mountain resort company in the world.”<sup>3</sup>

18. Defendants sold a variety of Passes for the 2019-20 Ski Season that offered unlimited skiing and riding at one or more of the North America Ski Resorts (collectively, “the Season Passes”). In addition to the Epic Pass and Epic Local Pass, Defendants also sold Season Passes for the 2019-20 Ski Season that provided Pass Holders with unlimited access to specific North America Ski Resorts, such as the Tahoe Local Pass. Defendants also sold Season Passes for the 2019-20 Ski Season that were available to specific groups of purchasers, such as the Epic Military Pass Active.

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<sup>3</sup> <http://www.vailresorts.com/Corp/info/who-we-are.aspx> (last accessed June 23, 2020).

19. Defendants also sold a variety of passes for the 2019-20 Ski Season that offered a specific number of days of skiing and riding at one or more of the North America Ski Resorts (collectively, “the Multiday Passes”), such as the Epic Day Pass and Whistler Blackcomb EDGE Card. The Season and Multiday Passes that Defendants sold are collectively referred to herein as “the Passes.”

20. In selling the Season Passes for the 2019-20 Ski Season, Defendants represented and promised that “the Epic Pass and Epic Local Pass continue to offer the best value and variety for unlimited skiing and riding.” Defendants advertised that the Epic Pass “provides unlimited, unrestricted access to all of the Company’s owned resorts and additional access to partner resorts around the world.” Defendants sold the Epic Pass for \$939 for the 2019-20 Ski Season.<sup>4</sup>

21. According to Defendants, the Epic Local Pass offered “[s]kiers and riders willing to navigate around a few peak dates...access to many of the same destinations.” Defendants sold the Epic Local Pass for prices starting at \$699 for the 2019-20 Ski Season. The Epic Local Pass carried certain blackout dates and limited the purchaser’s use at Vail Resort and Beaver Creek Resort to a cumulative total of ten days.

22. Because the individual daily rates for ski and snowboard passes are high – for instance at Vail resort over \$200 – customers who anticipate skiing or riding several days will assess their own needs and purchase the appropriate Pass. Many people take Spring Break ski vacations in March and April. For them, the cost effective way to purchase lift tickets was to purchase one type of Season or Multiday Pass.

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<sup>4</sup> <https://www.epicpass.com/info/epic-for-everyone-release.aspx> (accessed on June 23, 2020).

23. However, to solidify their cash flow, Defendants required customers to purchase the Epic Pass or Epic Local Pass for the 2019-20 Ski Season no later than September 2019. Thus, Defendants received nearly 100% of their 2019-20 Ski Season lift ticket revenue from Plaintiffs and Class Members before the 2019-20 Ski Season even began.

24. Defendants also sold the Epic Day Pass, which is a Multiday Pass, for the 2019-20 Ski Season. Defendants sold the Epic Day Pass to customers who could select the number of days, from one to seven, and whether or not to add holiday access. Defendants represented to and promised that purchasers of the Epic Day Pass “can use their customized Epic Day Pass anytime through the [2019-20] season at any of the Company’s North American owned resorts” and would be given access to other resorts if they purchased four or more days. Defendants’ prices for Epic Day Passes for adults ranged from \$106 to \$731 and for children from \$55 to \$380, depending on the number of days and holiday restrictions.

25. Defendants sold another type of Multiday Pass, the Whistler Blackcomb EDGE Card, for the 2019-20 Ski Season exclusively to residents of Canada and Washington State. Similar to the Epic Day Pass, Defendants sold the Whistler Blackcomb EDGE Card to customers who could select the number of days, either two, five, or ten, and whether or not to add holiday access. Defendants promised that purchasers of the Whistler Blackcomb EDGE Card would have access to Whistler Blackcomb for the number of days purchased, and the 5-Day and 10-Day options allowed the purchaser to use a certain number of the purchased days at any of Vail

Resorts' other owned and operated ski resorts. Prices for the Whistler Blackcomb EDGE Card ranged from CAD \$829 for unrestricted adult 10-Day to CAD \$103 for restricted child 2-Day.<sup>5</sup>

26. On March 14, 2020, without any prior notification to Plaintiffs or Class Members, Defendants initiated the Vail Closure by abruptly suspending all operations at their North America Ski Resorts and retail stores for one week promising an update in the next few days. Three days later, on March 17, 2020, Defendants announced "that all of its North American resorts and retail stores will remain closed for the 2019-20 winter ski season amidst the continued challenges associated with the spread of coronavirus (COVID-19)."<sup>6</sup>

27. By closing all of their North America Ski Resorts effective March 15, 2020, Defendants deprived Plaintiffs and Class Members of about one-third of the promised 2019-20 Ski Season.

28. As part of the North America ski resort shutdown, Defendants eliminated virtually all employees to greatly reduce their operating costs.

29. Thus, Defendants eliminated virtually all of their costs of operating their North America Ski Resorts, yet have refused to refund any portion of the costs paid for the Passes by Plaintiffs and the Class Members, which Passes were purchased with Defendants' representations they could be used for the full duration of the ski and snowboard season into June 2020.

30. Instead, Defendants have retained 100% of the fees paid by Plaintiffs and Class Members for their Passes even after Defendants closed their resorts after only about two-thirds of

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<sup>5</sup> <http://news.whistlerblackcomb.vailresorts.com/mountain/whistler-blackcomb/resort-news/pass-card-2019.htm> (last accessed June 23, 2020).

<sup>6</sup> <https://www.snow.com/info/vail-resorts-covid-19-resort-closing-update.aspx> (last accessed June 23, 2020)

the promised 2019-20 Ski Season had occurred. Defendants have refused to refund Pass Holders any portion of the hundreds of dollars paid by Plaintiffs and Class Members for such Passes.

31. Rather than make a cash refund to Plaintiffs and Class Members, on April 27, 2020, Vail notified Plaintiffs and Class Members by email or letter of its plan for a “credit” program to be available only for those Plaintiffs and Class Members who agree to purchase a Pass for the 2020-21 ski season.

32. On May 13, 2020, Defendants delivered personalized emails (the “Credit Emails”) to Plaintiffs and, on information and belief, Class Members in which Defendants set forth the amount of the Credit offered and a “promo code” that the Pass Holder could utilize to receive the Credit if and only if he or she purchased a Pass for the 2020-21 ski season. As an example, the Credit Email that Defendants sent to Plaintiff Faydenko is attached hereto as **Exhibit A**.

33. Defendants subsequently sent letters (the “Credit Letters”) to Plaintiffs and, on information and belief, Class Members in which Defendants again provided the amount of the Credit and the “promo code” to access it. As an example, the Credit Letter that Defendants sent to Plaintiff Faydenko is attached hereto as **Exhibit B**.

34. Defendants offered 2019-20 Pass Holders a discount of between 20% to 80% off the price of 2020-21 Passes, depending on how many days the Pass Holder skied or rode during the 2019-20 Ski Season prior to March 15, 2020.

35. For instance, Defendants offered Season Pass Holders who skied or rode five or more days a discount of only 20% for a Pass for the 2020-21 season. A Season Pass Holder who did not ski or ride at all in 2019-20 was offered a discount of only 80% for a Pass for 2020-21.



An Epic Multiday Pass Holder who had a 4-day Pass and used it only one day is offered a Credit of only 60% for a Pass for the 2020-21 ski season.<sup>7</sup> Thus, the “Credit” does not account for the true percentage of lost ski days to Pass Holders or other injury to Pass Holders.

36. Defendants state that Pass Holders have until September 7, 2020 to redeem this offer.<sup>8</sup> Defendants also announced that the prices for similar Passes for the upcoming 2020-21 season are higher than those charged for similar Passes for the 2019-20 Ski Season.

37. In the Credit Email, Defendants included a “FAQ” hyperlink to their website. By clicking on the link, a Pass Holder lands at the webpage located at <https://www.epicpass.com/info/2019-2020-pass-holder-credit.aspx>, which is captioned “2019/20 Pass Holder Credit.” Defendants include on that webpage a section titled “2019/20 Pass Holder Credit Terms & Conditions.” That webpage also includes another hyperlink labeled “Read More.” By clicking the link, a reader is connected to a multi-paragraph set of Terms & Conditions.

38. By scrolling down to Paragraph 9 of the Terms and Conditions, the reader discovers that Defendants included a section titled “Release of Claims,” which states:

If you choose to use your Credit toward the purchase of a 2020/2021 pass, you are thereby voluntarily and knowingly agreeing, to the maximum extent permitted by applicable law, to waive, release, and forfeit any and all claims and actions you have or may have against Vail Resorts, or any of its resorts, subsidiaries, affiliates, or Partner Resorts and any of our or their respective officers, directors, employees, contractors, representatives, or agents (collectively, the “Vail Resorts Parties”) and any associated losses, damages and expenses (including attorneys’ fees), that relate to, arise out of, or may arise out of the operation or closure of one or more of our resorts during the 2019/2020 season, including claims you may have for any other or additional form of refund, credit, or compensation for your

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<sup>7</sup> <https://www.epicpass.com/info/2019-2020-pass-holder-credit.aspx> (last accessed June 23, 2020).

<sup>8</sup> *Id.*

inability to use your 2019/2020 pass as a result of the closure of any of our resorts during the 2019/2020 season. We hereby advise that class action lawsuits have been filed against the Vail Corporation on behalf of certain pass holders in connection with resort closures during the 2019/2020 ski season seeking refunds and other alleged damages. These Terms and this release in connection with the Credit will affect any rights you have in connection with those lawsuits and any similar lawsuits that may be filed.

If you are a California resident, you waive California Civil Code Section 1542, which says: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.” If you are a resident of another jurisdiction, you waive any comparable statute or doctrine.<sup>9</sup>

39. Nowhere in the Credit Email, the Credit Letter, the “FAQ” page, or the Terms and Conditions was there a large, bold notice of the purported waiver, release, and forfeiture. Further, none of those communications identified this or any other pending class action, they did not identify class counsel, they did not describe the relief claimed in the class actions, and they did not advise Pass holders of the substantive rights and damages they were purportedly waiving, releasing, and forfeiting.

40. The failure to include such information prevents Defendants from making a full, fair, and meaningful disclosure, which thereby renders the proposed waiver, release, and forfeiture unfair, uninformed, unenforceable, and unlawful.

41. Thus, to get the alleged “benefit” of a Credit for the Passes, Plaintiffs and Class Members must spend more money to purchase a higher-priced Pass that they may neither want nor use. Absent spending more money to purchase a 2020-21 Pass, Plaintiff and Class Members receive no “benefit” whatsoever. Meanwhile, during a time of historic economic uncertainty and record unemployment including, on information and belief, Class Members, Defendants refuse to

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<sup>9</sup> *Id.*

refund to Plaintiffs and Class Members their overpayment for the Passes. Instead, Defendants unlawfully continue to retain the entire purchase price paid by Plaintiffs and Class Members for the Passes.

42. Plaintiffs seek relief in this action individually, and on behalf of all of Defendants' customers nationwide that purchased Season Passes for the 2019-2020 Ski Season or Multiday Passes for the 2019-2020 Ski Season who, as of March 15, 2020, had not used all of the days remaining on their Multiday Passes. Plaintiffs seek relief for themselves and all Class Members for Defendants' breach of contract, breach of express warranties, negligent misrepresentation, conversion, and unjust enrichment, as well as violations of state consumer protection statutes. Plaintiffs also seek a declaratory judgment.

#### **JURISDICTION AND VENUE**

43. This Court has subject matter jurisdiction over this controversy pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because (a) the proposed Class, defined below, consists of more than one hundred members; (b) the parties are minimally diverse, as members of the proposed Class are citizens of states different than Defendants' home state; and (c) the aggregate amount in controversy exceeds \$5 million, exclusive of interests and costs.

44. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

45. This Court has personal jurisdiction over Defendants because Defendants' principal places of business are within this District.

46. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants maintain their principal place of business within the District and a substantial part of the events giving rise to Plaintiffs' claims occurred here.

47. Plaintiffs bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages on behalf of themselves and Class Members nationwide:

All persons in the United States who purchased from Defendants for the 2019-20 Ski Season an Epic Pass, Epic Local Pass, or other Season Pass, or who purchased an Epic Day Pass, Whistler Blackcomb EDGE Card, or other Multiday Pass with days remaining for use at a Vail North American ski resort.

48. Excluded from the Class are: a) any Judge or Magistrate presiding over this action and members of their families; b) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest and their current or former employees; c) persons who properly execute and file a timely request for exclusion from the Class; d) the legal representatives, successors or assigns of any such excluded persons; and e) all persons who have previously had claims finally adjudicated or who have released their claims against Defendants similar to those alleged herein.

49. If necessary or alternatively, Plaintiffs also seek to represent subclasses of individuals who purchased passes from Defendants in each of the 50 states and U.S. territories, e.g., the California Subclass.

50. Collectively, unless otherwise so stated, the above-defined classes and subclasses are referred to herein as the "Class."

51. Plaintiffs reserve their right to amend the Class definitions if discovery or further investigation reveals that any Class should be expanded or narrowed, divided into additional subclasses under Rule 23(c)(5), or modified in any other way

52. While the exact number and identities of the Class Members are unknown at this time, and can only be ascertained through appropriate discovery, on information and belief, the Class is so numerous that joinder of all Class Members is impracticable. Also, on information and belief, all Class Members are readily identifiable since Defendants maintain electronic records of all Pass Holders.

53. Common questions of law and fact exist as to all members of the Class. Such questions of law and fact common to the Class include, but are not limited to, whether Defendants breached their contract and/or their warranty with their customers, whether Defendants negligently made misrepresentations, whether Defendants were unjustly enriched, whether Defendants are liable for conversion, and whether Defendants violated certain state consumer protection statutes.

54. Plaintiffs' claims are typical of the claims of all Class Members because such claims arise from Defendants' wrongful conduct, as alleged above. Plaintiffs have no interests that conflict with the interests of the other Class Members.

55. Questions of law and fact common to all Plaintiffs and Class Members predominate over any questions affecting only individual Class Members, including legal and factual issues relating to liability and damages.

56. Plaintiffs will fairly and adequately represent and protect the interests of the Class Members. Plaintiffs have retained competent counsel experienced in complex commercial litigation and class actions to represent themselves and the Class.

57. Class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress for claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in management of this class action.

58. Absent a class action, most Class members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class members' claims compared to the anticipated costs of the litigation, it is likely that only a few, if any, Class members could afford to seek legal redress for the harms caused by Defendants' actions.

**COUNT I**  
**Nationwide Class**  
**Breach of Contract**

59. Plaintiffs hereby repeat and reallege the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

60. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class arising from their purchases of Passes from Defendants.

61. Defendants offered the Passes to Plaintiffs and Class Members to provide access, including skiing and riding, to their North America Ski Resorts for the entire 2019-20 Ski Season in exchange for Plaintiffs' and Class Members' payment in full of Pass fees.

62. Each Plaintiff and all Class Members accepted Defendants' contractual offer and fully performed and complied with all conditions precedent including full payment to Defendants for the Passes.

63. Defendants breached these contracts by retaining Plaintiffs' and Class Members' Pass fees while all of their North America Ski Resorts remain closed, terminating about one-third of the ski and snowboard season that Defendants contractually promised to Plaintiffs and Class Members. Plaintiffs and Class Members have suffered an injury through the full payment of Pass fees, without a refund, while not having the contractually promised duration of ski and snowboard access to Defendants' North America Ski Resorts.

**COUNT II**  
**Nationwide Class**  
**Breach of Express Warranty**

64. Plaintiffs hereby repeat and reallege the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

65. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class arising from their purchases of Passes from Defendants.

66. In connection with their sale of Passes, Defendants made an express warranty that Season Pass Holders would have unlimited access to some or all of their North America Ski Resorts, or for the Multiday Passes, that they would have access to Defendants' North America Ski Resorts for a specified number of days, into June 2020.

67. Defendants' affirmation of fact and promise in their marketing and websites became part of the basis of the bargain between Defendants and Plaintiffs and Class Members, thereby creating express warranties that the services would conform to Defendants' affirmations of fact, representations, promises, and descriptions.

68. Each Plaintiff and all Class Members fully performed and complied with all conditions precedent including full payment to Defendants for the Passes.

69. Defendants breached their express warranty by failing to provide Season Pass Holders with unlimited ski and ride access to their North America Ski Resorts for the duration of the warranted 2019-20 Ski Season, into June 2020 and by failing to allow Multiday Pass Holders to use their Multiday Pass at any time during the promised 2019-20 Ski Season.

70. Plaintiffs and the Class Members were injured as a direct and proximate result of Defendants' breach because: (a) they would not have purchased or paid for Defendants' Passes absent Defendants' representations and omission of a warning that they would retain Class Members' Pass Holder fees while all of their North America Ski Resorts are closed; (b) they would not have purchased Passes on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' Passes based on Defendants' misrepresentations and omissions; and (d) Defendants' Passes did not have the characteristics, benefits, or quantities as promised.

**COUNT III**  
**Nationwide Class**  
**Negligent Misrepresentation**

71. Plaintiffs hereby repeat and reallege the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.



72. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class arising from their purchases of Passes from Defendants.

73. Defendants misrepresented that Season Pass Holders would have unlimited ski and ride access to their North America Ski Resorts for the duration of the warranted 2019-20 Ski Season, into June 2020 and that Multiday Pass Holders would be able to use their Multiday Pass at any time during the 2019-20 Ski Season into June 2020.

74. Defendants made these representations without knowledge of their truth or veracity.

75. Defendants negligently misrepresented and/or negligently omitted material facts about their Passes and services, including, but not limited to, that their North America Ski Resorts would unconditionally be available for the entire 2019-20 Ski Season into June 2020.

76. The negligent misrepresentations and omissions made by Defendants, upon which Plaintiffs and Class Members reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs and Class Members to purchase Defendants' Passes.

77. As a result of Defendants' misrepresentations, Plaintiffs and all Class Members made full payment to Defendants for Passes before the 2019-20 Ski Season began.

78. Plaintiffs and the Class Members were injured as a direct and proximate result of Defendants' misrepresentations because: (a) they would not have purchased or paid for Defendants' Passes absent Defendants' representations and omission of a warning that they would retain Class Members' Pass Holder fees while all of their North America Ski Resorts are closed; (b) they would not have purchased Passes on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' Passes based on

Defendants' misrepresentations and omissions; and (d) Defendants' Passes did not have the characteristics, benefits, or quantities as promised.

79. The negligent actions of Defendants caused damage to Plaintiffs and Class Members, who are entitled to damages and other legal and equitable relief as a result.

**COUNT IV**  
**Nationwide Class**  
**Unjust Enrichment**

80. Plaintiffs hereby repeat and reallege the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

81. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class arising from their purchases of Passes from Defendants.

82. Plaintiffs and Class Members conferred benefits on Defendants by paying in advance of the start of the 2019-20 Ski Season and in full for the Passes they purchased from Defendants.

83. Defendants have knowledge of such benefits and accepted those in full payments knowing the representations they made and services they were to provide in consideration for those payments, namely, (a) for the Season Pass Holders, unlimited skiing and riding at some or all North America Ski Resorts into June 2020; and (b) for the Multiday Pass Holders, skiing and riding at the specified North America Ski Resorts for the number of days, paid for the duration of the 2019-20 Ski Season into June 2020. Defendants developed the Pass program with the specific purpose to obtain nearly 100% of their ski revenues by the end of September, before the ski and snowboard season began.

84. As a result of the Vail Closure, Defendants received 100% of the revenues for their Passes sold to Plaintiffs and Class Members, but Defendants cancelled about one-third of the 2019-20 Ski Season depriving Plaintiffs and Class Members of benefits for which they paid Defendants in full.

85. Defendants eliminated the vast majority of their employees and cut other operating costs that they otherwise would have incurred had Defendants kept their North America Ski Resorts open for the full 2019-20 Season into June 2020, as they represented. Defendants have been unjustly enriched in retaining the revenues derived from Plaintiffs and Class Members' Pass fees, while eliminating the costs for the services purchased by Plaintiffs and Class Members with those Pass fees. Retention of those moneys under these circumstances is unfair, unjust and inequitable because Defendants are retaining their customers' full Pass fees while all of their North America Ski Resorts remain closed.

86. Because Defendants' retention of the non-gratuitous benefits conferred on them by Plaintiffs and Class Members is unfair, unjust, and inequitable, Defendants must pay restitution to Plaintiffs and Class Members for their unjust enrichment, as ordered by the Court.

**COUNT V**  
**Nationwide Class**  
**Conversion**

87. Plaintiffs hereby repeat and reallege the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

88. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class arising from their purchases of Passes from Defendants.

89. Plaintiffs and members of the Class had a right to an immediate refund of their Pass fees once all of Defendants' North America Ski Resorts were and remain closed. Defendants intentionally retained the full amount of the Plaintiffs' and Class Members' Pass fees while Defendants' North America Ski Resorts were closed. Plaintiffs and Class Members did not consent to Defendants' retaining such fees while Defendants' North America Ski Resorts are closed.

90. Plaintiffs and Class Members were harmed through Defendants' retention and conversion of their Pass fees for Defendants' own benefit; and Defendants' conduct was a substantial factor in causing Plaintiffs and Class Members' harm.

**COUNT VI**  
**Nationwide Class**  
**Declaratory Judgment**

91. Plaintiffs hereby repeat and reallege the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

92. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class arising from their purchases of Passes from Defendants.

93. Plaintiffs and Class Members had a right to an immediate refund of their unused Pass fees once Defendants' North America Ski Resorts were and remain closed. Instead of issuing refunds, Defendants intentionally retained the full amount of the Plaintiffs' and Class Members' Pass fees for ski and snowboard access to those resorts during the 2019-20 Ski Season without the consent of Plaintiffs and Class Members.

94. Defendants are now offering a partial "Credit," not a refund, and only to those Pass Holders who purchase a similar or escalated Pass for the 2020-21 Ski Season. And as to

those who accept the partial “Credit,” the fine print hidden in a paragraph on a web page that requires several clicks to find it, purport to waive the rights of Plaintiffs and Class Members in this class action.

95. Indeed, Defendants purport to require as a precondition to receiving the Credit proposed by Defendants for a 2020-21 Pass that Plaintiffs and Class Members agree to “waive, release, and forfeit any and all claims and actions” against Defendants “that relate to, arise out of, or may arise out of the operation or closure of one or more of our resorts during the 2019/2020 season,” including claims asserted in this lawsuit.

96. Defendants failed to make a full or adequate disclosure, including, without limitation, as to the details of this and other class action lawsuits, which renders the proposed waiver, release and forfeiture unfair, uninformed, unenforceable, and unlawful.

97. 28 U.S.C. § 2201(a) provides, “In a case of actual controversy within its jurisdiction...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”

98. Plaintiffs therefore request an order declaring that Defendants’ claim that the use of the partial Credit by Pass Holders for 2020-21 Pass purchases does not waive, release, or forfeit any rights of Plaintiffs or Class Members.

**COUNT VII**  
**Nationwide Class**  
**Violation of Colorado Consumer Protection Act,**  
**Colo. Rev. Stat. §§ 6-1-101, *et seq.***

99. Plaintiffs hereby repeat and reallege the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

100. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class arising from their purchases of Passes from Defendants or, alternatively, a Colorado Subclass.

101. Defendants are each a “person” as defined by Colo. Rev. Stat. § 6-1-102(6).

102. Plaintiffs and Class Members, as well as the general public, are actual or potential consumers of the products and services offered by Defendants or successors in interest to actual consumers.

103. Defendants engaged in deceptive trade practices in the course of their business, in violation of Colo. Rev. Stat. § 6-1-105(1), including, but not limited to, by advertising nationwide that purchasers of their Passes have unlimited, unrestricted skiing and snowboarding at Defendants’ North America Ski Resorts for the entire duration of the represented 2019-20 Ski Season into June 2020 and that Multiday Pass Holders would be able to use their Multiday Pass at any time during the 2019-20 Ski Season into June 2020.

104. By engaging in deceptive trade practices in the course of their business and vocation, directly or indirectly affecting the people of Colorado and all other states where Passes were sold, Defendants violated Colo. Rev. Stat. § 6-1-105(g) by representing that goods and services are of a particular standard or quality when they knew or should have known that they are of another.

105. In particular, Defendants represented that the purchasers of Passes would obtain “the best value and variety for unlimited skiing and riding” at their North America Ski Resorts for the entire duration of the 2019-20 Ski Season into June 2020 and that Multiday Pass Holders would be able to use their Multiday Pass at any time during the 2019-20 Ski Season into June 2020, when in fact Defendants knew or should have known that in the event that they closed all of their North America Ski Resorts before the end of the represented and promised 2019-20 Ski Season they would retain 100% of the price paid to Defendants for the Passes.

106. Defendants’ representations and omissions were material because they were likely to deceive reasonable consumers if Defendants failed to keep their North America Ski Resorts open for the duration of the 2019-20 Ski Season as represented and promised.

107. Plaintiffs and the Class Members acted reasonably when they purchased Defendants’ Passes based on their belief that Defendants’ representations and promises were true and lawful.

108. Defendants’ actions violate Colorado’s Consumer Protection Act, and recklessly disregarded Plaintiffs and Class Members’ rights by accepting Plaintiffs’ and Class Members’ payments in full for the Passes, which were represented and promised to allow Pass Holders the ability to ski and ride into June 2020, but by prematurely closing their resorts and refusing to refund the fees paid by Plaintiffs and Class Members.

109. As a direct and proximate result of Defendants’ deceptive trade practices, Plaintiffs and Class Members suffered injuries to their legally protected interests, including because: (a) they would not have purchased or paid for Defendants’ Passes absent Defendants’ representations and omission of a warning that they would retain 100% of Class Members’ Pass

Holder fees while all Defendants' North America Ski Resorts are closed; (b) they would not have purchased Passes on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' Passes based on Defendants' representations and omissions; and (d) Defendants' Passes did not have the characteristics, benefits, or quantities as promised.

110. Defendants' deceptive trade practices significantly impact the public because Defendants operate at least 34 North America Ski Resorts and, on information and belief, sell a large number of ski passes to consumers located in Colorado and every other state.

111. Plaintiffs and the Class Members seek all monetary and non-monetary relief allowed by law, including the greater of their: (a) actual damages, or (b) \$500, or (c) three times actual damages (for Defendants' bad faith conduct); injunctive relief; and reasonable attorneys' fees and costs.

**COUNT VIII**  
**California Subclass**  
**Violation of California's Unfair Competition Law,**  
**California Business & Professions Code §§ 17200, *et seq.***

112. The California Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the California Subclass, repeats and realleges the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein

113. Plaintiffs bring this claim individually and on behalf of the members of the proposed California Subclass arising from their purchases in California of Passes from Defendants.

114. Defendants are subject to California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.* The UCL provides, in pertinent part: "Unfair competition



shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising....”

115. Defendants advertised and represented that their Pass Holders would have “the best value and variety for unlimited skiing and riding” at their North America Ski Resorts for the entire Ski Season into June 2020. Defendants also represented that Multiday Pass Holders would be able to use their Passes “anytime” during the 2019-20 Ski Season into June 2020. Those representations were false and misleading to a reasonable consumer, including Plaintiff and the California Subclass Members, because Defendants in fact closed all of their North America Ski Resorts after only two-thirds of the Ski Season while retaining 100% of the price paid to Defendants by Class Members for the Passes.

116. Defendants’ business practices, described herein, violated the “unfair” prong of the UCL in that their conduct of refusing to issue refunds to Plaintiffs and Class Members is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendants’ advertising of their Passes as being available for use at any time during the entire Ski Season into June 2020 and their retention of Pass fees while their North America Ski Resorts are closed is of no benefit to consumers, but rather, is a substantial detriment.

117. Plaintiff and the California Subclass Members acted reasonably when they purchased Season Passes from Defendants based on the belief that they would have unlimited access to Defendants’ North America Ski Resorts for the entire 2019-20 Ski Season into June 2020 and that Multiday Pass Holders would be able to use their Multiday Pass at any time during the 2019-20 Ski Season into June 2020.

118. Plaintiff and the California Subclass Members lost money or property as a result of Defendants' UCL violations because Plaintiff and the California Subclass Members suffered injuries caused by Defendants because: (a) they would not have purchased or paid for Defendants' Passes absent Defendants' representations and omission of a warning that they would retain Class Members' Pass Holder fees while all of their North America Ski Resorts are closed; (b) they would not have purchased Passes on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' Passes based on Defendants' misrepresentations and omissions; and (d) Defendants' Passes did not have the characteristics, benefits, or quantities as promised.

**COUNT IX**  
**California Subclass**  
**Violation of California's Consumers Legal Remedies Act,**  
**California Civil Code §§ 1750, *et seq.***

119. The California Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the California Subclass, repeats and realleges the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

120. Plaintiffs bring this claim individually and on behalf of the members of the proposed California Subclass arising from their purchases in California of Passes from Defendants.

121. Plaintiff and California Subclass Members are residents of California and consumers who paid fees for use of Defendants' North America Ski Resorts for personal, family or household purposes. Plaintiff and the California Subclass Members are "consumers" as that

term is defined by California's Consumers Legal Remedies Act ("CLRA") in Cal. Civ. Code § 1761(d).

122. Access to Defendants' North America Ski Resorts that Plaintiff and the California Subclass Members purchased from Defendants was a "good" or "service" within the meaning of Cal. Civ. Code §§ 1761(a) and (b).

123. Defendants' actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods or services to consumers.

124. Defendants' advertising and marketing, including that Season Pass Holders would have "unlimited skiing and riding" at all of the North America Ski Resorts, that Multiday Pass Holders would be able to use their Multiday Pass at any time during the 2019-20 Ski Season, and that Pass Holders would have access to the North America Ski Resorts upon paying a fee, is false and misleading to a reasonable consumer, including Plaintiff. In fact, Defendants closed all of their North America Ski Resorts effective March 15, 2020, about one-third short of the promised duration of the 2019-20 Ski Season and refused to refund any fees paid by Pass Holders for Passes.

125. California's CLRA, Cal. Civ. Code § 1770(a)(5), prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have." By engaging in the conduct set forth herein, Defendants violated and continue to violate Section 1770(a)(5) of the CLRA, because Defendants' conduct constitutes unfair methods of competition and unfair acts or practices, in

that Defendants misrepresented the particular characteristics, benefits and quantities of the services.

126. Under the CLRA, Cal. Civ. Code § 1770(a)(7) prohibits representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. By engaging in the conduct set forth herein, Defendants violated and continue to violate Section 1770(a)(7) of the CLRA, because Defendants' conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that Defendants' actions in March 2020 in shuttering all of their North America Ski Resorts were contrary to the services advertised.

127. Plaintiff and the California Subclass Members acted reasonably when they purchased Defendants' Passes on the belief that Defendants' representations were true and lawful.

128. Plaintiff and the California Subclass Members suffered injuries caused by Defendants because: (a) they would not have purchased or paid for Defendants' Passes absent Defendants' representations and omission of a warning that they would retain Class Members' Pass Holder fees while all of their North America Ski Resorts are closed; (b) they would not have purchased Passes on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' Passes based on Defendants' misrepresentations and omissions; and (d) Defendants' Passes did not have the characteristics, benefits, or quantities as promised.

129. Under the CLRA, Civil Code § 1780(a), Plaintiff and Members of the California Subclass seek injunctive and equitable relief for Defendants' violations of the CLRA. Plaintiff

has mailed an appropriate demand letter consistent with California Civil Code § 1782(a). Defendants failed to take corrective action within 30 days of receipt of the demand letter. Plaintiffs thus also request for damages as permitted by Civil Code § 1782(d).

130. Wherefore, Plaintiff seeks injunctive and equitable relief, as well as damages, for Defendants' violations of the CLRA.

**COUNT X**  
**Massachusetts Subclass**  
**Violation of Massachusetts Consumer Protection Act,**  
**Mass. Gen. Laws Ann. Ch. 93A, §§ I, *et seq.***

131. The Massachusetts Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Massachusetts Subclass, repeat and reallege the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

132. Plaintiffs bring this claim individually and on behalf of the members of the proposed Massachusetts Subclass arising from their purchases in Massachusetts of Passes from Defendants.

133. The Massachusetts Consumer Protection Act ("MCPA"), Mass. Gen. Laws, Ch. 93A, *et seq.*, makes it unlawful to engage in any "unfair or deceptive acts or practices in the conduct of any trade or commerce" and, in interpreting its provisions, requires consideration be given to interpretations by the Federal Trade Commission ("FTC") relating to § 5 of the FTC Act. *See* Mass. Gen. Laws, Ch. 93A §§ 2(a) and (b).

134. Defendants, Plaintiff, and Massachusetts Subclass Members each are "persons" as defined by Mass. Gen. Laws, Ch. 93A, § 1(a).

135. Defendants operate in “trade” or “commerce” as defined by Mass. Gen. Laws Ann. Ch. 93A, § 1(b).

136. Defendants advertised, offered, or sold goods or services in Massachusetts and engaged in trade or commerce directly or indirectly affecting the people of Massachusetts, as defined by Mass. Gen. Laws Ann. Ch. 93A, § 1(b).

137. Defendants engaged in unfair methods of competition and unfair or deceptive acts and practices in the conduct of trade or commerce, in violation of Mass. Gen. Laws Ann. Ch. 93A, §§ 2(a) and 9, including, but not limited to, by closing all of their North America Ski Resorts after approximately two-thirds of the duration of the represented ski season while retaining 100% of the price paid to Defendants for the Passes despite advertising that their Pass Holders would have “unlimited skiing and riding” at their North America Ski Resorts for the entire 2019-20 Ski Season into June 2020 and that Multiday Pass Holders would be able to use their Multiday Pass at any time during the 2019-20 Ski Season into June 2020.

138. Defendants’ conduct is unfair within the meaning of Chapter 93A of the MCPA because it constitutes immoral, unethical, oppressive, and unscrupulous activity, caused substantial injury to consumers and businesses, and provided no benefit to consumers or competition.

139. As a direct and proximate result of Defendants’ deceptive trade practices, Plaintiff and the Massachusetts Subclass Members suffered injuries to their legally protected interests, including because: (a) they would not have purchased or paid for Defendants’ Passes absent Defendants’ representations and omission of a warning that they would retain Class Members’ Pass Holder fees while all of their North America Ski Resorts are closed; (b) they would not

have purchased the Passes on the same terms absent Defendants’ representations and omissions; (c) they paid a price premium for Defendants’ Passes based on Defendants’ misrepresentations and omissions; and (d) Defendants’ Passes did not have the characteristics, benefits, or quantities as promised.

140. Plaintiff and the Massachusetts Subclass Members seek all monetary and non-monetary relief allowed by law, including actual damages, double or treble damages, injunctive or other equitable relief, and attorneys' fees and costs.

**COUNT XI**  
**Minnesota Subclass**  
**Violation of Minnesota Consumer Fraud Act,**  
**Minn. Stat. §§ 325F.68, *et seq.* and Minn. Stat. §§ 8.31, *et seq.***

141. The Minnesota Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Minnesota Subclass, repeats and realleges the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

142. Plaintiffs bring this claim individually and on behalf of the members of the proposed Minnesota Subclass arising from their purchases in Minnesota of Passes from Defendants.

143. Defendants, Plaintiff, and the Minnesota Subclass Members are each a “person” as defined by Minn. Stat. § 325F.68(3).

144. Defendants’ services available to purchasers of their Epic Passes are “merchandise” as defined by Minn. Stat. § 325F.68(2).

145. Defendants engaged in “sales” as defined by Minn. Stat. § 325F.68(4).

146. Defendants engaged in false promises, misrepresentations, misleading statements, or deceptive practices in connection with the sale of merchandise, in violation of Minn. Stat. § 325F.69(1), as described herein.

147. Defendants' misrepresentations and omissions described herein were material because they were likely to deceive reasonable consumers.

148. Defendants intended to induce Plaintiff and the Minnesota Subclass Members to rely on their misrepresentations and omissions by representing, promoting, and advertising that purchasers of Defendants' Season Passes would have "unlimited skiing and riding" at Defendants' North America Ski Resorts for the entire 2019-20 Ski Season into June 2020 and that Multiday Pass Holders would be able to use their Multiday Pass at any time during the 2019-20 Ski Season into June 2020.

149. Defendants' misleading, or deceptive practices affected the public interest, including Minnesotans who purchased Passes from Defendants.

150. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff and the Minnesota Subclass Members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing Passes.

151. Plaintiff and the Minnesota Subclass Members seek all monetary and non-monetary relief allowed by law, including damages, injunctive or other equitable relief, and attorneys' fees, disbursements, and costs.



**COUNT XII**  
**Minnesota Subclass**  
**Violation of Minnesota Uniform Deceptive Trade Practices Act,**  
**Minn. Stat. §§ 325D.43, *et seq.***

152. The Minnesota Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Minnesota Subclass, repeats and realleges the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

153. Plaintiffs bring this claim individually and on behalf of the members of the proposed Minnesota Subclass arising from their purchases in Minnesota of Passes from Defendants.

154. Defendants engaged in deceptive trade practices in the course of their business, in violation of Minnesota’s Uniform Deceptive Trade Practices Act (“MNUDTPA”), Minn. Stat. § 325D.44, including, but not limited to, by advertising that purchasers of Defendants’ Passes would have unlimited, unrestricted skiing at Defendants’ North America Ski Resorts for the entire 2019-20 Ski Season into June 2020 and that Multiday Pass Holders would be able to use their Multiday Pass at any time during the 2019-20 Ski Season.

155. By engaging in deceptive trade practices in the course of their business and vocation, directly or indirectly affecting the people of Minnesota, Defendants violated Minn. Stat. § 325D.44, including the following provisions: representing that their goods and services had characteristics, uses, and benefits that they did not have, in violation of Minn. Stat. § 325D.44(1)(5); representing that goods and services are of a particular standard or quality when they are of another, in violation of Minn. Stat. § 325D.44(1)(7); and engaging in other conduct which similarly creates a likelihood of confusion or misunderstanding, in violation of Minn. Stat. § 325D.44(1)(13).

156. Defendants' representations and omissions were material because they were likely to deceive reasonable consumers.

157. Defendants intended to induce Plaintiff and the Minnesota Subclass Members to rely on their misrepresentations and omissions.

158. Defendants recklessly disregarded the rights of Plaintiff and the Minnesota Subclass Members.

159. As a direct and proximate result of Defendants' deceptive trade practices, Plaintiff and the Minnesota Subclass Members suffered injuries to their legally protected interests, including because: (a) they would not have purchased or paid for Defendants' Passes absent Defendants' representations and omission of a warning that they would retain Class Members' Pass Holder fees while all of their North America Ski Resorts nationwide are closed; (b) they would not have purchased Passes on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' Passes based on Defendants' misrepresentations and omissions; and (d) Defendants' Passes did not have the characteristics, benefits, or quantities as promised.

160. Plaintiff and the Minnesota Subclass Members seek all monetary and non-monetary relief allowed by law, including injunctive relief and attorneys' fees and costs.

**COUNT XIII**  
**Illinois Subclass**  
**Violation of the Illinois Uniform Deceptive Trade Practices Act,**  
**815 ILCS §§ 510/2, *et seq.***

161. The Illinois Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Illinois Subclass, repeat and reallege the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

162. Plaintiffs bring this claim individually and on behalf of the members of the proposed Illinois Subclass arising from their purchases in Illinois of Passes from Defendants.

163. Plaintiff and Defendants are each a “person” as defined by ILCS § 510/1(5).

164. Defendants engaged in deceptive trade practices in the course of their business, in violation of Illinois’s Uniform Deceptive Trade Practices Act (“IDTPA”), 815 ILCS § 510/2, including, but not limited to, by advertising that their Season Pass Holders would have “unlimited skiing and riding” at their North America Ski Resorts for the entire ski season into June 2020 and that Multiday Pass Holders would be able to use their Multiday Pass at any time during the 2019-20 Ski Season.

165. By engaging in deceptive trade practices in the course of their business and vocation, directly or indirectly affecting the people of Illinois, Defendants violated 815 ILCS § 510/2, including the following provisions: representing that their goods and services had characteristics, uses, and benefits that they did not have, in violation of 815 ILCS § 510/2(5); representing that goods and services are of a particular standard or quality when they are of another, in violation of 815 ILCS § 510/2(7); and engaging in other conduct which similarly creates a likelihood of confusion or misunderstanding, in violation of 815 ILCS § 510/2(12).

166. Defendants’ representations and omissions were material because they were likely to deceive reasonable consumers.

167. Defendants recklessly disregarded the rights of Plaintiff and the Illinois Subclass Members.

168. As a direct and proximate result of Defendants’ deceptive trade practices, Plaintiff and the Illinois Subclass Members suffered injuries to their legally protected interests, including because: (a) they would not have purchased or paid for Defendants’ Passes absent Defendants’ representations and omission of a warning that they would retain Plaintiff’s and Class Members’ Pass Holder fees while all Defendants’ North America Ski Resorts are closed; (b) they would not have purchased Passes on the same terms absent Defendants’ representations and omissions; (c) they paid a price premium for Defendants’ Passes based on Defendants’ representations and omissions; and (d) Defendants’ Passes did not have the characteristics, benefits, or quantities as promised.

169. Plaintiff and the Illinois Subclass Members seek all monetary and non-monetary relief allowed by law, including injunctive relief and attorneys’ fees and costs.

**COUNT XIV**  
**Washington Subclass**  
**Violation of Washington Consumer Protection Act,**  
**Wash. Rev. Code Ann. § 19.86.020 et seq.**

170. The Washington Plaintiff(s) identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the Washington Subclass, repeat and reallege the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

171. Plaintiffs bring this claim individually and on behalf of the members of the proposed Washington Subclass arising from their purchases in Washington of Passes from Defendants.

172. Plaintiff and Defendants are each a “person,” as defined by Wash. Rev. Code Ann. § 19.86.010(1).

173. Defendants advertised, offered, or sold goods or services in Washington and engaged in trade or commerce directly or indirectly affecting the people of Washington, as defined by Wash. Rev. Code Ann. § 19.86.010(2).

174. Defendants engaged in unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of Wash. Rev. Code Ann. § 19.86.020, as described herein.

175. Defendants engaged in unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of Wash. Rev. Code Ann. § 19.86.020, including, but not limited to, by closing all of their North America Ski Resorts after approximately two-thirds of the duration of the represented 2019-20 Ski Season while retaining 100% of the price paid to Defendants for the Passes despite advertising that their Pass Holders would have “unlimited skiing and riding” at their North America Ski Resorts for the entire ski season into June 2020 and that Multiday Pass Holders would be able to use their Multiday Pass at any time during the 2019-20 Ski Season.

176. Defendants’ representations and omissions were material because they were likely to deceive reasonable consumers.

177. Defendants intended to induce Plaintiff and the Washington Subclass Members to rely on their misrepresentations and omissions.

178. As a direct and proximate result of Defendants’ deceptive trade practices, Plaintiff and the Washington Subclass Members suffered injuries to their legally protected interests, including because: (a) they would not have purchased or paid for Defendants’ Passes absent Defendants’ representations and omission of a warning that they would retain Plaintiff’s and Class Members’ Pass Holder fees while all Defendants’ North America Ski Resorts are

closed; (b) they would not have purchased Passes on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' Passes based on Defendants' representations and omissions; and (d) Defendants' Passes did not have the characteristics, benefits, or quantities as promised.

179. Defendants' conduct is injurious to the public interest because it injured persons and had and has the capacity to injure persons. Furthermore, its conduct affected the public interest, including the many Washingtonians affected by Defendants' deceptive business practices.

180. Plaintiff and the Washington Subclass Members seek all monetary and non-monetary relief allowed by law, including actual damages, treble damages, injunctive relief, civil penalties, and attorneys' fees and costs.

**COUNT XV**  
**Wisconsin Subclass**  
**Violation of the Wisconsin Deceptive Trade Practices Act,**  
**Wis. Stat. §§ 100.18, *et seq.***

181. The Wisconsin Plaintiff(s) identified above ("Plaintiff," for purposes of this Count), individually and on behalf of the Wisconsin Subclass, repeat and re-allege the allegations contained in paragraphs 1 through 58 above of this complaint, as if fully alleged herein.

182. Plaintiffs bring this claim individually and on behalf of the members of the proposed Wisconsin Subclass arising from their purchases in Wisconsin of Passes from Defendants.

183. Plaintiff and Wisconsin Subclass Members are members of "the public," as that term is used in Wis. Stat. § 100.18(1).

184. Defendants are each a “person, firm, corporation or association,” as those terms are used in Wis. Stat. § 100.18(1).

185. With intent to sell, distribute, or increase consumption of merchandise, services, or anything else offered by Defendants to members of the public for sale, use, or distribution, Defendants made, published, circulated, placed before the public or caused (directly or indirectly) to be made, published, circulated, or placed before the public in Wisconsin advertisements, announcements, statements, and representations to the public which contained assertions, representations, or statements of fact which are untrue, deceptive, and/or misleading, in violation of Wis. Stat. § 100.18(1).

186. Defendants’ untrue, deceptive, and/or misleading communications included, but are not limited to, advertising that their Pass Holders would have “unlimited skiing and riding” at their North America ski resorts for the entire ski season into June 2020 and that Multiday Pass Holders would be able to use their Multiday Pass at any time during the 2019-20 Ski Season.

187. Defendants’ representations and omissions were material because they were likely to deceive reasonable consumers.

188. Defendants intended to induce Plaintiff and the Wisconsin Subclass Members to rely on their misrepresentations and omissions and they did rely by purchasing the Passes.

189. As a direct and proximate result of Defendants’ deceptive trade practices, Plaintiff and the Wisconsin Subclass Members suffered injuries to their legally protected interests, including because: (a) they would not have purchased or paid for Defendants’ Passes absent Defendants’ representations and omission of a warning that they would retain Plaintiff’s and Class Members’ Pass Holder fees while all Defendants’ North America Ski Resorts are

closed; (b) they would not have purchased Passes on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' Passes based on Defendants' representations and omissions; and (d) Defendants' Passes did not have the characteristics, benefits, or quantities as promised.

190. Plaintiffs and the Wisconsin Subclass Members seek all monetary and non-monetary relief allowed by law, including injunctive relief and attorneys' fees and costs.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendants, as follows:

- a) For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent the Class Members;
- b) For an order certifying the Subclasses under Rule 23 of the Federal Rules of Civil Procedure and naming the California Plaintiff as representative of the California Subclass, the Massachusetts Plaintiff as representative of the Massachusetts Subclass, the Minnesota Plaintiff as representative of the Minnesota Subclass, the Illinois Plaintiff as representative of the Illinois Subclass, the Washington Plaintiff as representative of the Washington Subclass, the Wisconsin Plaintiff as representative of the Wisconsin Subclass, and Plaintiffs' attorneys as Class Counsel to represent the Subclasses' Members.
- c) For an order declaring that Defendants' conduct violates the statutes and laws referenced herein;



- d) For an order finding in favor of Plaintiffs, the Class, and the Subclasses, on all counts asserted herein;
- e) For compensatory damages in an amount to be determined by the Court and/or jury;
- f) For an order declaring that Defendants' claim that the acceptance of the Credit by Pass Holders for future Pass purchases does not waive, release, or forfeit any rights of Plaintiffs or Class Members.
- g) For prejudgment and post-judgment interest on all amounts awarded;
- h) For an order of restitution and all other forms of equitable monetary relief;
- i) For injunctive relief as pleaded or as the Court may deem proper; and
- j) For an order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit.

#### **JURY DEMAND**

Plaintiffs demand a trial by jury on all causes of action and issues so triable.

**HELLMUTH & JOHNSON PLLC**

Dated: June 24, 2020

By: /s/ Richard M. Hagstrom

Richard M. Hagstrom, (MN #39445)  
Michael R. Cashman, (MN #206945)  
Gregory S. Otsuka (MN #206945)  
*(Not admitted in District of Colorado)*  
Daniel K. Asiedu (MN #399151)  
*(Not admitted in District of Colorado)*  
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# Exhibit A

From: **Epic Pass** <[seasonpass@e.epicpass.com](mailto:seasonpass@e.epicpass.com)>

Date: Wed, May 13, 2020 at 1:39 PM

Subject: Jim, your personalized credit is here.

To: [REDACTED]

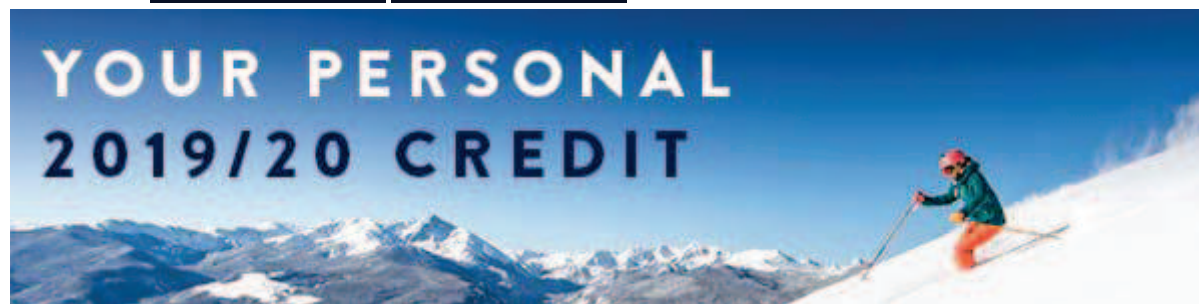


[FAQs](#)

[Epic Coverage](#)

[Passes](#)

[Epic Mountain Rewards](#)



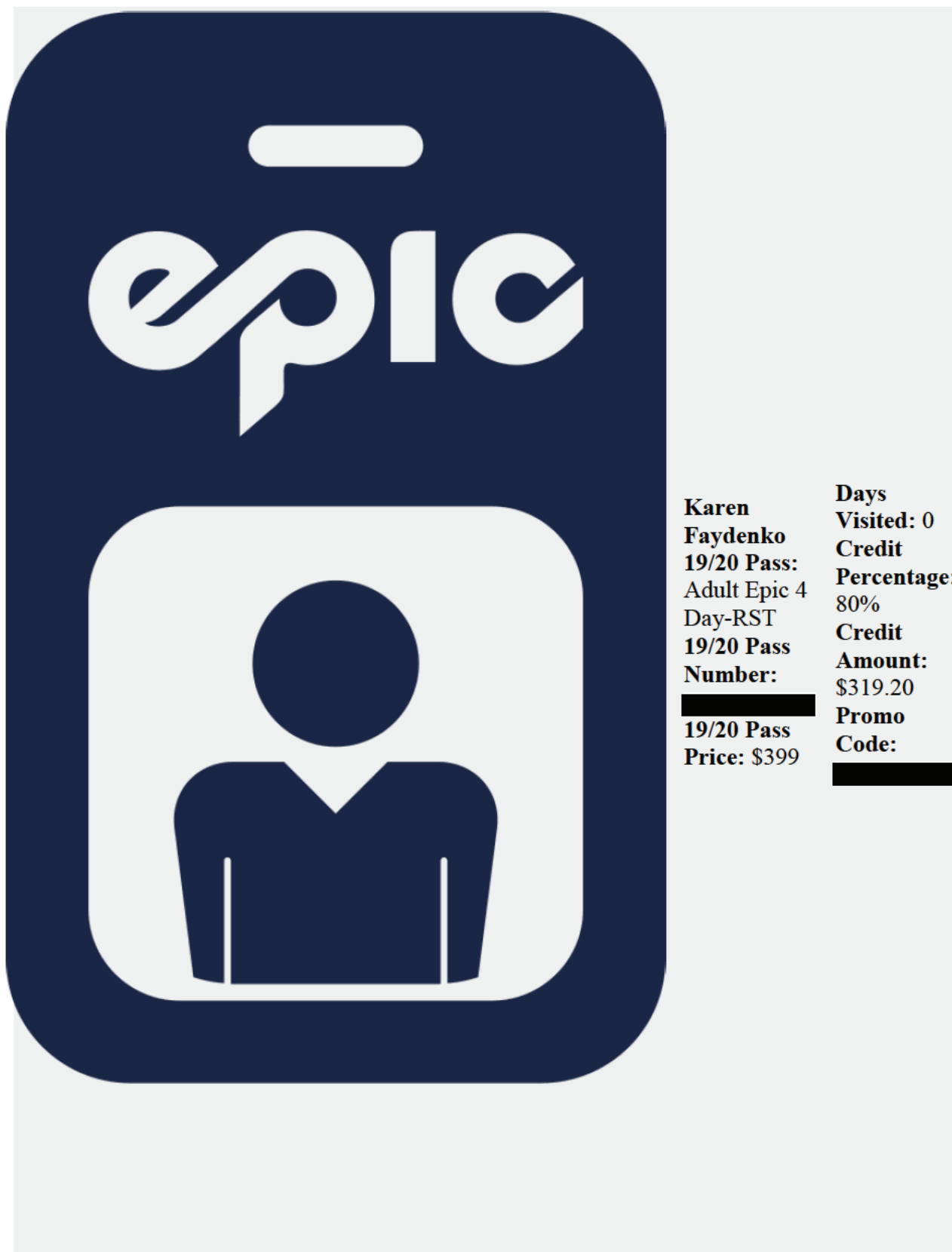
Dear Jim,

Please find the details of your 2019/20 pass holder credit below. Your personalized credit promotional code(s) can be applied toward the purchase of a 2020/21 pass of equal or greater value. And to ensure you have the time you need to make your plans for next season, your credits will be valid through Labor Day, September 7, 2020.



**Jim Faydenko**  
**19/20 Pass:**  
Adult Epic  
Local Pass  
**19/20 Pass**  
**Number:**  
[REDACTED]  
**19/20 Pass**  
**Price:** \$699

**Days**  
**Visited:** 13  
**Credit**  
**Percentage:**  
20%  
**Credit**  
**Amount:**  
\$139.80  
**Promo**  
**Code:**  
[REDACTED]

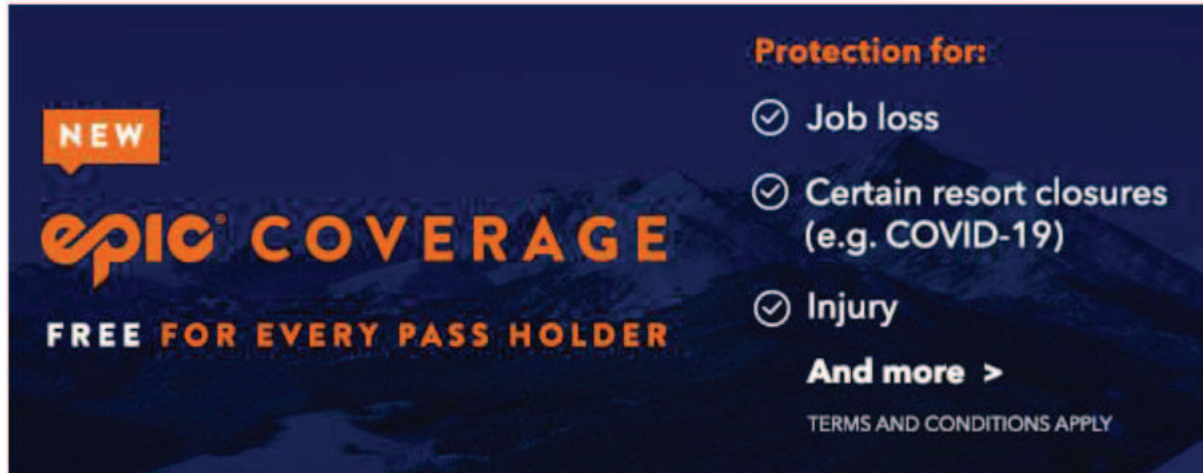


Your account Username is: [REDACTED]

Your credit can be applied to your 2020/21 pass purchase online at [Epicpass.com](https://epicpass.com). Add an eligible pass product to your cart, sign in to your account, and assign it to the person qualified for the credit shown above in this email. Then simply enter the corresponding promo code shown above, on the "Review Order" page at the end of the check-out process, to apply your credit before completing your purchase. You can also redeem your credit by calling one of our pass experts.

For any unanswered questions about your credits, please visit our [Credit FAQs](#).

Thank you again for your continued loyalty. We hope to see you on the mountain next season.

A promotional banner for Epic Coverage. On the left, it says "NEW" in a red box, followed by "epic COVERAGE" in large red letters, and "FREE FOR EVERY PASS HOLDER" in smaller red letters below. On the right, under the heading "Protection for:", there is a list of three items, each preceded by a red checkmark: "Job loss", "Certain resort closures (e.g. COVID-19)", and "Injury". Below this list is the text "And more >" and "TERMS AND CONDITIONS APPLY" in small white letters. The background of the banner is a dark, snowy mountain landscape.

**NEW**

**epic COVERAGE**

**FREE FOR EVERY PASS HOLDER**

**Protection for:**

- ✓ Job loss
- ✓ Certain resort closures (e.g. COVID-19)
- ✓ Injury

**And more >**

TERMS AND CONDITIONS APPLY

Sent to: [REDACTED]

[Update Your Profile](#) | [Privacy Policy](#) | [View Online](#)



Vail Resorts Management Company  
390 Interlocken Crescent, Suite 1000  
Broomfield, CO, 80021

# Exhibit B





\*\*\*\*\*AUTO\*\*SCH 5-DIGIT 80433  
A 298003 32/774/0

Jim Faydenko



Dear Jim,

In my email on April 27, we announced a comprehensive plan to address your concerns around this past season and your uncertainty of the future. This plan includes credits to honor our pass holder loyalty, new Epic Coverage to provide peace of mind for next season, and the extension of our spring deadlines. In this letter, we are providing the details of your credit that you can apply toward a purchase of a 2020/21 pass of equal or greater value. Your credit is based on the type of pass you purchased and how much you were able to ski or ride last season.

These promotional codes can be redeemed at **EpicPass.com/PassDM** and will be valid through Labor Day (Sept. 7, 2020) because we understand that you may need time to decide on your plans for next season.

### Jim Faydenko



19/20  
PASS:  
Adult Epic Local  
Pass

DAYS  
VISITED:  
13

CREDIT  
PERCENTAGE  
20%

CREDIT  
AMOUNT\*:  
\$139.80

PROMO  
CODE:  
[REDACTED]



### Karen Faydenko

19/20  
PASS:  
Adult Epic 4  
Day-RST

DAYS  
VISITED:  
0

CREDIT  
PERCENTAGE  
80%

CREDIT  
AMOUNT\*:  
\$319.20

PROMO  
CODE:  
[REDACTED]

PASS NUMBER: [REDACTED]

\*Credit Expiration: Sept 7, 2020

To redeem your credit, just add an eligible pass product to your cart and assign it to the person qualified for the credit shown above. Then simply enter the corresponding promo code shown above, on the "Review Order" page at the end of the check-out process and accept the Credit Terms and Conditions to apply your credit before completing your purchase. You can also redeem your credit by calling one of our pass experts at **970.754.0030**.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

JUSTIN B. GASMAN, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

THE VAIL CORPORATION d/b/a VAIL  
RESORTS MANAGEMENT COMPANY

Defendant.

Case No. 1:20-cv-1475

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiff Justin B. Gasman brings this action on behalf of himself and all others similarly situated against The Vail Corporation d/b/a Vail Resorts Management Company (“Vail” or “Defendant”) for claims arising out of the sale of and refusal to refund costs for ski passes despite the closure of its properties. Plaintiff makes the following allegations pursuant to the investigation of his counsel and based on information and belief, except for those allegations which pertain directly to himself, which he makes based on personal knowledge.

**PARTIES**

1. Plaintiff Justin B. Gasman is a citizen of Colorado and resides in Denver, Colorado. Mr. Gasman is an annual passholder for Vail Resorts. In 2019, Mr. Gasman purchased an Adult Epic Local Pass for himself, costing \$699.00. His Epic Pass Number was 20130839694. He also purchased a Child Epic Local Pass for his seven-year-old son, costing \$369.00. His son’s Child Epic Local Pass number was 24838074961. The Epic Passes promised unlimited and unrestricted skiing or snowboarding at various resorts, plus a combined total of ten days at Vail Resort or

Beaver Creek. On or about March 25, 2020, Vail Resorts notified its passholders that it closed all 34 of its North American resorts. Vail has not refunded any portion of Mr. Gasman's Adult Epic Local Pass or the Child Epic Local Pass that he purchased for his son. Mr. Gasman was only able to use his Epic Local Pass on 17 days before Vail closed its resorts. His son only used his Epic Local Pass on 2 days before Vail closed its resorts. Mr. Gasman and his son intended to use their pass for approximately 18 to 20 more visits, including visits to Vail and Beaver Creek. Mr. Gasman would not have purchased an Epic Local Pass for himself or his son if he had known he would not have had access to any of Vail's resorts after mid-March, 2020, and that he would not receive any refund of the total he spent on his Epic Passes. Plaintiff continues to face imminent harm as Defendant retains his Epic Pass fees while all of its mountain resorts remain closed nationwide.

2. Defendant The Vail Corporation is a Colorado Corporation, with its principal place of business at 390 Interlocken Crescent, Broomfield, CO 80021. Defendant is the operator of 34 ski resorts in North America, and holds itself out as a "the premiere mountain resort company in the world".<sup>1</sup>

### **JURISDICTION AND VENUE**

3. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) because (1) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, (2) the action is a class action, and (3) at least one member of the Class of plaintiffs is a citizen of a state different from Defendant.

4. This Court has personal jurisdiction over Defendant because Defendant was formed in State of Colorado, has its principal place of business in the State of Colorado, and has it

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<sup>1</sup> <http://www.vailresorts.com/Corp/info/who-we-are.aspx>, (last accessed on May 19, 2020).

personally availed itself of jurisdiction in this district by causing its products to be sold and used by Plaintiff in this district, giving rise to Plaintiff's claims.

5. Venue is proper in the District of Colorado under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

### **FACTUAL ALLEGATIONS**

6. Defendant is the operator of approximately 34 mountain resorts throughout the United States.

7. Defendant markets and sells various premium priced passes to customers across (and outside of ) the United States. The passes allow customers to visit Defendant's mountain resorts.

8. Available passes, known as "Epic Passes" include: annual passes ranging from \$319 to \$979; weekly passes ranging from \$391 to \$766; and day/multiday passes for anywhere from one to seven days ranging from \$67 to \$766.

9. Defendant sells Epic Passes promising "unlimited, unrestricted access" at various resorts. Some Epic Passes describe specifically delineated restrictions (such as black-out days) or day limits.<sup>2</sup>

10. On or about March 15, 2020, Defendant announced it would be closing its resorts and stores through March 22, 2020 to determine the best way to deal with the effects of COVID-19.<sup>3</sup>

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<sup>2</sup> <https://www.vail.com/plan-your-trip/lift-access/passes/epic-pass.aspx%20> (last accessed May 21, 2020).

<sup>3</sup> <https://www.snow.com/info/covid-19-update> (last accessed May 21, 2020).

11. Subsequently, Defendant announced that its North American resorts and retail stores would remain closed for the 2019-2020 winter ski season.

12. Customers were not informed of these potential closures when they purchased the Epic Passes.

13. Defendant does not offer refunds for individuals who had purchased Epic Passes.

14. Instead, Defendant offers only discounts to Epic Pass holders for the 2020-2021 ski season, should they choose to purchase passes for the 2020-2021 ski season.

### **CLASS ALLEGATIONS**

15. Plaintiff brings this action against Defendant pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all others similarly situated.

16. Plaintiff seeks certification of a nationwide Class, (“Class”), defined as follows:

**All Vail Resort Management Company customers who purchased annual passes for the 2019-2020 season.**

17. Excluded from the class are the Defendant, Defendant’s officers and directors during relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns and any entity in which Defendant has had a controlling interest.

18. When Vail closed its resorts and refused to provide any refund to its customers who had purchased annual passes, it subjected Plaintiff and putative Class Members to the same unfair, unlawful, and deceptive practices and harmed them in the same manner. As a result of Plaintiff’s purchases, Defendant was also unjustly enriched in the same manner.

### **Numerosity**

19. The Classes are so numerous that joinder of all members would be impracticable. Defendant has sold hundreds of thousands of annual passes like those sold to Plaintiff to customers

across the United States. Each and every one of those pass holders are and have been unable to use their passes since March 2020. Although the precise number of Class members is not presently known, it is estimated to be comprised of many hundreds of thousands of customers. The Class is certainly so numerous that joinder of all members of the Classes is impracticable.

### **Commonality**

20. There are questions of law and fact that are common to Plaintiff and all Class Members' claims. These common questions predominate over any questions that go particularly to any individual member of the Class. Common questions of fact and law exist because, *inter alia*, Plaintiff and all Class Members purchased annual passes, and were unable to use their passes due to the closure of the mountain resorts. Plaintiff and all Class Members paid a premium price for near unlimited access to Defendant's mountain resorts, and they did not receive the promised access.

21. The common questions include, without limitation:

- a. Whether Defendant falsely, deceptively and/or misleadingly marketed the access provided by purchasing the season passes;
- b. Whether Defendant breached its express warranty that Plaintiff and the other putative Class Members would have near unlimited access to certain resorts and slopes, and limited access to others
- c. Whether Defendant has breached its contract to Plaintiff and Class Members in failing to provide the promised access;
- d. Whether Defendant's actions in failing to provide access and/or a refund for the annual passes was unlawful;
- e. Whether Defendant knew or should have known that its representations, marketing statements, and advertisements regarding the virtually unlimited availability of Defendant's mountain resorts were unsubstantiated, false, and misleading;
- f. Whether and to what extent Defendant has been unjustly enriched by its conduct;

- g. Whether Plaintiff and Class Members did not receive the benefit of their bargain;
- h. Whether Plaintiff and Class Members were damaged by Defendant's misconduct;
- i. Whether Plaintiff and Class Members are entitled to damages;

### **Typicality**

22. Plaintiff's claims are typical of the claims of Class Members because both Plaintiff and Class Members were exposed to Defendant's false and misleading advertising, purchased annual passes for the 2019-2020 season, and were subject to Defendant's failure to provide access to the promised resorts and slopes and Defendant's failure to provide refunds. Thus, Plaintiff and all Class Members sustained the same injury arising out of Defendant's common course of conduct, which violates the respective laws complained of herein. The injury of each Class Member was caused directly by Defendant's uniform wrongful conduct in violation of law as alleged herein. Each Class member has sustained, and will continue to sustain, damages in the same manner as Plaintiff as a result of Defendant's wrongful conduct.

### **Adequacy of Representation**

23. Plaintiff will fairly and adequately protect the interest of the members of the Class. Plaintiff has retained competent and experienced class action attorneys to represent his interests and those of the Class. Plaintiff's counsel has the necessary financial resources to adequately and vigorously litigate this class action. Plaintiff has no adverse or antagonistic interests to those of the Class. Plaintiff is willing and prepared to serve the Court and the Class Members in a representative capacity, with all of the obligations and duties material thereto, and determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for Class members.



24. To prosecute this case, Plaintiff has chosen the undersigned law firm, which is very experienced in class action litigation and have the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

**Requirements of Fed. R. Civ. P. 23(b)(3)**

25. This action is appropriate as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

26. **Common Questions of Law and Fact Predominate:** The aforementioned questions of law or fact common to Plaintiff and each Class Member's claims predominate over any questions of law or fact affecting only individual members of the Class.

27. **Superiority:** A Class action is superior to individual actions in part because of the non-exhaustive factors listed below:

- a. Joinder of all Class Members would create extreme hardship and inconvenience for the affected customers as they reside all across the United States;
- b. Individual claims by Class Members are impractical because the costs to pursue individual claims exceed the value of what any one Class Member has at stake. As a result, individual Class Members have no interest in prosecuting and controlling separate actions;
- c. The interests of justice will be well served by resolving the common disputes of potential Class Members in one forum;
- d. Individual suits would not be cost effective or economically maintainable as individual actions;
- e. The action is manageable as a Class action; and
- f. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of these class actions that would preclude their maintenance as class actions.



**Requirements of Fed. R. Civ. P. 23(b)(1) & (2)**

28. Prosecuting separate actions by or against individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for the party opposing the Class.

29. Defendant has acted or failed to act in a manner generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

30. Defendant's wrongful conduct and practices, if not enjoined, will subject Class Members and other members of the public to substantial continuing harm and will cause irreparable injuries to Class Members and members of the public who are damaged by Defendant's conduct.

**COUNT I**

**UNJUST ENRICHMENT**

31. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

32. Plaintiff brings this claim on behalf of himself and the proposed Class.

33. Defendant received from Plaintiff and Class members benefits in the form of money and profits from the sale of annual passes which Defendant advertised and marketed as providing near unlimited access to certain mountain resorts for the 2019-2020 ski season.

34. Defendant did not provide, and is not providing the promised access, as all of Defendant's resorts nationwide remain closed.

35. Defendant had knowledge of these benefits and voluntarily accepted and retained the benefits.

36. Plaintiff and Class members paid a premium price for annual passes but did not receive access to mountain resorts commensurate with the price they paid because 100% of the mountain resorts included on the pass nationwide have been closed since mid-March 2020.

37. Defendant has been unjustly enriched by its retention of the revenues from Plaintiff and Class Members' pass fees. Retention of these moneys is unjust because 100% of the Defendant's mountain resorts nationwide remain closed.

38. It would be unjust and inequitable for Defendant to retain benefits obtained from Plaintiff and Class Members.

39. Plaintiff and Class Members are entitled to restitution of the amount by which Defendant was unjustly enriched at their expense.

40. Plaintiff, on behalf of himself and all similarly situated Class members, demand restitution by the Defendant in the amounts by which Defendant has been unjustly enriched at Plaintiff and Class Members' expense, and such other relief as this Court deems just and proper.

## **COUNT II**

### **BREACH OF EXPRESS WARRANTY**

41. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

42. Plaintiff brings this claim on behalf of himself and the proposed Class.

43. Defendant's advertising and marketing statements made to induce consumers to purchase its annual passes, as described above, expressly provided that annual passholders such as

Plaintiff and the other putative Class Members would have near unlimited access to certain resorts and slopes, and limited access to others.

44. Any minor limitation on the annual passes, such as black-out days or day-limits on particular resorts are clearly described prior to purchase.

45. None of the limitations described by Defendant include indefinite or season-long closure of any resort.

46. None of the limitations described by Defendant include indefinite or season-long closure of all of Defendant's resorts.

47. Defendant's affirmation of fact and promise in its marketing and signage is the basis of the bargain between Defendant and individuals who purchased the annual passes, and creates express warranties that the services purchased would conform to Defendant's affirmation of fact, representations, promise, and description.

48. Defendant breached their express warranty because it did not provide the promised access to annual passholders.

49. Plaintiff and Class Members sustained damages as a direct and proximate result of Defendant's breach, including damages for economic injuries from spending money on a premium-priced product that they would not have spent had they known they would not be provide the promised access to slopes and resorts or a refund if the access was unavailable.

50. Plaintiff and Class Members would not have purchased or paid for Defendant's passes absent Defendant's representations and omission of a warning that it would retain passholder fees even if all mountain resorts nationwide were closed.

51. Plaintiff and Class Members would not have purchased passes on the same terms absent Defendant's representations and omissions.

52. Plaintiff and Class Members would not have paid the premium price charged absent Defendant's representations and omissions.

53. Plaintiffs and Class Members did not receive access commensurate with the price they paid because Defendant chose to close its resorts in March of 2020.

54. Defendant's passes did not have the characteristics, benefits, or quantities as promised.

55. Plaintiff and Class Members have sustained, are sustaining, and will continue to sustain damages, as well as related damages alleged herein if Defendant continues to engage in deceptive, unfair, and unreasonable practices.

56. Plaintiffs and Class members are entitled to injunctive relief, attorneys' fees and costs, and any other relief that the Court deems just and equitable.

57. Plaintiff, on behalf of himself and all similarly situated Class members, demand judgment against Defendant for compensatory damages, pre- and post-judgment interest, injunctive and declaratory relief, costs incurred in bringing this action, and any other relief as this Court deems just and proper.

### **COUNT III**

#### **MONEY HAD AND RECEIVED**

58. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

59. Plaintiff brings this claim on behalf of himself and the proposed Class.

60. Defendant received money in the form of fees for annual passes that were intended to be used for the benefit of Plaintiff and putative Class Members.

61. The pass fees were not used for the benefit of Plaintiff and putative Class Members.

62. Defendant has not given back or refunded the wrongfully obtained money and pass fees to Plaintiffs and the Class.

63. Defendant obtained money in the form of pass fees that was intended to be used to provide near unlimited resort access to Plaintiff and Class Members.

64. Defendant closed its mountain resorts nationwide, making it impossible for Plaintiff and Class Members to access the mountain resorts as paid for.

65. Defendant has retained all of the pass fees while 100% of its mountain resorts were, and remain, closed.

66. Plaintiff, on behalf of himself and all similarly situated Class members, demand judgment against Defendant for compensatory damages, pre- and post-judgment interest, injunctive and declaratory relief, and any other relief as this Court deems just and proper.

#### **COUNT IV**

#### **CONVERSION**

67. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

68. Plaintiff brings this claim on behalf of himself and the proposed Class.

69. Plaintiff and Class Members had a right to retain their pass fees while all of Defendant's mountain resorts were and remain closed nationwide.

70. Defendant has intentionally retained the full amount of Plaintiff and Class Members' pass fees while Defendant's mountain resorts remain closed nationwide.

71. Plaintiff and Class Members did not consent to Defendant's retention of such fees and monies while Defendant's mountain resorts remain closed nationwide.

72. Plaintiff and Class Members have been and continue to be harmed by Defendant's retention of their fees and monies;

73. Defendant's actions, in closing its mountain resorts nationwide and failing and refusing to return fees and monies, is a substantial factor in causing Plaintiff and Class Members' harm.

74. Plaintiff, on behalf of himself and all similarly situated Class members, demand judgment against Defendant for compensatory damages, pre- and post-judgment interest, injunctive and declaratory relief, and any other relief as this Court deems just and proper.

## **COUNT V**

### **BREACH OF CONTRACT**

75. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

76. Plaintiff brings this claim on behalf of himself and the proposed Class.

77. Defendant entered into contracts with Plaintiff and Class Members to provide access to its mountain resorts in exchange for payment of pass fees.

78. Defendant has breached those contracts by retaining Class Members' full pass fees while all of its mountain resorts nationwide remain closed. Plaintiff and Class Members have

suffered injury through the payment of fees while not having the promised access to Defendant's mountain resorts.

79. Plaintiff, on behalf of himself and all similarly situated Class members, demand judgment against Defendant for compensatory damages, pre- and post-judgment interest, injunctive and declaratory relief, and any other relief as this Court deems just and proper.

### **COUNT VI**

#### **VIOLATION OF THE COLORADO CONSUMER PROTECTION ACT**

##### **C.R.S. § 6-1-101 *et seq.***

80. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

81. Plaintiff brings this claim on behalf of himself and the proposed Class.

82. Defendant engaged in deceptive trade practices by using false and misleading advertising and marketing statements made to induce consumers to purchase its annual passes, and failing to refund pass holders as described above.

83. This deceptive practice occurred in the course of Defendant's business.

84. In order to sell passes to its mountain resorts, Defendant expressly provided that annual passholders such as Plaintiff and the other putative Class Members would have near unlimited access to certain mountain resorts, and limited access to others.

85. Defendant knowingly failed and refused to provide the access promised, and knowingly failed and refused to provide refunds for passes to purchasers.

86. Defendant's deceptive marketing and failure to provide refunds to pass holders impacted the public as there are a significant number of individuals from across the United States who purchased Defendant's annual passes based on Defendant's representations.

87. Plaintiff and putative Class Members were actual consumers of Defendant's Epic Passes.

88. Defendant's deceptive trade practices caused actual losses or damages to Plaintiff and putative Class Members in that they paid a premium price to Defendant for the promised access to mountain resorts, were not provided the promised access, and Defendant has retained the premium payments paid for the annual passes.

89. Plaintiff, on behalf of himself and all similarly situated Class members, demands judgment against Defendant for up to three times the amount of compensatory damages, pre- and post-judgment interest, injunctive and declaratory relief, reasonable attorneys' fees and costs, and any other relief as this Court deems just and proper.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of himself and all similarly situated individuals, demands judgment against Defendant as follows:

- a. Declaring this action to be a proper Class action maintainable pursuant to Rule 23(a) and Rule 23(b)(1) & (2) and Rule 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiff and counsel to be representatives of the Class;
- b. Enjoining Defendant from continuing the acts and practices described above;
- c. Awarding damages, with any permissible multiplier, sustained by Plaintiff and the Class as a result of the Defendant's conduct, together with pre-judgment interest;



- d. Finding that Defendant has been unjustly enriched and requiring it to refund all unjust benefits to Plaintiff and the Class, together with pre-judgment interest;
- e. Awarding Plaintiff and the Class costs and disbursements and reasonable allowances for the fees of Plaintiff and the Class' counsel and experts, and reimbursement of expenses;
- f. Awarding Plaintiff and the Class unjust enrichment damages, injunctive relief, declaratory relief, attorneys' fees, and costs;
- g. Awarding Plaintiff and the Class damages, injunctive relief, declaratory relief, attorneys' fees, and costs for breach of express warranties;
- h. Awarding such other and further relief the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff and the Class request a jury trial for any and all Counts for which a trial by jury is permitted by law.

Dated: May 22, 2020

Respectfully submitted,

s/ Rick D. Bailey

Rick D. Bailey, #26554

Law Office of Rick D. Bailey, Esq.

1085 Lafayette St., #702

Denver, CO 80218

Telephone: 720-676-6023

Email: [rick@rickbaileylaw.com](mailto:rick@rickbaileylaw.com)

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[gklinger@masonllp.com](mailto:gklinger@masonllp.com)  
[dperry@masonllp.com](mailto:dperry@masonllp.com)

*Attorneys for Plaintiffs*

*\*admission pro hac vice anticipated*

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

JUSTIN B. GASMAN, on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Denver  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Rick D. Bailey, Esq.  
The Law Office of Rick D. Bailey, Esq.  
1085 Lafayette St., #702, Denver, CO 80218; 720-676-6023

**DEFENDANTS**

THE VAIL CORPORATION d/b/a VAIL RESORTS MANAGEMENT COMPANY

County of Residence of First Listed Defendant Broomfield  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act		
		<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1332(d)(2)

Brief description of cause:  
Breach of contract and failure to provide refund

☐ AP Docket

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$  
7,500,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/22/2020

SIGNATURE OF ATTORNEY OF RECORD

s/ Rick D. Bailey

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.:

BERNARD HAN, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

VAIL RESORTS, INC.,

Defendant.

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**CLASS ACTION COMPLAINT**

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Plaintiff BERNARD HAN (“Plaintiff”) by and through his counsel, brings this action against VAIL RESORTS, INC. (“Vail Resorts” or “Defendant”) on behalf of himself and those similarly situated, and makes the following allegations based on information, attorney investigation, and belief, except as to allegations pertaining to Plaintiff personally, which are founded on his respective knowledge.

**INTRODUCTION**

1. Plaintiff brings this case against Defendant to demand remediation of Vail Resorts’ refusal to provide refunds to its consumers who had previously purchased Epic Pass products following the closure of its mountains, ski lifts, ski slopes and recreational facilities due to the Novel Coronavirus Disease of 2019 (“COVID-19”). As a result of this refusal, Plaintiff and similarly situated consumers lost the full benefits associated with their Epic Passes for the remainder of the ski season. Plaintiff and similarly situated consumers seek refunds of the amounts they paid on a pro-rata basis as well as other

damages that resulted from being unable to use these expensive ski passes they paid for throughout the duration of the ski season, including the coveted spring skiing season for avid skiers.

### **BACKGROUND**

2. On or around March 15, 2020, Defendant announced that it would be closing its mountains, ski slopes and recreational facilities to consumers until further notice because of the COVID-19 pandemic.<sup>1</sup>

3. At around the same time, the Centers for Disease Control, and multiple state and local governments, including the Governor of Colorado issued a form of “Stay at Home, Stay Safe” order requiring consumers to remain in their homes except for essential activities such as grocery shopping.

4. Prior to the resorts closure, Colorado had “some of the earliest spread of the Covid virus due to [its] ski tourism industry.”<sup>2</sup>

5. Vail Resorts’ closure of their mountains, ski slopes, ski lifts and recreational facilities was the right thing to do in light of social distancing recommendations by the Centers for Disease Control, state, local and federal governments, but it is unfair and unlawful for Defendant to retain the full amounts their consumers paid for Epic Passes given the shortened ski season, and in particular the lack of a spring ski season.

6. Although Defendant is purportedly providing refunds to some of its consumers for some of its products and services including lift tickets, ski & ride school,

<sup>1</sup> <http://investors.vailresorts.com/news-releases/news-release-details/vail-resorts-provides-updated-commentary-covid-19-impact>

<sup>2</sup> <https://www.dailykos.com/stories/2020/3/25/1931275/-Colorado-Governor-issues-state-wide-Stay-at-home-order>

lodging and vacation packages, winter activities childcare bookings, and equipment rentals, Defendant refuses to provide refunds to consumers who purchased Epic Passes.<sup>3</sup>

7. Accordingly, Defendant has improperly retained monies paid by Plaintiff and the other members of the Class (*See* Class Definitions at ¶ 36) for Epic Passes. Even if Defendant did not have a choice in closing its ski slopes, ski lifts, mountains and recreational facilities to its consumers, it nevertheless improperly retained an unfair share of the costs of its consumers' Epic Passes.

8. Plaintiff brings this class action for injunctive, declaratory, and equitable relief, and any other available remedies, resulting from Defendant's illegal and unfair conduct, namely retaining the full amounts its consumers paid for Epic Passes while closing its mountains, ski lifts, skip slopes and recreational facilities to these consumers.

9. This lawsuit also seeks disgorgement of the value of the Epic Passes that were unused at the time Defendant closed its mountains, ski lifts, ski slopes and recreational facilities due to the COVID-19 pandemic.

### **PARTIES**

10. Plaintiff BERNARD HAN is a resident of New York who purchased five Epic Passes – two adult passes and three children's passes – on September 2, 2019 for the 2019/2020 ski season paying \$3,348.95 for all five Passes, and did not receive a partial refund when Defendant announced the closure of its mountains, ski lifts, ski slopes and recreational facilities in March of 2020. Plaintiff fully intended on using his Epic Passes throughout the duration of the ski season, which can extend until July (*See* ¶ 22, below).

<sup>3</sup> <https://www.snow.com/info/refund-request-form>

Attached as Exhibit A is a copy of the back of Plaintiff's Epic Pass with its terms and conditions.

11. Defendant VAIL RESORTS, INC., through its subsidiaries, is the leading global mountain resort operator. It is organized as a holding company and operates through various subsidiaries and three business segments: Mountain, Lodging and Real Estate. In the Mountain segment of its business, Defendant operates multiple mountain resorts and urban ski areas including: Vail, Beaver Creek, Breckenridge and Keystone in Colorado; Park City in Utah; Heavenly, Northstar and Kirkwood in the Lake Tahoe area of California and Nevada; Whistler Blackcomb in British Columbia, Canada; Perisher in Australia; Mount Snow and Stowe in Vermont; Stevens Pass in Washington; Wilmot Mountain in Wisconsin; Afton Alps in Minnesota; Mt. Brighton in Michigan; Hunter Mountain in New York; Wildcat Mountain and Crotched Mountain in New Hampshire; Liberty Mountain Resort, Roundtop Mountain Resort, Whitetail Resort, Jack Frost and Big Boulder in Pennsylvania; Alpine Valley, Boston Mills, Brandywine and Mad River Mountain in Ohio; Hidden Valley and Snow Creek in Missouri; and Paoli Peaks in Indiana. Vail Resorts is a publicly traded company traded on the New York Stock Exchange (NYSE: MTN).

#### **JURISDICTION AND VENUE**

12. This Court has original jurisdiction under the Class Action Fairness Act, 28 U.S.C. 1332(d)(2)(A), because the aggregated damages of the class members exceeds \$5,000,000, exclusive of interests and costs, over 100 members of the class are thought to exist, and this is a class action in which the Plaintiff is from a different State from the Defendant. Namely, Plaintiff is a New York resident while Defendant is considered to be a citizen of the State of Colorado.

13. This court has personal jurisdiction because, among other reasons, Defendant is at home in the State of Colorado and resides in this District.

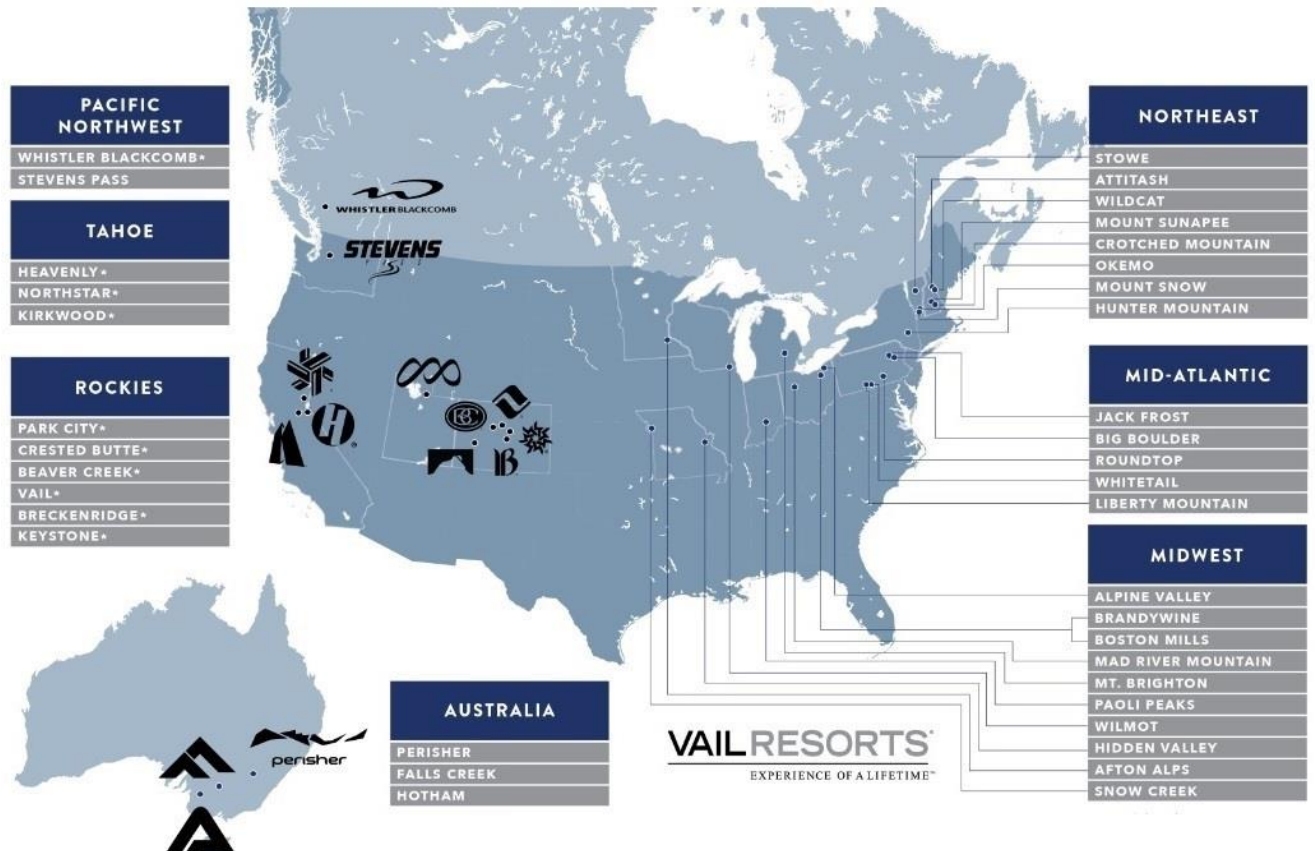
14. Venue is proper in this District pursuant to 28 U.S.C. 1391(b)(1) because the Defendant resides in this District and is a resident of the State in which this District is located.

15. Alternatively, venue is proper in this District because the Plaintiff was harmed in this District and the events giving rise to the Plaintiff's claims occurred in this District.

#### **FACTUAL ALLEGATIONS**

16. Vail Resort's Epic Pass launched in 2008 to grant skiers and riders access to all of Vail Resorts' properties, which are represented in the map below:





17. Defendant sells Epic Passes through its Epic website.<sup>4</sup> Defendant offers a variety of Epic Pass options including, without limitation, the Epic Pass that retails for \$979, Epic Local Pass that retails for \$729, and Epic Day Pass starting at \$109.

18. The \$979 Epic Pass offers unlimited skiing at most of Defendant's resorts.<sup>5</sup> The \$729 Epic Local Pass offers unlimited skiing at some of Defendant's resorts with limited access to certain resorts.<sup>6</sup> The Epic Day Pass starting at \$109 offers 1-7 days of skiing at one or more of Defendant's resorts.<sup>7</sup>

<sup>4</sup> <https://www.epicpass.com/>

<sup>5</sup> <https://www.epicpass.com/passes/epic-pass.aspx>

<sup>6</sup> <https://www.epicpass.com/passes/epic-local-pass.aspx>

<sup>7</sup> <https://www.epicpass.com/passes/epic-day-pass.aspx>



19. Defendant also offers a variety of Epic Passes that can only be used at specific mountain resorts including: the Summit Value Pass, Keystone Plus Pass, Tahoe Local Pass, Tahoe Value Pass, Kirkwood Pass, Northeast Value Pass, Northeast Midweek Pass, Park City Youth Pass, Afton Alps Pass, Mt. Brighton Pass, Wilmot Pass, Epic Military Pass Active, Epic Military Pass Veteran, Ohio Pass, Paoli Peaks Pass, Snow Creek Pass, and Hidden Valley Pass.

20. In Defendant's Fiscal 2020 First Quarter and Season Pass results dated December 9, 2019, it was highlighted that Season pass sales through December 2, 2019 for the upcoming 2019/2020 North American ski season increased approximately 17% in sales dollars (22% in units) as compared to the period in the prior year through December 3, 2018, including Military Pass sales and Peak Resorts pass sales in both periods.

21. Plaintiff and members of the Class are consumers who paid the cost of one or more Epic Passes for the 2019/2020 ski season.

22. Prior to the COVID-19 pandemic, mountains, ski lifts, ski slopes and recreational facilities were scheduled to be opened for the entire ski season, the dates of which varied depending on the mountain and its location:<sup>8</sup>

The length of the typical ski season varies by the local climate, the individual mountain and, of course, the seasonal weather conditions. But the average length of a ski season is five to six months for many U.S. ski resorts. Some mountains are able to stay open longer due to higher elevations and colder temperatures, not mention the great modern ski season-extender, snowmaking equipment . . . Near the West Coast, Mammoth Mountain Ski Area opens in November and has an unusually long season, sometimes not closing until the 4<sup>th</sup> of July.

23. Beginning in January of 2020, COVID-19 began presenting American cities and businesses with an unprecedented, modern-day challenge: maintaining the fabric of our economy and communities while protecting American lives.

24. To that end, in March 2020, several U.S. cities, states, and municipalities began calling for social distancing to slow the spread of COVID-19. Eventually, some cities, states and municipalities ordered citizens and residents to “shelter-at-home,” effectively requiring them to stay home, other than to receive essential services.

25. As a result of the COVID-19 pandemic, on March 15, 2020, Defendant closed all of its mountains, ski slopes, ski lifts, and recreational facilities. Such closure was announced in a letter from Chief Executive Officer, Robert Katz, which stated in relevant part:<sup>9</sup>

Given the escalating concerns surrounding the global spread of COVID-19 and the potential impact that continuing to operate our resorts would have on our

<sup>8</sup> <https://www.liveabout.com/how-long-is-typical-ski-season-3009674>

<sup>9</sup> <http://investors.vailresorts.com/news-releases/news-release-details/vail-resorts-provides-updated-commentary-covid-19-impact>

community medical system, we made the difficult decision to suspend the operations at all of our North American mountain resorts and retail stores beginning Sunday March 15, 2020. We determined yesterday that these resorts will remain closed for the remainder of the 2019/2020 ski season, and our lodging and transportation business will close as well.

26. On April 1, 2020 the Chief Executive Officer, Robert Katz, stated that it is unlikely that a limited number of Defendant's ski resorts would be opened for late season skiing:<sup>10</sup>

The circumstances surrounding COVID-19 are unprecedented and the financial impact to our Company and the broader travel industry has been significant. Following the difficult decision to close our North American mountain resorts, retail stores and lodging properties for the remainder of the 2019/2020 North American ski season, we have quickly transitioned to evaluating the longer-term impacts for our Company and resort operations. While we continue to assess our ability to reopen select resorts for late-season skiing we are keenly aware that the current travel restrictions may stay in place beyond that timeframe and could impact the timing of our ability to open our North American resorts for their summer season and our Australian resorts for their winter season.

27. It is commonplace for avid skiers to ski late in the season. In fact, spring skiing is one of the most popular seasons for avid skiers to hit the slopes.<sup>11</sup> The failure to re-open mountains by the Spring season substantially devalues these consumers' Epic Passes.

28. Although Defendant has closed all of its mountains, ski slopes, ski lifts and recreational facilities, Defendant is refunding only certain fees relating to a limited number of Defendant's offerings (discussed below in Paragraph ¶ 29), and outright refuses to provide a pro-rata refund to consumers who purchased Epic Passes.<sup>12</sup>

<sup>10</sup> <http://news.vailresorts.com/corporate/vailresorts/letter-from-vail-resorts-ceo-to-us-employees-on-covid-19-business-impacts.htm>

<sup>11</sup> <https://www.powder.com/stories/skiing-as-craft/spring-skiing-best-skiing/>

<sup>12</sup> <https://www.snow.com/info/refund-request-form>

29. Defendant's Guest Refund Request Form, a form completely inapt to Plaintiff and the Class members' allegations, explicitly states as much when it says:<sup>13</sup>

**GUEST REFUND REQUEST FORM**

**DOES NOT APPLY TO SEASON PASS AND EPIC DAY PASS PRODUCTS**

In response to the unprecedented circumstances surrounding coronavirus (COVID-19), Vail Resorts has announced today that all of its North American will be closed for the 2019-20 ski season . . . Given the unprecedented circumstances, there is not a requirement to get a refund or make changes in-resort. Please complete this form to submit for a refund or credit, subject to the applicable terms and conditions for the following products:

- Lift Tickets
- Ski & Ride School
- Lodging and Vacation Packages
- Winter Activities
- Childcare Bookings
- Equipment Rentals (booked on RentSkis.com or SkiRentals.com)

30. Chief Executive Officer, Robert Katz, also reiterated that Epic Season and Day Passes are nonrefundable:<sup>14</sup>

'Many things like ski school, lift tickets, equipment rentals and transportation can be fully refunded' . . . Katz said that **season pass products and Epic Day Passes are nonrefundable and not transferable to another season.**

(emphasis added).

31. Chief Executive Officer Robert Katz acknowledged the frustration of Epic Season Pass consumers when he said:<sup>15</sup>

We have also communicated with our season pass holders and indicated that we have heard their frustration about the early closure of the 2019/2020 ski season and are committed to identifying an approach for them to acknowledges this past season and retains their loyalty for the future.

<sup>13</sup> *Id.*

<sup>14</sup> <https://www.summitdaily.com/news/vail-resorts-suspending-operations-sunday-through-march-22/>

<sup>15</sup> <http://investors.vailresorts.com/node/19896/pdf>

32. Defendant has retained the value of payments made by Plaintiff and other members of the Class for Epic Passes while failing to provide the services to the consumers for which those fees were paid.

33. Various members of the Class have demanded the return of a pro-rata portion of their Epic Passes through a number of channels:

- One individual wrote a letter to the Vail Daily saying that Pass holders should get refunds if Vail is furloughing all of its employees.<sup>16</sup>
- “Vail will NOT refund. I know a bunch of people who bought them and were using them this month finally on trips. Its Vail so it doesn’t surprise me.”<sup>17</sup>
- “Haven’t heard anything yet. Longtime epic local pass (well, equivalent depending on name change over the years) holder...considering a chargeback to dispute directly to my credit card since they have not delivered on their services, very disappointed by Vail’s cold response to loyal customers. Myself included, I know many who wait until spring for the majority of their ski days.”<sup>18</sup>

34. However, Defendant has repeatedly made clear its policy, namely, that it will not provide refunds to customers with Epic Passes.

35. Through this lawsuit, Plaintiff seeks – for himself and the other members of the Class – a partial refund of fees paid for Epic Passes representing the unused portions of those Epic Passes.

### **CLASS ACTION ALLEGATIONS**

36. Plaintiff brings this action individually and, pursuant to Fed. R. Civ. P. 23(a), (b)(2), and/or (c)(4) for equitable relief and disgorgement on behalf of the following Class:

<sup>16</sup> <https://www.vaildaily.com/opinion/letter-what-about-a-refund/>

<sup>17</sup> <https://www.flyertalk.com/forum/coronavirus-travel/2013330-partial-refunds-early-closures-ikon-epic-passes.html>

<sup>18</sup> Id.

**Epic Pass Class:** All people who paid the cost for an Epic Pass for the 2019-2020 ski season who were not able to use, or did not otherwise get the full value from those Epic Passes, following closure of Defendant's mountains, ski slopes and recreational facilities on March 15, 2020 related to the COVID-19 pandemic.

37. Excluded from the Class are Vail Resorts, Inc., and any of their respective members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns, the judicial officers, and their immediate family members; and Court staff assigned to this case. Plaintiff reserves the right to modify or amend the Class definition, as appropriate during the course of this litigation.

38. This action has been brought and may properly be maintained on behalf of the Class proposed herein under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

39. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous and geographically disbursed that individual joinder of all Class members is impracticable. The precise number of Class members is unknown to Plaintiff but may be ascertained by Defendant's records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

40. **Commonality – Federal Rules of Civil Procedure 23(a)(2); Predominance – Federal Rules of Civil Procedure 23(b)(3).** This action involves questions of law and fact common to the Class, which predominate over any individual questions:

- a. Whether Defendant breached its contracts with Plaintiff and other members of the Class by closing its mountains, ski slopes, ski lifts, and

recreational facilities but not refunding the unused portions of their Epic Passes;

- b. Whether Defendant was unjustly enriched by retaining payments of Plaintiff and other Class members without providing the services for which the Epic Passes were supposed to provide;
- c. Whether Defendant committed conversion by retaining payments of Plaintiff and other Class members when Defendant closed its mountains, ski slopes, ski lifts and recreational facilities and refused to provide access to Epic Pass holders;
- d. Whether certification of the Class is appropriate under Fed R. Civ. P. 23;
- e. Whether the Class members are entitled to declaratory, equitable, or injunctive relief; and/or any other relief; and
- f. The amount and nature of relief to be awarded to Plaintiff and the other Class members.

41. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of the other Class members' claims because Plaintiff and the other Class members each paid fees for Epic Passes but were not provided the services that those fees were supposed to cover. Plaintiff and the other Class members suffered damages – namely, the loss of their fees and monies paid for Epic Passes – as a direct and proximate result of the same wrongful conduct in which Defendant engaged. Plaintiff's claims arise from the same practices and course of conduct that give rise to the other Class members' claims.



42. **Adequacy of Representation – Federal Rule of Civil Procedure**

**23(a)(4).** Plaintiff is an adequate Class representative because his interests do not conflict with the interests of the other Class members who he seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. Class members' interests will be fairly and adequately protected by Plaintiff and his counsel.

43. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure**

**23(b)(2).** Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class members as a whole.

44. **Certification of Specific Issues – Federal Rule of Civil Procedure**

**23(c)(4).** To the extent the class does not meet the requirements of Rules 23(b)(2) or (b)(3), Plaintiff seeks the certification of issues that will drive this litigation toward resolution.

**CLAIMS ALLEGED**

**FIRST CLAIM FOR RELIEF**

**Breach of Contract  
(Plaintiff and the Epic Pass Class)**

45. Plaintiff repeats and re-alleges the allegations in the Paragraphs above as if fully set forth herein.

46. Plaintiff brings this claim individually and on behalf of other members of the Epic Pass Class

47. Plaintiff and the Epic Pass Class entered into contracts with Defendant, which provided that Plaintiff and other members of the Epic Pass Class would pay fees to ski one or more times at one or more of Defendant's ski resorts throughout the world.

48. Plaintiff and other members of the Epic Pass Class fulfilled their end of the bargain when they paid the fees for their Epic Passes.

49. Defendant breached the contract with Plaintiff and the Epic Pass Class by closing all of its mountains, ski slopes, ski lifts, and recreational facilities on March 15, 2020, well before the planned end of the ski season at any of Defendant's mountains.

50. Defendant retained the monies paid by Plaintiff and the Epic Pass Class, without providing them with the benefit of the bargain, namely access to the mountain, ski slopes, ski lifts, and recreational facilities to which their Epic Passes entitled them.

51. Plaintiff and other members of the Epic Pass Class are entitled to a refund.

52. Plaintiff and other members of the Epic Pass Class are entitled to an equitable remedy – here: disgorgement of the unused amounts of the Epic Passes purchased by Plaintiff and members of the Class.

## **SECOND CLAIM FOR RELIEF**

### **Unjust Enrichment** **(Plaintiff and Other Members of the Epic Pass Class)**

53. Plaintiff repeats and re-alleges the allegations in the Paragraphs above, as if fully alleged herein.

54. Plaintiff brings this claim individually and on behalf of the other members of the Epic Pass Class and in the alternative to the breach of contract claim brought on behalf of the Plaintiff and other members of the Epic Pass Class.

55. Defendant has received a benefit at the expense of Plaintiff and other members of the Epic Pass Class to which it is not entitled. Plaintiff and other members of the Epic Pass Class paid substantial fees for access to a full season, or one or more days, of skiing at one of Defendant's mountains or ski resorts around the world and did not receive the full benefit of their bargain. Accordingly, the Defendant should return some or all of the monies that Class members paid for these Epic Passes. Equity demands the return of the value of these Epic Passes from the date the mountains closed in March until the end of the ski season.

56. Defendant has been enriched by retaining the monies paid by Plaintiff and other members of the Epic Pass Class for access to a full season, or one or more days, of skiing without providing the services for which those monies were paid. Equity requires that the Defendant return a portion of the monies paid for Epic Passes.

### **THIRD CLAIM FOR RELIEF**

#### **Conversion (Plaintiff and Other Members of the Epic Pass Class)**

57. Plaintiff repeats and re-alleges the allegations in the Paragraphs above, as if fully set forth herein.

58. Plaintiff brings this claim individually and on behalf of the other members of the Epic Pass Class.

59. Plaintiff and other members of the Epic Pass Class have a right to the services that were supposed to be provided in exchange for their payment of fees to Defendant.

60. Defendant intentionally interfered with the rights of Plaintiff and other members of the Epic Pass Class when it closed all of its facilities, while retaining the fees paid by Plaintiff and other members of the Epic Pass Class.

61. Defendant deprived the Plaintiff and other members of the Epic Pass Class of their fees or their right to the benefits and services for which their fees were intended to be used.

62. Epic Pass Class members demanded the return of pro-rated, unused portion of the fees they paid for their Passes for the remainder of the 2019/2020 ski season.

63. Defendant's retention of the fees paid by Plaintiff and the other members of the Epic Pass Class without providing them with the services for which they paid, deprived Plaintiff and the other members of the Class of the benefits for which their fees were paid.

64. This interference with the services for which Plaintiff and other members of the Epic Pass Class paid damaged Plaintiff and the other Class members in that they paid fees for services that will not be provided because all of Defendant's mountains, ski slopes, ski lifts, and recreational facilities are closed for the remainder of the ski season.

65. Plaintiff and other members of the Epic Pass Class are entitled to a return of the pro-rated, unused portion of the fees paid for their Epic Passes through the end of the ski season.

#### **REQUEST FOR RELIEF**

Plaintiff, individually and on behalf of the other Class members, respectfully request that the Court enter judgment in their favor and against Defendant as follows:

- a) Certifying the Class as requested herein, designating Plaintiff as class representatives, and appointing the undersigned counsel as Class Counsel;
- b) Declaring that Defendants are financially responsible for notifying Class members of the pendency of this suit;
- c) Declaring that Defendant has wrongfully kept monies paid for Epic Passes;
- d) Requiring that Defendants disgorge amounts wrongfully obtained in fees for Epic Passes;
- e) Awarding injunctive relief as permitted by law or equity, including enjoining Defendant from retaining the pro-rated, unused monies for Epic Passes;
- f) Awarding Plaintiff's reasonable attorney's fees, costs and expenses;
- g) Awarding pre- and post-judgment interest on any amounts awarded; and
- h) Awarding such other and further relief as may be just and proper.

**JURY TRIAL DEMANDED**

Plaintiff demands trial by jury on all causes of action so triable.

Respectfully submitted this April 21, 2020.

**SHUMAN, GLENN & STECKER**

/s/Rusty E. Glenn

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***Local Counsel for Plaintiff***

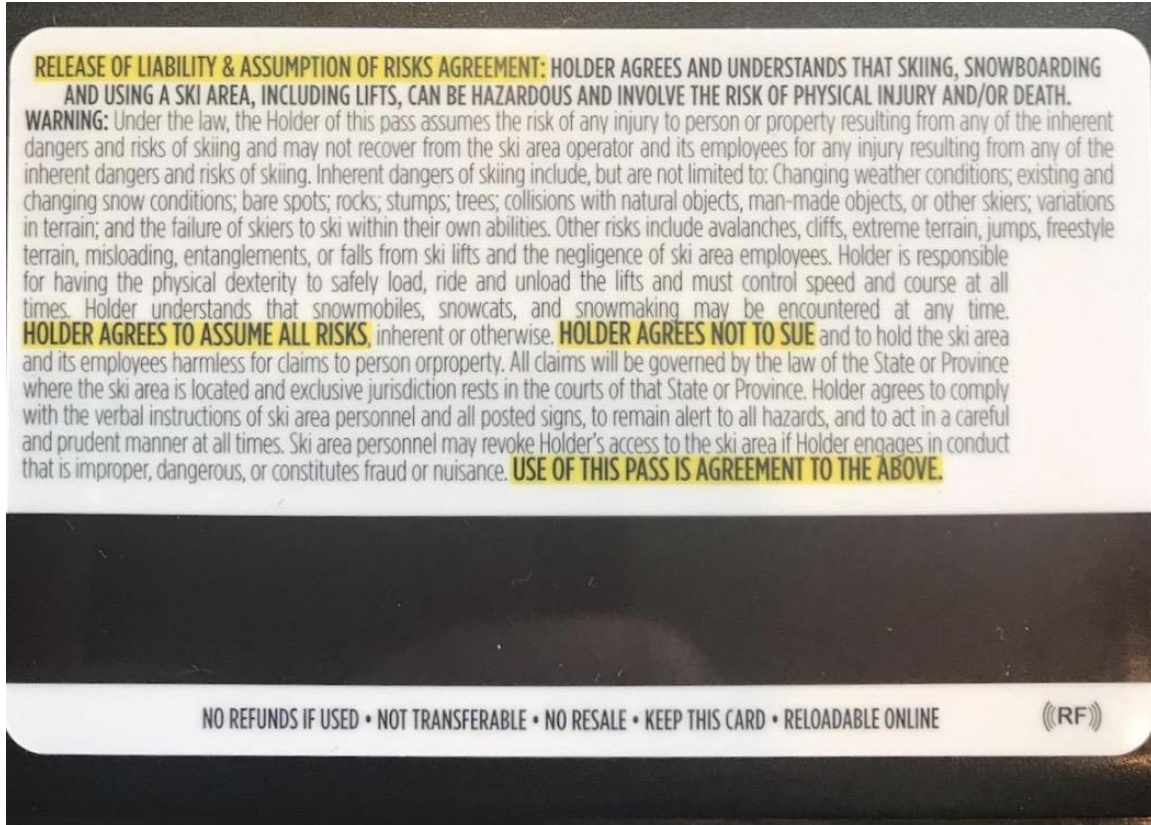
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**EXHIBIT “A”**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

SOFIA MALACHOWSKY,

Plaintiff,

v.

VAIL RESORTS, INC. and THE VAIL  
CORPORATION d/b/a VAIL  
RESORTS MANAGEMENT  
COMPANY,

Defendants.

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

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

1. Defendants sell ski passes that allow purchasers access to various resorts, with the passes ranging from single-day access to season-long. The passes, once purchased, give skiers the right to access the resorts and ski on the day(s) of their choosing. In exchange, Defendants received substantial up-front revenue from skiers.

2. Defendants sold these passes for the 2019-2020 winter ski season. While the passes were generally used as expected until March, the ski resorts at which the passes were used were closed by mid-March in connection with the COVID-19 pandemic. The resorts have stayed closed ever since, effectively ending the ski season months earlier than expected and eliminating the utility of the passes from the day of the closure onward.

3. Although Defendants charged skiers for the ski passes, which entailed future access to various ski resorts, Defendants issued no refunds upon the closure of the resorts. Instead, even though skiers could no longer use the passes, Defendants have



chosen to keep the money. Plaintiff purchased one of the passes at issue and, on behalf of herself and others similarly situated, seeks to compel Defendants to provide appropriate remuneration.

### **THE PARTIES**

4. Plaintiff Sofia Malachowsky is a citizen and resident of Incline Village, Nevada. Ms. Malachowsky spent over \$500 on an Epic Adult Tahoe Local Pass for the 2019-2020 ski season and has been precluded from using the pass since mid-March 2020. Ms. Malachowsky has received no refund for her purchase of the pass.

5. Defendant Vail Resorts, Inc., is a Delaware corporation, with its principal place of business in Broomfield, Colorado.

6. Defendant The Vail Corporation d/b/a Vail Resorts Management Company, is a Colorado corporation, with its principal place of business in Broomfield, Colorado. The Vail Corporation is a wholly-owned subsidiary of Vail Resorts, Inc. Throughout this complaint Vail Resorts, Inc., and The Vail Corporation d/b/a Vail Resorts Management are referred to collectively as Vail or the Vail Defendants.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the aggregated claims of the individual class members exceed the sum or value of \$5,000,000, exclusive of interest and costs, and this is a class action in which Defendants and more than two-thirds of the proposed plaintiff class are citizens of different states.

8. This Court may exercise jurisdiction over Defendants because they maintain their headquarters in Colorado; they are registered to conduct business in Colorado; they have sufficient minimum contacts in Colorado; and they intentionally avail themselves of the markets within Colorado through the promotion, sale, and

marketing of the ski passes at issue in this case, thus rendering the exercise of jurisdiction by this Court proper and necessary.

9. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants are headquartered in this district, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

## **FACTUAL ALLEGATIONS**

### **Epic Ski Passes**

10. Vail operates 37 ski resorts, including 33 in the United States. These include resorts in California, Utah, and Colorado, including resorts called Vail, Park City, Heavenly, and Northstar.

11. Vail sells a variety of ski passes for its resorts. These passes range from single-day passes (which allow the purchasers to gain access to a ski resort for a day of their choosing) to multiday and season-long passes (which can allow purchasers to access a variety of resorts at locations and on days of their choosing throughout the ski season).

12. In the past, skiers often bought lift tickets for one day (or a few days) at a time, for a single location. In recent years, there has been a shift toward ski passes offering access to multiple resorts over an entire ski season. For example, in its March 9, 2020 report to investors, Vail wrote that the growing pass program secured customer commitments in advance of the ski season, resulting in a "more stabilized stream" of revenue than if they relied on day-of lift ticket purchases. In exchange, customers receive larger scale access (throughout the ski season and at multiple resorts) to ski when and where they choose.

13. Vail markets its ski passes under the "Epic Pass" brand name.

14. Epic ski passes come in product tiers and frequently come with incentives for purchasing the passes early in the year and committing to renew the pass for subsequent ski seasons. For example, Vail offered a discount of \$30 on all Epic Pass tiers for the 2019-2020 ski season if consumers bought the passes before September 2, 2019. And the automatic renewal option for the Epic Pass came with the offer of discounted prices.

15. The highest-priced Epic pass, known simply as the Epic Pass, was priced for adults (without discounts) at \$969.

16. The Epic Pass was to provide access to Vail Defendants' resorts of Vail, Whistler Blackcomb, Keystone, Northstar, Stowe, Breckenridge, Park City, Heavenly, Kirkwood, Crested Butte, and Stevens Pass. It was also to provide access to partner resorts, including seven days at Telluride and several days at certain international locations.

17. The Epic ski pass that is one step less expensive than those discussed above is known as the Epic Local Pass.

18. For the 2019-2020 ski season, the Epic Local Pass was \$719 (without discounts). The Epic Local Pass preserves "unlimited, unrestricted" access to 9 of the Vail Defendants' resorts, including Breckenridge, Stevens Pass, and Keystone; adds holiday restrictions to 5 other Vail resorts, including North Star, Stowe, Heavenly and Park City; caps access at 10 days combined (also with holiday restrictions) to 4 other Vail resorts, including Vail and Whistler Blackcomb; and offers fewer days at a shorter list of partner resorts.

19. Vail also sold a combination of Epic branded ski passes for the 2019-2020 ski season that were regionally focused (e.g., for Tahoe ski resorts), resort-specific, and "daily" passes, which were for a specified number of days.

20. Epic branded ski passes could be purchased in a number of locations, including online on websites controlled by Defendants. For example, Epic passes could be purchased on [www.epicpass.com](http://www.epicpass.com) as well as on websites specific to Vail Defendant resorts, like [www.vail.com](http://www.vail.com).

21. Defendants' websites promise "flexibility" in connection with these ski passes and tell customers they will generally be able to access various ski resorts throughout the ski season. The Epic Passes are marketed as providing "unprecedented flexibility," with the Vail Defendants telling customers they will be able to access to Vail Defendant resorts "throughout" the ski season.

#### **The Resort Closures**

22. The COVID-19 pandemic reached the U.S. in early 2020 and many businesses closed as a result.

23. In March 2020, Jared Polis, Governor of Colorado, issued a series of executive orders. Order D 2020 003 declared COVID-19 a disaster emergency. Subsequent orders (D 2020 004 and D 2020 06) ordered ski resorts to suspend operations.

24. Vail announced on March 14, 2020, that it was closing its ski resorts on March 15, 2020. Vail's closure was initially for one week "to reassess [their] approach for the rest of the season," but ultimately Vail ski resorts did not reopen during the 2019-2020 ski season.

25. This closure fell within the 2019-2020 ski season, which Vail sold passes for as "19/20" or "2019/20" passes. The ski season in North America begins towards the end of one calendar year and ends during the subsequent calendar year. The exact timing and duration of the U.S. ski season varies each year, depending on factors such as weather, snowfall, and geographic location. In its March 9, 2020 10-Q filing with the

SEC, Vail told investors that the “peak operating seasons” in North America are “primarily from mid-November through mid-April.”

26. Spring skiing in March and April is popular for several reasons: many school spring breaks fall in those months, ski resorts have increasingly used artificial snowmaking to augment the ski season, and global weather trends have shifted the U.S. ski season to start later and end later over time.

27. At the time of Defendants’ closure of the ski resorts, many skiers had already purchased the various ski passes discussed above, which were to provide continued access to various ski resorts well beyond the mid-March closures. Defendants had accepted payment for those ski passes in exchange for the promise to provide access to the ski resorts through the natural end of the 2019-2020 ski season, which was still many weeks away on the date of the closures.

28. Vail has refused to provide refunds to the purchasers of the Epic passes and other ski passes discussed above. Defendants have withheld those refunds despite being unable to contest the fact that they received payment in exchange for providing additional ski opportunities during the 2019-2020 ski season which they were not providing.

29. At the time of the ski resort closures, Defendants acknowledged the closures constituted a premature and unnatural end to the 2019-2020 ski season. Vail issued a statement initially saying that they were suspending skiing but would later reassess whether skiing might resume “for the rest of the season.” Vail issued a subsequent statement that stated it was “incredibly disappointing ... to mark the end of the season so early.” Vail ultimately acknowledged that “the resort closures in mid-March impact[ed] about 20% of the core season” and that many customers had not used

their season pass at all “because we recognize that some of you were waiting until spring to use your pass.”

30. In recognition that they had accepted payment from their customers in exchange for a promise to provide access to ski resorts for the 2019-2020 ski season but had not in fact provided that benefit, Defendants initially suggested they would be providing refunds of ski-pass purchase funds. Vail said on March 17, 2020, that “Guests can process refunds and credits on pre-purchased lift tickets, lodging, ski and ride school, equipment rentals and more, subject to applicable terms and conditions, using an online form that will be available later today on the Company’s resort websites.”

31. Vail reversed course, however, and declined to refund the money they had been paid for skiing for the remainder of the 2019-2020 ski season. Instead, well after announcing the ski resorts’ closure, Defendants announced that rather than refunding that money, Defendants would merely be offering partial credits toward Epic ski passes for skiing during the 2020-2021 ski season.

32. To accept these credits, skiers thus had to provide Defendants still more money for future skiing, while accepting the risk that COVID-related restrictions would continue to impact skiing in the 2020-2021 ski season. As many of Defendants’ customers have stated, these credits do not provide the refunds owed and offer inadequate compensation for the loss of skiing opportunity during the 2019-2020 ski season:

We purchased four day passes for our family of five, a total of \$1800. You closed the slopes the day we were to arrive. So now we lose 20% of the value (due to no fault of our own) And our only option is credit. We live in Florida. What if we don’t want to go skiing next year for spring break?! You are the only company that has not given us 100% of our money back.

It would be more fair if you offered 80% cash back for day passes or 100% credit towards passes for next year!!<sup>1</sup>

SO UNFAIR! I am in agreement with the many comments you are getting from people who did not use their pass at all!! And I don't think you get our frustration. I had the same experience- had passes (with insurance!) for my family of 5 to come skiing on Spring Break. While I 100% understand your reason for closing please try to understand why we would want 100% of something we did not use returned!!! We drove 8 hours before we heard the mountain closed so turned around and drove 8 hours back. I basically went on a 16 hour road trip from my house to my freaking house!!!! The house we had rented for the week returned 100% of our payment because WE DID NOT USE IT! And I guess they apparently understand the right thing to do. I really have no idea how you can in good conscience make this decision. In these difficult times when so many are trying to help each other out your company is obviously doing the opposite. I really don't care what you have historically done! So you can save copying and pasting that same answer for me. Seems like the only people actually okay with this decision are the people who probably got to use their passes at least ONCE! Completely ridiculous!<sup>2</sup>

We purchased 4, EPIC 4 Day passes for my family to ski at Vail over Spring Break. This was a special trip, as my son was graduating High School in May. This was going to be our last family vacation together. We literally had driven all day and had just arrived in Denver when they closed the slopes. We live in Oklahoma, so skiing is a planned vacation, not a weekend event. Vail Resorts is only offering 80% credit for next year. It is easily verifiable that none of the 4 days were ever used and a credit for next season is of no value to us, since we can't go skiing next year. I realize these are strange times, but every other company provided a full and immediate refund. This includes the Lodge at Lionshead,

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<sup>1</sup> Jennifer Slosman Beck, Comment, Facebook (April 27, 2020, 7:57 AM), [https://www.facebook.com/epicpass/posts/3016765685035808?comment\\_id=3016849268360783&tn=R](https://www.facebook.com/epicpass/posts/3016765685035808?comment_id=3016849268360783&tn=R).

<sup>2</sup> Tara Hess, Comment, Facebook (May 1, 2020, 9:01 PM), [https://www.facebook.com/epicpass/posts/3016765685035808?comment\\_id=3027474630631580](https://www.facebook.com/epicpass/posts/3016765685035808?comment_id=3027474630631580).



Snowmobiling, Dog sledding, etc. It doesn't make sense to me that the only company not offering a full refund is Vail Resorts.<sup>3</sup>

I am completely disappointed in the way Epic Pass is handling their cancellation policy during COVID -19. We live in Atlanta and purchased our epic passes back in November. We arrived at Beaver Creek Ski Resort on March 14th and were bummed to learn that the ski resort would be closed the rest of the season when we arrived. Christy Sports Ski Rental refunded our rentals with no problem and were empathetic to the situation. However, even during this worldwide pandemic, Epic Pass has refused to refund our passes. I am disappointed and shocked in the lack of care we have received from Epic Pass. They should be ashamed of the way they do business and the lack of respect for people during this time. Hotels and airlines have been more than gracious in refunding customers, but Epic Pass is purely just trying to make a profit out of this horrible situation.<sup>4</sup>

### CLASS ACTION ALLEGATIONS

33. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of herself and the following proposed class:

*All persons in the United States who purchased a 2019-20 season Epic Pass, Epic Local Pass, or other Epic Pass, who had days remaining for use as of March 15, 2020.*

34. Excluded from the proposed classes are Defendants; any affiliate, parent, or subsidiary of any Defendant; any entity in which any Defendant has a controlling interest; any officer, director, or employee of any Defendant; any successor or assign of any Defendant; any judge to whom this case is assigned, his or her spouse; and members of the judge's staff.

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<sup>3</sup> Vance M., Review, Yelp (May 26, 2020), [https://www.yelp.com/not\\_recommended\\_reviews/epic-pass-vail](https://www.yelp.com/not_recommended_reviews/epic-pass-vail).

<sup>4</sup> Alexandra B., Review, Yelp (April 26, 2020), [https://www.yelp.com/not\\_recommended\\_reviews/epic-pass-vail](https://www.yelp.com/not_recommended_reviews/epic-pass-vail).



35. The above proposed class definitions suffice because they use objective characteristics; class membership turns on objective criteria including whether someone bought an Epic ski pass. Documents identifying such persons are either in Defendants' possession or can be produced by class members at an appropriate time.

36. **Numerosity**: Defendants sold thousands of the ski passes at issue. Members of the proposed class are thus too numerous to practically join in a single action. Class members may be notified of the pendency of this action by mail, supplemented by published notice (if deemed necessary or appropriate by the Court).

37. **Commonality and Predominance**: Common questions of law and fact exist as to all proposed members of the class and predominate over questions affecting only individual class members. These common questions include:

- a. Whether Defendants are in breach of their contractual obligations;
- b. Whether Defendants are contractually obligated to refund a portion of class members' ski-pass purchases;
- c. Whether Defendants have breached their contractual duties of good faith and fair dealing; and
- d. Whether Defendants are obligated, under principles of equity and good conscience, to refund a portion of class members' ski-pass purchases.

38. **Typicality**: Plaintiff's claims are typical of those asserted by the proposed classes, as Plaintiff and class members were similarly affected by Defendants' decision to stop refuse to provide refunds in connection with the closure of the ski resorts at issue, and seek to recover a refund.

39. **Adequacy**: Plaintiff will fairly and adequately protect the interests of the proposed classes. Plaintiff's interests do not conflict with the classes' interests, as both seek to recover refunds in connection with ski-resort closures from Defendants, and

Plaintiff has retained counsel experienced in complex class litigation to represent class members' interests.

40. **Superiority**: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Defendants have taken money that rightfully belongs to thousands of consumers, and only through collective action can that wrong be fully remedied.

41. **Injunctive Relief**: Defendants' decision to not provide refunds for closed ski resorts in the middle of a global pandemic was an action that applied generally to the entire class, such that final injunctive relief or corresponding declaratory relief would be appropriate respecting the class as a whole.

## **FIRST CAUSE OF ACTION**

### **Breach of contract**

42. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

43. Defendants offered ski passes for sale to consumers to allow them to gain access to various ski resorts on the days of their choosing.

44. Plaintiff and class members accepted Defendants' offer by purchasing passes to gain access to those resorts.

45. Defendants breached their contractual obligations by both closing the resorts and refusing to provide refunds to Plaintiff and class members after doing so.

46. As a result, Plaintiff and class members have suffered damages, including loss of the use of the money they spent on the ski passes.

## **SECOND CAUSE OF ACTION**

### **Breach of implied covenant of good faith and fair dealing**

47. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

48. As an alternative to the first cause of action's allegations, Plaintiff and class members allege Defendants breached the implied covenant of good faith and fair dealing.

49. Defendants offered ski passes for sale to consumers to allow them to gain access to various ski resorts on the days of their choosing.

50. Plaintiff and class members accepted Defendants' offer by purchasing passes to gain access to those resorts.

51. The agreement between Defendants, on the one hand, and Plaintiff and class members, on the other, afforded Defendants discretion with respect to the operation and temporary closure of the ski resorts and allowing Plaintiff and class members access to all or some part of those resorts during the ski season.

52. Defendants breached the implied covenant of good faith and fair dealing by using their discretion to act dishonestly and to act outside of accepted commercial practices to deprive Plaintiff and class members the benefit of the contract, including by declining to refund ski-pass revenues even after closing the resorts for which the ski passes were purchased to provide access. In doing so, Defendants engaged in arbitrary and unreasonable conduct that prevents Plaintiff and class members from receiving the reasonable expectations of the contract.

53. As a result, Plaintiff and class members have suffered damages, including loss of the use of the money they spent on the ski passes.

### **THIRD CAUSE OF ACTION**

#### **Money had and received**

54. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

55. As an alternative to the first and second cause of action's allegations, and without intending to make an election of remedies, Plaintiff and class members seek restitution from Defendants for money had and received.

56. Defendants received money from and on behalf of Plaintiff and class members that was intended to be used for their benefit.

57. Defendants did not use the money received from Plaintiff and class members for their benefit and have not returned the money to them.

58. As a matter of equity and good conscience, that money should be returned to Plaintiff and the classes.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of members of the proposed class, respectfully requests the following relief:

- A. A determination this action may be maintained as a class action;
- B. An award of damages and restitution;
- C. Appropriate injunctive and equitable relief sufficient to correct the harm caused by Defendants' actions and prevent it from continuing to capitalize on its unlawful practices;
- D. Pre-judgment interest and post-judgment interest, as provided by law;
- E. Attorneys' fees and expenses, including expert fees and costs; and
- F. Any and all other legal and equitable relief that the Court may find appropriate.

#### **JURY TRIAL DEMAND**

Plaintiff hereby demands a jury trial for all claims so triable.

Dated: May 28, 2020

Respectfully submitted,

**GIBBS LAW GROUP LLP**

By: /s/ Steven M. Tindall

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Karen Barth Menzies  
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*Attorneys for Plaintiffs*

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Sofia Malachowsky

(b) County of Residence of First Listed Plaintiff Washoe County, NV

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Steven M. Tindall

Gibbs Law Group LLP, 505 14th Street, Suite 1110, Oakland CA 94612  
(510) 350-9700**DEFENDANTS**Vail Resorts, Inc. and The Vail Corporation d/b/a Vail Resorts  
Management CompanyCounty of Residence of First Listed Defendant Broomfield, CO

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S. 1332(d), Class Action Fairness Act

Brief description of cause:

Breach of contract; Breach of Implied Covenant of Good Faith and Fair Dealing; Money Had and ReceivedAP Docket  
[ ] Filed**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Hon. R. Brooke JacksonDOCKET NUMBER 1:20-cv-1121

DATE

05/28/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Steven M. Tindall

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
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☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

MICHAEL McAULIFFE, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

THE VAIL CORPORATION d/b/a Vail  
Resorts Management Company,

Defendant.

**Trial by Jury Demanded**

**CLASS ACTION COMPLAINT**

Plaintiff MICHAEL McAULIFFE (“Plaintiff”), individually and on behalf of all others similarly situated, by and through counsel, against Defendant THE VAIL CORPORATION d/b/a/ Vail Resorts Management Company (“Defendant”), allege as follows based on information and belief except as to allegations specifically pertaining to Plaintiff, which are made upon personal knowledge:

**NATURE OF THE CASE**

1. This is a class action lawsuit brought by Plaintiffs on behalf of themselves and a class of individuals who purchased season passes or Epic Passes for the 2019-2020 ski season. After Defendant closed its ski resorts early due to the COVID-19 pandemic, class members were unable to use the remaining value in their passes, and Defendant has refused to refund Plaintiffs and Class members for the unusable portion of the passes.

2. Unsurprisingly, activities such as skiing and snowboarding—and especially using lifts to access the ski and snowboard routes—are difficult, if not impossible, to safely participate in while social distancing to help avoid contracting the virus. As such, beginning on March 15,

2020, Defendant suspended operations at all of its resorts in North America, and, within the following five days, closed all of its resorts.

3. Unfortunately for Plaintiff and the Class, however, Defendant has shifted the financial burden of this extraordinary crisis onto its customers, who paid hundreds or thousands of dollars for lift tickets and passes to ski or snowboard at Defendant's properties.

4. Specifically, Defendant has refused to refund to its customers any portion of the money paid for tickets and passes they cannot use; money that they need to provide for themselves and their families during this crisis.

5. Defendant's conduct breaches its contract with passholders, is unfair, unlawful, and unconscionable, and unjustly enriches it at the expense of its customers. Plaintiff brings this action in order to secure partial refunds for each and every similarly situated consumer that Defendant has wronged by refusing to issue refunds for season passes and Epic Daily Passes with unused days, when Defendant closed its resorts starting between March 15 and March 20, 2020.

### **JURISDICTION**

6. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2), the Class Action Fairness Act of 2005, because: (i) there are 100 or more Class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and one defendant are citizens of different States. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

7. This Court has personal jurisdiction over Defendant because Defendant is a resident of, and is headquartered in, this judicial district.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant is a citizen of and headquartered in this district, transacts business in this district, and is subject to personal jurisdiction in this district, and because a substantial part of the events giving rise to the claims occurred in this district.

### **PARTIES**

9. Plaintiff Michael McAuliffe is a resident and citizen of Colorado.

10. On September 24, 2019, Plaintiff purchased an Epic Pass from Defendant, which gave him unlimited access to Defendant's ski areas for the entire 2019-20 ski season. Plaintiff McAuliffe paid \$969.00 for his 2019-20 Epic Pass. Plaintiff McAuliffe used the Epic Pass at Defendant's ski areas during part of the 2019-20 ski season, and planned to use the Epic Pass after March 15, 2020. Due to the suspension and closure of Defendant's ski areas, Plaintiff McAuliffe was not able to use the Epic Pass for the 2019-20 ski season after March 15, 2020. Defendant did not provide Plaintiff McAuliffe a refund of the unused portion of the Epic Pass after Defendant closed all of its ski areas and rendered the Epic Pass unusable.

11. Defendant the Vail Corporation d/b/a Vail Resorts Management Company is a Colorado corporation with its principal place of business located at 390 Interlocken Crescent, Broomfield, Colorado 80021.

### **GENERAL ALLEGATIONS**

#### **Defendant's Ski Areas and Ski Passes**

12. Defendant operates 37 "mountain ski resorts and urban ski areas" (collectively, "ski areas") across the world, the majority of which are located in the United States. In the United States, Defendant owns and operates ski areas in Colorado, Utah, California, Nevada, Vermont, New York, New Hampshire, Washington, Pennsylvania, Ohio, Missouri, Wisconsin, Minnesota,

Michigan, and Indiana. Internationally, Defendant owns and operates resorts in Canada, Australia, Japan, Switzerland, Italy, and France.

13. Individuals obtain access to the ski areas by purchasing either a lift ticket or an “Epic Pass.” Generally, lift tickets may only be used for the ski area associated with the ticket. Lift tickets provide access to the ski area for 1 to 14 days, depending on the number of days purchased.

14. Defendant also sells numerous types of “Epic Passes.” The Epic Pass provides passholders unlimited access to most of Defendant’s ski areas, and limited access to the remainder of Defendant’s ski areas. Defendant advertises that Epic Passes provide “Unlimited, Unrestricted Skiing at our Best Resorts,” “Unlimited, unrestricted skiing or riding,” have “no restricted dates,” and Epic Passes are “without limits.”<sup>1</sup>

15. In addition to the Epic Pass, Defendant also sells the Local Epic Pass. The Local Epic Pass provides passholders “unlimited, unrestricted access” to many of Defendant’s ski areas, and limited access—either a limited number of days or holiday-restricted access—to the remainder of Defendant’s ski areas.<sup>2</sup>

16. Additionally, Defendant sells season passes to specific ski areas. The regional Epic Passes provide passholders “unlimited, unrestricted access” to the specific ski area(s).<sup>3</sup> Defendant’s regional Epic Passes include the following: Summit Value Pass, Keystone Plus Pass, Tahoe Local Pass, Tahoe Value Pass, Kirkwood Pass, Northeast Value Pass, Northeast Midweek

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<sup>1</sup> *Epic Season Pass*, EPIC PASS, available at: <https://www.epicpass.com/passes/epic-pass.aspx> (last accessed Apr. 24, 2020).

<sup>2</sup> *Epic Local Pass*, EPIC PASS, available at: <https://www.epicpass.com/passes/epic-local-pass.aspx> (last accessed Apr. 24, 2020).

<sup>3</sup> See e.g., *Kirkwood Pass*, EPIC PASS, available at: <https://www.epicpass.com/Passes/Kirkwood-Pass.aspx> (last accessed Apr. 24, 2020).

Pass, Afton Alps Pass, Mt. Brighton Pass, Wilmot Pass, Ohio Pass, Paoli Peaks Pass, Snow Creek Pass, and Hidden Valley Pass.

17. Defendant also sells “specialty” passes for specific groups of people. Defendant’s specialty passes include the following: Military Pass Active, Military Pass Active Dependent, Military Pass Retired, Military Pass Retired Dependent, Military Pass Veteran, Military Pass Veteran Dependent, Liberty Pass, Liberty Pass Dependent, Local College Pass, Summit Value College Pass, Park City Youth Pass, Tahoe Local College Pass, Tahoe Value College Pass, Kirkwood College Pass, Afton Alps College Pass, Afton Alps College Night Pass, Mt. Brighton College Pass, and Mt. Brighton College Night Pass.

18. Defendant’s regional Epic Passes may be limited to specific ski areas or particular days of the week, but otherwise provide access to ski areas for the entire 2019-20 season. Similarly, while some of Defendant’s specialty passes may be limited to particular ski areas or to certain days of the week, the passes otherwise provide access to the ski areas for the entire 2019-20 season. Defendant’s Epic Pass, Epic Local Pass, regional Epic Passes, and specialty Epic Passes are full season passes (hereinafter, collectively, “Season Epic Passes”).

19. Defendant also sells Epic Day Passes. The Epic Day Pass provides passholders with between 1 and 7 days of access to the majority of Defendant’s ski areas. Multi-day Epic Day Passes are not required to be used on consecutive days or at the same ski area.<sup>4</sup>

20. Defendant permitted consumers to purchase a 2019-20 Season Epic Pass or Epic Day Pass by making an initial payment of \$49.00. The remaining balance for the pass was then charged to the purchaser’s credit card in September 2019. Defendant’s Epic Pass website states that, by making the \$49.00 initial payment, the purchaser is “committing to buy the Pass(es)” and

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<sup>4</sup> *Epic Day Pass*, EPIC PASS, available at: <https://www.epicpass.com/passes/epic-day-pass.aspx?days=7> (last accessed Apr. 24, 2020).

that once the purchaser makes the \$49 initial payment neither the initial payment nor the pass purchase can be cancelled or refunded.<sup>5</sup>

21. Defendant also offers Pass Insurance for the Epic Passes. Passholders who purchase Pass Insurance will receive a refund of the cost of the Epic Pass, but only for certain covered events. The covered events are limited to the following: (a) injury or sickness of the insured (passholder); (b) injury, sickness, or death of a family member of the insured; (c) if the insured is subpoenaed, required to serve on a jury, hijacked, or quarantined; (d) if the insured is involuntarily laid off, terminated, or transferred; (e) if the insured is called for active military service or had military leave canceled; (f) if the insured has a pregnancy or childbirth; or (g) if the insured is a student and transfers schools. The Epic Pass website provides that, unless the passholder purchases Pass Insurance, the purchaser “will not be eligible for a refund of any kind” for the season or Epic Pass.<sup>6</sup>

22. Epic Passes are popular for skiers and snowboarders, as the Passes provide access to the ski areas for most of the year. Halfway through the 2018-19 ski season, Defendant had sold over 900,000 passes to its ski areas for that season.<sup>7</sup> The ski/snowboard season typically begins in mid to late October, and usually lasts through April, and, for some ski areas, can last through June.

23. Lift tickets and Epic Passes may be purchased either at one of Defendant’s resorts or ski areas, or from Defendant’s websites, such as [www.snow.com](http://www.snow.com) and [www.epicpass.com](http://www.epicpass.com). The Terms & Conditions for use of all of Defendant’s websites provide that the use of the website is

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<sup>5</sup> See *Deposit and Cancellation Policy*, EPIC PASS, available at: <https://www.epicpass.com/info/deposit-and-cancellation-policy.aspx> (last accessed Apr. 24, 2020).

<sup>6</sup> See *Epic Season Pass*, *supra*, footnote 1.

<sup>7</sup> See Scott Miller, *Vail Resorts has Sold about 925,000 passes of all kinds for 2018-19 Season*, VAIL DAILY NEWS (Dec. 8, 2018), available at: <https://www.skyhine.com/news/vail-resorts-has-sold-about-925000-passes-of-all-kinds-for-2018-19-ski-season/>.



governed by the laws of the State of Colorado, and any legal proceedings against Defendant shall be commenced in state or federal court in Denver, Colorado.

**The COVID-19 Pandemic and Response**

24. COVID-19 has proven capable of spreading silently through communities, steadily increasing its reach before its existence is detected. On February 29, 2020—the same day the U.S. government issued a “do not travel” warning and prohibited travel between the United States and several countries with COVID-19 outbreaks—the State of Washington became the first state to declare a state of emergency due to COVID-19. It would not be the last to do so.

25. On March 11, 2020, the WHO reclassified COVID-19 as a worldwide pandemic and, two days later, the President declared a “National Emergency.”

26. On March 11, 2020, in response to the COVID-19 pandemic, Jared Polis, Governor of Colorado, issued Executive Order D 2020 003, which declared COVID-19 a disaster emergency. On March 14, 2020, Governor Polis issued Executive Order D 2020 004, which directed all downhill ski resorts in the State of Colorado to suspend operations from March 15-22, 2020. On March 18, 2020, Governor Polis issued Executive Order D 2020 006, which ordered all downhill ski resorts to suspend operations from March 23-April 6, 2020, which was later extended to April 30, 2020. Some or all of Defendant’s resorts, including Defendant’s Colorado resorts are subject to these orders. On March 25, 2020, Governor Polis issued Executive Order D 2020 017, which ordered all residents of Colorado to stay at home.

### **Defendant's Actions**

27. As COVID-19 began to spread across the United States, reports linked the spread of the disease to ski resorts around the country, especially the resorts in Colorado.<sup>8</sup>

28. On or about March 15, 2020, Defendant suspended operation at all of its ski areas in North America until March 22, 2020. Defendant stated that it would refund all lift tickets that were valid for March 15-22, 2020. However, Defendant refused to provide refunds of any portion of the monies passholders paid to purchase a Season Epic Pass or Epic Daily Pass.

29. On March 17, 2020, Defendant stated that it would close all of its ski areas in North America beginning March 20, 2020. Again, Defendant refused to provide refunds for any Season Epic Pass or Epic Daily Pass.

30. On April 27, 2020, Defendant announced for the first time that it would issue credits—varying in amount based on the type of pass and the usage prior to the shutdowns—to impacted 2019-2020 passholders.<sup>9</sup> However, those credits may only be applied toward the purchase of new passes for the 2020-2021 season and Defendant continues to refuse to offer refunds of any kind for the Season Epic Pass or Epic Daily Pass for the 2019-2020 season.

31. Because Defendant refused to provide refunds for individuals who purchased any Season Epic Pass or Epic Daily Pass with unused days, many consumers made claims on their Pass Insurance, seeking a refund due to the closure of Defendant's ski areas. Passholders' claims under the Pass Insurance have consistently been denied.<sup>10</sup>

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<sup>8</sup> See e.g., Vincent Del Giudice, *Colorado Suspects Virus Cluster in Ski-Resort Region*, BLOOMBERG (Mar. 16, 2020), available at: <https://www.bloomberg.com/news/articles/2020-03-17/colorado-suspects-virus-cluster-in-ski-resort-region-of-state> (updated Mar. 17, 2020).

<sup>9</sup> *Vail Announces 19/20 Pass Holder Credits and 'Epic Coverage' for 20/21 Season*, VAIL RESORTS (Apr. 27, 2020), available at: <http://news.vailresorts.com/corporate/vailresorts/vail-resorts-announces-1920-pass-holder-credits-and-epic-coverage-for-2021-season.htm>.

<sup>10</sup> See e.g., Epic Pass Facebook, FACEBOOK, available at: <https://www.facebook.com/pg/epicpass/posts/> (Apr. 8, 2020, 8:50 A.M.) (comment from stating that his claim for a refund under the Pass Insurance was

32. No Season Epic Pass or Epic Daily Pass passholder is bound by Defendant's self-serving attempts to limit its own liability for closing its ski areas. Even if Defendant's limitation of liability applied by its terms—which it arguably does not—Defendant cannot disclaim liability for loss or damage by closing its ski areas and preventing consumers from being able to use the Season Epic Passes or Epic Daily Passes with unused days, without any compensation for the unused portion of the passes. Any attempt by Defendant to limit or disclaim liability for preventing passholders from using the Season Epic Passes or Epic Daily Passes with unused days, while retaining the fees that passholders paid to purchase the passes, is unconscionable and unenforceable, and unjustly enriches Defendant to the detriment of the passholders.

### **CLASS ALLEGATIONS**

33. Plaintiff brings this action, individually, and on behalf of a nationwide class, pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2) and/or 23(b)(3), defined as follows:

All persons in the United States who purchased a 2019-20 Season Epic Pass, or 2019-20 Epic Daily Pass that had unused days after March 15, 2020.

34. Excluded from the Class are: (a) Defendant; (b) Defendant's affiliates, agents, employees, officers and directors; and (c) any judge assigned to this matter, the judge's staff, and any member of the judge's immediate family.

35. **Numerosity**: Upon information and belief, the Class is so numerous that joinder of all members is impracticable. While the exact number and identity of individual members of the Class are unknown at this time, such information being in the sole possession of Defendant and obtainable by Plaintiff only through the discovery process, Plaintiff believes, and therefore alleges,

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denied); *id.* (Apr. 8, 2020, 6:55 A.M.) (same); Joyce and Doug Paff, *Letter: So Much for Epic Pass Insurance*, Vail Daily (Apr. 17, 2020), *available at*: <https://www.vaildaily.com/opinion/letter-so-much-for-epic-pass-insurance>.

that the Class consists of hundreds of thousands of people. The number of Class members can be determined based on Defendant's records.

36. **Commonality**: Common questions of law and fact exist as to all members of each Class. These questions predominate over questions affecting individual Class members. These common legal and factual questions include, but are not limited to:

- a. Whether Defendant breached the contract with Plaintiff and Class members;
- b. Whether Defendant was unjustly enriched by its conduct;
- c. Whether Defendant violated the Colorado Consumer Protection Act;
- d. Whether Defendant unlawfully converted Plaintiff's and Class members' property for its own use; and
- e. Whether Defendant breached the covenant of good faith and fair dealing.

37. **Typicality**: Plaintiff has the same interest in this matter as all Class members, and Plaintiff's claims arise out of the same set of facts and conduct as the claims of all Class members. Plaintiff's and Class members' claims all arise out Defendant's uniform conduct, statements, and unlawful, unfair, and deceptive acts and practices.

38. **Adequacy**: Plaintiff has no interest that conflicts with the interests of the Class, and is committed to pursuing this action vigorously. Plaintiff has retained counsel competent and experienced in complex consumer class action litigation. Accordingly, Plaintiff and his counsel will fairly and adequately protect the interests of the Class.

39. **Superiority**: A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiff and members of the Class. The injury suffered by each individual Class member is relatively small compared to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to effectively redress the wrongs

done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of this case. Individualized rulings and judgments could result in inconsistent relief for similarly-situated individuals. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

**COUNT I**  
**BREACH OF CONTRACT**

40. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint.

41. Plaintiff and the Class entered into a contract with Defendant when purchasing a 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass.

42. The contract was offered by Defendant and was formed at the time Plaintiff and the Class accepted it by purchasing their 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass.

43. Plaintiff and the Class performed their obligations under the contract by providing payment in consideration for the 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass.

44. Defendant breached its contracts with Plaintiff and the Class by retaining the consideration received by Plaintiff and the Class while closing their ski resorts for the remainder of the season, rendering useless and void the 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass for a substantial portion of the ski season.

45. Defendant's decision to retain the fees paid by Plaintiff and the Class while closing the resorts deprived Plaintiff and the Class the benefit of their bargains.

46. Due to the closure of Defendant's ski areas for a substantial portion of the 2019-20 season while refusing to provide refunds for Season Epic Passes or Epic Daily Passes renders those contracts illusory and void.

47. As a direct and proximate result of Defendant's breaches, Plaintiff and the Class have suffered monetary damages.

48. Plaintiff and the Class seek the return of amounts paid to Defendant for their 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass, as well as attorneys' fees, costs and interest.

**COUNT II**  
**UNJUST ENRICHMENT**  
**(In the alternative to Count I)**

49. Plaintiff incorporate by reference each of the allegations contained in the foregoing paragraphs of this Complaint.

50. Plaintiff and the Class conferred a direct benefit on Defendant by purchasing a 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass.

51. Defendant knowingly and willingly accepted and enjoyed the benefits conferred on it by Plaintiff and the Class.

52. Defendant's retention of these benefits is unjust and inequitable under the circumstances.

53. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and the Class are entitled to recover the amount each paid to Defendant for their 2019-20 Season Epic Pass or 2019-20 Epic Daily Pass, as well as attorneys' fees, costs and interest.

**COUNT IV**  
**CONVERSION**

54. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint.

55. Plaintiff and the Class purchased passes that granted them the right to services that were promised in exchange for the purchase price of the passes.

56. Defendant intentionally interfered with Plaintiff's and the Class' rights granted through those passes when Defendant closed all of its facilities and retained the purchase price of the passes.

57. Defendant exercised control over Plaintiff's and Class members' property by closing its ski areas and refusing to issue partial refunds for the unusable portion of the 2019-20 Season Epic Passes and Epic Daily Passes, and the rights granted by those passes.

58. Defendant's closure of its ski areas and its refusal to refund the unusable portion of the 2019-20 Season Epic Passes or Epic Daily Passes to Plaintiff and Class members are unauthorized.

59. Plaintiff and Class members have, through the filing of this lawsuit or otherwise communicating with Defendant, demanded that Defendant issue refunds for the unusable portion of the 2019-20 Season Epic Passes or Epic Daily Passes.

60. Defendant has uniformly and consistently refused to issue refunds for the unusable portion of the 2019-20 Season Epic Passes or Epic Daily Passes.

61. Plaintiff and the Class seek a partial return of the price paid to Defendant for their passes.

**COUNT V**  
**BREACH OF WARRANTY**

62. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint.

63. Defendant created an express warranty through its advertising statements that the passes would provide “unlimited, unrestricted access” to its ski areas through the 2019-20 season, that the Season Epic Passes provide access for the entire 2019-20 season, and that Epic Daily Passes provide access to Defendant’s ski areas for the number of days purchased until the end of the 2019-20 season.

64. This warranty became part of the basis of the bargain between the parties. Plaintiff and the Class relied on this warranty in deciding to purchase a pass from Defendant.

65. Defendant breached this warranty by failing to provide access to its resorts throughout the 2020 ski season and by failing to issue partial refunds to Plaintiff and the Class after shutting down access to its ski areas.

66. Plaintiff and the Class would not have purchased the passes, or would have paid substantially less for them, had Defendant disclosed that it would not honor the warranty and not refund any portion of the monies that Plaintiff and the Class paid to purchase a Season Epic Pass or Epic Daily Pass.

67. Plaintiff and the Class performed their obligations under the warranty, including paying in full for their passes.

68. Plaintiff and the Class were injured as a direct and proximate result of Defendant’s breach of warranty.



**COUNT VI**  
**BREACH OF IMPLIED COVENANT OF  
GOOD FAITH AND FAIR DEALING**

69. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint.

70. Every contract in Colorado contains an implied covenant of good faith and fair dealing. The implied covenant is an independent duty and may be breached even if there is no breach of a contract's express terms.

71. Defendant breached the covenant of good faith and fair dealing by failing to refund to Plaintiff and the Class a portion of the purchase price of their Season Epic Passes or Epic Daily Passes after Defendant terminated access to its facilities.

72. Defendants acted in bad faith and/or with a malicious motive to deny Plaintiff and the Class members some benefit of the bargain originally intended by the parties, thereby causing them injuries in an amount to be determined at trial.

**COUNT VII**  
**VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT<sup>11</sup>**

73. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint.

74. Colorado's Consumer Protection Act (the "CCPA") prohibits a person from engaging in a "deceptive trade practice," which includes "advertis[ing] goods, services, or property with intent not to sell them as advertised." § 6-1-105(1)(g), (i), C.R.S.

75. Defendant is a "person" within the meaning of § 6-1-102(6), C.R.S.

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<sup>11</sup> Plaintiff does not seek certification under Federal Rule of Civil Procedure 23(b)(3) for Defendant's violation of the CCPA. Instead, Plaintiff seeks certification under Rule 23(b)(2)—seeking declaratory relief—and Rule 23(c)(4)—regarding the issue of whether Defendant's conduct alleged herein violates the CCPA.

76. In the course of Defendant's business, it advertised that the purchasers of its passes would have unlimited access to skiing and snowboarding until the end of the 2019-20 season, which may last through June. Defendant knew, however, that if it closed all of its resorts before the end of 2019-20 season that it would retain 100% of the revenue generated from sales of the passes. As described above, Defendant engaged in unfair and deceptive trade practices as defined under Colorado law.

77. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

78. Defendant's unfair practices significantly impacted the public as actual or potential consumers of Defendants' goods, services or property.

79. Defendant's actions proximately caused injuries to Plaintiff and the Class members.

80. Plaintiff and the Class members have suffered an injury in fact, including the loss of money or property, as a result of Defendant's unfair, unlawful, and/or deceptive practices. In purchasing their passes, Plaintiff and the other Class members relied on the misrepresentations and/or omissions of Defendant with respect to their ability to access Defendant's locations without restriction. Had Plaintiff and the other Class members known this, they would not have purchased their passes and/or paid as much for them. Accordingly, Plaintiffs and the other Class members overpaid for their passes and did not receive the benefit of their bargain.

81. Plaintiff and the Class Members injuries are the direct and natural consequence of Defendant's misrepresentations and omissions.

82. Plaintiffs and the Class Members demand a jury as to all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and the Class, respectfully requests that this Court:

- A. Determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying the Class as defined above;
- B. Appoint Plaintiff as the representatives of the Class and his counsel as Class Counsel;
- C. Award actual damages, exemplary and equitable monetary relief to Plaintiff and the Class and/or order Defendant to return to Plaintiff and the Class the amount each paid to Defendant as allowed by applicable law;
- D. Award pre-judgment and post-judgment interest on such monetary relief;
- E. Grant appropriate injunctive and/or declaratory relief, including, without limitation, an order that requires Defendant to issue refunds to any member of the Class who requests a refund;
- F. Award reasonable attorneys' fees and costs; and
- G. Grant such further relief that this Court deems appropriate.

**JURY DEMAND**

Plaintiffs, on behalf of themselves and the putative Class, demands a trial by jury on all issues so triable.

Dated: April 27, 2020

Respectfully submitted,

/s/ Katherine Varholak  
Katherine Varholak  
Melissa Reagan  
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*Attorneys for the Plaintiffs and the Putative Class*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

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JORDAN RARICK, individually and on behalf  
of all others similarly situated,

Civil Action No.:

Plaintiff,

**JURY TRIAL DEMANDED**

v.

THE VAIL CORPORATION d/b/a VAIL  
RESORTS MANAGEMENT COMPANY.

Defendant.

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**CLASS ACTION COMPLAINT**

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Plaintiff Jordan Rarick brings this action on behalf of himself and all others similarly situated against Defendant The Vail Corporation d/b/a Vail Resorts Management Company (“Vail Resorts Management” or “Defendant”). Plaintiff makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to the allegations specifically pertaining to himself, which are based on personal knowledge.

**FACTS COMMON TO ALL CAUSES OF ACTION**

1. Defendant is the operator of more than 34 North American ski resorts throughout the United States. Defendant sells “Epic Passes” promising “unlimited, unrestricted skiing at [its] best resorts.”<sup>1</sup> Defendant also promises that its passes are the “best way to ski ... 7 days a week.”<sup>2</sup> To visit Defendant’s mountain resorts, consumers can purchase (1) annual passes for prices ranging from \$319 to \$979; (2) weekly passes from \$391 to \$766; (3); or day/multi-day

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<sup>1</sup> <https://www.vail.com/plan-your-trip/lift-access/passes/epic-pass.aspx> (last accessed April 9, 2020).

<sup>2</sup> <https://www.epicpass.com/passes/tahoe-local-pass.aspx> (last accessed April 9, 2020).

passes from \$67 to \$766 (called “Epic Day Passes” or “fixed season passes”). For customers that buy Epic Day Passes, they have the option to buy passes in packages for “1 to 7 total days.”

2. In March 2020, Defendant announced that it was closing all of its mountain resorts indefinitely. Subsequently, Defendant announced that its “North American resorts and retail stores will remain closed for the 2019-20 winter ski season.”<sup>3</sup> Defendant has not fully compensated its customers for their lost mountain resort access. Rather, Defendant has offered credits ranging from 20 to 80% of the pass values to season and day passholders.<sup>4</sup> The credits currently offered are insufficient to remedy Plaintiff and class members’ damages, as they are mere coupons that expire, if not used, by the start of the 2020-2021 season. Resultingly, Defendant has unjustly enriched itself by retaining passholder fees of hundreds of thousands of consumers – while denying passholders all access to all of Defendant’s mountain resorts.

3. Plaintiff seeks relief in this action individually, and on behalf of all of Defendant’s customers nationwide that purchased annual passes for the 2019-2020 season or fixed season passes for the 2019-2020 season who, as of the closure of Defendant’s resorts, had not used up all of the days remaining on their fixed season passes for breach of express warranties, negligent misrepresentation, unjust enrichment, money had and received, conversion, and breach of contract.

## **PARTIES**

4. Plaintiff Jordan Rarick is a citizen of Colorado, residing in Buena Vista, Colorado. Mr. Rarick is an annual passholder for Vail Resorts. In August of 2019, Mr. Rarick purchased two annual Epic Local season passes for \$699 per pass, which promised mountain

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<sup>3</sup> <https://www.snow.com/info/covid-19-update> (last accessed April 10, 2020).

<sup>4</sup> <https://www.epicpass.com/info/2019-2020-pass-holder-credit.aspx> (last accessed May 13, 2020).

access for the 2019-2020 ski season. In March 2020, however, Defendant notified passholders that it closed all 34 of its North American resorts. Defendant has retained the full amount of his annual pass fee even though Plaintiff does not have access to any of Defendant's resorts.

Further, Defendant has not credited Plaintiff any part of his annual pass fee for March 25 through the present, when Defendant's resorts were closed (and continue to remain closed). Plaintiff signed up for Defendant's annual pass with the understanding that he would be able to access Defendant's resorts for the 2019-2020 ski season. Plaintiff would not have paid for the annual pass, or would not have paid for it on the same terms, had he known that he would not have access to any of Defendant's resorts. Plaintiff continues to face imminent harm, as Defendant retains annual passholder's season pass fees while all of its resorts remain closed.

5. Defendant The Vail Corporation, is a Colorado corporation, with its principal place of business at 390 Interlocken Crescent, Broomfield, CO 80021. Defendant is the operator of 34 ski resorts in North America, and touts itself as "the premier mountain resort company in the world."<sup>5</sup> Defendant conducts substantial business throughout the United States, and specifically in the state of Colorado

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000, exclusive of interest and costs, and most members of the proposed nationwide class are citizens of states different from the states of Defendant.

7. This Court has personal jurisdiction over Defendant because Defendant conducts substantial business within Colorado such that Defendant has significant, continuous, and

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<sup>5</sup> <http://www.vailresorts.com/Corp/info/who-we-are.aspx> (last accessed April 9, 2020).

pervasive contacts with the State of Colorado. Defendant is registered to do business in the State of Colorado.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this District and a substantial part of the events giving rise to Plaintiff Rarick's claims took place within this District.

### **CLASS ACTION ALLEGATIONS**

9. Plaintiff brings this action as a class action under Federal Rule of Civil Procedure 23 on behalf of a Class consisting of all of Defendant's customers nationwide that purchased annual passes<sup>6</sup> for the 2019-2020 season or fixed season passes<sup>7</sup> for the 2019-2020 season who had not used up all of the days remaining on their fixed season passes.

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<sup>6</sup> Annual passes, as referred to in this complaint, refers to all Vail passes that are not limited to a fixed number of days during the season, including, but not limited to, the following passes: the Epic Pass, Epic Local, Epic Military Pass, Summit Value Pass, Keystone Plus Pass, Tahoe Local Pass, Tahoe Value Pass, Kirkwood Pass, Okemo/Mount Sunapee Pass, Okemo/Mount Sunapee Midweek Pass, Northeast College Pass, Whistler Blackcomb Unlimited Pass, Explorer, Explorer Youth, Drifter, Ranger, Traveler, Scout, Park City You Pass, Stevens Pass Premium Pass, Stevens Pass Select Pass, Adaptive Full Pass, Adaptive Tahoe Pass, Adaptive Urban Pass, Afton Alps College Night Pass, Afton Alps Family Pass, Afton Alps Friends Pass, Afton Alps Pass, Afton Alps Race Pass, Beave Creek Bachelor Gulch Club Pass, Beaver Creek Charter Club Member Pass, Beaver Creek Charter Club Non-Member Pass, Beaver Creek Gold Club Member Pass, Beaver Creek Gold Club Non-Member Pass, Crested Butte Choice Pass, Crested Butte Peak Pass, Eagle/Lake County School Employee Pass, Eagle/Summit/Lake County School Employee Pass, Liberty Pass, Merchant Epic Local Pass, Merchant Epic Pass, Merchant Pass Tahoe, Mt. Brighton College Night Pass, Mt. Brighton Family Pass, Mt. Brighton Pass, Senior Keystone/Breck 65+ Pass, Stevens Pass Other School Employee Pass, Stevens Pass Seasonal Program Pass, Summit/Lake County School Employee Pass, Tahoe Foundation Pass, Tahoe Gondola Pass, Whistler Blackcomb Gap Pass, Whistler Blackcomb Parent Pass, Whistler Blackcomb Sea to Sky Pass, Whistler Spirit Pass, Whistler Blackcomb Student Pass, Wilmot Family Pass, and Wilmot Pass.

<sup>7</sup> "Fixed season passes," as referred to in this complaint, refers to all Vail 2019/2020 passes that give the holder a fixed number of days to use the pass each season, usually ranging from 1 to 10 days, which are not required to be used on specific dates, including, but not limited to, the following passes: Epic Day Pass, Keystone Crested Butte 4 Pack, Whistler Blackcomb Edge Card 10 Day, Whistler Blackcomb Edge Card 5 Day, Whistler Edge Card 2 Day, Park City 4 Pack, Stevens Pass Powder Pack 4 Day, Stevens Pass Powder Pack 4 Night, Stevens Pass Powder Pack 6 Day, Stevens Pass Powder Pack 6 Night, 3x3 Pack, Adaptive 5 Day Pass, Adaptive Tahoe 5 Day, Adaptive Urban 5 Day Pass, Albany and Boston Ski Show 4 Pack, Attitash/Wildcat Cyber 4 Pack, Crotched Cyber 4 Pack, Mount Snow Cyber 4 Pack, Senior 70+ 10 Day Pass.



10. Plaintiff also seek to represent a subclass defined as all members of the Class who purchased the relevant passes in Colorado (the “Colorado Subclass”).

11. Plaintiff reserves the right to amend or modify the Class definition with greater specificity or further division into subclasses or limitation to particular issues as discovery and the orders of this Court warrant.

12. Excluded from the Class are the Defendant, the officers and directors of the Defendant at all relevant times, members of its immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendant has or had a controlling interest.

13. Plaintiff is a member of the Class and Colorado Subclass he seeks to represent.

14. Defendant has hundreds of thousands of customers nationwide that purchased resort passes that cannot be used. Accordingly, members of the Class are so numerous that their individual joinder herein is impracticable. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant.

15. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to whether Defendant has breached its contract with its customers and whether its actions are fraudulent and unlawful.

16. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff was exposed to Defendant’s false and misleading advertising and was charged

for his resort pass promising mountain access for the 2019-2020 ski season, despite being barred from entry into Defendant's resort properties and suffered losses as a result.

17. Plaintiff is an adequate representative of the Class because Plaintiff's interests do not conflict with the interests of the Class members Plaintiff seek to represent, Plaintiff has retained competent counsel experienced in prosecuting class actions, and Plaintiff intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

18. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of the Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

### **COUNT I**

#### **Breach of Express Warranty**

19. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

20. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendant. Plaintiff also brings this claim individually and on behalf of the members of the proposed Colorado Subclass against Defendant.

21. In connection with the sale of passes, Defendant issues an express warranty that customers would have unlimited access to its mountain resorts, or for the fixed season passes, that they would have access to Defendant's mountain resorts for a specified number of days.

22. Defendant's affirmation of fact and promise in Defendant's marketing and signage became part of the basis of the bargain between Defendant and Plaintiff and Class members, thereby creating express warranties that the services would conform to Defendant's affirmation of fact, representations, promise, and description.

23. Defendant breached its express warranty because Defendant does not provide unlimited access to its mountain resorts, and, for the fixed season passes, does not provide access to resorts even for customers who still have unused fixed season passes left for the 2019-2020 season. In fact, Defendant has retained the full amount of its pass fees while 100 percent of its mountain resorts are closed.

24. Plaintiff and the Class members were injured as a direct and proximate result of Defendant's breach because: Plaintiff and the Class suffered injuries caused by Defendant because (a) they would not have purchased or paid for Defendant's passes absent Defendant's representations and omission of a warning that it would retain members' passholder fees while all mountain resorts nationwide are closed; (b) they would not have purchased passes on the same terms absent Defendant's representations and omissions; (c) they paid a price premium for Defendant's passes based on Defendant's misrepresentations and omissions; and (d) Defendant's passes did not have the characteristics, benefits, or quantities as promised.

**COUNT II**

**Negligent Misrepresentation**

25. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

26. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendant. Plaintiff also brings this claim individually and on behalf of the members of the proposed Colorado Subclass against Defendant.

27. As discussed above, Defendant misrepresented that customers would have unlimited access to its mountain resorts, or, for the fixed season passes, that they would have access to Defendant's mountain resorts for a specified number of days. However, Defendant in fact retains the full price for passes, even when 100 percent of its mountain resorts are closed to the public.

28. Defendant negligently misrepresented and/or negligently omitted material facts about its passes and services.

29. The negligent misrepresentations and omissions made by Defendant, upon which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class members to purchase Defendant's passes.

30. Plaintiff and Class members would not have purchased Defendant's passes, or would not have purchased the services on the same terms, if the true facts had been known.

31. The negligent actions of Defendant caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

**COUNT III**  
**Unjust Enrichment**

32. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

33. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendant. Plaintiff also brings this claim individually and on behalf of the members of the proposed Colorado Subclass against Defendant.

34. Plaintiff and members of the Class conferred benefits on Defendant by paying, and being charged, pass fees while 100 percent of Defendant's mountain resorts were and remain closed.

35. Defendant has knowledge of such benefits.

36. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff and Class members' pass fees. Retention of those moneys under these circumstances is unjust and inequitable because Defendant is retaining its customers full pass fees while 100 percent of its mountain resorts remain closed. These misrepresentations and charges caused injuries to Plaintiff and members of the Class because they would not have paid Defendant's pass fees had the true facts been known.

37. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and members of the Class is unjust and inequitable, Defendant must pay restitution to Plaintiff and members of the Class for their unjust enrichment, as ordered by the Court.

**COUNT IV**  
**Money Had and Received**

38. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

39. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendant. Plaintiff also brings this claim individually and on behalf of the members of the proposed Colorado Subclass against Defendant.

40. Defendant received money in the form of pass fees that was intended to be used for the benefit of Plaintiff and the Class, those pass fees were not used for the benefit of Plaintiff and the Class, and Defendant has not given back or refunded the wrongfully obtained money and pass fees to Plaintiff and the Class.

41. Defendant obtained money in the form of pass fees that was intended to be used to provide unlimited mountain resort access to Plaintiff and the Class, or, for the fixed season passes, that was intended to provide customers with access to Defendant's mountain resorts for a specified number of days. However, Defendant has retained all of the pass fees while 100 percent of its mountain resorts were and remain closed.

## **COUNT V**

### **Conversion**

42. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

43. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendant. Plaintiff also brings this claim individually and on behalf of the members of the proposed Colorado Subclass against Defendant.

44. Plaintiff and members of the Class had a right to retain their pass fees while all of Defendant's mountain resorts were and remain closed; Defendant intentionally retained full amount of the Plaintiff's and Class members' pass fees while Defendant's mountain resorts were closed; Plaintiff and Class members did not consent to Defendant's retaining such fees while Defendant's mountain resorts are closed; Plaintiff and Class members were harmed through

Defendant's retention of their pass fees; Defendant's conduct was a substantial factor in causing Plaintiff and Class members' harm.

**COUNT VI**  
**Breach of Contract**

45. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

46. Plaintiff brings this claim individually and on behalf of the members of the proposed Nationwide Class against Defendant. Plaintiff also brings this claim individually and on behalf of the members of the proposed Colorado Subclass against Defendant.

47. Defendant entered into contracts with Plaintiff and Class members to provide access to its mountain resorts in exchange for the payment of pass fees. Defendant has breached these contracts by retaining and Class members' full pass fees while 100 percent of its mountain remain closed. Plaintiff and Class members have suffered an injury through the payment of pass fees while not having access to Defendant's mountain resorts.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- a) For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent the Class members;
- b) For an order certifying the Colorado Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Colorado Subclass and Plaintiff's attorneys as Class Counsel to represent the Colorado Subclass members;

- c) For an order declaring that Defendant's conduct violates the statutes and laws referenced herein;
- d) For an order finding in favor of Plaintiff, the Class, and the Colorado Subclass, on all counts asserted herein;
- e) For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- f) For prejudgment interest on all amounts awarded;
- g) For an order of restitution and all other forms of equitable monetary relief;
- h) For injunctive relief as pleaded or as the Court may deem proper; and
- i) For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit.

### **JURY DEMAND**

Plaintiff demands a trial by jury on all causes of action and issues so triable.

Dated: May 13, 2020

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By: /s/ Yeremey Krivoshey  
Yeremey Krivoshey

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**FILED**  
U. S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

MAY 18 2020

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

JAMES W. McCORMACK, CLERK  
By:  DEP CLERK

JAMES BRADLEY, on behalf of  
himself, and all others similarly situated

Plaintiffs,

vs.

UNITED SPECIALTY INSURANCE  
COMPANY,

Defendant.

Case No. 4:20-cv-520-JM

Judge: Moody

Magistrate Judge Kearney

JURY TRIAL REQUESTED

**CLASS ACTION COMPLAINT**

Comes now, James Bradley, on behalf of himself, and all others similarly situated (“Plaintiffs”), by and through the undersigned counsel, and files this Class Action Complaint against United Specialty Insurance Company (“Defendant” or “USIC”) and alleges as follows:

**INTRODUCTION**

1. This is a class action whereby Plaintiffs seek a declaratory judgment that Defendant breached its contract by refusing to reimburse or refund Plaintiffs for the loss of use of ski passes insured by Defendant.

2. Plaintiffs purchased insurance from Defendant to protect against the risk of not being able to use purchased ski passes. The insurance policy expressly provides coverage for Plaintiffs who were not able to use the ski passes due to a covered peril, and represents to refund Plaintiffs for the cost of their ski pass minus the applicable daily rate or pro-rata reduction for each day that Plaintiff used their ski pass during the 2019/2020 ski season.

3. Defendant is in material breach of the policy by failing to refund Plaintiffs who were unable to use their ski passes for reasons related to the COVID-19 pandemic.

4. Defendant has caused material harm to Plaintiffs by improperly failing to make payment.

5. Plaintiffs bring this action on behalf of himself and all other similarly situated individuals pursuant to 29 U.S.C. § 216(b). Plaintiffs seek to recover compensatory damages as well as declaratory and injunctive relief.

### **PARTIES**

6. Plaintiff James Bradley is a citizen of the United States residing in the City of Little Rock in Pulaski County, Arkansas. James Bradley purchased a policy from Defendant in the 2019-2020 ski season for ski pass insurance.

7. Defendant USIC is a property casualty insurance company incorporated under the laws of the State of Delaware with its principal place of business in the State of Texas at 1900 L Don Dodson Drive, Bedford, Texas 76021.

### **JURISDICTION AND VENUE**

8. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2), because this is a class action in which at least one member of the class is a citizen of a state different from Defendant, the amount in controversy exceeds \$5 million exclusive of interest and costs, and the proposed class contains more than 100 members.

9. This Court has personal jurisdiction over Defendant because Defendant conducts substantial business within Arkansas such that Defendant has significant, continuous, and pervasive contacts with the State of Arkansas.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this District and a substantial part of the events giving rise to Plaintiffs' claims took place within this District.

### **CLASS ACTION ALLEGATIONS**

11. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), 23(b)(3) and/or 23(c)(4), Plaintiff brings this action on behalf of himself and all others similarly situated, and seeks to represent the following class:

12. All persons who purchased both an Epic Pass for the 2019/2020 ski season and purchased from Defendant pass insurance on their Epic Pass, but were denied coverage for the loss of use of their passes after the resorts closed on March 15, 2020 due to no fault of their own.

13. Excluded from the class is Defendant, any entity in which Defendant has a controlling interest, any of the officers, directors, or employees of the Defendant, the legal representatives, heirs, successors, and assigns of the Defendant, anyone employed with Plaintiffs' counsels' firms, any Judge to whom this case is assigned, and his or her immediate family.

14. Plaintiffs' claims satisfy the numerosity, typicality, adequacy, commonality and superiority requirements under Federal Rule of Civil Procedure 23, as set forth more fully herein.

15. The persons who fall within the class number in at least the hundreds and most likely thousands, and thus the numerosity standard is satisfied. Because class members are geographically dispersed across the country, joinder of all class members in a single action is impracticable.

16. Class members are readily ascertainable from information and records in Defendant's possession, custody, or control. Notice of this action can readily be provided to the class.

17. There are questions of law and fact common to the claims of Plaintiff and the class that predominate over any questions affecting only individual class members. The questions of law and fact arising from Defendant's actions that are common to the class include, without

limitation:

- A) Whether the order and directive from the CEO for Vail Resorts closing all its resorts in the United States constituted a quarantine under the terms of the Policy because it was “an unforeseen event, occurrence, or circumstance” that restrained class-members from entering upon and using the facilities of Destination Resorts for the purposes permitted by the Epic Pass;
- B) Whether governmental orders applicable to class members were an “unforeseen event, occurrence, or circumstance” that constituted a quarantine by restraining class members from traveling to Destination Resorts, engaging in activities, and using the Epic Pass for its intended purpose;
- C) Whether Defendant breached the terms of the Class Policies;
- D) Whether the class sustained damages as a result of Defendant’s breaches of contract;
- E) Whether the class is entitled to damages, restitution, and/or other equitable relief; and
- F) Whether the class, or a subset of the class, is entitled to declaratory relief stating the proper construction and/or interpretation of the Class Policies.

18. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claims asserted herein.

19. Plaintiff’s claims are typical of the claims of the class in that Plaintiff and the class members all purchased ski pass insurance policies containing the same or similar terms including, in particular, what constitutes a Covered Peril.

20. Plaintiff will fairly and adequately protect and represent the interests of the proposed class, because his interests are aligned with, and not antagonistic to, those of the proposed class, and she is represented by counsel who are experienced and competent in the prosecution of class action litigation, and have particular expertise with class action litigation on behalf of

purchasers of insurance policies.

21. Maintenance of this action as a class action is a fair and efficient method for adjudicating this controversy. It would be impracticable and undesirable for each member of the class to bring a separate action. Because of the relatively small size of individual class members' claims, absent a class action, most class members would likely find the cost of litigating their claims prohibitively high and would have no effective remedy. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

## **FACTUAL BACKGROUND**

### **Introduction**

22. Defendant USIC provides season ski pass insurance coverage whereby it promises its insureds coverage against loss of use of the insured's season ski pass.

23. Upon information and belief, Defendant USIC provides this insurance service to customers of Vail Corporation d/b/a Vail Resorts Management Company ("Vail Resorts"), a North American company that operates more than 34 ski resorts throughout the United States. Vail Resorts sells "Epic Passes" directly to consumers promising access to skiing and snowboarding at its resorts. Customers can purchase annual, weekly, or daily Epic Passes in advance.

24. Vail Resorts offered Epic Pass insurance through Defendant USIC for customers that wished to mitigate the risk that they may be unable to realize the full use of their Epic Pass for reasons outside of their control. Upon information and belief, thousands of customers purchased optional pass insurance through USIC.

25. On September 21, 2019 Class Plaintiff James Bradley purchased an Epic Pass and

Epic Pass insurance through Defendant. Plaintiff signed up for Vail Resort's Epic 3-day pass with the understanding that he would be able to access Vail Resorts from October 2019 through the end of the season. To ensure he would be able to get a refund if he was unable to use the pass, Mr. Bradley opted to pay an additional fee for pass insurance.

26. On March 15, 2020, Vail Resorts announced that it was closing all of its mountain resorts indefinitely. Subsequently, Vail Resorts announced that its "North American resorts and retail stores will remain closed for the 2019-20 winter ski season."<sup>1</sup> Rob Katz, chairman and chief executive officer of Vail Resorts, explained the company was ending the skiing season early due to the fast-moving situation involving COVID-19. *Id.*

27. The Governor of Colorado, the Governor of Arkansas, and the President of the United States all issued various orders, limiting human contact and restricting travel and activities to only those considered essential. Skiing and snowboarding are considered non-essential activities.

28. As a result of the closures and quarantine related restrictions, Plaintiff was restrained from entering upon and using the facilities of any of the Vail Resort properties and deprived of the use of his Epic Pass.

29. On March 18, 2020 Plaintiff promptly provided notice and made a claim to American Claims Management, Inc. ("ACM"), the third-party claims administrator for the Pass Insurance Program. Any documentation requested was provided to ACM within 90 days after the Covered Loss occurred.

30. On April 9, 2020, ACM informed Plaintiff that they reserved the right to further

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<sup>1</sup> <https://www.snow.com/info/covid-19-update> (last accessed May 14, 2020).

evaluate the claim and the policy before determining whether coverage existed. *See Exhibit A.*

31. Nearly another month later, on May 7, 2020, ACM sent a second letter informing Plaintiff that Defendant USIC was denying coverage because the “Effective Date of Coverage” ended on March 15, 2020 when the resort closed. *See Exhibit B.*

### **The Class Policy**

32. Plaintiffs purchased insurance from Defendant to protect against the risk of not being able to use the ski passes. A true and accurate copy of the Certificate of Season Ski Pass Insurance (“Certificate”) is attached hereto as **Exhibit C** and is incorporated herein by reference. The Master Policy (Policy Number EYHBDISP0317) contains the Certificate and is also attached hereto as **Exhibit D.**

33. The terms of the Master Policy were not subject to individual negotiation, and upon information and belief are materially the same for all policy owners (“Class Policy”).

34. Plaintiffs are the owners of a Class Policy, which was in force at the time of the alleged loss.

35. Defendant is the liable insurer under the Class Policy.

### **Terms of the Policy**

36. The Policy and Class Policy offers the following coverage:

#### **PROPERTY INSURED AND COVERAGE LIMITS:**

We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro- Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

37. The Policy and Class Policy defines a “Covered Peril” as follows:

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski

Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:

- a) Sickness, Injury or death of you or a family member;
- b) You have a Pregnancy or Childbirth verified by medical records; coverage is included for pregnant Season Ski Pass Holder's spouse of domestic partner and minor child;
- c) Your primary residence being made Uninhabitable by Natural Disaster;
- d) The Destination Resort closes indefinitely due to a Natural Disaster;
- e) You are subpoenaed, required to serve on a jury, hijacked, **quarantined** or your travel visa is denied; (perils f – j omitted) (emphasis added)

38. The Policy does contain a definition section, but the Policy fails to define “quarantined.” A quarantine is generally defined as “to isolate from normal relations or communication,”<sup>2</sup> and “a restriction on the movement of people and goods which is intended to prevent the spread of disease or pests. It is often used in connection to disease and illness, preventing the movement of those who may have been exposed to a communicable disease, but do not have a confirmed medical diagnosis.”<sup>3</sup>

39. The Policy contains no applicable exclusions for viruses, pandemics, related government orders or actions taken by Vail Resorts, independently or pursuant to such government orders.

40. The Policy defines a Loss as follows:

**LOSS:** Means your inability to use your season Ski Pass due to an unforeseen event, occurrence or circumstance.

## **CAUSES OF ACTION**

### **Count I: Breach of Contract**

41. The preceding paragraphs 1 – 40 are incorporated by reference herein.

42. Plaintiff and the proposed class members purchased ski pass insurance from Defendant.

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<sup>2</sup> <https://www.merriam-webster.com/dictionary/quarantine>

<sup>3</sup> <https://en.wikipedia.org/wiki/Quarantine>



43. The Policy and Class Policies are valid and enforceable contracts between the Defendant and Plaintiff and proposed class members.

44. Plaintiff and the proposed class members substantially performed their obligations pursuant to the terms of the Policy and Class Policies.

45. Plaintiff and the proposed class members suffered a Loss from a Covered Peril as they are defined under the Policy and Class Policies.

46. Defendant has failed to compensate Plaintiff and proposed class member for their respective Losses as required by the Policy and Class Policies.

47. As a direct and proximate result of Defendant's breaches, Plaintiff and the proposed class members have sustained damages that are continuing in nature in an amount to be determined at trial.

#### **Count II: Declaratory and Injunctive Relief**

48. The preceding paragraphs 1 – 47 are incorporated by reference herein.

49. An actual controversy has arisen and now exists between Plaintiff and the class, on the one hand, and Defendant, on the other, concerning the respective rights and duties of the parties under the Policy and Class Policies.

50. Plaintiff contends that Defendant has breached the Policy and Class Policies by failing to timely pay Class Members for their respective Losses by reimbursing each member of the class for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that the member has used his/her Season Ski Pass during the Ski/Snowboard Season.

51. Plaintiff, therefore, seeks a declaration of the parties' respective rights and duties under the Policy and Class Policies and requests the Court to declare the aforementioned conduct

of Defendant unlawful and in material breach of the Policy and Class Policies so that future controversies may be avoided.

52. Pursuant to a declaration of the parties' respective rights and duties under the Policy and Class Policies, Plaintiff further seeks an injunction enjoining Defendant (1) from continuing to engage in conduct in breach of the Policy and Class Policies; and (2) ordering Defendant to comply with the terms of the Policy and Class Policies including payment of all amounts due.

### **DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury.

### **CONCLUSION AND PRAYER FOR RELIEF**

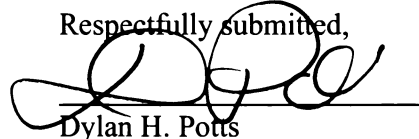
WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, requests relief and judgment against Defendant as follows:

- (a) That the Court enter an order certifying the class, appointing Plaintiff as a representative of the class, appointing Plaintiff's counsel as class counsel, and directing that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the class;
- (b) For a judgment against Defendant for the causes of action alleged against it;
- (c) For compensatory damages in an amount to be proven at trial;
- (d) For a declaration that Defendant's conduct as alleged herein is unlawful and in material breach of the Policy and Class Policies;
- (e) For appropriate injunctive relief, enjoining Defendant from continuing to engage in conduct related to the breach of the Policy and Class Policies;
- (f) For pre-judgment and post-judgment interest at the maximum rate permitted by law;

- (g) For Plaintiffs' attorney's fees;
- (h) For Plaintiffs' costs incurred; and
- (i) For such other relief in law or equity as the Court deems just and proper.

May 18, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dylan H. Potts', is written over a horizontal line.

Dylan H. Potts

Ark. Bar No. 2001258

Attorney for Plaintiff

GILL RAGON OWEN, P.A.

425 W. Capitol Avenue, Suite 3800

Little Rock, Arkansas 72201

(501) 376-3800

(501) 372-3359 (fax)

[potts@gill-law.com](mailto:potts@gill-law.com)



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Carlsbad, CA 92018-9030

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April 9, 2020

James Bradley  
3919 Lee Ave  
Little Rock, AR 72205

Claim Number : 69061721  
Date of Loss : 03/18/2020  
Re : Certificate of Ski Pass Insurance  
Season : 19-20

Dear James Bradley:

American Claims Management (hereinafter "ACM") is the authorized claims representative of United Specialty Insurance Company (hereinafter "USIC"). On behalf of USIC, we acknowledge the claim you made regarding the COVID-19 (or "virus") crisis and/or Vail's early closure of their North American resorts. Difficult decisions have been made to prioritize the health and wellbeing of our communities and our global population.

In the event you submitted your premium, USIC issued Season Ski Pass insurance (hereinafter "policy") to you for the 2019-2020 ski/snowboard season. A copy of that policy is available to you via the FAQ section of following web link <https://www.epicpass.com/info/pass-insurance.aspx>. We are happy to provide you with a copy of the policy upon your request.

In considering coverage, we have carefully reviewed the insurance policy referenced above as well as the factual basis of the presented claim. Based upon our review, we issue this letter to inform you that USIC reserves its rights to further our evaluation of your claim and the policy to determine whether coverage exists. We will provide you with additional information as soon as it is readily available.

Our coverage position is explained below.

### The Policy

We discuss below certain provisions of the USIC policy. Please note, however, that our discussion involves only a partial recitation of the terms, conditions, limitations and exclusions contained in the USIC policy. It is not intended to supplement, amend, supersede or otherwise alter the USIC policy. USIC does not intend to waive any provision of the USIC policy by virtue of its discussion. Please consult your copy of the USIC policy for a complete listing of all the terms, conditions, limitations and exclusions contained therein.

**INSURING AGREEMENT:** We will provide insurance under the Master Policy in consideration of your payment of the Premium.

**PROPERTY INSURED AND COVERAGE LIMITS:** We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:

### EXHIBIT A



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a) Sickness, Injury or death of you or a Family Member;

d) The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);

e) You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;

i) You are a Student (i) who transfers to a school located 100 or more miles from your current school; (ii) who is accepted into a foreign study program that will cause you to be out of the country during the ski season; (iii) who graduates and accepts a job that is 100 or more miles from your current residence.

**EXCLUSIONS:** We do not cover any Loss caused by or resulting from:

d) mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;

f) Loss that occurs when this coverage is not in effect;

#### **DEFINITIONS**

**EFFECTIVE DATE OF COVERAGE:** This insurance will be effective immediately upon acceptance by us of the Premium and shall remain in effect until the last day of the Ski/Snowboard Season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.

**DAILY RATE** – means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except; \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. DAILY RATE for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. The DAILY RATE does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.

**FAMILY MEMBER** - means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.

**NATURAL DISASTER** – means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.

**PHYSICIAN** – means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.

**SICKNESS** – in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.

#### **Insurance Company Position**



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Please be advised that regardless of the reason causing you to lose the ability to use your pass, if you are not an insured, you are ineligible for reimbursement of your pass price, or any portion thereof, from the policy. Please also note there is no reimbursement of the cost of your pass if the number of times you used your pass, multiplied by the applicable daily rate, exceeds your pass price.

In review, the concern of contracting the virus may not be covered under peril (a) because it is not considered **Sickness**, as defined by the policy, unless your physician certifies you actually contracted the disease. The policy may not provide you reimbursement for governmental authority(s) recommendation or to avoid, or bars travel, and/or "hold in place".

Anxiety, depression, psychological disorders, etc., experienced due to concerns of the virus, travel restrictions imposed, causing the inability to use your pass could disqualify any reimbursement pursuant to **exclusion (d)**.

Further, Vail's decision to close their resorts due to the concern of COVID-19 may not be covered under peril (d) since the reason of the closure is not a **Natural Disaster** as that term is defined by the policy.

In regard to peril (i), in the event a student's school closed early and the student returned home for on-line classes, it is possible no coverage exists for that cause of losing the ability to use the ski/snowboard season pass.

At this time, a final coverage determination has not been made whether pass holders with insurance will receive a reimbursement.

USIC reserves the right under the policy and applicable law to cite additional policy provisions as may be appropriate that may further limit the application of coverage under the applicable coverage parts of the USIC policy. The foregoing letter is premised upon the information previously obtained, and the terms and conditions of the policy. By limiting policy references to those cited, USIC does not waive any other policy provisions. The insurance policy in its entirety is incorporated by reference as if it had been stated in full.

We sincerely hope that all of you, your friends and your loved ones remain safe during this unprecedented time and that the world comes together to move past the challenges we currently face.

Sincerely,

Debbie Dettmer  
Vail Claims Adjuster  
(303) 834-4547  
Fax number: (760) 827-4844  
ddettmer@acmclaims.com



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May 7, 2020

James Bradley  
3919 Lee Ave  
Little Rock, AR 72205

Claim Number : 69061721  
Date of Loss : 03/18/2020  
Re : Certificate of Ski Pass Insurance  
Season : 2019 to 2020

Dear Guest:

American Claims Management (hereinafter "ACM") is the authorized claims representative of United Specialty Insurance Company (hereinafter "USIC"). If the premium was paid, USIC issued a Certificate of Season Ski Pass Insurance (hereinafter "Policy") to you for the 2019-2020 ski/snowboard season. A copy of that Policy is available to you via the FAQ section of following web link: <https://www.epicpass.com/info/pass-insurance.aspx>. We are happy to provide you with a copy of the Policy upon your request.

The basis of you not being able to use your pass may include, but not limited to, Vail Resorts' decision to close their North American Resorts on March 15, 2020 instead of April 15, 2020, travel restrictions imposed due to the COVID-19 pandemic, isolation to prevent the spread of COVID-19, or other reason(s), not including contraction of the virus, but associated with COVID-19.

Based upon review of the Policy issued to you by USIC, we regret to inform you there is no coverage provided for your claim under the USIC Certificate of Season Ski Pass Insurance. Our coverage position is explained below. Please refer to Vail Resorts' website for additional information. The website address is as follows:  
<https://www.epicpass.com>.

#### The Policy

Certain provisions of the USIC Policy are discussed below. Please note, however, that our discussion involves only a partial recitation of the terms, conditions, limitations, and exclusions contained in the USIC Policy. It is not intended to supplement, amend, supersede or otherwise alter the USIC Policy. USIC does not intend to waive any provision of the USIC Policy by virtue of its discussion. Please consult your copy of the USIC Policy for a complete listing of all the terms, conditions, limitations, and exclusions contained therein.

**INSURING AGREEMENT:** We will provide insurance under the Master Policy in consideration of your payment of the Premium.

**PROPERTY INSURED AND COVERAGE LIMITS:** We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

**PERILS INSURED AGAINST:** : Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:



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a) Sickness, Injury or death of you or a Family Member;

d) The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);

e) You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;

f) You are called to military service; your military leave is revoked; you are deployed or you are reassigned;

i) You are unable to use your Season Ski Pass due to the inability to travel to the United States due to a U.S. Tourist Visa rejection or denial or failure to obtain the visa required to enter the United States.

**EXCLUSIONS:** We do not cover any Loss caused by or resulting from:

d) mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;

f) Loss that occurs when this coverage is not in effect;

#### DEFINITIONS

**EFFECTIVE DATE OF COVERAGE:** This insurance will be effective immediately upon acceptance by us of the Premium and shall remain in effect until the last day of the Ski/Snowboard Season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.

**DAILY RATE** – means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except; \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. DAILY RATE for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. The DAILY RATE does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.

**FAMILY MEMBER** - means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.

**NATURAL DISASTER** – means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.

**PHYSICIAN** – means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.

**SICKNESS** – in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.

#### Insurance Company Position





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Under the Policy, USIC agreed to cover the Season Ski Pass cost you paid in the event you could not use your pass due to a covered peril, subject to limitations, terms, and conditions contained in the Policy. Please be advised that regardless of the reason causing you to lose the ability to use your pass, if you are not an insured, you are ineligible for reimbursement of your pass price, or any portion thereof, from the Policy. Please also note there is no reimbursement of the cost of your pass if the number of times you used your pass, multiplied by the applicable daily rate, exceeds your pass price.

Please be advised that per the definition of "Effective Date of Coverage" coverage started on the day the premium of this insurance was received and ended on March 15, 2020 which is the last day of the ski/snowboarding season at Vail Resorts. There is no coverage for any peril occurring outside the coverage period.

Your file was designated as one filed due to either Vail Resort's early closing of their North American Resorts, domestic, and international travel restrictions imposed due to the COVID-19 pandemic, or other reason(s), not including contraction of the virus, but associated with COVID-19.

Be advised, in the event you are military personnel, and your leave was revoked prior to March 15, 2020 due to the COVID-19 pandemic, your claim will be accepted under peril (f) upon our receipt and review of the order revoking your leave.

The Policy does not provide reimbursement for governmental authority(s) recommendation to avoid and/or bars domestic travel, and/or "hold in place". If you were unable to use your Ski Pass due to the inability to travel to the United States due to a U.S. Tourist Visa rejection, your claim is covered under peril (i) if the rejection occurred prior to the end of the coverage period. Confirmation of the Visa rejection is needed and should be sent to us for review.

In further review, the concern of you or a family member contracting the virus is not covered under **peril (a)** because it is not "Sickness", as that term is defined by the Policy. In the event your "Physician" certified you or a family member contracted the disease, please have your "Physician" complete the medical form previously sent to you and return it to our office for our review and further determination of coverage.

In the event of quarantine, as mentioned by **peril (e)**, coverage may apply in the event you are diagnosed as having or suspected of having COVID-19. If you are quarantined, by "Physician's" orders, before March 15, 2020, provide us with your "Physician's" certification that your "Physician" placed you in quarantine. We will review the "Physician's" order to determine whether coverage applies.

Further, Vail Resorts' decision to close their resorts due to the concern of COVID-19 is not covered under **peril (d)** since the reason of the closure is not a "Natural Disaster" as defined by the Policy.

Please also note that anxiety, depression, psychological disorders, etc., experienced due to concerns of COVID-19, or travel restrictions imposed, causing the inability to use your pass will disqualify any reimbursement pursuant to **exclusion (d)**.

USIC reserves the right under the Policy and applicable law to cite additional Policy provisions as may be appropriate that may further limit the application of coverage under the applicable coverage parts of the USIC Policy. The foregoing letter is premised upon the information previously obtained, and the terms and conditions of the Policy. By limiting Policy references to those cited, USIC does not waive any other Policy provisions. The Policy in its entirety is incorporated by reference as if it had been stated in full.

If you have additional information which you believe may affect this coverage position, please immediately forward it to ACM as it may affect our determination of coverage.

Sincerely,

Debbie Dettmer  
Vail Claims Adjuster  
(303) 834-4547  
Fax number: (760) 827-4844  
ddettmer@acmclaims.com



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Exceptional Results

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**Several states, within the United States of America, require ACM, working on behalf of USIC, to include specific language within this letter. If you are a resident of one of those states, see below:**

**California**

If you believe this claim has been wrongfully denied or rejected, you may have the matter reviewed by the California Department of Insurance. The address is State of California Department of Insurance, Claims Services Bureau, 11th Floor, 300 South Spring Street, South Tower, Los Angeles, California 90013. The telephone number is 1-800-927-4357 (Calling from within CA); 213-897-8921 (Outside California).

**Connecticut**

If you do not agree with this decision, you may contact the Division of Consumer Affairs within the Insurance Department.

Connecticut Insurance Department  
Consumer Affairs Division  
P.O. Box 816  
Hartford, CT 06142-0816  
800-203-3447 or (860) 297-3900  
E-mail address: [ctinsdept.consumeraffairs@po.state.ct.us](mailto:ctinsdept.consumeraffairs@po.state.ct.us)

**Florida**

Your Insurers are committed to the prompt and fair handling of all claims for coverage. If you believe that our position is incorrect or constitutes a wrongful denial, reservation of rights or rejection of this claim, you may have the matter reviewed by the Florida Division of Consumer Services by calling (877) 693-5236, or by writing to the Division at this address:

Florida Chief Financial Officer  
Division of Consumer Services,  
200 East Gaines Street,  
Tallahassee, FL 32399-0322

**Illinois**

Further to Part 919 of the Rules of the Illinois Department of Insurance requires that our company advise you that if you wish to take this matter up with the Illinois Department of Insurance, it maintains a Consumer Division in Chicago at 100 W. Randolph Street, Suite 15-100, Chicago, Illinois 60601 and in Springfield at 320 West Washington Street, Springfield, Illinois 62767.

**Nebraska**

If you believe this claim has been wrongfully denied or rejected, you may have the matter reviewed by the Nebraska Department of Insurance. The address is:

941 "O" Street, Suite 400  
Lincoln, NE 68508-3639  
(409) 471-2201  
(409) 471-4610- Fax

**New Hampshire**

**We will, of course, be available to you to discuss the position we have taken. Should you, however, wish to take this matter up with the New Hampshire Insurance department, it maintains a service division to investigate complaints at 21 South Fruit Street, Suite 14, Concord, New Hampshire 03301. The New Hampshire Insurance department can be reached, toll-free, by dialling 1-800-852-3416.**

**New Mexico**

If you believe that the Company has wrongfully denied or rejected any part of this claim, you may have the New Mexico Department of Insurance review the matter. The address and telephone number of the appropriate unit at



American Claims Management  
PO Box 9030  
Carlsbad, CA 92018-9030

Innovative Solutions  
Exceptional Results.

the Department of Insurance is:  
New Mexico Public Regulation Commission  
Insurance Division  
1120 Paseo De Peralta  
P.O. Box 1269  
Santa Fe, NM 87501  
Phone: (888) 427-5772

#### **New York**

Should you wish to take this matter up with the New York State Insurance Department, you may file with the Department either on its website at:

[www.ins.state.ny.us/complhow.htm](http://www.ins.state.ny.us/complhow.htm)

Or you may write to or visit the Consumer Services Bureau, New York State Insurance Department at: 25 Beaver Street, New York, NY 10004; One Commerce Plaza, Albany, NY 12257; 200 Old Country Road, Suite 340, Mineola, NY 11501; or Walter J. Mahoney Office Building, 65 Court Street, Buffalo, NY 14202.

#### **Rhode Island**

We will be available to you to discuss the position we have taken. Should you, however, wish to contact the Rhode Island Department of Business Regulation, you may do so at the address listed below. In certain limited circumstances the Department may have jurisdiction pursuant to R.I. Gen. Laws § 27-9.1-6 and therefore, you may be able to have the matter reviewed by the Department. The Department of Business Regulation does not have authority to settle or arbitrate claims, determine liability or order an insurer to pay a claim. Rhode Island Department of Business Regulation Insurance Division 233 Richmond Street, Providence, Rhode Island 02903 The Rhode Island Department of Business Regulation, Insurance Division can be contacted by telephone at 401-462-9520.

#### **Washington**

If you have questions or concerns about the actions of your insurance company or agent, or would like information on your rights to file an appeal, contact the Washington state Office of the Insurance Commissioner's consumer protection hotline at 1-800-562-6900 or visit [www.insurance.wa.gov](http://www.insurance.wa.gov). The insurance commissioner protects and educates insurance consumers, advances the public interest, and provides fair and efficient regulation of the insurance industry.

#### **West Virginia**

If you believe this claim has been wrongfully denied or rejected, you may have the matter reviewed by the West Virginia Consumer Service Division:  
West Virginia Offices of Insurance Commissioner  
Attn: Consumer Service Division  
P.O. Box 50540  
Charleston, West Virginia 25305-0540  
Telephone: Toll Free 1-888-TRY WVIC (888-879-9842) TTY 1-800-435-7381  
Website address: [www.wvinsurance.gov](http://www.wvinsurance.gov)

## CERTIFICATE OF SEASON SKI PASS INSURANCE

## UNITED SPECIALTY INSURANCE COMPANY

## SEASON SKI PASS INSURANCE COVERAGE UNDER MASTER POLICY NUMBER: EYHBDISP0317

This is to certify that the undersigned has arranged insurance as hereinafter specified and underwritten by United Specialty Insurance Company.

Please keep this document as your record of coverage under the plan.

**INSURING AGREEMENT:** We will provide insurance under the Master Policy in consideration of your payment of the Premium.

**EFFECTIVE DATE OF COVERAGE:** This insurance will be effective immediately upon acceptance by us of the Premium and shall remain in effect until the last day of the Ski/Snowboard Season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.

**PROPERTY INSURED AND COVERAGE LIMITS:** We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>a) Sickness, Injury or death of you or a Family Member;</li> <li>b) You have a Pregnancy or Childbirth verified by medical records; coverage is included for pregnant Season Ski Pass Holder's spouse or domestic partner and minor child;</li> <li>c) Your Primary Residence being made Uninhabitable by Natural Disaster;</li> <li>d) The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);</li> <li>e) You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;</li> <li>f) You are called to military service; your military leave is revoked; you are deployed or you are reassigned;</li> </ul> | <ul style="list-style-type: none"> <li>g) You or a <b>resident relative</b> have an involuntary, employer-initiated transfer that (i) is within the same organization for which you or a <b>resident relative</b> have been continuously employed for at least one year immediately preceding the transfer; and (ii) involves your or a <b>resident relative's</b> relocation to a Primary Residence 100 or more miles from your current Primary Residence;</li> <li>h) You or a <b>resident relative</b> are involuntarily terminated or laid off by an employer for whom you or a <b>resident relative</b> have been continuously employed for at least one-year immediately preceding the termination or lay off; or involves a non-renewal of a work visa. This provision is not applicable to temporary employment, independent contractors or self-employed persons;</li> <li>i) You are a Student (i) who transfers to a school located 100 or more miles from your current school; (ii) who is accepted into a foreign study program that will cause you to be out of the country during the ski season; (iii) who graduates and accepts a job that is 100 or more miles from your current residence.</li> <li>j) You are unable to use your Season Ski Pass due to the inability to travel to the United States due to a U.S. Tourist Visa rejection or denial or failure to obtain the visa required to enter the United States. Evidence of visa application and copy of formal rejection or denial will be required as proof of loss.</li> </ul> |
|--|--|

**EXCLUSIONS:** We do not cover any Loss caused by or resulting from:

- a) an intentional act, except for suicide or attempted suicide by you or a family member.
- b) any felony or criminal acts committed by you;
- d) mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;
- e) use of narcotics, controlled substances or alcohol;
- f) Loss that occurs when this coverage is not in effect;
- g) An Injury, Sickness or other medical condition which, within the 120 day period immediately preceding your coverage effective date: (i) first manifested itself, worsened or became acute or had symptoms which would have prompted a reasonable person to seek diagnosis, care or treatment; (ii) for which care or treatment was given or recommended by a Physician; or (iii) required taking prescription drugs or medicines, unless the condition for which the drugs or medicines are taken remains controlled without any change in the required prescription drugs or medicines.
- h) Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending or expected attack, by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or by military, naval or air forces or by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such governmental power, authority or forces. Civil disorder, riot, insurrection, rebellion, revolution, civil war, usurped power or action taken by governmental authority in hindering, combating or defending against such an occurrence, and seizure or destruction under quarantine, or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

Exclusion g. is waived if the following conditions are met: 1. The Season Ski Pass Insurance is purchased at the same time you make the Initial Payment for the Season Ski Pass; or 2. All the Insured's are medically able to ski/snowboard when the Season Ski Pass Insurance Cost is paid. The Initial Payment means the first payment made to the Insured's Season Ski Pass Supplier toward the cost of the Season Ski Pass.

**DEFINITIONS:**

**DAILY RATE** – means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except; \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. **DAILY RATE** for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. The **DAILY RATE** does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.

**DESTINATION RESORT** – means the ski resort where you expected to use your Season Ski Pass.

**INJURY** – in the case of you means accidental bodily injury that occurs while your coverage is in effect that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member, means accidental bodily injury that occurs while your coverage is in effect and that is either life threatening or requires your care, as certified by a Physician.

**INSURED** – means any person for whom the Premium has been paid and accepted by us.

**FAMILY MEMBER** – means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.

**LOSS** – means your inability to use your Season Ski Pass due to an unforeseen event, occurrence or circumstance.

**NATURAL DISASTER** – means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.

**PHYSICIAN** – means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.

**PREMIUM** – means the amount paid for the Season Ski Pass insurance coverage. Premium is 100% fully earned at inception. Premium includes 3% Colorado Surplus Lines Tax.

**PRIMARY RESIDENCE** – means your fixed, permanent and principal home for legal and tax purposes.

**RESIDENT RELATIVE** – means a person who is either the spouse (or domestic partner) or blood relation of the Insured and lives in the same home.

**SEASON SKI PASS HOLDER** – means the person whose name and likeness appear on the Season Ski Pass issued by the Season Ski Pass Supplier.

**SEASON SKI PASS SUPPLIER** – means any company that provides a Season Ski Pass for purchase.

**SEASON SKI PASS** – means any lift ticket access pass for multiple day usage throughout the duration of the Ski/Snowboard Season.

**SICKNESS** – in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.

**SKI/SNOWBOARD SEASON** – the period starting on October 15, 2019 and ending on April 15, 2020.

**SEASON SKI PASS COST** – means the purchase price of the Season Ski Pass.

**STUDENT** – means college student with at least twelve (12) credits for undergrads or six (6) for graduate students.

**UNINHABITABLE** - means the building structure is unstable and there is risk of collapse in whole or in part; or there is exterior or structural damage allowing elemental intrusions, such as rain, wind, hail or flood; or there are immediate safety hazards that have yet to be cleared and the home cannot be occupied.

**WE, US, or OUR** – means United Specialty Insurance Company.

**YOU or YOUR** – means the Insured, as the context requires.

**TERMINATION OF INSURANCE:** This insurance shall automatically terminate without notice to you on the last day of the Ski/Snowboard Season.

**VALUATION:** The value of the Season Ski Pass will be determined at the time of Loss and will be the Season Ski Pass Cost minus the applicable Daily Rate for each day (or portion thereof) that you have used of your Season Ski Pass during the Ski/Snowboard Season.

**OTHER INSURANCE:** If a Loss is also covered by other insurance, we will pay only the proportion of the Loss that this amount of insurance bears to the total amount of insurance covering the Loss.

**DUTIES YOU HAVE AFTER A LOSS:** You will give prompt notice to our authorized representative, listed below. The notice should include: a description of the Loss, the name of the Season Ski Pass Supplier, the Season Ski Pass Cost, and the date the Season Ski Pass was purchased. All claims under the Policy **must be submitted as soon as reasonably possible but, in any event, no later than July 15, 2020.**

<p>IF YOU HAVE A LOSS: write to:</p> <p>Or email to:</p> <p>Or report online via smartphone or computer</p>	<p>American Claims Management P.O. Box 9030 Carlsbad, CA 92011-9030 NewLosses@ACMClaims.com <a href="https://www.acmclaims.com/secureforms2/claim/vail">https://www.acmclaims.com/secureforms2/claim/vail</a></p>	<p>Telephone #1-877-895-1297 International Calling: +1-385-219-3411  Or fax #760-827-4081</p>
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**PROOF OF LOSS:** Documentation requested must be provided to American Claims Management no more than 90 days after a covered Loss occurs or claim is made, or as soon after that as is reasonably possible. Failure to provide acceptable proof of loss will cause your claim to be closed without payment.

**CONCEALMENT, MISREPRESENTATION AND FRAUD:** If you commit fraud by intentionally concealing or misrepresenting a material fact concerning the insurance evidenced by this Certificate you will void your insurance under this policy and be subject to prosecution.

**EXAMINATION UNDER OATH:** Before recovering for any Loss, if requested, you:

Will send us a sworn statement of loss containing the information we request to settle your claim within 60 days of our request;

Will agree to examinations under oath at our request;

Will produce others for examination under oath at our request;

Will provide us with all pertinent records needed to prove the loss; and

Will cooperate with us in the investigation or settlement of the loss

**LOSS PAYMENT/OTHER RECOVERIES:** We will pay or make good any covered Loss under the insurance evidenced by this Certificate within 30 days after we reach agreement with you, or the entry of final judgment or the filing of an arbitration award, whichever is earlier. We will not be liable for any part of a Loss which has been paid or made good by others.

**LEGAL ACTION AGAINST US:** No one may bring legal action against us unless there has been full compliance with all terms of the insurance evidenced by this Certificate; and such action is brought within one year after you first have knowledge of a Loss.

**TRANSFER OF COVERAGE:** Coverage under the policy cannot be transferred by the Insured to anyone else.

**OPTIONAL ARBITRATION:** In the event you and we fail to agree as to the interpretation or applicability of any of the terms of our Insurance, you may elect to resolve the disagreement by binding arbitration in accordance with the statutory rules and procedures of the state of Colorado or in accordance with the Commercial Arbitration Rules of the American Arbitration Association. This option is granted to you subject to the following terms and conditions:

Any arbitration claim instituted to determine coverage under the insurance evidenced by this Certificate must be filed within one year of the occurrence causing the Loss (which in the case of Sickness is the date you first experience symptoms, and in the case of Injury is the date the Injury occurs).

This optional arbitration clause is intended to grant an additional right to you. All other terms and conditions of this contract remain the same, and no rights or duties of yours or ours shall be diminished or negated by reason of this clause or exercise of this option.

**CANCELLATION:** The insurance evidenced by this Certificate may be canceled at any time by you, upon providing notice in writing to us or Beecher Carlson Insurance Services LLC. Premium is fully earned and there shall be no return premium due you.

**CHANGES:** This Certificate and the Master Policy contains agreements between you and us concerning the insurance afforded. This Certificate's terms can be amended or waived only by endorsement issued by us and made a part of the Master Policy.

**SERVICE OF SUIT:** In the event the Company fails to pay any amount claimed to be due, the Company, at the insured's request, will submit to a court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Company designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the Statute, or his successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designated the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**IF YOU HAVE ANY QUESTIONS REGARDING THE INSURANCE COVERAGE PROVIDED BY THIS CERTIFICATE:** Please contact your agent:

Beecher Carlson Insurance Services  
8000 E. Maplewood Ave., Suite 350  
Greenwood Village, CO 80111

Telephone # 303-996-5456 or #303-996-5415  
Or fax #770-870-3067  
Or email: [btaylor@beechercarlson.com](mailto:btaylor@beechercarlson.com) or [shayes@beechercarlson.com](mailto:shayes@beechercarlson.com)

*This contract is delivered as a surplus lines coverage under the "Nonadmitted Insurance Act". The insurer issuing this contract is not licensed in Colorado but is an approved nonadmitted insurer. There is no protection under the provisions of the "Colorado Guaranty Association Act."*

## Renewal Certificate

## United Specialty Insurance Company

Policy Number: EYHBDISP0317

**ITEM 1. Named Insured and Mailing Address:**

Vail Resorts, Inc.  
390 Interlocken Crescent  
Broomfield, CO 80021

**AGENT NAME AND ADDRESS:**

Beecher Carlson Insurance Services, LLC  
8000 E. Maplewood Ave.  
Suite 350  
Greenwood Village, CO 80111

**ITEM 2. Policy Period:** From: 03/01/2019 To: 03/01/2020

12:01 A.M. Standard Time at the address of the Named Insured as stated herein.

In consideration of the renewal premium stated, the above numbered policy is renewed for the period specified, subject to the terms conditions thereof, except as otherwise specified herein.

ANNUAL PREMIUM	TAX	POLICY and/or INSPECTION FEE	TOTAL PAID
\$ See Below	\$	\$	\$ See Below

☐ NO CHANGES FROM PREVIOUS TERM

☒ CHANGES ON ENDORSEMENT BELOW ARE APPLICABLE WITH ABOVE INCEPTION DATE

Premiums are as per Individual Certificates and Monthly Report.

BDI 00 01 10 16 – amended effective 03/01/2019

All other forms and endorsements are per Master policy.

  
SECRETARY

  
PRESIDENT

  
AUTHORIZED REPRESENTATIVE

EXHIBIT D

## CERTIFICATE OF SEASON SKI PASS INSURANCE

## UNITED SPECIALTY INSURANCE COMPANY

## SEASON SKI PASS INSURANCE COVERAGE UNDER MASTER POLICY NUMBER: EYHBDISP0317

This is to certify that the undersigned has arranged insurance as hereinafter specified and underwritten by United Specialty Insurance Company.  
Please keep this document as your record of coverage under the plan.

**INSURING AGREEMENT:** We will provide insurance under the Master Policy in consideration of your payment of the Premium.

**EFFECTIVE DATE OF COVERAGE:** This insurance will be effective immediately upon acceptance by us of the Premium and shall remain in effect until the last day of the Ski/Snowboard Season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.

**PROPERTY INSURED AND COVERAGE LIMITS:** We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>a) Sickness, injury or death of you or a Family Member;</li> <li>b) You have a Pregnancy or Childbirth verified by medical records; coverage is included for pregnant Season Ski Pass Holder's spouse or domestic partner and minor child;</li> <li>c) Your Primary Residence being made Uninhabitable by Natural Disaster;</li> <li>d) The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);</li> <li>e) You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;</li> <li>f) You are called to military service; your military leave is revoked; you are deployed or you are reassigned;</li> </ul> | <ul style="list-style-type: none"> <li>g) You or a <b>resident relative</b> have an involuntary, employer-initiated transfer that: (i) is within the same organization for which you or a <b>resident relative</b> have been continuously employed for at least one year immediately preceding the transfer; and (ii) involves your or a <b>resident relative's</b> relocation to a Primary Residence 100 or more miles from your current Primary Residence;</li> <li>h) You or a <b>resident relative</b> are involuntarily terminated or laid off by an employer for whom you or a <b>resident relative</b> have been continuously employed for at least one-year immediately preceding the termination or lay off; or involves a non-renewal of a work visa. This provision is not applicable to temporary employment, independent contractors or self-employed persons;</li> <li>i) You are a Student (i) who transfers to a school located 100 or more miles from your current school; (ii) who is accepted into a foreign study program that will cause you to be out of the country during the ski season; (iii) who graduates and accepts a job that is 100 or more miles from your current residence.</li> <li>j) You are unable to use your Season Ski Pass due to the inability to travel to the United States due to a U.S. Tourist Visa rejection or denial or failure to obtain the visa required to enter the United States. Evidence of visa application and copy of formal rejection or denial will be required as proof of loss.</li> </ul> |
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**EXCLUSIONS:** We do not cover any Loss caused by or resulting from:

- a) an intentional act, except for suicide or attempted suicide by you or a family member.
- b) any felony or criminal acts committed by you;
- d) mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;
- e) use of narcotics, controlled substances or alcohol;
- f) Loss that occurs when this coverage is not in effect;
- g) An Injury, Sickness or other medical condition which, within the 120 day period immediately preceding your coverage effective date: (i) first manifested itself, worsened or became acute or had symptoms which would have prompted a reasonable person to seek diagnosis, care or treatment; (ii) for which care or treatment was given or recommended by a Physician; or (iii) required taking prescription drugs or medicines, unless the condition for which the drugs or medicines are taken remains controlled without any change in the required prescription drugs or medicines.
- h) Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending or expected attack, by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or by military, naval or air forces or by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such governmental power, authority or forces. Civil disorder, riot, insurrection, rebellion, revolution, civil war, usurped power or action taken by governmental authority in hindering, combating or defending against such an occurrence, and seizure or destruction under quarantine, or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

Exclusion g. is waived if the following conditions are met: 1. The Season Ski Pass Insurance is purchased at the same time you make the Initial Payment for the Season Ski Pass; or 2. All the Insured's are medically able to ski/snowboard when the Season Ski Pass Insurance Cost is paid. The Initial Payment means the first payment made to the Insured's Season Ski Pass Supplier toward the cost of the Season Ski Pass.

**DEFINITIONS:**

**DAILY RATE** – means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except; \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilnot Mtn. **DAILY RATE** for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilnot Mtn. The **DAILY RATE** does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.

**DESTINATION RESORT** – means the ski resort where you expected to use your Season Ski Pass.

**INJURY** – in the case of you means accidental bodily injury that occurs while your coverage is in effect that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member, means accidental bodily injury that occurs while your coverage is in effect and that is either life threatening or requires your care, as certified by a Physician.

**INSURED** – means any person for whom the Premium has been paid and accepted by us.

**FAMILY MEMBER** – means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.

**LOSS** – means your inability to use your Season Ski Pass due to an unforeseen event, occurrence or circumstance.

**NATURAL DISASTER** – means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.

**PHYSICIAN** – means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.



**PREMIUM** – means the amount paid for the Season Ski Pass insurance coverage. Premium is 100% fully earned at inception. Premium includes 3% Colorado Surplus Lines Tax.

**PRIMARY RESIDENCE** – means your fixed, permanent and principal home for legal and tax purposes.

**RESIDENT RELATIVE** – means a person who is either the spouse (or domestic partner) or blood relation of the Insured and lives in the same home.

**SEASON SKI PASS HOLDER** – means the person whose name and likeness appear on the Season Ski Pass issued by the Season Ski Pass Supplier.

**SEASON SKI PASS SUPPLIER** – means any company that provides a Season Ski Pass for purchase.

**SEASON SKI PASS** – means any lift ticket access pass for multiple day usage throughout the duration of the Ski/Snowboard Season.

**SICKNESS** – in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.

**SKI/SNOWBOARD SEASON** – the period starting on October 15, 2019 and ending on April 15, 2020.

**SEASON SKI PASS COST** – means the purchase price of the Season Ski Pass.

**STUDENT** – means college student with at least twelve (12) credits for undergrads or six (6) for graduate students.

**UNINHABITABLE** – means the building structure is unstable and there is risk of collapse in whole or in part; or there is exterior or structural damage allowing elemental intrusions, such as rain, wind, hail or flood; or there are immediate safety hazards that have yet to be cleared and the home cannot be occupied.

**WE, US, or OUR** – means United Specialty Insurance Company.

**YOU or YOUR** – means the Insured, as the context requires.

**TERMINATION OF INSURANCE:** This insurance shall automatically terminate without notice to you on the last day of the Ski/Snowboard Season.

**VALUATION:** The value of the Season Ski Pass will be determined at the time of Loss and will be the Season Ski Pass Cost minus the applicable Daily Rate for each day (or portion thereof) that you have used of your Season Ski Pass during the Ski/Snowboard Season.

**OTHER INSURANCE:** If a Loss is also covered by other insurance, we will pay only the proportion of the Loss that this amount of insurance bears to the total amount of insurance covering the Loss.

**DUTIES YOU HAVE AFTER A LOSS:** You will give prompt notice to our authorized representative, listed below. The notice should include: a description of the Loss, the name of the Season Ski Pass Supplier, the Season Ski Pass Cost, and the date the Season Ski Pass was purchased. All claims under the Policy must be submitted as soon as reasonably possible but, in any event, no later than July 15, 2020.

IF YOU HAVE A

LOSS:

write to:

Or email to:

Or report online via smartphone or computer

American Claims Management

P.O. Box 9030

Carlsbad, CA 92011-9030

NewLosses@ACMClaims.com

<https://www.acmclaims.com/secureforms2/claim/vail>

Telephone #1-877-895-1297

International Calling: +1-385-219-3411

Or fax #760-827-4081

**PROOF OF LOSS:** Documentation requested must be provided to American Claims Management no more than 90 days after a covered Loss occurs or claim is made, or as soon after that as is reasonably possible. Failure to provide acceptable proof of loss will cause your claim to be closed without payment.

**CONCEALMENT, MISREPRESENTATION AND FRAUD:** If you commit fraud by intentionally concealing or misrepresenting a material fact concerning the insurance evidenced by this Certificate you will void your insurance under this policy and be subject to prosecution.

**EXAMINATION UNDER OATH:** Before recovering for any Loss, if requested, you:

Will send us a sworn statement of loss containing the information we request to settle your claim within 60 days of our request;

Will agree to examinations under oath at our request;

Will produce others for examination under oath at our request;

Will provide us with all pertinent records needed to prove the loss; and

Will cooperate with us in the investigation or settlement of the loss

**LOSS PAYMENT/OTHER RECOVERIES:** We will pay or make good any covered Loss under the insurance evidenced by this Certificate within 30 days after we reach agreement with you, or the entry of final judgment or the filing of an arbitration award, whichever is earlier. We will not be liable for any part of a Loss which has been paid or made good by others.

**LEGAL ACTION AGAINST US:** No one may bring legal action against us unless there has been full compliance with all terms of the insurance evidenced by this Certificate; and

such action is brought within one year after you first have knowledge of a Loss.

**TRANSFER OF COVERAGE:** Coverage under the policy cannot be transferred by the Insured to anyone else.

**OPTIONAL ARBITRATION:** In the event you and we fail to agree as to the interpretation or applicability of any of the terms of our Insurance, you may elect to resolve the disagreement by binding arbitration in accordance with the statutory rules and procedures of the state of Colorado or in accordance with the Commercial Arbitration Rules of the American Arbitration Association. This option is granted to you subject to the following terms and conditions:

Any arbitration claim instituted to determine coverage under the insurance evidenced by this Certificate must be filed within one year of the occurrence causing the Loss (which in the case of Sickness is the date you first experience symptoms, and in the case of Injury is the date the Injury occurs).

This optional arbitration clause is intended to grant an additional right to you. All other terms and conditions of this contract remain the same, and no rights or duties of yours or ours shall be diminished or negated by reason of this clause or exercise of this option.

**CANCELLATION:** The insurance evidenced by this Certificate may be canceled at any time by you, upon providing notice in writing to us or Beecher Carlson Insurance Services LLC. Premium is fully earned and there shall be no return premium due you.

**CHANGES:** This Certificate and the Master Policy contains agreements between you and us concerning the insurance afforded. This Certificate's terms can be amended or waived only by endorsement issued by us and made a part of the Master Policy.

**SERVICE OF SUIT:** In the event the Company fails to pay any amount claimed to be due, the Company, at the insured's request, will submit to a court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Company designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the Statute, or his successor or successors in office, as our true and lawful attorney

upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designated the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**IF YOU HAVE ANY QUESTIONS REGARDING THE INSURANCE COVERAGE PROVIDED BY THIS CERTIFICATE:** Please contact your agent:

Beecher Carlson Insurance Services

8000 E. Maplewood Ave., Suite 350

Greenwood Village, CO 80111

Telephone # 303-996-5456 or #303-996-5413

Or fax #770-870-3067

Or email: [btaylor@beechercarlson.com](mailto:btaylor@beechercarlson.com) or [shayes@beechercarlson.com](mailto:shayes@beechercarlson.com)

*This contract is delivered as a surplus lines coverage under the "Nonadmitted Insurance Act". The insurer issuing this contract is not licensed in Colorado but is an approved nonadmitted insurer. There is no protection under the provisions of the "Colorado Guaranty Association Act."*



POLICY NUMBER: EYHBDISP0317

COMMERCIAL INLAND MARINE

CM BDI 00 10 00

**COMMERCIAL INLAND MARINE DECLARATIONS**EFFECTIVE DATE 03 / 01 / 2017

COMPANY	AGENT
United Specialty Insurance Company	Beecher Carlson Insurance Services, LLC 8000 Maplewood Ave, Suite 350 Greenwood Village, Colorado 80111

NAMED INSURED Vail Resorts, Inc.MAILING ADDRESS 390 Interlocken CrescentBroomfield, CO 80021POLICY PERIOD: From 03/01/2017 to 03/01/2018 at  
12:01 A.M. Standard Time at your mailing address shown above.IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS  
POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.Business Description: Ski Pass Insurance CoveragePremium for this Coverage Part \$ Per Monthly Premium Payable Per Monthly Premium Reports  
ReportsForms applicable to the Commercial Inland Marine Coverage Part \_\_\_\_\_  
(Show numbers)See Schedule of Forms and Endorsements CM BDI 10 10 16COUNTERSIGNED 4/10/2017 BY Sally D. Hayes  
(Date) (Authorized Representative)NOTE: OFFICERS' FACSIMILE SIGNATURES MAY BE INSERTED HERE, ON THE POLICY COVER OR  
ELSEWHERE AT THE COMPANY'S OPTION

Policy Number: EYHBDISP0317

CM BDI 10 10 16

## **SCHEDULE OF FORMS AND ENDORSEMENTS**

Insured Name: Vail Resorts, Inc.

Form(s) and Endorsement(s) made a part of this policy at time of issue:

CM BDI 00 10 00	COMMERCIAL INLAND MARINE DECLARATIONS
CM BDI 10 10 16	SCHEDULE OF FORMS AND ENDORSEMENTS
BDI 00 01 10 16	SKI PASS INSURANCE MASTER POLICY
IL 00 17 11 98	COMMON POLICY CONDITIONS
IL 01 69 09 07	COLORADO CHANGES
IL 02 28 09 07	COLORADO CHANGES – CANCELLATION AND NONRENEWAL
IL 00 03 09 07	CALCULATION OF PREMIUM
IL 09 52 01 15	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
IL 09 85 01 15	DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT
BDI 10 12 10 16	SERVICE OF SUIT

CM BDI 10 10 16

## SKI PASS INSURANCE MASTER POLICY

In this Policy, the "Insured" is the Season Ski Pass Holder and will be referred to as either "you" or "your". "We", "us" and "our" refers to the insurance company.

### INSURING AGREEMENT

We will provide insurance under this policy in consideration of the payment of "premium". The most we will pay is the Season Ski Pass cost you paid.

### EFFECTIVE DATE

This insurance coverage will become effective under each Certificate of Season Ski Pass Insurance immediately upon acceptance by us of the Premium.

### PROPERTY INSURED

The property insured under each certificate of Season Ski Pass insurance consists of the Season Ski Pass Cost minus the applicable Daily Rate for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

### COVERAGE

We will cover loss of use of your Ski Pass if caused by any one of the following unforeseen perils:

- a. Sickness, Injury or death of you or a Family Member
- b. You have a complication of pregnancy, normal pregnancy or childbirth verified by medical records;
- c. Your Primary Residence being made Uninhabitable by Natural Disaster;
- d. The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);
- e. You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;
- f. You are called to military service; your military leave is revoked; you are deployed or you are reassigned;
- g. You have an involuntary, employer-initiated transfer that: (i) is within the same organization for which you

have been continuously employed for at least one year immediately preceding the transfer; and (ii) involves your relocation to a Primary Residence 100 or more miles from your current Primary Residence;

- h. You are involuntarily terminated or laid off by an employer for whom you have been continuously employed for at least one-year immediately preceding the termination or lay off; or involves a non-renewal of a work visa. This provision is not applicable to temporary employment, independent contractors or self-employed persons;
- i. You are a Student (i) who transfers to a school located 100 or more miles from your current school; (ii) who is accepted into a foreign study program that will cause you to be out of the country during the ski season; (iii) who graduates and accepts a job that is 100 or more miles from your current residence.

### OTHER INSURANCE

If a Loss is also covered by other insurance, we will pay only the portion of the Loss that this amount of insurance bears to the total amount of insurance covering the loss.

### EXCLUSIONS

We do not cover loss caused by or resulting from:

- a. an intentional act, except for suicide or attempted suicide by you or a family member.
- b. any felony or criminal acts committed by you;
- c. mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;
- d. use of narcotics, controlled substances or alcohol;

## **SKI PASS INSURANCE MASTER POLICY**

- e. Loss that occurs when this coverage is not in effect;
- f. An Injury, Sickness or other medical condition which, within the 120 day period immediately preceding your coverage effective date: (i) first manifested itself, worsened or became acute or had symptoms which would have prompted a reasonable person to seek diagnosis, care or treatment; (ii) for which care or treatment was given or recommended by a Physician; or (iii) required taking prescription drugs or medicines, unless the condition for which the drugs or medicines are taken remains controlled without any change in the required prescription drugs or medicines.
- g. Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending or expected attack, by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or by military, naval or air forces or by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such governmental power, authority or forces. Civil disorder, riot, insurrection, rebellion, revolution, civil war, usurped power or action taken by governmental authority in hindering, combating or defending against such an occurrence, and seizure or destruction under quarantine, or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

Exclusion f. is waived if the following conditions are met: 1. The Season Ski Pass Insurance is purchased at the same time you make the Initial Payment

for the Season Ski Pass; or 2. All the Insured's are medically able to ski/snowboard when the Season Ski Pass Insurance Cost is paid. The Initial Payment means the first payment made to the Insured's Season Ski Pass Supplier toward the cost of the Season Ski Pass.

### **CONCEALMENT, MISPRESENTATION AND FRAUD**

If you, your representative or the insured commit fraud by intentionally concealing or misrepresenting a material fact concerning the insurance evidenced by this policy you will void your insurance under this policy and be subject to prosecution.

### **EXAMINATION UNDER OATH**

Before recovering any loss, if requested you or the insured will;

- a. send us a sworn statement of loss containing the information we request to settle your claim within 60 days of our request;
- b. agree to examinations under oath at our request;
- c. produce others for examination under oath at our request;
- d. provide us with all pertinent records needed to prove the loss; and
- e. cooperate with us in the investigation or settlement of the loss.

### **OPTIONAL ARBITRATION**

In the event you and we fail to agree as to the interpretation or applicability of any of the terms of our Insurance, you may elect to resolve the disagreement by binding arbitration in accordance with the statutory rules and procedures of the state of Colorado or in accordance with the Commercial Arbitration Rules of the American Arbitration Association. This option is granted to you subject to the following terms and conditions:

Any arbitration claim instituted to determine coverage under the insurance evidenced by this Certificate must be filed within one year of the occurrence causing the Loss (which in the case of Sickness is the date you first experience

## SKI PASS INSURANCE MASTER POLICY

symptoms, and in the case of Injury is the date the Injury occurs).

This optional arbitration clause is intended to grant an additional right to you. All other terms and conditions of this contract remain the same, and no rights or duties of yours or ours shall be diminished or negated by reason of this clause or exercise of this option.

### CHANGES

The master policy and Certificates of Ski Pass Insurance contain agreements between you, the Insured and us concerning the insurance afforded. This policy's terms can be amended or waived only by endorsement issued by us and made a part of the master policy.

### TERMINATION OR CANCELLATION OF INSURANCE

The insurance evidence by each Certificate of Season Ski Pass Insurance issued under this Policy will automatically terminate on the last day of the Ski/Snowboard season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.

For reasons other than nonpayment of "premium", we may cancel this insurance at any time and for any reason permitted by the Cancellation Statutes in the state for which the insurance is written, in writing to you at the address set forth in your season ski pass contact information. Proof of mailing will be sufficient proof of notice. In the event of such cancellation, the Notice of Cancellation will state the effective date of cancellation and the reason for the date. If the policy is cancelled for any reason other than the nonpayment of "premium" refund, we will send you refund.

### CONFORMITY WITH STATE STATUTES

If these terms of cancellation are in conflict with the laws of the state where in this Certificate of Insurance is issued,

they are hereby amended to conform to such statutes.

### EXAMINATION OF RECORDS

We, through any authorized representatives and at all times, shall have access to your books and records for the purpose of determining any fact relating to this insurance. Any evasion or attempted evasion by you in connection with reports, payment of "premium" hereunder, or any matter relating to this insurance shall void this Policy and shall be an absolute defense to suit or action brought under this policy.

### DEFINITIONS

**DAILY RATE** – means \$75 per day (\$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn.) for an adult pass (age 13 and up); \$35 per day (\$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn.) for a child pass (age 12 and under).

**DESTINATION RESORT** – means the ski resort where you expected to use your Season Ski Pass.

**INJURY** – in the case of you means accidental bodily injury that occurs while your coverage is in effect that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member, means accidental bodily injury that occurs while your coverage is in effect and that is either life threatening or requires your care, as certified by a Physician.

**INSURED** – means any person for whom the Premium has been paid and accepted by us.

**FAMILY MEMBER** - means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.

**LOSS** – means your inability to use your Season Ski Pass due to an unforeseen event, occurrence or circumstance.

## **SKI PASS INSURANCE MASTER POLICY**

**NATURAL DISASTER** – means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.

**PHYSICIAN** – means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.

**PREMIUM** – means the amount paid for the Season Ski Pass insurance coverage. Premium is 100% fully earned at inception.

**PRIMARY RESIDENCE** – means your fixed, permanent and principal home for legal and tax purposes.

**SEASON SKI PASS HOLDER** – means the person whose name and likeness appear on the Season Ski Pass issued by the Season Ski Pass Supplier.

**SEASON SKI PASS SUPPLIER** – means any company that provides a Season Ski Pass for purchase.

**SEASON SKI PASS** – means any lift ticket access pass for multiple day usage throughout the duration of the Ski/Snowboard Season.

**SICKNESS** – in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.

**SKI/SNOWBOARD SEASON** – means the period starting on October 15, 2017 and ending on April 15, 2018.

**SEASON SKI PASS COST** – means the purchase price of the Season Ski Pass.

**STUDENT** – means college student with at least twelve (12) credits for undergrads or six (6) for graduate students.

**UNINHABITABLE** - means the building structure is unstable and there is risk of collapse in whole or in part; or there is

exterior or structural damage allowing elemental intrusions, such as rain, wind, hail or flood; or there are immediate safety hazards that have yet to be cleared and the home cannot be occupied.

**WE, US, or OUR** – means Black Diamond Insurance Inc.

**YOU or YOUR** – means the Insured, as the context requires.

### **DUTIES YOU HAVE AFTER A LOSS**

You will give prompt notice to our authorized representative. The notice should include: a description of the Loss, the name of the Season Ski Pass Supplier, the Season Ski Pass Cost, and the date the Season Ski Pass was purchased. All claims under the Policy must be submitted as soon as reasonably possible but, in any event, no later than July 15, 2018.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COMMON POLICY CONDITIONS**

All Coverage Parts included in this policy are subject to the following conditions.

### **A. Cancellation**

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### **B. Changes**

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### **C. Examination Of Your Books And Records**

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### **D. Inspections And Surveys**

1. We have the right to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### **E. Premiums**

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### **F. Transfer Of Your Rights And Duties Under This Policy**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**COLORADO CHANGES – CONCEALMENT,  
MISREPRESENTATION OR FRAUD**

This endorsement modifies insurance provided under the following:

**CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART – FARM PROPERTY – OTHER FARM PROVISIONS FORM –  
ADDITIONAL  
COVERAGES, CONDITIONS, DEFINITIONS  
FARM COVERAGE PART – LIVESTOCK COVERAGE FORM  
FARM COVERAGE PART – MOBILE AGRICULTURAL MACHINERY AND  
EQUIPMENT COVERAGE FORM**

The **CONCEALMENT, MISREPRESENTATION OR FRAUD** Condition is replaced by the following:  
**CONCEALMENT, MISREPRESENTATION OR FRAUD**

We will not pay for any loss or damage in any case of:

1. Concealment or misrepresentation of a material fact; or
2. Fraud;

committed by you or any other insured ("insured") at any time and relating to coverage under this policy.



IL 02 28 09 07

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COLORADO CHANGES – CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL INLAND MARINE COVERAGE PART**

A. Paragraph 2. of the Cancellation Common Policy Condition is replaced by the following:

2. If this policy has been in effect for less than 60 days, we may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. 30 days before the effective date of cancellation if we cancel for any other reason.

B. The following is added to the Cancellation Common Policy Condition:

#### **7. Cancellation Of Policies In Effect For 60 Days Or More**

a. If this policy has been in effect for 60 days or more, or is a renewal of a policy we issued, we may cancel this policy by mailing through first-class mail to the first Named Insured written notice of cancellation:

- (1) Including the actual reason, at least 10 days before the effective date of cancellation, if we cancel for nonpayment of premium; or
- (2) At least 45 days before the effective date of cancellation if we cancel for any other reason.

We may only cancel this policy based on one or more of the following reasons:

- (1) Nonpayment of premium;
- (2) A false statement knowingly made by the insured on the application for insurance; or
- (3) A substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the policy unless the first Named Insured has notified us of the change and we accept such change.

C. The following is added and supersedes any other provision to the contrary:

#### **NONRENEWAL**

If we decide not to renew this policy, we will mail through first-class mail to the first Named Insured shown in the Declarations written notice of the nonrenewal at least 45 days before the expiration date, or its anniversary date if it is a policy written for a term of more than one year or with no fixed expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

D. The following condition is added:

#### **INCREASE IN PREMIUM OR DECREASE IN COVERAGE**

We will not increase the premium unilaterally or decrease the coverage benefits on renewal of this policy unless we mail through first-class mail written notice of our intention, including the actual reason, to the first Named Insured's last mailing address known to us, at least 45 days before the effective date.

Any decrease in coverage during the policy term must be based on one or more of the following reasons:

- 1. Nonpayment of premium;
- 2. A false statement knowingly made by the insured on the application for insurance; or
- 3. A substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the policy unless the first Named Insured has notified us of the change and we accept such change.

If notice is mailed, proof of mailing will be sufficient proof of notice.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CALCULATION OF PREMIUM**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
STANDARD PROPERTY POLICY

### **A. Cap On Certified Terrorism Losses**

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

### **B. Application Of Exclusions**

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.



**B. Disclosure Of Federal Participation In Payment Of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals a percentage (as shown in Part II of the Schedule of this endorsement or in the policy Declarations) of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

**C. Cap On Insurer Participation In Payment Of Terrorism Losses**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

BDI 10 12 10 16

## **SERVICE OF SUIT**

**SERVICE OF SUIT:** In the event the Company fails to pay any amount claimed to be due, the Company, at the insured's request, will submit to a court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Company designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the Statute, or his successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designated the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

BDI 10 12 10 16

JS 44 (Rev. 09/19)

## CIVIL COVER SHEET

4:20-cv-520-JM

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

JAMES BRADLEY, on behalf of  
himself, and all others similarly situated

(b) County of Residence of First Listed Plaintiff Pulaski

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Dylan H. Potts (ABA 2001258), Gill Ragon Owen, P.A., 425 W. Capitol,  
Suite 3800, Little Rock, AR 72201 501-376-3800, potts@gill-law.com

**DEFENDANTS**

UNITED SPECIALTY INSURANCE COMPANY

County of Residence of First Listed Defendant Tarrant County, TX

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 28 U.S.C. § 1332(d)(2) (paragraph 8)    29 U.S.C. § 216(b) (paragraph 5)

Brief description of cause:  
 breach of the policy by failing to refund Plaintiffs who were unable to use their ski passes

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes    ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/15/2020 5/18/2020

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:20-cv-01152-CMA-KLM

ANN C. HOAK, JOHN NEVRAUMONT,  
SUNIT ANANDWALA, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

UNITED SPECIALTY INSURANCE  
COMPANY,

Defendant.

---

**AMENDED CLASS ACTION COMPLAINT**

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Plaintiffs Ann C. Hoak, John Nevraumont, and Sunit Anandwala (“Plaintiffs”) bring this action on behalf of themselves and all other similarly situated persons against Defendant United Specialty Insurance Company (“USIC”). Plaintiffs make the following allegations pursuant to the investigation of counsel, and based upon information and belief, except as to the allegations specifically pertaining to them, which are based on personal knowledge.

**I. NATURE OF ACTION**

1. This is a class action for breach of contract to recover amounts for the loss of use of ski passes insured by USIC. Plaintiffs’ claims and those of the proposed class are supported by the written provisions of the ski pass insurance they purchased from USIC, which are materially the same for all members of the proposed class.

2. Plaintiffs and the proposed class members purchased from USIC ski pass insurance that covers the cost of each insured ski pass against the risk of not being able to use the pass due



to the occurrence of a covered peril. Defendant promised to reimburse Plaintiffs and members of the proposed class for the cost of their ski passes (minus an applicable daily rate or pro-rata reduction for each day that an insured used his or her ski pass during the 2019/2020 ski season).

3. Despite unambiguous language in the insuring agreement, which is fully integrated, USIC breached its promises by failing to pay Plaintiffs and proposed class members when they were prevented from using their ski passes because of closure of ski resorts due to the COVID-19 pandemic.

4. USIC has caused material harm to Plaintiffs and the proposed class by improperly failing to make payment.

5. On behalf of themselves and a class of similarly situated persons, Plaintiffs seek to recover compensatory damages, as well as declaratory relief.

## **II. PARTIES**

6. Plaintiff Ann C. Hoak is a resident of the City of Vail in Eagle County, Colorado.

7. Plaintiff John Nevraumont is a resident of the City of San Leandro in Alameda County, California.

8. Plaintiff Sunit Anandwala is a resident of the City of Seattle in King County, Washington.

9. Defendant USIC is a property casualty insurance company incorporated under the laws of the State of Delaware with its principal place of business in the State of Texas at 1900 L Don Dodson Drive, Bedford, Texas 76021.

## **III. JURISDICTION AND VENUE**

10. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2), because this is a class action in which at least one member of the class is a citizen of a state different from

Defendant, the amount in controversy exceeds \$5 million exclusive of interest and costs, and the proposed class contains more than 100 members.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that Defendant resides in this judicial district and division and a substantial portion of the events giving rise to the causes of action occurred in this judicial district and division.

### **FACTUAL BACKGROUND**

#### **The Epic Pass and Ski Pass Insurance**

12. Defendant USIC provides ski pass insurance whereby it promises its insureds coverage against loss of use of their ski passes.

13. Vail Corporation d/b/a Vail Resorts Management Company (“Vail Resorts”) operates 33 ski resorts throughout the United States. Vail Resorts sells “Epic Passes” promising access to skiing and snowboarding at its resorts. Consumers can purchase Epic Passes as: (1) annual passes for prices generally ranging from \$319 to \$979; (2) weekly passes for prices generally ranging from \$391 to \$766; or (3) day or multi-day passes for prices generally ranging from \$67 to \$766.

14. To induce consumers to purchase Epic Passes well in advance of the ski season, and to mitigate the risk that consumers may be unable to realize the full use of their Epic Pass for reasons beyond their control, pass insurance was offered to Vail Resorts’ customers through USIC.

15. Upon information and belief, Vail Resorts sold hundreds of thousands of Epic Passes for the 2019/2020 ski season.

16. Upon information and belief, thousands of consumers purchased insurance on their Epic Passes through USIC.

17. The website for Epic Pass identified pricing for pass insurance as follows, based on the type of Epic Pass purchased:

<b><u>Pass Type</u></b>	<b><u>Adult/Teen</u></b>	<b><u>Child</u></b>
Epic Pass	\$32	\$22
Military Epic Pass – Active/Retired	\$17	N/A
Military Epic Pass – Active/Retired Dependent	\$17	\$12
Military Epic Pass – Veteran	\$27	N/A
Military Epic Pass – Veteran dependent	\$27	\$17
Epic Local Pass	\$27	\$17
Epic Day Pass	\$27	\$17
Summit Value Pass	\$27	\$17
Keystone Plus Pass	\$17	\$12
Park City Youth Pass	\$17	\$12
Tahoe Local Pass	\$27	\$17
Tahoe Value Pass	\$17	\$12
Kirkwood Pass	\$27	\$17
Afton Alps Pass	\$17	\$17
Mt. Brighton Pass	\$17	\$12
Wilmot Pass	\$17	\$12

#### **Plaintiffs Purchased Ski Pass Insurance**

18. Plaintiffs purchased Epic Passes providing them access during the 2019/2020 ski season to the mountain resorts owned and/or operated by Vail Resorts.

19. Plaintiffs also purchased ski pass insurance from USIC on their 2019/2020 Epic Passes. A true and accurate copy of the “Certificate of Season Ski Pass Insurance” (“Certificate”) is attached hereto as Exhibit A and is incorporated herein by reference.

20. The Certificate identifies USIC as the insurer of “SEASON SKI PASS INSURANCE COVERAGE UNDER MASTER POLICY NUMBER: EYHBDISP0317.” The Certificate further provides: “This is to certify that the undersigned has arranged insurance as hereinafter specified and underwritten by United Specialty Insurance Company.”

21. The Certificate is the “record of coverage under the plan” for each purchaser of ski pass insurance through USIC.

22. Plaintiffs are owners of ski pass insurance from USIC on the Epic Passes they purchased from Vail Resorts for the 2019/2020 ski season. Their ski pass insurance was in force at the time of the alleged loss.

23. USIC is the effective and liable insurer of Plaintiffs’ Epic Passes for the 2019/2020 ski season. Likewise, USIC is the effective and liable insurer of passes purchased by persons meeting the class definition (the “Class”).

24. The terms of the ski pass insurance purchased by Plaintiffs and members of the proposed Class are evidenced in the Certificate. The terms of the ski pass insurance are not subject to individual negotiation and are materially the same for all insureds who purchased ski pass insurance through USIC.

#### **Terms of the Ski Pass Insurance**

25. The Certificate provides:

**PROPERTY INSURED AND COVERAGE LIMITS:** We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

26. The Certificate defines “Season Ski Pass” as follows:

**SEASON SKI PASS** – means any lift ticket access pass for multiple day usage throughout the duration of the Ski/Snowboard Season.

27. The Certificate defines the “Ski/Snowboard Season” as follows:

**SKI/SNOWBOARD SEASON** – the period starting on October 15, 2019 and ending on April 15, 2020.

28. The Certificate defines “Season Ski Pass Cost” as follows:

**SEASON SKI PASS COST** – Means the purchase price of the Season Ski Pass.

29. The Certificate defines “Daily Rate” as follows:

**DAILY RATE** – means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except; \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. **DAILY RATE** for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. The DAILY RATE does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.

30. The Certificate defines “Covered Peril,” in part, as follows:

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils *occurring after the effective date of coverage:*

a) Sickness, Injury or death of you or a Family member;

...

e) you are subpoenaed, required to serve on a jury, hijacked, **quarantined** or your travel visa is denied; (emphasis added)...

31. The term “quarantined” is not expressly defined within the Certificate but is commonly understood to mean: “to detain in or exclude by quarantine,” “to isolate from normal relations,” “a restraint upon the activities or communication of persons...designed to prevent the spread of disease...,” “the situation of being kept away from others to prevent a disease from spreading,” “to exclude, detain, or isolate for political, social, or hygienic reasons,” and “a system of measures maintained by governmental authority at ports, frontiers, etc., for preventing the spread of disease.” See [www.merriam-webster.com](http://www.merriam-webster.com); [www.dictionary.com](http://www.dictionary.com).

32. The Certificate defines “Loss” as follows:

**LOSS** – means your inability to use your Season Ski Pass due to an unforeseen event, occurrence or circumstance.

33. The Certificate states:

**VALUATION:** The value of the Season Ski pass will be determined at the time of Loss and will be the Season Ski Pass Cost minus the applicable Daily Rate for each day (or portion thereof) that you have used of your Season Ski Pass during the Ski/Snowboard Season.

34. The Certificate references no applicable exclusions for viruses, pandemics, related government and health orders and directives, or actions taken by Vail Resorts, independently or pursuant to such government and health orders and directives.

#### **Plaintiffs’ Loss**

35. The President of the United States, and state and local authorities throughout the United States, including the locations where ski resorts owned by Vail Resorts operate, have issued various orders and directives related to the COVID-19 pandemic, and limiting human contact and restricting travel and activities.

36. For instance, Eagle County, Colorado – where Plaintiff Hoak resides and the location of the Vail ski resort owned by Vail Resorts – filed a local disaster emergency declaration with the state of Colorado on March 7, 2020, in response to the arrival of COVID-19 in that county.

37. Likewise, the Governor of the State of Colorado, like the governors of other states, and representatives of local governments, municipalities, and counties around the United States, declared a state of emergency as a result of COVID-19, and on March 11, 2020, issued executive order D 2020 003, declaring a disaster emergency due to the presence of COVID-19 in Colorado.

38. On March 12, 2020, in response to the community spread of COVID-19, the Eagle County Public Health Department, like the health departments of states, municipalities, and

counties around the United States, issued a public health order imposing restrictions on social gatherings.

39. Thereafter, on March 14, 2020, having “been closely tracking every new development related to coronavirus (COVID-19) and hav[ing] been in constant contact with local health officials for guidance,” Vail Resorts announced it was closing all its mountain resorts in response to the COVID-19 pandemic beginning on March 15, 2020 through March 22, 2020, and would “reassess our approach for the rest of the season.” *See* “Update on Vail Resorts Operations from CEO Rob Kratz,” <https://www.snow.com/info/covid-19-update.aspx>.

40. That same day, the Governor of Colorado issued Executive Order D 2020 004 ordering the closure of downhill ski resorts “due to the presence of COVID-19 in the State of Colorado.”

41. On March 17, 2020, Vail Resorts made the decision to extend closure of its North American resorts for the entirety of the 2019/2020 season “amidst the continued challenges associated with the spread of coronavirus (COVID-19).” *See* Vail Resorts’ March 17, 2020, news release, “Vail Resorts to Close North American Resorts for the 2019-20 Ski Season,” <http://investors.vailresorts.com/news-releases/news-release-details/vail-resorts-close-north-american-resorts-2019-20-ski-season>.

42. Vail Resorts explained it made its decision “[g]iven the escalating concerns surrounding the global spread of COVID-19 and the potential impact that continuing to operate our resorts would have on our community medical systems,” and acknowledged its efforts to “work to contain the spread of COVID-19 with a focus on the health and safety of our employees, guests and communities.” *See* Vail Resorts’ March 18, 2020, news release, “Vail Resorts Provides Updated Commentary on COVID-19 Impact,” <http://investors.vailresorts.com/news-releases/news-release-details/vail-resorts-provides-updated-commentary-covid-19-impact>.

43. As a result of the closure, Plaintiffs were excluded from entering upon and using the facilities of any of Vail Resorts' properties and deprived of the use of their Epic Passes.

44. As set forth in the Certificate, Plaintiffs are entitled to receive from USIC payment of the cost of their Epic Passes less the applicable "Daily Rate" for each day that they used their Epic Passes during the ski/snowboarding season.

45. USIC is on notice of the COVID-19 pandemic and Vail Resorts' closure of ski resorts throughout North America, which has prevented access to all Epic Pass holders.

46. USIC is on notice of Plaintiffs' and the Class's loss of use of their Epic Passes.

47. Although the Certificate identifies coverage for loss of use of Epic Passes for Plaintiff and the proposed Class under the circumstances set forth herein, USIC has stated through its agents that it will not provide coverage for the March 14, 2020, closure of Vail Resorts' ski resorts.

48. Through its agents, USIC has therefore confirmed that any filing of notice of loss related to the March 14, 2020, closure of Vail Resorts' ski resorts would be futile.

49. Specifically, the Certificate provides that any notice of loss can be made to American Claims Management ("ACM") by mail, email, or by report online via smartphone or computer at <https://www.acmclaims.com/secureforms2/claim/vail>, but the form provided at that link includes a "Reminder" at the top of the page, stating (emphasis in original):

**There is no coverage under the insurance policy for Resort Closure. We suggest you go to the 2019/2020 Pass Holder Credit section of [epicpass.com](https://www.epicpass.com) for more information prior to filing a claim.**

Due to COVID-19 you may not hear from someone for several weeks.

50. Likewise, in offering a credit for new Epic Pass purchases for the 2020/2021 season, Vail Resorts informs Epic Pass purchasers that they will be entitled to COVID-19 related coverage for future purchases of ski passes, but they are not covered by Pass Insurance for COVID-



19 related closure for the 2019-2020 season. *See*, for instance, <https://www.epicpass.com/info/epic-coverage.aspx> (stating, “We understand that as a result of the disruption caused by the COVID-19 pandemic, many of you may be feeling uncertain about your future plans. **We also recognize that** our passes, and **Pass Insurance, historically have not provided refunds in situations like the COVID-19 pandemic.**”) (emphasis added).

51. Regardless of these public statements that closure of Vail Resorts was not covered by pass insurance, a number of Class members still completed the claim form and provided requested information to USIC through its authorized representative ACM, as identified in the Certificate, including providing any requested documentation to ACM within 90 days after the covered Loss occurred.

52. Such notice was met with a letter from ACM acknowledging receipt of claim (“Acknowledgement Letter”). For instance, see a copy of an April 10, 2020, Acknowledgement Letter attached hereto as Exhibit B.

53. By separate letter, ACM also provided a “Coverage Position” to proposed Class members. For instance, see a copy of an April 10, 2020, Coverage Position letter attached hereto as Exhibit C, and stating that ACM had “carefully reviewed the insurance policy referenced above as well as the factual basis of the presented claim” but was not making payment or recommending payment because it was still determining whether coverage exists.

54. The Coverage Position sent by ACM further asserted as follows (emphasis in original):

In review, the concern of contracting the virus may not be covered under peril (a) because it is not considered **Sickness**, as defined by the policy, unless your physician certifies you actually contracted the disease. The policy may not provide you reimbursement for governmental authority(s) recommendation or to avoid, or bars travel, and/or “hold in place”.

Anxiety, depression, psychological disorders, etc., experienced due to concerns of the virus, travel restrictions imposed, causing the inability to use your pass could disqualify any reimbursement pursuant to **exclusion (d)**.

Further, Vail's decision to close their resorts due to the concern of COVID-19 may not be covered under peril (d) since the reason of the closure is not a **Natural Disaster** as that term is defined by the policy.

In regard to peril (i), in the event a student's school closed early and the student returned home for on-line classes, it is possible no coverage exists for that cause of losing the ability to use the ski/snowboard season pass.

55. The Coverage Position concluded by stating USIC's position as follows:

At this time, a final coverage determination has not been made whether pass holders with insurance will receive a reimbursement.

56. The Coverage Position failed to address and ignored altogether peril (e) which expressly provided coverage if the insured was "quarantined."

57. And in yet another letter provided by ACM to proposed Class members, ACM denied coverage of the Epic Pass ("Denial Letter"). See, for instance, a copy of a May 7, 2020 Denial Letter, attached hereto as Exhibit D, where ACM stated that "[b]ased upon review of the Policy issued to you by USIC, we regret to inform you there is no coverage provided for your claims under the USIC Certificate of Season Ski Pass Insurance."

58. The Denial Letter further asserted, in part, as follows (emphasis in original):

Your file was designated as one filed due to either Vail Resort's early closing of their North American Resorts, domestic, and international travel restrictions imposed due to the COVID-19 pandemic, or other reason(s), not including contraction of the virus, but associated with COVID-19.

...

The Policy does not provide reimbursement for governmental authority(s) recommendation to avoid and/or bars domestic travel, and/or "hold in place"...

In further review, the concern of you or a family member contracting the virus is not covered under **peril (a)** because it is not "Sickness", as that term is defined by the Policy. In the event your "Physician" certified you or a

family member contracted the disease, please have your "Physician" complete the medical form previously sent to you and return it to our office for our review and further determination of coverage.

In the event of quarantine, as mentioned by **peril (e)**, coverage may apply in the event you are diagnosed as having or suspected of having COVID-19. If you are quarantined, by "Physician's" orders, before March 15, 2020, provide us with your "Physician's" certification that your "Physician" placed you in quarantine. We will review the "Physician's" order to determine whether coverage applies.

Further, Vail Resorts' decision to close their resorts due to the concern of COVID-19 is not covered under **peril (d)** since the reason of the closure is not a "Natural Disaster" as defined by the Policy.

Please also note that anxiety, depression, psychological disorders, etc., experienced due to concerns of COVID-19, or travel restrictions imposed, causing the inability to use your pass will disqualify any reimbursement pursuant to **exclusion (d)**.

59. While the Coverage Position ignored altogether "quarantine" as a Covered Peril, the Denial Letter addressed "quarantine" but sought to limit its application by ignoring the commonly understood meaning of the term. In doing so, the Denial Letter provides a reading of "quarantine" coverage that is entirely inconsistent with the plain terms set forth in the Certificate.

60. USIC's denial is improper and in breach of the plain terms of the Certificate.

61. Plaintiffs and other purchasers of USIC's pass insurance are entitled to coverage as a result of their exclusion from Vail Resorts due to the COVID-19 pandemic, but USIC has failed to make payment without just cause or excuse.

## **V. CLASS ACTION ALLEGATIONS**

62. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), 23(b)(3) and/or 23(c)(4), Plaintiffs bring this action on behalf of themselves and all others similarly situated, and seek to represent the following Class:

All persons in the United States: (1) who purchased an Epic Pass (or Epic Passes) for the 2019/2020 ski season, and (2) who purchased ski pass insurance from USIC on their 2019/2020 Epic Pass(es).

63. Excluded from the Class is USIC, any entity in which USIC has a controlling interest, any of the officers, directors, or employees of USIC, the legal representatives, heirs, successors, and assigns of USIC, anyone employed with Plaintiffs' counsels' firms, any Judge to whom this case is assigned, and his or her immediate family.

64. Plaintiffs' claims satisfy the numerosity, typicality, adequacy, commonality and superiority requirements under Federal Rule of Civil Procedure 23, as set forth more fully herein.

65. The persons who fall within the Class number in at least the hundreds, and most likely thousands, and thus the numerosity standard is satisfied. Because Class members are geographically dispersed across the country, joinder of all Class members in a single action is impracticable.

66. Class members are readily ascertainable from information and records in USIC's possession, custody, or control. Notice of this action can readily be provided to the Class.

67. There are questions of law and fact common to the claims of Plaintiffs and the Class that predominate over any questions affecting only individual Class members. The questions of law and fact arising from USIC's actions that are common to the class include, without limitation:

- a. Whether the order and directive from Vail Resorts closing its resorts in the United States, and excluding Epic Pass holders from those resorts, constituted a Covered Peril, as a "quarantine," under the terms of USIC's ski pass insurance agreements;
- b. Whether orders and directives from the many governmental and health authorities throughout the United States, which restrained travel and excluded participation in certain activities due to the presence of COVID-19, constituted a Covered Peril, as a "quarantine," under the terms of USIC's ski pass insurance agreements;

- c. Whether Defendant breached the terms of its ski pass insurance agreements with Class members;
- d. Whether the Class sustained damages as a result of USIC's breaches of contract;
- e. Whether the Class is entitled to damages, restitution, and/or other equitable relief; and
- f. Whether the Class, or a subset of the Class, is entitled to declaratory relief stating the proper construction and/or interpretation of USIC's ski pass insurance agreement.

68. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claims asserted herein.

69. Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs and the Class members all purchased ski pass insurance containing the same or similar terms including, in particular, what constitutes a Covered Peril.

70. Plaintiffs will fairly and adequately protect and represent the interests of the proposed Class, because their interests are aligned with, and not antagonistic to, those of the proposed Class, and they are represented by counsel who are experienced and competent in the prosecution of class action litigation, and have particular expertise with class action litigation on behalf of purchasers of insurance policies.

71. Maintenance of this action as a class action is a fair and efficient method for adjudicating this controversy. It would be impracticable and undesirable for each member of the Class to bring a separate action. Because of the relatively small size of individual Class members' claims, absent a class action, most Class members would likely find the cost of litigating their

claims prohibitively high and would have no effective remedy. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

### **COUNT I: BREACH OF CONTRACT**

72. The preceding paragraphs are incorporated by reference as if fully alleged herein.

73. Plaintiffs and each member of the proposed Class purchased ski pass insurance from Defendant.

74. The ski pass insurance agreement, as evidenced by the Certificate, is a valid and enforceable contract between USIC and Plaintiffs and Class members.

75. Plaintiffs and Class members substantially performed their obligations under the terms of the ski pass insurance agreement.

76. Plaintiffs and Class members suffered a Loss from a Covered Peril.

77. USIC has failed to compensate Plaintiffs and Class members for their respective Losses as required by the ski pass insurance agreement.

78. As a direct and proximate result of USIC's breaches, Plaintiffs and the Class have sustained damages that are continuing in nature in an amount to be determined at trial.

### **COUNT II: DECLARATORY RELIEF**

79. The preceding paragraphs are incorporated by reference as if fully alleged herein.

80. An actual controversy has arisen and now exists between Plaintiffs and the Class, on the one hand, and USIC, on the other, concerning the respective rights and duties of the parties under the ski pass insurance agreement.

81. Plaintiffs contend that USIC has breached its agreement by failing to timely pay Class members for their respective Losses by reimbursing each member of the Class for the value of the Epic Pass cost as set forth in the ski pass insurance agreement.

82. Plaintiffs, therefore, seek a declaration of the parties' respective rights and duties under the ski pass insurance agreement and request the Court to declare the aforementioned conduct of USIC unlawful and in material breach of the ski pass insurance agreement so that future controversies may be avoided.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, request relief and judgment against USIC as follows:

- (a) For an order certifying the Class, appointing Plaintiffs as representatives of the Class, appointing Plaintiffs' counsel as Class counsel, and directing that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the Class;
- (b) For a judgment against USIC for the causes of action alleged against it;
- (c) For compensatory damages in an amount to be proven at trial;
- (d) For a declaration that USIC's conduct as alleged herein is unlawful and in material breach of its ski pass insurance agreement;
- (e) For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- (f) For Plaintiffs' attorney's fees;
- (g) For Plaintiffs' costs incurred; and
- (h) For such other relief in law or equity as the Court deems just and proper.

### **DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all issues so triable.

May 18, 2020

Respectfully submitted,

**MILLER SCHIRGER, LLC**

*s/ Joseph M. Feierabend*

Joseph M. Feierabend

Stephen R. Miller

John J. Schirger

Matthew W. Lytle

4520 Main Street, Suite 1570

Kansas City, Missouri 64111

816-561-6500

816-561-6501 (f)

jfeierabend@millerschirger.com

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mlytle@millerschirger.com

- And -

**STUEVE SIEGEL HANSON LLP**

Patrick J. Stueve

Ethan M. Lange

460 Nichols Road, Suite 200

Kansas City, Missouri 64112

816-714-7100

816-714-7101 (f)

stueve@stuevesiegel.com

lange@stuevesiegel.com

*Attorneys for Plaintiffs*



# Exhibit A

# CERTIFICATE OF SEASON SKI PASS INSURANCE

## UNITED SPECIALTY INSURANCE COMPANY

### SEASON SKI PASS INSURANCE COVERAGE UNDER MASTER POLICY NUMBER: EYHBDISP0317

This is to certify that the undersigned has arranged insurance as hereinafter specified and underwritten by United Specialty Insurance Company.  
Please keep this document as your record of coverage under the plan.

**INSURING AGREEMENT:** We will provide insurance under the Master Policy in consideration of your payment of the Premium.

**EFFECTIVE DATE OF COVERAGE:** This insurance will be effective immediately upon acceptance by us of the Premium and shall remain in effect until the last day of the Ski/Snowboard Season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.

**PROPERTY INSURED AND COVERAGE LIMITS:** We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>a) Sickness, Injury or death of you or a Family Member;</li> <li>b) You have a Pregnancy or Childbirth verified by medical records; coverage is included for pregnant Season Ski Pass Holder's spouse or domestic partner and minor child;</li> <li>c) Your Primary Residence being made Uninhabitable by Natural Disaster;</li> <li>d) The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);</li> <li>e) You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;</li> <li>f) You are called to military service; your military leave is revoked; you are deployed or you are reassigned;</li> </ul> | <ul style="list-style-type: none"> <li>g) You or a resident relative have an involuntary, employer-initiated transfer that: (i) is within the same organization for which you or a resident relative have been continuously employed for at least one year immediately preceding the transfer; and (ii) involves your or a resident relative's relocation to a Primary Residence 100 or more miles from your current Primary Residence;</li> <li>h) You or a resident relative are involuntarily terminated or laid off by an employer for whom you or a resident relative have been continuously employed for at least one-year immediately preceding the termination or lay off; or involves a non-renewal of a work visa. This provision is not applicable to temporary employment, independent contractors or self-employed persons;</li> <li>i) You are a Student (i) who transfers to a school located 100 or more miles from your current school; (ii) who is accepted into a foreign study program that will cause you to be out of the country during the ski season; (iii) who graduates and accepts a job that is 100 or more miles from your current residence.</li> <li>j) You are unable to use your Season Ski Pass due to the inability to travel to the United States due to a U.S. Tourist Visa rejection or denial or failure to obtain the visa required to enter the United States. Evidence of visa application and copy of formal rejection or denial will be required as proof of loss.</li> </ul> |
|--|--|

**EXCLUSIONS:** We do not cover any Loss caused by or resulting from:

- a) an intentional act, except for suicide or attempted suicide by you or a family member.
- b) any felony or criminal acts committed by you;
- d) mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;
- e) use of narcotics, controlled substances or alcohol;
- f) Loss that occurs when this coverage is not in effect;
- g) An Injury, Sickness or other medical condition which, within the 120 day period immediately preceding your coverage effective date: (i) first manifested itself, worsened or became acute or had symptoms which would have prompted a reasonable person to seek diagnosis, care or treatment; (ii) for which care or treatment was given or recommended by a Physician; or (iii) required taking prescription drugs or medicines, unless the condition for which the drugs or medicines are taken remains controlled without any change in the required prescription drugs or medicines.
- h) Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending or expected attack, by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or by military, naval or air forces or by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such governmental power, authority or forces. Civil disorder, riot, insurrection, rebellion, revolution, civil war, usurped power or action taken by governmental authority in hindering, combating or defending against such an occurrence, and seizure or destruction under quarantine, or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

Exclusion g. is waived if the following conditions are met: 1. The Season Ski Pass Insurance is purchased at the same time you make the Initial Payment for the Season Ski Pass; or 2. All the Insured's are medically able to ski/snowboard when the Season Ski Pass Insurance Cost is paid. The Initial Payment means the first payment made to the Insured's Season Ski Pass Supplier toward the cost of the Season Ski Pass.

#### DEFINITIONS:

**DAILY RATE** – means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except; \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. **DAILY RATE** for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. The DAILY RATE does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.

**DESTINATION RESORT** – means the ski resort where you expected to use your Season Ski Pass.

**INJURY** – in the case of you means accidental bodily injury that occurs while your coverage is in effect that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member, means accidental bodily injury that occurs while your coverage is in effect and that is either life threatening or requires your care, as certified by a Physician.

**INSURED** – means any person for whom the Premium has been paid and accepted by us.

**FAMILY MEMBER** - means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.

**LOSS** – means your inability to use your Season Ski Pass due to an unforeseen event, occurrence or circumstance.

**NATURAL DISASTER** – means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.

**PHYSICIAN** – means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.

**PREMIUM** – means the amount paid for the Season Ski Pass insurance coverage. Premium is 100% fully earned at inception. Premium includes 3% Colorado Surplus Lines Tax.

**PRIMARY RESIDENCE** – means your fixed, permanent and principal home for legal and tax purposes.

**RESIDENT RELATIVE** – means a person who is either the spouse (or domestic partner) or blood relation of the Insured and lives in the same home.

**SEASON SKI PASS HOLDER** – means the person whose name and likeness appear on the Season Ski Pass issued by the Season Ski Pass Supplier.

**SEASON SKI PASS SUPPLIER** – means any company that provides a Season Ski Pass for purchase.

**SEASON SKI PASS** – means any lift ticket access pass for multiple day usage throughout the duration of the Ski/Snowboard Season.

**SICKNESS** – in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.

**SKI/SNOWBOARD SEASON** – the period starting on October 15, 2019 and ending on April 15, 2020.

**SEASON SKI PASS COST** – means the purchase price of the Season Ski Pass.

**STUDENT** – means college student with at least twelve (12) credits for undergrads or six (6) for graduate students.

**UNINHABITABLE** - means the building structure is unstable and there is risk of collapse in whole or in part; or there is exterior or structural damage allowing elemental intrusions, such as rain, wind, hail or flood; or there are immediate safety hazards that have yet to be cleared and the home cannot be occupied.

**WE, US, or OUR** – means United Specialty Insurance Company.

**YOU or YOUR** – means the Insured, as the context requires.

**TERMINATION OF INSURANCE:** This insurance shall automatically terminate without notice to you on the last day of the Ski/Snowboard Season.

**VALUATION:** The value of the Season Ski Pass will be determined at the time of Loss and will be the Season Ski Pass Cost minus the applicable Daily Rate for each day (or portion thereof) that you have used of your Season Ski Pass during the Ski/Snowboard Season.

**OTHER INSURANCE:** If a Loss is also covered by other insurance, we will pay only the proportion of the Loss that this amount of insurance bears to the total amount of insurance covering the Loss.

**DUTIES YOU HAVE AFTER A LOSS:** You will give prompt notice to our authorized representative, listed below. The notice should include: a description of the Loss, the name of the Season Ski Pass Supplier, the Season Ski Pass Cost, and the date the Season Ski Pass was purchased. All claims under the Policy **must be submitted as soon as reasonably possible but, in any event, no later than July 15, 2020.**

IF YOU HAVE A LOSS:  
write to:

American Claims Management  
P.O. Box 9030  
Carlsbad, CA 92011-9030

Telephone #1-877-895-1297  
International Calling: +1-385-219-3411

Or email to:

NewLosses@ACMClaims.com

Or fax #760-827-4081

Or report online via smartphone or computer <https://www.acmclaims.com/secureforms2/claim/vail>

**PROOF OF LOSS:** Documentation requested must be provided to American Claims Management no more than 90 days after a covered Loss occurs or claim is made, or as soon after that as is reasonably possible. Failure to provide acceptable proof of loss will cause your claim to be closed without payment.

**CONCEALMENT, MISREPRESENTATION AND FRAUD:** If you commit fraud by intentionally concealing or misrepresenting a material fact concerning the insurance evidenced by this Certificate you will void your insurance under this policy and be subject to prosecution.

**EXAMINATION UNDER OATH:** Before recovering for any Loss, if requested, you:

Will send us a sworn statement of loss containing the information we request to settle your claim within 60 days of our request;

Will agree to examinations under oath at our request;

Will produce others for examination under oath at our request;

Will provide us with all pertinent records needed to prove the loss; and

Will cooperate with us in the investigation or settlement of the loss

**LOSS PAYMENT/OTHER RECOVERIES:** We will pay or make good any covered Loss under the insurance evidenced by this Certificate within 30 days after we reach agreement with you, or the entry of final judgment or the filing of an arbitration award, whichever is earlier. We will not be liable for any part of a Loss which has been paid or made good by others.

**LEGAL ACTION AGAINST US:** No one may bring legal action against us unless there has been full compliance with all terms of the insurance evidenced by this Certificate; and such action is brought within one year after you first have knowledge of a Loss.

**TRANSFER OF COVERAGE:** Coverage under the policy cannot be transferred by the Insured to anyone else.

**OPTIONAL ARBITRATION:** In the event you and we fail to agree as to the interpretation or applicability of any of the terms of our Insurance, you may elect to resolve the disagreement by binding arbitration in accordance with the statutory rules and procedures of the state of Colorado or in accordance with the Commercial Arbitration Rules of the American Arbitration Association. This option is granted to you subject to the following terms and conditions:

Any arbitration claim instituted to determine coverage under the insurance evidenced by this Certificate must be filed within one year of the occurrence causing the Loss (which in the case of Sickness is the date you first experience symptoms, and in the case of Injury is the date the Injury occurs).

This optional arbitration clause is intended to grant an additional right to you. All other terms and conditions of this contract remain the same, and no rights or duties of yours or ours shall be diminished or negated by reason of this clause or exercise of this option.

**CANCELLATION:** The insurance evidenced by this Certificate may be canceled at any time by you, upon providing notice in writing to us or Beecher Carlson Insurance Services LLC. Premium is fully earned and there shall be no return premium due you.

**CHANGES:** This Certificate and the Master Policy contains agreements between you and us concerning the insurance afforded. This Certificate's terms can be amended or waived only by endorsement issued by us and made a part of the Master Policy.

**SERVICE OF SUIT:** In the event the Company fails to pay any amount claimed to be due, the Company, at the insured's request, will submit to a court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Company designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the Statute, or his successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designated the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**IF YOU HAVE ANY QUESTIONS REGARDING THE INSURANCE COVERAGE PROVIDED BY THIS CERTIFICATE:** Please contact your agent:

Beecher Carlson Insurance Services  
8000 E. Maplewood Ave., Suite 350  
Greenwood Village, CO 80111

Telephone # 303-996-5456 or #303-996-5413

Or fax #770-870-3067

Or email: [btaylor@beechercarlson.com](mailto:btaylor@beechercarlson.com) or [shayes@beechercarlson.com](mailto:shayes@beechercarlson.com)

*This contract is delivered as a surplus lines coverage under the "Nonadmitted Insurance Act". The insurer issuing this contract is not licensed in Colorado but is an approved nonadmitted insurer. There is no protection under the provisions of the "Colorado Guaranty Association Act."*

# Exhibit B



American Claims Management  
PO Box 9030  
Carlsbad, CA 92018-9030

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Exceptional Results.

April 10, 2020

Ann Hoak  
2418 Garmisch Dr #1  
Vail, CO 81657

RE: Acknowledgement

Guest : Ann Hoak  
Incident Date : 03/14/2020  
ACM Claim No. : 69064491

Dear Ann Hoak:

American Claims Management, Inc. ("ACM") is the third party claims administrator for the Pass Insurance Program. We acknowledge receipt of the claim you have submitted. Please be advised that your pass will be inactivated while the claim is being investigated.

In order to process your claim, additional documentation is required to support your claim for reimbursement. At this time, we are requesting for the information below which matches your cancellation reason:

- ☐ **MEDICAL CONDITION:**  
Please have your physician complete the attached medical claim form if you or a family member has suffered a medical condition that prevents the use of the ski pass. NOTE: Physician will need to verify name of any primary caregiver should the medical condition require their care and cause loss of use of their ski pass.
- ☐ **PREGNANCY:**  
Please have your physician complete the attached medical claim form if you are unable to use the ski pass due to a pregnancy.
- ☐ **DEATH:**  
Please forward the death certificate, or have your physician complete the attached claim form if you or a family member is unable to use the ski pass for this reason.
- ☐ **ACTIVE MILITARY SERVICE:**  
Please forward a copy of the military documentation proving deployment or military leave reassignment.
- ☐ **EMPLOYER TRANSFER:**  
Please forward relocation documents from your employer outlining the terms of the involuntary, employer-initiated transfer. NOTE: Employer relocation is a qualifying reason if you have been continuously employed within the same organization for at least one year and involves the relocation of your primary residence of 100 or more miles.  
Please provide the following documentation on company letterhead:
  - The name of your employer
  - The job title and date of hire
  - The location you are relocating from and the location where you will be relocated to
  - The effective date of the relocation and the date you were first notified of the transfer
  - Your primary residence upon completion of the relocation
  - Any documentation that would prove your employment with the company of at least 1 year, such as a pay stub

\*\* Employer must confirm that this was an involuntary transfer\*\*



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- ☐ **INVOLUNTARY JOB TERMINATION:**  
Please provide documentation proving the involuntary termination of employment. NOTE: Employer termination is a qualifying reason if you have been continuously employed for at least one year preceding the termination.  
Please provide the following documentation:
- Date you were first notified of termination
  - Official termination letter from your employer
  - Any documentation that would prove your employment with the company of at least 1 year, such as a pay stub
- \*\* Employer must confirm that this was an involuntary termination\*\*
- ☐ **COURT APPEARANCE/JURY DUTY:**  
Please provide a copy of the legal document proving you were subpoenaed, called for jury duty, or are hijacked or quarantined and unable to utilize the ski pass.
- ☐ **NATURAL DISASTER:**  
Please provide a police report, or other local authority reports or documentation proving your primary residence or destination is uninhabitable due to a natural disaster.
- ☐ **STUDENT RELATED CANCELLATION:**  
Please provide one of the following documents that is applicable to your specific circumstance: 1) school transfer documents that indicate you have relocated more than 100 miles from your current school; 2) a study abroad acceptance letter outlining the dates that you will be out of the country; 3) a copy of your diploma and a letter from your employer that indicates you have relocated more than 100 miles from your current residence in order to accept the position.
- ☐ **VISA REJECTION OR FAILURE TO OBTAIN:**  
Please provide a copy of your visa application and a copy of the formal rejection or denial of your visa.

The adjuster assigned to handle your claim is noted below. Please forward the requested information to your adjuster via mail, fax, or email:

Kiara Torres Jimenez  
American Claims Management, Inc.  
P.O. Box 9030  
Carlsbad, CA 92018-9030  
(760) 710-6876  
Fax number: (760) 827-4081  
kjimenez@acmclaims.com

Please be advised that this letter should not be construed that your claim has been accepted. Once we confirm coverage, pass usage, and review your proof of claim, we will confirm if your claim for reimbursement has been accepted, denied or if additional information is required.

**Any person knowingly presents false or fraudulent claim for the payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and maybe subject to fines and confinement in prison.**

If you should have any questions or concerns, please contact the undersigned at the number listed above.

Very truly yours,

Kiara Torres Jimenez  
Claims Adjuster



American Claims Management  
PO Box 9030  
Carlsbad, CA 92018-9030

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## CLAIM FORM (MEDICAL & PREGNANCY FORM ONLY)

Ann Hoak  
69064491

**Please complete this form in its entirety, and return it to the address noted above with the requested documentation. Note, filing a cancellation/interruption claim will automatically deactivate your season ski pass. The following documentation is required to process your claim:**

**Attending Physician's Statement:**

**To be completed by the physician certifying cancellation of the ski pass.**

<b>Patient Name:</b>	<b>Age:</b>	<b>Date of Birth:</b>	
<b>Address:</b>	<b>City:</b>	<b>State:</b>	<b>Zip:</b>
<b>Please indicate the medical diagnosis that required cancellation/interruption of season ski pass:</b>			
<b>Date of Diagnosis:</b>		<b>Diagnosis Code:</b>	
<b>Has the patient previously been treated for this condition?</b>			
<b>Date of the first treatment for the diagnosis noted above:</b>			
<b>List all treatment dates:</b>			
<b>Based on your diagnosis do you recommend patient refrain from skiing activities for the winter ski season?</b>			
<b>If yes, was an examination performed?</b>			
<b>Date of Examination:</b>			
<b>Date you recommended cancellation/interruption of the season ski pass:</b>			
<b>Due to the diagnosis is the patient required to have a primary caregiver?</b>			
<i>All statements above are true and factual, reflecting my best medical judgment. Any false or misleading statements made in support of and resulting in the payment of a claim shall be subject to legal action for collection of damages to the Insurance Company against the person or persons making such false and or misleading statements.</i>			
<b>Date:</b>	<b>Attending Physician's Signature:</b>		
<b>Address:</b>	<b>Fax number:</b>		
<b>City:</b>	<b>State:</b>	<b>Zip:</b>	<b>Email address:</b>
<b>Phone:</b>	<b>Physician's Stamp:</b>		

# Exhibit C





American Claims Management  
PO Box 9030  
Carlsbad, CA 92018-9030

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April 10, 2020

Ann Hoak  
2418 Garmisch Dr #1  
Vail, CO 81657

Claim Number : 69064491  
Date of Loss : 03/14/2020  
Re : Certificate of Ski Pass Insurance  
Season : 19-20

Dear Ann Hoak:

American Claims Management (hereinafter "ACM") is the authorized claims representative of United Specialty Insurance Company (hereinafter "USIC"). On behalf of USIC, we acknowledge the claim you made regarding the COVID-19 (or "virus") crisis and/or Vail's early closure of their North American resorts. Difficult decisions have been made to prioritize the health and wellbeing of our communities and our global population.

In the event you submitted your premium, USIC issued Season Ski Pass insurance (hereinafter "policy") to you for the 2019-2020 ski/snowboard season. A copy of that policy is available to you via the FAQ section of following web link <https://www.epicpass.com/info/pass-insurance.aspx>. We are happy to provide you with a copy of the policy upon your request.

In considering coverage, we have carefully reviewed the insurance policy referenced above as well as the factual basis of the presented claim. Based upon our review, we issue this letter to inform you that USIC reserves its rights to further our evaluation of your claim and the policy to determine whether coverage exists. We will provide you with additional information as soon as it is readily available.

Our coverage position is explained below.

### The Policy

We discuss below certain provisions of the USIC policy. Please note, however, that our discussion involves only a partial recitation of the terms, conditions, limitations and exclusions contained in the USIC policy. It is not intended to supplement, amend, supersede or otherwise alter the USIC policy. USIC does not intend to waive any provision of the USIC policy by virtue of its discussion. Please consult your copy of the USIC policy for a complete listing of all the terms, conditions, limitations and exclusions contained therein.

**INSURING AGREEMENT:** We will provide insurance under the Master Policy in consideration of your payment of the Premium.

**PROPERTY INSURED AND COVERAGE LIMITS:** We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:



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- a) Sickness, Injury or death of you or a Family Member;
- d) The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);
- e) You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;
- i) You are a Student (i) who transfers to a school located 100 or more miles from your current school; (ii) who is accepted into a foreign study program that will cause you to be out of the country during the ski season; (iii) who graduates and accepts a job that is 100 or more miles from your current residence.

**EXCLUSIONS:** We do not cover any Loss caused by or resulting from:

- d) mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;
- f) Loss that occurs when this coverage is not in effect;

#### DEFINITIONS

**EFFECTIVE DATE OF COVERAGE:** This insurance will be effective immediately upon acceptance by us of the Premium and shall remain in effect until the last day of the Ski/Snowboard Season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.

**DAILY RATE** – means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except; \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. DAILY RATE for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. The DAILY RATE does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.

**FAMILY MEMBER** - means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.

**NATURAL DISASTER** – means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.

**PHYSICIAN** – means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.

**SICKNESS** – in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.

#### Insurance Company Position



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PO Box 9030  
Carlsbad, CA 92018-9030

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Please be advised that regardless of the reason causing you to lose the ability to use your pass, if you are not an insured, you are ineligible for reimbursement of your pass price, or any portion thereof, from the policy. Please also note there is no reimbursement of the cost of your pass if the number of times you used your pass, multiplied by the applicable daily rate, exceeds your pass price.

In review, the concern of contracting the virus may not be covered under peril (a) because it is not considered **Sickness**, as defined by the policy, unless your physician certifies you actually contracted the disease. The policy may not provide you reimbursement for governmental authority(s) recommendation or to avoid, or bars travel, and/or "hold in place".

Anxiety, depression, psychological disorders, etc., experienced due to concerns of the virus, travel restrictions imposed, causing the inability to use your pass could disqualify any reimbursement pursuant to **exclusion (d)**.

Further, Vail's decision to close their resorts due to the concern of COVID-19 may not be covered under peril (d) since the reason of the closure is not a **Natural Disaster** as that term is defined by the policy.

In regard to peril (i), in the event a student's school closed early and the student returned home for on-line classes, it is possible no coverage exists for that cause of losing the ability to use the ski/snowboard season pass.

At this time, a final coverage determination has not been made whether pass holders with insurance will receive a reimbursement.

USIC reserves the right under the policy and applicable law to cite additional policy provisions as may be appropriate that may further limit the application of coverage under the applicable coverage parts of the USIC policy. The foregoing letter is premised upon the information previously obtained, and the terms and conditions of the policy. By limiting policy references to those cited, USIC does not waive any other policy provisions. The insurance policy in its entirety is incorporated by reference as if it had been stated in full.

We sincerely hope that all of you, your friends and your loved ones remain safe during this unprecedented time and that the world comes together to move past the challenges we currently face.

Sincerely,

Klara Torres Jimenez  
Claims Adjuster  
(760) 710-6876  
Fax number: (760) 827-4844  
kjimenez@acmclaims.com

# Exhibit D



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May 7, 2020

Ann Hoak  
2418 Garmisch Dr #1  
Vail, CO 81657

Claim Number : 69064491  
Date of Loss : 03/14/2020  
Re : Certificate of Ski Pass Insurance  
Season : 2019 to 2020

Dear Guest:

American Claims Management (hereinafter "ACM") is the authorized claims representative of United Specialty Insurance Company (hereinafter "USIC"). If the premium was paid, USIC issued a Certificate of Season Ski Pass Insurance (hereinafter "Policy") to you for the 2019-2020 ski/snowboard season. A copy of that Policy is available to you via the FAQ section of following web link: <https://www.epicpass.com/info/pass-insurance.aspx>. We are happy to provide you with a copy of the Policy upon your request.

The basis of you not being able to use your pass may include, but not limited to, Vail Resorts' decision to close their North American Resorts on March 15, 2020 instead of April 15, 2020, travel restrictions imposed due to the COVID-19 pandemic, isolation to prevent the spread of COVID-19, or other reason(s), not including contraction of the virus, but associated with COVID-19.

Based upon review of the Policy issued to you by USIC, we regret to inform you there is no coverage provided for your claim under the USIC Certificate of Season Ski Pass Insurance. Our coverage position is explained below. Please refer to Vail Resorts' website for additional information. The website address is as follows:  
<https://www.epicpass.com>.

### The Policy

Certain provisions of the USIC Policy are discussed below. Please note, however, that our discussion involves only a partial recitation of the terms, conditions, limitations, and exclusions contained in the USIC Policy. It is not intended to supplement, amend, supersede or otherwise alter the USIC Policy. USIC does not intend to waive any provision of the USIC Policy by virtue of its discussion. Please consult your copy of the USIC Policy for a complete listing of all the terms, conditions, limitations, and exclusions contained therein.

**INSURING AGREEMENT:** We will provide insurance under the Master Policy in consideration of your payment of the Premium.

**PROPERTY INSURED AND COVERAGE LIMITS:** We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

**PERILS INSURED AGAINST:** : Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:



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- a) Sickness, Injury or death of you or a Family Member;
- d) The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);
- e) You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;
- f) You are called to military service; your military leave is revoked; you are deployed or you are reassigned;
- i) You are unable to use your Season Ski Pass due to the inability to travel to the United States due to a U.S. Tourist Visa rejection or denial or failure to obtain the visa required to enter the United States.

**EXCLUSIONS:** We do not cover any Loss caused by or resulting from:

- d) mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;
- f) Loss that occurs when this coverage is not in effect;

#### DEFINITIONS

**EFFECTIVE DATE OF COVERAGE:** This insurance will be effective immediately upon acceptance by us of the Premium and shall remain in effect until the last day of the Ski/Snowboard Season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.

**DAILY RATE** – means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except; \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. DAILY RATE for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. The DAILY RATE does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.

**FAMILY MEMBER** - means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.

**NATURAL DISASTER** – means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.

**PHYSICIAN** – means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.

**SICKNESS** – in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.

#### Insurance Company Position



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Under the Policy, USIC agreed to cover the Season Ski Pass cost you paid in the event you could not use your pass due to a covered peril, subject to limitations, terms, and conditions contained in the Policy. Please be advised that regardless of the reason causing you to lose the ability to use your pass, if you are not an insured, you are ineligible for reimbursement of your pass price, or any portion thereof, from the Policy. Please also note there is no reimbursement of the cost of your pass if the number of times you used your pass, multiplied by the applicable daily rate, exceeds your pass price.

Please be advised that per the definition of "Effective Date of Coverage" coverage started on the day the premium of this insurance was received and ended on March 15, 2020 which is the last day of the ski/snowboarding season at Vail Resorts. There is no coverage for any peril occurring outside the coverage period.

Your file was designated as one filed due to either Vail Resort's early closing of their North American Resorts, domestic, and international travel restrictions imposed due to the COVID-19 pandemic, or other reason(s), not including contraction of the virus, but associated with COVID-19.

Be advised, in the event you are military personnel, and your leave was revoked prior to March 15, 2020 due to the COVID-19 pandemic, your claim will be accepted under peril (f) upon our receipt and review of the order revoking your leave.

The Policy does not provide reimbursement for governmental authority(s) recommendation to avoid and/or bars domestic travel, and/or "hold in place". If you were unable to use your Ski Pass due to the inability to travel to the United States due to a U.S. Tourist Visa rejection, your claim is covered under peril (i) if the rejection occurred prior to the end of the coverage period. Confirmation of the Visa rejection is needed and should be sent to us for review.

In further review, the concern of you or a family member contracting the virus is not covered under **peril (a)** because it is not "Sickness", as that term is defined by the Policy. In the event your "Physician" certified you or a family member contracted the disease, please have your "Physician" complete the medical form previously sent to you and return it to our office for our review and further determination of coverage.

In the event of quarantine, as mentioned by **peril (e)**, coverage may apply in the event you are diagnosed as having or suspected of having COVID-19. If you are quarantined, by "Physician's" orders, before March 15, 2020, provide us with your "Physician's" certification that your "Physician" placed you in quarantine. We will review the "Physician's" order to determine whether coverage applies.

Further, Vail Resorts' decision to close their resorts due to the concern of COVID-19 is not covered under **peril (d)** since the reason of the closure is not a "Natural Disaster" as defined by the Policy.

Please also note that anxiety, depression, psychological disorders, etc., experienced due to concerns of COVID-19, or travel restrictions imposed, causing the inability to use your pass will disqualify any reimbursement pursuant to **exclusion (d)**.

USIC reserves the right under the Policy and applicable law to cite additional Policy provisions as may be appropriate that may further limit the application of coverage under the applicable coverage parts of the USIC Policy. The foregoing letter is premised upon the information previously obtained, and the terms and conditions of the Policy. By limiting Policy references to those cited, USIC does not waive any other Policy provisions. The Policy in its entirety is incorporated by reference as if it had been stated in full.

If you have additional information which you believe may affect this coverage position, please immediately forward it to ACM as it may affect our determination of coverage.

Sincerely,

Klara Torres Jimenez  
Claims Adjuster  
(760) 710-6876  
Fax number: (760) 827-4844  
kjimenez@acmclaims.com



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**Several states, within the United States of America, require ACM, working on behalf of USIC, to include specific language within this letter. If you are a resident of one of those states, see below:**

#### **California**

If you believe this claim has been wrongfully denied or rejected, you may have the matter reviewed by the California Department of Insurance. The address is State of California Department of Insurance, Claims Services Bureau, 11th Floor, 300 South Spring Street, South Tower, Los Angeles, California 90013. The telephone number is 1-800-927-4357 (Calling from within CA); 213-897-8921 (Outside California).

#### **Connecticut**

If you do not agree with this decision, you may contact the Division of Consumer Affairs within the Insurance Department.

Connecticut Insurance Department  
Consumer Affairs Division  
P.O. Box 816  
Hartford, CT 06142-0816  
800-203-3447 or (860) 297-3900  
E-mail address: ctinsdept.consumeraffairs@po.state.ct.us

#### **Florida**

Your Insurers are committed to the prompt and fair handling of all claims for coverage. If you believe that our position is incorrect or constitutes a wrongful denial, reservation of rights or rejection of this claim, you may have the matter reviewed by the Florida Division of Consumer Services by calling (877) 693-5236, or by writing to the Division at this address:

Florida Chief Financial Officer  
Division of Consumer Services,  
200 East Gaines Street,  
Tallahassee, FL 32399-0322

#### **Illinois**

Further to Part 919 of the Rules of the Illinois Department of Insurance requires that our company advise you that if you wish to take this matter up with the Illinois Department of Insurance, it maintains a Consumer Division in Chicago at 100 W. Randolph Street, Suite 15-100, Chicago, Illinois 60601 and in Springfield at 320 West Washington Street, Springfield, Illinois 62767.

#### **Nebraska**

If you believe this claim has been wrongfully denied or rejected, you may have the matter reviewed by the Nebraska Department of Insurance. The address is:

941 "O" Street, Suite 400  
Lincoln, NE 68508-3639  
(409) 471-2201  
(409) 471-4610- Fax

#### **New Hampshire**

**We will, of course, be available to you to discuss the position we have taken. Should you, however, wish to take this matter up with the New Hampshire insurance department, it maintains a service division to investigate complaints at 21 South Fruit Street, Suite 14, Concord, New Hampshire 03301. The New Hampshire insurance department can be reached, toll-free, by dialling 1-800-852-3416.**

#### **New Mexico**

If you believe that the Company has wrongfully denied or rejected any part of this claim, you may have the New Mexico Department of Insurance review the matter. The address and telephone number of the appropriate unit at





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the Department of Insurance is:  
New Mexico Public Regulation Commission  
Insurance Division  
1120 Paseo De Peralta  
P.O. Box 1269  
Santa Fe, NM 87501  
Phone: (888) 427-5772

### **New York**

Should you wish to take this matter up with the New York State Insurance Department, you may file with the Department either on its website at:

[www.ins.state.ny.us/complhow.htm](http://www.ins.state.ny.us/complhow.htm)

Or you may write to or visit the Consumer Services Bureau, New York State Insurance Department at: 25 Beaver Street, New York, NY 10004; One Commerce Plaza, Albany, NY 12257; 200 Old Country Road, Suite 340, Mineola, NY 11501; or Walter J. Mahoney Office Building, 65 Court Street, Buffalo, NY 14202.

### **Rhode Island**

We will be available to you to discuss the position we have taken. Should you, however, wish to contact the Rhode Island Department of Business Regulation, you may do so at the address listed below. In certain limited circumstances the Department may have jurisdiction pursuant to R.I. Gen. Laws § 27-9.1-6 and therefore, you may be able to have the matter reviewed by the Department. The Department of Business Regulation does not have authority to settle or arbitrate claims, determine liability or order an Insurer to pay a claim. Rhode Island Department of Business Regulation Insurance Division 233 Richmond Street, Providence, Rhode Island 02903 The Rhode Island Department of Business Regulation, Insurance Division can be contacted by telephone at 401-462-9520.

### **Washington**

If you have questions or concerns about the actions of your insurance company or agent, or would like information on your rights to file an appeal, contact the Washington state Office of the Insurance Commissioner's consumer protection hotline at 1-800-562-6900 or visit [www.insurance.wa.gov](http://www.insurance.wa.gov). The insurance commissioner protects and educates insurance consumers, advances the public interest, and provides fair and efficient regulation of the insurance industry.

### **West Virginia**

If you believe this claim has been wrongfully denied or rejected, you may have the matter reviewed by the West Virginia Consumer Service Division:  
West Virginia Offices of Insurance Commissioner  
Attn: Consumer Service Division  
P.O. Box 50540  
Charleston, West Virginia 25305-0540  
Telephone: Toll Free 1-888-TRY WVIC (888-879-9842) TTY 1-800-435-7381  
Website address: [www.wvinsurance.gov](http://www.wvinsurance.gov)

**BURSOR & FISHER, P.A.**

Yeremey Krivoshey (State Bar No. 295032)  
Brittany S. Scott (State Bar No. 327132)  
1990 North California Blvd., Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
E-mail: ykrivoshey@bursor.com  
bscott@bursor.com

**BURSOR & FISHER, P.A.**

Scott A. Bursor (State Bar No. 276006)  
2665 S. Bayshore Dr., Suite 220  
Miami, FL 33133-5402  
Telephone: (305) 330-5512  
Facsimile: (305) 676-9006  
E-Mail: scott@bursor.com

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

BRIAN HUNT, DAN KODAMA, and  
MICHAEL ODELL, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

THE VAIL CORPORATION d/b/a VAIL  
RESORTS MANAGEMENT COMPANY,  
AMERICAN CLAIMS MANAGEMENT,  
BEECHER CARLSON INSURANCE, LLC,  
and UNITED SPECIALTY INSURANCE CO.

Defendants.

Case No. 4:20-cv-02463-JSW

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Brian Hunt, Dan Kodama, and Michael Odell (“Plaintiffs”) bring this action on behalf of themselves and all others similarly situated against Defendants The Vail Corporation d/b/a Vail Resorts Management Company (“Vail Resorts Management”), American Claims Management (“American Claims”), Beecher Carlson Insurance (“Beecher Carlson”), and United Specialty Insurance Co. (“United Specialty”) (collectively “Defendants”). Plaintiffs make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to the allegations specifically pertaining to themselves, which are based on personal knowledge.

### **FACTS COMMON TO ALL CAUSES OF ACTION**

#### **A. Vail Resorts Management’s Decision to Close Its Ski Resorts**

1. Defendant Vail Resorts Management has made the unconscionable decision to retain its millions of customers’ passholder fees while closing 100% of its mountain resorts as the novel coronavirus, COVID-19, rages throughout the world and the United States economy has gone into a deep recession.

2. Vail Resorts Management is the operator of more than 34 North American ski resorts throughout the United States. Vail Resorts Management sells “Epic Passes” promising “unlimited, unrestricted skiing at [its] best resorts.”<sup>1</sup> Vail Resorts Management also promises that its passes are the “best way to ski ... 7 days a week.”<sup>2</sup> To visit Vail Resorts Management’s mountain resorts, consumers can purchase (1) annual passes for prices ranging from \$319 to \$979; (2) weekly passes from \$391 to \$766; (3); or day/multi-day passes from \$67 to \$766 (called “Epic Day Passes”). For customers that buy Epic Day Passes, they have the option to buy passes in packages for “1 to 7 total days.”

3. On March 25, 2020, Vail Resorts Management announced that it was closing all of its mountain resorts indefinitely due to state quarantine orders going into effect nationwide.

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<sup>1</sup> <https://www.vail.com/plan-your-trip/lift-access/passes/epic-pass.aspx> (last accessed April 9, 2020).

<sup>2</sup> <https://www.epicpass.com/passes/tahoe-local-pass.aspx> (last accessed April 9, 2020).

4. Subsequently, Vail Resorts Management announced that its “North American resorts and retail stores will remain closed for the 2019-20 winter ski season.”<sup>3</sup> Vail Resorts Management has not refunded any consumers for their lost mountain resort access. Rather, for annual pass-holders, Vail Resorts Management has simply deferred all auto-renewal charges and spring deadlines (for those people that did not pre-pay for the entire season). Further, for Epic Day Pass customers, Vail Resorts Management has explicitly stated that, despite Vail Resorts Management’s closures, the passes are “non-refundable and non-transferable to another season.”<sup>4</sup> Accordingly, customers who did not have a chance to use all of their purchased passes under the Epic Day Pass program get zero consideration or compensation for their inability to use those unused, purchased days, even if they wanted to. Resultingly, Vail Resorts Management has unjustly enriched itself by retaining passholder fees of hundreds of thousands of consumers – while denying passholders all access to all of Vail Resorts Management’s mountain resorts.

5. Plaintiffs Hunt and Kodama seek relief in this action individually, and on behalf of all of Vail Resort Management’s customers nationwide that purchased annual passes for the 2019-2020 season or Epic Day Passes for the 2019-2020 season who, as of March 25, 2020, had not used up all of the days remaining on their Epic Day Passes for Vail Resort Management’s violations of the California Consumer Legal Remedies Act (“CLRA”), Civil Code §§ 1750, *et seq.*, Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*, False Advertising Law (“FAL”), Bus. & Prof. Code §§ 17500, *et seq.*, violation of Hawaii’s Unfair Deceptive Acts or Practices Statute, H.R.S. § 480-1, *et seq.*, Uniform Deceptive Trade Practices Act, H.R.S. § 481A, *et seq.*, False Advertising Law, H.R.S. § 708-871, *et seq.*, for breach of express warranties, negligent misrepresentation, unjust enrichment, money had and received, conversion, and breach of contract.

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<sup>3</sup> <https://www.snow.com/info/covid-19-update> (last accessed April 10, 2020).

<sup>4</sup> <https://www.snow.com/info/message-to-our-guests.aspx> (last accessed April 10, 2020).

**B. The Insurers' Refusal to Honor Season Ski Pass Insurance Policies**

6. In concert with Vail Resorts Management, Defendants American Claims, Beecher Carlson, and United Specialty (the "Insurers") have breached their contracts with consumers who purchased season ski pass insurance to accompany their Epic Day Pass purchases.

7. Defendants sell add-on season ski pass insurance to consumers to accompany their Epic Passes. The cost of the season ski pass insurance ranges from \$12 to \$22 for insuring child ski passes to \$17-\$32 for insuring adult/teen ski passes.<sup>5</sup>

8. Consumers purchase season ski pass insurance because they believe it will protect their purchase and ensure that they will receive a refund of their purchase if there is an unforeseen event that will preclude them from using their ski passes.

9. Defendants advertise their season ski pass insurance to consumers by advertising that they can "protect [their] pass with pass insurance."<sup>6</sup> Indeed, Defendants market their insurance by reminding consumers that "You've saved. You've planned. You've looked forward to skiing or riding for months. **But things don't always go according to plan. What if you get sick or injured and are unable to use your ski pass? What if you are laid off from your job?** Pass Insurance is offered through Beecher Carlson Insurance Co., **to cover you and your investments when the unexpected happens.**"<sup>7</sup>

10. Yet, when the unexpected happened and consumers and corporations were forced to quarantine as COVID-19 swept the globe, Defendants blatantly repudiated their promise "to cover [consumers] and [their] investments when the unexpected happens."<sup>8</sup>

11. Defendants' insurance policy states that it protects against loss of use resulting from "**unforeseen perils** occurring after the effective date of coverage" including situations where the insured is "subpoenaed, required to serve on a jury, hijacked, **quarantined.**" Certificate of Season Ski Pass Insurance, **Ex. A** (emphasis added). However, Defendants are refusing to honor this

<sup>5</sup> <https://www.epicpass.com/info/pass-insurance.aspx> (last accessed April 23, 2020).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* (emphasis added)

<sup>8</sup> *Id.*

1 policy, instead informing its insureds that it will not provide coverage because it does not fall  
2 within the “Sickness” and “Natural Disaster” perils listed in the policy.

3 12. Resultingly, Defendants have unjustly enriched themselves by retaining passholder  
4 and insurance fees of hundreds of thousands of consumers – while denying passholders coverage  
5 under the insurance policy.

6 13. Plaintiffs Kodama and Odell also seek relief in this action individually, and on  
7 behalf of all of Defendants’ customers nationwide that purchased season ski pass insurance for the  
8 2019-2020 season who were denied insurance coverage after Vail Resorts Management’s resort  
9 closures for violations of the California Consumer Legal Remedies Act (“CLRA”), Civil Code §§  
10 1750, *et seq.*, Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*, False  
11 Advertising Law (“FAL”), Bus. & Prof. Code §§ 17500, *et seq.*, violation of Hawaii’s Unfair  
12 Deceptive Acts or Practices Statute, H.R.S. § 480-1, *et seq.*, Uniform Deceptive Trade Practices  
13 Act, H.R.S. § 481A, *et seq.*, False Advertising Law, H.R.S. § 708-871, *et seq.*, for breach of  
14 express warranties, negligent misrepresentation, unjust enrichment, money had and received,  
15 conversion, and breach of contract.

### 16 PARTIES

17 14. Plaintiff Brian Hunt is a citizen of California, residing in San Ramon, California.  
18 Mr. Hunt is an annual passholder for Vail Resorts. In June of 2019, Mr. Hunt purchased an annual  
19 Tahoe Local season pass for \$499 which promised mountain access from October 2019 to June  
20 2020, so long as there was snow. On March 25, 2020, Vail Resort Management notified  
21 passholders that it closed all 34 of its North American resorts. Vail Resort Management has  
22 retained the full amount of his annual pass fee even though Plaintiff does not have access to any of  
23 Vail Resort Management’s resorts. Further, Vail Resort Management has not refunded Plaintiff  
24 any part of his annual pass fee for March 25 through the present, when Defendant’s resorts were  
25 closed (and continue to remain closed). Plaintiff signed up for Vail Resort Management’s annual  
26 pass with the understanding that he would be able to access Vail Resort Management’s resorts  
27 from October 2019 through June 2020, so long as there was snow on the mountains. Plaintiff  
28 would not have paid for the annual pass, or would not have paid for it on the same terms, had he

1 known that he would not have access to any of Vail Resort Management's resorts. Plaintiff  
2 continues to face imminent harm, as Vail Resort Management retains annual passholder's season  
3 pass fees while all of its resorts remain closed.

4 15. Plaintiff Dan Kodama is a citizen of Hawaii, residing in Honolulu, Hawaii. Mr.  
5 Kodama is an Epic Day passholder for Vail Resorts. On October 13, 2019, Mr. Kodama purchased  
6 four Epic 4 Day passes and pass insurance for \$1313.9, which promised mountain access to Vail  
7 Resort Management's Tahoe resorts, and insurance coverage from the date of purchase to the end  
8 of the ski season. On March 25, 2020, Vail Resorts Management notified passholders that it closed  
9 all 34 of its North American resorts. Vail Resorts Management has retained the full amount of his  
10 Epic 4 Day pass fees even though Plaintiff does not have access to any of Vail Resort  
11 Management's resorts. Further, Vail Resort Management has not refunded Plaintiff any part of his  
12 Epic 4 Day pass fees for March 25 through the present, when Defendant's resorts were closed (and  
13 continue to remain closed). Plaintiff signed up for Vail Resort Management's Epic 4 Day pass  
14 with the understanding that he would be able to access Vail Resort Management's resorts for four  
15 days during the 2019-2020 ski season. Plaintiff would not have paid for the Epic 4 Day pass, or  
16 would not have paid for it on the same terms, had he known that he would not have access to any  
17 of Vail Resort Management's resorts. Plaintiff continues to face imminent harm, as Vail Resort  
18 Management's retains Epic Day passholder's pass fees while all of its resorts remain closed.

19 16. Plaintiff Kodama signed up for Defendants' season ski pass insurance with the  
20 understanding that he would be able to use the insurance to cover any losses associated with  
21 unforeseen circumstances. Following closure of Vail Resort Management's resorts, Plaintiff  
22 notified Defendants that he would be seeking coverage for the loss of his passes. On April 9, 2020,  
23 Defendants issued a letter stating that it was their position that loss relating to COVID-19 closures  
24 was not covered by the season ski pass policy. Plaintiff would not have paid for the season ski pass  
25 insurance, or would not have paid for it on the same terms, had he known that Defendants would  
26 not provide coverage under the policy for covered "perils." Plaintiff continues to face imminent  
27 harm, as Defendants' retain his Epic Day passholder's pass and insurance fees while refusing to  
28 provide coverage under the season ski pass policy.

1           17. Plaintiff Michael Odell is a citizen of Tennessee, residing in Greeneville, Tennessee.  
2 Mr. Odell is an Epic Day passholder for Vail Resorts. On September 2, 2019, Mr. Odell purchased  
3 four Epic 6 Day passes and pass insurance for \$1947.95, which promised mountain access and  
4 insurance coverage from the date of purchase to the end of the ski season. On March 25, 2020,  
5 Vail Resorts Management notified passholders that it closed all 34 of its North American resorts.  
6 Vail Resorts Management has retained the full amount of his Epic 6 Day pass fees even though  
7 Plaintiff does not have access to any of Vail Resort Management's resorts. Further, Vail Resort  
8 Management has not refunded Plaintiff any part of his Epic 6 Day pass fees for March 25 through  
9 the present, when Vail Resorts Management's resorts were closed (and continue to remain closed).  
10 Plaintiff signed up for Vail Resort Management's Epic 6 Day pass with the understanding that he  
11 would be able to access Vail Resort Management's resorts for four days during the 2019-2020 ski  
12 season. Plaintiff would not have paid for the Epic 6 Day pass, or would not have paid for it on the  
13 same terms, had he known that he would not have access to any of Vail Resort Management's  
14 resorts. Plaintiff continues to face imminent harm, as Vail Resort Management's retains Epic Day  
15 passholder's pass fees while all of its resorts remain closed.

16           18. Plaintiff Odell signed up for Defendants' season ski pass insurance with the  
17 understanding that he would be able to use the insurance to cover any losses associated with  
18 unforeseen circumstances. Following closure of Vail Resort Management's resorts, Plaintiff  
19 notified Defendants that he would be seeking coverage for the loss of his passes. On April 9, 2020,  
20 Defendants issued a letter stating that it was their position that loss relating to COVID-19 closures  
21 was not covered by the season ski pass policy. Plaintiff would not have paid for the season ski pass  
22 insurance, or would not have paid for it on the same terms, had he known that Defendants would  
23 not provide coverage under the policy for covered "perils." Plaintiff continues to face imminent  
24 harm, as Defendants' retain his Epic Day passholder's pass and insurance fees while refusing to  
25 provide coverage under the season ski pass policy.

26           19. Defendant The Vail Corporation, is a Colorado corporation, with its principal place  
27 of business at 390 Interlocken Crescent, Broomfield, CO 80021. Defendant is the operator of 34  
28 ski resorts in North America, and touts itself as "the premier mountain resort company in the



1 world.”<sup>9</sup> Defendant conducts substantial business throughout the United States, and specifically in  
2 the state of California.

3 20. Defendant Beecher Carlson LLC is a California limited liability company, with its  
4 principal place of business at Six Concourse Parkway, Suite 2300, Atlanta, GA 30328. Defendant  
5 is the insurer of Vail Resort Management’s season ski pass insurance. Defendant conducts  
6 substantial business throughout the United States, and specifically in the state of California.

7 21. Defendant American Claims Management is a California corporation, with its  
8 principal place of business at 2544 & 2548 Campbell Place, Carlsbad, CA 92008. Defendant is the  
9 claims administrator of Vail Resort Management’s season ski pass insurance. Defendant conducts  
10 substantial business throughout the United States, and specifically in the state of California.

11 22. Defendant United Specialty Insurance Co. is a Delaware corporation, with its  
12 principal place of business at 160 Greentree Drive, Suite 101, Dover, DE 19904. Defendant is the  
13 underwriter of Vail Resort Management’s season ski pass insurance. Defendant conducts  
14 substantial business throughout the United States, and specifically in the state of California.

### 15 **JURISDICTION AND VENUE**

16 23. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A)  
17 because this case is a class action where the aggregate claims of all members of the proposed class  
18 are in excess of \$5,000,000, exclusive of interest and costs, and most members of the proposed  
19 nationwide class are citizens of states different from the states of Defendants.

20 24. This Court has personal jurisdiction over Defendants because Defendants conduct  
21 substantial business within California such that Defendants have significant, continuous, and  
22 pervasive contacts with the State of California. Defendants Vail Resorts Management, Beecher  
23 Carlson, and American Claims Management are registered to do business in the State of California.

24 25. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants do  
25 substantial business in this District and a substantial part of the events giving rise to Plaintiff  
26 Hunt’s claims took place within this District.

27  
28 <sup>9</sup> <http://www.vailresorts.com/Corp/info/who-we-are.aspx> (last accessed April 9, 2020).

**CLASS ACTION ALLEGATIONS**

26. Plaintiffs Hunt and Kodama bring this action as a class action under Federal Rule of Civil Procedure 23 on behalf of a Class consisting of all of Vail Resort Management's customers nationwide that purchased annual passes for the 2019-2020 season or Epic Day Passes for the 2019-2020 season who, as of March 25, 2020, had not used up all of the days remaining on their Epic Day Passes (the "Nationwide Epic Pass Class").

27. Plaintiff Hunt also seeks to represent a subclass defined as all members of the Class who purchased the relevant passes in California (the "California Epic Pass Subclass").

28. Plaintiff Kodama also seeks to represent a subclass defined as all members of the Class who purchased the relevant passes in Hawaii (the "Hawaii Epic Pass Subclass").

29. Plaintiffs Kodama and Odell also seek to represent a Class defined as all of Defendants' customers nationwide that purchased season ski pass insurance for the 2019-2020 who were denied coverage relating to losses accrued from Vail Resort Management's resort closures (the "Nationwide Insurance Class")

30. Plaintiff Kodama also seeks to represent a subclass defined as all members of the Class who purchased the relevant pass insurance in Hawaii (the "Hawaii Insurance Subclass").

31. Plaintiff Odell also seeks to represent a subclass defined as all members of the Class who purchased the relevant pass insurance in Tennessee (the "Tennessee Insurance Subclass").

32. Plaintiffs reserves the right to amend or modify the Class definitions with greater specificity or further division into subclasses or limitation to particular issues as discovery and the orders of this Court warrant.

33. Excluded from the Classes are the Defendants, the officers and directors of the Defendants at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

34. Plaintiff Hunt is a member of the Nationwide Epic Pass Class and California Epic Pass Subclass he seeks to represent.

1           35. Plaintiff Kodama is a member of the Nationwide Epic Pass Class, Hawaii Epic Pass  
2 Subclass, Nationwide Insurance Class, and Hawaii Insurance Subclass he seeks to represent.

3           36. Plaintiff Odell is a member of the Nationwide Insurance Class, and Tennessee  
4 Insurance Subclass he seeks to represent.

5           37. Defendants have hundreds of thousands of customers nationwide that purchased  
6 resort passes that cannot be used. Accordingly, members of the Class are so numerous that their  
7 individual joinder herein is impracticable. The precise number of Class members and their  
8 identities are unknown to Plaintiffs at this time but may be determined through discovery. Class  
9 members may be notified of the pendency of this action by mail and/or publication through the  
10 distribution records of Defendants.

11           38. Common questions of law and fact exist as to all Class members and predominate  
12 over questions affecting only individual Class members. Common legal and factual questions  
13 include, but are not limited to whether Defendants have breached their contracts with their  
14 customers and whether their actions are fraudulent and unlawful.

15           39. The claims of the named Plaintiffs Hunt and Kodama are typical of the claims of the  
16 Epic Pass Classes in that the named Plaintiffs were exposed to Defendants' false and misleading  
17 advertising and were charged for their resort passes promising mountain access for the 2019-2020  
18 ski season despite being barred from entry into Defendant's resort properties and suffered losses as  
19 a result.

20           40. The claims of the named Plaintiffs Kodama and Odell are typical of the claims of  
21 the Insurance Classes in that the named Plaintiffs were exposed to Defendants' false and  
22 misleading advertising, were charged for their season ski pass insurance for the 2019-2020 ski  
23 season despite, and were denied coverage under the season ski pass coverage.

24           41. Plaintiffs are adequate representatives of the Classes because Plaintiffs' interests do  
25 not conflict with the interests of the Class members Plaintiffs seek to represent, Plaintiffs have  
26 retained competent counsel experienced in prosecuting class actions, and Plaintiffs intend to  
27 prosecute this action vigorously. The interests of Class members will be fairly and adequately  
28 protected by Plaintiffs and their counsel.

42. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of the Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants' liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

## **CAUSES OF ACTION AGAINST DEFENDANT THE VAIL CORPORATION**

### **COUNT I**

#### **Violation of California's Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (Injunctive Relief Only)**

43. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

44. Plaintiff Hunt brings this claim individually and on behalf of members of the proposed Nationwide Epic Pass Class against Defendant Vail Resorts Management.

45. Plaintiff Hunt also brings this claim individually and on behalf of members of the proposed California Epic Pass Subclass against Vail Resorts Management.

46. Plaintiff Hunt and Class members are consumers who paid fees for use of Defendant's mountain resorts for personal, family or household purposes. Plaintiff and the Class are "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).

47. Vail Resorts Management's mountain resort access that Plaintiff and Class members purchased from Vail Resorts Management was a "service" within the meaning of Cal. Civ. Code § 1761(b).

1           48.     Vail Resorts Management’s actions, representations, and conduct have violated, and  
2 continue to violate the CLRA, because they extend to transactions that intended to result, or which  
3 have resulted in, the sale of services to consumers.

4           49.     Vail Resorts Management’s advertising that consumers would have unlimited  
5 access to all of its ski resorts and that its customers would have access to its ski resorts upon paying  
6 a fee is false and misleading to a reasonable consumer, including Plaintiff Hunt, because Vail  
7 Resorts Management in fact closed all of its mountain resorts while continuing to retain the full  
8 price consumers’ passes.

9           50.     California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits  
10 “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses,  
11 benefits, or quantities which they do not have or that a person has a sponsorship, approval, status,  
12 affiliation, or connection which he or she does not have.” By engaging in the conduct set forth  
13 herein, Vail Resorts Management violated and continues to violate Section 1770(a)(5) of the  
14 CLRA, because Vail Resorts Management’s conduct constitutes unfair methods of competition and  
15 unfair or fraudulent acts or practices, in that Vail Resorts Management misrepresents the particular  
16 characteristics, benefits and quantities of the services.

17           51.     Cal. Civ. Code § 1770(a)(7) prohibits representing that goods or services are of a  
18 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of  
19 another. By engaging in the conduct set forth herein, Vail Resorts Management violated and  
20 continues to violate Section 1770(a)(7) of the CLRA, because Vail Resorts Management’s conduct  
21 constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that Vail  
22 Resorts Management misrepresents the particular standard, quality or grade of the services.

23           52.     Cal. Civ. Code § 1770(a)(9) further prohibits “[a]dvertising goods or services with  
24 intent not to sell them as advertised.” By engaging in the conduct set forth herein, Vail Resorts  
25 Management violated and continues to violate Section 1770(a)(9), because Vail Resorts  
26 Management’s conduct constitutes unfair methods of competition and unfair or fraudulent acts or  
27 practices, in that Vail Resorts Management advertises services with the intent not to sell the  
28 services as advertised.

53. Plaintiff and the Class acted reasonably when they purchased Vail Resorts Management's passes on the belief that Vail Resorts Management's representations were true and lawful.

54. Plaintiff and the Class suffered injuries caused by Vail Resorts Management because: (a) they would not have purchased or paid for Vail Resorts Management's passes absent Vail Resorts Management's representations and omission of a warning that it would retain members' passholder fees while all mountain resorts nationwide are closed; (b) they would not have purchased passes on the same terms absent Vail Resorts Management's representations and omissions; (c) they paid a price premium for Vail Resorts Management's passes based on its misrepresentations and omissions; and (d) Vail Resorts Management's passes did not have the characteristics, benefits, or quantities as promised.

55. Under California Civil Code § 1780(a), Plaintiff Hunt and members of the Class seek injunctive and equitable relief for Vail Resorts Management's violations of the CLRA. Plaintiff Hunt has mailed an appropriate demand letter consistent with California Civil Code § 1782(a). If Vail Resorts Management fails to take corrective action within 30 days of receipt of the demand letter, Plaintiff Hunt will amend the complaint to include a request for damages as permitted by Civil Code § 1782(d).

56. Wherefore, Plaintiff Hunt seeks injunctive and equitable relief for these violations of the CLRA.

## **COUNT II**

### **Violation of California's Unfair Competition Law, California Business & Professions Code §§ 17200, *et seq.***

57. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

58. Plaintiff Hunt brings this claim individually and on behalf of the members of the proposed Nationwide Epic Pass Class against Vail Resorts Management. Plaintiff also brings this claim individually and on behalf of members of the proposed California Epic Pass Subclass against Vail Resorts Management.

1           59. Vail Resorts Management is subject to California’s Unfair Competition Law, Cal.  
2 Bus. & Prof. Code §§ 17200, *et seq.* The UCL provides, in pertinent part: “Unfair competition  
3 shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive,  
4 untrue or misleading advertising ....”

5           60. Vail Resorts Management’s advertising that its passholders would have unlimited  
6 access to its mountain resorts, and that its customers would have access to its mountain resorts  
7 upon paying a pass fee is false and misleading to a reasonable consumer, including Plaintiff,  
8 because Vail Resorts Management in fact closed all of its mountain resorts while continuing to  
9 retain the full price of customers’ passes.

10          61. Vail Resorts Management’s business practices, described herein, violated the  
11 “unlawful” prong of the UCL by violating the CLRA, the FAL, and other applicable law as  
12 described herein.

13          62. Vail Resorts Management’s business practices, described herein, violated the  
14 “unfair” prong of the UCL in that its conduct is substantially injurious to consumers, offends public  
15 policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct  
16 outweighs any alleged benefits. Vail Resorts Management’s advertising of its passes and its  
17 retention of pass fees while its mountain resorts are closed is of no benefit to consumers.

18          63. Vail Resorts Management violated the fraudulent prong of the UCL by misleading  
19 Plaintiff and the Class to believe that they would have access to Vail Resorts Management’s  
20 mountain resorts.

21          64. Plaintiff and the Class acted reasonably when they signed up for passes based on the  
22 belief that they would have access to Vail Resorts Management’s mountain resorts.

23          65. Plaintiff and the Class lost money or property as a result of Vail Resorts  
24 Management’s UCL violations because Plaintiff and the Class suffered injuries caused by Vail  
25 Resorts Management because: (a) they would not have purchased or paid for Vail Resorts  
26 Management’s passes absent Vail Resorts Management’s representations and omission of a  
27 warning that it would retain members’ passholder fees while all mountain resorts nationwide are  
28 closed; (b) they would not have purchased passes on the same terms absent Vail Resorts

1 Management's representations and omissions; (c) they paid a price premium for Vail Resorts  
 2 Management's passes based on Vail Resorts Management's misrepresentations and omissions; and  
 3 (d) Vail Resorts Management's passes did not have the characteristics, benefits, or quantities as  
 4 promised.

5 **COUNT III**  
 6 **Violation of California's False Advertising Law,**  
 7 **California Business & Professions Code §§ 17500, *et seq.***

8 66. Plaintiffs hereby incorporate by reference the allegations contained in all preceding  
 9 paragraphs of this complaint.

10 67. Plaintiff Hunt brings this claim individually and on behalf of the members of the  
 11 proposed Nationwide Epic Pass Class against Vail Resorts Management. Plaintiff Hunt also brings  
 12 this claim individually and on behalf of the members of the proposed California Epic Pass Subclass  
 13 against Vail Resorts Management.

14 68. California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*,  
 15 makes it "unlawful for any person to make or disseminate or cause to be made or disseminated  
 16 before the public in this state, ... in any advertising device ... or in any other manner or means  
 17 whatever, including over the Internet, any statement, concerning ... personal property or services,  
 18 professional or otherwise, or performance or disposition thereof, which is untrue or misleading and  
 19 which is known, or which by the exercise of reasonable care should be known, to be untrue or  
 20 misleading."

21 69. Vail Resorts Management engaged in a scheme of retaining customers' pass fees  
 22 while 100 percent of its mountain resorts were closed. Vail Resorts Management's advertising and  
 23 marketing of its passes as providing access its mountain resorts misrepresented and/or omitted the  
 24 true content and nature of Vail Resorts Management's services. Vail Resorts Management's  
 25 advertisements and inducements were made in California and come within the definition of  
 26 advertising as contained in Bus. & Prof. Code § 17500, *et seq.* in that the promotional materials  
 27 were intended as inducements to purchase passes, and are statements disseminated by Vail Resorts  
 28 Management to Plaintiff and Class members. Vail Resorts Management knew that these  
 statements were unauthorized, inaccurate, and misleading.



70. Vail Resorts Management's advertising that passholders would have unlimited access to its mountain resorts and that its customers would have access to its mountain resorts upon paying a passholder fee is false and misleading to a reasonable consumer, including Plaintiff, because Vail Resorts Management in fact closed all of its mountain resorts while retaining the full price of customers' passes.

71. Vail Resorts Management violated § 17500, *et seq.* by misleading Plaintiff and the Class to believe that they would have access to Vail Resorts Management's mountain resorts from October 2019 to June 2020.

72. Vail Resorts Management knew or should have known, through the exercise of reasonable care that its advertising that customers would have access its mountain resorts is false and misleading. Further, Vail Resorts Management knew or should have known that it was breaching its contracts with its customers and fraudulently charging fees when it retained all pass fees while all of its mountain resorts were closed.

73. Plaintiff and the Class lost money or property as a result of Vail Resorts Management's FAL violation because Plaintiff and the Class suffered injuries caused by Vail Resorts Management because: (a) they would not have purchased or paid for Vail Resorts Management's passes absent Vail Resorts Management's representations and omission of a warning that it would retain members' passholder fees while all mountain resorts nationwide are closed; (b) they would not have purchased passes on the same terms absent Vail Resorts Management's representations and omissions; (c) they paid a price premium for Vail Resorts Management's passes based on Vail Resorts Management's misrepresentations and omissions; and (d) Vail Resorts Management's passes did not have the characteristics, benefits, or quantities as promised.

**COUNT IV**  
**Breach of Express Warranty**

74. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

75. Plaintiffs Hunt and Kodama bring this claim individually and on behalf of the members of the proposed Nationwide Epic Pass Class against Vail Resorts Management. Plaintiffs

1 also bring this claim individually and on behalf of the members of the proposed California Epic  
2 Pass Subclass against Vail Resorts Management.

3 76. In connection with the sale of passes, Vail Resorts Management issues an express  
4 warranty that customers would have unlimited access to its mountain resorts, or for the Epic Day  
5 Passes, that they would have access to Vail Resorts Management's mountain resorts for a specified  
6 number of days.

7 77. Vail Resorts Management's affirmation of fact and promise in Vail Resorts  
8 Management's marketing and signage became part of the basis of the bargain between Vail Resorts  
9 Management and Plaintiffs and Class members, thereby creating express warranties that the  
10 services would conform to Vail Resorts Management's affirmation of fact, representations,  
11 promise, and description.

12 78. Vail Resorts Management breached its express warranty because Vail Resorts  
13 Management does not provide unlimited access to its mountain resorts, and, for the Epic Day  
14 Passes, does not provide access to resorts even for customers who still have unused Epic Day  
15 Passes left for the 2019-2020 season. In fact, Vail Resorts Management has retained the full  
16 amount of its pass fees while 100 percent of its mountain resorts are closed.

17 79. Plaintiffs and Class members were injured as a direct and proximate result of Vail  
18 Resorts Management's breach because: (a) they would not have purchased or paid for Vail Resorts  
19 Management's passes absent Vail Resorts Management's representations and omission of a  
20 warning that it would retain members' passholder fees while all mountain resorts nationwide are  
21 closed; (b) they would not have purchased passes on the same terms absent Vail Resorts  
22 Management's representations and omissions; (c) they paid a price premium for Vail Resorts  
23 Management's passes based on Vail Resorts Management's misrepresentations and omissions; and  
24 (d) Vail Resorts Management's passes did not have the characteristics, benefits, or quantities as  
25 promised.

26 //

27 //

28 //

**COUNT V**  
**Negligent Misrepresentation**

80. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

81. Plaintiffs Hunt and Kodama bring this claim individually and on behalf of the members of the proposed Nationwide Epic Pass Class against Vail Resorts Management. Plaintiffs also bring this claim individually and on behalf of the members of the proposed California and Hawaii Epic Pass Subclasses against Vail Resorts Management.

82. As discussed above, Vail Resorts Management misrepresented that customers would have unlimited access to its mountain resorts, or, for the Epic Day Passes, that they would have access to Vail Resorts Management's mountain resorts for a specified number of days. However, Vail Resorts Management in fact retains the full price for passes, even when 100 percent of its mountain resorts are closed to the public.

83. At the time Vail Resorts Management made these representations, Vail Resorts Management knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

84. At an absolute minimum, Vail Resorts Management negligently misrepresented and/or negligently omitted material facts about its passes and services.

85. The negligent misrepresentations and omissions made by Vail Resorts Management, upon which Plaintiffs and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs and Class members to purchase Vail Resorts Management's passes.

86. Plaintiffs and Class members would not have purchased Vail Resorts Management's passes, or would not have purchased the services on the same terms, if the true facts had been known.

87. The negligent actions of Vail Resorts Management caused damage to Plaintiffs and Class members, who are entitled to damages and other legal and equitable relief as a result.

**COUNT VI**  
**Unjust Enrichment**

88. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

89. Plaintiffs Hunt and Kodama bring this claim individually and on behalf of the members of the proposed Nationwide Epic Pass Class against Vail Resorts Management. Plaintiffs also bring this claim individually and on behalf of the members of the proposed California and Hawaii Epic Pass Subclasses against Vail Resorts Management.

90. Plaintiffs and members of the Class conferred benefits on Vail Resorts Management by paying, and being charged, pass fees while 100 percent of Vail Resorts Management's mountain resorts were and remain closed.

91. Vail Resorts Management has knowledge of such benefits.

92. Vail Resorts Management has been unjustly enriched in retaining the revenues derived from Plaintiffs and Class members' pass fees. Retention of those moneys under these circumstances is unjust and inequitable because Vail Resorts Management is retaining its customers full pass fees while 100 percent of its mountain resorts remain closed. These misrepresentations and charges caused injuries to Plaintiffs and members of the Class because they would not have paid Vail Resorts Management's pass fees had the true facts been known.

93. Because Vail Resorts Management's retention of the non-gratuitous benefits conferred on it by Plaintiffs and members of the Class is unjust and inequitable, Defendants must pay restitution to Plaintiffs and members of the Class for their unjust enrichment, as ordered by the Court.

**COUNT VII**  
**Money Had and Received**

94. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

95. Plaintiffs Hunt and Kodama bring this claim individually and on behalf of the members of the proposed Nationwide Epic Pass Class against Vail Resorts Management. Plaintiffs

1 also bring this claim individually and on behalf of the members of the proposed California and  
 2 Hawaii Epic Pass Subclasses against Vail Resorts Management.

3 96. Vail Resorts Management received money in the form of pass fees that was  
 4 intended to be used for the benefit of Plaintiffs and the Class, those pass fees were not used for the  
 5 benefit of Plaintiffs and the Class, and Vail Resorts Management has not given back or refunded  
 6 the wrongfully obtained money and pass fees to Plaintiffs and the Class.

7 97. Vail Resorts Management obtained money in the form of pass fees that was  
 8 intended to be used to provide unlimited mountain resort access to Plaintiffs and the Class, or for  
 9 the Epic Day Passes, that was intended to provide customers with access to Vail Resorts  
 10 Management mountain resorts for a specified number of days. However, Vail Resorts  
 11 Management has retained all of the pass fees while 100 percent of its mountain resorts were and  
 12 remain closed.

13 **COUNT VIII**  
**Conversion**

14 98. Plaintiffs hereby incorporate by reference the allegations contained in all preceding  
 15 paragraphs of this complaint.

16 99. Plaintiffs bring this claim individually and on behalf of the members of the  
 17 proposed Nationwide Epic Pass Class against Vail Resorts Management. Plaintiffs also bring this  
 18 claim individually and on behalf of the members of the proposed California and Hawaii Subclasses  
 19 against Vail Resorts Management.

20 100. Plaintiffs and members of the Class had a right to retain their pass fees while all of  
 21 Vail Resorts Management's mountain resorts were and remain closed; Vail Resorts Management  
 22 intentionally retained full amount of the Plaintiffs' and Class members' pass fees while Vail  
 23 Resorts Management's mountain resorts were closed; Plaintiffs and Class members did not consent  
 24 to Vail Resorts Management's retaining such fees while Vail Resorts Management's mountain  
 25 resorts are closed; Plaintiff and Class members were harmed through Vail Resorts Management's  
 26 retention of their pass fees; Vail Resorts Management's conduct was a substantial factor in causing  
 27 Plaintiffs and Class members' harm.  
 28

**COUNT IX**  
**Breach of Contract**

101. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

102. Plaintiffs Hunt and Kodama bring this claim individually and on behalf of the members of the proposed Nationwide Epic Pass Class against Vail Resorts Management. Plaintiffs also bring this claim individually and on behalf of the members of the proposed California and Hawaii Epic Pass Subclasses against Vail Resorts Management.

103. Vail Resorts Management entered into contracts with Plaintiffs and Class members to provide access to its mountain resorts in exchange for the payment of pass fees. Vail Resorts Management has breached these contracts by retaining and Class members' full pass fees while 100 percent of its mountain remain closed. Plaintiffs and Class members have suffered an injury through the payment of pass fees while not having access to Vail Resorts Management's mountain resorts.

**COUNT X**  
**Violation of Hawaii's Unfair Deceptive Acts or Practices Statute**  
**H.R.S. § 480-1, *et seq.***

104. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

105. Plaintiff Kodama brings this cause of action on behalf of himself and members of the Hawaii Epic Pass Subclass.

106. This cause of action is brought pursuant to Hawaii's Unfair Deceptive Acts and Practices Statute ("UDAP"), H.R.S. § 480-1, *et seq.*

107. Plaintiff and the other members of the Hawaii Epic Pass Subclass are "consumers," as the term is defined by H.R.S. § 480-1 because they are natural persons who, primarily for personal, family, or household purposes, purchased ski passes from Vail Resorts Management.

108. The conduct alleged in this Complaint constitutes unfair and deceptive acts and practices for the purpose of the UDAP because the conduct was undertaken by Defendant in the conduct of its trade and commerce.

1           109. Plaintiff purchased his ski passes during the statute of limitations period. With  
2 respect to these purchases, Plaintiff reasonably believed that he would be able to use said passes to  
3 ski at Vail Resorts Management's resorts. Plaintiff's belief in this regard was reasonable because  
4 Vail Resorts Management's represents that the Epic Day Passes permit consumers to ski on Vail  
5 Resorts Management's property during the ski season.

6           110. Plaintiff would not have made this purchase, or would have paid less for his ski  
7 passes had he known that Vail Resorts Management would close 100% of its mountain resorts for  
8 the remainder of the ski season. The same is true for members of the Hawaii Epic Pass Subclass.

9           111. As alleged more fully above, Vail Resorts Management has violated the UDAP by  
10 representing that their customers would be entitled to access its mountain resorts during the 2019-  
11 2020 ski season.

12           112. As a result of engaging in such conduct, Vail Resorts Management has violated  
13 H.R.S. § 480-2, which declares "unfair methods of competition and unfair or deceptive acts or  
14 practices in the conduct of any trade or commerce" to be unlawful.

15           113. A practice is "unfair" under the UDAP when it offends established public policy  
16 and when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to  
17 consumers. *See Balthazar v. Verizon Haw., Inc.*, 109 Haw. 69, 77, 123 P.3d 194, 202 (2005).

18           114. Vail Resorts Management's conduct was of no benefit to ski pass holders who rely  
19 on the marketing of Vail Resorts Management in making purchasing decisions. The indefinite  
20 closure of Vail Resorts Management's resorts during the ski season is of no benefit to consumers.  
21 Moreover, representing that Vail Resorts Management would provide access to its mountain resorts  
22 during the ski season, when it would not, is injurious to customers because it deceived them into  
23 purchasing ski passes under the belief that they carried with them certain terms and conditions that  
24 they simply did not possess. Indeed, Plaintiff believed that he would be able to ski during the  
25 2019-2020 ski season.

26           115. Plaintiff and the Hawaii Epic Pass Subclass members would not have purchased  
27 Epic Passes or would have paid less for them, had they known that they would be not have access  
28

1 to Vail Resorts Management's ski resorts. As a result, Vail Resorts Management's conduct is  
2 substantially injurious to consumers, including Plaintiff, and such conduct was "unfair."

3 116. An act or practice is "deceptive" under the UDAP when it consists of a  
4 representation, omission, or practice that is likely to mislead consumers acting reasonably under  
5 the circumstances and when the representation, omission, or practice is material. *See Courbat v.*  
6 *Dahana Ranch, Inc.*, 111 Haw. 254, 262, 141 P.3d 427, 434 (2006). A representation, omission, or  
7 practice is considered material if it involves information that is important to consumers and, hence,  
8 likely to affect their choice of, or conduct regarding, a product. *See id.*

9 117. As alleged herein, Vail Resorts Management's conduct was deceptive because it had  
10 the effect of deceiving consumers into believing that Vail Resorts Management would provide  
11 consumers access to its ski resorts for the 2019-2020 season. The belief that Vail Resorts  
12 Management would provide access to its ski resorts was material because it was important to  
13 consumers and influenced Plaintiff's and the Hawaii Epic Pass Subclass members' decision to  
14 purchase Vail Resorts Management's ski passes. Specifically, Plaintiff and the Hawaii Epic Pass  
15 Subclass members would not have purchased ski passes, or would have paid less for them, had they  
16 known that they would be unable to access Vail Resorts Management's ski resorts.

17 118. Because Vail Resorts Management – through its advertising of its ski passes–  
18 misled Plaintiff and members of the Hawaii Epic Pass Subclass into believing they would be  
19 provided with access to Vail Resorts Management's ski resorts, when they would not, and this  
20 caused financial injury to customers by inducing purchases that would not have occurred and/or  
21 caused them to pay more for ski passes than they otherwise would have, Vail Resorts  
22 Management's conduct was and is "deceptive."

23 119. In sum, each of the elements for a claim brought pursuant to H.R.S. § 480-13 is  
24 satisfied, in that: (1) Vail Resorts Management has violated H.R.S. § 480-2(a) by committing  
25 unfair and deceptive business acts and practices, as set forth above, (2) these unfair and deceptive  
26 business acts and practices caused Plaintiff and the Hawaii Epic Subclass members financial harm  
27 by inducing purchases that would not have occurred and/or caused them to pay more for the ski  
28 passes than they otherwise would have, (3) damages to Plaintiff and the Hawaii Epic Pass Subclass



members can be proven on class-wide basis, and (4) this action is in the public interest because Vail Resorts Management's unfair and deceptive business acts and practices have caused harm to all consumers, and Vail Resorts Management is a merchant that sells the ski passes for profit.

120. Plaintiff seeks an order requiring Vail Resorts Management to issue prompt refunds to Plaintiff and members of the Hawaii Epic Pass Subclass.

121. Pursuant to H.R.S. § 480-13(a)(1), Plaintiff also seeks compensatory damages of threefold the damages incurred by himself and the Hawaii Epic Pass Subclass in purchasing the ski passes, as well as reasonable attorney's fees together with the costs of suit.

### **COUNT XI**

#### **Violation of Hawaii's Uniform Deceptive Trade Practices Act**

#### **H.R.S. § 481A, *et seq.***

#### **(Injunctive Relief Only)**

122. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

123. Plaintiff Kodama brings this cause of action on behalf of himself and members of the Hawaii Epic Pass Subclass.

124. By committing the acts and practices alleged herein, Vail Resorts Management has violated Hawaii's Uniform Deceptive Trade Practices Act ("UDTPA"), H.R.S. § 481A, *et seq.*, as to the Hawaii Epic Pass Subclass.

125. Vail Resorts Management is a "person" under H.R.S. § 481A-2 because it is a corporation.

126. Pursuant to Hawaii's UDTPA, Vail Resorts Management has engaged in deceptive trade by engaging in the following conduct:

- (a) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have. *See* H.R.S. § 481A-3(a)(5). Vail Resorts Management has represented that it would provide access to its mountain resorts in exchange for a fee, when it would not;
- (b) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. *See* H.R.S. §

481A-3(a)(7). Vail Resorts Management has represented that it would provide access to its mountain resorts in exchange for a fee, when it would not;

(c) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding. *See* H.R.S. § 481A-3(a)(7). Vail Resorts Management has represented that it would provide access to its mountain resorts in exchange for a fee, when it would not;

(d) Advertising goods or services with the intent not to sell them as advertised. *See* H.R.S. § 481A-3(a)(7). Vail Resorts Management has represented that it would provide access to its mountain resorts in exchange for a fee, when it would not.

127. At all relevant times, Vail Resorts Management has known or reasonably should have known that it would not provide access to its ski resorts and that Plaintiff and other members of the Hawaii Epic Pass Subclass would reasonably and justifiably rely on the packaging and other advertisements in purchasing the ski passes.

128. Plaintiff and members of the Hawaii Epic Pass Subclass have reasonably and justifiably relied on Vail Resorts Management's misleading, and fraudulent conduct when purchasing the ski passes. With respect to Plaintiff's purchases, Plaintiff reasonably believed that the ski pass would provide access to Vail Resorts Management's resorts during the 2019-2020 ski season. Plaintiff's belief in this regard was reasonable because of Vail Resorts Management's marketing and advertising. Plaintiff would not have made this purchase, or would have paid less for the ski passes, had he known that Vail Resorts Management would close 100% of its ski resorts. The same is true for members of the Hawaii Epic Pass Subclass.

129. Moreover, based on the materiality of Vail Resorts Management's deceptive and misleading conduct, reliance on such conduct as a material reason for the decision to purchase the products may be presumed or inferred for Plaintiff and members of the Hawaii Epic Pass Subclass.

130. Under H.R.S. § 481A-4, Plaintiff and members of the Hawaii Epic Pass Subclass are seeking injunctive relief, preventing Vail Resorts Management from continuing to engage in the wrongful acts and unfair and unlawful business practices described herein. Plaintiff also seeks

attorneys' fees and costs and all other remedies this Court deems proper pursuant to H.R.S. § 481A-4.

### **COUNT XII**

#### **Violation of Hawaii's False Advertising Law H.R.S. § 708-871, *et seq.***

131. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

132. Plaintiff Kodama brings this cause of action on behalf of himself and members of the Hawaii Epic Pass Subclass.

133. Hawaii's False Advertising Law ("FAL") provides that:

A person commits the offense of false advertising if, in connection with the promotion of the sale of property or services, the person knowingly or recklessly makes or causes to be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons.

H.R.S. § 708-871.

134. Vail Resorts Management has knowingly and recklessly made false and misleading statements to the public, including to Plaintiff and members of the Hawaii Epic Pass Subclass, through its deceptive marketing, that the ski passes would provide access to Vail Resorts Management's ski resorts. Vail Resorts Management's representations were misleading because it closed 100% of its ski resorts for the remainder of the ski season. Because Vail Resorts Management have disseminated misleading information regarding the ski passes, and Vail Resorts Management knows, knew, or should have known through the exercise of reasonable care that the representation was misleading, Vail Resorts Management has violated the FAL.

135. Furthermore, Vail Resorts Management knows, knew or should have known through the exercise of reasonable care that such representation was unauthorized and misleading.

136. As a result of Vail Resorts Management's false advertising, Vail Resorts Management has fraudulently obtained money from Plaintiff and members of the Hawaii Epic Pass Subclass.

137. Plaintiff requests that this Court cause Vail Resorts Management to restore this fraudulently obtained money to Plaintiff and members of the Hawaii Epic Pass Subclass, to disgorge the profits Vail Resorts Management made on these transactions, and to enjoin Vail

1 Resorts Management from violating the FAL or violating it in the same fashion in the future as  
 2 discussed herein. Otherwise, Plaintiff and members of the Hawaii Epic Pass Subclass may be  
 3 irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

4 **CAUSES OF ACTION AGAINST ALL DEFENDANTS**

5 **COUNT XIII**

6 **Violation of California's Consumers Legal Remedies Act,  
 7 California Civil Code §§ 1750, *et seq.*  
 8 (Injunctive Relief Only)**

9 138. Plaintiffs hereby incorporate by reference the allegations contained in all preceding  
 10 paragraphs of this complaint.

11 139. Plaintiffs Kodama and Odell bring this claim individually and on behalf of members  
 12 of the proposed Nationwide Insurance Class against Defendants.

13 140. Plaintiffs and Class members are consumers who paid fees for use of Defendants'  
 14 insurance coverage for personal, family or household purposes. Plaintiff and the Class are  
 15 "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).

16 141. Defendants' season ski pass insurance that Plaintiff and Class members purchased  
 17 from Defendants was a "service" within the meaning of Cal. Civ. Code § 1761(b).

18 142. Defendants' actions, representations, and conduct have violated, and continue to  
 19 violate the CLRA, because they extend to transactions that intended to result, or which have  
 20 resulted in, the sale of services to consumers.

21 143. Defendants' advertising that consumers would receive unforeseen loss insurance  
 22 coverage upon paying a fee is false and misleading to a reasonable consumer, including Plaintiff,  
 23 because Defendants in fact refuse to honor the insurance policy while continuing to retain the full  
 24 price consumers' ski passes and their insurance fees.

25 144. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits  
 26 "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses,  
 27 benefits, or quantities which they do not have or that a person has a sponsorship, approval, status,  
 28 affiliation, or connection which he or she does not have." By engaging in the conduct set forth  
 herein, Defendants violated and continue to violate Section 1770(a)(5) of the CLRA, because

1 Defendants' conduct constitutes unfair methods of competition and unfair or fraudulent acts or  
2 practices, in that Defendants misrepresent the particular characteristics, benefits and quantities of  
3 the services.

4 145. Cal. Civ. Code § 1770(a)(7) prohibits representing that goods or services are of a  
5 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of  
6 another. By engaging in the conduct set forth herein, Defendants violated and continues to violate  
7 Section 1770(a)(7) of the CLRA, because Defendants' conduct constitutes unfair methods of  
8 competition and unfair or fraudulent acts or practices, in that Defendants misrepresent the  
9 particular standard, quality or grade of the services.

10 146. Cal. Civ. Code § 1770(a)(9) further prohibits "[a]dvertising goods or services with  
11 intent not to sell them as advertised." By engaging in the conduct set forth herein, Defendant  
12 violated and continues to violate Section 1770(a)(9), because Defendants' conduct constitutes  
13 unfair methods of competition and unfair or fraudulent acts or practices, in that Defendants  
14 advertises services with the intent not to sell the services as advertised.

15 147. Plaintiffs and the Class acted reasonably when they purchased Defendants' season  
16 ski pass insurance on the belief that Defendants' representations were true and lawful.

17 148. Plaintiffs and the Class suffered injuries caused by Defendants because: (a) they  
18 would not have purchased or paid for Defendants' season ski pass insurance absent Defendants'  
19 representations and omission of a warning that it would retain insureds' passholder and insurance  
20 fees while all mountain resorts nationwide are closed; (b) they would not have purchased season  
21 ski pass insurance on the same terms absent Defendants' representations and omissions; (c) they  
22 paid a price premium for Defendants' season ski pass insurance based on Defendants'  
23 misrepresentations and omissions; and (d) Defendants' season ski pass insurance did not have the  
24 characteristics, benefits, or quantities as promised.

25 149. Under California Civil Code § 1780(a), Plaintiffs Kodama and Odell, and members  
26 of the Class seek injunctive and equitable relief for Defendants' violations of the CLRA. Plaintiffs  
27 have mailed an appropriate demand letter consistent with California Civil Code § 1782(a). If  
28

Defendants fail to take corrective action within 30 days of receipt of the demand letter, Plaintiffs will amend the complaint to include a request for damages as permitted by Civil Code § 1782(d).

150. Wherefore, Plaintiffs seek injunctive and equitable relief for these violations of the CLRA.

#### **COUNT XIV**

#### **Violation of California's Unfair Competition Law, California Business & Professions Code §§ 17200, *et seq.***

151. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

152. Plaintiffs Kodama and Odell bring this claim individually and on behalf of the members of the proposed Nationwide Insurance Class against Defendants.

153. Defendants are subject to California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising ...."

154. Defendants' advertising that its insureds would be covered from loss due to unforeseen events in exchange for an insurance fee is false and misleading to a reasonable consumer, including Plaintiffs, because Defendants in fact are denying coverage for a covered event resulting from Vail Resort Management's resort closures while continuing to retain the full price of customers' passes and insurance fees.

155. Defendants' business practices, described herein, violated the "unlawful" prong of the UCL by violating the CLRA, the FAL, and other applicable law as described herein.

156. Defendants' business practices, described herein, violated the "unfair" prong of the UCL in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendants' advertising of their season ski pass insurance and their denial of insurance coverage is of no benefit to consumers.

157. Defendants violated the fraudulent prong of the UCL by misleading Plaintiffs and the Class to believe that they would have loss coverage in the event of an unforeseen peril.

158. Plaintiffs and the Class acted reasonably when they signed up for season ski pass insurance based on the belief that they would have coverage in the event of an unforeseen peril.

159. Plaintiffs and the Class lost money or property as a result of Defendants' UCL violations because Plaintiffs and the Class suffered injuries caused by Defendant because: (a) they would not have purchased or paid for Defendants' season ski pass insurance absent Defendants' representations and omission of a warning that it would retain insureds' passholder and insurance fees while all mountain resorts nationwide are closed; (b) they would not have purchased season ski pass insurance on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' season ski pass insurance based on Defendants' misrepresentations and omissions; and (d) Defendants' season ski pass insurance did not have the characteristics, benefits, or quantities as promised.

#### **COUNT XV**

#### **Violation of California's False Advertising Law, California Business & Professions Code §§ 17500, *et seq.***

160. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

161. Plaintiffs Kodama and Odell bring this claim individually and on behalf of the members of the proposed Nationwide Insurance Class against Defendants.

162. California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*, makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

163. Defendants engaged in a scheme of retaining customers pass and insurance fees by denying insurance coverage for an unforeseen peril covered by the insurance policy. Defendants' advertising and marketing of their season ski passes as providing coverage in the event of an unforeseen event misrepresented and/or omitted the true content and nature of Defendants'

1 services. Defendants' advertisements and inducements were made in California and come within  
2 the definition of advertising as contained in Bus. & Prof. Code § 17500, *et seq.* in that the  
3 promotional materials were intended as inducements to purchase passes, and are statements  
4 disseminated by Defendants to Plaintiffs and Class members. Defendants knew that these  
5 statements were unauthorized, inaccurate, and misleading.

6 164. Defendants' advertising that season ski pass insurance holders would be covered in  
7 the event of an unforeseen peril upon paying an passholder fee is false and misleading to a  
8 reasonable consumer, including Plaintiffs, because Defendants in fact are denying insurance  
9 coverage while retaining the full price of customers' passes and insurance fees.

10 165. Defendants violated § 17500, *et seq.* by misleading Plaintiffs and the Class to  
11 believe that they would be covered in the event of an unforeseen peril, including a quarantine.

12 166. Defendants knew or should have known, through the exercise of reasonable care  
13 that their advertising that the season ski pass insurance would cover unforeseen perils is false and  
14 misleading. Further, Defendants knew or should have known that they were breaching their  
15 contracts with their customers and fraudulently retaining fees when they denied insurance coverage  
16 after the ski resorts were closed indefinitely.

17 167. Plaintiffs and the Class lost money or property as a result of Defendants' FAL  
18 violation because Plaintiffs and the Class suffered injuries caused by Defendant because: (a) they  
19 would not have purchased or paid for Defendants' season ski pass insurance absent Defendants'  
20 representations and omission of a warning that it would retain insureds' passholder and insurance  
21 fees while all mountain resorts nationwide are closed; (b) they would not have purchased season  
22 ski pass insurance on the same terms absent Defendants' representations and omissions; (c) they  
23 paid a price premium for Defendants' season ski pass insurance based on Defendants'  
24 misrepresentations and omissions; and (d) Defendants' season ski pass insurance did not have the  
25 characteristics, benefits, or quantities as promised.

26 //

27 //

28 //



**COUNT XVI**  
**Breach of Express Warranty**

168. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

169. Plaintiffs Kodama and Odell bring this claim individually and on behalf of the members of the proposed Nationwide Insurance Class against Defendants. Plaintiffs also bring this claim individually and on behalf of the members of the proposed Hawaii and Tennessee Insurance Subclasses against Defendants.

170. In connection with the sale of ski insurance Defendants issue an express warranty that insureds would be covered for unforeseen perils, including sickness, quarantine, and natural disasters.

171. Defendants' affirmation of fact and promise in Defendants' marketing and contracts became part of the basis of the bargain between Defendants and Plaintiffs and Class members, thereby creating express warranties that the services would conform to Defendants' affirmation of fact, representations, promise, and description.

172. Defendants breached their express warranty because Defendants do not provide insurance coverage for covered perils. In fact, Defendants have retained the full amount of their insureds' pass and insurance fees while denying insurance coverage under the policy.

173. Plaintiffs and the Class members were injured as a direct and proximate result of Defendants' breach because: (a) they would not have purchased or paid for Defendants' season ski pass insurance absent Defendants' representations and omission of a warning that it would retain insureds' passholder and insurance fees while all mountain resorts nationwide are closed; (b) they would not have purchased season ski pass insurance on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' season ski pass insurance based on Defendants' misrepresentations and omissions; and (d) Defendants' season ski pass insurance did not have the characteristics, benefits, or quantities as promised.

**COUNT XVII**  
**Negligent Misrepresentation**

174. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

175. Plaintiffs Kodama and Odell bring this claim individually and on behalf of the members of the proposed Nationwide Insurance Class against Defendants. Plaintiffs also bring this claim individually and on behalf of the members of the proposed Hawaii and Tennessee Insurance Subclasses against Defendants.

176. As discussed above, Defendants misrepresented that insureds would have season ski pass coverage in the event of unforeseen perils. However, Defendants in fact retain the full price for passes and insurance, despite denying coverage for a covered event under the policy.

177. At the time Defendants made these representations, Defendants knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

178. At an absolute minimum, Defendants negligently misrepresented and/or negligently omitted material facts about their insurance policy and services.

179. The negligent misrepresentations and omissions made by Defendants, upon which Plaintiffs and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs and Class members to purchase Defendants' season ski pass insurance.

180. Plaintiffs and Class members would not have purchased Defendants' season ski pass insurance, or would not have purchased the services on the same terms, if the true facts had been known.

181. The negligent actions of Defendants caused damage to Plaintiffs and Class members, who are entitled to damages and other legal and equitable relief as a result.

**COUNT XVIII**  
**Unjust Enrichment**

182. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.



benefit of Plaintiffs and the Class, and Defendants have not given back or refunded the wrongfully obtained money and fees to Plaintiffs and the Class.

191. Defendants obtained money in the form of pass and insurance fees that was intended to be used to provide insurance coverage to Plaintiffs and the Class. However, Defendants have retained all of the pass and insurance fees while denying insurance coverage under the season ski pass policy.

### **COUNT XX** **Conversion**

192. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

193. Plaintiffs Kodama and Odell bring this claim individually and on behalf of the members of the proposed Nationwide Insurance Class against Defendants. Plaintiffs also bring this claim individually and on behalf of the members of the proposed Hawaii and Tennessee Insurance Subclasses against Defendants.

194. Plaintiffs and members of the Class had a right to retain their pass and insurance fees while all of Vail Resort Management's mountain resorts were and remain closed; Defendants intentionally retained full amount of the Plaintiffs' and Class members' pass and insurance fees while denying coverage under the season ski pass policy; Plaintiffs and Class members did not consent to Defendants' retaining such fees while Vail Resort Management's mountain resorts are closed; Plaintiffs and Class members were harmed through Defendants' retention of their pass and insurance fees; Defendants' conduct was a substantial factor in causing Plaintiff and Class members' harm.

### **COUNT XXI** **Breach of Contract**

195. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

196. Plaintiffs Kodama and Odell bring this claim individually and on behalf of the members of the proposed Nationwide Insurance Class against Defendants. Plaintiffs also bring this claim individually and on behalf of the members of the proposed Hawaii and Tennessee Subclasses against Defendants.

197. Defendants entered into contracts with Plaintiffs and Class members to provide insurance coverage in the event of an unforeseen peril. Defendants have breached these contracts by retaining and Class members' full pass and insurance fees while denying coverage under the season ski pass policy. Plaintiffs and Class members have suffered an injury through the payment of pass and insurance fees while being denied insurance coverage despite the existence of a covered unforeseen peril.

**COUNT XXII**  
**Violation of Hawaii's Unfair Deceptive Acts or Practices Statute**  
**H.R.S. § 480-1, *et seq.***

198. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

199. Plaintiff Kodama brings this cause of action on behalf of himself and members of the Hawaii Insurance Subclass.

200. This cause of action is brought pursuant to Hawaii’s Unfair Deceptive Acts and Practices Statute (“UDAP”), H.R.S. § 480-1, *et seq.*

201. Plaintiff and the other members of the Hawaii Insurance Subclass are “consumers,” as the term is defined by H.R.S. § 480-1 because they are natural persons who, primarily for personal, family, or household purposes, purchased season ski pass insurance from Defendants.

202. The conduct alleged in this Complaint constitutes unfair and deceptive acts and practices for the purpose of the UDAP because the conduct was undertaken by Defendants in the conduct of their trade and commerce.

203. Plaintiff purchased his ski pass insurance during the statute of limitations period. With respect to these purchases, Plaintiff reasonably believed that, in the event that they were to experience an unforeseen peril, Plaintiff would be issued a prompt refund of his ski pass price. Plaintiff's belief in this regard was reasonable because Defendants represent in their certificate of insurance that the insurance would cover unforeseen perils, such as natural disasters, sickness, and quarantine.

204. Plaintiff would not have made this purchase, or would have paid less for his season ski pass insurance, had he known that he would be denied coverage for a covered peril under the insurance agreement. The same is true for members of the Hawaii Subclass.

1           205. As alleged more fully above, Defendants have violated the UDAP by representing  
2 that their customers would be entitled to insurance coverage for covered perils, when in fact  
3 Defendants are denying coverage under the insurance policy for such perils.

4           206. As a result of engaging in such conduct, Defendants have violated H.R.S. § 480-2,  
5 which declares “unfair methods of competition and unfair or deceptive acts or practices in the  
6 conduct of any trade or commerce” to be unlawful.

7           207. A practice is “unfair” under the UDAP when it offends established public policy  
8 and when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to  
9 consumers. *See Balthazar v. Verizon Haw., Inc.*, 109 Haw. 69, 77, 123 P.3d 194, 202 (2005).

10           208. Defendants’ conduct was of no benefit to ski pass holders who rely on the marketing  
11 of insurance companies in making purchasing decisions. Failing to cover an unforeseen peril in  
12 accordance with the insurance policy is of no benefit to consumers. Moreover, representing that  
13 Defendants would cover an included unforeseen loss, when they would not, is injurious to  
14 customers because it deceived them into ski passes and season ski pass insurance under the belief  
15 that it carried with it certain terms and conditions that it simply did not possess. Indeed, Plaintiff  
16 believed that the ski passes he purchased would be refunded under the insurance policy of his ski  
17 pass based on the certificate of insurance provided by Defendants.

18           209. Plaintiff and the Hawaii Insurance Subclass members would not have purchased  
19 season ski pass insurance, or would have paid less for them, had they known that they would be  
20 denied coverage for a covered loss. As a result, Defendants’ conduct is substantially injurious to  
21 consumers, including Plaintiff, and such conduct was “unfair.”

22           210. An act or practice is “deceptive” under the UDAP when it consists of a  
23 representation, omission, or practice that is likely to mislead consumers acting reasonably under  
24 the circumstances and when the representation, omission, or practice is material. *See Courbat v.*  
25 *Dahana Ranch, Inc.*, 111 Haw. 254, 262, 141 P.3d 427, 434 (2006). A representation, omission, or  
26 practice is considered material if it involves information that is important to consumers and, hence,  
27 likely to affect their choice of, or conduct regarding, a product. *See id.*

211. As alleged herein, Defendants' conduct was deceptive because it had the effect of deceiving consumers into believing that Defendants would cover losses relating to unforeseen perils listed in the agreement. The belief that Defendants would promptly refund ski pass fees in the event of an unforeseen peril was material because it was important to consumers and influenced Plaintiff's and the Hawaii Insurance Subclass members' decision to purchase Defendant's season ski pass insurance. Specifically, Plaintiff and the Hawaii Subclass members would not have purchased season ski pass with Hawaiian, or would have paid less for them, had they known that they would be denied coverage for unforeseen perils covered by the insurance policy..

212. Because Defendants – through their advertising of their season ski pass insurance – misled Plaintiff and members of the Hawaii Insurance Subclass into believing they would be covered by the insurance policy in the event of an unforeseen peril, and this caused financial injury to customers by inducing purchases that would not have occurred and/or caused them to pay more for season ski pass insurance than they otherwise would have, Defendants' conduct was and is “deceptive.”

213. In sum, each of the elements for a claim brought pursuant to H.R.S. § 480-13 is satisfied, in that: (1) Defendants have violated H.R.S. § 480-2(a) by committing unfair and deceptive business acts and practices, as set forth above, (2) these unfair and deceptive business acts and practices caused Plaintiff and the Hawaii Subclass members financial harm by inducing purchases that would not have occurred and/or caused them to pay more for the season ski pass insurance than they otherwise would have, (3) damages to Plaintiff and the Hawaii Insurance Subclass members can be proven on class-wide basis, and (4) this action is in the public interest because Defendants' unfair and deceptive business acts and practices have caused harm to all consumers, and Defendants are merchants that sells the season ski pass insurance policy for profit.

214. Plaintiff seeks an order requiring Defendants to issue prompt refunds or insurance coverage to Plaintiff and members of the Hawaii Insurance Subclass.

215. Pursuant to H.R.S. § 480-13(a)(1), Plaintiff also seeks compensatory damages of threefold the damages incurred by himself and the Hawaii Subclass in purchasing the season ski pass insurance, as well as reasonable attorney's fees together with the costs of suit.

**COUNT XXIII****Violation of Hawaii's Uniform Deceptive Trade Practices Act****H.R.S. § 481A, *et seq.*****(Injunctive Relief Only)**

216. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

217. Plaintiff Kodama brings this cause of action on behalf of himself and members of the Hawaii Insurance Subclass.

218. By committing the acts and practices alleged herein, Defendants have violated Hawaii's Uniform Deceptive Trade Practices Act ("UDTPA"), H.R.S. § 481A, *et seq.*, as to the Hawaii Insurance Subclass.

219. Defendants are "persons" under H.R.S. § 481A-2 because they are corporate entities.

220. Pursuant to Hawaii's UDTPA, Defendants have engaged in deceptive trade by engaging in the following conduct:

- (a) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have. *See* H.R.S. § 481A-3(a)(5). Defendants have represented that they would provide insurance coverage in the event of an unforeseen peril, when Defendants would not;
- (b) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. *See* H.R.S. § 481A-3(a)(7). Defendants have represented that they will would provide insurance coverage in the event of an unforeseen peril, when Defendants would not;
- (c) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding. *See* H.R.S. § 481A-3(a)(7). Defendants' certificate of insurance represented that Defendants would provide insurance coverage in the event of an unforeseen peril, when Defendants would not; and
- (d) Advertising goods or services with the intent not to sell them as advertised. *See* H.R.S. § 481A-3(a)(7). Defendants have represented that they would provide insurance coverage for covered unforeseen perils, when Defendants would not.



221. At all relevant times, Defendants have known or reasonably should have known that they would not provide insurance coverage for covered unforeseen perils and that Plaintiff and other members of the Hawaii Insurance Subclass would reasonably and justifiably rely on the packaging and other advertisements in purchasing the season ski pass insurance.

222. Plaintiff and members of the Hawaii Insurance Subclass have reasonably and justifiably relied on Defendants' misleading, and fraudulent conduct when purchasing the season ski pass insurance. With respect to Plaintiff's purchases, Plaintiff reasonably believed that the season ski pass insurance would cover listed unforeseen losses. Plaintiff's belief in this regard was reasonable because of the certificate of insurance. Plaintiff would not have made this purchase, or would have paid less for the season ski pass insurance, had he known that Defendants would deny coverage under the insurance policy for covered unforeseen events. The same is true for members of the Hawaii Insurance Subclass.

223. Moreover, based on the materiality of Defendants' deceptive and misleading conduct, reliance on such conduct as a material reason for the decision to purchase the products may be presumed or inferred for Plaintiff and members of the Hawaii Insurance Subclass.

224. Under H.R.S. § 481A-4, Plaintiff and members of the Hawaii Subclass are seeking injunctive relief, preventing Defendants from continuing to engage in the wrongful acts and unfair and unlawful business practices described herein. Plaintiff also seeks attorneys' fees and costs and all other remedies this Court deems proper pursuant to H.R.S. § 481A-4.

**COUNT XXIV**  
**Violation of Hawaii's False Advertising Law**  
**H.R.S. § 708-871, *et seq.***

225. Plaintiffs incorporate by reference and re-allege herein all paragraphs alleged above.

226. Plaintiff Kodama brings this cause of action on behalf of himself and members of the Hawaii Subclass.

227. Hawaii's False Advertising Law ("FAL") provides that:

A person commits the offense of false advertising if, in connection with the promotion of the sale of property or services, the person knowingly or recklessly

1 makes or causes to be made a false or misleading statement in any advertisement  
2 addressed to the public or to a substantial number of persons.

3 H.R.S. § 708-871.

4 228. Defendants have knowingly and recklessly made false and misleading statements to  
5 the public, including to Plaintiff and members of the Hawaii Insurance Subclass, through  
6 Defendants' deceptive marketing, that the season ski pass insurance would cover listed unforeseen  
7 perils. Defendants' representations were misleading because they would not provide coverage for  
8 listed unforeseen perils. Because Defendants have disseminated misleading information regarding  
9 the season ski pass insurance, and Defendants know, knew, or should have known through the  
10 exercise of reasonable care that the representation was misleading, Defendants have violated the  
11 FAL.

12 229. Furthermore, Defendants know, knew, or should have known through the exercise  
13 of reasonable care that such representation was unauthorized and misleading.

14 230. As a result of Defendants' false advertising, Defendants have fraudulently obtained  
15 money from Plaintiff and members of the Hawaii Insurance Subclass.

16 231. Plaintiff requests that this Court cause Defendants to restore this fraudulently  
17 obtained money to Plaintiff and members of the Hawaii Insurance Subclass, to disgorge the profits  
18 Defendants made on these transactions, and to enjoin Defendants from violating the FAL or  
19 violating it in the same fashion in the future as discussed herein. Otherwise, Plaintiff and members  
20 of the Hawaii Insurance Subclass may be irreparably harmed and/or denied an effective and  
21 complete remedy if such an order is not granted.

## 22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek  
24 judgment against Defendants, as follows:

- 25 a) For an order certifying the Nationwide Epic Pass Class under Rule 23 of the Federal  
26 Rules of Civil Procedure and naming Plaintiffs Hunt and Kodama as representatives of  
27 the Nationwide Epic Pass Class and Plaintiffs' attorneys as Class Counsel to represent  
28 the Nationwide Epic Pass Class members; an order certifying the California Epic Pass

Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff Hunt as representative of the California Epic Pass Subclass and Plaintiffs' attorneys as Class Counsel to represent the California Epic Pass Subclass members; an order certifying the Hawaii Epic Pass Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff Kodama as representative of the Hawaii Epic Pass Subclass and Plaintiffs' attorneys as Class Counsel to represent the Hawaii Epic Pass Subclass members;

- b) For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs Kodama and Odell as representatives of the Nationwide Insurance Class and Plaintiffs' attorneys as Class Counsel to represent the Nationwide Insurance Class members; an order certifying the Hawaii Insurance Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff Kodama as representative of the Hawaii Insurance Subclass and Plaintiffs' attorneys as Class Counsel to represent the Hawaii Insurance Subclass members; and an order certifying the Tennessee Insurance Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff Odell as representative of the Tennessee Insurance Subclass and Plaintiffs' attorneys as Class Counsel to represent the Tennessee Insurance Subclass members;
- c) For an order declaring that Defendants' conduct violates the statutes and laws referenced herein;
- d) For an order finding in favor of Plaintiffs, the Nationwide Epic Pass Class, the Nationwide Insurance Class, the California Epic Pass Subclass, the California Insurance Subclass, the Hawaii Epic Pass Subclass, the Hawaii Insurance Subclass, and the Tennessee Insurance Subclass on all counts asserted herein;
- e) For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- f) For prejudgment interest on all amounts awarded;
- g) For an order of restitution and all other forms of equitable monetary relief;

- 1 h) For injunctive relief as pleaded or as the Court may deem proper; and  
2 i) For an order awarding Plaintiffs and the Classes their reasonable attorneys' fees and  
3 expenses and costs of suit.

4 **JURY DEMAND**

5 Plaintiffs demand a trial by jury on all causes of action and issues so triable.

6  
7 Dated: April 29, 2020

**BURSOR & FISHER, P.A.**

8 By: /s/ Brittany S. Scott  
9 Brittany S. Scott

10 Yeremey Krivoshey (State Bar No. 295032)  
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20 *Attorneys for Plaintiffs*  
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24  
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28

**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, Brittany S. Scott, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and I am member of the bar of this Court. I am an associate at Bursor & Fisher, P.A., counsel of record for Plaintiffs in this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. The Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the events alleged in the Complaint occurred in this District.

3. I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed at Oakland, California this 29th day of April, 2020.

/s/ Brittany S. Scott  
Brittany S. Scott

**EXHIBIT A**

## CERTIFICATE OF SEASON SKI PASS INSURANCE

## UNITED SPECIALTY INSURANCE COMPANY

## SEASON SKI PASS INSURANCE COVERAGE UNDER MASTER POLICY NUMBER: EYHBDISP0317

This is to certify that the undersigned has arranged insurance as hereinafter specified and underwritten by United Specialty Insurance Company.  
Please keep this document as your record of coverage under the plan.

**INSURING AGREEMENT:** We will provide insurance under the Master Policy in consideration of your payment of the Premium.

**EFFECTIVE DATE OF COVERAGE:** This insurance will be effective immediately upon acceptance by us of the Premium and shall remain in effect until the last day of the Ski/Snowboard Season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.

**PROPERTY INSURED AND COVERAGE LIMITS:** We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>a) Sickness, Injury or death of you or a Family Member;</li> <li>b) You have a Pregnancy or Childbirth verified by medical records; coverage is included for pregnant Season Ski Pass Holder's spouse or domestic partner and minor child;</li> <li>c) Your Primary Residence being made Uninhabitable by Natural Disaster;</li> <li>d) The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);</li> <li>e) You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;</li> <li>f) You are called to military service; your military leave is revoked; you are deployed or you are reassigned;</li> </ul> | <ul style="list-style-type: none"> <li>g) You or a resident relative have an involuntary, employer-initiated transfer that: (i) is within the same organization for which you or a resident relative have been continuously employed for at least one year immediately preceding the transfer; and (ii) involves your or a resident relative's relocation to a Primary Residence 100 or more miles from your current Primary Residence;</li> <li>h) You or a resident relative are involuntarily terminated or laid off by an employer for whom you or a resident relative have been continuously employed for at least one-year immediately preceding the termination or lay off; or involves a non-renewal of a work visa. This provision is not applicable to temporary employment, independent contractors or self-employed persons;</li> <li>i) You are a Student (i) who transfers to a school located 100 or more miles from your current school; (ii) who is accepted into a foreign study program that will cause you to be out of the country during the ski season; (iii) who graduates and accepts a job that is 100 or more miles from your current residence.</li> <li>j) You are unable to use your Season Ski Pass due to the inability to travel to the United States due to a U.S. Tourist Visa rejection or denial or failure to obtain the visa required to enter the United States. Evidence of visa application and copy of formal rejection or denial will be required as proof of loss.</li> </ul> |
|--|--|

**EXCLUSIONS:** We do not cover any Loss caused by or resulting from:

- a) an intentional act, except for suicide or attempted suicide by you or a family member.
- b) any felony or criminal acts committed by you;
- d) mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;
- e) use of narcotics, controlled substances or alcohol;
- f) Loss that occurs when this coverage is not in effect;
- g) An Injury, Sickness or other medical condition which, within the 120 day period immediately preceding your coverage effective date: (i) first manifested itself, worsened or became acute or had symptoms which would have prompted a reasonable person to seek diagnosis, care or treatment; (ii) for which care or treatment was given or recommended by a Physician; or (iii) required taking prescription drugs or medicines, unless the condition for which the drugs or medicines are taken remains controlled without any change in the required prescription drugs or medicines.
- h) Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending or expected attack, by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or by military, naval or air forces or by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such governmental power, authority or forces. Civil disorder, riot, insurrection, rebellion, revolution, civil war, usurped power or action taken by governmental authority in hindering, combating or defending against such an occurrence, and seizure or destruction under quarantine, or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

Exclusion g. is waived if the following conditions are met: 1. The Season Ski Pass Insurance is purchased at the same time you make the Initial Payment for the Season Ski Pass; or 2. All the Insured's are medically able to ski/snowboard when the Season Ski Pass Insurance Cost is paid. The Initial Payment means the first payment made to the Insured's Season Ski Pass Supplier toward the cost of the Season Ski Pass.

**DEFINITIONS:**

**DAILY RATE** – means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except; \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. **DAILY RATE** for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. The DAILY RATE does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.

**DESTINATION RESORT** – means the ski resort where you expected to use your Season Ski Pass.

**INJURY** – in the case of you means accidental bodily injury that occurs while your coverage is in effect that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member, means accidental bodily injury that occurs while your coverage is in effect and that is either life threatening or requires your care, as certified by a Physician.

**INSURED** – means any person for whom the Premium has been paid and accepted by us.

**FAMILY MEMBER** - means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.

**LOSS** – means your inability to use your Season Ski Pass due to an unforeseen event, occurrence or circumstance.

**NATURAL DISASTER** – means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.

**PHYSICIAN** – means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.

**PREMIUM** – means the amount paid for the Season Ski Pass insurance coverage. Premium is 100% fully earned at inception. Premium includes 3% Colorado Surplus Lines Tax.

**PRIMARY RESIDENCE** – means your fixed, permanent and principal home for legal and tax purposes.

**RESIDENT RELATIVE** – means a person who is either the spouse (or domestic partner) or blood relation of the Insured and lives in the same home.

**SEASON SKI PASS HOLDER** – means the person whose name and likeness appear on the Season Ski Pass issued by the Season Ski Pass Supplier.

**SEASON SKI PASS SUPPLIER** – means any company that provides a Season Ski Pass for purchase.

**SEASON SKI PASS** – means any lift ticket access pass for multiple day usage throughout the duration of the Ski/Snowboard Season.

**SICKNESS** – in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.

**SKI/SNOWBOARD SEASON** – the period starting on October 15, 2019 and ending on April 15, 2020.

**SEASON SKI PASS COST** – means the purchase price of the Season Ski Pass.

**STUDENT** – means college student with at least twelve (12) credits for undergrads or six (6) for graduate students.

**UNINHABITABLE** - means the building structure is unstable and there is risk of collapse in whole or in part; or there is exterior or structural damage allowing elemental intrusions, such as rain, wind, hail or flood; or there are immediate safety hazards that have yet to be cleared and the home cannot be occupied.

**WE, US, or OUR** – means United Specialty Insurance Company.

**YOU or YOUR** – means the Insured, as the context requires.

**TERMINATION OF INSURANCE:** This insurance shall automatically terminate without notice to you on the last day of the Ski/Snowboard Season.

**VALUATION:** The value of the Season Ski Pass will be determined at the time of Loss and will be the Season Ski Pass Cost minus the applicable Daily Rate for each day (or portion thereof) that you have used of your Season Ski Pass during the Ski/Snowboard Season.

**OTHER INSURANCE:** If a Loss is also covered by other insurance, we will pay only the proportion of the Loss that this amount of insurance bears to the total amount of insurance covering the Loss.

**DUTIES YOU HAVE AFTER A LOSS:** You will give prompt notice to our authorized representative, listed below. The notice should include: a description of the Loss, the name of the Season Ski Pass Supplier, the Season Ski Pass Cost, and the date the Season Ski Pass was purchased. All claims under the Policy **must be submitted as soon as reasonably possible but, in any event, no later than July 15, 2020.**

IF YOU HAVE A LOSS:  
write to:

American Claims Management  
P.O. Box 9030  
Carlsbad, CA 92011-9030

Telephone #1-877-895-1297  
International Calling: +1-385-219-3411

Or email to:

NewLosses@ACMClaims.com

Or fax #760-827-4081

Or report online via smartphone or computer

<https://www.acmclaims.com/secureforms2/claim/vail>

**PROOF OF LOSS:** Documentation requested must be provided to American Claims Management no more than 90 days after a covered Loss occurs or claim is made, or as soon after that as is reasonably possible. Failure to provide acceptable proof of loss will cause your claim to be closed without payment.

**CONCEALMENT, MISREPRESENTATION AND FRAUD:** If you commit fraud by intentionally concealing or misrepresenting a material fact concerning the insurance evidenced by this Certificate you will void your insurance under this policy and be subject to prosecution.

**EXAMINATION UNDER OATH:** Before recovering for any Loss, if requested, you:

Will send us a sworn statement of loss containing the information we request to settle your claim within 60 days of our request;

Will agree to examinations under oath at our request;

Will produce others for examination under oath at our request;

Will provide us with all pertinent records needed to prove the loss; and

Will cooperate with us in the investigation or settlement of the loss

**LOSS PAYMENT/OTHER RECOVERIES:** We will pay or make good any covered Loss under the insurance evidenced by this Certificate within 30 days after we reach agreement with you, or the entry of final judgment or the filing of an arbitration award, whichever is earlier. We will not be liable for any part of a Loss which has been paid or made good by others.

**LEGAL ACTION AGAINST US:** No one may bring legal action against us unless there has been full compliance with all terms of the insurance evidenced by this Certificate; and such action is brought within one year after you first have knowledge of a Loss.

**TRANSFER OF COVERAGE:** Coverage under the policy cannot be transferred by the Insured to anyone else.

**OPTIONAL ARBITRATION:** In the event you and we fail to agree as to the interpretation or applicability of any of the terms of our Insurance, you may elect to resolve the disagreement by binding arbitration in accordance with the statutory rules and procedures of the state of Colorado or in accordance with the Commercial Arbitration Rules of the American Arbitration Association. This option is granted to you subject to the following terms and conditions:

Any arbitration claim instituted to determine coverage under the insurance evidenced by this Certificate must be filed within one year of the occurrence causing the Loss (which in the case of Sickness is the date you first experience symptoms, and in the case of Injury is the date the Injury occurs).

This optional arbitration clause is intended to grant an additional right to you. All other terms and conditions of this contract remain the same, and no rights or duties of yours or ours shall be diminished or negated by reason of this clause or exercise of this option.

**CANCELLATION:** The insurance evidenced by this Certificate may be canceled at any time by you, upon providing notice in writing to us or Beecher Carlson Insurance Services LLC. Premium is fully earned and there shall be no return premium due you.

**CHANGES:** This Certificate and the Master Policy contains agreements between you and us concerning the insurance afforded. This Certificate's terms can be amended or waived only by endorsement issued by us and made a part of the Master Policy.

**SERVICE OF SUIT:** In the event the Company fails to pay any amount claimed to be due, the Company, at the insured's request, will submit to a court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Company designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the Statute, or his successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designated the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**IF YOU HAVE ANY QUESTIONS REGARDING THE INSURANCE COVERAGE PROVIDED BY THIS CERTIFICATE:** Please contact your agent:

Beecher Carlson Insurance Services  
8000 E. Maplewood Ave., Suite 350  
Greenwood Village, CO 80111

Telephone # 303-996-5456 or #303-996-5413

Or fax #770-870-3067

Or email: [btaylor@beechercarlson.com](mailto:btaylor@beechercarlson.com) or [shayes@beechercarlson.com](mailto:shayes@beechercarlson.com)

*This contract is delivered as a surplus lines coverage under the "Nonadmitted Insurance Act". The insurer issuing this contract is not licensed in Colorado but is an approved nonadmitted insurer. There is no protection under the provisions of the "Colorado Guaranty Association Act."*



**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF UTAH  
SUMMIT DIVISION**

<b>MARCUS MAIR, on behalf of himself, and all others similarly situated</b>	)	Case No. _____
	)	
<i>Plaintiffs,</i>	)	<b>COMPLAINT</b>
	)	
vs.	)	<b>Class Action</b>
	)	
<b>UNITED SPECIALTY INSURANCE COMPANY</b>	)	
	)	
<i>Defendant.</i>	)	<b>DEMAND FOR JURY TRIAL</b>

**CLASS ACTION COMPLAINT**

Comes now, Marcus Mair, on behalf of himself, and all others similarly situated (“Plaintiffs”), by and through the undersigned counsel, and files this Class Action Complaint against United Specialty Insurance Company (“Defendant” or “USIC”) and alleges as follows:

**INTRODUCTION**

1. This is a class action whereby Plaintiffs seek a declaratory judgment that Defendant breached its contract by refusing to reimburse or refund Plaintiffs for the loss of use of ski passes insured by Defendant.

2. Plaintiffs purchased insurance from Defendant to protect against the risk of not being able to use purchased ski passes. The insurance policy expressly provides coverage for Plaintiffs who were not able to use the ski passes due to a covered peril, and represents to refund Plaintiffs for the cost of their ski pass minus the applicable daily rate or pro-rata reduction for each day that Plaintiff used their ski pass during the 2019/2020 ski season.

3. Defendant is in material breach of the policy by failing to refund Plaintiffs who were unable to use their ski passes for reasons related to the COVID-19 pandemic.

4. Defendant has caused material harm to Plaintiffs by improperly failing to make payment.

5. Plaintiff brings this action on behalf of himself and all other similarly situated individuals pursuant to 29 U.S.C. § 216(b). Plaintiffs seek to recover compensatory damages as well as declaratory and injunctive relief.

### **PARTIES**

6. Plaintiff Marcus Mair is a citizen of the United States residing in Park City, Utah in Summit County. Marcus Mair purchased a policy from Defendant in the 2019/2020 ski season for ski pass insurance.

7. Defendant USIC is a property casualty insurance company incorporated under the laws of the State of Delaware with its principal place of business in the State of Texas at 1900 L Don Dodson Drive, Bedford, Texas 76021.

### **JURISDICTION AND VENUE**

8. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2), because this is a class action in which at least one member of the class is a citizen of a state different from Defendant, the amount in controversy exceeds \$5 million exclusive of interest and costs, and the proposed class contains more than 100 members.

9. This Court has personal jurisdiction over Defendant because Defendant conducts substantial business within Utah such that Defendant has significant, continuous, and pervasive contacts with the State of Utah.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this District and a substantial part of the events giving rise to Plaintiffs' claims took place within this District.

### **CLASS ACTION ALLEGATIONS**

11. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), 23(b)(3) and/or 23(c)(4), Plaintiff brings this action on behalf of himself and all others similarly situated, and seeks to represent the following class:

12. All persons who purchased both an Epic Pass for the 2019/2020 ski season and purchased from Defendant pass insurance on their Epic Pass, but were denied coverage for the loss of use of their passes after the resorts closed on March 15, 2020 due to no fault of their own.

13. Excluded from the class is Defendant, any entity in which Defendant has a controlling interest, any of the officers, directors, or employees of the Defendant, the legal representatives, heirs, successors, and assigns of the Defendant, anyone employed with Plaintiffs' counsels' firms, any Judge to whom this case is assigned, and his or her immediate family.

14. Plaintiffs' claims satisfy the numerosity, typicality, adequacy, commonality and superiority requirements under Federal Rule of Civil Procedure 23, as set forth more fully herein.

15. The persons who fall within the class number in at least the hundreds and most likely thousands, and thus the numerosity standard is satisfied. Because class members are geographically dispersed across the country, joinder of all class members in a single action is impracticable.

16. Class members are readily ascertainable from information and records in Defendant's possession, custody, or control. Notice of this action can readily be provided to the class.

17. There are questions of law and fact common to the claims of Plaintiff and the class that predominate over any questions affecting only individual class members. The

questions of law and fact arising from Defendant's actions that are common to the class include, without limitation:

- A) Whether the order and directive from the CEO for Vail Resorts closing all its resorts in the United States constituted a quarantine under the terms of the Policy because it was "an unforeseen event, occurrence, or circumstance" that restrained class-members from entering upon and using the facilities of Destination Resorts for the purposes permitted by the Epic Pass;
- B) Whether governmental orders applicable to class members were an "unforeseen event, occurrence, or circumstance" that constituted a quarantine by restraining class members from traveling to Destination Resorts, engaging in activities, and using the Epic Pass for its intended purpose;
- C) Whether Defendant breached the terms of the Class Policies;
- D) Whether the class sustained damages as a result of Defendant's breaches of contract;
- E) Whether the class is entitled to damages, restitution, and/or other equitable relief; and
- F) Whether the class, or a subset of the class, is entitled to declaratory relief stating the proper construction and/or interpretation of the Class Policies.

18. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claims asserted herein.

19. Plaintiff's claims are typical of the claims of the class in that Plaintiff and the class members all purchased ski pass insurance policies containing the same or similar terms including, in particular, what constitutes a Covered Peril.

20. Plaintiff will fairly and adequately protect and represent the interests of the proposed class, because his interests are aligned with, and not antagonistic to, those of the proposed class, and he is represented by counsel who are experienced and competent in the

prosecution of class action litigation, and have particular expertise with class action litigation on behalf of purchasers of insurance policies.

21. Maintenance of this action as a class action is a fair and efficient method for adjudicating this controversy. It would be impracticable and undesirable for each member of the class to bring a separate action. Because of the relatively small size of individual class members' claims, absent a class action, most class members would likely find the cost of litigating their claims prohibitively high and would have no effective remedy. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

## **FACTUAL BACKGROUND**

### **Introduction**

22. Defendant USIC provides season ski pass insurance coverage whereby it promises its insureds coverage against loss of use of the insured's season ski pass.

23. Upon information and belief, Defendant USIC provides this insurance service to customers of Vail Corporation d/b/a Vail Resorts Management Company ("Vail Resorts"), a North American company that operates more than 34 ski resorts throughout the United States. Vail Resorts sells "Epic Passes" directly to consumers promising access to skiing and snowboarding at its resorts. Customers can purchase annual, weekly, or daily Epic Passes in advance.

24. Vail Resorts offered Epic Pass insurance through Defendant USIC for customers that wished to mitigate the risk that they may be unable to realize the full use of their Epic Pass

for reasons outside of their control. Upon information and belief, thousands of customers purchased optional pass insurance through USIC.

25. On September 21, 2019, Class Plaintiff Marcus Mair purchased an Epic Pass (specifically a Vail Local Pass) and Pass insurance through Defendant. Plaintiff purchased the Epic Pass with the understanding that he would be able to access Vail Resorts from October 2019 through the end of the season. To ensure he would be able to get a refund if he was unable to get full use of the pass, Mr. Mair opted to pay an additional fee for pass insurance.

26. On March 15, 2020, Vail Resorts announced that it was closing all of its mountain resorts indefinitely. Subsequently, Vail Resorts announced that its “North American resorts and retail stores will remain closed for the 2019-20 winter ski season.”<sup>1</sup> Rob Katz, chairman and chief executive officer of Vail Resorts, explained the company was ending the skiing season early due to the fast-moving situation involving COVID-19. *Id.*

27. The Governor of Colorado, the Governor of Utah, and the President of the United States all issued various orders, limiting human contact and restricting travel and activities to only those considered essential. Skiing and snowboarding are considered non-essential activities.

28. As a result of the closures and quarantine related restrictions, Plaintiff was restrained from entering upon and using the facilities of any of the Vail Resort properties and deprived of the use of his Epic Pass. The Governor of Utah also issued “Stay Home” Orders, directing all Utah residents to limit travel only to essential activities.<sup>2</sup>

29. On June 10, 2020, Plaintiff timely provided notice and made a claim to American Claims Management, Inc. (“ACM”), the third-party claims administrator for the Pass Insurance

<sup>1</sup> <https://www.snow.com/info/covid-19-update> (last accessed May 14, 2020).

<sup>2</sup> <https://coronavirus.utah.gov/special-orders/>, See Stay at Home Declaration.

Program. Any documentation requested was provided to ACM within 90 days after the Covered Loss occurred.

30. On June 15, 2020, ACM informed Plaintiff that Defendant USIC was denying coverage because the “Effective Date of Coverage” ended on March 15, 2020 when the resort closed, and that Plaintiff must provide a Physician’s Orders stating that a physician placed the Plaintiff in quarantine. *See Exhibit A.*

### **The Class Policy**

31. Plaintiffs purchased insurance from Defendant to protect against the risk of not being able to use the ski passes. A true and accurate copy of the Certificate of Season Ski Pass Insurance (“Certificate”) is attached hereto as **Exhibit B** and is incorporated herein by reference.

32. The terms of the Policy were not subject to individual negotiation, and upon information and belief are materially the same for all policy owners (“Class Policy”).

33. Plaintiffs are the owners of a Class Policy, which was in force at the time of the alleged loss.

34. Defendant is the liable insurer under the Class Policy.

### **Terms of the Policy**

35. The Policy and Class Policy offers the following coverage:

#### **PROPERTY INSURED AND COVERAGE LIMITS:**

We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro- Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

36. The Policy and Class Policy defines a “Covered Peril” as follows:

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski

Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:

- a) Sickness, Injury or death of you or a family member;
- b) You have a Pregnancy or Childbirth verified by medical records; coverage is included for pregnant Season Ski Pass Holder's spouse of domestic partner and minor child;
- c) Your primary residence being made Uninhabitable by Natural Disaster;
- d) The Destination Resort closes indefinitely due to a Natural Disaster;
- e) You are subpoenaed, required to serve on a jury, hijacked, **quarantined** or your travel visa is denied; (perils f – j omitted) (emphasis added)

37. The Policy does contain a definition section, but the Policy fails to define “quarantined.” A quarantine is generally defined as “to isolate from normal relations or communication,”<sup>3</sup> and “a restriction on the movement of people and goods which is intended to prevent the spread of disease or pests. It is often used in connection to disease and illness, preventing the movement of those who may have been exposed to a communicable disease, but do not have a confirmed medical diagnosis.”<sup>4</sup>

38. The Policy contains no applicable exclusions for viruses, pandemics, related government orders or actions taken by Vail Resorts, independently or pursuant to such government orders.

39. The Policy defines a Loss as follows:

**LOSS:** Means your inability to use your season Ski Pass due to an unforeseen event, occurrence or circumstance.

## **CAUSES OF ACTION**

### **Count I: Breach of Contract**

40. The preceding paragraphs 1 – 39 are incorporated by reference herein.

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<sup>3</sup> <https://www.merriam-webster.com/dictionary/quarantine>

<sup>4</sup> <https://en.wikipedia.org/wiki/Quarantine>



41. Plaintiff and the proposed class members purchased ski pass insurance from Defendant.

42. The Policy and Class Policies are valid and enforceable contracts between the Defendant and Plaintiff and proposed class members.

43. Plaintiff and the proposed class members substantially performed their obligations pursuant to the terms of the Policy and Class Policies.

44. Plaintiff and the proposed class members suffered a Loss from a Covered Peril as they are defined under the Policy and Class Policies.

45. Defendant has failed to compensate Plaintiff and proposed class member for their respective Losses as required by the Policy and Class Policies.

46. As a direct and proximate result of Defendant's breaches, Plaintiff and the proposed class members have sustained damages that are continuing in nature in an amount to be determined at trial.

### **Count II: Declaratory and Injunctive Relief**

47. The preceding paragraphs 1 – 46 are incorporated by reference herein.

48. An actual controversy has arisen and now exists between Plaintiff and the class, on the one hand, and Defendant, on the other, concerning the respective rights and duties of the parties under the Policy and Class Policies.

49. Plaintiff contends that Defendant has breached the Policy and Class Policies by failing to timely pay Class Members for their respective Losses by reimbursing each member of the class for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that the member was able to use his/her Season Ski Pass during the Ski/Snowboard Season.

50. Plaintiff, therefore, seeks a declaration of the parties' respective rights and duties under the Policy and Class Policies and requests the Court to declare the aforementioned conduct of Defendant unlawful and in material breach of the Policy and Class Policies so that future controversies may be avoided.

51. Pursuant to a declaration of the parties' respective rights and duties under the Policy and Class Policies, Plaintiff further seeks an injunction enjoining Defendant (1) from continuing to engage in conduct in breach of the Policy and Class Policies; and (2) ordering Defendant to comply with the terms of the Policy and Class Policies including payment of all amounts due.

#### **DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury.

#### **CONCLUSION AND PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, requests relief and judgment against Defendant as follows:

- (a) That the Court enter an order certifying the class, appointing Plaintiff as a representative of the class, appointing Plaintiff's counsel as class counsel, and directing that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the class;
- (b) For a judgment against Defendant for the causes of action alleged against it;
- (c) For compensatory damages in an amount to be proven at trial;
- (d) For a declaration that Defendant's conduct as alleged herein is unlawful and in material breach of the Policy and Class Policies;
- (e) For appropriate injunctive relief, enjoining Defendant from continuing to

engage in conduct related to the breach of the Policy and Class Policies;

- (f) For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- (g) For Plaintiffs' attorney's fees;
- (h) For Plaintiffs' costs incurred; and
- (i) For such other relief in law or equity as the Court deems just and proper.

DATED this 27th day of July, 2020.

/s/ Robert W. Gibbons (13221)

ROBERT W. GIBBONS

Attorney for Plaintiffs

# EXHIBIT A



American Claims Management  
PO Box 9030  
Carlsbad, CA 92018-9030

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June 11, 2020

Marcus Mair  
563 saddle view way #19  
Park city, UT 84060

Claim Number : 69066079  
Date of Loss : 03/12/2020  
Re : Certificate of Ski Pass Insurance  
Season : 2019 to 2020

Dear Guest:

American Claims Management (hereinafter "ACM") is the authorized claims representative of United Specialty Insurance Company (hereinafter "USIC"). If the premium was paid, USIC issued a Certificate of Season Ski Pass Insurance (hereinafter "Policy") to you for the 2019-2020 ski/snowboard season. A copy of that Policy is available to you via the FAQ section of following web link: <https://www.epicpass.com/info/pass-insurance.aspx>. We are happy to provide you with a copy of the Policy upon your request.

The basis of you not being able to use your pass may include, but not limited to, Vail Resorts' decision to close their North American Resorts on March 15, 2020 instead of April 15, 2020, travel restrictions imposed due to the COVID-19 pandemic, isolation to prevent the spread of COVID-19, or other reason(s), not including contraction of the virus, but associated with COVID-19.

Based upon review of the Policy issued to you by USIC, we regret to inform you there is no coverage provided for your claim under the USIC Certificate of Season Ski Pass Insurance. Our coverage position is explained below. Please refer to Vail Resorts' website for additional information. The website address is as follows: <https://www.epicpass.com>.

### The Policy

Certain provisions of the USIC Policy are discussed below. Please note, however, that our discussion involves only a partial recitation of the terms, conditions, limitations, and exclusions contained in the USIC Policy. It is not intended to supplement, amend, supersede or otherwise alter the USIC Policy. USIC does not intend to waive any provision of the USIC Policy by virtue of its discussion. Please consult your copy of the USIC Policy for a complete listing of all the terms, conditions, limitations, and exclusions contained therein.

**INSURING AGREEMENT:** *We will provide insurance under the Master Policy in consideration of your payment of the Premium.*

**PROPERTY INSURED AND COVERAGE LIMITS:** *We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.*

**PERILS INSURED AGAINST:** *: Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:*



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- a) *Sickness, Injury or death of you or a Family Member;*
- d) *The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);*
- e) *You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;*
- f) *You are called to military service; your military leave is revoked; you are deployed or you are reassigned;*
- i) *You are unable to use your Season Ski Pass due to the inability to travel to the United States due to a U.S. Tourist Visa rejection or denial or failure to obtain the visa required to enter the United States.*

**EXCLUSIONS:** *We do not cover any Loss caused by or resulting from:*

- d) *mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;*
- f) *Loss that occurs when this coverage is not in effect;*

#### DEFINITIONS

**EFFECTIVE DATE OF COVERAGE:** *This insurance will be effective immediately upon acceptance by us of the Premium and shall remain in effect until the last day of the Ski/Snowboard Season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.*

**DAILY RATE** - *means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except; \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. DAILY RATE for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. The DAILY RATE does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.*

**FAMILY MEMBER** - *means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.*

**NATURAL DISASTER** - *means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.*

**PHYSICIAN** - *means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.*

**SICKNESS** - *in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.*

#### Insurance Company Position



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Under the Policy, USIC agreed to cover the Season Ski Pass cost you paid in the event you could not use your pass due to a covered peril, subject to limitations, terms, and conditions contained in the Policy. Please be advised that regardless of the reason causing you to lose the ability to use your pass, if you are not an insured, you are ineligible for reimbursement of your pass price, or any portion thereof, from the Policy. Please also note there is no reimbursement of the cost of your pass if the number of times you used your pass, multiplied by the applicable daily rate, exceeds your pass price.

Please be advised that per the definition of "Effective Date of Coverage" coverage started on the day the premium of this insurance was received and ended on March 15, 2020 which is the last day of the ski/snowboarding season at Vail Resorts. There is no coverage for any peril occurring outside the coverage period.

Your file was designated as one filed due to either Vail Resort's early closing of their North American Resorts, domestic, and international travel restrictions imposed due to the COVID-19 pandemic, or other reason(s), not including contraction of the virus, but associated with COVID-19.

Be advised, in the event you are military personnel, and your leave was revoked prior to March 15, 2020 due to the COVID-19 pandemic, your claim will be accepted under peril (f) upon our receipt and review of the order revoking your leave.

The Policy does not provide reimbursement for governmental authority(s) recommendation to avoid and/or bars domestic travel, and/or "hold in place". If you were unable to use your Ski Pass due to the inability to travel to the United States due to a U.S. Tourist Visa rejection, your claim is covered under peril (i) if the rejection occurred prior to the end of the coverage period. Confirmation of the Visa rejection is needed and should be sent to us for review.

In further review, the concern of you or a family member contracting the virus is not covered under **peril (a)** because it is not "Sickness", as that term is defined by the Policy. In the event your "Physician" certified you or a family member contracted the disease, please have your "Physician" complete the medical form previously sent to you and return it to our office for our review and further determination of coverage.

In the event of quarantine, as mentioned by **peril (e)**, coverage may apply in the event you are diagnosed as having or suspected of having COVID-19. If you are quarantined, by "Physician's" orders, before March 15, 2020, provide us with your "Physician's" certification that your "Physician" placed you in quarantine. We will review the "Physician's" order to determine whether coverage applies.

Further, Vail Resorts' decision to close their resorts due to the concern of COVID-19 is not covered under **peril (d)** since the reason of the closure is not a "Natural Disaster" as defined by the Policy.

Please also note that anxiety, depression, psychological disorders, etc., experienced due to concerns of COVID-19, or travel restrictions imposed, causing the inability to use your pass will disqualify any reimbursement pursuant to **exclusion (d)**.

USIC reserves the right under the Policy and applicable law to cite additional Policy provisions as may be appropriate that may further limit the application of coverage under the applicable coverage parts of the USIC Policy. The foregoing letter is premised upon the information previously obtained, and the terms and conditions of the Policy. By limiting Policy references to those cited, USIC does not waive any other Policy provisions. The Policy in its entirety is incorporated by reference as if it had been stated in full.

If you have additional information which you believe may affect this coverage position, please immediately forward it to ACM as it may affect our determination of coverage.

Sincerely,

Kiara Torres Jimenez  
Claims Adjuster  
(760) 710-6876  
Fax number: (760) 827-4844  
kjimenez@acmclaims.com

**Several states, within the United States of America, require ACM, working on behalf of USIC, to include specific language within this letter. If you are a resident of one of those states, see below:**

#### **California**

If you believe this claim has been wrongfully denied or rejected, you may have the matter reviewed by the California



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Department of Insurance. The address is State of California Department of Insurance, Claims Services Bureau, 11th Floor, 300 South Spring Street, South Tower, Los Angeles, California 90013. The telephone number is 1-800-927-4357 (Calling from within CA); 213-897-8921 (Outside California).

#### **Connecticut**

If you do not agree with this decision, you may contact the Division of Consumer Affairs within the Insurance Department.  
Connecticut Insurance Department  
Consumer Affairs Division  
P.O. Box 816  
Hartford, CT 06142-0816  
800-203-3447 or (860) 297-3900  
E-mail address: ctinsdept.consumeraffairs@po.state.ct.us

#### **Florida**

Your Insurers are committed to the prompt and fair handling of all claims for coverage. If you believe that our position is incorrect or constitutes a wrongful denial, reservation of rights or rejection of this claim, you may have the matter reviewed by the Florida Division of Consumer Services by calling (877) 693-5236, or by writing to the Division at this address:  
Florida Chief Financial Officer  
Division of Consumer Services,  
200 East Gaines Street,  
Tallahassee, FL 32399-0322

#### **Illinois**

Further to Part 919 of the Rules of the Illinois Department of Insurance requires that our company advise you that if you wish to take this matter up with the Illinois Department of Insurance, it maintains a Consumer Division in Chicago at 100 W. Randolph Street, Suite 15-100, Chicago, Illinois 60601 and in Springfield at 320 West Washington Street, Springfield, Illinois 62767.

#### **Nebraska**

If you believe this claim has been wrongfully denied or rejected, you may have the matter reviewed by the Nebraska Department of Insurance. The address is:  
941 "O" Street, Suite 400  
Lincoln, NE 68508-3639  
(409) 471-2201  
(409) 471-4610- Fax

#### **New Hampshire**

We will, of course, be available to you to discuss the position we have taken. Should you, however, wish to take this matter up with the New Hampshire insurance department, it maintains a service division to investigate complaints at 21 South Fruit Street, Suite 14, Concord, New Hampshire 03301. The New Hampshire insurance department can be reached, toll-free, by dialling 1-800-852-3416.

#### **New Mexico**

If you believe that the Company has wrongfully denied or rejected any part of this claim, you may have the New Mexico Department of Insurance review the matter. The address and telephone number of the appropriate unit at the Department of Insurance is:  
New Mexico Public Regulation Commission  
Insurance Division  
1120 Paseo De Peralta  
P.O. Box 1269  
Santa Fe, NM 87501  
Phone: (888) 427-5772

#### **New York**

Should you wish to take this matter up with the New York State Insurance Department, you may file with the Department either





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on its website at:

[www.ins.state.ny.us/complhow.htm](http://www.ins.state.ny.us/complhow.htm)

Or you may write to or visit the Consumer Services Bureau, New York State Insurance Department at: 25 Beaver Street, New York, NY 10004; One Commerce Plaza, Albany, NY 12257; 200 Old Country Road, Suite 340, Mineola, NY 11501; or Walter J. Mahoney Office Building, 65 Court Street, Buffalo, NY 14202.

#### **Rhode Island**

We will be available to you to discuss the position we have taken. Should you, however, wish to contact the Rhode Island Department of Business Regulation, you may do so at the address listed below. In certain limited circumstances the Department may have jurisdiction pursuant to R.I. Gen. Laws § 27-9.1-6 and therefore, you may be able to have the matter reviewed by the Department. The Department of Business Regulation does not have authority to settle or arbitrate claims, determine liability or order an Insurer to pay a claim. Rhode Island Department of Business Regulation Insurance Division 233 Richmond Street, Providence, Rhode Island 02903 The Rhode Island Department of Business Regulation, Insurance Division can be contacted by telephone at 401-462-9520.

#### **Washington**

If you have questions or concerns about the actions of your insurance company or agent, or would like information on your rights to file an appeal, contact the Washington state Office of the Insurance Commissioner's consumer protection hotline at 1-800-562-6900 or visit [www.insurance.wa.gov](http://www.insurance.wa.gov). The insurance commissioner protects and educates insurance consumers, advances the public interest, and provides fair and efficient regulation of the insurance industry.

#### **West Virginia**

If you believe this claim has been wrongfully denied or rejected, you may have the matter reviewed by the West Virginia Consumer Service Division:

West Virginia Offices of Insurance Commissioner

Attn: Consumer Service Division

P.O. Box 50540

Charleston, West Virginia 25305-0540

Telephone: Toll Free 1-888-TRY WVIC (888-879-9842) TTY 1-800-435-7381

Website address: [www.wvinsurance.gov](http://www.wvinsurance.gov)

# EXHIBIT B

## CERTIFICATE OF SEASON SKI PASS INSURANCE

## UNITED SPECIALTY INSURANCE COMPANY

## SEASON SKI PASS INSURANCE COVERAGE UNDER MASTER POLICY NUMBER: EYHBDISP0317

This is to certify that the undersigned has arranged insurance as hereinafter specified and underwritten by United Specialty Insurance Company.  
Please keep this document as your record of coverage under the plan.

**INSURING AGREEMENT:** We will provide insurance under the Master Policy in consideration of your payment of the Premium.

**EFFECTIVE DATE OF COVERAGE:** This insurance will be effective immediately upon acceptance by us of the Premium and shall remain in effect until the last day of the Ski/Snowboard Season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.

**PROPERTY INSURED AND COVERAGE LIMITS:** We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>a) Sickness, Injury or death of you or a Family Member;</li> <li>b) You have a Pregnancy or Childbirth verified by medical records; coverage is included for pregnant Season Ski Pass Holder's spouse or domestic partner and minor child;</li> <li>c) Your Primary Residence being made Uninhabitable by Natural Disaster;</li> <li>d) The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);</li> <li>e) You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;</li> <li>f) You are called to military service; your military leave is revoked; you are deployed or you are reassigned;</li> </ul> | <ul style="list-style-type: none"> <li>g) You or a resident relative have an involuntary, employer-initiated transfer that: (i) is within the same organization for which you or a resident relative have been continuously employed for at least one year immediately preceding the transfer; and (ii) involves your or a resident relative's relocation to a Primary Residence 100 or more miles from your current Primary Residence;</li> <li>h) You or a resident relative are involuntarily terminated or laid off by an employer for whom you or a resident relative have been continuously employed for at least one-year immediately preceding the termination or lay off; or involves a non-renewal of a work visa. This provision is not applicable to temporary employment, independent contractors or self-employed persons;</li> <li>i) You are a Student (i) who transfers to a school located 100 or more miles from your current school; (ii) who is accepted into a foreign study program that will cause you to be out of the country during the ski season; (iii) who graduates and accepts a job that is 100 or more miles from your current residence.</li> <li>j) You are unable to use your Season Ski Pass due to the inability to travel to the United States due to a U.S. Tourist Visa rejection or denial or failure to obtain the visa required to enter the United States. Evidence of visa application and copy of formal rejection or denial will be required as proof of loss.</li> </ul> |
|--|--|

**EXCLUSIONS:** We do not cover any Loss caused by or resulting from:

- a) an intentional act, except for suicide or attempted suicide by you or a family member.
- b) any felony or criminal acts committed by you;
- d) mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;
- e) use of narcotics, controlled substances or alcohol;
- f) Loss that occurs when this coverage is not in effect;
- g) An Injury, Sickness or other medical condition which, within the 120 day period immediately preceding your coverage effective date: (i) first manifested itself, worsened or became acute or had symptoms which would have prompted a reasonable person to seek diagnosis, care or treatment; (ii) for which care or treatment was given or recommended by a Physician; or (iii) required taking prescription drugs or medicines, unless the condition for which the drugs or medicines are taken remains controlled without any change in the required prescription drugs or medicines.
- h) Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending or expected attack, by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or by military, naval or air forces or by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such governmental power, authority or forces. Civil disorder, riot, insurrection, rebellion, revolution, civil war, usurped power or action taken by governmental authority in hindering, combating or defending against such an occurrence, and seizure or destruction under quarantine, or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

Exclusion g. is waived if the following conditions are met: 1. The Season Ski Pass Insurance is purchased at the same time you make the Initial Payment for the Season Ski Pass; or 2. All the Insured's are medically able to ski/snowboard when the Season Ski Pass Insurance Cost is paid. The Initial Payment means the first payment made to the Insured's Season Ski Pass Supplier toward the cost of the Season Ski Pass.

**DEFINITIONS:**

**DAILY RATE** – means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except: \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. **DAILY RATE** for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. The DAILY RATE does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.

**DESTINATION RESORT** – means the ski resort where you expected to use your Season Ski Pass.

**INJURY** – in the case of you means accidental bodily injury that occurs while your coverage is in effect that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member, means accidental bodily injury that occurs while your coverage is in effect and that is either life threatening or requires your care, as certified by a Physician.

**INSURED** – means any person for whom the Premium has been paid and accepted by us.

**FAMILY MEMBER** - means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.

**LOSS** – means your inability to use your Season Ski Pass due to an unforeseen event, occurrence or circumstance.

**NATURAL DISASTER** – means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.

**PHYSICIAN** – means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.

**PREMIUM** – means the amount paid for the Season Ski Pass insurance coverage. Premium is 100% fully earned at inception. Premium includes 3% Colorado Surplus Lines Tax.

**PRIMARY RESIDENCE** – means your fixed, permanent and principal home for legal and tax purposes.

**RESIDENT RELATIVE** – means a person who is either the spouse (or domestic partner) or blood relation of the Insured and lives in the same home.

**SEASON SKI PASS HOLDER** – means the person whose name and likeness appear on the Season Ski Pass issued by the Season Ski Pass Supplier.

**SEASON SKI PASS SUPPLIER** – means any company that provides a Season Ski Pass for purchase.

**SEASON SKI PASS** – means any lift ticket access pass for multiple day usage throughout the duration of the Ski/Snowboard Season.

**SICKNESS** – in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.

**SKI/SNOWBOARD SEASON** – the period starting on October 15, 2019 and ending on April 15, 2020.

**SEASON SKI PASS COST** – means the purchase price of the Season Ski Pass.

**STUDENT** – means college student with at least twelve (12) credits for undergrads or six (6) for graduate students.

**UNINHABITABLE** - means the building structure is unstable and there is risk of collapse in whole or in part; or there is exterior or structural damage allowing elemental intrusions, such as rain, wind, hail or flood; or there are immediate safety hazards that have yet to be cleared and the home cannot be occupied.

**WE, US, or OUR** – means United Specialty Insurance Company.

**YOU or YOUR** – means the Insured, as the context requires.

**TERMINATION OF INSURANCE:** This insurance shall automatically terminate without notice to you on the last day of the Ski/Snowboard Season.

**VALUATION:** The value of the Season Ski Pass will be determined at the time of Loss and will be the Season Ski Pass Cost minus the applicable Daily Rate for each day (or portion thereof) that you have used of your Season Ski Pass during the Ski/Snowboard Season.

**OTHER INSURANCE:** If a Loss is also covered by other insurance, we will pay only the proportion of the Loss that this amount of insurance bears to the total amount of insurance covering the Loss.

**DUTIES YOU HAVE AFTER A LOSS:** You will give prompt notice to our authorized representative, listed below. The notice should include: a description of the Loss, the name of the Season Ski Pass Supplier, the Season Ski Pass Cost, and the date the Season Ski Pass was purchased. All claims under the Policy **must be submitted as soon as reasonably possible but, in any event, no later than July 15, 2020.**

IF YOU HAVE A LOSS:  
write to:

American Claims Management  
P.O. Box 9030  
Carlsbad, CA 92011-9030

Telephone #1-877-895-1297  
International Calling: +1-385-219-3411

Or email to:

NewLosses@ACMClaims.com

Or fax #760-827-4081

Or report online via smartphone or computer

<https://www.acmclaims.com/secureforms2/claim/vail>

**PROOF OF LOSS:** Documentation requested must be provided to American Claims Management no more than 90 days after a covered Loss occurs or claim is made, or as soon after that as is reasonably possible. Failure to provide acceptable proof of loss will cause your claim to be closed without payment.

**CONCEALMENT, MISREPRESENTATION AND FRAUD:** If you commit fraud by intentionally concealing or misrepresenting a material fact concerning the insurance evidenced by this Certificate you will void your insurance under this policy and be subject to prosecution.

**EXAMINATION UNDER OATH:** Before recovering for any Loss, if requested, you:

Will send us a sworn statement of loss containing the information we request to settle your claim within 60 days of our request;

Will agree to examinations under oath at our request;

Will produce others for examination under oath at our request;

Will provide us with all pertinent records needed to prove the loss; and

Will cooperate with us in the investigation or settlement of the loss

**LOSS PAYMENT/OTHER RECOVERIES:** We will pay or make good any covered Loss under the insurance evidenced by this Certificate within 30 days after we reach agreement with you, or the entry of final judgment or the filing of an arbitration award, whichever is earlier. We will not be liable for any part of a Loss which has been paid or made good by others.

**LEGAL ACTION AGAINST US:** No one may bring legal action against us unless there has been full compliance with all terms of the insurance evidenced by this Certificate; and such action is brought within one year after you first have knowledge of a Loss.

**TRANSFER OF COVERAGE:** Coverage under the policy cannot be transferred by the Insured to anyone else.

**OPTIONAL ARBITRATION:** In the event you and we fail to agree as to the interpretation or applicability of any of the terms of our Insurance, you may elect to resolve the disagreement by binding arbitration in accordance with the statutory rules and procedures of the state of Colorado or in accordance with the Commercial Arbitration Rules of the American Arbitration Association. This option is granted to you subject to the following terms and conditions:

Any arbitration claim instituted to determine coverage under the insurance evidenced by this Certificate must be filed within one year of the occurrence causing the Loss (which in the case of Sickness is the date you first experience symptoms, and in the case of Injury is the date the Injury occurs).

This optional arbitration clause is intended to grant an additional right to you. All other terms and conditions of this contract remain the same, and no rights or duties of yours or ours shall be diminished or negated by reason of this clause or exercise of this option.

**CANCELLATION:** The insurance evidenced by this Certificate may be canceled at any time by you, upon providing notice in writing to us or Beecher Carlson Insurance Services LLC. Premium is fully earned and there shall be no return premium due you.

**CHANGES:** This Certificate and the Master Policy contains agreements between you and us concerning the insurance afforded. This Certificate's terms can be amended or waived only by endorsement issued by us and made a part of the Master Policy.

**SERVICE OF SUIT:** In the event the Company fails to pay any amount claimed to be due, the Company, at the insured's request, will submit to a court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Company designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the Statute, or his successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designated the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**IF YOU HAVE ANY QUESTIONS REGARDING THE INSURANCE COVERAGE PROVIDED BY THIS CERTIFICATE:** Please contact your agent:

Beecher Carlson Insurance Services  
8000 E. Maplewood Ave., Suite 350  
Greenwood Village, CO 80111

Telephone # 303-996-5456 or #303-996-5413

Or fax #770-870-3067

Or email: [btaylor@beechercarlson.com](mailto:btaylor@beechercarlson.com) or [shayes@beechercarlson.com](mailto:shayes@beechercarlson.com)

*This contract is delivered as a surplus lines coverage under the "Nonadmitted Insurance Act". The insurer issuing this contract is not licensed in Colorado but is an approved nonadmitted insurer. There is no protection under the provisions of the "Colorado Guaranty Association Act."*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**LUKE MUELLER, on behalf of  
himself, and all others similarly situated**

*Plaintiffs,*

VS.

**UNITED SPECIALTY INSURANCE  
COMPANY,**

*Defendant.*

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

**Judge:** \_\_\_\_\_

**JURY TRIAL REQUESTED**

## CLASS ACTION COMPLAINT

Comes now, Luke Mueller, on behalf of himself, and all others similarly situated (“Plaintiffs”), by and through the undersigned counsel, and files this Class Action Complaint against United Specialty Insurance Company (“Defendant” or “USIC”) and alleges as follows:

# INTRODUCTION

1. This is a class action whereby Plaintiffs seek a declaratory judgment that Defendant breached its contract by refusing to reimburse or refund Plaintiffs for the loss of use of ski passes insured by Defendant.

2. Plaintiffs purchased insurance from Defendant to protect against the risk of not being able to use purchased ski passes. The insurance policy expressly provides coverage for Plaintiffs who were not able to use the ski passes due to a covered peril, and represents to refund Plaintiffs for the cost of their ski pass minus the applicable daily rate or pro-rata reduction for each day that Plaintiff used their ski pass during the 2019/2020 ski season.

3. Defendant is in material breach of the policy by failing to refund Plaintiffs who were unable to use their ski passes for reasons related to the COVID-19 pandemic.

4. Defendant has caused material harm to Plaintiffs by improperly failing to make payment.

5. Plaintiffs bring this action on behalf of himself and all other similarly situated individuals. Plaintiffs seek to recover compensatory damages as well as declaratory and injunctive relief.

### **PARTIES**

6. Plaintiff Luke Mueller is a citizen of the United States residing in Glen Head, New York in Nassau County. Luke Mueller purchased a policy from Defendant in the 2019-2020 ski season for ski pass insurance.

7. Defendant USIC is a property casualty insurance company incorporated under the laws of the State of Delaware with its principal place of business in the State of Texas at 1900 L Don Dodson Drive, Bedford, Texas 76021.

### **JURISDICTION AND VENUE**

8. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2), because this is a class action in which at least one member of the class is a citizen of a state different from Defendant, the amount in controversy exceeds \$5 million exclusive of interest and costs, and the proposed class contains more than 100 members.

9. This Court has personal jurisdiction over Defendant because Defendant conducts substantial business within Arkansas such that Defendant has significant, continuous, and pervasive contacts with the State of Arkansas.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this District and a substantial part of the events giving rise to Plaintiffs' claims took place within this District.

### **CLASS ACTION ALLEGATIONS**

11. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), 23(b)(3) and/or 23(c)(4), Plaintiff brings this action on behalf of himself and all others similarly situated, and seeks to represent the following class:

12. All persons who purchased both an Epic Pass for the 2019/2020 ski season and purchased from Defendant pass insurance on their Epic Pass, but were denied coverage for the loss of use of their passes after the resorts closed on March 15, 2020 due to no fault of their own.

13. Excluded from the class is Defendant, any entity in which Defendant has a controlling interest, any of the officers, directors, or employees of the Defendant, the legal representatives, heirs, successors, and assigns of the Defendant, anyone employed with Plaintiffs' counsels' firms, any Judge to whom this case is assigned, and his or her immediate family.

14. Plaintiffs' claims satisfy the numerosity, typicality, adequacy, commonality and superiority requirements under Federal Rule of Civil Procedure 23, as set forth more fully herein.

15. The persons who fall within the class number in at least the hundreds and most likely thousands, and thus the numerosity standard is satisfied. Because class members are geographically dispersed across the country, joinder of all class members in a single action is impracticable.

16. Class members are readily ascertainable from information and records in Defendant's possession, custody, or control. Notice of this action can readily be provided to the class.

17. There are questions of law and fact common to the claims of Plaintiff and the class that predominate over any questions affecting only individual class members. The questions of law and fact arising from Defendant's actions that are common to the class include, without

limitation:

- A) Whether the order and directive from the CEO for Vail Resorts closing all its resorts in the United States constituted a quarantine under the terms of the Policy because it was “an unforeseen event, occurrence, or circumstance” that restrained class-members from entering upon and using the facilities of Destination Resorts for the purposes permitted by the Epic Pass;
- B) Whether governmental orders applicable to class members were an “unforeseen event, occurrence, or circumstance” that constituted a quarantine by restraining class members from traveling to Destination Resorts, engaging in activities, and using the Epic Pass for its intended purpose;
- C) Whether Defendant breached the terms of the Class Policies;
- D) Whether the class sustained damages as a result of Defendant’s breaches of contract;
- E) Whether the class is entitled to damages, restitution, and/or other equitable relief; and
- F) Whether the class, or a subset of the class, is entitled to declaratory relief stating the proper construction and/or interpretation of the Class Policies.

18. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claims asserted herein.

19. Plaintiff’s claims are typical of the claims of the class in that Plaintiff and the class members all purchased ski pass insurance policies containing the same or similar terms including, in particular, what constitutes a Covered Peril.

20. Plaintiff will fairly and adequately protect and represent the interests of the proposed class, because his interests are aligned with, and not antagonistic to, those of the proposed class, and she is represented by counsel who are experienced and competent in the prosecution of class action litigation, and have particular expertise with class action litigation on behalf of



purchasers of insurance policies.

21. Maintenance of this action as a class action is a fair and efficient method for adjudicating this controversy. It would be impracticable and undesirable for each member of the class to bring a separate action. Because of the relatively small size of individual class members' claims, absent a class action, most class members would likely find the cost of litigating their claims prohibitively high and would have no effective remedy. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

## **FACTUAL BACKGROUND**

### **Introduction**

22. Defendant USIC provides season ski pass insurance coverage whereby it promises its insureds coverage against loss of use of the insured's season ski pass.

23. Upon information and belief, Defendant USIC provides this insurance service to customers of Vail Corporation d/b/a Vail Resorts Management Company ("Vail Resorts"), a North American company that operates more than 34 ski resorts throughout the United States. Vail Resorts sells "Epic Passes" directly to consumers promising access to skiing and snowboarding at its resorts. Customers can purchase annual, weekly, or daily Epic Passes in advance.

24. Vail Resorts offered Epic Pass insurance through Defendant USIC for customers that wished to mitigate the risk that they may be unable to realize the full use of their Epic Pass for reasons outside of their control. Upon information and belief, thousands of customers purchased optional pass insurance through USIC.

25. Prior to the 2019/2020 ski season, Class Plaintiff Luke Mueller and his wife

purchased Epic Passes and Epic Pass insurance through Defendant. Plaintiff purchased the Epic pass with the understanding that he would be able to access Vail Resorts from October 2019 through the end of the season. To ensure he would be able to get a refund if he was unable to use the pass, Mr. Mueller opted to pay an additional fee for pass insurance.

26. On March 15, 2020, Vail Resorts announced that it was closing all of its mountain resorts indefinitely. Subsequently, Vail Resorts announced that its “North American resorts and retail stores will remain closed for the 2019-20 winter ski season.”<sup>1</sup> Rob Katz, chairman and chief executive officer of Vail Resorts, explained the company was ending the skiing season early due to the fast-moving situation involving COVID-19. *Id.*

27. The COVID-19 outbreak devastated millions of residents in New York. Given the seriousness of the spread across New York and the nation, the Governor of New York and the President of the United States issued various orders, limiting human contact and restricting travel and activities to only those considered essential. Skiing and snowboarding are considered non-essential activities.

28. As a result of the closures and quarantine related restrictions, Plaintiff was restrained from entering upon and using the facilities of any of the Vail Resort properties and deprived of the use of his Epic Pass.

29. Plaintiff promptly provided notice and made a claim to American Claims Management, Inc. (“ACM”), the third-party claims administrator for the Pass Insurance Program. Any documentation requested was provided to ACM within 90 days after the Covered Loss occurred.

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<sup>1</sup> <https://www.snow.com/info/covid-19-update> (last accessed May 14, 2020).

30. On April 9, 2020, ACM sent a letter to Plaintiff acknowledging that a claim was made. The April 9, 2020 letter did not make a final coverage determination on whether pass holders would receive a reimbursement. The April 9, 2020 letter did not discuss or define what a “quarantine” was under the terms of the Policy. See **Exhibit A**.

31. Shortly thereafter, ACM sent a second letter to Plaintiff informing him Defendant USIC was denying coverage under the terms of the Policy.

### **The Class Policy**

32. Plaintiffs purchased insurance from Defendant to protect against the risk of not being able to use the ski passes. A true and accurate copy of the Certificate of Season Ski Pass Insurance (“Certificate” or “Policy”) is attached hereto as **Exhibit B** and is incorporated herein by reference.

33. The terms of the Policy were not subject to individual negotiation, and upon information and belief are materially the same for all policy owners (“Class Policy”).

34. Plaintiffs are the owners of a Class Policy, which was in force at the time of the alleged loss.

35. Defendant is the liable insurer under the Class Policy.

### **Terms of the Policy**

36. The Policy and Class Policy offers the following coverage:

#### **PROPERTY INSURED AND COVERAGE LIMITS:**

We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro- Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

37. The Policy and Class Policy defines a “Covered Peril” as follows:

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:

- a) Sickness, Injury or death of you or a family member;
- b) You have a Pregnancy or Childbirth verified by medical records; coverage is included for pregnant Season Ski Pass Holder's spouse of domestic partner and minor child;
- c) Your primary residence being made Uninhabitable by Natural Disaster;
- d) The Destination Resort closes indefinitely due to a Natural Disaster;
- e) You are subpoenaed, required to serve on a jury, hijacked, **quarantined** or your travel visa is denied; (perils f – j omitted) (emphasis added)

38. The Policy does contain a definition section, but the Policy fails to define “quarantined.” A quarantine is generally defined as “to isolate from normal relations or communication,”<sup>2</sup> and “a restriction on the movement of people and goods which is intended to prevent the spread of disease or pests. It is often used in connection to disease and illness, preventing the movement of those who may have been exposed to a communicable disease, but do not have a confirmed medical diagnosis.”<sup>3</sup>

39. The Policy contains no applicable exclusions for viruses, pandemics, related government orders or actions taken by Vail Resorts, independently or pursuant to such government orders.

40. The Policy defines a Loss as follows:

**LOSS:** Means your inability to use your season Ski Pass due to an unforeseen event, occurrence or circumstance.

## **CAUSES OF ACTION**

### **Count I: Breach of Contract**

41. The preceding paragraphs 1 – 40 are incorporated by reference herein.

42. Plaintiff and the proposed class members purchased ski pass insurance from

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<sup>2</sup> <https://www.merriam-webster.com/dictionary/quarantine>

<sup>3</sup> <https://en.wikipedia.org/wiki/Quarantine>

Defendant.

43. The Policy and Class Policies are valid and enforceable contracts between the Defendant and Plaintiff and proposed class members.

44. Plaintiff and the proposed class members substantially performed their obligations pursuant to the terms of the Policy and Class Policies.

45. Plaintiff and the proposed class members suffered a Loss from a Covered Peril as they are defined under the Policy and Class Policies.

46. Defendant has failed to compensate Plaintiff and proposed class members for their respective Losses as required by the Policy and Class Policies.

47. As a direct and proximate result of Defendant's breaches, Plaintiff and the proposed class members have sustained damages that are continuing in nature in an amount to be determined at trial.

### **Count II: Declaratory and Injunctive Relief**

48. The preceding paragraphs 1 – 47 are incorporated by reference herein.

49. An actual controversy has arisen and now exists between Plaintiff and the class, on the one hand, and Defendant, on the other, concerning the respective rights and duties of the parties under the Policy and Class Policies.

50. Plaintiff contends that Defendant has breached the Policy and Class Policies by failing to timely pay Class Members for their respective Losses by reimbursing each member of the class for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that the member has used his/her Season Ski Pass during the Ski/Snowboard Season.

51. Plaintiff, therefore, seeks a declaration of the parties' respective rights and duties

under the Policy and Class Policies and requests the Court to declare the aforementioned conduct of Defendant unlawful and in material breach of the Policy and Class Policies so that future controversies may be avoided.

52. Pursuant to a declaration of the parties' respective rights and duties under the Policy and Class Policies, Plaintiff further seeks an injunction enjoining Defendant (1) from continuing to engage in conduct in breach of the Policy and Class Policies; and (2) ordering Defendant to comply with the terms of the Policy and Class Policies including payment of all amounts due.

### **DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury.

### **CONCLUSION AND PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, requests relief and judgment against Defendant as follows:

- (a) That the Court enter an order certifying the class, appointing Plaintiff as a representative of the class, appointing Plaintiff's counsel as class counsel, and directing that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the class;
- (b) For a judgment against Defendant for the causes of action alleged against it;
- (c) For compensatory damages in an amount to be proven at trial;
- (d) For a declaration that Defendant's conduct as alleged herein is unlawful and in material breach of the Policy and Class Policies;
- (e) For appropriate injunctive relief, enjoining Defendant from continuing to engage in conduct related to the breach of the Policy and Class Policies;
- (f) For pre-judgment and post-judgment interest at the maximum rate

permitted by law;

- (g) For Plaintiffs' attorney's fees;
- (h) For Plaintiffs' costs incurred; and
- (i) For such other relief in law or equity as the Court deems just and proper.

Dated: July 29, 2020  
New York, N.Y.

Respectfully submitted,

SLATER SLATER SCHULMAN LLP

By: Adam P. Slater  
Adam P. Slater Esq.  
*Attorneys for Plaintiffs*  
488 Madison Avenue, 20th Floor  
New York, N.Y. 10022  
(212) 481 -7400

## Exhibit A





American Claims Management  
PO Box 9030  
Carlsbad, CA 92018-9030

Innovative Solutions.  
Exceptional Results.

April 9, 2020

Luke Mueller  
40 Cody Ave  
Glen Head, NY 11545

Claim Number : 69059439  
Date of Loss : 03/02/2020  
Re : Certificate of Ski Pass Insurance  
Season : 19-20

Dear Luke Mueller:

American Claims Management (hereinafter "ACM") is the authorized claims representative of United Specialty Insurance Company (hereinafter "USIC"). On behalf of USIC, we acknowledge the claim you made regarding the COVID-19 (or "virus") crisis and/or Vail's early closure of their North American resorts. Difficult decisions have been made to prioritize the health and wellbeing of our communities and our global population.

In the event you submitted your premium, USIC issued Season Ski Pass insurance (hereinafter "policy") to you for the 2019-2020 ski/snowboard season. A copy of that policy is available to you via the FAQ section of following web link <https://www.epicpass.com/info/pass-insurance.aspx>. We are happy to provide you with a copy of the policy upon your request.

In considering coverage, we have carefully reviewed the insurance policy referenced above as well as the factual basis of the presented claim. Based upon our review, we issue this letter to inform you that USIC reserves its rights to further our evaluation of your claim and the policy to determine whether coverage exists. We will provide you with additional information as soon as it is readily available.

Our coverage position is explained below.

### The Policy

We discuss below certain provisions of the USIC policy. Please note, however, that our discussion involves only a partial recitation of the terms, conditions, limitations and exclusions contained in the USIC policy. It is not intended to supplement, amend, supersede or otherwise alter the USIC policy. USIC does not intend to waive any provision of the USIC policy by virtue of its discussion. Please consult your copy of the USIC policy for a complete listing of all the terms, conditions, limitations and exclusions contained therein.

**INSURING AGREEMENT:** We will provide insurance under the Master Policy in consideration of your payment of the Premium.

**PROPERTY INSURED AND COVERAGE LIMITS:** We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:



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PO Box 9030  
Carlsbad, CA 92018-9030

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Exceptional Results.

- a) Sickness, Injury or death of you or a Family Member;
- d) The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);
- e) You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;
- i) You are a Student (i) who transfers to a school located 100 or more miles from your current school; (ii) who is accepted into a foreign study program that will cause you to be out of the country during the ski season; (iii) who graduates and accepts a job that is 100 or more miles from your current residence.

**EXCLUSIONS:** We do not cover any Loss caused by or resulting from:

- d) mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;
- f) Loss that occurs when this coverage is not in effect;

#### DEFINITIONS

**EFFECTIVE DATE OF COVERAGE:** This insurance will be effective immediately upon acceptance by us of the Premium and shall remain in effect until the last day of the Ski/Snowboard Season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.

**DAILY RATE** – means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except; \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. DAILY RATE for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. The DAILY RATE does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.

**FAMILY MEMBER** - means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.

**NATURAL DISASTER** – means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.

**PHYSICIAN** – means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.

**SICKNESS** – in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.

#### Insurance Company Position



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PO Box 9030  
Carlsbad, CA 92018-9030

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Please be advised that regardless of the reason causing you to lose the ability to use your pass, if you are not an insured, you are ineligible for reimbursement of your pass price, or any portion thereof, from the policy. Please also note there is no reimbursement of the cost of your pass if the number of times you used your pass, multiplied by the applicable daily rate, exceeds your pass price.

In review, the concern of contracting the virus may not be covered under peril (a) because it is not considered **Sickness**, as defined by the policy, unless your physician certifies you actually contracted the disease. The policy may not provide you reimbursement for governmental authority(s) recommendation or to avoid, or bars travel, and/or "hold in place".

Anxiety, depression, psychological disorders, etc., experienced due to concerns of the virus, travel restrictions imposed, causing the inability to use your pass could disqualify any reimbursement pursuant to **exclusion (d)**.

Further, Vail's decision to close their resorts due to the concern of COVID-19 may not be covered under peril (d) since the reason of the closure is not a **Natural Disaster** as that term is defined by the policy.

In regard to peril (i), in the event a student's school closed early and the student returned home for on-line classes, it is possible no coverage exists for that cause of losing the ability to use the ski/snowboard season pass.

At this time, a final coverage determination has not been made whether pass holders with insurance will receive a reimbursement.

USIC reserves the right under the policy and applicable law to cite additional policy provisions as may be appropriate that may further limit the application of coverage under the applicable coverage parts of the USIC policy. The foregoing letter is premised upon the information previously obtained, and the terms and conditions of the policy. By limiting policy references to those cited, USIC does not waive any other policy provisions. The insurance policy in its entirety is incorporated by reference as if it had been stated in full.

We sincerely hope that all of you, your friends and your loved ones remain safe during this unprecedented time and that the world comes together to move past the challenges we currently face.

Sincerely,

Debbie Dettmer  
Vail Claims Adjuster  
(303) 834-4547  
Fax number: (760) 827-4844  
ddettmer@acmclaims.com

## Exhibit B

## CERTIFICATE OF SEASON SKI PASS INSURANCE

## UNITED SPECIALTY INSURANCE COMPANY

## SEASON SKI PASS INSURANCE COVERAGE UNDER MASTER POLICY NUMBER: EYHBDISP0317

This is to certify that the undersigned has arranged insurance as hereinafter specified and underwritten by United Specialty Insurance Company.  
Please keep this document as your record of coverage under the plan.

**INSURING AGREEMENT:** We will provide insurance under the Master Policy in consideration of your payment of the Premium.

**EFFECTIVE DATE OF COVERAGE:** This insurance will be effective immediately upon acceptance by us of the Premium and shall remain in effect until the last day of the Ski/Snowboard Season or the date upon which ski operations are ceased due to an unforeseen event, whichever is earlier.

**PROPERTY INSURED AND COVERAGE LIMITS:** We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>a) Sickness, Injury or death of you or a Family Member;</li> <li>b) You have a Pregnancy or Childbirth verified by medical records; coverage is included for pregnant Season Ski Pass Holder's spouse or domestic partner and minor child;</li> <li>c) Your Primary Residence being made Uninhabitable by Natural Disaster;</li> <li>d) The Destination Resort closes indefinitely due to a Natural Disaster (this coverage does not apply if you reside in a state with more than one Destination Resort and at least one of the other Destination Resorts is operating);</li> <li>e) You are subpoenaed, required to serve on a jury, hijacked, quarantined or your travel visa is denied;</li> <li>f) You are called to military service; your military leave is revoked; you are deployed or you are reassigned;</li> </ul> | <ul style="list-style-type: none"> <li>g) You or a resident relative have an involuntary, employer-initiated transfer that: (i) is within the same organization for which you or a resident relative have been continuously employed for at least one year immediately preceding the transfer; and (ii) involves your or a resident relative's relocation to a Primary Residence 100 or more miles from your current Primary Residence;</li> <li>h) You or a resident relative are involuntarily terminated or laid off by an employer for whom you or a resident relative have been continuously employed for at least one-year immediately preceding the termination or lay off; or involves a non-renewal of a work visa. This provision is not applicable to temporary employment, independent contractors or self-employed persons;</li> <li>i) You are a Student (i) who transfers to a school located 100 or more miles from your current school; (ii) who is accepted into a foreign study program that will cause you to be out of the country during the ski season; (iii) who graduates and accepts a job that is 100 or more miles from your current residence.</li> <li>j) You are unable to use your Season Ski Pass due to the inability to travel to the United States due to a U.S. Tourist Visa rejection or denial or failure to obtain the visa required to enter the United States. Evidence of visa application and copy of formal rejection or denial will be required as proof of loss.</li> </ul> |
|--|--|

**EXCLUSIONS:** We do not cover any Loss caused by or resulting from:

- a) an intentional act, except for suicide or attempted suicide by you or a family member.
- b) any felony or criminal acts committed by you;
- d) mental, nervous or psychological conditions or disorders, including but not limited to: anxiety, depression, neurosis, phobia, psychosis, or any related physical manifestations thereof;
- e) use of narcotics, controlled substances or alcohol;
- f) Loss that occurs when this coverage is not in effect;
- g) An Injury, Sickness or other medical condition which, within the 120 day period immediately preceding your coverage effective date: (i) first manifested itself, worsened or became acute or had symptoms which would have prompted a reasonable person to seek diagnosis, care or treatment; (ii) for which care or treatment was given or recommended by a Physician; or (iii) required taking prescription drugs or medicines, unless the condition for which the drugs or medicines are taken remains controlled without any change in the required prescription drugs or medicines.
- h) Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending or expected attack, by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or by military, naval or air forces or by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such governmental power, authority or forces. Civil disorder, riot, insurrection, rebellion, revolution, civil war, usurped power or action taken by governmental authority in hindering, combating or defending against such an occurrence, and seizure or destruction under quarantine, or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

Exclusion g. is waived if the following conditions are met: 1. The Season Ski Pass Insurance is purchased at the same time you make the Initial Payment for the Season Ski Pass; or 2. All the Insured's are medically able to ski/snowboard when the Season Ski Pass Insurance Cost is paid. The Initial Payment means the first payment made to the Insured's Season Ski Pass Supplier toward the cost of the Season Ski Pass.

**DEFINITIONS:**

**DAILY RATE** – means \$95 per day for an adult pass (age 13 and up) at all Destination Resorts except: \$50 per day at Stevens Pass, Okemo, Stowe and Sunapee; \$35 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. **DAILY RATE** for a child pass (age 12 and under) is \$35 per day at all Destination Resorts except \$15 per day at Afton Alps, Mt. Brighton and Wilmot Mtn. The DAILY RATE does not apply to Epic Day Pass. Usage reduction for Epic Day pass will be pro-rated for each usage day and if all days have been used there is no refund.

**DESTINATION RESORT** – means the ski resort where you expected to use your Season Ski Pass.

**INJURY** – in the case of you means accidental bodily injury that occurs while your coverage is in effect that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member, means accidental bodily injury that occurs while your coverage is in effect and that is either life threatening or requires your care, as certified by a Physician.

**INSURED** – means any person for whom the Premium has been paid and accepted by us.

**FAMILY MEMBER** - means the Season Ski Pass Holder's spouse, child, domestic partner, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-child, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, legal guardian, caregiver, foster child, ward or legal ward.

**LOSS** – means your inability to use your Season Ski Pass due to an unforeseen event, occurrence or circumstance.

**NATURAL DISASTER** – means a flood, hurricane, tornado, earthquake, fire, wildfire, volcanic eruption, or blizzard that is due to natural causes.

**PHYSICIAN** – means a licensed practitioner including medical, surgical, or dental, services acting within the scope of his/her license. The treating Physician may not be the Season Ski Pass Holder, Insured, a traveling companion, a Family Member, or a business partner.

**PREMIUM** – means the amount paid for the Season Ski Pass insurance coverage. Premium is 100% fully earned at inception. Premium includes 3% Colorado Surplus Lines Tax.

**PRIMARY RESIDENCE** – means your fixed, permanent and principal home for legal and tax purposes.

**RESIDENT RELATIVE** – means a person who is either the spouse (or domestic partner) or blood relation of the Insured and lives in the same home.

**SEASON SKI PASS HOLDER** – means the person whose name and likeness appear on the Season Ski Pass issued by the Season Ski Pass Supplier.

**SEASON SKI PASS SUPPLIER** – means any company that provides a Season Ski Pass for purchase.

**SEASON SKI PASS** – means any lift ticket access pass for multiple day usage throughout the duration of the Ski/Snowboard Season.

**SICKNESS** – in the case of you means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician and that prevents your use of your Season Ski Pass, as certified by a Physician at the time of Loss; and as to a Family Member means an illness or disease diagnosed while your coverage is in effect that is treated by a Physician that is either life threatening or requires your care, as certified by a Physician.

**SKI/SNOWBOARD SEASON** – the period starting on October 15, 2019 and ending on April 15, 2020.

**SEASON SKI PASS COST** – means the purchase price of the Season Ski Pass.

**STUDENT** – means college student with at least twelve (12) credits for undergrads or six (6) for graduate students.

**UNINHABITABLE** - means the building structure is unstable and there is risk of collapse in whole or in part; or there is exterior or structural damage allowing elemental intrusions, such as rain, wind, hail or flood; or there are immediate safety hazards that have yet to be cleared and the home cannot be occupied.

**WE, US, or OUR** – means United Specialty Insurance Company.

**YOU or YOUR** – means the Insured, as the context requires.

**TERMINATION OF INSURANCE:** This insurance shall automatically terminate without notice to you on the last day of the Ski/Snowboard Season.

**VALUATION:** The value of the Season Ski Pass will be determined at the time of Loss and will be the Season Ski Pass Cost minus the applicable Daily Rate for each day (or portion thereof) that you have used of your Season Ski Pass during the Ski/Snowboard Season.

**OTHER INSURANCE:** If a Loss is also covered by other insurance, we will pay only the proportion of the Loss that this amount of insurance bears to the total amount of insurance covering the Loss.

**DUTIES YOU HAVE AFTER A LOSS:** You will give prompt notice to our authorized representative, listed below. The notice should include: a description of the Loss, the name of the Season Ski Pass Supplier, the Season Ski Pass Cost, and the date the Season Ski Pass was purchased. All claims under the Policy **must be submitted as soon as reasonably possible but, in any event, no later than July 15, 2020.**

IF YOU HAVE A LOSS:  
write to:

American Claims Management  
P.O. Box 9030  
Carlsbad, CA 92011-9030

Telephone #1-877-895-1297  
International Calling: +1-385-219-3411

Or email to:

NewLosses@ACMClaims.com

Or fax #760-827-4081

Or report online via smartphone or computer

<https://www.acmclaims.com/secureforms2/claim/vail>

**PROOF OF LOSS:** Documentation requested must be provided to American Claims Management no more than 90 days after a covered Loss occurs or claim is made, or as soon after that as is reasonably possible. Failure to provide acceptable proof of loss will cause your claim to be closed without payment.

**CONCEALMENT, MISREPRESENTATION AND FRAUD:** If you commit fraud by intentionally concealing or misrepresenting a material fact concerning the insurance evidenced by this Certificate you will void your insurance under this policy and be subject to prosecution.

**EXAMINATION UNDER OATH:** Before recovering for any Loss, if requested, you:

Will send us a sworn statement of loss containing the information we request to settle your claim within 60 days of our request;

Will agree to examinations under oath at our request;

Will produce others for examination under oath at our request;

Will provide us with all pertinent records needed to prove the loss; and

Will cooperate with us in the investigation or settlement of the loss

**LOSS PAYMENT/OTHER RECOVERIES:** We will pay or make good any covered Loss under the insurance evidenced by this Certificate within 30 days after we reach agreement with you, or the entry of final judgment or the filing of an arbitration award, whichever is earlier. We will not be liable for any part of a Loss which has been paid or made good by others.

**LEGAL ACTION AGAINST US:** No one may bring legal action against us unless there has been full compliance with all terms of the insurance evidenced by this Certificate; and such action is brought within one year after you first have knowledge of a Loss.

**TRANSFER OF COVERAGE:** Coverage under the policy cannot be transferred by the Insured to anyone else.

**OPTIONAL ARBITRATION:** In the event you and we fail to agree as to the interpretation or applicability of any of the terms of our Insurance, you may elect to resolve the disagreement by binding arbitration in accordance with the statutory rules and procedures of the state of Colorado or in accordance with the Commercial Arbitration Rules of the American Arbitration Association. This option is granted to you subject to the following terms and conditions:

Any arbitration claim instituted to determine coverage under the insurance evidenced by this Certificate must be filed within one year of the occurrence causing the Loss (which in the case of Sickness is the date you first experience symptoms, and in the case of Injury is the date the Injury occurs).

This optional arbitration clause is intended to grant an additional right to you. All other terms and conditions of this contract remain the same, and no rights or duties of yours or ours shall be diminished or negated by reason of this clause or exercise of this option.

**CANCELLATION:** The insurance evidenced by this Certificate may be canceled at any time by you, upon providing notice in writing to us or Beecher Carlson Insurance Services LLC. Premium is fully earned and there shall be no return premium due you.

**CHANGES:** This Certificate and the Master Policy contains agreements between you and us concerning the insurance afforded. This Certificate's terms can be amended or waived only by endorsement issued by us and made a part of the Master Policy.

**SERVICE OF SUIT:** In the event the Company fails to pay any amount claimed to be due, the Company, at the insured's request, will submit to a court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Company designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the Statute, or his successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designated the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**IF YOU HAVE ANY QUESTIONS REGARDING THE INSURANCE COVERAGE PROVIDED BY THIS CERTIFICATE:** Please contact your agent:

Beecher Carlson Insurance Services  
8000 E. Maplewood Ave., Suite 350  
Greenwood Village, CO 80111

Telephone # 303-996-5456 or #303-996-5413

Or fax #770-870-3067

Or email: [btaylor@beechercarlson.com](mailto:btaylor@beechercarlson.com) or [shayes@beechercarlson.com](mailto:shayes@beechercarlson.com)

*This contract is delivered as a surplus lines coverage under the "Nonadmitted Insurance Act". The insurer issuing this contract is not licensed in Colorado but is an approved nonadmitted insurer. There is no protection under the provisions of the "Colorado Guaranty Association Act."*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

**LEE TOURGEE, on behalf of  
himself, and all others similarly situated**

*Plaintiffs,*

vs.

**UNITED SPECIALTY INSURANCE  
COMPANY,**

*Defendant.*

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**Case No. 1:20-cv-902**

**Judge:** \_\_\_\_\_

**JURY TRIAL REQUESTED**

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**CLASS ACTION COMPLAINT**

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Comes now, Lee Tourgee, on behalf of himself, and all others similarly situated (“Plaintiffs”), by and through the undersigned counsel, and files this Class Action Complaint against United Specialty Insurance Company (“USIC” or “Defendant”) and alleges as follows:

**INTRODUCTION**

1. This is a class action for breach of an insurance contract whereby Plaintiffs seek to recover amounts for the loss of use of ski passes insured by Defendant. Upon information and belief, Defendant is refusing to reimburse or refund Plaintiffs for the loss of use of ski passes as required under the written provisions of the insurance policy (which are materially the same as the policies held by all members of the proposed class).

2. Plaintiffs purchased insurance from Defendant to protect themselves against the possible risk of not being able to use purchased ski passes. The insurance policy expressly provides coverage for Plaintiffs who were not able to use the ski passes due to a covered peril, and the policy expressly states a quarantine is a covered peril.

3. Further, the policies represent to refund Plaintiffs for the cost of their ski pass minus the applicable daily rate or pro-rata reduction for each day that Plaintiff used their ski pass during the 2019/2020 ski season.

4. Defendant is in material breach of the policy by failing to refund Plaintiffs who were unable to use their ski passes for reasons related to the COVID-19 pandemic.

5. Defendant has caused material harm to Plaintiffs by improperly failing to make payment.

6. As a result, Plaintiffs now bring this action against USIC for its failure to honor its obligations under the insurance policies issued to Plaintiffs. Plaintiffs seek to recover compensatory damages as well as declaratory and injunctive relief.

### **PARTIES**

6. Plaintiff Lee Tourgee is a citizen of the United States domiciled in Austin, Texas in Travis County. Mr. Tourgee purchased a policy from Defendant in the 2019-2020 ski season for ski pass insurance.

7. Defendant USIC is a property casualty insurance company incorporated under the laws of the State of Delaware with its principal place of business in the State of Delaware at 160 Greentree Drive, Suite 101, Dover, DE 19904. Defendant conducts substantial business throughout the United States, and specifically in the state of Texas.

### **JURISDICTION AND VENUE**

8. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2), because this is a class action in which at least one member of the class is a citizen of a state different from Defendant, the amount in controversy exceeds \$5 million exclusive of interest and costs, and the



proposed class contains more than 100 members.

9. This Court has personal jurisdiction over USIC pursuant to the “long arm statute” because USIC has submitted to jurisdiction in this state by: (a) Defendant conducts substantial business throughout the United States, and specifically transacting business in the state of Texas; (b) contracting to insure a person located within Texas at the time of contracting; and (c) making a contract substantially connected with Texas. In addition, USIC exercises significant, substantial, systematic, pervasive and continuous contacts with Texas by doing business in Texas, serving insureds in Texas and seeking additional business in Texas.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this District and a substantial part of the events or omission giving rise to Plaintiffs’ claims took place within this District.

### **CLASS ACTION ALLEGATIONS**

11. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), 23(b)(3) and/or 23(c)(4), Plaintiff brings this action on behalf of himself and all others similarly situated, and seeks to represent the following class:

12. All persons who purchased both an Epic Pass for the 2019/2020 ski season and purchased from Defendant pass insurance on their Epic Pass, but were denied coverage for the loss of use of their passes after the resorts closed on March 15, 2020 due to no fault of their own.

13. Excluded from the class is Defendant, any entity in which Defendant has a controlling interest, any of the officers, directors, or employees of the Defendant, the legal representatives, heirs, successors, and assigns of the Defendant, anyone employed with Plaintiffs’ counsels’ firms, any Judge to whom this case is assigned, and his or her immediate family.

14. Plaintiffs’ claims satisfy the numerosity, typicality, adequacy, commonality and

superiority requirements under Federal Rule of Civil Procedure 23, as set forth more fully herein.

15. The persons who fall within the class number in at least the hundreds and most likely thousands, and thus the numerosity standard is satisfied. Because class members are geographically dispersed across the country, joinder of all class members in a single action is impracticable. Defendants have hundreds of thousands of customers nationwide that purchased insured ski passes that have not been refunded. Accordingly, members of the Class are so numerous that their individual joinder herein is impracticable.

16. Class members are readily ascertainable from information and records in Defendant's possession, custody, or control. Notice of this action can readily be provided to the class.

17. There are questions of law and fact common to the claims of Plaintiff and the class that predominate over any questions affecting only individual class members. The questions of law and fact arising from Defendant's actions that are common to the class include, without limitation:

A) Whether the order and directive from the CEO for Vail Resorts closing all its resorts in the United States constituted a quarantine under the terms of the Policy because it was "an unforeseen event, occurrence, or circumstance" that restrained class-members from entering upon and using the facilities of Destination Resorts for the purposes permitted by the Epic Pass;

B) Whether governmental orders applicable to class members were an "unforeseen event, occurrence, or circumstance" that constituted a quarantine by restraining class members from traveling to Destination Resorts, engaging in activities, and using the Epic Pass for its intended purpose;

C) Whether Defendant breached the terms of the Class Policies;

D) Whether the class sustained damages as a result of Defendant's breaches of contract;

E) Whether the class is entitled to damages, restitution, and/or other equitable relief; and

F) Whether the class, or a subset of the class, is entitled to declaratory relief stating the proper construction and/or interpretation of the Class Policies.

18. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claims asserted herein.

19. Plaintiff's claims are typical of the claims of the class in that Plaintiff and the class members all purchased ski pass insurance policies containing the same or similar terms including, in particular, what constitutes a Covered Peril.

20. Plaintiff will fairly and adequately protect and represent the interests of the proposed class, because his interests are aligned with, and not antagonistic to, those of the proposed class, and she is represented by counsel who are experienced and competent in the prosecution of class action litigation, and have particular expertise with class action litigation on behalf of purchasers of insurance policies.

21. Maintenance of this action as a class action is a fair and efficient method for adjudicating this controversy. It would be impracticable and undesirable for each member of the class to bring a separate action. Because of the relatively small size of individual class members' claims, absent a class action, most class members would likely find the cost of litigating their claims prohibitively high and would have no effective remedy. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

## **FACTUAL BACKGROUND**

### **Introduction**

22. Defendant USIC provides season ski pass insurance coverage whereby it promises its insureds coverage against loss of use of the insured's season ski pass.

23. Upon information and belief, Defendant USIC provides this insurance service to customers of Vail Corporation d/b/a Vail Resorts Management Company ("Vail Resorts"), a North American company that operates more than 34 ski resorts throughout the United States. Vail Resorts sells "Epic Passes" directly to consumers promising access to skiing and snowboarding at its resorts. Customers can purchase annual, weekly, or daily Epic Passes in advance.

24. Vail Resorts offered Epic Pass insurance through Defendant USIC for customers that wished to mitigate the risk that they may be unable to realize the full use of their Epic Pass for reasons outside of their control. Upon information and belief, thousands of customers purchased optional pass insurance through USIC.

25. Prior to the 2019/2020 ski season, Class Plaintiff Lee Tourgee purchased an Epic Pass and Epic Pass insurance through Defendant. Plaintiff purchased the Epic pass with the understanding that he would be able to access Vail Resorts from October 2019 through the end of the season. To ensure he would be able to get a refund if he was unable to use the pass, Mr. Tourgee opted to pay an additional fee for pass insurance.

26. On March 15, 2020, Vail Resorts announced that it was closing all of its mountain resorts indefinitely. Subsequently, Vail Resorts announced that its "North American resorts and retail stores will remain closed for the 2019-20 winter ski season."<sup>1</sup> Rob Katz, chairman and chief executive officer of Vail Resorts, explained the company was ending the skiing season early due

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<sup>1</sup> <https://www.snow.com/info/covid-19-update> (last accessed May 14, 2020).

to the fast-moving situation involving COVID-19. *Id.*

27. The COVID-19 outbreak devastated millions of citizens across the nation. The President of the United States, the Governor of Texas and other states all issued various orders, limiting human contact and restricting travel and activities to only those considered essential. Skiing and snowboarding are considered non-essential activities.

28. As a result of the closures and quarantine related restrictions, Plaintiff was restrained from entering upon and using the facilities of any of the Vail Resort properties and deprived of the use of his Epic Pass.

29. On June 9<sup>th</sup> 2020, Plaintiff timely provided notice and made a claim to American Claims Management, Inc. (“ACM”), the third-party claims administrator for the Pass Insurance Program.

30. As of the date of this filing, ACM still has not issued Plaintiff a formal denial letter for his claim. ACM has not reached out to Plaintiff requesting any additional documentation. Neither ACM nor USIC has responded to Plaintiff regarding his insurance claim and request for reimbursement.

31. However, Vail resorts have changed their entire insurance coverage for the 2020/2021 ski pass season, calling the new coverage “Epic Coverage.”<sup>2</sup> Epic is also attempting to offer partial credits to 2019/2020 ski pass purchasers but only on the condition they purchase a 2020/2021 ski pass.<sup>3</sup>

### **The Class Policy**

32. Plaintiffs purchased insurance from Defendant to protect against the risk of not

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<sup>2</sup> <https://www.epicpass.com/info/epic-coverage.aspx>

<sup>3</sup> <https://www.epicpass.com/info/2019-2020-pass-holder-credit.aspx>

being able to use the ski passes. A true and accurate copy of the Certificate of Season Ski Pass Insurance (“Certificate” or “Policy”) is attached hereto as **Exhibit A** and is incorporated herein by reference.

33. The terms of the Policy were not subject to individual negotiation, and upon information and belief are materially the same for all policy owners (“Class Policy”).

34. Plaintiffs are the owners of a Class Policy, which was in force at the time of the alleged loss.

35. Defendant is the liable insurer under the Class Policy.

#### **Terms of the Policy**

36. The Policy and Class Policy offers the following coverage:

##### **PROPERTY INSURED AND COVERAGE LIMITS:**

We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro- Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

37. The Policy and Class Policy defines a “Covered Peril” as follows:

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:

- a) Sickness, Injury or death of you or a family member;
- b) You have a Pregnancy or Childbirth verified by medical records; coverage is included for pregnant Season Ski Pass Holder’s spouse of domestic partner and minor child;
- c) Your primary residence being made Uninhabitable by Natural Disaster;
- d) The Destination Resort closes indefinitely due to a Natural Disaster;
- e) You are subpoenaed, required to serve on a jury, hijacked, **quarantined** or your travel visa is denied; (perils f – j omitted) (emphasis added)

38. The Policy does contain a definition section, but the Policy fails to define “quarantined.” A quarantine is generally defined as “to isolate from normal relations or

communication,”<sup>4</sup> and “a restriction on the movement of people and goods which is intended to prevent the spread of disease or pests. It is often used in connection to disease and illness, preventing the movement of those who may have been exposed to a communicable disease, but do not have a confirmed medical diagnosis.”<sup>5</sup>

39. The Policy contains no applicable exclusions for viruses, pandemics, related government orders or actions taken by Vail Resorts, independently or pursuant to such government orders.

40. The Policy defines a Loss as follows:

**LOSS:** Means your inability to use your season Ski Pass due to an unforeseen event, occurrence or circumstance.

#### **CAUSES OF ACTION**

##### **Count I: Breach of Contract**

41. The preceding paragraphs 1 – 40 are incorporated by reference herein.

42. Plaintiff and the proposed class members purchased ski pass insurance from Defendant.

43. Each Policy and Class Policies are valid and enforceable contracts between the Defendant and Plaintiff and proposed class members. Under these policies, Defendant was paid monies in exchange for its promise to reimburse Plaintiff should he not be able to use his ski pass the entire season.

44. Plaintiff and the proposed class members substantially performed their obligations pursuant to the terms of the Policy and Class Policies. Plaintiff and the proposed class members complied with all applicable provisions of the Policies, including payment, and yet Defendant has

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<sup>4</sup> <https://www.merriam-webster.com/dictionary/quarantine>

<sup>5</sup> <https://en.wikipedia.org/wiki/Quarantine>

abrogated his obligations for reimbursement.

45. Plaintiff and the proposed class members suffered a Loss from a Covered Peril as they are defined under the Policy and Class Policies.

46. Defendant has failed to compensate Plaintiff and proposed class members for their respective Losses as required by the Policy and Class Policies. By failing to compensate Plaintiff and the proposed class members for their respective Losses, Defendant has breached its obligations under the contract.

47. As a direct and proximate result of Defendant's breaches, Plaintiff and the proposed class members have sustained damages that are continuing in nature in an amount to be determined at trial.

**Count II: Noncompliance with Texas Insurance Code: Unfair Settlement Practices**

48. The preceding paragraphs 1 – 47 are incorporated by reference herein.

49. Defendant's conduct constitutes multiple violations of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE § 541.060(a). All violations under this article are made actionable by TEX. INS. CODE § 541.151.

50. Defendant's unfair settlement practice, as described above, of failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the claim, even though USIC's liability under the Policy was reasonably clear, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(2)(A).

51. Defendant's unfair settlement practice, as described above, of failing to promptly provide Plaintiff with a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for its offer of a compromise settlement of the claim, constitutes an unfair method



of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(3).

52. Defendant's unfair settlement practices, as described above, of failing within a reasonable time to affirm or deny coverage of the claim to Plaintiff, or to submit a reservation of rights to Plaintiff, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(4).

53. Defendant's unfair settlement practice, as described above, of refusing to pay Plaintiffs' claim without conducting a reasonable investigation, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(7).

**Count III: Noncompliance with Texas Insurance Code:**  
**Prompt Payment of Claims Statute**

54. The preceding paragraphs 1 – 53 are incorporated by reference herein.

55. Plaintiff is entitled to 18% interest and attorney fees under TEX. INS. CODE §542.060 for violating the Texas Insurance Code, Prompt Payment of claims TEX. INS. CODE §542.051 et. seq.

56. Defendant failed to acknowledge receipt of Plaintiff's claim, commence investigation of the claim, and request from Plaintiffs all items, statements, and forms that it reasonably believed would be required within the applicable time constraints under TEX. INS. CODE §542.055.

57. Defendant failed to notify Plaintiff in writing of its acceptance or rejection of the claim within applicable time constraints under TEX. INS. CODE §542.056.

58. Defendant delayed the payment of Plaintiff's claim following its receipt of all items, statements, and forms reasonably requested and required, longer than the amount of time

provided for under TEX. INS. CODE §542.058.

59. For noncompliance with Texas Insurance Code, Prompt Payment of Claims, Plaintiffs are entitled to the amount of the claim, as well as 18% (eighteen percent) interest per annum on the amount of such claim as damages, together with attorney's fees. TEX. INS. CODE § 542.060.

**Count IV: Breach of the Duty of Good Faith and Fair Dealing with Knowledge**

60. The preceding paragraphs 1 – 59 are incorporated by reference herein.

61. Defendant breached the duty of good faith and fair dealing by failing to adequately and reasonably investigate and evaluate Plaintiff's claim while it knew or should have known, by the exercise of reasonable diligence, that its liability was reasonably clear.

62. Each of the acts described above, together and singularly, were done "knowingly" as that term is used in the Texas Insurance Code.

63. For noncompliance with the Texas Insurance Code, Unfair Settlement Practices, Plaintiffs are entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policy, court costs, and attorney's fees. For knowing conduct of the acts described above, Plaintiffs ask for three times their actual damages. TEX. INS. CODE § 541.152.

**Count V: Declaratory and Injunctive Relief**

64. The preceding paragraphs 1 – 63 are incorporated by reference herein.

65. An actual controversy has arisen and now exists between Plaintiff and the class, on the one hand, and Defendant, on the other, concerning the respective rights and duties of the parties under the Policy and Class Policies.

66. Each ski pass is a contract under which Defendant was paid monies in exchange for services with a caveat that Plaintiff would be reimbursed monies should Plaintiff not be able to use

his ski pass the entire season. Plaintiff and the class have complied with all applicable provisions of the Policies, including payment in exchange for performance. Plaintiff contends that Defendant has arbitrarily and without justification refused to reimburse Plaintiffs for their respective Losses by reimbursing each member of the class for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that the member has used his/her Season Ski Pass during the Ski/Snowboard Season. Defendant breached the Policy and Class Policies by failing to timely pay Class Members for their respective Losses by reimbursing each member of the class for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that the member has used his/her Season Ski Pass during the Ski/Snowboard Season.

67. The actual case or controversy exists regarding Plaintiffs' rights and Defendant's obligations under the contract to reimburse Plaintiff and the class their respective Losses by reimbursing each member of the class for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that the member has used his/her Season Ski Pass during the Ski/Snowboard Season. Plaintiff, therefore, seeks a declaration of the parties' respective rights and duties under the Policy and Class Policies and requests the Court to declare the aforementioned conduct of Defendant unlawful and in material breach of the Policy and Class Policies so that future controversies may be avoided in accordance with 28 U.S.C. § 2201.

68. Pursuant to a declaration of the parties' respective rights and duties under the Policy and Class Policies, Plaintiff further seeks an injunction enjoining Defendant (1) from continuing to engage in conduct in breach of the Policy and Class Policies; and (2) ordering Defendant to comply with the terms of the Policy and Class Policies including payment of all amounts due.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury.

**CONCLUSION AND PRAYER FOR RELIEF**

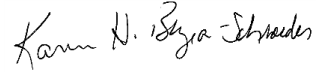
WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, requests relief and judgment against Defendant as follows:

- (a) That the Court enter an order certifying the class, appointing Plaintiff as a representative of the class, appointing Plaintiff's counsel as class counsel, and directing that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the class;
- (b) For a judgment against Defendant for the causes of action alleged against it;
- (c) For compensatory damages in an amount to be proven at trial;
- (d) For a declaration that Defendant's conduct as alleged herein is unlawful and in material breach of the Policy and Class Policies;
- (e) For appropriate injunctive relief, enjoining Defendant from continuing to engage in conduct related to the breach of the Policy and Class Policies;
- (f) For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- (g) For treble damages under the Texas Insurance Code.
- (h) For Plaintiffs' attorney's fees;
- (i) For Plaintiffs' costs incurred; and
- (j) For such other relief in law or equity as the Court deems just and proper.

Dated: August 28, 2020

Respectfully submitted,

BURNETT LAW FIRM

A handwritten signature in cursive script, reading "Karen H. Beyea-Schroeder".

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**BEFORE THE UNITED STATES JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**

**In Re: NATIONAL SKI PASS INSURANCE LITIGATION**

MDL No. 1:20-P-113

---

**MOTION OF PLAINTIFF FOR TRANSFER AND  
COORDINATION OF ACTIONS PURSUANT TO 28 U.S.C. § 1407**

Plaintiff James Bradley, in the action captioned *Bradley v. United Specialty Insurance Company*, 4:20-cv-520-JM, before the United States District Court for the Eastern District of Arkansas hereby moves the Joint Panel on Multidistrict Litigation, pursuant to 28 U.S.C. § 1407, to consolidate and transfer the Related Actions, and any tag-along actions, to the United States District Court for the Eastern District of Arkansas for coordinated and consolidated pretrial purposes. A list of the Related Actions is attached hereto as the Schedule of Related Actions.

Dated: June 16, 2020

By: s/ Derek H. Potts  
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**ATTORNEY FOR PLAINTIFFS**

**BEFORE THE UNITED STATES JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**

**In Re: NATIONAL SKI PASS INSURANCE LITIGATION**

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**BRIEF IN SUPPORT OF MOTION FOR TRANSFER AND  
COORDINATION OF ACTIONS PURSUANT TO 28 U.S.C. § 1407**

Pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure for the Judicial Panel on Multidistrict Litigation, Movant James Bradley (“Plaintiff”) respectfully moves the Panel to centralize Related Actions for coordinated or consolidated pretrial proceedings.

**I. INTRODUCTION**

Pursuant to 28 U.S.C. § 1407 and Rule 6.2(e) of the Rules of Procedure of the U.S. Judicial Panel on Multidistrict Litigation (the “Panel”), Plaintiff in the action captioned *Bradley v. United Specialty Insurance Company*, 4:20-cv-520-JM, currently pending in the United States District Court for the Eastern District of Arkansas, respectfully submits this brief in support of this motion to transfer and coordinate at least seven Related Actions. Plaintiff’s case arises out of United Specialty Insurance Company (“USIC”)’s refusal to pay Plaintiff under an insurance policy from USIC purchased simultaneously with his 2019-2020 Season Ski Pass (“Epic Pass”). Vail Corporation d/b/a Vail Resorts Management Company (“Vail Resorts”) issued the Epic Pass to Plaintiff. On March 15, 2020, Vail Resorts announced the premature and early closure of all of its North American resorts (“Destination Resorts”) for the remainder of the 2019-2020 ski season due to the emergence of COVID-19, thereby eliminating Plaintiff’s ability to fully utilize his Epic Pass.

Plaintiff now seeks to join all cases involving any similarly situated Plaintiffs who, in connection with the purchase of a 2019-2020 ski pass, paid the optional, additional fee for

insurance coverage and whose subsequent insurance claims made were similarly denied. Transfer and coordination is appropriate, and Plaintiff requests that the Panel transfer all cases identified in the Schedule of Related Actions (the “Schedule”), as well as subsequently filed tag-along actions, to the Eastern District of Arkansas.

The actions listed in the Schedule are putative class actions brought by ski pass consumers who also paid a premium to purchase insurance. Each of these submitted claims to their applicable insurance companies for the unused value of their insured ski passes after the early season closure announcement and each were denied reimbursement. To date, seven actions have been filed against multiple insurance companies. Each action concerns an insurance policy sold to ski pass consumers by an insurance company in connection with ski passes issued by varying ski resorts for the 2019-2020 ski season. The putative classes behind each Related Action are comprised solely of insured ski pass purchasers who elected to pay an optional additional fee for insurance on their ski passes. None of the Related Actions concern ski pass purchasers who did not purchase the optional insurance.

28 U.S.C. § 1407 (“Section 1407”) states that civil actions pending in different districts which involve one or more common questions of fact may be transferred to any district for coordinated or consolidated pretrial proceedings. At least six additional, identical actions have been filed nation-wide. Forums in which actions are pending possess a comparable evidentiary nexus or relevant business presence. Accordingly, centralization and coordination in the Eastern District of Arkansas will best further the objectives of Section 1407, which does not require that the transferee court sit in a district in which the case might have been filed under standard jurisdiction-and-venue analysis.

The docket of the Eastern District of Arkansas indicates that centralization and



coordination in the District of Arkansas is appropriate. There are no pending MDL proceedings in the Eastern District of Arkansas, nor has it recently been assigned an MDL matter. Accordingly, Plaintiff respectfully requests the Related Actions be transferred to and coordinated in the Eastern District of Arkansas.

## **II. RELEVANT FACTS**

Each of the Related Actions on the Schedule allege claims against insurance companies arising out of virtually identical factual circumstances. Plaintiff here purchased, for the 2019-2020, the Epic Pass and the available USIC insurance. The material facts of Plaintiff's case and those of the cases listed in the schedule only differ with regards to the issuer of the ski pass and/or company that insured it.

In Plaintiff's case, the Epic Pass granted access to over thirty-four (34) Destination Resorts across the country; which were all closed on March 15, 2020 due to COVID-19. Despite the fact that the closures rendered the Epic Passes unusable for a substantial portion of the 2019-2020 ski season, Defendant refused to issue any refunds to Plaintiff or to any similarly situated person. Plaintiffs in the Related Actions experienced substantially similar circumstances with the insurance on the ski passes they purchased. Specifically, each were also denied a refund despite purchasing an insurance policy for the ski passes which was intended to grant them access to different Destination Resorts and similar ski destinations before they closed due to COVID-19.

The scope of actions fit for consolidation and transfer is not limited solely to actions brought by Epic Pass insurance purchasers against USIC. Just as Plaintiff paid for the optional, additional fee for ski pass insurance from USIC in connection with his purchase of an Epic Pass from Vail Resorts, many Plaintiffs paid optional, additional fees for similar insurance in

connection with the purchase of an “Ikon Pass” from Alterra Mountain Company (“Alterra”).

Ikon Pass’s “Ski Pass Preserver” policy is underwritten by Arch Insurance Company (“Arch”) and administered by Out of Towne, LLC d/b/a Red Sky Travel Insurance (“Red Sky”). Like Vail Resorts, Alterra also announced in March 2020 the early closure of its Destination Resorts for the remainder of the 2019-20 ski season due to the emergence of COVID-19. A vast majority of Destination Resorts are owned either by Vail Resorts or by Alterra, and the claims brought by Alterra’s Ikon Pass holders against insurers Arch and Red Sky mirror the claims brought by Vail Resorts’ Epic Pass holders against insurer USIC.

Plaintiff seeks to join all such actions, along with all other actions against insurance companies that have been unjustly enriched, because they denied the claims of individuals who paid an optional, additional fee for insurance on ski passes purchased before early closure of applicable pass-accessible Destination Resorts or similar ski destinations due to COVID-19.

Each of the Related Actions on the Schedule also seek to certify similar nationwide classes of persons who purchased an insured ski pass for the 2019-2020 ski season and who, after the COVID-19 closure, submitted a claim for the unused portion and were denied.

### **III. ARGUMENT**

#### **A. Legal Standard**

When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to *any district* “for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407 (emphasis added). The Panel typically considers the following four factors in deciding whether to transfer a case:

- a. The elimination of duplication in discovery;

- b. The avoidance of conflicting rules and schedules;
- c. The reduction of litigation costs; and
- d. The conservation of time and effort of the parties, attorneys, witness, and courts.

Pursuant to § 1407(a), transfer and centralization is appropriate where (1) the pending actions involve one or more common questions of fact; (2) transfer will aid the convenience of the parties, and 3) transfer will promote the just and efficient conduct of such actions. In these instances, transfer and centralization streamlines discovery, avoids conflicting rulings and scheduling issues, minimizes costs and conserves time and resources of the parties, witnesses and the courts. *See Manual For Complex Litigation* § 20.131 (4th ed. 2016). As discussed below, these factors weigh heavily in favor of transfer and centralization of the Related Actions in the Eastern District of Arkansas.

The Related Actions meet the requirements for centralization under § 1407(a). All Related Actions share common questions of fact and law with little to no variation. Transfer is appropriate in cases sharing common factual issues in order to avoid duplication of discovery efforts and prevent inconsistent rulings. *See In re Fed. Election Campaign Act Litig.*, 511 F. Supp. 821, 823 (J.P.M.L. 1979); *In re Antibiotic Drugs*, 309 F. Supp. 155, 156 (J.P.M.L. 1970) (“[T]he applicability of different legal principles will not prevent the transfer of an action under § 1407 if the requisite common questions of fact exist.”). Section 1407 is operative not only where there is multidistrict litigation involving common plaintiffs or defendants. *In re Western Liquid Asphalt*, 309 F. Supp. 157 (Jud. Pan. Mult. Lit. 1970). Section 1407 is satisfied because all Related Actions referenced in the Schedule arise from the same operative facts. Specifically, both USIC and Arch have refused to issue any refunds for insured passes rendered unusable due to the closure of all Pass-accessible ski areas for the remainder of the 2019-2020 ski season, and

purchasers of insured ski passes seek to recover under the same legal theories. Transfer and centralization undoubtedly is appropriate as it exceeds the requirements necessary under Section 1407. *In re Zyprexa Prod. Liab. Litig.*, 314 F. Supp. 2d 1380, 1381 (J.P.M.L. 2004) (“[T]ransfer under Section 1407 does not require a complete identity or even majority of common factual issues as a prerequisite to transfer”). Because the Related Actions seek to certify overlapping classes, centralization will guard against inconsistent rulings and inconsistent class determinations. *See In re U. S. Fin. Sec. Litig.*, 375 F. Supp. 1403, 1404 (J.P.M.L. 1974) (“the prevalence of common factual issues and similar class allegations necessitates transfer of all actions to a single district for coordinated or consolidated pretrial proceedings under Section 1407 in order to prevent duplication of discovery and eliminate the possibility of inconsistent or overlapping class determinations.”).

Therefore, the transferee judge should undoubtedly find the Related Actions feasible to coordinate.

**B. Consolidation Is The Most Convenient, Just, and Efficient Method of Coordinating Pretrial Proceedings for This Litigation.**

All relevant factors strongly favor consolidation. Many more actions will likely be added to the seven pending actions in this litigation, making a compelling case for centralization. This Panel has previously held that a number of procedurally similar actions will make the case for centralization compelling, and has routinely ordered centralized proceedings in cases involving even fewer lawsuits. *See In re: Boehringer Ingelheim Pharm., Inc., Fair Labor Standards Act (FLSA) Litig.*, 763 F. Supp. 2d 1377, 1378 (U.S. Jud. Pan. Mult. Lit. 2011); *In re: Fontainebleau Las Vegas Contract Litig.*, 657 F. Supp. 2d 1374, 1375 (U.S. Jud. Pan. Mult. Lit. 2009) (centralizing proceedings for litigation involving **two** actions filed in separate districts); *In re Mobile Telecommunications Techs., LLC Patent Litig.*, 222 F. Supp. 3d 1337 (U.S. Jud. Pan.

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The likelihood of inconsistent rulings and the amount of resources that would be consumed in the overlapping prosecution, defense, and adjudication of pretrial proceedings in seven substantially similar putative class actions are indicative of the original purpose for which Section 1407 was enacted.

Centralization is even more appropriate in this instance, as every individual lawsuit is at a significantly similar procedural posture. Neither the production of documents nor depositions of any witnesses have taken place. There have been no substantive rulings to date in any of the actions. Given the number of procedurally similar actions involved, and that new putative class actions concerning the same facts will continue to be filed, the Plaintiffs and Defendants involved in this litigation will benefit from centralized proceedings.

### **C. Each Related Action Involves Multiple Common Factual Allegations**

The claims and allegations at issue in each of the seven actions stem from a breach

contract between the applicable insurance company and the Plaintiffs. Liability in each of the actions will thus turn on the same alleged questions of fact. *In re Auto Body Shop Antitrust Litig.*, 37 F. Supp. 3d 1388, 1390 (U.S. Jud. Pan. Mult. Lit. 2014) (“Transfer under section 1407 does not require a complete identity of common factual issues or parties as a prerequisite to transfer, and the presence of additional facts or differing legal theories is not significant where, as here, the actions still arise from a common factual core.”).

The legal and factual similarities in the instant cases surpass other matters that have been deemed suitable for centralization. *See In re: Discover Card Payment Protection Plan Marketing & Sales Practices Litigation*, 764 F. Supp.2d at 1343 (finding the Panel ordered centralization of four actions because each involved the marketing, sale, operation and/or administration of Discover’s payment protection plan). In *In re: Discover*, the Panel issued the order over the objection of one plaintiff that her action, which alleged that Discover marketed payment protection plans to individuals without inquiring as to whether they qualify for benefits, was factually distinct from the other claims because those claims focused on Discover’s alleged enrolling of individuals in the plans without their consent, charging higher fees than disclosed, and requiring onerous steps to terminate the plan. *Id.* The Panel agreed that the objecting plaintiff’s allegations were “somewhat different” from the other complaints and concluded, “the actions were sufficiently similar and contained enough overlapping facts concerning the marketing of the Discover payment protection plan to benefit from centralized proceedings.” *Id.*

Here, the seven actions contain substantially similar allegations that arise from an identical factual core. While centralization requires only a single common question of law or fact, there is a clear overlap in this instance between the various claims and allegations. Each Related Action alleges an insurance company effectively denying insurance coverage for losses

resulting from the closure of ski resorts due to COVID-19. Lastly, these claims will each involve the production of virtually identical documents and witnesses and would most appropriately and justly be transferred for centralized proceedings.

**D. The Eastern District of Arkansas is the Most Appropriate Transferee Forum Because Each of the Actions Involves Multiple Common Factual Allegations**

The Judicial Panel on Multidistrict Litigation (the “Panel”) should transfer the seven virtually- identical and potentially overlapping class actions, filed in seven different federal courts, to the Hon. Jay Moody of the U.S. District Court for the Eastern District of Arkansas. The actions all involve the same breach of contract claims. Without consolidation in one transferee court, there exists a significant threat of overlapping classes, inconsistent rulings and results, gross inefficiency among many federal courts, and prejudice to the Defendants caused by duplicative motions practice and discovery.

Putative class action plaintiffs, all customers of the applicable defendant insurance companies involved in connection with the purchase of insured ski passes, have filed overlapping class actions alleging defendant insurance companies breached the terms of their policies in at least one of the following ways:

- A) The COVID-19 closure of all certain ski resorts in the United States constituted a quarantine under the terms of the applicable policies because it was an unforeseen event, occurrence, or circumstance that restrained class-members from entering upon and using the facilities of ski resorts for the purposes permitted by the insured ski pass;
- B) The governmental orders applicable to plaintiffs were an "unforeseen event, occurrence, or circumstance" that constituted a quarantine by restraining class members from traveling to the applicable ski resorts, engaging in activities, and using the insured ski pass for its intended purpose;
- C) Defendant insurance companies breached the terms of their policies;
- D) Plaintiffs sustained damages as a result of the insurance companies' breach of

contract;

- E) Plaintiffs are entitled to damages, restitution, and/or other equitable relief; and
- F) Class plaintiffs, or any subset class plaintiffs, are entitled to declaratory relief stating the proper construction and/or interpretation of the applicable policies.

The actions broadly allege the same core facts: (1) Plaintiffs all purchased ski pass insurance from the applicable insurance company; (2) each insurance company issued a policy to purchasers of insured ski passes; (3) the policies are valid and enforceable contracts between the applicable insurance company and each Plaintiff; (4) Plaintiffs substantially performed their obligations pursuant to the terms of the applicable policy; (5) Plaintiffs suffered a loss as defined by the terms of the applicable policies; and (6) the insurance companies failed to compensate Plaintiffs for their respective losses as required by their policies.

These actions present the quintessential case for consolidation under 28 U.S.C. § 1407(a). Consolidation will (1) avoid encumbering multiple federal courts with duplicative work, including addressing the same affirmative defenses, discovery efforts, and class-action issues, and will (2) eliminate the risk of inconsistent results.



In determining the most appropriate forum for centralization under 28 U.S.C. § 1407, relevant factors include “the site of the occurrence of the common facts, where the cost and inconvenience will be minimized, and the experience, skill, and caseloads of available judges.” *Manual for Complex Litigation* § 20.131 (4th ed. 2016). The District of Arkansas has the judicial expertise, resources, and favorable caseload to conduct efficient pretrial proceedings in these actions and is centrally located. Alternatively, the Honorable Joseph Goodwin of the United States District Court for the Southern District of West Virginia has substantial experience overseeing complex multi-district litigation and is in the process of closing various transvaginal mech MDLs.

### **CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Panel enter an Order transferring the Related Actions to the Eastern District of Arkansas.

Dated: June 16, 2020

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- c. The reduction of litigation costs; and
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Pursuant to § 1407(a), transfer and centralization is appropriate where (1) the pending actions involve one or more common questions of fact; (2) transfer will aid the convenience of the parties, and 3) transfer will promote the just and efficient conduct of such actions. In these instances, transfer and centralization streamlines discovery, avoids conflicting rulings and scheduling issues, minimizes costs and conserves time and resources of the parties, witnesses and the courts. *See Manual For Complex Litigation* § 20.131 (4th ed. 2016). As discussed below, these factors weigh heavily in favor of transfer and centralization of the Related Actions in the Eastern District of Arkansas.

The Related Actions meet the requirements for centralization under § 1407(a). All Related Actions share common questions of fact and law with little to no variation. Transfer is appropriate in cases sharing common factual issues in order to avoid duplication of discovery efforts and prevent inconsistent rulings. *See In re Fed. Election Campaign Act Litig.*, 511 F. Supp. 821, 823 (J.P.M.L. 1979); *In re Antibiotic Drugs*, 309 F. Supp. 155, 156 (J.P.M.L. 1970) (“[T]he applicability of different legal principles will not prevent the transfer of an action under § 1407 if the requisite common questions of fact exist.”). Section 1407 is operative not only where there is multidistrict litigation involving common plaintiffs or defendants. *In re Western Liquid Asphalt*, 309 F. Supp. 157 (Jud. Pan. Mult. Lit. 1970). Section 1407 is satisfied because all Related Actions referenced in the Schedule arise from the same operative facts. Specifically, both USIC and Arch have refused to issue any refunds for insured passes rendered unusable due to the closure of all Pass-accessible ski areas for the remainder of the 2019-2020 ski season, and

purchasers of insured ski passes seek to recover under the same legal theories. Transfer and centralization undoubtedly is appropriate as it exceeds the requirements necessary under Section 1407. *In re Zyprexa Prod. Liab. Litig.*, 314 F. Supp. 2d 1380, 1381 (J.P.M.L. 2004) (“[T]ransfer under Section 1407 does not require a complete identity or even majority of common factual issues as a prerequisite to transfer”). Because the Related Actions seek to certify overlapping classes, centralization will guard against inconsistent rulings and inconsistent class determinations. *See In re U. S. Fin. Sec. Litig.*, 375 F. Supp. 1403, 1404 (J.P.M.L. 1974) (“the prevalence of common factual issues and similar class allegations necessitates transfer of all actions to a single district for coordinated or consolidated pretrial proceedings under Section 1407 in order to prevent duplication of discovery and eliminate the possibility of inconsistent or overlapping class determinations.”).

Therefore, the transferee judge should undoubtedly find the Related Actions feasible to coordinate.

**B. Consolidation Is The Most Convenient, Just, and Efficient Method of Coordinating Pretrial Proceedings for This Litigation.**

All relevant factors strongly favor consolidation. Many more actions will likely be added to the seven pending actions in this litigation, making a compelling case for centralization. This Panel has previously held that a number of procedurally similar actions will make the case for centralization compelling, and has routinely ordered centralized proceedings in cases involving even fewer lawsuits. *See In re: Boehringer Ingelheim Pharm., Inc., Fair Labor Standards Act (FLSA) Litig.*, 763 F. Supp. 2d 1377, 1378 (U.S. Jud. Pan. Mult. Lit. 2011); *In re: Fontainebleau Las Vegas Contract Litig.*, 657 F. Supp. 2d 1374, 1375 (U.S. Jud. Pan. Mult. Lit. 2009) (centralizing proceedings for litigation involving two actions filed in separate districts); *In re Mobile Telecommunications Techs., LLC Patent Litig.*, 222 F. Supp. 3d 1337 (U.S. Jud. Pan.

Mult. Lit. 2016) (granting transfer motion consisting of fourteen actions pending in two districts); *In re Dollar Gen. Corp. Motor Oil Mktg. & Sales Practices Litig.*, 190 F. Supp. 3d 1361, 1362 (U.S. Jud. Pan. Mult. Lit. 2016) (ordering centralized proceedings for litigation involving eighteen actions pending in eighteen districts); *In re Anheuser-Busch Beer Labeling Mktg. & Sales Practices Litig.*, 949 F. Supp. 2d 1371, 1372 (U.S. Jud. Pan. Mult. Lit. 2013) (centralizing six actions pending in six districts); *In re Anheuser-Busch Beer Labeling Marketing and Sales Practices Litigation*, 949 F. Supp. 2d at 1369 (centralizing seven actions pending in five districts); *In re: 5-Hour Energy Mktg. & Sales Practices Litig.*, 949 F. Supp. 2d 1357 (U.S. Jud. Pan. Mult. Lit. 2013) (centralizing nine actions pending in eight districts); *In re Fosamax Products Liab. Litig.*, 444 F. Supp. 2d 1347, 1348 (J.P.M.L. 2006) (granting transfer motion for litigation involving eighteen actions in five districts).

The likelihood of inconsistent rulings and the amount of resources that would be consumed in the overlapping prosecution, defense, and adjudication of pretrial proceedings in seven substantially similar putative class actions are indicative of the original purpose for which Section 1407 was enacted.

Centralization is even more appropriate in this instance, as every individual lawsuit is at a significantly similar procedural posture. Neither the production of documents nor depositions of any witnesses have taken place. There have been no substantive rulings to date in any of the actions. Given the number of procedurally similar actions involved, and that new putative class actions concerning the same facts will continue to be filed, the Plaintiffs and Defendants involved in this litigation will benefit from centralized proceedings.

### **C. Each Related Action Involves Multiple Common Factual Allegations**

The claims and allegations at issue in each of the seven actions stem from a breach

contract between the applicable insurance company and the Plaintiffs. Liability in each of the actions will thus turn on the same alleged questions of fact. *In re Auto Body Shop Antitrust Litig.*, 37 F. Supp. 3d 1388, 1390 (U.S. Jud. Pan. Mult. Lit. 2014) (“Transfer under section 1407 does not require a complete identity of common factual issues or parties as a prerequisite to transfer, and the presence of additional facts or differing legal theories is not significant where, as here, the actions still arise from a common factual core.”).

The legal and factual similarities in the instant cases surpass other matters that have been deemed suitable for centralization. *See In re: Discover Card Payment Protection Plan Marketing & Sales Practices Litigation*, 764 F. Supp.2d at 1343 (finding the Panel ordered centralization of four actions because each involved the marketing, sale, operation and/or administration of Discover’s payment protection plan). In *In re: Discover*, the Panel issued the order over the objection of one plaintiff that her action, which alleged that Discover marketed payment protection plans to individuals without inquiring as to whether they qualify for benefits, was factually distinct from the other claims because those claims focused on Discover’s alleged enrolling of individuals in the plans without their consent, charging higher fees than disclosed, and requiring onerous steps to terminate the plan. *Id.* The Panel agreed that the objecting plaintiff’s allegations were “somewhat different” from the other complaints and concluded, “the actions were sufficiently similar and contained enough overlapping facts concerning the marketing of the Discover payment protection plan to benefit from centralized proceedings.” *Id.*

Here, the seven actions contain substantially similar allegations that arise from an identical factual core. While centralization requires only a single common question of law or fact, there is a clear overlap in this instance between the various claims and allegations. Each Related Action alleges an insurance company effectively denying insurance coverage for losses



resulting from the closure of ski resorts due to COVID-19. Lastly, these claims will each involve the production of virtually identical documents and witnesses and would most appropriately and justly be transferred for centralized proceedings.

**D. The Eastern District of Arkansas is the Most Appropriate Transferee Forum Because Each of the Actions Involves Multiple Common Factual Allegations**

The Judicial Panel on Multidistrict Litigation (the “Panel”) should transfer the seven virtually- identical and potentially overlapping class actions, filed in seven different federal courts, to the Hon. Jay Moody of the U.S. District Court for the Eastern District of Arkansas. The actions all involve the same breach of contract claims. Without consolidation in one transferee court, there exists a significant threat of overlapping classes, inconsistent rulings and results, gross inefficiency among many federal courts, and prejudice to the Defendants caused by duplicative motions practice and discovery.

Putative class action plaintiffs, all customers of the applicable defendant insurance companies involved in connection with the purchase of insured ski passes, have filed overlapping class actions alleging defendant insurance companies breached the terms of their policies in at least one of the following ways:

- A) The COVID-19 closure of all certain ski resorts in the United States constituted a quarantine under the terms of the applicable policies because it was an unforeseen event, occurrence, or circumstance that restrained class-members from entering upon and using the facilities of ski resorts for the purposes permitted by the insured ski pass;
- B) The governmental orders applicable to plaintiffs were an "unforeseen event, occurrence, or circumstance" that constituted a quarantine by restraining class members from traveling to the applicable ski resorts, engaging in activities, and using the insured ski pass for its intended purpose;
- C) Defendant insurance companies breached the terms of their policies;
- D) Plaintiffs sustained damages as a result of the insurance companies' breach of

contract;

- E) Plaintiffs are entitled to damages, restitution, and/or other equitable relief; and
- F) Class plaintiffs, or any subset class plaintiffs, are entitled to declaratory relief stating the proper construction and/or interpretation of the applicable policies.

The actions broadly allege the same core facts: (1) Plaintiffs all purchased ski pass insurance from the applicable insurance company; (2) each insurance company issued a policy to purchasers of insured ski passes; (3) the policies are valid and enforceable contracts between the applicable insurance company and each Plaintiff; (4) Plaintiffs substantially performed their obligations pursuant to the terms of the applicable policy; (5) Plaintiffs suffered a loss as defined by the terms of the applicable policies; and (6) the insurance companies failed to compensate Plaintiffs for their respective losses as required by their policies.

These actions present the quintessential case for consolidation under 28 U.S.C. § 1407(a). Consolidation will (1) avoid encumbering multiple federal courts with duplicative work, including addressing the same affirmative defenses, discovery efforts, and class-action issues, and will (2) eliminate the risk of inconsistent results.

In determining the most appropriate forum for centralization under 28 U.S.C. § 1407, relevant factors include “the site of the occurrence of the common facts, where the cost and inconvenience will be minimized, and the experience, skill, and caseloads of available judges.” *Manual for Complex Litigation* § 20.131 (4th ed. 2016). The District of Arkansas has the judicial expertise, resources, and favorable caseload to conduct efficient pretrial proceedings in these actions and is centrally located. Alternatively, the Honorable Joseph Goodwin of the United States District Court for the Southern District of West Virginia has substantial experience overseeing complex multi-district litigation and is in the process of closing various transvaginal mech MDLs.

### **CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Panel enter an Order transferring the Related Actions to the Eastern District of Arkansas.

Dated: June 16, 2020

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**VAIL CONSOLIDATED CLASS ACTIONS**  
**(All Consolidated Into *Han V. Vail Resorts Inc.* Case No 1:20-Cv-01121)**

<b>No.</b>	<b><i>Case Caption</i></b>	<b><i>Plaintiff(s) Counsel</i></b>
1.	<i>Bellafatto v. The Vail Corporation</i> ; United States District Court for the District of Colorado, Case No 1:20-cv-01585	Jordan Laurence Lurie Pomerantz LLP 1100 Glendon Ave., 15th Floor Los Angeles, CA 90024 Telephone: (310) 432-8492 Email: jllurie@pomlaw.com
2.	<i>Clarke v. The Vail Corporation</i> ; United States District Court for the District of Colorado, Case No 1:20-cv-01163	Craig Valentine Norton Frickey, P.C. 2301 E. Pikes Peak Ave., Suite 205 Colorado Springs, CO 80909 Telephone: (719) 634-6450 Fax: (719) 634-6807 Email: craig@coloradolaw.com  Robert Bruce Carey Hagens Berman Sobol Shapiro LLP 11 West Jefferson. Ste. 1000 Phoenix, AZ 85003 Telephone: (602) 840-5900 Email: rob@hbsslaw.com  Stuart McKinley Paynter Paynter Law Firm PLLC 1200 G Street N.W. Suite 800 Washington, DC 20005 Telephone: 202-626-4486 Fax: 866-734-0622 Email: stuart@paynterlawfirm.com
3.	<i>Connolly v. The Vail Corporation</i> ; United States District Court for the District of Colorado, Case No 1:20-cv-01881	Nicholas Lange Carlson Lynch LLP 111 W. Washington St., Ste. 1240 Chicago, IL 60602 Telephone: 312-750-1265 Email: nlange@carlsonlynch.com

No.	Case Caption	Plaintiff(s) Counsel
4.	<i>DiPirro v. Vail Resorts, Inc.</i> ; United States District Court for the District of Colorado, Case No. 1:20-cv-01468	<p>Daniel C. Hedlund Gustafson Gluek PLLC Canadian Pacific Plaza 120 South Sixth Street, Suite 2600 Minneapolis, MN 55402 Telephone: (612) 333-8844 Email: dhedlund@gustafsongluek.com</p> <p>Daniel E. Gustafson Gustafson Gluek PLLC 120 South 6th St., Ste. 2600 Minneapolis, MN 55402 Telephone: (612) 333-8844 Fax: (612) 339-6622 Email: dgustafson@gustafsongluek.com</p>
5.	<i>Faydenko v. Vail Resorts, Inc.</i> ; United States District Court for the District of Colorado, Case No. 1:20-cv-01134	<p>Richard M. Hagstrom Michael R. Cashman - Hellmuth &amp; Johnson, PLLC 8050 West 78th Street Edina, MN 55439 Telephone: (952) 941-4005 Fax: (952) 941-2337 Email: rhagstrom@hjlawfirm.com mcashman@hjlawfirm.com</p>
6.	<i>Gasman v. The Vail Corporation</i> ; United States District Court for the District of Colorado, Case No. 1:20-cv-01475	<p>Rick D. Bailey Rick D. Bailey, Esquire 1085 Lafayette St., Ste. 702 Denver, CO 80218 Telephone: (720) 323-2363 Email: rick@rickbaileylaw.com</p> <p>Gary E. Mason Mason Lietz &amp; Klinger LLP 5101 Wisconsin Ave., NW, Ste. 305 Washington, DC 20016 Telephone: (202) 640-1160 Email: gmason@masonllp.com</p>

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7.	<i>Han v. Vail Resorts, Inc.</i> ; United States District Court for the District of Colorado, Case No. 1:20-cv-01121	Rusty E. Glenn Shuman, Glenn & Stecker 600 17th Street, Suite 2800 South Denver, CO 80202 Telephone: (303) 861-3003 Email: rusty@shumanlawfirm.com
8.	<i>Malachowsky v. Vail Resorts, Inc.</i> ; United States District Court for the District of Colorado, Case No. 1:20-cv-01529	Eric Howard Gibbs Steven M. Tindall Gibbs Law Group 505 14th Street, Suite 1110 Oakland, CA 94612 Telephone: (510) 350-9700 Email: smt@classlawgroup.com ehg@classlawgroup.com
9.	<i>McAuliffe v. The Vail Corporation</i> ; United States District Court for the District of Colorado, Case No. 1:20-cv-01176	Bryan L. Clobes Cafferty Clobes Meriwether & Sprengel LLP 205 North Monroe Media, PA 19063 Telephone: (215) 864-2800 Fax: (215) 864-2810 Email: bclobes@caffertyclobes.com  Nyrán Rose Rasche Cafferty Clobes Meriwether & Sprengel LLP 150 S. Wacker Dr., Ste.3000 Chicago, IL 60606 Telephone: (312) 782-4880 Fax: (312) 782-4885 Email: nrasche@caffertyclobes.com  Katherine D. Varholak Melissa K. Reagan

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10.	<i>Rarick v. The Vail Corporation</i> ; United States District Court for the District of Colorado, Case No. 1:20-cv-01364	Yeremy Krivoshey Bursor & Fisher, P.A. 1900 N. California Blvd., Ste. 940 Walnut Creek, CA 94596 Telephone: (925) 300-4455 Email: ykrivoshey@bursor.com

## OTHER CLASS ACTIONS

<i>No.</i>	<i>Case Caption</i>	<i>Plaintiff(s) Counsel</i>
1.	<i>Bradley v. United Specialty Insurance Company</i> (“USIC”); United States District Court for the Eastern District of Arkansas, Central Division, Case No. 4:20-cv-00520	Dylan H. Potts Gill Ragon Owen, P.A. 425 W. Capitol Avenue, Suite 3800 Little Rock, Arkansas 72201 Telephone: (501) 376-3800 E-Mail: potts@gill-law.com
2.	<i>Hoak v. USIC</i> ; United States District Court for the District of Colorado, Case No. 1:20-cv-01152	<p>John J. Schirger Matthew W. Lytle Joseph M. Feierabend Stephen R. Miller Miller Schirger, LLC 4520 Main Street, Suite 1570 Kansas City, Missouri 64111 Telephone: (816) 561-6500 E-mail: jschirger@millerschirger.com mlytle@millerschirger.com jfeierabend@millerschirger.com smiller@millerschirger.com</p> <p>Patrick Stueve Ethan M. Lange STUEVE SIEGEL HANSON LLP 460 Nichols Road, Suite 200 Kansas City, Missouri 64112 Telephone: (816) 714-7100 E-mail: siegel@stuevesiegel.com stueve@stuevesiegel.com lange@stuevesiegel.com</p>
3.	<i>Kodama v. American Claims Management</i> ; United States District Court for the Northern District of California, Case No. 4:20-cv-02463	<p>Yeremy Krivoshey Brittany S. Scott Bursor &amp; Fisher, P.A. 1900 N. California Blvd., Ste. 940 Walnut Creek, CA 94596 Telephone: (925) 300-4455 E-mail: ykrivoshey@bursor.com bscott@bursor.com</p> <p>Scott A. Bursor</p>



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4.	<i>Mair v. USIC</i> ; United States District Court for the Central District of Utah, Summit Division, Case No. 2:20-cv-00531	<p>Robert W. Gibbons  Gridley Ward &amp; Hamilton  635 25th St.  Ogden, UT 84401  Telephone: (801)621-3317  Email: rgibbons@gwhlaw.net</p>
5.	<i>Muller v. USIC</i> ; United States District Court for the Eastern District of New York, Case No. 2:20-cv-03407	<p>John C Luke , Jr.  Slater Slater Schulman LLP  488 Madison Avenue, 20th Floor  New York, NY 10022  Telephone: (212) 481-7400  Email: jluke@sssfirm.com</p>
6.	<i>Tourgee v. USIC</i> ; United States District Court for the Western District of Texas, Case No. 1:20-cv-00902	<p>Karen H. Beyea-Schroeder  Burnett Law Firm  3737 Buffalo Speedway, 18th Floor  Houston, Texas 77089  Telephone: (832) 413-4410  Email:  Karen.schroeder@rburnettlaw.com</p>