

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

THOMAS F. REISER JR. and LINDA  
T. REISER, individually and as  
Trustees of the Tom and Linda Reiser  
Living Trust Dated June 20, 2006, et  
al.,

Plaintiffs,

v.

MARRIOTT VACATIONS  
WORLDWIDE CORPORATION, a  
Delaware corporation, et al.,

Defendants.

No. 2:16-cv-00237-MCE-CKD

**MEMORANDUM AND ORDER**

The present lawsuit stems from the purchase, by twenty-two parties (collectively, "Plaintiffs"), of fractional interests in the Ritz-Carlton Club, Lake Tahoe, located in Truckee, California (the "Lake Tahoe Ritz"). Currently before this court is Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint ("SAC") for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6).<sup>1</sup> For the reasons set forth below, Defendants' Motion is DENIED.

---

<sup>1</sup> The SAC identifies the following Defendants: Ritz-Carlton Development Company, Inc. ("RC Development"), Ritz-Carlton Sales Company, Inc. ("Ritz-Carlton Sales"), Ritz-Carlton Management Company, LLC ("RC Management"), Cobalt Travel Company, LLC ("Cobalt"), Marriott Ownership Resorts, Inc., d.b.a. Marriott Vacation Club International, and Marriott Vacations Worldwide Corporation (collectively, "Defendants").

1 **BACKGROUND<sup>2</sup>**

2  
3 The Lake Tahoe Ritz consists of twenty-eight residential condominiums (“Club  
4 Interest Units”). Under a framework established by the so-called Club Interest  
5 Declaration,<sup>3</sup> Defendants fractionalized these twenty-eight Club Interest Units into three  
6 hundred thirty-six timeshare units (“fractional interests” or “fractional units”). The Club  
7 Interest Declaration, which was specifically incorporated within the Purchase  
8 Agreements used to buy the fractional interests, established a Club Interest Association  
9 with authority over not only the common areas of the complex but also each individual  
10 fractional interest purchased.

11 On May 16, 2008, in accordance with the Club Interest Declaration, Defendant  
12 RC Management agreed to act on behalf of the Club Interest Association and its  
13 members as the exclusive operating entity of the Club. The resulting Management  
14 Agreement<sup>4</sup> delegated absolute control over the deeded fractional property interests to  
15 RC Management, including authority over the rules and regulations governing each  
16 owner’s use of a fractional unit, and all authority to maintain the Club Interest Units. RC  
17 Management, in turn, delegated managerial authority and control over use of the Club  
18 Interest Units, pursuant to its authority to hire subagents, to Defendant Cobalt.

19 In early 2009, Defendants sold one-twelfth fractional units to Plaintiffs and  
20 approximately thirty-eight other buyers. As owners of fractional interests, Plaintiffs were  
21 given exclusive accessibility rights to the Lake Tahoe Ritz not available to non-owners of  
22 fractional interests. Among other benefits, Plaintiffs’ ownership entitled them to spend  
23 up to twenty-one days per year at the Lake Tahoe Ritz.

24 ///

25 \_\_\_\_\_  
<sup>2</sup> This statement of facts is based on the allegations contained within the SAC. ECF No. 19.

26 <sup>3</sup> This document, known formally as the Declaration of Covenants and Restrictions for the  
27 Highlands Resort West Parcel Club, is dated May 30, 2008.

28 <sup>4</sup> This agreement, entered into on May 16, 2008, is formally named the Highlands Resort Club  
Association Operating Agreement and was later amended on March 19, 2010.

1 Defendants' efforts to sell fractional units in the Lake Tahoe Ritz stalled as the  
2 economy deteriorated. In November 2011, Defendants de-annexed seventeen of the  
3 original twenty-eight Club Interest Units and sold them as regular, non-fractionalized  
4 condominium units. In July 2012, Defendants announced their intention to pursue a new  
5 external exchange affiliation ("MVC Affiliation") between Defendant Ritz-Carlton  
6 Development Company, Inc. ("RC Development") and the Marriott Vacation Club  
7 ("MVC") that afforded MVC members many of the same privileges at the Lake Tahoe  
8 Ritz that Plaintiffs enjoyed as fractional unit owners. MVC is a larger, less exclusive, and  
9 less expensive competing product managed, owned, and promoted by Defendants. In  
10 2014, Defendants used their control over Cobalt to implement the MVC Affiliation.  
11 Through the MVC Affiliation with RC Development, MVC members can spend just as  
12 many days at the Lake Tahoe Ritz as Plaintiffs and do so at a significantly reduced cost  
13 compared to Plaintiffs.

14 As a result of the de-annexation of Club Interest Units and the MVC Affiliation, the  
15 operational costs at the Lake Tahoe Ritz are spread only among the owners of fifty-nine  
16 fractional units, rather than three hundred thirty-six fractional units that would exist if  
17 Defendants had sold all of the Club Interest Units as fractional interests. According to  
18 Plaintiffs, the de-annexation and MVC affiliation resulted in a significant increase in the  
19 annual dues that Plaintiffs must pay each year, a loss of access to the Lake Tahoe Ritz,  
20 and a significant reduction in the value of Plaintiffs' one-twelfth fractional units.

21 The terms of the Club Interest Declaration, as well as the subsequent  
22 Management Agreement with RC Management and RC's delegation to Cobalt, granted  
23 those entities authority over not only the common areas, but also the separately deeded  
24 property interests that each individual fractional unit owner purchased. As indicated  
25 above, the Club Interest Declaration gave the Club Interest Association all powers  
26 necessary to ensure the proper functioning of each individual fractional unit, as well as  
27 the power to delegate that authority to a professional management company. Pursuant  
28 to the Management Agreement, the Club Interest Authority delegated that authority to

1 RC Management. Additionally, as authorized by California Business & Professions  
2 Code Section 11267(a)(2), which allows professional management companies to hire  
3 subagents, RC Management, in turn, entrusted its authority to Cobalt. According to  
4 Plaintiffs, Defendants used the resulting control to essentially gut the value of the  
5 fractional interests Plaintiffs purchased.

6 Plaintiffs are therefore unable to sell their fractional units. In May 2015, Plaintiff  
7 Reiser contacted real estate agent Liza Killen (“Killen”) of the Northstar Office of Tahoe  
8 Mountain Realty to inquire about selling his fractional interest. Killen responded that  
9 there was only one Ritz Carlton fractional unit on the market for \$5,000.00, and all other  
10 listings had either expired or were cancelled. In May 2016, Plaintiff Reiser contacted a  
11 second Northstar real estate agent, Sam Drury (“Drury”) of Padden Properties. Drury  
12 told Reiser that a Ritz Carlton fractional unit had not sold in the previous two years.  
13 According to Drury, the fractional ownership interests, which had typically been  
14 purchased for sums in excess of \$200,000.00, had lost nearly all their value. He  
15 expressed the belief that there simply was no market for the interests.

16 Plaintiffs’ First Amended Complaint (“FAC”) alleged six causes of action:  
17 (1) rescission, (2) breach of contract, (3) breach of the implied covenant of good faith  
18 and fair dealing, (4) breach of fiduciary duty, (5) violation of the California’s Unfair  
19 Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, and (6) aiding and abetting.  
20 Defendants moved to dismiss Plaintiffs’ FAC in its entirety for failure to state a claim, and  
21 by the Memorandum and Order filed April 29, 2016 (ECF No. 19), the Court denied that  
22 motion as to the rescission, breach of contract, and breach of the implied covenant  
23 claims but granted dismissal as to Plaintiffs’ remaining causes of action.

24 Plaintiffs subsequently filed their SAC on May 25, 2016 (ECF No. 19), which  
25 prompted the Motion to Dismiss (ECF No. 22) now before the Court. That Motion again  
26 attacks all six causes of action pled in the SAC despite the fact that the Court previously  
27 denied Defendants’ prior motion as to three of those claims. Defendants in essence  
28 recycle their previous arguments advocating dismissal of Plaintiffs’ rescission, breach of

1 contract, and breach of implied covenant claims on grounds that the Court committed  
2 “clear error” in not dismissing those claims in the FAC.

### 3 4 **STANDARD**

5  
6 On a motion to dismiss for failure to state a claim under Federal Rule of Civil  
7 Procedure 12(b)(6),<sup>5</sup> all allegations of material fact must be accepted as true and  
8 construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins.  
9 Co., 80 F.3d 336, 337–38 (9th Cir. 1996). Rule 8(a)(2) requires only “a short and plain  
10 statement of the claim showing that the pleader is entitled to relief” in order to “give the  
11 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell  
12 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,  
13 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require  
14 detailed factual allegations. However, “a plaintiff’s obligation to provide the grounds of  
15 his entitlement to relief requires more than labels and conclusions, and a formulaic  
16 recitation of the elements of a cause of action will not do.” Id. (internal citations and  
17 quotations omitted). A court is not required to accept as true a “legal conclusion  
18 couched as a factual allegation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting  
19 Twombly, 550 U.S. at 555). “Factual allegations must be enough to raise a right to relief  
20 above the speculative level.” Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright &  
21 Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the  
22 pleading must contain something more than “a statement of facts that merely creates a  
23 suspicion [of] a legally cognizable right of action.”)).

24 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket  
25 assertion, of entitlement to relief.” Twombly, 550 U.S. at 556 n.3 (internal citations and  
26 quotations omitted). Thus, “[w]ithout some factual allegation in the complaint, it is hard

27  
28 

---

<sup>5</sup> All further references to “Rule” or “Rules” are to the Federal Rules of Civil Procedure unless otherwise noted.

1 to see how a claimant could satisfy the requirements of providing not only ‘fair notice’ of  
2 the nature of the claim, but also ‘grounds’ on which the claim rests.” Id. (citing 5 Charles  
3 Alan Wright & Arthur R. Miller, supra, at § 1202). A pleading must contain “only enough  
4 facts to state a claim to relief that is plausible on its face.” Id. at 570. If the “plaintiffs . . .  
5 have not nudged their claims across the line from conceivable to plausible, their  
6 complaint must be dismissed.” Id. However, “[a] well-pleaded complaint may proceed  
7 even if it strikes a savvy judge that actual proof of those facts is improbable, and ‘that a  
8 recovery is very remote and unlikely.’” Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S.  
9 232, 236 (1974)).

## 11 ANALYSIS

### 13 A. Rescission, Breach Of Contract, And Breach Of Covenant

14 Defendants seek reconsideration of the Court’s prior Order dismissing  
15 Defendants’ Motion to Dismiss Plaintiffs’ rescission, breach of contract, and breach of  
16 covenant claims as set forth in the SAC’s First, Second and Third Causes of Action.  
17 Defendants re-argue their previous position, contending the Court’s ruling constituted  
18 “clear error.”

19 Plaintiffs contend that Defendants have made a deficient motion for  
20 reconsideration, failing to establish any of the bases for reconsideration—namely newly  
21 discovered evidence or an intervening change in controlling law. Defendants, instead,  
22 rely on the proposition that a court may reconsider its prior rulings to correct clear error.  
23 Lennar Mare Island, LLC v. Steadfast Ins. Co., No. 2:12-CV-02182, 2014 WL 2002204,  
24 at \*3 (E.D. Cal. May 15, 2014) (finding reconsideration “appropriate where . . . it is  
25 necessary to correct clear error”).

26 While the Court may reconsider its previous rulings, “[r]econsideration is an  
27 ‘extraordinary remedy’ that is to be used ‘sparingly.’” Quinn v. Fresno Cty. Sheriff,  
28 No. 1:10-CV-01617, 2012 WL 2839648, at \*2 (E.D. Cal. Jul. 10, 2012) (quoting Kona

1 Enters. v. Estate of Bishop, 229 F.3d 887, 890 (9th Cir. 2000). “To succeed, a party  
2 must set forth facts or law of a strongly convincing nature to induce the court to reverse  
3 its prior decision.” Id. (quoting United States v. Westlands Water Dist., 134 F. Supp. 2d  
4 1111, 1131 (E.D. Cal. 2001). “Mere dissatisfaction with the court’s order, or belief that  
5 the court is wrong in its decision, is not grounds for relief under Rule 60(b).” Joe Hand  
6 Promotions, Inc. v. Rangee, No. 2:13-CV-00939, 2013 WL 6859001, at \*2 (E.D. Cal.  
7 Dec. 24, 2013) (quoting Twentieth Century-Fox Film Corp. v. Dunnahoo, 637 F.2d 1338,  
8 1341 (9th Cir. 1981). “A district court may properly deny a motion for reconsideration  
9 that simply reiterates an argument already presented by the petitioner.” Id. (quoting  
10 Marazit v. Thorpe, 52 F.3d 252, 255 (9th Cir. 1995).

11 Defendants’ Motion merely repeats facts and reiterates arguments made in  
12 Defendants’ first motion to dismiss. This does not satisfy the clear error standard.  
13 Reconsideration due to clear error occurs only when the court is left with “a definite and  
14 firm conviction that a mistake has been committed.” Husain v. Olympic Airways,  
15 316 F.3d 829, 835 (9th Cir. 2002) (quoting Easley v. Cromartie, 532 U.S. 234, 242  
16 (2001)). Nothing in Defendants’ new Motion to Dismiss has demonstrated that any such  
17 mistake was committed in the Court’s prior ruling. The Court previously addressed all  
18 the issues Defendants raise in their pending Motion to Dismiss in detail. See ECF No.  
19 17, at 6–11. Accordingly, Defendants’ request that the Court reconsider its prior ruling  
20 with respect to Plaintiffs’ rescission, breach of contract, and breach of the implied  
21 covenant claims is DENIED.

## 22 **B. Breach Of Fiduciary Duty**

23 To properly put forth a claim for breach of fiduciary duty, a plaintiff must plead:  
24 (1) facts plausibly showing the existence of a fiduciary relationship, (2) breach of that  
25 fiduciary relationship, and (3) damage proximately caused by that breach. Knox v.  
26 Dean, 205 Cal. App. 4th 417, 432 (2012).

27 The Court dismissed Plaintiffs’ breach of fiduciary duty claim as pleaded in their  
28 FAC because Plaintiffs did not present any specific allegations as to how Defendants

1 owed them a fiduciary duty, or how the seller and buyer relationship between Plaintiffs  
2 and Defendants—which does not ordinarily produce a fiduciary relationship—could have  
3 created that fiduciary duty. Defendants contend that Plaintiffs’ SAC has not done  
4 nothing to rectify those deficiencies. The Court disagrees; Plaintiffs have alleged an  
5 abundance of new facts to support their claim.

6 Plaintiffs claim a fiduciary duty exists due to the agency and subagency  
7 relationships created with RC Management and with Cobalt. A fiduciary relationship  
8 arises between parties to a transaction where one of the parties has assumed a duty to  
9 act with the utmost good faith and for the benefit of the other party. Gilman v. Dalby,  
10 176 Cal. App. 4th 606, 614 (2009). A fiduciary duty may be imposed as a matter of law  
11 based on the nature of the relationship. See Cleveland v. Johnson, 209 Cal. App. 4th  
12 1315, 1339 (2012) (describing joint ventures, partnerships, and agencies as illustrative  
13 examples of relationships in which fiduciary duties are imposed by law). Plaintiffs allege  
14 that under the Management Agreement, RC Management was appointed to act on  
15 behalf of the Club Interest Association and its members as the exclusive operating entity  
16 of the property and to manage the daily affairs of the Club. SAC, ¶¶ 74, 75. RC  
17 Management then proceeded to delegate absolute managerial authority and control over  
18 Plaintiffs’ use of the Club Interest Units to its subagent Cobalt. Id. ¶ 78.

19 Initially, Defendants counter by citing the terms of the Management Agreement  
20 itself, which contains express disclaimer provisions that bar any agency relationship from  
21 being imputed. Those provisions, however, only bar an agency relationship between the  
22 signing parties. Plaintiffs were not parties to the Management Agreement, and instead  
23 possess only an ownership agreement in fractional units governed by the Agreement.  
24 Consequently, the disclaimer language is not binding upon them.

25 Plaintiffs also claim that a fiduciary duty was triggered when the Management  
26 Agreement gave RC Management control not just over the common areas, but also  
27 Plaintiffs’ individually deeded property interests. Id. ¶ 66. Whether or not a fiduciary  
28 duty exists depends on the surrounding facts and circumstances. Ward v. Mgmt.

1 Analysis Co. Emp. Disability Ben. Plan, 135 F.3d 1276, 1284 (9th Cir. 1998). Under  
2 California law, the key factor is whether there is “control by a person over the property of  
3 another.” Vai v. Bank of Am. Nat’l Trust & Ass’n, 56 Cal. 2d 329, 338 (1961). Plaintiffs  
4 have pleaded exactly that—RC Management had control over their individually deeded  
5 property interests.

6 Plaintiffs have pleaded sufficient facts to survive a motion to dismiss under either  
7 of their agency theories. Accordingly, Defendants’ Motion to Dismiss Plaintiffs’ breach of  
8 fiduciary duty claim, as set forth in the SAC’s Third Cause of Action, is DENIED.

### 9 **C. Violation Of UCL**

10 Under the Unfair Competition Law (“UCL”) a court may enjoin any person or entity  
11 engaging in unfair competition. Cal. Bus. & Prof. Code § 17203. The UCL creates  
12 “three varieties of unfair competition—acts or practices which are unlawful, or unfair, or  
13 fraudulent.” Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1140 (9th Cir. 2012). In  
14 their Fifth Cause of Action, Plaintiffs allege Defendants violated both the UCL’s  
15 “unlawful” and “unfair” prongs. Defendants move to dismiss on grounds that Plaintiffs  
16 have failed to identify any predicate “unlawful” or “unfair” acts. As set forth below, the  
17 Court concludes that Plaintiffs have at least met their pleading burden under the  
18 “unlawful” prong, and so declines to address Plaintiffs’ allegations of “unfair” acts.

19 “[A] violation of another law is a predicate for stating a cause of action under the  
20 UCL’s unlawful prong.” Berryman v. Merit Prop. Mgmt., Inc., 152 Cal. App. 4th 1544,  
21 1554 (2007). Plaintiffs satisfy this predicate by alleging that Defendants violated  
22 California Business & Professions Code Section 11252. Section 11252 prohibits  
23 developers from “materially encumbering” the use rights of timeshare purchasers without  
24 the written assent of at least fifty-one percent of the timeshare interest owners other than  
25 the developer. Cal. Bus. & Prof. Code § 11252.

26 Plaintiffs allege the MVC Affiliation constituted such an encumbrance in causing  
27 the value of their fractional units to utterly collapse. Defendants, however, claim that the  
28 MVC Affiliation does not fit the definition of “encumbrance” as defined in the state. See

1 id. §§ 11226, 11244, 11255. Defendants further argue that even if the MVC Affiliation is  
2 an encumbrance, they have not materially encumbered Plaintiffs' rights because there is  
3 no linkage between the valuation of Plaintiffs' fractional interests and their "use rights."

4 The Court previously found that the FAC contained "no basis, beyond speculation,  
5 as to the value of Plaintiffs' fractional interests." ECF No. 17, at 16:4-5. As stated  
6 above, however, the SAC alleges that Plaintiff Reiser contacted two Lake Tahoe real  
7 estate agents inquiring about selling his fractional units. Killen, a real estate agent at the  
8 Northstar Office of Tahoe Mountain Realty, told Reiser that there were no pending  
9 listings for the Ritz Carlton fractional units other than a two bedroom house on the  
10 market for \$5,000.00, with "all other listings either expired or . . . cancelled." SAC, ¶ 62.  
11 A second real estate agent, Drury at Padden Properties, similarly indicated that the Ritz  
12 Carlton fractional interests "have lost nearly ALL value," explaining that "[i]t is clear  
13 there's no market for this product at all." Id.

14 Defendants contend that even accepting the results of these inquiries at face  
15 value, none of the information obtained shows a linkage to the MVC Affiliation or to  
16 Plaintiff Reiser's "use rights." Plaintiffs, however, need only provide enough "[f]actual  
17 allegations . . . to raise a right to relief above the speculative level. Twombly, 550 U.S. at  
18 555. By alleging that the MVC Affiliation diluted the value of Plaintiffs' fractional  
19 interests, and alleging that the value of those interests plunged to virtually nothing,  
20 Plaintiffs' SAC satisfies that standard.

21 Although Defendants further argue that Plaintiffs' UCL claim must be dismissed  
22 on grounds that they failed to substantively oppose Defendants' motion, that argument is  
23 also misplaced. Plaintiffs have opposed Defendants' arguments within the allegations of  
24 the SAC itself. They have alleged a violation of Section 11252 on grounds that the MVC  
25 Affiliation materially encumbered their use rights when the value of their fractional  
26 interests collapsed.

27 ///

28 ///

1 The Court must accept all allegations of material fact as true and construe them in  
2 the light most favorable to the nonmoving party, and Plaintiffs have included enough  
3 facts to plausibly state a claim to relief. Accordingly, Defendants' Motion to Dismiss  
4 Plaintiffs' UCL claim is DENIED.

5 **D. Aiding And Abetting**

6 A claim for aiding and abetting requires a plaintiff to establish an underlying tort  
7 that was "aided and abetted." In re Mortgage Elec. Registration Syst., Inc., 754F.3d 772,  
8 786 (9th Cir. 2014). In the SAC, Plaintiffs have pleaded an underlying tort:breach of  
9 fiduciary duty. See SAC, ¶¶ 119-122.

10 Defendants contend that Plaintiffs' aiding and abetting claim is insufficiently  
11 pleaded because this underlying tort was insufficiently pleaded. However, as set forth  
12 above, Plaintiffs' breach of fiduciary claim is properly pleaded.

13 Turning to the substance of Plaintiffs' aiding and abetting claim, the factual  
14 allegations offered in the SAC are enough to raise their right to relief to beyond mere  
15 speculation as required under Twombly and Iqbal. Plaintiffs allege that Defendants  
16 devised a three-prong plan to solve their unsold inventory problem. First, Defendants  
17 secretly de-annexed seventeen of the twenty-eight Club Interest Units and sold them as  
18 non-fractionalized, regular condominium units. SAC, ¶ 4. Second, Defendants  
19 implemented the MVC Affiliation, which devalued the Fractional Units. Id. ¶ 5. Third,  
20 Defendants discontinued any meaningful effort to continue selling fractional units. Id.  
21 ¶ 6. The Court finds that these allegations are sufficient to support a claim of aiding and  
22 abetting.

23 Accordingly, Defendants' Motion to Dismiss Plaintiffs' aiding and abetting claim,  
24 as set forth in the Sixth Cause of Action, is also DENIED.

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CONCLUSION**

For the foregoing reasons, Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint, for failure to state a claim pursuant to Rule 12(b)(6), ECF No. 21, is DENIED.

IT IS SO ORDERED.

DATED: February 10, 2017

  
MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE