

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-13-333

STATE OF MAINE,

Plaintiff

v.

ZEALANDIA HOLDING COMPANY, INC.,
F/K/A FESTIVA HOSPITALITY GROUP, INC.,
PATTON HOSPITALITY MANAGEMENT,
LLC, F/K/A FESTIVA MANAGEMENT
GROUP, LLC, FESTIVA DEVELOPMENT
GROUP, LLC, ZEALANDIA CAPITAL, INC.,
F/K/A SETI MARKETING, INC., RESORT TRAVEL
& XCHANGE, LLC, F/K/A FESTIVA TRAVEL
& XCHANGE, FESTIVA REAL ESTATE
HOLDINGS, LLC, F/K/A FESTIVA RESORTS,
LLC, FESTIVA RESORTS ADVENTURE CLUB
MEMBERS' ASSOCIATION, ZEALANDIA
HOLDINGS, LLC, DONALD K. CLAYTON,
AND HERBERT H. PATRICK, JR.,

Defendants

COMPLAINT
(Injunctive Relief
Requested)

Plaintiff, the State of Maine (hereinafter the "State"), brings this action by and through its Attorney General, Janet T. Mills, against Defendants Zealandia Holding Company, Inc., f/k/a Festiva Hospitality Group, Inc., Patton Hospitality Management, LLC, f/k/a Festiva Management Group, LLC, Festiva Development Group, LLC, Zealandia Capital, Inc., f/k/a SETI Marketing, Inc., Resort Travel & Xchange, LLC, f/k/a Festiva Travel & Xchange, Festiva Real Estate Holdings, LLC, f/k/a Festiva Resorts, LLC, Festiva Resorts Adventure Club Members' Association, Zealandia Holdings, LLC, Donald K. Clayton, and Herbert H. Patrick, Jr., pursuant to 5 M.R.S. §§ 207 and 209 of the Maine Unfair Trade Practices Act (the "UTPA," 5 M.R.S.

§§ 205-A – 214), seeking permanent injunctive relief, equitable relief for consumers, civil penalties, costs, and attorney's fees.

PARTIES

1. Plaintiff, the State of Maine, is a sovereign state that brings this action, by and through its Attorney General, Janet T. Mills, pursuant to 5 M.R.S. §§ 191 and 209 and the powers vested in her by common law.

2. Defendant Zealandia Holding Company, Inc. ("ZHC"), f/k/a Festiva Hospitality Group, Inc., is a Nevada corporation that, at all material times, has been doing business in the State of Maine in connection with timeshare resort development, and the marketing, sale and management of Festiva's vacation club memberships. It is the parent holding company at the top of Festiva's corporate structure. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

3. Defendant Patton Hospitality Management, LLC, f/k/a Festiva Management Group, LLC, is a Nevada limited liability company that, at all material times, has been doing business in the State of Maine in connection with property management services for vacation resorts. Its managing member is Festiva Hospitality Group, Inc., n/k/a ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

4. Defendant Festiva Development Group, LLC is a Nevada limited liability company that, at all material times, has been doing business in the State of Maine by marketing and selling memberships in Festiva's vacation club. It is the declarant and administrator for the Festiva Adventure Club. Its managing member is ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

5. Defendant Zealandia Capital, Inc., f/k/a SETI Marketing, Inc., is a Nevada corporation that, at all material times, has been doing business in the State of Maine in connection with the collection of amounts

due from Festiva's vacation club members. Its sole shareholder is ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

6. Defendant Resort Travel & Xchange, LLC, f/k/a Festiva Travel & Xchange, is a Nevada limited liability company that, at all material times, has been doing business in the State of Maine in connection with facilitating trades with other third-party resorts for Festiva's vacation club members who wish to travel outside its network. Its managing member is ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

7. Defendant Festiva Real Estate Holdings, LLC, f/k/a Festiva Resorts, LLC, is a Nevada limited liability company that, at all material times, has been doing business in the State of Maine in connection with the ownership and management of Festiva's various real estate assets. Its managing member is ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

8. Defendant Festiva Resorts Adventure Club Members' Association is a South Carolina nonprofit corporation that, at all material times, has been doing business in the State of Maine as a members' association for Festiva's vacation club members. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

9. Defendant Zealandia Holdings, LLC is a Nevada limited liability company that, at all material times, has been doing business in the State of Maine in connection with the marketing, sale or management of Festiva's vacation club memberships. Its managing members are Defendants Donald K. Clayton and Herbert H. Patrick, Jr. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

10. Defendant Donald K. Clayton ("Clayton") is a resident of North Carolina and is a founder, with Defendant Herbert H. Patrick, Jr., of Festiva. He has ownership in ZHC, and is the chairman of its board.

At all times material to this Complaint, acting alone or in concert with others, Clayton has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. He, in connection with the matters alleged herein, has transacted business in Maine and throughout the United States. His business address is One Vance Gap Road, Asheville, NC 28805.

11. Defendant Herbert H. Patrick, Jr. ("Patrick") is a resident of North Carolina and is the other founder, with Clayton, of Festiva. He has ownership interests in ZHC, and is its president and treasurer. At all times material to this Complaint, acting alone or in concert with others, Patrick has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. He, in connection with the matters alleged herein, has transacted business in Maine and throughout the United States. His business address is One Vance Gap Road, Asheville, NC 28805.

12. Defendants are collectively referred to herein as "Festiva" or "Festiva Defendants." Any act that is attributed to Festiva in this Complaint includes any act of its employees, agents, controlled subsidiaries, and/or representatives acting on its behalf, as well as the named individual defendants.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action, pursuant to 4 M.R.S. § 105 and 5 M.R.S. § 209. This Court has jurisdiction over the Defendants, pursuant to 5 M.R.S. § 209 and 14 M.R.S. 704-A.

14. Venue is properly laid in Kennebec County,

STATUTORY BACKGROUND

15. Pursuant to 5 M.R.S. § 207 of the UTPA, unfair and deceptive acts or practices in the conduct of any trade or business are unlawful.

16. Pursuant to 5 M.R.S. § 209, whenever the Attorney General reasonably believes that someone is violating, or is about to violate, the UTPA, and that proceedings would be in the public interest, she may bring an action to enjoin the conduct and seek injunctive relief, including restitution, to remedy the unfair and deceptive acts, as well as civil penalties for intentional violations and costs of suit.

COURSE OF CONDUCT

17. In June 2000, Clayton and Patrick began Festiva's operations by marketing and selling points-based vacation club memberships to consumers throughout the United States and elsewhere, and by managing certain timeshare resorts in which Festiva held significant ownership interests.

18. In 2006, Festiva began selling points-based memberships in the Festiva Adventure Club (the "Club").

19. Festiva's timeshares, many of which are located in resorts along the East Coast, are held in a trust created by Defendants Festiva Development Group, LLC and Festiva Resorts Adventure Club Members' Association.

20. Consumers who purchase a Club membership receive a certain number of points, based on the purchase price, which can be used to reserve nights for a resort timeshare held by the trust. The points required for a vacation at each resort timeshare can vary by location and time.

21. Points are renewed annually or biennially, with consumers paying more for points that are renewed annually.

22. Festiva's current website claims that it has timeshares at 24 resorts and four cruise club destinations for nearly 55,000 Club members.

CONVERSION OF RANGELEY LAKE RESORT TIMESHARES

23. In September of 2008, Festiva acquired the remaining unsold timeshares at the Rangeley Lake Resort, a timeshare development in Rangeley, Maine.

24. Thereafter, Festiva began contacting Rangeley Lake Resort timeshare owners ("Rangeley owners") to attend an informational meeting to learn about changes to the resort.

25. In truth and in fact, the meetings were high-pressure sales presentations aimed at converting Rangeley owners to Club membership.

26. A conversion required the Rangeley owner to deed over his or her timeshare to the trust, and to pay additional money for points.

27. Festiva told Rangeley owners that their maintenance fees would be lowered or reduced if they converted compared to those who did not convert their timeshares.

28. In truth and in fact, Rangeley owners who converted to Club membership found that their maintenance fees have increased substantially.

29. Festiva told Rangeley owners that they would be able to take more vacations at a variety of resort locations if they converted to Club membership.

30. In truth and in fact, Rangeley owners who converted to Club membership experienced great difficulty booking any vacation, including one at the Rangeley Lake Resort.

31. When Rangeley owners complained to Festiva that they actually received less vacation time after they converted their timeshares, Festiva responded by telling them that they needed to buy more points.

32. Festiva represented, directly or by implication, that Rangeley owners would be compensated with points for the “equity” in their timeshares when they converted to Club membership.

33. In truth and in fact, Festiva gave points to Rangeley owners based upon the amount of money they paid, and not for any equity attributed to their timeshares.

SALES PRESENTATIONS AT RIVERSIDE DRIVE

34. Festiva also solicits consumers to attend sales presentations at its sales office located on 190 Riverside Drive in Portland, Maine.

35. Festiva uses sweepstakes entry forms, which are placed at malls, fairs and other venues, to generate potential leads to consumers whom it will contact to attend a sales presentation.

36. Consumers who enter a Festiva sweepstakes must disclose their annual household income and sign the entry form which, in fine print, grants Festiva permission to make telemarketing calls to them even if they are registered with the Do Not Call Registry.

37. Festiva uses the sweepstakes entry forms to identify consumers who meet its specifications for minimum household income and, at times, marital status.

38. Festiva induces consumers who meet its specifications to attend its sales presentations through promises of gifts, including free vacations.

39. In truth and in fact, many of these so-called gifts and “free” items are not gifts or free because they have restrictions and conditions that make it impossible for consumers to use, or require them to pay money to obtain the promised benefit.

40. Festiva induces consumers who meet its specifications to attend its sales presentations by informing them that they have been specially selected, using language such as, “carefully selected,” “you have been chosen,” or words to that effect, which has a tendency to lead consumers to believe that they have been specially selected by Festiva.

41. In truth and in fact, the consumers have not been specially selected by Festiva, apart from having been identified as meeting its specifications.

42. During sales presentations, Festiva represents to consumers that Club members can take vacations at any time and at any Festiva resort of their choosing every year or every other year, depending on the number of points purchased and when they are renewed.

43. In truth and in fact, most Club members have a difficult time scheduling any vacation due to the lack of available timeshares at Festiva’s resorts, particularly during peak times at desirable locations. Many consumers have owned their Club membership for years, but have been unable to schedule a vacation for their first or second choice of time and location.

44. During sales presentations, Festiva represents to consumers that they will save money on future vacations by purchasing a Club membership.

45. In truth and in fact, consumers do not realize the savings that Festiva claims because its methodology for calculating the savings is flawed, and excludes the cost of maintenance fees and periodic special assessments.

46. During sales presentations, Festiva has represented to consumers that their points will be rolled over to the next year if they do not use them in a year.

47. Many consumers later discovered that their points were “lost” because they were not rolled over automatically, but only if the consumer called Festiva within a certain time period to request it.

48. During sales presentations, Festiva tells consumers that it is easy to contact Festiva with questions and to make reservations for a vacation.

49. In truth and in fact, consumers report that it is nearly impossible to get in touch with anyone at Festiva who will assist them with customer service issues or vacation reservations.

50. Festiva fails to clearly and conspicuously disclose to consumers that maintenance fees increase regularly.

51. Festiva fails to clearly and conspicuously disclose to consumers that additional fees, or “special assessments,” can be imposed on Club members.

52. Festiva fails to clearly and conspicuously disclose to consumers that they have a right to cancel the contract within ten calendar days following its execution, pursuant to 33 M.R.S. § 592.

53. Some consumers who called Festiva to cancel within ten days found that Festiva failed to honor their requests.

SALES PRACTICES COMMON TO ALL FESTIVA SALES

54. Festiva creates a false sense of urgency that consumers must buy a Club membership at the sales presentation by telling them that the deal offered will not be available after they leave.

55. Consumers who agree to buy are then presented with multiple, and often complex, closing documents to sign, including a contract that obligates consumers to pay maintenance fees, together with any special assessments, for a period of 40 years.

56. Festiva does not give consumers adequate time to consider their decision to purchase, or to properly review the closing documents.

57. Festiva fails to disclose to consumers the total cost of Club membership, including, for example, the total cost of maintenance fees over the 40-year contract term.

58. Festiva represents to consumers, directly and by implication, that they will be able to sell their membership/points if, at any time, they decide that they no longer want to be Club members.

59. In truth and in fact, it is impossible for consumers to sell their membership/points because there is no market for them.

60. When consumers have asked for assistance in selling their membership/points, Festiva has referred them at times to unscrupulous timeshare resellers.

61. Festiva makes oral representations to consumers at the point of sale that are inconsistent with its contract and other documents.

COUNT I

(Rangeley Lake Resort Conversions – Deception)

62. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

63. Festiva induced Rangeley owners to convert their timeshares to Club membership by making misrepresentations, such as failure to convert their timeshares would result in increased maintenance fees; converting their timeshares would provide them with greater flexibility and access to more vacation times and locations; and they would be given credit for the “equity” in their timeshares.

64. Festiva’s conduct described in this count is deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT II

(Riverside Drive Sales Practices)

65. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

66. Festiva induces consumers to attend sales presentations by promising them a gift or free item that is not a gift or free because it is restricted, conditional or requires the consumer to pay something.

67. Festiva’s conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT III

(Riverside Drive Sales Practices)

68. Plaintiff repeats and realleges the preceding paragraphs of the Complaint

69. Festiva induces consumers to attend sales presentations by using language that has a tendency to lead consumers to believe that they have been specially selected when they have not been specially selected.

70. Festiva's conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT IV

(Riverside Drive Sales Practices – Misrepresentations)

71. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

72. Festiva induces consumers to purchase points for membership in the Club by making misrepresentations, including those concerning the savings that they will realize; the ease and simplicity with which they can book a vacation; the availability of its resort timeshares at desired locations and times; the rollover of unused points; and Festiva's responsiveness to customer service issues.

73. Festiva's conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT V

(Riverside Drive Sales Practices - Material Omissions)

74. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

75. Festiva fails to clearly and conspicuously disclose to consumers information that is material to their decision to purchase, including that consumers have a ten-day right to cancel the contract, that maintenance fees will increase, and that they can be required to pay special assessments.

76. Festiva's conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT VI

(Common Sales Practices - High Pressure Sales Tactics)

77. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

78. Festiva creates a false sense of urgency to pressure consumers into buying a Club membership at a sales presentation, and fails to give consumers adequate time to consider their decision and to review sales documents before signing them.

79. Festiva's conduct described in this count is unfair in violation of 5 M.R.S. § 207, and is intentional.

COUNT VII

(Common Sales Practices - Failure to Disclose Total Cost)

80. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

81. Festiva fails to disclose the total cost of a membership in the Club, including the cost of maintenance fees over the 40-year contract term.

82. Festiva's conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT VIII

(Common Sales Practices - Misrepresentations)

83. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

84. Festiva represents, directly and indirectly, to consumers that they will be able to sell their membership/points if they decide they no longer want to be Club members when, in fact, there is no market for their membership/points.

85. Festiva's conduct as described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT IX

(Common Sales Practices - Contradictory and Inconsistent Statements)

86. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

87. Festiva makes oral representations to consumers at the point of sale that are inconsistent with, and contradict, its contract and other documents.

88. Festiva's conduct as described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

RELIEF REQUESTED

Wherefore, Plaintiff requests that this Court enter the following relief:

1. Declare that Festiva has violated § 207 of the UTPA by:
 - A. Inducing Rangeley owners through the use of misrepresentations to convert their timeshares to Club membership;
 - B. Inducing consumers to attend its sales presentations by promising a gift or free item that is not a gift or free because it is restricted, conditional or requires the payment of money by the consumer;
 - C. Inducing consumers to attend its sales presentations using language that has a tendency to lead consumers to believe that they have been specially

selected when they have not been specially selected;

- D. Inducing consumers through the use of misrepresentations to purchase a Club membership;
- E. Failing to clearly and conspicuously disclose material information, including that maintenance fees will increase, that special assessments may be imposed, and that consumers have a right to cancel the contract within ten days of execution;
- F. Pressuring consumers into purchasing a Club membership at its sales presentations, and failing to give them adequate time to consider their decision or to review closing documents before execution;
- G. Failing to disclose to consumers the total cost of Club membership over the 40-year contract term, including maintenance fees;
- H. Representing to consumers that they will be able to sell their membership/points if they choose; and
- I. Making oral statements at the point of sale that are inconsistent with, or contradict, its contract or other documents.

2. Pursuant to 5 M.R.S. § 209 and M.R. Civ. P. 65, permanently enjoin Festiva, its agents, servants, employees, and those persons in active concert or participation with it who receive actual notice of the injunction from selling Club membership/points in Maine or to Maine consumers.

3. Pursuant to 5 M.R.S. § 209, order Festiva's contracts with Maine consumers rescinded, and order Festiva to reimburse each Maine consumer for payments made to it for Club membership/points, including any interest, maintenance fees and special assessments.

4. Pursuant to 5 M.R.S. § 209, assess a civil penalty, jointly and severally, against Festiva Defendants of up to \$10,000 per violation for each intentional violation of the UTPA.

5. Pursuant to 5 M.R.S. § 209 and 14 M.R.S. § 1522(1)(A), order Festiva Defendants to pay, jointly and severally, to the Attorney General her costs of suit and investigation, including attorney's fees.

6. Order such other and further relief as the Court may deem necessary to remedy the effects of Festiva's unfair and deceptive business practices.

Dated: November 25, 2013

Respectfully submitted,

JANET T. MILLS
Attorney General



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Attorneys for the State of Maine

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FIRST AMENDED
COMPLAINT
(Injunctive Relief
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Plaintiff, the State of Maine (hereinafter the "State"), brings this action by and through its Attorney General, Janet T. Mills, against Defendants Zealandia Holding Company, Inc., f/k/a Festiva Hospitality Group, Inc., Patton Hospitality Management, LLC, f/k/a Festiva Management Group, LLC, Festiva Development Group, LLC, Zealandia Capital, Inc., f/k/a SETI Marketing, Inc., Resort Travel & Xchange, LLC, f/k/a Festiva Travel & Xchange, Festiva Real Estate Holdings, LLC, f/k/a Festiva Resorts, LLC, Festiva Resorts Adventure Club Members' Association, Zealandia Holdings, LLC, Donald K. Clayton, and Herbert H. Patrick, Jr., pursuant to 5 M.R.S. §§ 207 and 209 of the Maine Unfair Trade Practices Act (the "UTPA," 5 M.R.S.

§§ 205-A – 214), seeking permanent injunctive relief, equitable relief for consumers, civil penalties, costs, and attorney's fees.

PLAINTIFF

1. Plaintiff, the State of Maine, is a sovereign state that brings this action, by and through its Attorney General, Janet T. Mills, pursuant to 5 M.R.S. §§ 191 and 209 and the powers vested in her by common law.

DEFENDANTS

2. Defendant Zealandia Holding Company, Inc. ("ZHC"), f/k/a Festiva Hospitality Group, Inc., is a Nevada corporation that, at all material times, has transacted and continues to transact business in the State of Maine in connection with timeshare resort development, and the marketing, sale and management of Defendants' vacation club memberships. It is the parent holding company at the top of Defendants' corporate structure. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

3. Defendant Patton Hospitality Management, LLC, f/k/a Festiva Management Group, LLC, is a Nevada limited liability company that, at all material times, has transacted and continues to transact business in the State of Maine in connection with property management services for vacation resorts. It is authorized to do business in Maine as a foreign limited liability company. Its managing member is Festiva Hospitality Group, Inc., n/k/a ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

4. Defendant Festiva Development Group, LLC ("FDG") is a Nevada limited liability company that, at all material times, has transacted and continues to transact business in the State of Maine by marketing and selling memberships in Defendants' vacation club. It is the declarant and administrator for the Festiva Adventure Club (the "Club"). It is authorized to do business in Maine as a foreign limited liability company. Its managing member is ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

5. Defendant Zealandia Capital, Inc., f/k/a SETI Marketing, Inc., is a Nevada corporation that, at all material times, has transacted and continues to transact business in the State of Maine in connection with the collection of amounts due from Defendants' vacation club members. It is authorized to do business in Maine as a foreign corporation. Its sole shareholder is ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

6. Defendant Resort Travel & Xchange, LLC, f/k/a Festiva Travel & Xchange, is a Nevada limited liability company that, at all material times, has transacted and continues to transact business in the State of Maine in connection with facilitating trades with other third-party resorts for Defendants' vacation club members who wish to travel outside their network. Its managing member is ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

7. Defendant Festiva Real Estate Holdings, LLC, f/k/a Festiva Resorts, LLC, is a Nevada limited liability company that, at all material times, has transacted and continues to transact business in the State of Maine in connection with the ownership and management of Defendants' various real estate assets. Its managing member is ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

8. Defendant Festiva Resorts Adventure Club Members' Association (the "Association") is a South Carolina nonprofit corporation that, at all material times, has transacted and continues to transact business in the State of Maine as a members' association for Defendants' vacation club members. It is authorized to do business in Maine as a foreign nonprofit corporation. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

9. Defendant Zealandia Holdings, LLC is a Nevada limited liability company that, at all material times, has transacted and continues to transact business in the State of Maine in connection with the marketing, sale or management of Defendants' vacation club memberships. Its managing members are

Defendants Donald K. Clayton and Herbert H. Patrick, Jr. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

10. Defendants ZHC, Patton Hospitality Management, LLC, FDG, Zealandia Capital, Inc., Resort Travel & Xchange, LLC, Festiva Real Estate Holdings, LLC, the Association, and Zealandia Holdings, LLC are referred to collectively as “Corporate Defendants.”

11. Defendant Donald K. Clayton (“Clayton”) is an individual who resides in North Carolina. In connection with the matters alleged herein, Clayton transacts or has transacted business in the State of Maine. He is an owner, officer and principal of the Corporate Defendants. At all times material to this Complaint, alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in, and had knowledge of, the acts and practices set forth in this Complaint. In the alternative, Clayton (with Defendant Patrick) is an alter ego of the Corporate Defendants. His business address is One Vance Gap Road, Asheville, NC 28805.

12. Defendant Herbert H. Patrick, Jr. (“Patrick”) is an individual who resides in North Carolina. In connection with the matters alleged herein, Patrick transacts, or has transacted business in the State of Maine. He is an owner, officer and principal of the Corporate Defendants. At all times material to this Complaint, alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in, and had knowledge of, the acts and practices set forth in this Complaint. In the alternative, Patrick (with Clayton) is an alter ego of the Corporate Defendants. His business address is One Vance Gap Road, Asheville, NC 28805.

13. Corporate Defendants have operated as a common enterprise while engaging in the unfair and deceptive acts and practices alleged in this Complaint through an interrelated network of companies that have, among other things, common ownership, managers, office

locations and interdependent economic interests. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged herein. Defendants Clayton and Patrick have formulated, directed, controlled, had the authority to control, or participated in, and had knowledge of, the acts and practices of the Corporate Defendants that constitute the common enterprise.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action, pursuant to 4 M.R.S. § 105 and 5 M.R.S. § 209. This Court has jurisdiction over the Defendants, pursuant to 5 M.R.S. § 209 and 14 M.R.S. § 704-A.

15. Venue is properly laid in Kennebec County,

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16. Pursuant to 5 M.R.S. § 207 of the UTPA, unfair and deceptive acts or practices in the conduct of any trade or business are unlawful.

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19. In 2006, Defendants began selling points-based memberships in the Club.

20. Defendants' timeshares, many of which are located in resorts along the East Coast, are held in a trust created by FDG and the Association.

21. Consumers who purchase a Club membership receive a certain number of points, based on the purchase price, which can be used to reserve nights for a resort timeshare held by the trust. The points required for a vacation at each resort timeshare can vary by location and time.

22. Points are renewed annually or biennially, with consumers paying more for points that are renewed annually.

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25. Thereafter, Defendants began contacting Rangeley Lake Resort timeshare owners ("Rangeley owners") to attend an informational meeting to learn about changes to the resort.

26. In truth and in fact, the meetings were high-pressure sales presentations aimed at converting Rangeley owners to Club membership.

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28. Defendants told Rangeley owners that their maintenance fees would be lowered or reduced if they converted compared to those who did not convert their timeshares.

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32. When Rangeley owners complained to Defendants that they actually received less vacation time after they converted their timeshares, Defendants responded by telling them that they needed to buy more points.

33. Defendants represented, directly or by implication, that Rangeley owners would be compensated with points for the “equity” in their timeshares when they converted to Club membership.

34. In truth and in fact, Defendants gave points to Rangeley owners based upon the amount of money they paid, and not for any equity attributed to their timeshares.

SALES PRESENTATIONS AT RIVERSIDE DRIVE

35. Defendants also solicit Maine consumers as well as consumers in other New England states to attend sales presentations at their sales office located on 190 Riverside Drive in Portland, Maine.

36. Defendants use sweepstakes entry forms, which are placed at malls, fairs and other venues, to generate potential leads to consumers whom they will contact to attend a sales presentation.

37. Consumers who enter one of Defendants’ sweepstakes must disclose their annual household income and sign the entry form which, in fine print, grants Defendants permission to

make telemarketing calls to them even if the consumers are registered with the Do Not Call Registry.

38. Defendants use the sweepstakes entry forms to identify consumers who meet their specifications for minimum household income and, at times, marital status.

39. Defendants induce consumers who meet their specifications to attend their sales presentations through promises of gifts, including free vacations.

40. In truth and in fact, many of these so-called gifts and “free” items are not gifts or free because they have restrictions and conditions that make it impossible for consumers to use, or require them to pay money to obtain the promised benefit.

41. Defendants induce consumers who meet their specifications to attend their sales presentations by informing them that the consumers have been specially selected, using language such as, “carefully selected,” “you have been chosen,” or words to that effect, which has a tendency to lead consumers to believe that they have been specially selected by Defendants.

42. In truth and in fact, the consumers have not been specially selected by Defendants, apart from having been identified as meeting their specifications.

43. During sales presentations, Defendants represent to consumers that Club members can take vacations at any time and at any of Defendants’ resorts of the consumers’ choosing every year or every other year, depending on the number of points purchased and when they are renewed.

44. In truth and in fact, most Club members have a difficult time scheduling any vacation due to the lack of available timeshares at Defendants’ resorts, particularly during peak times at desirable locations. Many consumers have owned their Club membership for years, but have been unable to schedule a vacation for their first or second choice of time and location.

45. During sales presentations, Defendants represent to consumers that they will save money on future vacations by purchasing a Club membership.

46. In truth and in fact, consumers do not realize the savings that Defendants claim because their methodology for calculating the savings is flawed, and excludes the cost of maintenance fees and periodic special assessments.

47. During sales presentations, Defendants have represented to consumers that their points will be rolled over to the next year if they do not use them in a year.

48. Many consumers later discovered that their points were “lost” because they were not rolled over automatically, but only if the consumer called Defendants within a certain time period to request it.

49. During sales presentations, Defendants tell consumers that it is easy to contact Defendants with questions and to make reservations for a vacation.

50. In truth and in fact, consumers report that it is nearly impossible to get in touch with anyone working for Defendants who will assist them with customer service issues or vacation reservations.

51. Defendants fail to clearly and conspicuously disclose to consumers that maintenance fees increase regularly.

52. Defendants fail to clearly and conspicuously disclose to consumers that additional fees, or “special assessments,” can be imposed on Club members.

53. Defendants fail to clearly and conspicuously disclose to consumers that they have a right to cancel the contract within ten calendar days following its execution, pursuant to 33 M.R.S. § 592.

54. Some consumers who called Defendants to cancel within ten days found that Defendants failed to honor their requests.

SALES PRACTICES COMMON TO ALL DEFENDANTS' SALES

55. Defendants create a false sense of urgency that consumers must buy a Club membership at the sales presentation by telling them that the deal offered will not be available after they leave.

56. Consumers who agree to buy are then presented with multiple, and often complex, closing documents to sign, including a contract that obligates consumers to pay maintenance fees, together with any special assessments, for a period of 40 years.

57. Defendants do not give consumers adequate time to consider their decision to purchase, or to properly review the closing documents.

58. Defendants fail to disclose to consumers the total cost of Club membership, including, for example, the total cost of maintenance fees over the 40-year contract term.

59. Defendants represent to consumers, directly and by implication, that they will be able to sell their membership/points if, at any time, they decide that they no longer want to be Club members.

60. In truth and in fact, it is impossible for consumers to sell their membership/points because there is no market for them.

61. When consumers have asked for assistance in selling their membership/points, Defendants have referred them at times to unscrupulous timeshare resellers.

62. Defendants make oral representations to consumers at the point of sale that are inconsistent with their contract and other documents.

COUNT I

(Rangeley Lake Resort Conversions – Deception)

63. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

64. Defendants induced Rangeley owners to convert their timeshares to Club membership by making misrepresentations, such as failure to convert their timeshares would result in increased maintenance fees; converting their timeshares would provide them with greater flexibility and access to more vacation times and locations; and they would be given credit for the “equity” in their timeshares.

65. Defendants’ conduct described in this count is deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT II

(Riverside Drive Sales Practices)

66. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

67. Defendants induce consumers to attend sales presentations by promising them a gift or free item that is not a gift or free because it is restricted, conditional or requires the consumer to pay something.

68. Defendants’ conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT III

(Riverside Drive Sales Practices)

69. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

70. Defendants induce consumers to attend sales presentations by using language that has a tendency to lead consumers to believe that they have been specially selected when they have not been specially selected.

71. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT IV

(Riverside Drive Sales Practices – Misrepresentations)

72. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

73. Defendants induce consumers to purchase points for membership in the Club by making misrepresentations, including those concerning the savings that consumers will realize; the ease and simplicity with which they can book a vacation; the availability of Defendants' resort timeshares at desired locations and times; the rollover of unused points; and Defendants' responsiveness to customer service issues.

74. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT V

(Riverside Drive Sales Practices - Material Omissions)

75. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

76. Defendants fail to clearly and conspicuously disclose to consumers information that is material to their decision to purchase, including that consumers have a ten-day right to cancel the contract, that maintenance fees will increase, and that they can be required to pay special assessments.

77. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT VI

(Common Sales Practices - High Pressure Sales Tactics)

78. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

79. Defendants create a false sense of urgency to pressure consumers into buying a Club membership at a sales presentation, and fail to give consumers adequate time to consider their decision and to review sales documents before signing them.

80. Defendants' conduct described in this count is unfair in violation of 5 M.R.S. § 207, and is intentional.

COUNT VII

(Common Sales Practices - Failure to Disclose Total Cost)

81. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

82. Defendants fail to disclose the total cost of a membership in the Club, including the cost of maintenance fees over the 40-year contract term.

83. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT VIII

(Common Sales Practices - Misrepresentations)

84. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

85. Defendants represent, directly and indirectly, to consumers that they will be able to sell their membership/points if they decide they no longer want to be Club members when, in fact, there is no market for their membership/points.

86. Defendants' conduct as described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT IX

(Common Sales Practices - Contradictory and Inconsistent Statements)

87. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

88. Defendants make oral representations to consumers at the point of sale that are inconsistent with, and contradict, their contract and other documents.

89. Defendants' conduct as described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

RELIEF REQUESTED

Wherefore, Plaintiff requests that this Court enter the following relief:

1. Declare that Defendants have violated 5 M.R.S. § 207 by:
 - A. Inducing Rangeley owners through the use of misrepresentations to *convert their timeshares to Club membership*;
 - B. Inducing consumers to attend their sales presentations by promising a gift or free item that is not a gift or free because it is restricted, conditional or requires the payment of money by the consumer;
 - C. Inducing consumers to attend their sales presentations using language that has a tendency to lead consumers to believe that they have been specially selected when they have not been specially selected;
 - D. Inducing consumers through the use of misrepresentations to purchase a Club membership;

- E. Failing to clearly and conspicuously disclose material information, including that maintenance fees will increase, that special assessments may be imposed, and that consumers have a right to cancel the contract within ten days of execution;
- F. Pressuring consumers into purchasing a Club membership at their sales presentations, and failing to give consumers adequate time to consider their decision or to review closing documents before execution;
- G. Failing to disclose to consumers the total cost of Club membership over the 40-year contract term, including maintenance fees;
- H. Representing to consumers that they will be able to sell their membership/points if they choose; and
- I. Making oral statements at the point of sale that are inconsistent with, or contradict, its contract or other documents.

2. Pursuant to 5 M.R.S. § 209 and M.R. Civ. P. 65, permanently enjoin Defendants, their agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of the injunction from selling Club membership/points in Maine or to Maine consumers.

3. Pursuant to 5 M.R.S. § 209, order Defendants' contracts with Maine consumers and those out-of-state consumers who entered into a contract with Defendants in Maine rescinded, and order Defendants to reimburse each such consumer for payments made to Defendants for Club membership/points, including any interest, maintenance fees and special assessments.

4. Pursuant to 5 M.R.S. § 209, assess a civil penalty, jointly and severally, against Defendants of up to \$10,000 per violation for each intentional violation of the UTPA.

5. Pursuant to 5 M.R.S. § 209 and 14 M.R.S. § 1522(1)(A), order Defendants to pay, jointly and severally, to the Attorney General her costs of suit and investigation, including attorney's fees.

6. Order such other and further relief as the Court may deem necessary to remedy the effects of Defendants' unfair and deceptive business practices.

Dated: February 14, 2014

Respectfully submitted,

JANET T. MILLS
Attorney General



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STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-13-333

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
ZEALANDIA HOLDING COMPANY, INC.,)
F/K/A FESTIVA HOSPITALITY GROUP, INC.;)
PATTON HOSPITALITY MANAGEMENT,)
LLC, F/K/A FESTIVA MANAGEMENT)
GROUP, LLC; FESTIVA DEVELOPMENT)
GROUP, LLC; ZEALANDIA CAPITAL, INC.,)
F/K/A SETI MARKETING, INC.; RESORT TRAVEL)
& XCHANGE, LLC, F/K/A FESTIVA TRAVEL)
& XCHANGE, LLC; FESTIVA REAL ESTATE)
HOLDINGS, LLC, F/K/A FESTIVA RESORTS,)
LLC; FESTIVA RESORTS ADVENTURE CLUB)
MEMBERS' ASSOCIATION, INC.; DONALD K.)
CLAYTON; AND HERBERT H. PATRICK, JR.,)
)
Defendants)

SECOND AMENDED
COMPLAINT
(Injunctive Relief
Requested)

Plaintiff, the State of Maine (hereinafter the "State"), brings this action by and through its Attorney General, Janet T. Mills, against Defendants Zealandia Holding Company, Inc., f/k/a Festiva Hospitality Group, Inc.; Patton Hospitality Management, LLC, f/k/a Festiva Management Group, LLC; Festiva Development Group, LLC; Zealandia Capital, Inc., f/k/a SETI Marketing, Inc.; Resort Travel & Xchange, LLC, f/k/a Festiva Travel & Xchange, LLC; Festiva Real Estate Holdings, LLC, f/k/a Festiva Resorts, LLC; Festiva Resorts Adventure Club Members' Association, Inc.; Donald K. Clayton; and Herbert H. Patrick, Jr., pursuant to 5 M.R.S. §§ 207 and 209 of the Maine Unfair Trade Practices Act (the "UTPA," 5 M.R.S. §§ 205-A

through 214), seeking permanent injunctive relief, equitable relief for consumers, civil penalties, costs, and attorney's fees.

PLAINTIFF

1. Plaintiff, the State of Maine, is a sovereign state that brings this action, by and through its Attorney General, Janet T. Mills, pursuant to 5 M.R.S. §§ 191 and 209 and the powers vested in her by common law.

DEFENDANTS

2. Defendant Donald K. Clayton ("Clayton") is an individual who resides in North Carolina.

3. Defendant Herbert H. Patrick, Jr. ("Patrick") is an individual who resides in North Carolina.

4. In 2000, Clayton and Patrick founded a vacation ownership business. Clayton brought his experience in marketing and selling vacation interests to consumers, and Patrick brought his experience in acquiring resorts, accounting, finance, human resources and homeowners' associations.

5. In 2000, Clayton and Patrick formed the Nevada limited liability company Defendant Festiva Resorts, LLC to perform sales and marketing for timeshare developers.

6. In January of 2012, Festiva Resorts, LLC's name was changed to Defendant Festiva Real Estate Holdings, LLC.

7. In 2005, Clayton and Patrick formed Defendant Festiva Development Group, LLC ("FDG"), a Nevada limited liability company, to develop timeshare resorts and to market and sell vacation interests in timeshare resorts to consumers. FDG also provides financing to enable consumers to purchase its vacation interests. It has been authorized to do business in Maine as a foreign limited liability company since 2008.

8. Patrick is, and has been, the president and manager of FDG since its creation, except for a 6- to 7-month hiatus.

9. In 2005, Clayton and Patrick formed Defendant Festiva Management Group, LLC, a Nevada limited liability company, to manage resort properties. Its activities include resort rentals, management and maintenance services to vacation ownership resorts.

10. In January of 2013, Festiva Management Group, LLC filed a Statement of Change with the Maine Secretary of State stating that its name had been changed to Defendant Patton Hospitality Management, LLC ("Patton"). It has been authorized to do business in Maine as a foreign limited liability company since 2008.

11. Clayton and Patrick formed Defendant Festiva Travel & Xchange, LLC, a Nevada limited liability company, to facilitate trades with other third-party resorts for club members who wish to travel outside of Festiva's resort network.

12. Festiva Travel & Xchange, LLC's name was changed to Defendant Resort Travel & Xchange, LLC.

13. In 2005, Clayton and Patrick formed Defendant SETI Marketing, Inc. ("SETI"), a Nevada corporation, to provide marketing services to FDG. Its purpose was to generate prospects for sales. SETI performed primarily marketing functions until the end of 2011.

14. In 2012, SETI's name was changed to Defendant Zealandia Capital, Inc.

15. Zealandia Capital, Inc.'s current function is to collect receivables, such as membership fees and special assessments assessed on consumers. It has been authorized to do business in Maine as a foreign corporation since 2008.

16. In 2004, Clayton and Patrick formed Defendant Festiva Hospitality Group, Inc. (“FHG”), a Nevada corporation.

17. In December of 2006, FHG acquired Defendants Festiva Management Group, LLC, n/k/a Patton; SETI, n/k/a Zealandia Capital, Inc.; Festiva Travel & Xchange, LLC, n/k/a Resort Travel & Xchange, LLC; Festiva Resorts, LLC, n/k/a Festiva Real Estate Holdings, LLC; and FDG.

18. Clayton & Patrick served as CEO and president, respectively, of FHG. They own, and have owned, a controlling interest in FHG and its subsidiaries, Festiva Management Group, LLC, n/k/a Patton; SETI, n/k/a Zealandia Capital, Inc.; Festiva Travel & Xchange, LLC, n/k/a Resort Travel & Xchange, LLC; Festiva Resorts, LLC, n/k/a Festiva Real Estate Holdings, LLC; and FDG. (FHG and its subsidiaries are collectively referred to as “Corporate Defendants.”)

19. In 2012, FHG’s name was changed to Zealandia Holding Company, Inc. (“ZHC”). Clayton and Patrick, the founders, remain CEO and president, respectively.

20. In 2006, Defendant Festiva Resorts Adventure Club Members’ Association, Inc. (the “Association”) was incorporated in South Carolina as a nonprofit corporation to be a members’ association for Defendants’ vacation club members. It has been authorized to do business in Maine as a foreign nonprofit corporation since 2008.

21. “Zealandia” is the name of the building located at One Vance Gap Road, in Asheville, North Carolina.

22. Zealandia is the home office address for all of the Defendants, except for Zealandia Capital, Inc. which moved to another location in Asheville, North Carolina in 2013.

23. Clayton is an owner, officer and principal of ZHC and its subsidiaries. At all times material to this Complaint, alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in, and had knowledge of, the acts and practices set forth in this Complaint. In the alternative, Clayton (with Patrick) is an alter ego of the Corporate Defendants.

24. Patrick is an owner, officer and principal of ZHC and its subsidiaries. At all times material to this Complaint, alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in, and had knowledge of, the acts and practices set forth in this Complaint. In the alternative, Patrick (with Clayton) is an alter ego of the Corporate Defendants.

25. Clayton devotes, and has devoted, 100% of his time to the business activities of Corporate Defendants.

26. Patrick devotes, and has devoted, 100% of his time to the business activities of Corporate Defendants.

27. Corporate Defendants have operated as a common enterprise while engaging in the unfair and deceptive acts and practices alleged in this Complaint through an interrelated network of companies that have, among other things, common ownership, managers, office locations and interdependent economic interests. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged herein.

28. Clayton and Patrick have formulated, directed, controlled, had the authority to control, or participated in, and had knowledge of, the acts and practices of the Corporate Defendants that constitute the common enterprise.

JURISDICTION AND VENUE

29. This Court has jurisdiction over this action, pursuant to 4 M.R.S. § 105 and 5 M.R.S. § 209. This Court has jurisdiction over the Defendants, pursuant to 5 M.R.S. § 209 and 14 M.R.S. § 704-A.

30. Venue is properly laid in Kennebec County,

STATUTORY BACKGROUND

31. Pursuant to 5 M.R.S. § 207 of the UTPA, unfair and deceptive acts or practices in the conduct of any trade or business are unlawful.

32. Pursuant to 5 M.R.S. § 209, whenever the Attorney General reasonably believes that someone is violating, or is about to violate, the UTPA, and that proceedings would be in the public interest, she may bring an action to enjoin the conduct and seek injunctive relief, including restitution, to remedy the unfair and deceptive acts, as well as civil penalties for intentional violations and costs of suit.

COURSE OF CONDUCT

33. In June 2000, Clayton and Patrick founded Festiva Resorts, LLC, a vacation ownership company.

34. In 2006, Defendants began selling points-based memberships, also called vacation ownership interests, in the Festiva Adventure Club (the “Club”).

35. Defendants' vacation interests, many of which are located in resorts along the East Coast, are held in a trust created by FDG and the Association.

36. Consumers who purchase a Club membership receive a certain number of points, based on the purchase price, which can be used to reserve nights for a resort timeshare held by the trust. The points required for a vacation at each resort timeshare can vary by location and time.

37. Points are renewed annually or biennially, with consumers paying more for points that are renewed annually.

38. Defendants have done business with at least 2,900 Maine consumers, and have received payments from Maine consumers in excess of \$20,000,000 for Festiva Adventure Club memberships, points, maintenance fees and special assessments.

CONVERSION OF RANGELEY LAKE RESORT TIMESHARES

39. In September of 2008, Defendants acquired the remaining unsold timeshares at the Rangeley Lake Resort, a timeshare development in Rangeley, Maine.

40. Thereafter, Defendants began contacting Rangeley Lake Resort timeshare owners ("Rangeley owners") to attend an informational meeting to learn about changes to the resort.

41. In truth and in fact, the meetings were high-pressure sales presentations aimed at converting Rangeley owners to Club membership.

42. A conversion required the Rangeley owner to deed over his or her timeshare to the trust, and to pay additional money for points.

43. Defendants' sales agents told Rangeley owners that their maintenance fees would be lowered or reduced if they converted compared to those who did not convert their timeshares.

44. In truth and in fact, Rangeley owners who converted to Club membership found that their maintenance fees have increased substantially.

45. Defendants' sales agents told Rangeley owners that they would be able to take more vacations at a variety of resort locations if they converted to Club membership.

46. In truth and in fact, Rangeley owners who converted to Club membership experienced great difficulty booking any vacation, including one at the Rangeley Lake Resort.

47. When Rangeley owners complained to Defendants that they actually received less vacation time after they converted their timeshares, Defendants responded by telling them that they needed to buy more points.

48. Defendants represented, directly or by implication, that Rangeley owners would be compensated with points for the "equity" in their timeshares when they converted to Club membership.

49. In truth and in fact, Defendants gave points to Rangeley owners based upon the amount of money they paid, and not for any equity attributed to their timeshares.

SALES PRESENTATIONS AT RIVERSIDE DRIVE

50. Defendants also solicited Maine consumers, as well as consumers in other New England states, to attend sales presentations at their sales office located on 190 Riverside Drive in Portland, Maine.

51. Defendants used sweepstakes entry forms, which were placed at malls, fairs and other venues, to generate potential leads to consumers whom they contacted to attend a sales presentation.

52. Consumers who entered one of Defendants' sweepstakes had to disclose their annual household income and sign the entry form which, in fine print, granted Defendants permission to make telemarketing calls to them even if the consumers were registered with the Do Not Call Registry.

53. Defendants used the sweepstakes entry forms to identify consumers who met their specifications for minimum household income and, at times, marital status.

54. Defendants induced consumers who met their specifications to attend their sales presentations through promises of gifts, including free vacations.

55. In truth and in fact, many of these so-called gifts and "free" items were not gifts or free because they had restrictions and conditions that made it impossible for consumers to use, or required them to pay money to obtain the promised benefit.

56. Defendants induced consumers who met their specifications to attend their sales presentations by informing them that the consumers had been specially selected, using language such as, "carefully selected," "you have been chosen," or words to that effect, which had a tendency to lead consumers to believe that they had been specially selected by Defendants.

57. In truth and in fact, the consumers had not been specially selected by Defendants, apart from being identified as having met their specifications.

58. Defendants' typical sales presentation began with a "podium presentation" by one of their sales agents who presented a scripted sales pitch to multiple prospective customers.

59. The podium presentation was designed to cause consumers to visualize taking a no-hassle, economical, family vacation on a regular basis.

60. Defendants' sales agents and sales materials omitted information that was material to a consumer's decision to purchase a Club membership, such as the true cost of Club membership over the 40-year term of the contract; that maintenance fees would increase; that they could be required to pay special assessments; that scheduling a vacation at a resort is dependent on points purchased and is subject to availability, which is limited at peak times and locations; that consumers had a 10-day right to cancel; and that it is impossible to resell or cancel a Club membership.

61. Following the podium presentation, consumers met with an individual sales agent who determined what their specific vacation interests were and how much they could afford.

62. Individual sales agents were paid on commission and were under pressure to keep sales numbers high or face termination.

63. Defendants' sales agents represented to consumers that Club members could take vacations at any time and at any of Defendants' resorts of the consumers' choosing every year or every other year, depending on the number of points purchased.

64. In truth and in fact, most Club members have a difficult time scheduling any vacation due to the lack of available timeshares at Defendants' resorts, particularly at peak times and locations. Many consumers have owned their Club membership for years, but they have been unable to schedule a vacation for their first or second choice of time and location.

65. Defendants' sales agents represented to consumers that they would save money on future vacations by purchasing a Club membership.

66. In truth and in fact, consumers did not realize the claimed savings because Defendants' methodology for calculating those savings was flawed, and excluded the cost of maintenance fees and periodic special assessments.

67. Defendants' sales agents represented to consumers that their points would be rolled over to the next year if they did not use them in a year.

68. In truth and in fact, consumers "lost" their points because they were not rolled over automatically, but only if consumers called Defendants within a certain time period to request it.

69. Defendants' sales agents represented to consumers that it would be easy to contact Defendants with questions and to make reservations for a vacation.

70. In truth and in fact, consumers report that it is nearly impossible to get in touch with anyone working for Defendants who will assist them with customer service issues or vacation reservations.

71. When consumers balked at the price, Defendants' sales agents sold them fewer points to get the price into an affordable range, without telling consumers that the amount of points that they were purchasing was not enough to take the vacations described at the podium presentation.

72. If Defendants' sales agent had trouble making a sale, another sales agent, called a takeover person, or "TO," assisted in closing the sale.

73. After the sale was made, Defendants' verification officer, or "VO," completed the required paperwork and had the consumer sign the documents.

74. Defendants' sales agent gave the VO the initial worksheet, who then faxed it to Zealandia, where the closing documents were prepared.

75. The VOs were also paid on commission for sales and had to reimburse Defendants for any commission paid on a purchase that was subsequently cancelled by the consumer.

76. The VOs reported to Defendants at Zealandia.

77. The VOs recorded their portion of the sale by using the phone to log into the corporate server.

COMMON SALES PRACTICES

78. Defendants have trained their Maine sales agents and VOs at Zealandia, either in person or via computer intranet.

79. Upon information and belief, employee training materials, the podium presentation, marketing materials including DVDs and brochures, closing documents, finance decisions, are all produced, reviewed, approved and maintained at Zealandia.

80. Some of Defendants' sales agents and VOs have not understood the points-based membership, while others, under pressure, have omitted giving consumers material information to make a sale.

81. Defendants' training and supervision of their Maine sales agents and VOs have been inadequate, and contribute to a culture which results in misrepresentations to consumers.

82. Defendants' sales presentations create a false sense of urgency by telling consumers that they must buy a Club membership at the initial sales presentation or the deal offered will not be available ever again.

83. Consumers who agree to buy are presented with multiple, and often complex, closing documents to sign that are prepared by Defendants, including a contract that obligates consumers to pay maintenance fees, together with any special assessments, for a period of 40 years.

84. Defendants do not give consumers adequate time to consider their decision to purchase, or to properly review the closing documents.

85. Defendants fail to disclose to consumers the total cost of Club membership, including, for example, the total cost of maintenance fees over the 40-year contract term.

86. Defendants' sales agents represent to consumers, directly and by implication, that *they will be able to sell their membership/points if, at any time, they decide that they no longer want to be Club members.*

87. In truth and in fact, it is impossible for consumers to sell their membership/points because there is no market for them.

88. When consumers ask for assistance in selling their membership/points, Defendants refer them at times to unscrupulous timeshare resellers.

89. Defendants' sales agents make oral representations to consumers at the point of sale that are inconsistent with Defendants' contract and other documents.

90. Defendants fail to clearly and conspicuously disclose to consumers that maintenance fees increase regularly.

91. Defendants fail to clearly and conspicuously disclose to consumers that additional fees, or "special assessments," can be assessed and billed to Club members.

92. Defendants fail to clearly and conspicuously disclose to consumers that they have a right to cancel the contract within ten calendar days following its execution, pursuant to 33 M.R.S. § 592.

93. Some consumers who contacted Defendants to cancel their contract within ten days found that Defendants failed to honor their requests.

COUNT I

(Rangeley Lake Resort Conversions – Deception)

94. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

95. Defendants' sales agents induced Rangeley owners to attend their sales presentations and to convert their timeshares to Club membership by making misrepresentations, such as the purpose of meeting with Defendants' sales agents was informational, their maintenance fees would be lowered or reduced if they converted; converting their timeshares would provide them with greater flexibility and access to more vacation times and locations; and they would be given credit for the "equity" in their timeshares.

96. Defendants' conduct described in this count is deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT II

(Riverside Drive Sales Practices)

97. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

98. Defendants induced consumers to attend sales presentations by promising them a gift or free item that was not a gift or free because it was restricted, conditional or required the consumer to pay something.

99. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT III

(Riverside Drive Sales Practices)

100. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

101. Defendants induced consumers to attend sales presentations by using language that had a tendency to lead consumers to believe that they had been specially selected when they had not been specially selected.

102. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT IV

(Riverside Drive Sales Practices – Misrepresentations)

103. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

104. Defendants' sales agents induced consumers to purchase points for membership in the Club by making misrepresentations, including those concerning the savings that consumers would realize; the ease and simplicity with which they could book a vacation; the availability of vacations at peak times and locations; the automatic rollover of unused points; and Defendants' responsiveness to customer service issues.

105. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT V

(Riverside Drive Sales Practices - Material Omissions)

106. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

107. Defendants' sales agents and sales materials omitted information that was material to a consumer's decision to purchase, including the true cost of Club membership over the 40-year contract term; that maintenance fees would increase; that they could be required to pay special assessments; that scheduling a vacation is subject to limited availability at peak times and locations; that consumers had a ten-day right to cancel the contract; and that it is impossible to resell or cancel a Club membership.

108. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT VI

(Common Sales Practices - High Pressure Sales Tactics)

109. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

110. Defendants create a false sense of urgency to pressure consumers into buying a Club membership at a sales presentation, and fail to give consumers adequate time to consider their decision and to properly review multiple, and often complex, sales documents before signing them.

111. Defendants' conduct described in this count is unfair in violation of 5 M.R.S. § 207, and is intentional.

COUNT VII

(Common Sales Practices - Failure to Disclose)

112. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

113. Defendants fail to clearly and conspicuously disclose to consumers the total cost of a membership in the Club, including the cost of maintenance fees over the 40-year contract term; that maintenance fees increase regularly; that Club members can be assessed and billed special assessments; and that consumers have a 10-day right to cancel their contract.

114. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT VIII

(Common Sales Practices - Misrepresentations)

115. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

116. Defendants' sales agents represent, directly and indirectly, to consumers that they will be able to sell their membership/points if they decide they no longer want to be Club members when, in fact, there is no market for their membership/points.

117. Defendants' conduct as described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT IX

(Common Sales Practices - Contradictory and Inconsistent Statements)

118. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

119. Defendants' sales agents make oral representations to consumers at the point of sale that are inconsistent with, and contradict, Defendants' contract and other printed documents.

120. Defendants' conduct as described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT X

(Common Sales Practices – Failure to Honor Cancellation Requests)

121. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

122. Defendants have failed to honor consumers' requests to cancel their contract within 10 days following its execution, pursuant to 33 M.R.S. § 592.

123. Defendants' conduct as described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

RELIEF REQUESTED

Wherefore, Plaintiff requests that this Court enter the following relief:

1. Declare that Defendants have violated 5 M.R.S. § 207 by:
 - A. Inducing Rangeley owners through the use of misrepresentations to attend sales presentations and to convert their timeshares to Club membership;
 - B. Inducing consumers to attend their sales presentations by promising a gift or free item that is not a gift or free because it is restricted, conditional or requires the payment of money by the consumer;
 - C. Inducing consumers to attend their sales presentations using language that has a tendency to lead consumers to believe that they have been specially selected when they have not been specially selected;
 - D. Inducing consumers through the use of misrepresentations to purchase a Club membership or more points;
 - E. Omitting information that is material to a consumer's decision to purchase a Club membership, including the true cost of Club membership over the

40-year contract term; that maintenance fees will increase; that special assessments may be imposed, that scheduling a vacation is subject to availability which is limited at peak times and locations; that consumers have a right to cancel the contract within ten days of execution; and that it is impossible to resell or cancel a Club membership;

- F. Creating a false sense of urgency to pressure consumers into purchasing a Club membership at their sales presentations, and failing to give consumers adequate time to consider their decision or to review closing documents before execution;
- G. Failing to clearly and conspicuously disclose to consumers the total cost of Club membership over the 40-year contract term; that maintenance fees increase regularly; that Club members may have to pay special assessments; and that consumers have a 10-day right to cancel their contracts;
- H. Representing to consumers that they will be able to sell their membership/points if they choose;
- I. Making oral statements at the point of sale that are inconsistent with, or contradict, their contract or other documents; and
- J. Failing to honor consumers' requests to cancel their contract within 10 days of its execution, pursuant to 33 M.R.S. § 592.

2. Pursuant to 5 M.R.S. § 209 and M.R. Civ. P. 65, permanently enjoin Defendants, their agents, servants, employees, and those persons in active concert or participation with them

who receive actual notice of the injunction from selling Club membership/points in Maine or to Maine consumers.

3. Pursuant to 5 M.R.S. § 209, order Defendants' contracts with Maine consumers and those out-of-state consumers who entered into a contract with Defendants in Maine rescinded, and order Defendants to reimburse each such consumer for payments made to Defendants for Club membership/points, including any interest, maintenance fees and special assessments.

4. Pursuant to 5 M.R.S. § 209, assess a civil penalty, jointly and severally, against Defendants of up to \$10,000 per violation for each intentional violation of the UTPA.

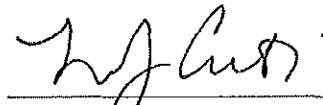
5. Pursuant to 5 M.R.S. § 209 and 14 M.R.S. § 1522(1)(A), order Defendants to pay, jointly and severally, to the Attorney General her costs of suit and investigation, including attorney's fees.

6. Order such other and further relief as the Court may deem necessary to remedy the effects of Defendants' unfair and deceptive business practices.

Dated: July 10, 2014

Respectfully submitted,

JANET T. MILLS
Attorney General



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Attorneys for the State of Maine

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-13-333

STATE OF MAINE,

Plaintiff

v.

ZEALANDIA HOLDING COMPANY, INC.,
F/K/A FESTIVA HOSPITALITY GROUP, INC.;
PATTON HOSPITALITY MANAGEMENT,
LLC, F/K/A FESTIVA MANAGEMENT
GROUP, LLC; FESTIVA DEVELOPMENT
GROUP, LLC; ZEALANDIA CAPITAL, INC.,
F/K/A SETI MARKETING, INC.; RESORT TRAVEL
& XCHANGE, LLC, F/K/A FESTIVA TRAVEL
& XCHANGE, LLC; FESTIVA REAL ESTATE
HOLDINGS, LLC, F/K/A FESTIVA RESORTS,
LLC; FESTIVA RESORTS ADVENTURE CLUB
MEMBERS' ASSOCIATION, INC.; DONALD K.
CLAYTON; AND HERBERT H. PATRICK, JR.,

Defendants

THIRD AMENDED
COMPLAINT
(Injunctive Relief
Requested)

Plaintiff, the State of Maine (hereinafter the "State"), brings this action by and through its Attorney General, Janet T. Mills, against Defendants Zealandia Holding Company, Inc., f/k/a Festiva Hospitality Group, Inc.; Patton Hospitality Management, LLC, f/k/a Festiva Management Group, LLC; Festiva Development Group, LLC; Zealandia Capital, Inc., f/k/a SETI Marketing, Inc.; Resort Travel & Xchange, LLC, f/k/a Festiva Travel & Xchange, LLC; Festiva Real Estate Holdings, LLC, f/k/a Festiva Resorts, LLC; Festiva Resorts Adventure Club Members' Association, Inc.; Donald K. Clayton; and Herbert H. Patrick, Jr., pursuant to 5 M.R.S. §§ 207 and 209 of the Maine Unfair Trade Practices Act (the "UTPA," 5 M.R.S. §§ 205-A

through 214), seeking permanent injunctive relief, equitable relief for consumers, civil penalties, costs, and attorney's fees.

PLAINTIFF

1 Plaintiff, the State of Maine, is a sovereign state that brings this action, by and through its Attorney General, Janet T. Mills, pursuant to 5 M.R.S. §§ 191 and 209 and the powers vested in her by common law.

DEFENDANTS

2 Defendant Donald K. Clayton ("Clayton") is an individual who resides in North Carolina.

3 Defendant Herbert H. Patrick, Jr. ("Patrick") is an individual who resides in North Carolina.

4 In 2000, Clayton and Patrick founded a vacation ownership business. Clayton brought his experience in marketing and selling vacation interests to consumers, and Patrick brought his experience in acquiring resorts, accounting, finance, human resources and homeowners' associations.

5 In 2000, Clayton and Patrick formed the Nevada limited liability company Defendant Festiva Resorts, LLC to perform sales and marketing for timeshare developers.

6 In January of 2012, Festiva Resorts, LLC's name was changed to Defendant Festiva Real Estate Holdings, LLC.

7 In 2005, Clayton and Patrick formed Defendant Festiva Development Group, LLC ("FDG"), a Nevada limited liability company, to develop timeshare resorts and to market and sell vacation interests in timeshare resorts to consumers. FDG also provides financing to enable consumers to purchase its vacation interests. It has been authorized to do business in Maine as a foreign limited liability company since 2008.

8. Patrick is, and has been, the president and manager of FDG since its creation, except for a 6- to 7-month hiatus.

9. In 2005, Clayton and Patrick formed Defendant Festiva Management Group, LLC, a Nevada limited liability company, to manage resort properties. Its activities include resort rentals, management and maintenance services to vacation ownership resorts.

10. In January of 2013, Festiva Management Group, LLC filed a Statement of Change with the Maine Secretary of State stating that its name had been changed to Defendant Patton Hospitality Management, LLC ("Patton"). It has been authorized to do business in Maine as a foreign limited liability company since 2008.

11. Clayton and Patrick formed Defendant Festiva Travel & Xchange, LLC, a Nevada limited liability company, to facilitate trades with other third-party resorts for club members who wish to travel outside of Festiva's resort network.

12. Festiva Travel & Xchange, LLC's name was changed to Defendant Resort Travel & Xchange, LLC

13. In 2005, Clayton and Patrick formed Defendant SETI Marketing, Inc. ("SETI"), a Nevada corporation, to provide marketing services to FDG. Its purpose was to generate prospects for sales. SETI performed primarily marketing functions until the end of 2011.

14. In 2012, SETI's name was changed to Defendant Zealandia Capital, Inc.

15. Zealandia Capital, Inc.'s current function is to collect receivables, such as membership fees and special assessments assessed on consumers. It has been authorized to do business in Maine as a foreign corporation since 2008.

16. In 2004, Clayton and Patrick formed Defendant Festiva Hospitality Group, Inc. (“FHG”), a Nevada corporation.

17. In December of 2006, FHG acquired Defendants Festiva Management Group, LLC, n/k/a Patton; SETI, n/k/a Zealandia Capital, Inc.; Festiva Travel & Xchange, LLC, n/k/a Resort Travel & Xchange, LLC; Festiva Resorts, LLC, n/k/a Festiva Real Estate Holdings, LLC; and FDG.

18. Clayton & Patrick served as CEO and president, respectively, of FHG. They own, and have owned, a controlling interest in FHG and its subsidiaries, Festiva Management Group, LLC, n/k/a Patton; SETI, n/k/a Zealandia Capital, Inc.; Festiva Travel & Xchange, LLC, n/k/a Resort Travel & Xchange, LLC; Festiva Resorts, LLC, n/k/a Festiva Real Estate Holdings, LLC; and FDG. (FHG and its subsidiaries are collectively referred to as “Corporate Defendants.”)

19. In 2012, FHG’s name was changed to Zealandia Holding Company, Inc. (“ZHC”). Clayton and Patrick, the founders, remain CEO and president, respectively.

20. In 2006, Defendant Festiva Resorts Adventure Club Members’ Association, Inc. (the “Association”) was incorporated in South Carolina as a nonprofit corporation to be a members’ association for Defendants’ vacation club members. It has been authorized to do business in Maine as a foreign nonprofit corporation since 2008.

21. Defendants’ written communications with consumers also refer to the Association as (the “Membership”) or the “Festiva Adventure Club—FAC”.

22. The Corporate Defendants have investments in the resorts along with the resort members and the Association

23. Corporate Defendants have engaged in related party transactions with the Association.

24. The Defendant Association is liable in this matter as part of the corporate enterprise and is also alternatively liable for its unfair and deceptive acts alleged herein.

25. "Zealandia" is the name of the building located at One Vance Gap Road, in Asheville, North Carolina.

26. Zealandia is the home office address for all of the Defendants, except for Zealandia Capital, Inc. which moved to another location in Asheville, North Carolina in 2013.

27. Clayton is an owner, officer and principal of ZHC and its subsidiaries. At all times material to this Complaint, alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in, and had knowledge of, the acts and practices set forth in this Complaint. In the alternative, Clayton (with Patrick) is an alter ego of the Corporate Defendants.

28. Patrick is an owner, officer and principal of ZHC and its subsidiaries. At all times material to this Complaint, alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in, and had knowledge of, the acts and practices set forth in this Complaint. In the alternative, Patrick (with Clayton) is an alter ego of the Corporate Defendants.

29. Clayton devotes, and has devoted, 100% of his time to the business activities of Corporate Defendants.

30. Patrick devotes, and has devoted, 100% of his time to the business activities of Corporate Defendants.

31. Corporate Defendants and the Association have operated as a common enterprise while engaging in the unfair and deceptive acts and practices alleged in this Complaint through an interrelated network of companies that have, among other things, common ownership,

managers, office locations and interdependent economic interests. Because these Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged herein.

32. Clayton and Patrick have formulated, directed, controlled, had the authority to control, or participated in, and had knowledge of, the acts and practices of the Defendants that constitute the common enterprise.

JURISDICTION AND VENUE

33. This Court has jurisdiction over this action, pursuant to 4 M.R.S. § 105 and 5 M.R.S. § 209. This Court has jurisdiction over the Defendants, pursuant to 5 M.R.S. § 209 and 14 M.R.S. § 704-A.

34. Venue is properly laid in Kennebec County,

STATUTORY BACKGROUND

35. Pursuant to 5 M.R.S. § 207 of the UTPA, unfair and deceptive acts or practices in the conduct of any trade or business are unlawful.

36. Pursuant to 5 M.R.S. § 209, whenever the Attorney General reasonably believes that someone is violating, or is about to violate, the UTPA, and that proceedings would be in the public interest, she may bring an action to enjoin the conduct and seek injunctive relief, including restitution, to remedy the unfair and deceptive acts, as well as civil penalties for intentional violations and costs of suit.

COURSE OF CONDUCT

37. In June 2000, Clayton and Patrick founded Festiva Resorts, LLC, a vacation ownership company.

38. In 2006, Defendants began selling points-based memberships, also called vacation ownership interests, in the Festiva Adventure Club (the “Club”).

39. Defendants’ vacation interests, many of which are located in resorts along the East Coast, are held in a trust created by FDG and the Association.

40. Consumers who purchase a Club membership receive a certain number of points, based on the purchase price, which can be used to reserve nights for a resort timeshare held by the trust. *The points required for a vacation at each resort timeshare can vary by location and time.*

41. Points are renewed annually or biennially, with consumers paying more for points that are renewed annually.

42. When consumers finance the purchase of a vacation interest, they sign a promissory note that is called “FESTIVA ADVENTURE CLUB Promissory Note,” hereinafter (the “Note”).

43. Under the terms of the Note, the consumer promises to pay defendant FDG for a vacation club membership in the Festiva Adventure Club.

44. The note states that upon closing the consumer automatically becomes a member of the Association and is bound by its Articles of Incorporation, By-Laws, Rules and Regulations.

45. The Association’s Articles of Incorporation, By-Laws, Rules and Regulations are not provided to the consumers at or before the closing.

46. Consumers are directed to pay invoices for maintenance fees and special assessments to Festiva FAC and Festiva Adventure Club S.A.

47. Defendants have done business with at least 2,900 Maine consumers, and have received payments from Maine consumers in excess of \$20,000,000 for Festiva Adventure Club memberships, points, maintenance fees and special assessments.

CONVERSION OF RANGELEY LAKE RESORT TIMESHARES

48. In September of 2008, Defendants acquired the remaining unsold timeshares at the Rangeley Lake Resort, a timeshare development in Rangeley, Maine.

49. Thereafter, Defendants began contacting Rangeley Lake Resort timeshare owners ("Rangeley owners") to attend an informational meeting to learn about changes to the resort.

50. In truth and in fact, the meetings were high-pressure sales presentations aimed at converting Rangeley owners to Club membership.

51. A conversion required the Rangeley owner to deed over his or her timeshare to the trust, and to pay additional money for points.

52. Defendants' sales agents told Rangeley owners that their maintenance fees would be lowered or reduced if they converted compared to those who did not convert their timeshares.

53. *In truth and in fact, Rangeley owners who converted to Club membership found that their maintenance fees have increased substantially.*

54. Defendants' sales agents told Rangeley owners that they would be able to take more vacations at a variety of resort locations if they converted to Club membership.

55. In truth and in fact, Rangeley owners who converted to Club membership experienced great difficulty booking any vacation, including one at the Rangeley Lake Resort.

56. When Rangeley owners complained to Defendants that they actually received less vacation time after they converted their timeshares, Defendants responded by telling them that they needed to buy more points.

57. Defendants represented, directly or by implication, that Rangeley owners would be compensated with points for the “equity” in their timeshares when they converted to Club membership.

58. In truth and in fact, Defendants gave points to Rangeley owners based upon the amount of money they paid, and not for any equity attributed to their timeshares.

SALES PRESENTATIONS AT RIVERSIDE DRIVE

59. Defendants also solicited Maine consumers, as well as consumers in other New England states, to attend sales presentations at their sales office located on 190 Riverside Drive in Portland, Maine.

60. Defendants used sweepstakes entry forms, which were placed at malls, fairs and other venues, to generate potential leads to consumers whom they contacted to attend a sales presentation.

61. Consumers who entered one of Defendants’ sweepstakes had to disclose their annual household income and sign the entry form which, in fine print, granted Defendants permission to make telemarketing calls to them even if the consumers were registered with the Do Not Call Registry.

62. Defendants used the sweepstakes entry forms to identify consumers who met their specifications for minimum household income and, at times, marital status.

63. Defendants induced consumers who met their specifications to attend their sales presentations through promises of gifts, including free vacations.

64. In truth and in fact, many of these so-called gifts and “free” items were not gifts or free because they had restrictions and conditions that made it impossible for consumers to use, or required them to pay money to obtain the promised benefit.

65. Defendants induced consumers who met their specifications to attend their sales presentations by informing them that the consumers had been specially selected, using language such as, “carefully selected,” “you have been chosen,” or words to that effect, which had a tendency to lead consumers to believe that they had been specially selected by Defendants.

66. In truth and in fact, the consumers had not been specially selected by Defendants, apart from being identified as having met their specifications.

67. Defendants’ typical sales presentation began with a “podium presentation” by one of their sales agents who presented a scripted sales pitch to multiple prospective customers.

68. The podium presentation was designed to cause consumers to visualize taking a no-hassle, economical, family vacation on a regular basis.

69. Defendants’ sales agents and sales materials omitted information that was material to a consumer’s decision to purchase a Club membership, such as the true cost of Club membership over the 40-year term of the contract; that maintenance fees would increase; that they could be required to pay special assessments; that scheduling a vacation at a resort is dependent on points purchased and is subject to availability, which is limited at peak times and locations; that consumers had a 10-day right to cancel; and that it is impossible to resell or cancel a Club membership.

70. Following the podium presentation, consumers met with an individual sales agent who determined what their specific vacation interests were and how much they could afford.

71. Individual sales agents were paid on commission and were under pressure to keep sales numbers high or face termination.

72. Defendants' sales agents represented to consumers that Club members could take vacations at any time and at any of Defendants' resorts of the consumers' choosing every year or every other year, depending on the number of points purchased.

73. In truth and in fact, most Club members have a difficult time scheduling any vacation due to the lack of available timeshares at Defendants' resorts, particularly at peak times and locations. Many consumers have owned their Club membership for years, but they have been unable to schedule a vacation for their first or second choice of time and location.

74. Defendants' sales agents represented to consumers that they would save money on future vacations by purchasing a Club membership.

75. In truth and in fact, consumers did not realize the claimed savings because Defendants' methodology for calculating those savings was flawed, and excluded the cost of maintenance fees and periodic special assessments.

76. Defendants' sales agents represented to consumers that their points would be rolled over to the next year if they did not use them in a year.

77. In truth and in fact, consumers "lost" their points because they were not rolled over automatically, but only if consumers called Defendants within a certain time period to request it.

78. Defendants' sales agents represented to consumers that it would be easy to contact Defendants with questions and to make reservations for a vacation.

79. In truth and in fact, consumers report that it is nearly impossible to get in touch with anyone working for Defendants who will assist them with customer service issues or vacation reservations.

80. When consumers balked at the price, Defendants' sales agents sold them fewer points to get the price into an affordable range, without telling consumers that the amount of points that they were purchasing was not enough to take the vacations described at the podium presentation.

81. If Defendants' sales agent had trouble making a sale, another sales agent, called a takeover person, or "TO," assisted in closing the sale.

82. After the sale was made, Defendants' verification officer, or "VO," completed the required paperwork and had the consumer sign the documents.

83. Defendants' sales agent gave the VO the initial worksheet, who then faxed it to Zealandia, where the closing documents were prepared.

84. The VOs were also paid on commission for sales and had to reimburse Defendants for any commission paid on a purchase that was subsequently cancelled by the consumer.

85. The VOs reported to Defendants at Zealandia.

86. The VOs recorded their portion of the sale by using the phone to log into the corporate server.

COMMON SALES PRACTICES

87. Defendants have trained their Maine sales agents and VOs at Zealandia, either in person or via computer intranet.

88. Upon information and belief, employee training materials, the podium presentation, marketing materials including DVDs and brochures, closing documents, finance decisions, are all produced, reviewed, approved and maintained at Zealandia.

89. Some of Defendants' sales agents and VOs have not understood the points-based membership, while others, under pressure, have omitted giving consumers material information to make a sale.

90. Defendants' training and supervision of their Maine sales agents and VOs have been inadequate, and contribute to a culture which results in misrepresentations to consumers.

91. Defendants' sales presentations create a false sense of urgency by telling consumers that they must buy a Club membership at the initial sales presentation or the deal offered will not be available ever again.

92. Consumers who agree to buy are presented with multiple, and often complex, closing documents to sign that are prepared by Defendants, including a contract that obligates consumers to pay maintenance fees, together with any special assessments, for a period of 40 years.

93. Defendants do not give consumers adequate time to consider their decision to purchase, or to properly review the closing documents.

94. Defendants fail to disclose to consumers the total cost of Club membership, including, for example, the total cost of maintenance fees over the 40-year contract term.

95. Defendants' sales agents represent to consumers, directly and by implication, that they will be able to sell their membership/points if, at any time, they decide that they no longer want to be Club members.

96. In truth and in fact, it is impossible for consumers to sell their membership/points because there is no market for them.

97. When consumers ask for assistance in selling their membership/points, Defendants refer them at times to unscrupulous timeshare resellers.

98. Defendants' sales agents make oral representations to consumers at the point of sale that are inconsistent with Defendants' contract and other documents.

99. Defendants fail to clearly and conspicuously disclose to consumers that maintenance fees increase regularly.

100. Defendants fail to clearly and conspicuously disclose to consumers that additional fees, or "special assessments," can be assessed and billed to Club members.

101. Defendants fail to clearly and conspicuously disclose to consumers that they have a right to cancel the contract within ten calendar days following its execution, pursuant to 33 M.R.S. § 592.

102. Some consumers who contacted Defendants to cancel their contract within ten days found that Defendants failed to honor their requests.

103. Even after consumers become owners, the Association a/k/a Festiva Adventure Club, continues to market additional points and products to them under the guise of informational meetings. An example is attached hereto as Exhibit 1.

COUNT I

(Rangeley Lake Resort Conversions – Deception)

104. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

105. Defendants' sales agents induced Rangeley owners to attend their sales presentations and to convert their timeshares to Club membership by making misrepresentations, such as the purpose of meeting with Defendants' sales agents was informational, their maintenance fees would be lowered or reduced if they converted, converting their timeshares would provide them with greater flexibility and access to more vacation times and locations; and they would be given credit for the "equity" in their timeshares.

106 Defendants' conduct described in this count is deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT II

(Riverside Drive Sales Practices)

107. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

108. Defendants induced consumers to attend sales presentations by promising them a gift or free item that was not a gift or free because it was restricted, conditional or required the consumer to pay something.

109. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT III

(Riverside Drive Sales Practices)

110. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

111. Defendants induced consumers to attend sales presentations by using language that had a tendency to lead consumers to believe that they had been specially selected when they had not been specially selected.

112. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT IV

(Riverside Drive Sales Practices – Misrepresentations)

113. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

114. Defendants' sales agents induced consumers to purchase points for membership in the Club by making misrepresentations, including those concerning the savings that consumers

would realize; the ease and simplicity with which they could book a vacation; the availability of vacations at peak times and locations; the automatic rollover of unused points; and Defendants' responsiveness to customer service issues.

115. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT V

(Riverside Drive Sales Practices - Material Omissions)

116. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

117. Defendants' sales agents and sales materials omitted information that was material to a consumer's decision to purchase, including the true cost of Club membership over the 40-year contract term; that maintenance fees would increase; that they could be required to pay special assessments; that scheduling a vacation is subject to limited availability at peak times and locations; that consumers had a ten-day right to cancel the contract; and that it is impossible to resell or cancel a Club membership.

118. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT VI

(Common Sales Practices - High Pressure Sales Tactics)

119. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

120. Defendants create a false sense of urgency to pressure consumers into buying a Club membership at a sales presentation, and fail to give consumers adequate time to consider their decision and to properly review multiple, and often complex, sales documents before signing them.

121 Defendants' conduct described in this count is unfair in violation of 5 M.R.S. § 207, and is intentional.

COUNT VII

(Common Sales Practices - Failure to Disclose)

122. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

123. Defendants fail to clearly and conspicuously disclose to consumers the total cost of a membership in the Club, including the cost of maintenance fees over the 40-year contract term; that maintenance fees increase regularly; that Club members can be assessed and billed special assessments; that consumers have a 10-day right to cancel their contract; and they do not provide copies of the Association's Articles of Incorporation, By-Laws or Rules and Regulations at or before the time consumers become automatically bound by them.

124. Defendants' conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT VIII

(Common Sales Practices - Misrepresentations)

125. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

126. Defendants' sales agents represent, directly and indirectly, to consumers that they will be able to sell their membership/points if they decide they no longer want to be Club members when, in fact, there is no market for their membership/points.

127. Defendants' conduct as described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT IX

(Common Sales Practices - Contradictory and Inconsistent Statements)

128. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

129. Defendants' sales agents make oral representations to consumers at the point of sale that are inconsistent with, and contradict, Defendants' contract and other printed documents.

130. Defendants' conduct as described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT X

(Common Sales Practices -- Failure to Honor Cancellation Requests)

131. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

132. Defendants have failed to honor consumers' requests to cancel their contract within 10 days following its execution, pursuant to 33 M.R.S. § 592.

133. Defendants' conduct as described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT XI

(Deception -- the Association)

134. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

135. Defendant Association sends Maine consumers notices of informational meetings.

136. In truth and in fact informational meetings are sales presentations where Defendants' sales agents attempt to sell consumers additional points and products.

137. Defendant Association's conduct described in this Count is unfair and deceptive in violation of 5 M.R.S.A. § 207, and is intentional.

COUNT XII

(Unfairness – the Association)

138. Plaintiff repeats and realleges the preceding paragraphs of the Complaint. 139.

Defendant Association does not provide consumers with copies of its Articles of Incorporation, By-laws, Rules and Regulations at or before the time consumers become automatically bound by them.

140. Defendant Association's conduct as described in this Count is unfair and deceptive in violation of 5 M.R.S.A. § 207, and is intentional.

RELIEF REQUESTED

Wherefore, Plaintiff requests that this Court enter the following relief:

1. Declare that Defendants have violated 5 M.R.S. § 207 by:
 - A. Inducing Rangeley owners through the use of misrepresentations to attend sales presentations and to convert their timeshares to Club membership;
 - B. Inducing consumers to attend their sales presentations by promising a gift or free item that is not a gift or free because it is restricted, conditional or requires the payment of money by the consumer,
 - C. Inducing consumers to attend their sales presentations using language that has a tendency to lead consumers to believe that they have been specially selected when they have not been specially selected;
 - D. Inducing consumers through the use of misrepresentations to purchase a Club membership or more points;
 - E. Omitting information that is material to a consumer's decision to purchase a Club membership, including the true cost of Club membership over the

40-year contract term; that maintenance fees will increase; that special assessments may be imposed, that scheduling a vacation is subject to availability which is limited at peak times and locations; that consumers have a right to cancel the contract within ten days of execution; and that it is impossible to resell or cancel a Club membership;

- F. Creating a false sense of urgency to pressure consumers into purchasing a Club membership at their sales presentations, and failing to give consumers adequate time to consider their decision or to review closing documents before execution;
- G. Failing to clearly and conspicuously disclose to consumers the total cost of Club membership over the 40-year contract term; that maintenance fees increase regularly; that Club members may have to pay special assessments; and that consumers have a 10-day right to cancel their contracts;
- H. Representing to consumers that they will be able to sell their membership/points if they choose;
- I. Making oral statements at the point of sale that are inconsistent with, or contradict, their contract or other documents; and
- J. Failing to honor consumers' requests to cancel their contract within 10 days of its execution, pursuant to 33 M.R.S. § 592.

2. Pursuant to 5 M.R.S. § 209 and M.R. Civ. P. 65, permanently enjoin Defendants, their agents, servants, employees, and those persons in active concert or participation with them

who receive actual notice of the injunction from selling Club membership/points in Maine or to Maine consumers.

3. Pursuant to 5 M.R.S. § 209, order Defendants' contracts with Maine consumers and those out-of-state consumers who entered into a contract with Defendants in Maine rescinded, and order Defendants to reimburse each such consumer for payments made to Defendants for Club membership/points, including any interest, maintenance fees and special assessments.

4. Pursuant to 5 M.R.S. § 209, assess a civil penalty, jointly and severally, against Defendants of up to \$10,000 per violation for each intentional violation of the UTPA.

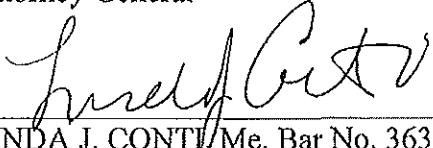
5. Pursuant to 5 M.R.S. § 209 and 14 M.R.S. § 1522(1)(A), order Defendants to pay, jointly and severally, to the Attorney General her costs of suit and investigation, including attorney's fees.

6. Order such other and further relief as the Court may deem necessary to remedy the effects of Defendants' unfair and deceptive business practices.

Dated: October 17, 2014

Respectfully submitted,

JANET T. MILLS
Attorney General



LINDA J. CONTI, Me. Bar No. 3638
CAROLYN A. SILSBY, Me. Bar No. 3030
Assistant Attorneys General
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006
Tel. (207) 626-8800

Attorneys for the State of Maine



Owner Update Meeting Notice

Dear Richard and Sheryl,

We have scheduled an appointment for you to explain the exciting things that are happening with Festiva Adventure Club and/or our affiliate resorts. The appointment will take approximately sixty minutes. We want to ensure that all of our valued owners are updated in-person on all new happenings.

We know that informed owners are happy owners. Also, you will be receiving a \$50 pre-paid Visa card upon completion of your appointment as our way of saying thank you for taking the time to meet with us. *We require all owners on your deed and/or significant other/spouse to attend this important meeting.*

Please check in at the front desk for your appointment. We look forward to meeting with you. If you have any questions regarding scheduling, please call us at (207) 347-3023 (Sunday – Thursday, 3 pm – 9 pm), state that you are an owner, and ask for Alan.

With directional questions on your way to the appointment, please call the Rangeley Lake Resort front desk at (207) 854-3880.

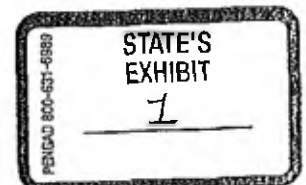
Date: **Saturday, June 8th**

Time: **2 pm**

Location: **Rangeley Lake Resort Grand Lodge**

2222 Main Street

Rangeley, Maine 04970



SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made and entered into by and between the State of Maine (the "State"); Zealandia Holding Company, Inc. ("ZHC"), a Nevada corporation; Festiva Development Group, Inc. ("FDG"), a Nevada corporation; Resort Travel & Xchange, Inc. ("RTX"), a Nevada Corporation; Festiva Real Estate Holdings, LLC ("FREH"), a Nevada limited liability company; Zealandia Capital, Inc. ("ZCap"), a Nevada corporation; Patton Hospitality Management, Inc. ("PHM"), a Nevada corporation; Festiva Resorts Adventure Club Members' Association, Inc. (the "Association"), a South Carolina corporation; Herbert H. Patrick, Jr., an individual residing in Asheville, North Carolina; and Donald K. Clayton, an individual residing in Asheville, North Carolina. Hereinafter ZHC, FDG, RTX, FREH, ZCap, PHM, the Association, Mr. Patrick, and Mr. Clayton will be collectively referred to as the "Defendants." Hereinafter, the State and the Defendants will be collectively referred to as the "Parties"; and the State and each of the Defendants will be referred to as "Party," as the case may be.

WHEREAS, in 2011, the State of Maine began an investigation of the sales and marketing practices for Festiva Adventure Club ("FAC") memberships and in connection therewith sent a survey (the "Survey") to certain FAC members (the "Survey Recipients"), a small number of whom responded to the Survey by stating that they were satisfied with "Festiva" (the "Satisfied Recipients"). Hereinafter, that body of other Survey Recipients shall be referred to as the "Consumers," and a list of the Consumers is attached hereto as Exhibit A;

WHEREAS, on or about November 25, 2013, the State filed a complaint against Defendants, in the Kennebec County Superior Court captioned as *State of Maine v. Zealandia Holding Company, et al.*, currently pending on the Business and Consumer Docket in the Maine Superior Court, Docket No. BCD-CV-14-11 (the "Action"), alleging violations of § 207 of the Maine Unfair Trade Practices Act (5 M.R.S.A. §§ 205-A – 214) in connection with the sale and marketing of FAC memberships and seeking a variety of declaratory and injunctive relief, as well as civil penalties and the costs of the State's investigation;

WHEREAS, the State alleges that Defendants' sales agents induced consumers to purchase such memberships and/or points by using high pressure sales tactics and by making misrepresentations relating to, e.g., the savings that consumers would realize, the ease and simplicity of booking a vacation, the availability of vacations at peak times and locations, and Defendants' responsiveness to consumer service issues; and that Defendants' sales agents and sales materials omitted information that was material to a consumer's decision to purchase including, e.g., the true cost of a FAC membership over the 40-year contract term, that maintenance fees would increase, and that consumers have a ten (10) day right to cancel;

WHEREAS, the State alleges that ZHC, FDG, RTX, FREH, ZCap, PHM, and the Association have operated as a common enterprise while engaging in unfair and deceptive trade practices through an interrelated network of companies;

WHEREAS, the State has alleged that Mr. Patrick and Mr. Clayton have formulated, directed, controlled, had the authority to control, participated in and had knowledge of the acts and practices which the State alleges constitutes the common enterprise;

WHEREAS, FDG contends it is in the business of developing and acquiring timeshare resorts, and is in the business of marketing and selling vacation club memberships in the FAC;

WHEREAS, in connection with selling FAC memberships, FDG contends that it enters into contracts with purchasers in which purchasers agree to purchase FAC memberships together with annual or biennial points (the "FAC Contract") and FDG may extend loans to purchasers of FAC memberships and/or FAC points to allow them to finance a portion of the purchase price for the FAC membership and/or points;

WHEREAS, all FAC members are members of the Association;

WHEREAS, RTX contends it is in the business of providing, among other things, reservation and exchange services to the vacation industry by contract;

WHEREAS, FREH contends it is in the business of owning real estate and leasing real estate to its tenants;

WHEREAS, ZCap contends it is in the business of providing, among other things, collection, billing and account maintenance services to the vacation industry by contract;

WHEREAS, PHM contends it is in the business of providing, among other things, resort management services to component resorts of the FAC;

WHEREAS, the Association was formed in 2006 as a South Carolina non-profit corporation to serve as the association for all members of the FAC;

WHEREAS, ZHC wholly owns FDG, RTX, FREH, ZCap, and PHM as subsidiaries;

WHEREAS, in August 2006, FDG and the Association entered into the Festiva Resorts Adventure Club Trust Agreement and the Declaration for Festiva Resorts Adventure Club, which Defendants contend had the effect of establishing the FAC and creating a trust into which FDG transferred deeded timeshare weeks (the "Trust") to be held by the trustee of the Trust for the benefit of and use by FAC members;

WHEREAS, the Association contends that it is assessed maintenance fees in connection with the deeded timeshare weeks which are held by the Trust and passes such maintenance fees on to and collects them from FAC members;

WHEREAS, in 2008, FDG acquired the unsold deeded timeshare weeks located at the Rangeley Lake Resort ("RLR"), in Rangeley, Maine, and conveyed such inventory to the trustee of the Trust,

WHEREAS, in connection with FDG's acquisition of the unsold deeded timeshare weeks located at the RLR, FDG contends that it also acquired RLR's sales centers located at Riverside Drive in Portland, Maine (the "Portland Sales Location") and at RLR;

WHEREAS, FDG contends that it engaged in marketing and sales of FAC memberships at the Portland Sales Location and at RLR;

WHEREAS, as part of its sale of FAC memberships at the Portland Sales Location and at RLR, FDG contends that it accepted deeded timeshare weeks at RLR and other timeshare resorts owned by purchasers in partial payment for FAC memberships (the "Conversion Transactions");

WHEREAS, after the State initiated the Action, on or about October 17, 2014, the State filed its Third Amended Complaint (the "Third Amended Complaint"), which is the operative complaint in the Action;

WHEREAS, on October 12, 2015, the Parties mediated the Action before Hon. Paul T. Pierson (ret.), and signed a Term Sheet of Settlement, dated October 12, 2015;

WHEREAS, the Parties wish to enter into this Agreement to settle, release and discharge certain claims among them, including those relating to the sale or marketing of any vacation product or services, including but not limited to the marketing or sale of FAC memberships or FAC points, any Conversion Transactions, or the financing of the purchase of FAC memberships or FAC points; any representations or omissions made by Defendants; the collection of amounts owed to Defendants by anyone in connection with the marketing or sale of FAC memberships or FAC points; the establishment of the FAC or Trust; the assessment and collection of maintenance fees or special assessments relating to the FAC; any exchange or reservation services provided to FAC members; any notices sent to persons relating to the FAC; any meetings held with persons relating to the FAC; the FAC; and including any claims which were asserted or which arise out of the facts alleged in the Third Amended Complaint against Defendants in the Action (the "Released Claims");

WHEREAS, this Agreement and the releases contained herein, are the products of mutual negotiation and effects the settlement of the Action;

NOW, THEREFORE, in consideration of the Parties' agreements herein, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties agree as follows:

1. **The State's Release of the Defendants.** In consideration of the undertakings, transactions, and consideration recited in this Agreement, the State hereby unconditionally and irrevocably remises, releases and forever discharges each of the Defendants, and each of their respective past, present and future representatives, administrators, successors, predecessors, assigns, parent companies, members, sister companies, affiliates, subsidiaries, divisions, officers, directors, partners, employees, agents, attorneys, insurers, heirs, assigns and personal representatives (hereinafter the "Released Parties"), of and from any and all suits, arbitrations, claims, demands, interests, costs (including attorneys' fees and costs actually incurred), expenses, actions and causes of action, rights, liabilities, obligations, promises, contracts,

agreements, controversies, losses, grievances, debts, warranties, covenants, damages, variances, judgments, executions, claims and demands, costs, losses, claims for court costs and attorneys' fees, liabilities and obligations of any kind or nature whatsoever matured or unmatured, liquidated or unliquidated, absolute or contingent, known or unknown, in law, in equity, or otherwise, which the State has, now has, or may have against the Released Parties relating to the Released Claims.

2. **Other Consideration.** Among the consideration granted to the State and to the Defendants are the following:

a. **Opportunities for Consumers to Obtain Releases.**

- 1) **Group 1 Consumers.** To each Consumer who indicated dissatisfaction with "sales tactics" on the Survey and who never took a vacation in connection with his or her FAC membership through the use of points and who did not participate in a Conversion Transaction, FDG shall provide the Consumer an opportunity to seek a release from his or her FAC Contract. A list of such Consumers is attached hereto as Exhibit B. For each Consumer who elects to exercise the foregoing opportunity, FDG shall cancel any outstanding loan balances as of the date this Agreement is executed and the Association shall cancel any outstanding maintenance fee amounts owed by the Consumer as of the date this Agreement is executed. FDG shall communicate the foregoing opportunity to each Consumer listed on Exhibit B through a letter accompanied with a release agreement to be executed by the Consumer. The letter and release agreement shall be mutually agreed to between the State and FDG.
- 2) **Group 2 Consumers.** To each Consumer who indicated dissatisfaction with "sales tactics" on the Survey and who never took a vacation in connection with his or her FAC membership through the use of points and who participated in a Conversion Transaction, FDG shall provide the Consumer with an opportunity to elect either (a) an opportunity to seek a release from his or her FAC Contract or (b) an opportunity to seek a release from his or her FAC Contract, the return of his or her original deeded week, and reversion to the Consumer's prior status as a deeded week owner. A list of such Consumers is attached hereto as Exhibit C. For each Consumer who elects to exercise either of the foregoing opportunities, FDG shall cancel any outstanding loan balances as of the date this Agreement is executed and the Association shall cancel any outstanding maintenance fee amounts owed by the Consumer as of the date this Agreement is executed. FDG shall communicate the foregoing opportunity to each Consumer listed on Exhibit C through a letter accompanied with a release

agreement to be executed by the Consumer. The letter and release agreement shall be mutually agreed to between the State and FDG.

- 3) **Group 3 Consumers.** To each Consumer who participated in a Conversion Transaction and who is not described in Sub-Paragraph 2(a)(2) above, FDG shall provide an opportunity to seek a release from his or her FAC Contract, the return of his or her original deeded week, and reversion to the Consumer's prior status as a deeded week owner. A list of such Consumers is attached hereto as Exhibit D. For each Consumer who elects to exercise the foregoing opportunity, FDG shall cancel any outstanding loan balances as of the date this Agreement is executed and the Association shall cancel any outstanding maintenance fee amounts owed by the Consumer as of the date this Agreement is executed. FDG shall communicate the foregoing opportunity to each Consumer listed on Exhibit D through a letter accompanied with a release agreement to be executed by the Consumer. The letter and release agreement shall be mutually agreed to between the State and FDG.
- 4) **Group 4 Consumers.** For each Consumer who owns less than 3200 biennial points in the FAC and who did not participate in a Conversion Transaction, FDG shall provide the rights and opportunities described in Sub-Paragraph 2(a)(1). A list of such Consumers is attached hereto as Exhibit E. FDG shall communicate the foregoing opportunity to each Consumer listed on Exhibit E through a letter accompanied with a release agreement to be executed by the Consumer. The letter and release agreement shall be mutually agreed to between the State and FDG.
- 5) **Group 5 Consumers.** For each Consumer who owns less than 3200 biennial points in the FAC and who participated in a Conversion Transaction, FDG shall provide the rights and opportunities described in Sub-Paragraph 2(a)(2). A list of such Consumers is attached hereto as Exhibit F. FDG shall communicate the foregoing opportunity to each Consumer listed on Exhibit F through a letter accompanied with a release agreement to be executed by the Consumer. The letter and release agreement shall be mutually agreed to between the State and FDG.
- 6) **Group 6 Consumers.** For each Consumer not described in Sub-Paragraphs 2(a)(1) through 2(a)(3), above, FDG shall provide an opportunity for him or her to be released from his or her FAC contract before the end of the 40-year term so long as any loan balances in connection with the purchase and/or upgrade of the Consumer's FAC membership is paid in full and the Consumer is

at all times current on maintenance fees owed to the Association. A list of such Consumers is attached hereto as Exhibit G. Each release granted by FDG in accordance with this Sub-Paragraph shall be effective ten (10) years from the date the Consumer signed his or her FAC contract, but each Consumer who elects such a release shall continue to be bound by his or her FAC contract, including the obligation to pay all required maintenance fees, until the ten (10) year period expires. FDG shall communicate the foregoing opportunity to each Consumer through a letter accompanied with a release agreement to be executed by each Consumer receiving this opportunity. The letter and release agreement shall be mutually agreed to between the State and FDG.

7) **Procedures Relating to Exhibits A through G.** FDG has supplied the information set forth on Exhibits A through G. The State shall inform FDG in writing about any error or omission the State contends appears on Exhibits A through G on or before October 30, 2015. Thereafter, the Parties shall work cooperatively in good faith to resolve any contention made by the State within ten (10) days of the State's notice under this Sub-Paragraph. In the event that the Parties are unable to resolve any contention by the State, the Parties shall rely on the dispute resolution mechanisms set forth in Paragraph 11.

8) **Procedures Relating to Letters and Release Agreements.**

i) Whenever FDG has agreed to communicate to certain Consumers by letter with a release agreement, as described in Sub-Paragraphs 2(a)(1) through 2(a)(6), FDG shall provide such letters and release agreements to the State for its review and approval. FDG shall provide such documents to the State by email and overnight delivery, addressed as follows:

Attn: Linda Conti, AAG
Linda.conti@maine.gov
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006

ii) The State shall have ten (10) days from FDG's transmission of the documents to communicate its position as to approval. If the State does not communicate its position as to approval, FDG shall be entitled to send the letter and release agreement to such Consumers, as the case

may be, as if the State had approved the letter and release agreement.

- iii) With respect to its obligations to provide Consumers with a letter and release agreement, pursuant to Sub-Paragraphs 2(a)(1) through 2(a)(6), above, FDG shall send each such letter and release agreement to each Consumer via certified U.S. Mail, return-receipt requested, or through such other method of communication mutually-agreed upon with the State. *FDG shall send the letter and release agreement to the last-known address for each respective Consumer.*
 - iv) With respect to its obligations to provide Consumers with a letter and release agreement, pursuant to Sub-Paragraphs 2(a)(1) through 2(a)(6), above, FDG shall provide each Consumer 30 days from the date of postmark of such letter and release agreement to execute and return the release agreement.
- b. **Credit Reporting.** FDG shall request credit reporting agencies to delete any trade line(s) relating to amounts owed to FDG for each Consumer. FDG shall provide a certification to the State regarding compliance with this Sub-Paragraph by email to Linda Conti, AAG, at Linda.Conti@maine.gov.
 - c. **Payment to the State.** FDG shall pay the State the amount of \$150,000 to be distributed by the State to Consumers, in the Attorney General's sole discretion.
 - d. **Three (3) Year Covenant Not to Sell.** FDG covenants not to sell any FAC memberships in Maine for three (3) years from the date this Agreement is executed. ZHC also covenants that neither it nor any of its subsidiaries nor any new entity ZHC causes to be created shall sell FAC memberships in Maine for three (3) years. In the event this Sub-Paragraph is breached, FDG agrees to pay liquidated damages to the State in the amount of \$250,000.

3. **Reporting Requirements.**

- a. FDG shall provide the State with an exemplar of any letter and release agreement that it is required to send to Consumers pursuant to Sub-Paragraph 2(a), together with a list of the recipients of such correspondence, within a reasonable time after FDG directs such correspondence to Consumers.
- b. FDG shall cause H. Catherine Claussen, Esq. to serve as the point of contact in connection with FDG's compliance described in this Paragraph

and shall provide reports to the State relating to the same on a weekly basis until FDG's obligations under Paragraphs 2(a) through 2(c) are completed.

- c. Any reporting required in this Paragraph shall be provided to the State via email to Linda Conti, AAG, at Linda.Conti@maine.gov.

4. Dismissal of Action with Prejudice and Without Costs. Upon performance of the obligations identified in Sub-Paragraphs 2(a) through 2(c), the Parties will file a Stipulation of Dismissal with Prejudice and Without Costs, in the form of Exhibit H hereto.

5. Acknowledgments and Representations.

The Parties understand and agree that the acceptance of the consideration referred to in this Agreement herein is in settlement of claims which are disputed and is not to be considered as an admission of fault or liability by any Party, by whom any fault or liability is expressly denied.

The decision by the Parties to enter into this Agreement has not been induced in any way by any other Party or any representative or person acting on behalf of any Party and, further, no Party relies upon any statement or representation made by any other Party or their agent, attorney or any other person representing any other Party in connection herewith.

The Parties each represent that (1) the execution of this Agreement has been duly authorized, and (2) the claims released herein have not been and will not be assigned or otherwise transferred to any person, corporation or other entity.

6. Entire Agreement. This Agreement is contractual in nature, and constitutes the entire agreement among the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, both written and oral, including but not limited to the Term Sheet of Settlement, among the Parties with respect to the subject matter hereof. No other promises or agreements shall be binding or shall modify this Agreement unless signed by the Parties hereto.

7. Amendment. This Agreement may be amended only in a writing signed by the Parties.

8. Severability. If any provision of this Agreement, or the application thereof, becomes or is declared by an arbitrator or court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of this Settlement Agreement will continue in full force and effect. The Parties further agree to replace such void or unenforceable provision of this Settlement Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision

9. Counterparts. This Agreement may be executed by facsimile and in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one agreement binding on the Parties.

10. Rules of Construction. The Parties waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

11. Dispute Resolution.

- a. The Parties agree that this Agreement, and any disputes arising out of it, shall be governed under the laws of the State of Maine, without regard to any choice of law provisions or conflicts of laws principles.
- b. The Parties also agree that for any dispute arising out of this Agreement, including but not limited to any breach of any term of this Agreement, shall entitle the non-breaching Party, at its option, to pursue any available remedy. Any such attempts to enforce this Agreement or any disputes arising under this Agreement shall be resolved through binding arbitration with Hon. Paul T. Pierson (ret.), serving as the arbitrator or another arbitrator mutually agreed upon by the Parties. By agreeing to this provision, the State does not waive its sovereign immunity.

12. Voluntary Act.

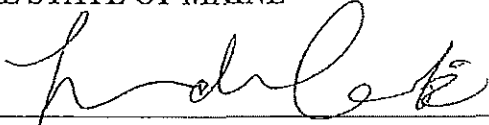
The Parties acknowledge that each of them have carefully read and understand the contents of this Agreement and that each of them signs it as his or its own free act and deed.

IN WITNESS WHEREOF, the Parties have executed this Agreement by affixing their signature below.

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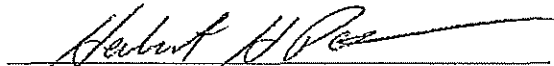
Dated: October 13, 2015

THE STATE OF MAINE



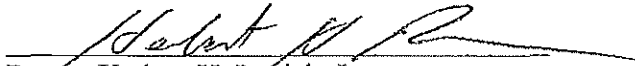
By: Linda Conti, Assistant Attorney General

FESTIVA DEVELOPMENT GROUP, INC.



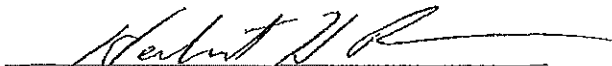
By: Herbert H. Patrick, Jr.
Its President

ZEALANDIA HOLDING COMPAY, INC.



By: Herbert H. Patrick, Jr.
Its President

FESTIVA REAL ESTATE HOLDINGS, LLC by Zealandia Holding Company, Inc., its
sole member



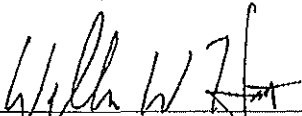
By: Herbert H. Patrick, Jr.
Its President

ZEALANDIA CAPITAL, INC.

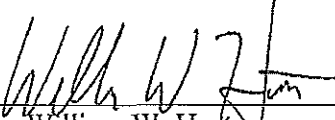


By: H. Catherine Claussen, Esq.,
Its Secretary and Treasurer

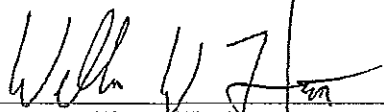
PATTON HOSPITALITY MANAGEMENT, INC.


By: William W. Horton
Its President

RESORT TRAVEL & XCHANGE, INC.


By: William W. Horton
Its President

FESTIVA RESORTS ADVENTURE CLUB MEMBERS' ASSOCIATION, INC. by Patton
Hospitality Management, Inc., its Manager


By: William W. Horton
Its President


HERBERT H. PATRICK, JR.


DONALD K. CLAYTON