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**CHARLES WOLF, on behalf of himself and
all others similarly situated,**

Plaintiff,

v.

**PINE BARRENS GOLF CLUB, LLC;
EMPIRE GOLF MANAGEMENT,
LLC; BERGSTOL ENTERPRISES;
ERIC BERGSTOL; MARK UNGER;
MICHAEL SOMMERFELDT; RUDY
VIRGA; BARBARA IASILLO; ABC
COMPANIES 1-25 (fictitiously named
parties); and JOHN and JANE DOES 1-
25 (fictitiously named parties),**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH
COUNTY**

DOCKET NO.: MON-L-4108-20

Civil Action

FIRST AMENDED COMPLAINT

Plaintiff, **CHARLES WOLF**, individually and on behalf of all others similarly situated,
by way of complaint against **PINE BARRENS GOLF CLUB, LLC; EMPIRE GOLF
MANAGEMENT, LLC; BERGSTOL ENTERPRISES; ERIC BERGSTOL; MARK UNGER;
MICHAEL SOMMERFELDT; RUDY VIRGA; BARBARA IASILLO; ABC COMPANIES 1-
25 (fictitiously named parties); and JOHN and JANE DOES 1-25 (fictitiously named parties))**
(collectively the “**Defendants**”), alleges upon information and belief as follows:

PARTIES

1. Plaintiff, **CHARLES WOLF**, is an individual residing at 2134 First Avenue in the

Township of Wall, County of Monmouth, State of New Jersey. Plaintiff joined **PINE BARRENS GOLF CLUB, LLC (individually “Pine Barrens”)**, as a member in the “Golf Membership” category on or about September 30, 2004.

2. **PINE BARRENS GOLF CLUB, LLC** is a New Jersey Limited Liability Company with its principal offices at 540 South Hope Chapel Road in Jackson Township, County of Ocean, State of New Jersey. Pine Barrens is a golf club featuring golf facilities and social facilities.

3. **EMPIRE GOLF MANAGEMENT, LLC (individually “EMPIRE”)**, is a New York Limited Liability Company with an address listed with the New York Secretary of State at 112 Pomona Road, in the Village of Pomona, County of Rockland, State of New York and at all relevant times was the manager of all operations at Pine Barrens.

4. **BERGSTOL ENTERPRISES**, is a New York Real Estate Developer with an address listed as 475 Route 304 Ste. 1, in New City, County of Rockland, State of New York and at all relevant times was the parent company of EMPIRE.

5. **ERIC BERGSTOL**, is an individual who at all times relevant to the allegations set forth in this complaint was an employee, officer, and/or owner of EMPIRE and/or Bergstol Enterprises.

6. **MARK UNGER**, is an individual who at all times relevant to the allegations set forth in this complaint was an employee and/or an officer of Pine Barrens and/or EMPIRE.

7. **MICHAEL SOMMERFELDT**, is an individual who at all times relevant to the allegations set forth in this complaint was an employee and/or officer of Pine Barrens and/or EMPIRE.

8. **RUDY VIRGA**, is an individual who at all times relevant to the allegations set forth in this complaint was an employee and/or officer of Pine Barrens and/or EMPIRE and was the Director of Operations at Pine Barrens and a resident of New Jersey.

9. **BARBARA IASILLO**, is an individual who at all times relevant to the allegations set forth in this complaint was an employee and/or officer of Pine Barrens and/or EMPIRE and was the General Manager at Pine Barrens and a resident of New Jersey.

10. **ABC COMPANIES 1-25 and JOHN and JANE DOES 1-25**, are business entities and individuals, said names being fictitious, are business entities who at all times relevant to the allegations set forth in this complaint owned, controlled, managed and/or otherwise oversaw operations of Pine Barrens, or are individuals who at all times relevant to the allegations set forth in this complaint were employees and/or officers of Pines Barrens and/or EMPIRE and/or Bergstol Enterprises.

JURISDICTION AND VENUE

11. Jurisdiction is properly laid in this Court in that Defendants, **PINE BARRENS GOLF CLUB, LLC; EMPIRE GOLF MANAGEMENT, LLC; BERGSTOL ENTERPRISES; ERIC BERGSTOL; MARK UNGER; MICHAEL SOMMERFELDT; RUDY VIRGA; BARBARA IASILLO; ABC COMPANIES 1-25 (fictitiously named parties); and JOHN and JANE DOES 1-25 (fictitiously named parties)**, regularly transact business in New Jersey including with residents of Monmouth County, subjecting them to personal jurisdiction in this venue. Pine Barrens is a resident of Ocean County, New Jersey. Class representative Charles Wolf is a resident of Monmouth County. Venue is proper because a party to this action resides in Monmouth County and defendants regularly conduct business with residents of this County.

FACTUAL BACKGROUND AND SUBSTANTIVE ALLEGATIONS

12. Sometime in 1998 Pine Barrens began operations as a public pay-to-play golf course. Sometime thereafter, EMPIRE and/or Bergstol Enterprises purchased Pine Barrens and turned Pine Barrens into a private golf course. In doing so, Pine Barrens, EMPIRE, and/or Begstol Enterprises solicited membership agreements with private citizens.

13. On or about September 30, 2004, Plaintiff entered into an agreement to purchase a private golf membership with Pine Barrens. Plaintiff and Pine Barrens entered into a Membership Plan (hereafter “Membership Agreement”) for a “Golf Membership” category plan.

14. The Membership Agreement that Defendants entered into with Plaintiff and the putative Class Members required Plaintiff and the Putative Class Members to pay joining fees and annual membership dues.

15. The Membership Agreement that Defendants entered into with Plaintiff and the putative Class Members set forth the promise, agreement, and representation by Defendants to keep the best interests at heart of Plaintiff and the putative Class Members.

16. The Membership Agreement that Defendants entered into with Plaintiff and the Putative Class Members set forth the promise, agreement, and representation by Defendants to communicate clearly with Plaintiff and the putative Class Members.

17. The Membership Agreement required Defendants to refund a portion of the membership joining fees upon any members' resignation from Pine Barnes. For individuals who had purchased private golf memberships in the “Golf Membership” category at Pine Barrens, the amount of the membership joining fee that was refundable to any particular member was set forth in a table in each Membership Plan.

18. The Membership Agreement, and specifically the standard Membership Plan, set forth all terms and conditions relevant to all membership joining fees, refunds thereof, and related provisions, as well as the rights, categories, privileges, and benefits of the membership. A copy of the Pine Barrens Membership Plan is attached herein as *Exhibit A*.

19. The Membership Plan’s “Membership Deposit” provision specifically stated that each member would “be required to pay a refundable membership deposit[.]”

20. The Membership Plan’s “Resignation of Membership” provision governing refunds

of membership joining fees stated:

When a member resigns from the Club, the resigned membership will be placed on a waiting list and will be refunded on a first-resigned, first-refunded basis as follows:

(a) At such times as the Club has fewer than 350 active, dues-paying Golf Members, provided there is a resigned membership on the waiting list in a given category, all proceeds from the issuance of every seventh membership in a given category will be used to pay the refunds due resigned members in that category of memberships (the Club shall be entitled to retain the proceeds from the issuance of the other six memberships).

(b) If the Club has 350 or more active, dues-paying Golf Members, all such cash proceeds actually received from the issuance of every membership in the Club in a given category will be used to pay refunds due resigned members in that category, with the member at the top of the resigned list being refunded at such time as the Club has received sufficient funds to pay the full amount of the refund owned to such member.

21. Between 1998 and present, Plaintiff and Putative Class Members purchased private golf memberships from Defendants by completing and signing their respective Membership Agreements, which were subsequently accepted and executed by an authorized representative of and on behalf of Pine Barrens and/or other Defendants, and by paying their respective membership joining fees.

22. By their completion and execution of their respective Membership Agreements, along with Pine Barren and/or other Defendants' acceptance and execution of the Membership Agreements by its authorized representatives, Plaintiff and putative Class Members entered into valid contracts with Pine Barrens and/or other Defendants as governed by the Terms and Conditions of the Membership Agreement.

23. At or before the time of their completion of their Membership Agreements, Defendants provided Plaintiff and putative Class Members with a copy of the Membership Plan.

24. Plaintiff and putative Class Members paid all of their annual membership dues to Pine Barrens and/or other Defendants prior to their respective dates of resignation.

25. Plaintiff resigned from Pine Barrens on December 31, 2015, and putative Class Members resigned from sometime between 1998 to present (the "Membership Resignation Period").

26. Despite the request by each Plaintiff and putative Class Members that Defendants pay them the refundable portion of their respective memberships joining fees, Defendants have failed and/or refused to make payments.

27. Under the “Resignation of Membership” provision of the Membership Plan, Pine Barrens and/or other Defendants were obligated to place the resigned memberships of Plaintiff and putative Class Members on a waiting list and refund the refundable portions of their membership joining fees on a “first-resigned, first-refunded basis.”

28. At all times relevant during the Membership Registration Period, Pine Barrens had three hundred and fifty (350) or more active, dues-paying “Golf Membership” members, obligating Pine Barrens and/or other Defendants under section (b) of the “Registration of Membership” provision of the Membership Plan to use “all cash proceeds actually received from the issuance of every membership in the Club [Pine Barrens]” in the “Golf Membership” category to pay refunds due to former members who resigned their Pine Barrens memberships in the “Golf Membership” category, with the member at the top of the resigned list being refunded as soon as Pine Barrens had received sufficient funds to repay the full amount of the refund owed to such former members.

29. At all times relevant during the Member Registration Period, Pine Barrens and/or other Defendants had received sufficient cash proceeds from the issuance of every membership in the “Golf Membership” category, including, but not limited to, membership joining fees and membership dues, to pay the full amount of the refunds owed to Plaintiff and putative Class Members.

30. At all relevant times during the Membership Period, Defendants failed to count all the “active, dues-paying ‘Golf Members’” when calculating whether Pine Barrens had more or less than three hundred and fifty (350) active, dues-paying “Golf Members” and therefore erroneously processed refunds under section (a) of the “Resignation of Membership” provision of the Membership Plan and/or failed to process refunds whatsoever.

31. If Defendants had counted all “active, dues-paying ‘Golf Members’” when calculating whether Pine Barrens had more or less than three hundred and fifty (350) active, dues-paying “Golf Members,” Defendants would have been obligated to process refunds under section (b) of the “Resignation of Membership” provision of the Membership Plan which would have then obligated Pine Barrens and/or other Defendants under the terms of the Membership Agreement to pay Plaintiff and each putative Class Member the full refundable amount of their membership joining fees.

32. The provision of the Membership Plan entitled “Membership Joining Fee Required To Acquire A Membership” required Pine Barrens and/or other Defendants to charge a membership joining fee to each person purchasing a membership at Pine Barrens.

33. On information and belief, on or after 1998, Pine Barrens and/or other Defendants did not charge a membership joining fee to each person purchasing a secondary, junior, weekday, junior executive, legacy, high school, trade or flex business membership in the “Golf Membership” category at Pine Barrens. Such action artificially limited the pool of available funds which could be used to reimburse members who left prior to the thirty-year (30) period in the Membership Agreement, which would trigger the refund to such members. Defendants made this decision to maximize the profits Pine Barrens would receive from membership dues to be paid by incoming members, despite the negative effect this had on the source of funds available to refund resigning members in the “Golf Membership” category.

34. The effect of Pine Barrens and/or other Defendants' failure to charge each person purchasing such memberships in the “Golf Membership” category at Pine Barrens was to reduce cash proceeds from which refunds could be paid to members on the resigned members list in the “Golf Membership” category, including Plaintiff and the putative Class Members.

35. On information and belief, on and after 1998, Pine Barrens and/or Defendants did not charge a membership joining fee to each person purchasing a primary membership in the “Golf Membership” category at Pine Barrens. Defendants made this decision to maximize the profits Pine Barrens would receive from membership dues to be paid by incoming members, despite the negative effect this had on the source of funds available to refund resigning members in the “Golf Membership” category.

36. The effect of Defendants' failure to charge a membership joining fee on and after 1998 to each person purchasing a primary membership in the “Golf Membership” category at Pine Barrens was to eliminate future cash proceeds from which refunds could be paid to members on the resigned members list, including Plaintiff and the putative Class Members.

37. On information and belief, at all relevant times, Pine Barrens and/or other Defendants administered the Membership Plan’s “Resignation of Membership” provision governing refunds so as to restrict the source of refunds to be paid to resigning members in the “Golf Membership” category solely to funds constituting membership joining fees received by Defendants from the issuance of memberships to primary members in the “Golf Membership” category after the resignation date of that particular member, thereby excluding from the pool of monies available for refunds to these resigned members: (1) all membership joining fees proceeds received by Defendants for the issuance of memberships in the “Golf Membership” category other than for primary memberships; (2) all memberships joining fees proceeds received by Defendants for the issuance of primary memberships in the “Golf Membership” category prior to the date of resignation of the resigned member; and (3) all membership dues paid by members in the “Golf Membership” category, thereby reducing and ultimately eliminating any monies from which refunds could be paid to members on the resigned members list pursuant to section (b) of the “Resignation of Membership” provision of the Membership Plan, including Plaintiff and putative Class Members.

38. In the alternative, to the extent there were times during the Membership Resignation Period, when Pine Barrens had less than three hundred and fifty (350) active, dues-paying members in the "Golf Membership" category, and therefore section (a) of the "Resignation of Membership" provision of the Membership Plan applied to refunds due to resigning members, Pine Barrens and/or other Defendants were obligated to use all cash proceeds actually received from the issuance of every seventh membership in the Club [Pine Barrens] in the "Golf Membership" category to pay refunds due to former members who resigned their Pine Barrens memberships in the "Golf Membership" category.

39. At all relevant times during the Membership Resignation Period, Defendants had received sufficient cash proceeds from the issuance of every seventh membership in the "Golf Membership" category, including but not limited to membership joining fees and membership dues, to pay the full amount of the refunds owed to Plaintiff and putative Class Members and has failed to do so in accordance with the Membership Plan.

40. The effect of Defendants' administration of the Membership Plan's "Resignation of Membership" provision governing refunds, to restrict the source of refunds to be paid to resigning members in the "Golf Membership" category solely to funds constituting membership joining fees received by Defendant from the issuance of memberships to primary members in the "Golf Membership" category after the date of the resignation date of that particular member, was to reduce, and ultimately eliminate, monies from which refunds could be paid to members on the resigned members list pursuant section (a) of the "Resignation of Membership" provision of the Membership Plan, including Plaintiff and putative Class Members.

41. Defendants misrepresented to, intentionally concealed from, and/or fraudulently presented to Plaintiff and the putative Class Members that they would process

refunds of membership joining fees in accordance with the Terms and Conditions of the Membership Agreements, including representing that they would accurately count active dues paying golf members in the "Golf Membership" category for purposes of determining whether the refund would be processed under section (a) or section (b) of the Membership Plan's "Resignation of Membership" provision governing refunds of membership joining fees.

42. Defendants misrepresented to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that at all times during the Membership Resignation Period Pine Barrens had less than three hundred and fifty (350) active, dues-paying "Golf Members" members.

43. Defendants intentionally did not disclose to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that at all times during the Membership Resignation Period Pine Barrens had more than three hundred and fifty (350) active, dues-paying Golf members.

44. Defendants intentionally did not disclose to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that they only counted primary golf members in the "Golf Membership" category for purposes of determining the number of active dues paying golf members, which in turn dictated whether the refund would be processed under section (a) or section (b) of the Membership Plan's "Resignation of Membership" provision governing refunds of membership joining fees.

45. Defendants intentionally did not disclose to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that they did not count primary secondary members, primary junior members,

weekday members, weekday secondary members, weekday junior members, junior executive members, junior executive secondary members, legacy members, high school members, trade members or flex business members for purposes of determining the count of active dues paying golf members, even though Defendants knew that all of these members were in fact active dues paying golf members in the "Golf Membership" category.

46. Defendants misrepresented to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that they would process refunds of membership joining fees in accordance with the terms and conditions of the Membership Agreements, including charging a membership joining fee to each person purchasing a membership in the "Golf Membership" category at Pine Barrens.

47. Defendants intentionally did not disclose to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that they did not charge a membership joining fee to each person purchasing a membership in the "Golf Membership" category at Pine Barrens and intentionally did not disclose to Plaintiff and the putative Class Members that the effect of Defendants' failure to charge a membership joining fee to each person purchasing a "Golf Membership" at Pine Barrens was to reduce future cash proceeds from which refunds could be paid to members on the resigned members list, including Plaintiff and the putative Class Members.

48. Defendants intentionally did not disclose to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that they made this decision to maximize the profits Defendants would receive from membership dues to be paid by incoming members, despite the negative effect this had on the source of funds available to refund resigning members in the "Golf Membership" category.

49. Defendants misrepresented to Plaintiff and the putative Class Members, that Defendants would process refunds of membership joining fees in accordance with the terms and conditions of the Membership Agreements, including charging a membership joining fee to each person purchasing a primary membership in the "Golf Membership" category at Pine Barrens.

50. Defendants intentionally did not disclose to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that on and after 1998, they did not charge a membership joining fee to each person purchasing a primary membership in the "Golf Membership" category at Pine Barrens and intentionally did not disclose to Plaintiff and the putative Class Members that the effect of Defendants' failure to charge a membership joining fee to each person purchasing a primary membership in the "Golf Membership" category at Pine Barrens on and after 1998 was to eliminate future cash proceeds from which refunds could be paid to members on the resigned members list, including Plaintiff and the putative Class Members.

51. Defendants intentionally did not disclose to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that they made this decision to maximize the profits Defendants would receive from membership dues to be paid by incoming primary "Golf Members," despite the negative effect this had on the source of funds available to refund resigning in the "Golf Membership" category.

52. Defendants misrepresented to Plaintiff and the putative Class Members, that they would process refunds of membership joining fees in accordance with the terms and conditions of the Membership Agreements, including using all cash proceeds actually received from the issuance of every membership at Pine Barrens in the "Golf Membership" category to pay refunds due resigned members in that category.

53. Defendants intentionally did not disclose to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that they administered the Membership Plan's "Resignation of Membership" provision governing refunds so as to restrict the source of refunds to be paid to resigning members in the "Golf Membership" category solely to funds constituting membership joining fees received by Defendants from the issuance of memberships to primary members in the "Golf Membership" category after the date of the resignation date of that particular member, thereby excluding from the pool of monies available for refunds to these resigned members; (a) all membership joining fees proceeds received by Pine Barrens for the issuance of memberships in the "Golf Membership" category other than for primary memberships; (b) all membership joining fees proceeds received by Pine Barrens for the issuance of primary memberships in the "Golf Membership" category prior to the date of resignation of the resigned member; and (c) all membership dues paid by members in the "Golf Membership" category.

54. Defendants intentionally did not disclose to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that the effect of Defendants' administration of the Membership Plan's "Resignation of Membership" provision governing refunds, to restrict the source of refunds to be paid to resigning members in the "Golf Membership" category solely to funds constituting membership joining fees received by Defendants from the issuance of memberships to primary members in the "Golf Membership" category after the date of the resignation date of that particular member, was to reduce and ultimately eliminate any monies from which refunds could be paid to members on the resigned members list pursuant either section (a) or section (b) of the "Resignation of Membership" provision of the Membership Plan, including Plaintiff and putative Class Members.

55. Defendants employed numerous purposefully vague and undefined terms, phrases and clauses in the Membership Agreements, including but not limited to "Golf Member," "given category" and "all proceeds," and used other internally inconsistent references to "initiation fees" and "membership deposits," each of which was misleading or had the capacity to mislead, to permit them to administer Pine Barrens' refund policy in an unlawful, unconscionable, misrepresentative, fraudulent, and/or deceptive manner that would be to the maximum financial advantage of Defendants and to the maximum financial disadvantage of Plaintiff and putative Class Members.

56. At all relevant times Defendants purposefully concealed their unlawful, unconscionable, misrepresentative, misleading, fraudulent and/or deceptive administration of Pine Barrens' refund policy and misrepresented to Plaintiff and putative Class Members that it was administering Pine Barrens' refund policy in a manner in strict adherence to the Terms and Conditions of the Membership Agreements and that Plaintiff and putative Class Members had been properly placed on the refund waiting list and would receive their refunds at the proper time as prescribed by the terms and conditions of the Membership Agreements.

57. At all relevant times, Defendants encouraged and engaged in unlawful, unconscionable, misrepresentative, fraudulent and/or deceptive business practices in connection with the sale and/or advertisement of the Membership Agreements in violation of the New Jersey Consumer Fraud Act (the "CFA"), *N.J.S.A. 56:8-1 et seq.*

TOLLING OF THE LIMITATIONS PERIOD

58. Defendants' misrepresentations and intentional non-disclosure and purposeful concealment of the conduct as set forth above in paragraphs 12 through 57 of this Complaint continuously tolls the commencement of the limitations period to file these claims.

59. The earliest date upon which Plaintiff and putative Class Members first received information regarding the conduct of the Defendants' as set forth above is from the date that this Complaint is filed.

CLASS ACTION ALLEGATIONS

60. Plaintiff brings this action on behalf of themselves and all other persons similarly situated, pursuant to *R. 4:32-1, et seq.*

61. The Class which Plaintiff seeks to represent is defined as:

Any person or entity who paid Pine Barrens Golf Course a membership deposit and/or joining fee, a portion of which was refundable upon resignation from Pine Barrens Golf Course on the terms and conditions set forth in their respective membership agreements with Pine Barrens Golf Course, their respective successors-in-interest, successors, predecessors-in-interest, predecessors, agents, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them and which includes Former Member Class Members and Current Member Class Members identified herein (the "Class").

Excluded from this Class are any person, firm, trust, corporation, or other entity related to or affiliated with Defendants, and any member who, prior to July 1, 2021, has already been paid a refund by Pine Barrens ("Previously Paid Members").

NUMEROSITY

62. The members of the Class are so numerous that joinder of all members is impractical. The precise number of Class members can only be ascertained through discovery, which includes Pine Barrens membership records. The disposition of their claims through a class action will benefit both the parties and this Court. Upon information and belief, there are hundreds of former members of Pine Barrens who resigned their memberships during the Membership Resignation Period and are within the Class.

COMMON QUESTIONS OF LAW AND FACT

63. There is a well-defined community of common interest in the questions of law and fact involved affecting the members of the Class.

64. Pursuant to *R. 4:32-l(b)(3)*, the questions of law and fact common to the Class predominate over questions which may affect individual members, and include the following:

- (a) Whether a valid contract existed between Defendants and Plaintiff and putative Class Members;
- (b) Whether Defendants engaged in unlawful, unconscionable, misrepresentative, misleading, fraudulent and/or deceptive business practices in connection with the sale and/or advertisement of the golf memberships in violation of New Jersey Consumer Fraud Act *N.J.S.A. 56:8-1 et seq.*;
- (c) Whether Defendants' conduct constitutes a breach of contract;
- (d) Whether Defendants' conduct violates the implied covenant of good faith and fair dealing implied in the Membership Agreements;
- (e) Whether Defendants undercounted the number of "active, dues-paying 'Golf Members'" for purposes of the resigned membership refunds and misrepresented same to Plaintiff and putative Class Members;
- (f) What was and/or is the number of "active, dues-paying 'Golf Members'" at Pine Barrens during the Membership Resignation Period for purposes of processing resigned former member refunds of their membership joining fees;
- (g) Whether Defendants had received sufficient cash proceeds to issue refunds to Plaintiff and putative Class Members under section (a) of the "Resignation of Membership" provision of the Membership Plan;
- (h) Whether Defendants had received sufficient cash proceeds to issue refunds to Plaintiff and putative Class Members under section (b) of the "Resignation of Membership" provision of the Membership Plan;
- (i) Whether Defendants failed to charge a membership joining fee to each person purchasing a membership in the "Golf Membership" category at Pine Barrens, and whether the effect of such failure was to reduce the source of funds from which refunds should have been paid to members on the resigned members list;
- (j) Whether on and after 1998, Defendants failed to charge a membership joining fee to each person purchasing a primary membership in the "Golf Membership" category at Pine Barrens, and whether the effect of such failure was to eliminate the source of funds from which refunds should have been paid to members on the resigned members list;
- (k) Whether Defendants administered its refund policy so as to restrict the source of refunds to be paid to resigning members in the "Golf Membership" category solely to funds constituting membership joining fees received by Pine Barrens from the issuance of memberships to primary members in the "Golf Membership" category after the date of the resignation date of that particular member, thereby reducing or eliminating any monies from which refunds could be paid to members on the resigned members list;
- (l) Whether Defendants made the misrepresentations to Plaintiff and putative Class Members as set forth in paragraphs 41, 42, 46, 49 and 52 of this complaint,
- (m) Whether Pine Barrens did not disclose and/or intentionally did not disclose to Plaintiff and putative Class Members those matters set forth in paragraphs 43, 44, 45, 47, 48, 50, 51, 53 and 54 of this Complaint;
- (n) Whether Defendants employed numerous purposefully vague and undefined terms, phrases and clauses in the Membership Agreements, to permit Pine Barrens

to administer its refund policy in an unlawful, unconscionable, misrepresentative, fraudulent, and/or deceptive manner as set forth in paragraph 55 of this complaint;
 (o) Whether Defendants purposefully concealed their duplicitous administration of Pine Barrens refund policy and misrepresented to Plaintiff and putative Class Members that they were administering Pine Barrens refund policy in a manner in strict adherence to the terms and conditions of the Membership Agreements and that Plaintiff and putative Class Members had been properly placed on the refund waiting list and would receive their refunds at the proper time as prescribed by the terms and conditions of the Membership Agreements.

(p) Whether EMPIRE and the individual Defendants encouraged and engaged in unlawful, unconscionable, misrepresentative, fraudulent and/or deceptive business practices in connection with the sale and/or advertisement of the Membership Agreement in violation of the CFA.

65. Because members of the Class are numerous and similarly situated, and questions of law and fact common to the Class predominate, a class action is superior to any other available methods for the fair and efficient adjudication of the controversy.

TYPICALITY

66. The claims and defenses of Plaintiff, as the representative Plaintiff, are typical of the claims and defenses of the class because Plaintiff and the Class Members all purchased a membership in the "Golf Membership" category at Pines Barrens, were governed by identical provisions of the Membership Plan relating to membership joining fees, refunds thereof and related terms and were later improperly denied a refund by Defendants of the refundable portion of their membership joining fees due under their Membership Agreements following the resignation of their Pine Barrens membership as a result of the conduct, actions and omissions of the Defendants.

ADEQUACY OF REPRESENTATION

67. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action litigation and intends to prosecute this action vigorously. Plaintiff is a member of the Class described herein and does not have interests antagonistic to, or in conflict with, the other members

of the Class. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class were subjected to Defendants' common course of conduct.

PREDOMINANCE

68. Questions common to the Class predominate over those which only affect individual former Pine Barrens members. This case involves an identical Membership Plan containing all the Terms and Conditions relevant to refunds of membership joining fees and related terms, which Membership Plan is incorporated into all of the Membership Agreements entered into by all Class members with Defendants and the identical conduct of Defendants in administering Pine Barrens' refund policies with respect to its former members in the "Golf Membership" category of membership. Liability will primarily be predicated upon the jury's evaluation of the Membership Plan and Defendants' actions, omissions and conduct in connection with the administration of its refund policy.

SUPERIORITY

69. A class action provides a fair and efficient method for the adjudication of controversy for the following reasons:

- (a) The common questions of law and fact set forth in Paragraph 64 predominate over any questions affecting only individual Class Members;
- (b) The Class is so numerous as to make joinder impracticable. The Class, however, is not so numerous as to create manageability problems. There are no unusual legal or factual issues which would create manageability problems;
- (c) Prosecution of a separate action by individual members of the Class would create a risk of inconsistent and varying adjudications against Defendants and would establish incompatible standards of conduct for Defendants;
- (d) The claims of the individual Class members are small in relation to the expenses of litigation, making a class action the only procedure in which Class members can, as a practical matter, recover.
- (e) A class action would be superior to and more efficient than adjudicating hundreds of individual lawsuits.
- (f) Defendants have acted and refused to act in a manner generally applicable to all members of the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with the respect the class as a whole.

COUNT ONE

70. Plaintiff and putative Class Members hereby incorporate by reference the allegations contained in all prior and subsequent paragraphs of this complaint as though set forth fully herein.

71. The New Jersey Consumer Fraud Act ("CFA") states in pertinent part as follows:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice

N.J.S.A. 56:8-2.

72. Defendants, **PINE BARRENS GOLF CLUB, LLC; EMPIRE GOLF MANAGEMENT, LLC; BERGSTOL ENTERPRISES; ERIC BERGSTOL; MARK UNGER; MICHAEL SOMMERFELDT; RUDY VIRGA; BARBARA IASILLO; ABC COMPANIES 1-25 (fictitiously named parties); and JOHN and JANE DOES 1-25 (fictitiously named parties)**, are each a "person" subject to the CFA pursuant to *N.J.S.A. 56:8-1(d)*.

73. The private golf memberships sold by Defendants to Plaintiff and putative Class Members, as set forth above, constitute "merchandise" under the CFA pursuant to *N.J.S.A. 56:8-1(c)*.

74. The Membership Agreements, including the Membership Plan, which Defendants provided to Plaintiff and putative Class Members all contained provisions, and statements, including the refund or "Resignation of Membership" provision, that constituted misrepresentations, were fraudulent, made under false pretense, were deceptive and/or had the capacity to mislead Plaintiff and putative Class Members regarding Defendants' refund policy and the administration of its refund policy in connection with the membership joining fees paid to Defendants, in violation of the CFA.

75. Defendants violated the CFA by engaging in conduct which, either singly or in combination, constitutes unconscionable commercial practices which were deceptive, fraudulent,

misrepresentative, and/or had the capacity to mislead, and/or intentionally omitted material facts intending for the Plaintiff and putative Class Members who relied upon such concealment, suppression or omission, in connection with the sale and advertisement of the private golf memberships at Pine Barrens to Plaintiff, and putative Class Members, including but not limited to the following:

- (a) Misrepresenting to Plaintiff and the putative Class Members that Defendants would accurately and timely process refunds of membership joining fees in accordance with the terms and conditions of the Membership Agreements, including representing accurately counting all active, dues-paying Golf members;
- (b) Misrepresenting to Plaintiff and the putative Class Members that at all times during the Membership Resignation Period Pine Barrens had less than three hundred and fifty (350) active, dues-paying "Golf Members" members.
- (c) Intentionally not disclosing to Plaintiff and the putative Class Members that at all times during the Membership Resignation Period Pine Barrens had more than three hundred and fifty (350) active, dues-paying "Golf Members" members.
- (d) Intentionally not disclosing to Plaintiff and the putative Class Members that Defendants only counted primary golf members in the "Golf Membership" category for purposes of determining the number of active dues paying golf members, which in turn dictated whether the refund would be processed under section (a) or section (b) of the Membership Plan's "Resignation of Membership" provision governing refunds of membership joining fees.
- (e) Intentionally not disclosing to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that Defendants did not count primary secondary members, primary junior members, weekday members, weekday secondary members, weekday junior members, junior executive members, junior executive secondary members, legacy members, high school members, trade members or flex business members for purposes of determining the count of active dues paying golf members, even though Defendants knew that all of these members were in fact active dues paying golf members in the "Golf Membership" category.
- (f) Misrepresenting to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that Defendants would process refunds of membership joining fees in accordance with the terms and conditions of the Membership Agreements, including charging a membership joining fee to each person purchasing a membership in the "Golf Membership" category at Pine Barrens;
- (g) Intentionally not disclosing to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that Defendants did not charge a membership joining fee to each person purchasing a membership in the "Golf Membership" category at Pine Barrens;
- (h) Intentionally not disclosing to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that

the effect of Defendants' failure to charge a membership joining fee to each person purchasing a "Golf Membership" at Pine Barren was to reduce future cash proceeds from which refunds could be paid to members on the resigned members list, including Plaintiff and the putative Class Members;

(i) Intentionally not disclosing to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that Defendants had made this decision to maximize the profits Defendants would receive from membership dues to be paid by incoming members, despite the negative effect this had on the source of funds available to refund resigning in the "Golf Membership" category;

(j) Misrepresenting to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that Defendants would process refunds of membership joining fees in accordance with the terms and conditions of the Membership Agreements, including charging a membership joining fee to each person purchasing a primary membership in the "Golf Membership" category at Pine Barrens;

(k) Intentionally not disclosing to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that on and after 1998, Defendants did not charge a membership joining fee to each person purchasing a primary membership in the "Golf Membership" category at Pine Barrens;

(l) Intentionally not disclosing to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, what the effect of Defendants' failure to charge a membership joining fee to each person purchasing a primary membership in the "Golf Membership" category at Pine Barrens on and after 1998 was to eliminate future cash proceeds from which refunds could be paid to members on the resigned members list, including Plaintiff and the putative Class Members;

(m) Intentionally not disclosing to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that Defendants had made this decision to maximize the profits Defendants would receive from membership dues to be paid by incoming primary golf members, despite the negative effect this had on the source of funds available to refund resigning in the "Golf Membership" category;

(n) Misrepresenting to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that Defendants would process refunds of membership joining fees in accordance with the terms and conditions of the Membership Agreements, including using all cash proceeds actually received from the issuance of every membership at Pine Barrens in the "Golf Membership" category to pay refunds due resigned members in that category;

(o) Intentionally not disclosing to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that they had administered the Membership Plan's "Resignation of Membership" provision governing refunds so as to restrict the source of refunds to be paid to resigning members in the "Golf Membership" category solely to funds constituting membership joining fees received by Defendants from the issuance of memberships

to primary members in the "Golf Membership" category after the date of the resignation date of that particular member;

(p) Intentionally not disclosing to Plaintiff and the putative Class Members, with the intent that Plaintiff and the putative Class Members would rely on this omission, that the effect of Defendants' administration of the Membership Plan's "Resignation of Membership" provision governing refunds, to restrict the source of refunds to be paid to resigning members in the "Golf Membership" category solely to funds constituting membership joining fees received by Defendants from the issuance of memberships to primary members in the "Golf Membership" category after the date of the resignation date of that particular member, was to reduce and ultimately eliminate any monies from which refunds could be paid to members on the resigned members list pursuant to either section (a) or section (b) of the "Resignation of Membership" provision of the Membership Plan, including Plaintiff and putative Class Members;

(q) Employing numerous purposefully vague and undefined terms, phrases and clauses in the Membership Agreements, including but not limited to "Golf Member," "given category" and "all proceeds," and internally inconsistent references to "initiation fees" and "membership deposits," each of which was misleading or had a capacity to mislead;

(r) Administering Pine Barrens' refund policy in a unlawful, unconscionable, misrepresentative, fraudulent and/or deceptive manner that was to the maximum financial advantage of Pine Barrens and Empire and their respective owners and to the maximum financial disadvantage of Plaintiff and putative Class Members;

(s) Using the terms "membership deposit" and "initiation fee" in a misleading and inconsistent manner in the Membership Agreement with a capacity to mislead;

(t) Defining categories of membership in the Membership Agreement and then implemented policies inconsistent with those definitions; and

(u) Purposefully concealing their duplicitous administration of Pine Barrens' refund policy and misrepresenting to Plaintiff and putative Class Members that they were administering Pine Barrens' refund policy in a manner in strict adherence to the terms and conditions of the Membership Agreements and that Plaintiff and putative Class Members had been properly placed on the refund waiting list and would receive their refunds at the proper time as prescribed by the terms and conditions of the Membership Agreements.

76. Defendants are jointly and severally liable with Pine Barrens under the CFA for their conduct in encouraging, facilitating, taking a blind eye toward, causing and/or fully and/or actively participating in Pine Barrens' and/or other Defendants' conduct as set forth above, including but not limited to the fraud, deception, and/or misrepresentations to and intentional omission and/or purposeful concealment of such conduct from Plaintiff and putative Class Members.

77 As a direct and proximate result of the violations of the CFA by the Defendants as set forth above, Plaintiff and putative Class Members have sustained ascertainable loss and damages,

including but not limited to the loss of the refundable portion of the membership joining fee each of them paid as identified in their respective Membership Agreements, attorneys' fees and costs to prosecute this claim.

78. *N.J.S.A. 56:8-2.11* provides: "Any person violating the provisions of the within Act shall be liable for a refund of all money acquired by means of any practice declared herein to be unlawful."

79. As a direct and proximate result of the Defendants' violations of the CFA as set forth above, Defendants acquired the membership joining fees paid by Plaintiff and putative Class Members or after the respective dates they purchased private golf memberships at Pine Barrens.

80. Pursuant to *N.J.S.A. 56:8-2.11*, Defendants are liable to refund to Plaintiff the entire amount of the membership joining fees paid by each of the Plaintiff and putative Class Members to Pine Barrens.

WHEREFORE, Plaintiff and putative Class Members demand judgment in their favor and against Defendants, jointly and severally, pursuant to *N.J.S.A. 56:8-2.11* for a refund of the entire amount of the membership joining fees paid by Plaintiff and putative Class Members to Pine Barrens, reasonable attorneys' fees and costs of suit pursuant to *N.J.S.A. 56:8-19*, pre-judgment interest, post-judgment interest, punitive damages, and such other relief as this Court may deem equitable and just.

COUNT TWO

81. Plaintiff and putative Class Members hereby incorporate by reference the allegations contained in all prior and subsequent paragraphs of this complaint as though set forth fully herein.

82. The Membership Agreements which Defendants entered into with Plaintiff and putative Class Members constitute valid and enforceable contracts.

83. Plaintiff and putative Class Members performed all of their obligations to Defendants under their respective Membership Agreements and in accordance with the provisions of the Membership Agreement.

84. Defendants has failed to comply with its obligations under the Membership Agreements and in accordance with the provisions of the Membership Agreements.

85. Defendants' failures to comply with its obligations under the Membership Agreements and in accordance with the provisions of the Membership Agreements constitute a breach of the Membership Agreements. Specifically, Defendants have breached the Membership Agreements by:

- (a) Failing to pay the Plaintiff and putative Class Members the refundable portions of their respective refundable joining fees;
- (b) Failing to count all "active, dues-paying 'Golf Members'" when calculating whether Pine Barrens had more or less than three hundred and fifty (350) active, dues-paying "Golf Members";
- (c) Processing refunds under section (a) of the "Resignation of Membership" provision of the Membership Plan when the refunds should have been processed under section (b) of the "Resignation of Membership" provision of the Membership Plan;
- (d) Failing to charge a membership joining fee to each person purchasing a membership in the "Golf Membership" category at Pine Barrens;
- (e) Failing to charge a membership joining fee to each person purchasing a primary membership in the "Golf Membership" category at Pine Barrens on or after 1998;
- (f) Restricting the source of refunds to be paid to resigning members in the "Golf Membership" category solely to funds constituting membership joining fees received by Defendants from the issuance of memberships to primary members in the "Golf Membership" category after the date of the resignation date of that particular member;
- (g) Failing to keep the best interests of Plaintiff and putative Class Members at heart in administering the Pine Barrens' refund policy; and
- (h) Failing to communicate clearly with Plaintiff and putative Class Members in connection with the Pine Barrens refund policy and Defendants' administration of the refund policy.
- (i) Failing to accurately and timely process refunds under either section (a) or (b) of the "Resignation of Membership" provision of the Membership Plan

86. The Membership Agreements which Defendants entered into with Plaintiff and putative Class Members, obligated Defendants to pay upon their resignation the refundable portion of the membership joining fee paid by Plaintiff and putative Class Members, as identified in their

respective Membership Agreements, in accordance with the terms and conditions governing refunds of membership joining fees.

87. Despite demand by Plaintiff and putative Class Members, Defendants have failed and refused to pay Plaintiff and putative Class Members the refundable portion of the membership joining fee Plaintiff and putative Class Members paid Defendants, thereby breaching the Membership Agreements.

88. As a direct and proximate cause of Defendants' breach of the Membership Agreements as set forth above, Defendants impermissibly relied on and has impermissibly retained membership dues causing Plaintiff and putative Class Members to sustain damages, including the refundable portion of the membership joining fee due to them upon resignation, as identified in their respective Membership Agreements.

WHEREFORE, Plaintiff and putative Class Members demand judgment in their favor and against Pine Barrens for the refundable portion of the membership joining fee Plaintiff and putative Class Members paid Pine Barrens, as identified in their respective Membership Agreements, plus court costs, pre-judgment interest, post-judgment interest, punitive damages, and such other relief as this Court may deem equitable and just.

COUNT FOUR

89. Plaintiff and putative Class Members hereby incorporate by reference the allegations contained in all prior and subsequent paragraphs of this complaint as though set forth fully herein.

90. Defendants' conduct as set forth above are inconsistent with bargained for rights of Plaintiff and putative Class Members under the Membership Agreements.

91. Defendants' conduct as set forth above in failing and refusing to perform under the Membership Agreement has deprived Plaintiff and putative Class Members of the benefit of their bargained for exchange of the Membership Agreements.

92. Defendants' conduct as set forth above in failing and refusing to perform under the Membership Agreements has frustrated the purpose of the Membership Agreements.

93. Defendants' conduct as set forth above was committed in bad faith and in order to frustrate the purpose of the Membership Agreements and deny Plaintiff and putative Class Members the refund payments due to them under Membership Agreement. Accordingly, these actions were in violation of the covenant of good faith and fair dealing implied in every New Jersey contract, including the Membership Agreements .

94. As a proximate result of Defendants' breach of the implied covenant of good faith and fair dealing as described above, Plaintiff and putative Class Members have sustained damages, including the refundable portion of the membership joining fee Plaintiff and putative Class Members paid Pine Barrens in their respective Membership Agreements.

WHEREFORE, Plaintiff and putative Class Members demand judgement in their favor and against Pine Barrens for the refundable portion of the membership joining fee that Plaintiff and putative Class Members paid Pine Barrens, as identified in their Membership Agreement, plus court costs, pre-judgement interest, post-judgement interest, punitive damages, and such other relief as this Court may deem equitable and just.

COUNT FIVE

95. Plaintiff and putative Class Members hereby incorporate by reference the allegations contained in all prior and subsequent paragraphs of this complaint as though set forth fully herein.

96. A benefit has been conferred upon Defendants by Plaintiff and putative Class Members in their purchase of private golf membership in the form of membership dues, both annually and at signing.

97. If Plaintiff and putative Class Members were aware that the refundable portion of their membership dues would not be paid back to them, they would not have signed their respective agreements.

98. Under principles of equity and good conscience, Defendants should not be permitted to retain revenue that they acquired by virtue of unlawful, deceptive, and/or fraudulent conduct. All funds, revenue, and benefit received by Defendants rightful belong to Plaintiff and putative Class Members, which Defendants have unjustly received as a result of their actions.

WHEREFORE, Plaintiff and putative Class Members demand judgement in their favor and against Pine Barrens for the refundable portion of the membership joining fee that Plaintiff and putative Class Members paid Pine Barrens, as identified in their Membership Agreement, plus court costs, pre-judgement interest, post-judgement interest, punitive damages, and such other relief as this Court may deem equitable and just.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated, prays for a judgement against Defendants as follows:

1. For an order certifying the Class pursuant to *R. 4-32-l(b)*, appointing Plaintiff as representatives of the Class, and appointing the law firm representing Plaintiff as counsel for the Class;
2. For a declaration that Plaintiff and putative Class Members are entitled to an immediate refund of the refundable portions of their membership joining fees;
3. For compensatory damages sustained by Plaintiff and putative Class Members;
4. For compensatory damages and/or restitution of the refundable portions of membership joining fee funds acquired by Defendants from Plaintiff and putative Class Members, as a result of

Defendants' violations of the CFA, breach of contract, and breach of the implied covenant of good faith and fair dealing as set forth above;

5. For punitive damages, to be awarded to Plaintiff and putative Class Members;

6. Under the CFA, the trebling of damages suffered by the Plaintiff and putative Class Members;

7. For a refund of the entire amount of the membership joining fees paid by Plaintiff and putative Class Members to Defendants;

8. For payment of costs of suit herein incurred;

9. For both pre-and post-judgment interest on any amounts awarded;

10. For payment of reasonable attorneys' fees and expert fees; and

11. For such other and further relief as the Court may deem proper.

JURY DEMAND

Pursuant to *R. 4:35-1*, Plaintiff demands a trial by jury for all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to *R. 4:25-4*, Gerald H. Clark, Esq. and Mark W. Morris, Esq. are hereby designated trial counsel.

CERTIFICATION PURSUANT TO *R. 4:5-1*

The undersigned, Mark W. Morris, Esquire certifies on behalf of Plaintiff as follows:

1. I am an attorney admitted to practice law in the State of New Jersey and the Principal of the Clark Law Firm, counsel for the above-named plaintiff in the subject action.

2. I am aware of no other currently pending action involving the same facts contained herein.

3. There are no other parties who should be joined in this action that we are aware of at the present time.

4. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Clark Law Firm, PC
Attorneys for Plaintiff

Dated: 8-5-2021



GERALD H. CLARK



MARK W. MORRIS