STATE OF NEW HAMPSHIRE

ROCKINGHAM, ss. SUPERIOR COURT

LUIS NODAL and EDITH NODAL,
Individually and on behalf of all others similarly situated

v.

BLUEGREEN VACATIONS UNLIMITED, INC. and BLUEGREEN VACATIONS CORPORATION

Docket No. 218-2025-CV-00535

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Christina A. Ferrari
N.H. Bar No. 19836
James J. Armillay, Jr.
N.H. Bar No. 271651
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.
670 North Commercial Street, Suite 108
P.O. Box 1120
Manchester, NH 03105-1120

and

Grace L. Mead (*pro hac vice* forthcoming)
Andrea N. Nathan (*pro hac vice* forthcoming)
Joseph J. Onorati (*pro hac vice* forthcoming)
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Museum Tower, Suite 2200
150 West Flagler Street
Miami, FL 33130

July 28, 2025

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Regulations

Defendants Bluegreen Vacations Unlimited, Inc. and Bluegreen Vacations Corporation (together, "Defendants" or "Bluegreen"), under New Hampshire Superior Court Rules 9(b), 11, and 12(d), respectfully move to dismiss Plaintiffs' Class Action Complaint and Demand for Jury Trial ("Complaint"). In support, Bluegreen states:

INTRODUCTION

Plaintiffs—both Florida residents—have sued two Florida corporations here in New Hampshire to invalidate timeshare interests held in a Florida trust that are governed by Florida law. This Court need not wade into any nuances of the *forum non conveniens* doctrine in order to reject this forum shopping.

Plaintiffs executed promissory notes, attached to their Complaint, and seek to invalidate their obligations under those notes. But each note provides: "the exclusive jurisdiction and venue for legal actions or proceedings relating to or arising from this [note] . . . shall be in the State or federal courts located in Palm Beach County, Florida." Accordingly, the Uniform Model Choice of Forum Act, adopted in New Hampshire under RSA 508-A:3, mandates that Plaintiffs' action be dismissed. Thus, this Court need not and should not reach the many other reasons explained below for dismissing Plaintiffs' claims ranging from *forum non conveniens* to their failure to state any claims.[1]

[1] Citations to "Compl. ¶ __" are to Plaintiffs' Complaint in the above-referenced case filed on May 2, 2025. "MLA" refers to the Military Lending Act, 10 U.S.C. § 987, et seq.; "MAPR" refers to the Military Annual Percentage Rate, as defined by the MLA. Emphasis is added and internal citations omitted unless otherwise indicated.

BACKGROUND

A. Bluegreen

Bluegreen is a vacation ownership or timeshare company headquartered in Florida that offers vacation and travel services to consumers through ownership in the Bluegreen Vacation Club, a multi-site timeshare plan established under a Trust Agreement and related documents. *See* Compl. ¶¶ 3, 79, 80. Each purchaser enters into an Owner Beneficiary Agreement ("OBA") with Bluegreen and acquires a timeshare estate with accompanying vacation points to use at Bluegreen resorts across the country. *See* Compl. ¶¶ 48, 54, 79, 80.

B. Plaintiffs and their Purchases

Plaintiffs Luis Nodal and Edith Nodal are citizens of Florida. Compl. ¶¶ 12, 13.

1. August 12, 2023 Purchase

Plaintiffs allege that on August 12, 2023 they entered into a timeshare contract with Bluegreen to purchase a timeshare estate and appurtenant vacation points (16,000). Compl. ¶ 48, Ex. A. The timeshare estate consists of certain property located in a residential structure called MountainLoft Resort II in Gatlinburg, Tennessee that will be conveyed to the Nodals upon termination of the Trust Agreement. Compl., Ex. A, 8/12/23 Certificate of Beneficiary Rights.

The Nodals financed their purchase with a promissory note that they executed with Bluegreen, which provides that it is governed by Florida law. That note also provides that the exclusive jurisdiction and venue for legal actions relating to or arising from the interpretation or enforcement of that note "shall be in the State or federal courts located in Palm Beach County, Florida . . .":

> 10. GOVERNING LAW, JURISDICTION AND VENUE. This Note shall be governed by the laws of the STATE OF FLORIDA, without regard to its conflict of laws principles. *Borrower expressly consents and agrees that the exclusive jurisdiction and venue for legal actions or proceedings relating to or arising from this NOTE*, whether pertaining to the interpretation or the enforceability hereof or otherwise, *shall be in the State or federal*

> *courts located in Palm Beach County, Florida*, except in the event that applicable law requires such jurisdiction and venue to be in the courts of the State where the Property is located.

Compl., Ex. A, 8/12/23 Promissory Note.

2. December 16, 2023 Purchase

Plaintiffs allege that in December of 2023, they traveled to Bluegreen's timeshare located in Orlando, Florida and purchased another timeshare estate with accompanying vacation points. Compl. ¶ 51.

The timeshare estate for this purchase consists of certain property located in a residential structure called BG Patrick Henry Square in Williamsburg, Virginia to be conveyed to the Nodals upon termination of the Trust Agreement. Compl., Ex. B, 12/16/23 Certificate of Beneficiary Rights.

The Nodals also financed this purchase with a promissory note that they executed with Bluegreen. That note also provides that it is governed by Florida law and that the exclusive jurisdiction and venue for legal actions relating to or arising from that note is in Florida:

> 10. GOVERNING LAW, JURISDICTION AND VENUE. This Note shall be governed by the laws of the STATE OF FLORIDA, without regard to its conflict of laws principles. *Borrower expressly consents and agrees that the exclusive jurisdiction and venue for legal actions or proceedings relating to or arising from this NOTE*, whether pertaining to the interpretation or the enforceability hereof or otherwise, *shall be in the State or federal courts located in Palm Beach County, Florida*, except in the event that applicable law requires such jurisdiction and venue to be in the courts of the State where the Property is located.

Compl., Ex. B, 12/16/23 Promissory Note.

C. Plaintiffs' Claims and the Proposed Class

Plaintiffs allege that they both were on active duty status with the United States Army at the time of the purchases. Compl. ¶¶ 12-15. Plaintiffs claim that Bluegreen "violate[s] the MLA in three distinct ways." Compl. ¶ 35. First, Plaintiffs contend that Bluegreen requires them to pay

interest on loans that contain terms prohibited by the MLA. *Id*. Second, Plaintiffs assert that Bluegreen requires them to waive their legal right to participate in a class action and to have their claims heard by a jury. *Id*. And third, Plaintiffs claim that Bluegreen has required them to submit to arbitration. *Id*.

Plaintiffs bring one count against both Defendants. In Count I, Plaintiffs seek to assert claims under sections of the MLA, 10 U.S.C. §§ 987(a), (c)(1), (e)(2), and (e)(3), on behalf of the following proposed class:

> All active duty servicemembers and/or their spouses who financed the purchase of a timeshare from the Defendants within the five (5) years prior to the filing of the initial Complaint through the date the Court certifies the proposed Class.

Compl. ¶ 89.[2]

In addition to declaratory and injunctive relief voiding their timeshare contracts, Plaintiffs seek their "actual damages paid" on their timeshare contracts, but "not less than $500 per MLA violation," pre- and post-judgment interest, and punitive damages. Compl. ¶ 36-37.

STANDARD OF REVIEW

On a motion to dismiss, the Court must determine "whether the allegations in the plaintiff's pleadings are reasonably susceptible to a construction that would permit recovery." *Cluff-Landry v. Roman Catholic Bishop of Manchester*, 169 N.H. 670, 673 (2017). To reach a conclusion, the Court will engage in a "threshold inquiry that tests the facts in the [pleading] against the applicable law" and "must rigorously scrutinize the complaint to determine whether, *on its face*, it asserts a cause of action." *Gen. Insulation Co. v. Eckman Const.*, 159 N.H. 601, 611 (2010); *Jay Edwards, Inc. v. Baker*, 130 N.H. 41, 44-45 (1987) (emphasis in original). The Court will grant a motion to dismiss when the allegations in the complaint do not constitute a basis for legal relief. *Id*.

[2] Plaintiffs' proposed class contains no limitation or nexus requirement to New Hampshire or the forum.

For purposes of a motion to dismiss, the Court "assume[s] the truth of the facts alleged by the plaintiff and construe[s] all reasonable inferences in the light most favorable to the plaintiff." *Lamb v. Shaker Reg'l Sch. Dist.*, 168 N.H. 47, 49 (2015). But the Court will not do the same with allegations that are merely conclusions of law. *Id*. Indeed, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).[3] And "[i]f the factual allegations in the complaint are too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture, the complaint is open to dismissal." *Barchock v. CVS Health Corp.*, 886 F.3d 43, 48 (1st Cir. 2018).

In addition to the complaint, the Court "may also consider documents attached to the plaintiff's pleadings, or documents the authenticity of which are not disputed by the parties, official public records, or documents sufficiently referred to in the complaint." *Beane v. Dana S. Beane & Co.*, 160 N.H. 708, 711 (2010).

ARGUMENT

I. The Uniform Model Choice of Forum Act Requires Dismissal

The Uniform Model Choice of Forum Act, adopted in New Hampshire under RSA 508-A:3 (the "Act), provides: "[i]f the parties have agreed in writing that an action on a controversy shall be brought only in another state and it is brought in a court of this state, the court will dismiss or stay the action."

Plaintiffs sued in New Hampshire to try to void the loans that they took out to make their timeshare purchases from Bluegreen. Yet, as shown by the corresponding promissory notes Plaintiffs attached to their Complaint, such an action must be brought in Florida. Both provide:

[3] *See also A.G. ex rel. Maddox v. Elsevier, Inc.*, 732 F.3d 77, 81 (1st Cir. 2013) (finding that "[w]hen allegations, though disguised as factual, are so threadbare that they omit any meaningful factual content, [the Court] will treat them as what they are: naked conclusions.").

> Borrower expressly consents and agrees that *the exclusive jurisdiction and venue for legal actions or proceedings relating to or arising from this NOTE*, whether pertaining to the interpretation or enforceability hereof or otherwise, *shall be in the State or federal courts located in Palm Beach County, Florida*, except in the event that applicable law requires such jurisdiction and venue to be in the court of the State where the Property is located.

Compl., Ex. A, 8/12/23 Promissory Note; Ex. B, 12/16/23 Promissory Note.[4]

The New Hampshire Supreme Court, when interpreting similar language, has ruled that such language "is more than a passive grant of jurisdictional authority; it mandates that dispositive action be reached in a particular venue." *Strafford Tech., Inc. v. Camcar Div. of Textron, Inc.*, 147 N.H. 174, 176 (2001). Additionally, the only exception found in the Bluegreen promissory notes––when "applicable law requires such jurisdiction and venue to be in the court of the State where the Property is located"—does not apply. The properties underlying the two timeshare purchases are located in Virginia and Tennessee, neither of which have any such requirement. Regardless, Plaintiffs did not bring this action in either of those states; instead, they sued here in New Hampshire.

The Act's exceptions are also inapplicable. The Act requires that the Court dismiss or stay the action unless "(I) the court is required by statute to entertain the action; (II) the plaintiff cannot secure effective relief in the other state, for reasons other than delay in bringing the action; (III) the other state would be a substantially less convenient place for the trial of the action than this state; (IV) the agreement as to the place of the action was obtained by misrepresentation, duress,

[4] The promissory notes also make clear that they "shall be governed by the laws of the STATE OF FLORIDA, without regard to its conflict of laws principles." Compl., Ex. A, 8/12/23 Promissory Note; Ex. B, 12/16/23 Promissory Note. Like New Hampshire, the Florida Supreme Court has held that "forum selection clauses should be enforced in the absence of a showing that enforcement would be unreasonable or unjust." *Manrique v. Fabbri*, 493 So. 2d 437, 440 (Fla. 1986). Additionally, Florida courts have found that language such as "venue in any action brought by Purchaser or Builder *shall be in* East Pasco County, Florida" is a mandatory venue clause that can and should be enforced. *Gen. Home Dev. Corp. v. Kwirant*, 819 So. 2d 255, 258 (Fla. 2d DCA 2002).

the abuse of economic power, or other unconscionable means; or (V) it would for some other reason be unfair or unreasonable to enforce the agreement." RSA 508-A:3.

Plaintiffs do not address the jurisdiction and venue selection clauses at all in the Complaint, so it is unsurprising that there are no allegations in the Complaint that this Court is required to entertain it under one of these statutory exceptions. Plaintiffs do not plead any facts suggesting that Plaintiffs cannot secure effective relief in Florida, do not plead any facts suggesting that Florida would be a substantially less convenient place for trial, do not plead any facts suggesting that that the "agreement as to the place of the action" was obtained by unconscionable behavior, and do not plead any facts suggesting that it would be unfair or unreasonable to enforce the jurisdiction and venue selection clauses. So, the forum selection clause in the promissory notes must be enforced and this action dismissed.[5]

II. The Doctrine of *Forum Non Conveniens* Requires Dismissal

The underlying principle of the doctrine of *forum non conveniens* is that "a court, even though it has jurisdiction, will not exercise it if it is a seriously inappropriate forum for the trial of the action so long as an appropriate forum is available to the plaintiff." *Vandam v. Smit*, 101 N.H. 508, 509 (1959). The ultimate inquiry as it pertains to the question of the convenience of a forum is where trial will best serve the convenience of the parties and the ends of justice. *Thistle v. Halstead*, 95 N.H. 87, 89 (1948) (citing *Koster v. Lumbermen's Mut. Cas. Co.*, 330 U.S. 518, 527

[5] Although RSA 508-A:3, the Act, states that the court "will dismiss *or* stay" the action if none of the exceptions apply, dismissal, rather than a stay, is appropriate because there are no unique circumstances or ties to New Hampshire that support a stay. *Compare Ford Const. Co. v. TWG Const. Co., Inc., et al.*, No. 03-C-236, 2004 WL 585629, at *7 (N.H. Sup. Ct. Feb. 10, 2004) (staying action pending the outcome of litigation in New York or upon motion from plaintiff indicating it will not pursue litigation in New York, as opposed to dismissal based on New Hampshire's interest in the litigation, including the preservation of a mechanic's lien that was already obtained by the plaintiff, a New Hampshire company, in the New Hampshire trial court relating to work that was subcontracted to be performed in New Hampshire).

(1947)); *Jackson & Sons v. Lumberman's Mut. Cas. Co.*, 86 N.H. 341, 343 (1933). Dismissals for *forum non conveniens* are generally within the discretion of the trial court. *Dig. Equip. Corp. v. Int'l Dig. Sys. Corp.*, 130 N.H. 362, 364 (1988).

A court should dismiss an action for *forum non conveniens* if: (a) an alternative forum is available to the plaintiff; and (b) "weighty reasons" exist to disturb the plaintiff's choice of forum. *Stankunas v. Stankunas*, 133 N.H. 643, 646 (1990); *Smith v. Smith*, 125 N.H. 336, 337 (1984). In determining whether a defendant has demonstrated the "weighty reasons" necessary to justify dismissal for *forum non conveniens*, the New Hampshire Supreme Court has approved and applied several factors previously employed by the United States Supreme Court in *Gulf Oil v. Gilbert*, 330 U.S. 501 (1947). *Leeper v. Leeper*, 116 N.H. 116, 118 (1976). These factors include "the private interest of the litigant, relative ease of access to sources of proof, availability of compulsory process, the cost of obtaining attendance of willing witnesses, the possibility of view of premises if appropriate, the question of enforceability of the foreign judgment, and other concerns relating to the public interest." *Dig. Equip. Corp.*, 130 N.H. at 364 (citing *Leeper*, 116 N.H. at 118 and *Gulf Oil*, 330 U.S. at 508).

Dismissal of Plaintiffs' Complaint for *forum non conveniens* is proper here because an alternative forum is available for Plaintiffs' claims, and an analysis of the *Leeper* factors demonstrates that litigation of Plaintiffs' claims in New Hampshire would be contrary to both the public interest and the private interests of the litigants.

First, Florida's state courts present an alternative forum for Plaintiffs to litigate their claims. As explained above, the timeshare agreements here are governed by Florida law exclusively and the promissory notes here require legal action to be brought in Florida's courts, and "ordinarily, jurisdiction of actions in contract will not be declined," *Vandam*, 101 N.H. at 509.

Both Plaintiffs and both Defendants are also domiciled in Florida.

Second, regarding the *Leeper* analysis, the attenuated connections between the parties and New Hampshire bear on both the public and private interests at issue. *See In re Estate of Mullin*, 169 N.H. 632, 640 (2017). The Complaint demonstrates that Plaintiffs entered into two discrete timeshare agreements specifically governed by Florida law concerning properties outside of New Hampshire. In addition, the trust that holds the timeshare property is a Florida trust governed by Florida law, and many of the definitions contained in the various purchase and sale and vacation program documents referenced in the Complaint are pulled from Florida state laws governing timeshares. As such, the Complaint plainly establishes that Florida is a more convenient forum for litigation of this dispute. Moreover, it is reasonable to assume that service of process, witnesses, and evidence are more easily available in Florida. *See id*. at 640.

Therefore, because Florida is an alternative forum available for Plaintiffs' claims, and application of the *Leeper* factors demonstrates "weighty reasons" to disturb Plaintiffs' choice of New Hampshire as the forum for litigation of Plaintiffs' claims, the Complaint should be dismissed for *forum non conveniens*.

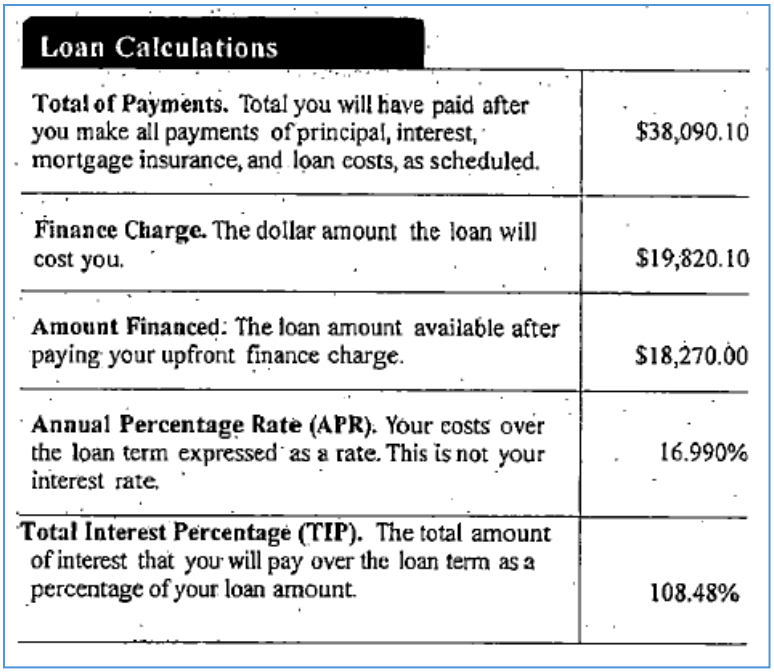
III. Plaintiffs Do Not and Cannot Adequately Plead Facts Stating Any Claims Against Defendants

A. The Complaint's Exhibits Establish that Bluegreen Made All of the Required Disclosures

Plaintiffs plead legal conclusions that Defendants "fail to provide the required MLA disclosures" to the Plaintiffs, to "any covered members," or to "their dependents," Compl. ¶ 5, and that Defendants do not include "any statement of the MAPR." Compl. ¶ 37; *see also* Compl. ¶¶ 5, 36-41, 76, 95, 117-120. But those legal conclusions are fatally undermined by the MLA itself, the factual allegations in the Complaint, and the Complaint's attached exhibits.

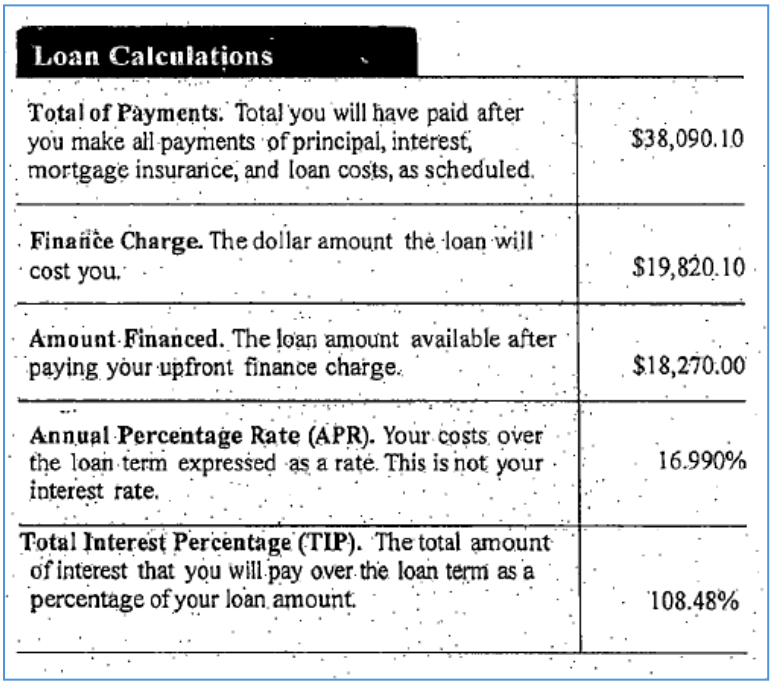
The MLA requires the following "mandatory loan disclosures": "(A) A statement of the annual percentage rate of interest applicable to the extension of credit. (B) Any disclosures required under the Truth In Lending Act (15 U.S.C. § 1601 et seq.). (C) A clear description of the payment obligations of the member or dependent, as applicable." 10 U.S.C. § 987(c)(1). It further requires that "[s]uch disclosures shall be presented in accordance with terms prescribed by the regulations issued by the Board of Governors of the Federal Reserve System," 10 U.S.C. § 987(c)(2), though, of course, "an agency cannot decree[] a duty that the statute does not require and that the statute does not empower the agency to impose," *Ins. Mktg. Coal. Ltd. v. FCC*, 127 F. 4th 303, 312 (11th Cir. 2025). Perhaps for that reason, the implementing regulations provide that they "shall not be construed as requiring a creditor to describe the MAPR as a numerical value or to describe the total dollar amount of all charges in the MAPR." 32 C.F.R. § 232.6(c).

Defendants' disclosures squarely satisfy those obligations. Both Exhibit A and Exhibit B of Plaintiffs' Complaint establish that Bluegreen made the required Truth in Lending Act disclosures and that Bluegreen went beyond the MLA's statutory requirements to disclose the "annual percentage rate" and "[a] clear description of [] payment obligations," 10 U.S.C. § 987(c)(1). For example, the closing disclosures provided for both of Plaintiffs' August 12, 2023 and December 16, 2023 purchases establish that Bluegreen not only disclosed an annual percentage rate of 16.990% but, among other things, Bluegreen also disclosed the following Loan Calculations:



Loan Calculations	
Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	$38,090.10
Finance Charge. The dollar amount the loan will cost you.	$19,820.10
Amount Financed. The loan amount available after paying your upfront finance charge.	$18,270.00
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	16.990%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	108.48%

Compl., Ex. A, 8/12/23 Closing Disclosure.



Loan Calculations	
Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	$38,090.10
Finance Charge. The dollar amount the loan will cost you.	$19,820.10
Amount Financed. The loan amount available after paying your upfront finance charge.	$18,270.00
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	16.990%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	108.48%

Compl., Ex. B, 12/16/23 Closing Disclosure.

These are but a few of the written and oral disclosures provided to the Plaintiffs. In fact, the disclosures attached to Plaintiffs' Complaint total 36 pages for their August 12, 2023 purchase,

and 46 pages for their December 16, 2023 purchase. Compl., Ex. A and Ex. B. Plaintiffs' allegations that Bluegreen failed to provide the required financial disclosures cannot be accepted as true, even for purposes of this Motion, because they are directly contradicted by the exhibits attached to their Complaint.[6]

B. Plaintiffs Do Not and Cannot Allege that Bluegreen Has Ever Sought to Enforce Arbitration Rights against the Individual Plaintiffs or the Proposed Class Members

Plaintiffs allege that "[a]s a result of unlawfully requiring covered borrowers like the Plaintiffs and the Class to enter into timeshare Agreements containing mandatory arbitration provisions," Compl. ¶ 125, and "unlawfully requiring covered borrowers to waive their right to file or even participate in any class action lawsuit," Compl. ¶ 130, their timeshare contracts are "void from inception."

But Plaintiffs do not and cannot allege that Bluegreen has ever required Plaintiffs or any covered borrowers to arbitrate claims or waive the right to bring a class action lawsuit. Bluegreen has not required these Plaintiffs to arbitrate their claims or adhere to any class action waiver. Indeed, Plaintiffs' counsel should well know that. When these same attorneys sued Bluegreen in another proposed class action under the Military Lending Act on behalf of different clients, that action was dismissed for lack of Article III standing, in part, because Bluegreen never sought to enforce those provisions. *Louis v. Bluegreen Vacations Unlimited, Inc., et al.*, No. 21-CV-61938-

[6] *See Beane*, 160 N.H. at 711 (stating that, in addition to the complaint, the court "may also consider documents attached to the plaintiff's pleadings, or documents the authenticity of which are not disputed by the parties, official public records, or documents sufficiently referred to in the complaint."); *see also Mentis Scis., Inc. v. Pittsburgh Networks, LLC*, 173 N.H. 584, 588 (2020) (stating that "[w]here, as here, the plaintiff attaches a copy of the contract to the complaint, we may consider the terms of the contract in reviewing the ruling on the motion to dismiss."); *see also Gascard v. Hall*, 175 N.H. 462, 464, 467 (2022) (affirming the trial court's dismissal of the plaintiff's defamation claims based on the trial court's consideration of the alleged defamatory statements in their totality, which was evidenced only by the exhibits attached to the plaintiff's complaint that the trial court found were integral to addressing the claim.).

RAR, 2022 WL 1793058, at *1 (S.D. Fla. June 1, 2022), *aff'd*, No. 22-12217, 2024 WL 2873778 (11th Cir. June 7, 2024). Here too, the Plaintiffs have failed to state any facts establishing that Bluegreen is "unlawfully requiring covered borrowers" to arbitrate. Hence, they have no claim on that basis.

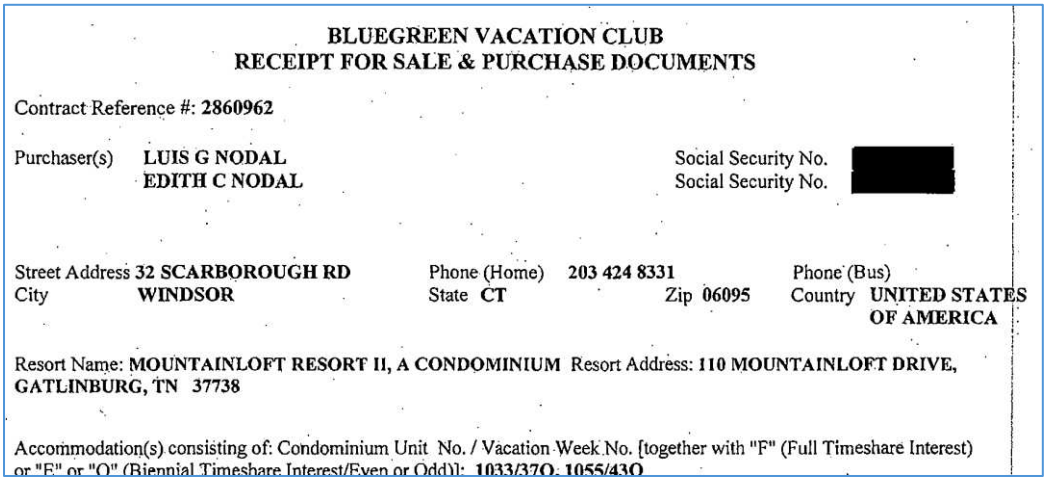
C. The MLA Does Not Apply Because the Transaction Here is Exempt

Plaintiffs' claims must also be dismissed for failure to state a claim because the financing Plaintiffs received to purchase their timeshares is exempt under the plain language of the MLA.

The MLA and its implementing regulations define the term "consumer credit" as "credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is: (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments." 32 C.F.R. § 232.3(f)(1)(i)-(ii). But the MLA also provides that this definition does not extend to "*[a] residential mortgage, which is any credit transaction secured by an interest in a dwelling*, *including a transaction to finance the purchase* or initial construction of *the dwelling*, any refinance transaction, home equity loan or line of credit, or reverse mortgage." 32 C.F.R. § 232.3(f)(2)(i). The MLA then defines a "dwelling" as follows: "*a residential structure* that contains one to four units, whether or not the structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and manufactured home." 32 C.F.R. § 232.3(k). A structure is defined as "something (such as a building) that is constructed."[7] "Residential" is defined as "of or relating to residence or residences" and "residence" is defined as "the act or fact of dwelling in a place for some time."[8]

[7] Merriam-Webster, https://www.merriam-webster.com/dictionart/structure.
[8] Merriam-Webster, https://www.merriam-webster.com/dictionart/residential; Merriam-Webster, https://www.merriam-webster.com/dictionart/residence.

Plaintiffs purchased timeshare interests here that were tied to a specific "residential structure" containing various individual condominium units. The residential structure related to the first purchase was at MountainLoft Resort II in Gatlinburg, Tennessee:



BLUEGREEN VACATION CLUB
RECEIPT FOR SALE & PURCHASE DOCUMENTS

Contract Reference #: **2860962**

Purchaser(s) **LUIS G NODAL** Social Security No. [redacted]
EDITH C NODAL Social Security No.

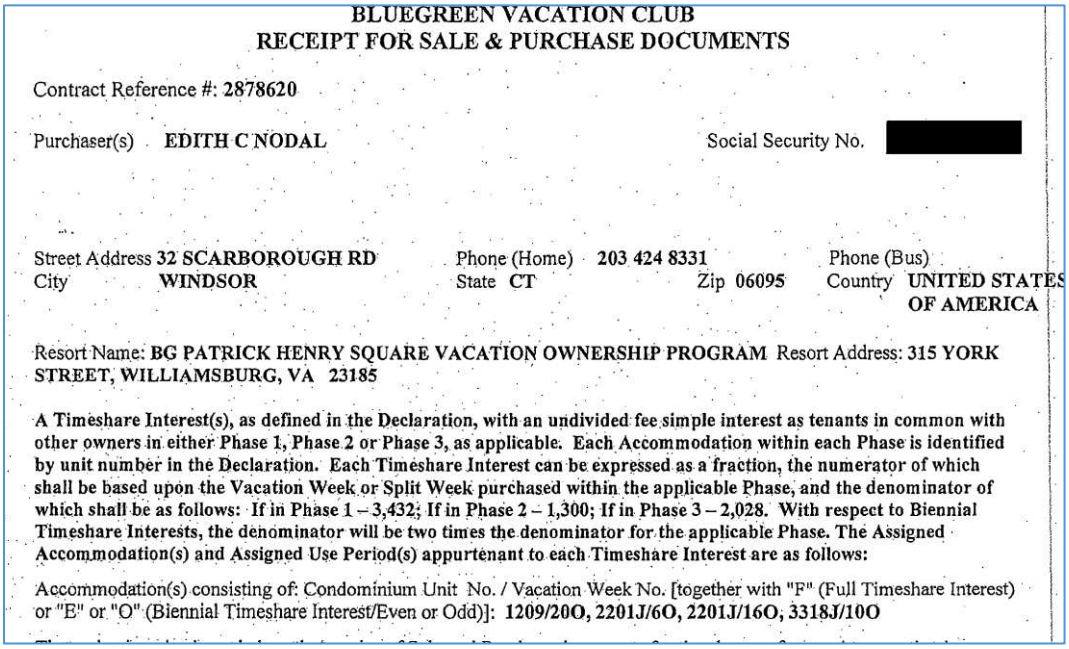
Street Address **32 SCARBOROUGH RD** Phone (Home) **203 424 8331** Phone (Bus)
City **WINDSOR** State **CT** Zip **06095** Country **UNITED STATES OF AMERICA**

Resort Name: **MOUNTAINLOFT RESORT II, A CONDOMINIUM** Resort Address: **110 MOUNTAINLOFT DRIVE, GATLINBURG, TN 37738**

Accommodation(s) consisting of: Condominium Unit No. / Vacation Week No. [together with "F" (Full Timeshare Interest) or "E" or "O" (Biennial Timeshare Interest/Even or Odd)]: **1033/37O; 1055/43O**

Compl., Ex. A, 8/12/23 Receipt for Sale & Purchase Documents.

The residential structure related to the second purchase was at BG Patrick Henry Square in Williamsburg, Virginia:



BLUEGREEN VACATION CLUB
RECEIPT FOR SALE & PURCHASE DOCUMENTS

Contract Reference #: **2878620**

Purchaser(s) **EDITH C NODAL** Social Security No. [redacted]

Street Address **32 SCARBOROUGH RD** Phone (Home) **203 424 8331** Phone (Bus)
City **WINDSOR** State **CT** Zip **06095** Country **UNITED STATES OF AMERICA**

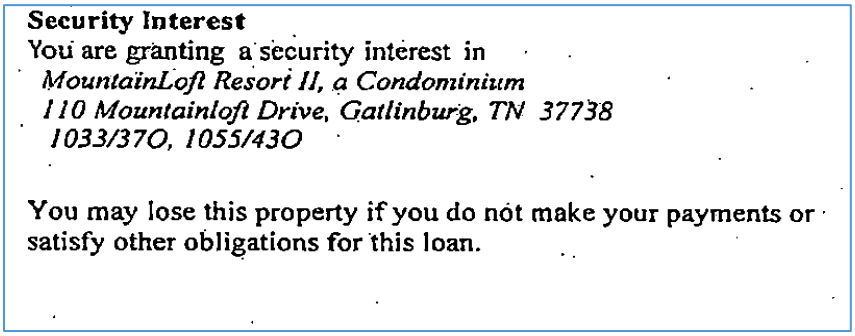
Resort Name: **BG PATRICK HENRY SQUARE VACATION OWNERSHIP PROGRAM** Resort Address: **315 YORK STREET, WILLIAMSBURG, VA 23185**

A Timeshare Interest(s), as defined in the Declaration, with an undivided fee simple interest as tenants in common with other owners in either Phase 1, Phase 2 or Phase 3, as applicable. Each Accommodation within each Phase is identified by unit number in the Declaration. Each Timeshare Interest can be expressed as a fraction, the numerator of which shall be based upon the Vacation Week or Split Week purchased within the applicable Phase, and the denominator of which shall be as follows: If in Phase 1 – 3,432; If in Phase 2 – 1,300; If in Phase 3 – 2,028. With respect to Biennial Timeshare Interests, the denominator will be two times the denominator for the applicable Phase. The Assigned Accommodation(s) and Assigned Use Period(s) appurtenant to each Timeshare Interest are as follows:

Accommodation(s) consisting of: Condominium Unit No. / Vacation Week No. [together with "F" (Full Timeshare Interest) or "E" or "O" (Biennial Timeshare Interest/Even or Odd)]: **1209/20O, 2201J/6O, 2201J/16O, 3318J/10O**

Compl., Ex. B, 12/16/23 Receipt for Sale & Purchase Documents.

Because the Plaintiffs financed their purchases, they encumbered their timeshare interests with mortgages. Indeed, Plaintiffs' promissory notes provide that their "performance under this Note is secured by a mortgage, deed of trust, or other security instrument of even date relating to the Unit(s) and Vacation Week(s) described therein (the 'Property') and given to the Note Holder or its designee." Compl., Ex. A, 8/12/23 Promissory Note; Ex. B, 12/16/23 Promissory Note. In other words, Plaintiffs obtained financing to purchase their timeshare interests which were secured by mortgages related to condominium units in residential structures in Tennessee and Virginia:


Security Interest
You are granting a security interest in
MountainLoft Resort II, a Condominium
110 Mountainloft Drive, Gatlinburg, TN 37738
1033/37O, 1055/43O

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

See, e.g., Compl., Ex. A, Closing Cost Details at 4.

Plaintiffs' legal conclusion that "Bluegreen is a 'creditor' that provided 'consumer credit' to Plaintiff[s] as those terms are defined in 32 C.F.R. § 232.3(f), (h), & (i)" cannot be reconciled with the plain language of the MLA. Compl. ¶ 62. The plain language of the MLA explicitly exempts transactions involving residential mortgages, which is statutorily defined to include *any* credit transaction secured by an interest in a residential structure. *See* 32 C.F.R. § 232.3(f)(2)(i) and (k).

Plaintiffs try to paint their timeshare purchases as transactions not involving the conveyance of real property, but as the sale of "the potential to book a future vacation through a complex system of vacation credits" or points. Compl. ¶ 3. While Bluegreen's marketing focuses on the vacations individual owners can enjoy through membership in the Bluegreen Vacation Club,

this does not transform their underlying timeshare purchases into ones not involving the conveyance of real property. In fact, the Eleventh Circuit has confirmed that beneficial interests in timeshare vacation trusts, like the one involved here, constitute real property under both the Florida Land Trust Act and the Florida Timeshare Act. *See Lennen v. Marriott Ownership Resorts, Inc.*, No. 19-13215, 2021 WL 5834264, at *8-9 (11th Cir. Dec. 9, 2021). Accordingly, no picture the Plaintiffs try to paint can change the fact that they purchased interests in real property.[9]

Accordingly, the financing Plaintiffs received to purchase their timeshares are exempt transactions under the plain language of the MLA and Plaintiffs' claims fail as a matter of law.

D. No Facts Pleaded Establish Any Claim for Damages

Plaintiffs assert that because "these agreements are void from inception and Plaintiffs have suffered statutory and actual damages of the same type and in the same manner as the Class they seek to represent," Compl. ¶ 95, they seek a "judgment awarding Plaintiffs and Class Members actual damages paid in connection with or pursuant to the illegal and void timeshare Agreements not less than $500 per MLA violation." Compl. at ¶ 36. Furthermore, Plaintiffs assert that "[e]ach time that Plaintiffs paid money on Defendants' void loans constitutes a separate and independent violation under the MLA and damages caused by Defendants' unlawful MLA conduct." Compl. ¶ 139. Yet Plaintiffs have failed to plead facts establishing any entitlement to any damages.

The MLA provides: "[a] person who violates this section with respect to any person is civilly liable to such a person for . . . [a]ny *actual damage sustained* as a result, but not less than $500 for each violation." 10 U.S.C. § 987(5)(A)(i). Similarly, the MLA's implementing

[9] In *Steines v. Westgate Palace, LLC*, the Eleventh Circuit found a Westgate timeshare interest was not exempt under the MLA because "the unit is not 'residential' in nature." 113 F.4th 1335, 1347 (11th Cir. 2024). But, though the parties and the Eleventh Circuit there considered the definition of "residential" at great length, no one addressed it as an adjective modifying the noun "structure" or the meaning of the word "structure." Reading both words together and giving meaning to both requires ruling that Plaintiffs here purchased an interest in a "residential structure."

regulations similarly provide: "[a] person who violates 10 U.S.C. 987 as implemented by this part with respect to any person is civilly liable to such person for . . . [a]ny *actual damage sustained* as a result, but not less than $500 for each violation." 32 C.F.R. § 232.9(e)(1)(i).

The text of the MLA itself dictates that if Plaintiffs suffer no "actual damages," there is no civil liability and Plaintiffs recover nothing. "[A]ctual damages is a legal term of art, [] and it is a cardinal rule of statutory construction that, when Congress employs a term of art, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken." *FAA v. Cooper*, 566 U.S. 284, 292 (2012). "Actual damages" are "[a]n amount awarded to a complainant to compensate for a proven injury or loss; damages that repay actual losses." *Black's Law Dictionary*, Damages, Actual Damages (8th ed. 2004). Under the plain meaning of its terms, then, the MLA requires a "proven injury or loss" and "actual losses" before Plaintiffs may recover anything. If, for example, Plaintiffs are charged interest that exceeds the statutory cap, then the minimum amount of their actual damages would be $500. *See Cooper*, 566 U.S. at 296-98. But Plaintiffs have made no such allegations here, and indeed, have failed to plead any facts that would support any theory of "actual damages" or "actual losses."

E. No Facts Pleaded Establish Any Claim for an Injunction or Declaration

"A preliminary injunction is an 'extraordinary and drastic remedy.'" *Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc.*, 645 F.3d 26, 32 (1st Cir. 2011) (citing *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008)); *N.H. Dep't of Envtl. Servs. v. Mottolo*, 155 N.H. 57, 63 (2007). A preliminary injunction is generally designed to preserve the status quo in a matter pending a final determination of the case on the merits. *Kukene v. Genualdo*, 145 N.H. 1, 4 (2000). It is within the Court's sound discretion to grant an injunction after consideration of the facts and established principles of equity. *ATV Watch v. N.H. Dep't of Res. & Econ. Dev.*, 155 N.H. 434, 437-38 (2007); *Mottolo*, 155 N.H. at 63.

To obtain a preliminary injunction, Plaintiffs must show that they will "likely succeed on the merits." *Mottolo*, 155 N.H. at 63. They must also show that "there is an immediate danger of irreparable harm to the party seeking injunctive relief," that "there is no adequate remedy at law," and that the public interest would not be adversely affected if the Court grants the injunction. *ATV Watch*, 155 N.H. at 437; *Mottolo*, 155 N.H. at 63; *Thompson v. N.H. Bd. of Med.*, 143 N.H. 107, 108 (1998).

Plaintiffs' request for such relief here fails. As explained above, Plaintiffs are unlikely to succeed on the merits of their claims against Bluegreen. Plaintiffs also fail to demonstrate that they will suffer an immediate danger of irreparable harm without an adequate remedy at law absent the injunctive relief they seek.[10]

Similarly, Plaintiffs fail to allege any viable claim for declaratory relief. To state a claim for declaratory judgment, "the claims raised must be definite and concrete and touch the legal relations of parties having adverse interests." *New Eng. Backflow, Inc. v. Gagne*, 172 N.H. 655, 666 (2019). Declaratory judgment actions should be confined to "justiciable controversies of sufficient immediacy and reality." *Salem Coal. for Caution v. Town of Salem*, 121 N.H. 694, 697 (1981). "Where a plaintiff seeks a declaratory judgment, he is not seeking to enforce a claim against the defendant, but rather a judicial declaration as to the existence and effect of a relation between him and the defendant." *N. Country Envtl. Servs. v. Town of Bethlehem*, 150 N.H. 606,

[10] Evidence of irreparable harm weighs heavily in the analysis of whether Plaintiffs are entitled to injunctive relief, and the burden of proof is on Plaintiffs as the movants. *Dionne v. Shulkin*, No. 17-CV-142-PB, 2017 WL 7520658, at *2 (D.N.H. Apr. 14, 2017); *Voice of the Arab World*, 645 F.3d at 32. "A finding of irreparable harm must be grounded on something more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store." *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004); *see also Matos ex rel. Matos v. Clinton Sch. Dist.*, 367 F.3d 68, 73 (1st Cir. 2004) (finding that a preliminary injunction should not issue except to prevent a real threat of harm and that "[a] threat that is either unlikely to materialize or purely theoretical will not do.").

621 (2004). The remedy of declaratory judgment affords relief from uncertainty and insecurity created by a doubt as to rights, status or legal relations existing between the parties. *Benson v. N.H. Ins. Guar. Ass'n*, 151 N.H. 590, 593-94 (2004).

Even if the alleged facts set forth in the Complaint are taken as true, as a matter of law, Plaintiffs fail to plead a claim entitling them to declaratory relief. Plaintiffs have not alleged any facts establishing the necessary elements for declaratory relief, including that there is "uncertainty and insecurity created by a doubt as to rights, status or legal relations existing between the parties." *Benson*, 151 N.H. at 593-94. To the contrary, the factual allegations that Plaintiffs do make show that there is no uncertainty as to their status or legal relations. At best, Plaintiffs plead unsupported legal conclusions about MLA violations, still fail to identify any concrete disclosures Bluegreen failed to make, and then ask this Court for a declaration that such violations have occurred. Plaintiffs are not entitled to declaratory relief.

Accordingly, Plaintiffs' claims for injunctive and declaratory relief fail as a matter of law.

STATEMENT REGARDING N.H. SUPER. CT. R. 11(c)

Pursuant to New Hampshire Superior Court Rule 11(c), Defendants have not sought concurrence in the relief sought herein because this is a dispositive Motion.

CONCLUSION AND PRAYERS FOR RELIEF

For the foregoing reasons, Defendants respectfully request that this Honorable Court dismiss Plaintiffs' Complaint in its entirety, and grant such other and further relief as may be just and equitable.

Respectfully submitted,

Bluegreen Vacations Unlimited, Inc. and
Bluegreen Vacations Corporation, Defendants

By and through their attorneys,

BERNSTEIN, SHUR, SAWYER & NELSON, P.A,

Dated: July 28, 2025

By: /s/ Christina A. Ferrari

Christina A. Ferrari, Esq.
N.H. Bar No. 19836
James J. Armillay, Jr., Esq.
N.H. Bar No. 271651
670 North Commercial Street, Suite 108
P.O. Box 1120
Manchester, NH 03105-1120
(603) 623-8700
cferrari@bernsteinshur.com
jarmillay@bernsteinshur.com

CERTIFICATE OF SERVICE

I certify that on the 28th day of July 2025, I have served by the Court's e-filing system the foregoing Defendants' Motion to Dismiss Plaintiffs' Class Action Complaint and Demand for Jury Trial to all parties and counsel of record.

/s/ Christina A. Ferrari
Christina A. Ferrari, Esq.