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SUPERIOR COURT OF THE STATE OF WASHINGTON

KITTITAS COUNTY

PENNY GUTSCHMIDT,

Plaintiff,

v.

TUMBLE CREEK GOLF, LLC, a Washington Limited Liability Company; SUNCADIA RESORT LLC, a Delaware Limited Liability Company; ESCALANTE GOLF, LLC, a Texas Limited Liability Company; ESCALANTE TUMBLE CREEK, LLC, a Delaware Limited Liability Company; ESCALANTE TUMBLE CREEK DEVELOPMENT, LLC, a Delaware Limited Liability Company; ESCALANTE TUMBLE CREEK HOLDINGS, LLC, a Delaware Limited Liability Company; JOHN DOES 1-10.

Defendants.

Case No.: 25-2-00406-19

FIRST AMENDED COMPLAINT

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I. INTRODUCTION

"'Relax,' said the night man, 'We are programmed to receive.
You can check out any time you like, but you can never leave.'"[1]

The Plaintiff, Penny Gutschmidt, through her undersigned counsel, brings this First Amended Complaint against Tumble Creek Golf, LLC, ("Tumble Creek") Suncadia Resort, LLC ("Suncadia Resort"), Escalante Golf, LLC ("Escalante Golf"), Escalante Tumble Creek, LLC ("Escalante Tumble Creek"), Escalante Tumble Creek Development, LLC ("Escalante Development"), and Escalante Tumble Creek Holdings, LLC ("Escalante Holdings"), over the Tumble Creek Golf Club ("The Club") Membership Scheme which effectively imposes lifetime memberships on all but a few Members. Even worse than the lifetime gym memberships that the Washington State Legislature outlawed in the 1990's, these memberships don't even have the decency to die when their members do.

Once a person signs up to be a member, to play golf, tennis, or use the lap pool or fitness center at the Club, Members can resign their membership anytime they like. But their membership only ends when Tumble Creek replaces you or chooses to let you go. (whether that's 10 days after resignation, 15 years, or indefinitely into the future). Because while you can check out anytime you like, you can never leave.

II. PARTIES

1. Penny Gutschmidt is a former resident of the Tumble Creek neighborhood in Suncadia. She resigned her Tumble Creek membership more than 2 years ago and moved out of the state. She resides in Maricopa County, Arizona. Five

[1] Eagles, Hotel California, on Hotel California (Asylum Records 1976).

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months after she filed this lawsuit, Tumble Creek unilaterally reacquired her membership.

2. Tumble Creek Golf, LLC is a Washington Limited Liability Company with its former principal place of business at 3600 Suncadia Trail, Cle Elum, WA 98922. It owned the Tumble Creek Club.

3. Suncadia Resort, LLC is a Delaware Limited Liability Company with its principal place of business at 11777 San Vincente Boulevard, Suite 900, Los Angeles, California. Suncadia Resort is affiliated with Tumble Creek Golf LLC and, on information and belief, marketed homes in the Tumble Creek neighborhood and memberships in the Club.

4. Escalante Golf, LLC is a Texas Limited Liability Company, with its principal place of business at 1021 Foch Street, Fort Worth, TX 76107-2919.

5. Escalante Tumble Creek LLC is a Delaware Limited Liability Company, with its principal place of business at 851 Honolulu Dr, Cle Elum, WA 98922.

6. Escalante Tumble Creek Development LLC is a Delaware Limited Liability Company, with its principal place of business at 851 Honolulu Dr, Cle Elum, WA 98922.

7. Escalante Tumble Creek Holdings, LLC is a Delaware Limited Liability Company, with its principal place of business at 851 Honolulu Dr, Cle Elum, WA 98922.

8. John Does 1-10.

III. JURISDICTION AND VENUE

9. The Court has jurisdiction under RCW §2.08.010 and RCW §7.24.080.

10. Venue is proper. Tumble Creek's principal place of business was in Kittitas County, Suncadia owns or owned real property in Kittitas County, Escalante

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and Escalante Development both own real property in Kittitas County every Club Membership Agreement transaction took place in Kittitas County.

IV. FACTS

11. Tumble Creek is a neighborhood in the Suncadia Development, outside Cle Elum and Roslyn, Washington. Development began in 2000 and now Suncadia is a 6,400-acre high-end residential development with several hundred homes, several golf courses, miles of walking trails and all manner of other outdoor recreation opportunities.[2]

12. The Tumble Creek neighborhood is a private enclave in the Suncadia Development built around the Club's golf course, which Tumble Creek and Suncadia Resort LLC have marketed as the centerpiece of the neighborhood.

13. The Tumble Creek Club (the "Club") is a golf and country club, with tennis, outdoor swimming, a full fitness center, and restaurant and bar. The Club offers fitness opportunities and activities to Members. It also maintains a social calendar for its members.

14. Until about the end of June 2026, Tumble Creek Golf owned, directed, and controlled the Club.

15. The Club offers Residential Memberships in various categories (broadly divided into Golf and Social Memberships) to homeowners in Suncadia and Non-Residential Golf Memberships to the broader public at large. The Club also rents out the Golf Course for tournaments open to non-members.

The Club's Membership Agreement and Membership Plan.

[2] The Tumble Creek Neighborhood is within the Suncadia Development project but is distinct. The Tumble Creek Club is affiliated with the Suncadia Resort.

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16. Members sign a Membership Agreement which binds them to a generally applicable Membership Plan. Where the Membership Agreements and the Membership Plan conflict, the Membership Plan controls.

17. The Club offers various membership categories: Residential Golf, Honolulu, Founder, Charter, Corporate, Non-Residential Golf, and Shared Ownership.[3]

18. People can become residential members when they buy a home in Tumble Creek neighborhood, or later if they elect to sign up after they've bought a home. To become a Club Member, a person must pay the Club a "membership deposit."[4] Once a Member, they pay the Club monthly dues to use the facilities, including the restaurant, pool, and fitness facility.

19. Members, except Honolulu Members, may play golf at the Club weather permitting when the Course is open and the Club is not using it for other purposes. Due to the regional geography and weather, the Golf Couse is only open for 6 or 7 months out of the year, while The Club and its facilities remain open throughout the year.

20. The Club has collected membership deposits from every current, resigned, and former Member, excluding the recent Non-Resident Golf Members.

21. While labeled "Deposits," the Club treats Member's membership deposits and the obligation to repay deposits as contingent liabilities.

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[3] A Shared Ownership Membership is like a Residential Golf Membership, just for jointly owned homes. The Club selects Founder and Charter members from Residential Golf Members, and for this suit, they are effectively the same. On paper at least, every membership (except the Non-Residential Golf and Corporate Memberships) requires the member own property in the Tumble Creek neighborhood.

[4] Non-Resident Golf Members who joined after March 2018 and Corporate Members must pay a non-refundable initiation fee. The proposed class, defined below, excludes these non-refundable memberships.

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22. The Membership Plan indicates that the Club must refund each Member's deposit after they've been a member for 30 years, but only if the Member is still in good standing. If the Member owes the Club any money, whether principal, interest, or late fees on monthly dues, the Club deducts the outstanding balance from their refund obligation. It is entirely possible for this deduction to exceed the refund obligation on the member deposit.

23. Members can notify the Club of their intention to resign their membership before the 30-year term expires. However, the Club has created a complex system to refund membership deposits that effectively insulates itself from ever having to part with money to refund membership deposits.

24. Resigning has no actual effect on the Club Member's financial obligations to the Club and will not trigger a deposit refund. Instead, the resigning member must arrange for the Club to reissue their membership.

25. Those that joined the Club early are fortunate. Refundable memberships issued before September 1, 2009, must continue paying dues until the Club reissues the membership or for at least 12 months after they resign. For refundable membership issued or transferred after June 30, 2009, Members must pay monthly dues until Tumble Creek reissues the membership. These post June 30, 2009, Members have no contractual cut-off to their obligations, and their obligation to pay monthly membership dues does not end until the Club finds their replacement. The Club never has to reissue their membership and may, at their election, issue new memberships instead.

26. There are only a few ways that a resigned refundable member's obligation to pay monthly dues ends; and the resigned member (entitled to a refund) has no control over any of them. First, if a refundable member sells their home,

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the outgoing member may arrange for the Club to transfer the membership to the new home buyer, presuming the new home buyer wants to purchase it, and the Club approves. Second, if the member desires, once during their lifetime, they may transfer their membership to a child or grandchild who fulfills the Club's membership criteria.[5] Third, if a member dies, their surviving spouse, or a child or grandchild (once again who fulfills the Club's criteria) can assume the membership.[6] Fourth, for every four new Memberships the Club sells (transferred memberships do not count towards this number), the Club will remove one resigned member from the Reissuance List, until the Club has filled its membership roll. Once the membership roll is full, every new membership is to replace a resigned member from the reissuance waiting list.

27. Club members cannot move away to end their obligations. Despite the Club's claims that it limits membership to homeowners in Tumble Creek (and a limited group in Suncadia), the Club merely deems a member who sells their Tumble Creek property as "resigned." They must continue paying monthly dues until the Club reissues the membership.

28. There are three ways that a Club Member can get their membership deposit back before the 30-year term expires. First, an outgoing member may sell their home to a person (who the Club approves) and the new buyer becomes the same type of member. The other two ways are:

> If a [refundable] Member resigns prior to the end of the 30-year period, the member will be refunded an amount

[5] The child or grandchild doesn't have to pay a deposit, and the Club does not refund the transferring member's deposit.

[6] The spouse, child or grandchild doesn't have to pay a deposit, and the Club does not refund the transferring member's deposit.

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> equal to the lesser of (i) the membership deposit paid by the member, without interest, or (ii) the then current membership deposit charged by the Club to a new member acquiring the membership, upon reissuance of the resigned membership to the new member. (emphasis added)

29. Whenever a Member transfers their membership to their surviving spouse, child, or grandchild (whether the member is alive or dead when they do it) do, The Club's 30-year deposit refund clock restarts.

30. When a member dies, the Club deems the membership resigned unless a family member can assume the membership. Under the Membership Plan, as written, the deceased (resigned) member's membership is treated exactly like any other resigned member—i.e., charged dues until the Club reissues the membership in the normal course.

31. On paper, Tumble Creek has maximum number of memberships available. Per the Membership Plan, the Club may have up to 470 combined Residential Golf, Charter, and Founder (Collectively, "Residential Golfing") Members. And the Club may have as many Honolulu Members as there are residences and home sites in the Tumble Creek Neighborhood, minus the active combined Residential Golfing Members. The Club may also have as many Non-Resident Golf Members as the Club sees fit. According to the terms of the Membership Plan, the Club may offer Non-Resident Golf Memberships to "(i) a person who owns property in the Community jointly or with another person who owns a Resident Golf Membership, and (ii) persons who do not own property in Tumble Creek [Neighborhood] or Suncadia." In practice, the Club can issue memberships to anyone it chooses.

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32. According to the terms of the Membership Plan, the Club may, in its discretion, adjust any membership number from time to time. And once a member makes it to their 30-year refund, they no longer count toward any of the membership caps, further increasing the likelihood that the Club will never reissue memberships on a 1-to-1 basis.

33. The Club does not have to sell and issue new memberships. Prospective members must apply and the Club has sole authority to admit new members.

34. Even after 30 years, Club membership does not end. While the Club states that it will refund the Member Deposit, Members may only resign their membership as described above, and must still pay monthly membership dues indefinitely until the Club reissues their membership.

35. Once a Resigned Member is on the Reissuance List, the Club still exercises control over whether they'll ever stop being members. The Club reserves the right to move any Resigned Member to the bottom of the Reissuance List if a resigned member owes the Club an outstanding balance, which can postpone reissuance indefinitely.

36. Even after 30 years, when the Club reimburses a Club Member's deposit, the membership doesn't end. The only ways a Club Member can end their membership is to resign (and wait until Tumble Creek reissues the membership) or transfer it to a family member or in a home sale. When a reimbursed member resigns, the Club then puts their membership on the Reissuance List until the Club reissues it. In the meantime, the Club continues charging the Resigned Member dues every month. If a member protests and stops paying, the Club can again drop them down to the bottom of the Reissuance List, prolonging reissuance of their Membership further.

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37. Under the terms of the Membership Plan, even death does not release the Member. As set forth above, a member's spouse, child or grandchild may assume their membership. "Upon such transfer... the original member and [their] estate shall be deemed to have transferred its right to the refund of any membership deposit... to the surviving spouse [, child, or grandchild], but [their] estate shall remain jointly liable with the surviving spouse for any obligations owed by the member to the Club as of the date of death." If no one is willing or able to acquire the Deceased Member's membership, then the Club deems the membership resigned and their estate is responsible for the Club's monthly dues until the membership reissues. The Club can continue charging dues each month. While the Club does this, the estate can, effectively, never close. Beneficiaries can never receive money left to them. Inheritances are frozen. Eventually, the deceased Member's estate will run out of money.

38. Because the Club controls the membership caps, the idea that memberships will eventually reissue at a 1-to-1 ratio is an illusion. Once the Club reaches 470 golf members, there is nothing that prevents the Club from simply increasing the maximum number of golfing memberships to ensure they have new memberships to sell and issue; and deposits to collect. In so doing the Club can keep Resigned Members obligated to pay monthly dues nearly indefinitely.

39. If a Resigned Member stops paying their monthly dues, the Club assesses late fees and interest on the unpaid monthly dues. These unpaid dues, late fees, and interest reduce the Club's obligation to repay the Resigned Member's Membership Deposit.

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40. As set out in the terms of the Membership Plan, this pattern can effectively continue forever. Once a Resigned Member's unpaid monthly dues exceed the credits that the Club can apply to its obligation to repay the Resigned Member's Membership Deposit, there is nothing stopping the Club from continuing to assess monthly dues and eventually initiating collections actions to recover the unpaid amounts.

41. Given that Memberships will not end until the Club decides they do, the Club is authorized to repeat this process every 6 years, shortly before the statute of limitations has run – effectively forever. It would only end once the Club drained a Resigned Member's account to $0, even following their death.

42. The Club has alleged that it does not advertise or solicit to the public. On information and belief Suncadia Resorts, which owns Tumble Creek, advertised the Tumble Creek neighborhood as a place to buy a home and the Club as the crown jewel of the neighborhood to induce people to become members.

Penny Gutschmidt's Experience with Tumble Creek.

43. On December 17, 2022, Ms. Gutschmidt signed a membership agreement with the Club which bound her to the Membership Plan. No one from the Club discussed the membership benefits or obligations with Ms. Gutschmidt even though she went to the Club in person and asked for membership paperwork.

44. At the time, the Club charged Residential Golf Members a $60,000.00 deposit to become a member. Ms. Gutschmidt paid the membership deposit when she signed up.

45. Since Ms. Gutschmidt first joined the Club in 2022, her dues obligation increased from $900.00 a month to nearly $1,600.00 a month.

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46. In April 2024, Ms. Gutschmidt resigned her membership from the Club. She discussed the matter with the Club's Membership Director, Ciera Woodruff. Ms. Woodruff told Ms. Gutschmidt that her membership would go on the Club's Resigned Members Reissuance List until the Club reissued her membership.

47. Ms. Woodruff confirmed that when the Club reissued her membership it would "refund" her the lesser of her home buyer's deposit (if her buyer became a Honolulu member) or her original deposit, less the 10% transfer fee and less money she owed the Club for unpaid monthly dues applicable late fees and interest.

48. What Gutschmidt did not know at the time but has since learned is that the Club uses the proceeds of the new membership deposit from either the subsequent buyer or the fourth "new membership" sold to pay her back for her membership deposit. The Club does not maintain deposits or issue refunds, instead it takes money from new members' deposits to pay outgoing members.

49. Ms. Gutschmidt resigned her membership because she was selling her home in Tumble Creek and moving to Arizona. Ms. Woodruff explained that Ms. Gutschmidt still had to pay monthly dues until the Club reissued her membership. Because she was selling her home, the Club could (but was not required to) re-issue her membership to her buyer. If her home buyer elected not to become a Club Member at all, then she would remain on the Reissuance List until the Club reissued her membership on the 1-in-4 ratio.

50. Ms. Gutschmidt sold her home in August 2025.

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51. At various times after she resigned, Ms. Gutschmidt requested a copy of the Resigned Members Reissuance List to see where she stood in having her membership reissued. At first the Club refused to give her a copy of this list.

52. Eventually she convinced the Club to provide a stripped-down version of the Resigned Member Reissuance List to her. She then asked for the list monthly, and each month the list appeared inconsistent with the prior month in ways that indicated that there was no discernable order to which names were being added, removed, or ranked within the list.

53. The Club continued to assess Ms. Gutschmidt monthly membership fees and credit the outstanding dues against its obligation to refund her deposit. Ms. Gutschmidt has not paid her monthly membership fees since she resigned because she has not been in Washington to use the facilities. Because she has refused to pay monthly dues for facilities she cannot use, the Club has, or could at any time move, her name to the bottom of the Reissuance List.

54. Gutschmidt filed this lawsuit on or about November 3, 2025.

55. Following the initiation of the lawsuit, on March 16, 2026, the Club unilaterally reacquired Gutschmidt's membership, affording her a benefit not given to other members who may also wish to end their obligations, but who may not have the resources to pursue litigation.

Sale of Tumble Creek Club to Escalante Golf

56. On or about April 30, 2026, Tumble Creek executed a Purchase and Sale Agreement (for Club Assets) (the "PSA") with Escalante Tumble Creek to sell all or substantially all of the Club's assets and assigning, inter alia, the Membership Agreements and Membership Plan to Escalante Tumble Creek.

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57. On or about June 30, 2026, Tumble Creek and Escalante Tumble Creek closed on the PSA, transferring among other things, the tradename of the Club (i.e., "Tumble Creek Club"), and the Membership Agreements (controlled by the Membership Plan) to Escalante Tumble Creek, LLC.

58. In a related transaction, Suncadia Resort transferred developmental property in Tumble Creek to Escalante Tumble Creek Development LLC.

59. Members must now look to the new owner of "Tumble Creek Club" for any deposit refunds.

60. On information and belief, the Club did not hold members' deposits in any accounts, but instead treating this obligation as some type of contingent liability.

61. On information and belief, the Club uses funds collected from the sale of new memberships or transferring memberships to refund exiting members' "deposits."

62. Going forward from the closing date Escalante Tumble Creek, LLC (and/or its affiliates), not Tumble Creek Club, LLC controls, revises, enforces, and interprets the Membership Plan that controls Member obligations. Escalante Tumble Creek, LLC will have an obligation to issue future refunds to Members.

63. On information and belief, Escalante Golf, LLC is the manager of Escalante Tumble Creek, LLC, Escalante Tumble Creek Development, LLC and Escalante Tumble Creek Holdings, LLC, which on further information and belief have affiliate agreements between the various companies.

V. CLASS ACTION ALLEGATIONS

64. In addition to her personal claims, Ms. Gutschmidt brings this action on behalf of every current, resigned, and former Member entitled to a refund of their

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deposit who spent time on the Club's Reissuance List, whose membership was issued or transferred after June 30, 2009.

65. The Club issued or transferred dozens to hundreds of Members after June 30, 2009.

66. Each of Ms. Gutschmidt's claims apply to at least one subclass, and some reach across multiple subclasses.

67. The Consumer Protection Act claim for the Membership Plan itself applies to every Class Member.

68. The Consumer Protection Act claim for charging dues to Resigned Members applies to the Resigned and Former Members subclass:

69. The Declaratory Judgment claim is common to every Class Member. While the members sign individual Membership Agreements, the Membership Plan, which the Club may amend from time to time, applies universally to all Members.

70. Individual actions create the risk the Court could issue inconsistent rulings across legally identical claims and could create res judicata or collateral estoppel effects.

71. As a practical matter, if the Court decides the merits of some of Class Member's claims, it will effectively decide the merits of other Club Member who are not also class members.

72. The Club has treated each class member the same with respect to their being bound to the Membership Plan in its most recent form.

73. The common questions between class members predominate over any potential differences. Potential differences may exist between subclasses if a member was ever on the Reissuance List. Within the subclasses involving the

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Reissuance List the differences primarily concern how long class members remained on the Reissuance List and calculating their damages. Whatever damages may be, the Court may apply a single standard across the class or sub-classes.

74. The Court should certify this action as a class action under CR 23.

75. This class is made up of two subclasses. The identified subclasses are Active Members entitled to an injunction and order governing the Membership Deposit; and Resigned and Former Members entitled to a refund of their Deposit and Dues paid post resignation. The Plaintiffs may identify other subclasses during discovery.

76. The Court may certify sub-classes under CR 23.

Active Members Entitled to a Refund:

77. The Club owes Members who joined or received their membership via transfer after June 30, 2009; and Non-Resident Golf Memberships who joined before March 1, 2018, a refundable membership deposit. At the same time, these same Members face a monthly dues obligation that does not have a set end date. Under the Membership Plan, these members can only end their dues when the Club reissues their membership.

78. Current members are subject to the Membership Plan and have an interest in the Declaratory Judgment Act claim and the injunctive relief available under the Consumer Protection Act given their interest in receiving a refund, ending their monthly payment obligation, or transferring their membership.

79. Everyone dies. The transfer on death rules—including the ongoing obligations it facially imposes—will eventually apply to every current member equally.

80. The members

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Resigned and Former Members who the Club Invoiced After They Resigned:

81. Resigned Members are on the Club's Reissuance List and must pay dues for a membership they resigned months or years prior.

82. If a Resigned Member does not pay monthly dues, the Club charges them late fees and charges interest.

83. The Club may also move resigned members who stop paying dues down the Reissuance List, preventing their membership from reissuing, and further tying them into the late fees and interest. Because there is no express end date, these members face the risk they'll be tied to these monthly dues forever.

84. The Club credits a member's unpaid dues, including late fees and interest, against the Club's obligation to refund their membership deposit. However, the Membership Plan is silent about what happens to memberships where the member's financial obligation exceeds the Membership Deposit.

85. Contractually, the Club may continue charging the membership dues, including late fees and interest, after a member's debt to the club exceeds their deposit.

86. Contractually, the Club can continue assessing membership dues, late fees, and interest, against resigned members forever, moving their name down the reissuance list, and suing to collect unpaid dues every 6 years.

87. Because memberships don't end when members die, a dead member's estate (presuming there is no one available to transfer the membership to) becomes liable for these obligations, carrying an unending recurring debt forever, until the estate runs out of money.

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VI. CLAIM 1: VIOLATIONS OF THE WASHINGTON CONSUMER PROTECTION ACT (CH. 19.86 RCW) ("CPA")

88. Ms. Gutschmidt and Class Members reassert and incorporate by refence ¶¶1-87 as though fully set forth herein.

89. Tumble Creek committed the following unfair or deceptive acts or practices:

a. Having members sign an agreement with a "lifetime plus" membership term.

b. Having members sign an agreement over which they have no control when their obligations end.

c. Collecting "refundable" "deposits" which are neither refunded—as the Club uses new members' membership deposits to pay outgoing members nor are they held as a deposit.

d. Each time the Club charged Resigned or Former Members monthly membership dues.

e. Each time the Club charged Resigned or Former Members late fees and interest on unpaid membership dues.

f. Each time Tumble Creek did not release members form their membership obligations upon death.

90. Escalante Tumble Creek, as the successor in interest to Tumble Creek Club is poised to continue these practices as it is the new owner of the Club and Members must look to the new owner for their refunds, any changes to the Membership Plan and how the Club may decide to deviate from the Membership Plan in its current form.

91. These unfair or deceptive acts or practices violate RCW § 19.86.020.

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92. The Club committed these unfair or deceptive acts while conducting its business.

93. These violations occurred in trade or commerce in the state of Washington.

94. These unfair or deceptive acts or practices affect the public interest because they affect hundreds of Club Members and could affect every Club Member's spouse, children, or other estate beneficiary if they die as a member. Suncadia and/or Tumble Creek marketed the Tumble Creek Neighborhood and the Club to the public to induce people to buy homes in the development. Escalante Tumble Creek, Escalante Golf, and/or Escalante Development are now poised to continue these practices. These unfair or deceptive acts or practices have the capacity to affect hundreds more people and those people's spouses, children, or other estate beneficiaries.

95. Alternatively, The Club, whether under the ownership of Tumble Creek Golf or Escalante Tumble Creek, is a health studio, offering health studio services through its golf course and fitness center, as defined under RCW §19.142.

96. The Club sold memberships and grants members a license to access facilities that they can use to maintain or improve their physical condition through exercise (swimming, playing tennis, lifting weights or other gym equipment, playing golf. Now the Club under Escalante Tumble Creek offers or will likely continue to offer those same memberships and limited licenses.

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97. The Club violated RCW 19.142.040 *et seq*. because membership obligations last longer than 3 years; members don't have a right to cancel their membership if they move away, members don't have a right to cancel their membership if they become permanently disabled, and the Membership Agreement does not contain clauses explaining either a Member's right to refund and relief from future payment obligations after canceling a contract, or a Member's right to cancel.

98. Violating RCW 19.142 constitutes a *per se* unfair or deceptive act or practice and a *per se* violation of Consumer Protection Act, under RCW § 19.142.110.

99. Tumble Creek's Membership Plan and Agreement has injured Ms. Gutschmidt and the Class Members in their business or property as they're bound to pay money forever, including after they die.

100. Tumble Creek's Membership Plan and Agreement has injured Ms. Gutschmidt and two subclasses (Resigned Members and Former Members) as Tumble Creek Club charged those Members and/or those Members paid after resigning their membership.

101. The unfair or deceptive acts or practices have actually and proximately caused the harm that Ms. Gutschmidt and the class members have suffered.

102. Ms. Gutschmidt and Class Members have suffered damages in an amount to be proven at trial.

103. RCW §19.86.090 entitles Ms. Gutschmidt and Class Members to exemplary damages equal to three times their actual damages up to $25,000.00 per violation.

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104. RCW § 19.86.090 entitles Ms. Gutschmidt and Class Members to a permanent injunction prohibiting the Club (i.e., Escalante Tumble Creek and/or Escalante Development (or from continuing the unfair and/or deceptive acts or practices that Tumble Creek and Suncadia Resort initiated, and which are likely to continue.

105. Escalante Tumble Creek and Escalante Development are liable as successors in interest to Tumble Creek Golf and Suncadia Resort and are the correct Defendants for the declaratory and injunctive relief sought.

VII. CLAIM 2: DECLARATORY JUDGMENT ON TUMBLE CREEK'S MEMBERSHIP PLAN AND MEMBERSHIP AGREEMENT.

106. Ms. Gutschmidt and Class Members reassert and incorporate by reference ¶¶1-105 as though fully set forth herein.

107. Ms. Gutschmidt and Class Members are persons interested in the outcome and interpretation of The Club's Membership Plan and Agreements.

108. Under RCW §7.24.020, Ms. Gutschmidt and the Class Members may ask the Court to decide any question of construction or validity arising under the Membership Plan and Agreements, and obtain a declaration of rights, status, or other legal relations thereunder.

109. A justiciable dispute exists between the parties concerning:

a. the terms of the Membership Plan and Agreement as they relate to a Resigned Member's ongoing obligation to pay monthly dues after they resign;

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b. the terms of the Membership Plan and Agreement as they relate to a Resigned Member's ongoing obligation to pay monthly dues after their Membership Deposit is exhausted;

c. Whether the Membership Plan and Agreement, together, violate public policy;

d. Tumble Creek and Escalante Tumble Creek's obligations under the implied duty of good faith and fair dealing as related to the Membership Plan and Agreement; and

e. Whether the Membership Agreement is illusory;

f. Whether Tumble Creek and/or Escalante Tumble Creek must perform an accounting and repay Resigned and Former Club Members for the monthly dues they paid after they resigned their Club Membership.

110. The Court should enter a declaratory judgment and/or further relief pursuant to the Declaratory Judgment Act that:

a. The Defendants cannot compel Resigned Club Members to continue paying monthly membership fees either after they resign or after they erode their Membership Deposit;

b. That the Membership Agreement is against public policy and therefore void;

c. The Defendants may not try collecting from a Deceased Member's Estate;

d. Finding the Membership Plan and Agreement is illusory because it imposes no duties on the Defendants; or

e. The Defendants must perform an accounting to determine how much money each Resigned and Former Club Member paid to Tumble Creek

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and/or Escalante Tumble Creek after they resigned their Club Membership;

f. The Defendants must repay each Resigned and Former Club Member the amount of money they paid to Tumble Creek after they resigned their Club Membership.

VIII. CLAIM 3: CIVIL CONSPIRACY.

111. Ms. Gutschmidt and Class Members reassert and incorporate by reference ¶¶1-110 as though fully set forth herein.

112. At all relevant times, Defendants agreed, expressly or tacitly, to accomplish those acts in violation of the Consumer Protection Act as alleged in this Complaint, the "Common Plan."

113. Each conspirator knowingly and intentionally participated in the Common Plan and took overt actions in furtherance thereof. They undertook these overt acts for, and to advance this Common Plan. Their acts were not independent or coincidental conduct.

114. This conduct constituted or furthered violations of the Consumer Protection Act, as alleged in Claim 1 and violated public policy underlying Claim 2, of the Complaint.

115. As a direct and proximate result of Defendants' agreement and the overt acts committed in furthering it, Gutschmidt and Class Members suffered injuries and damages in an amount to be proven at trial.

116. Each Defendant is liable for the damages caused by the wrongful acts performed by the other conspirators in furtherance of the common plan.

IX. PRAYER FOR RELIEF

Ms. Gutschmidt asks the Court to enter Judgment as follows:

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1. A Declaration consistent with ¶109, above finding for Ms. Gutschmidt and the Class Members on those issues.
2. Issue a Permanent Injunction preventing the Club (Escalante Tumble Creek) from charging or collecting membership dues from any Club Member after the Club Member resigns or dies;
3. Compelling Tumble Creek under the Washington Consumer Protection Act or the Washington Declaratory Judgment Act to account to Resigned or Former Members for all the money they paid the Club after they resigned their membership;
4. Compelling Escalante Tumble Creek and/or Tumble Creek to promptly refund each Resigned or Former Member who paid membership dues after they notified the Club that they resigned their membership;
5. Awarding Plaintiff and each Class Member damages in an amount to be proven at trial;
6. Awarding treble damages under RCW §19.86.090;
7. For prejudgment interest on any monetary award;
8. Awarding reasonable costs and attorneys' fees for investigating and litigating this matter under either RCW § 19.86 *et seq* or RCW § 7.24 *et seq.*;
9. Any other relief the Court finds appropriate.

Ms. Gutschmidt and the Class reserve the right to amend these pleadings based on new evidence discovered during litigation, to conform to the evidence presented at trial, to further the ends of justice or as equity requires.

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DATED October, 23 ___, 2026.

POSSINGER LAW GROUP, PLLC

/s/ Jeffrey Possinger

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CERTIFICATE OF SERVICE

I certify that on the date shown below I served a copy of the Amended Complaint on the following persons in the manner set forth below:

Zac Delap, WSBA # 56113 Alexander M. Wu WSBA # 40649 HILLIS CLARK MARTIN & PETERSON P.S. 999 Third Ave, Ste 4600 Seattle, WA 98104 (t) 206-623-1745 zac.delap@hcmp.com alex.wu@hcmp.com buffy.visick@hcmp.com erika.donis@hcmp.com	[X] via eFiling/Email [ ] via Messenger [ ] via US Mail [ ] via Fax

DATED October 23, 2026.

/s/ *David Selka*
David Selka, Paralegal