

1 **BILL LOCKYER,**
Attorney General
2 **HERSCHEL T. ELKINS,**
Senior Assistant Attorney General
3 **ALBERT SHELDEN,**
Supervising Deputy Attorney General
4 **MICHAEL B. HUGHES,** State Bar # 108409
Deputy Attorney General,
5 300 South Spring Street, Suite 5212
Los Angeles, CA 90013
6

7 **JAMES P. FOX, DISTRICT ATTORNEY**
County of San Mateo, State of California
State Bar No. 45169
8 400 County Center, 3rd Floor
Redwood City, California 94063
9 By: **Chuck Finney, Deputy**

10 Attorneys for Plaintiff,
The People of the State of California
11

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN MATEO**
14

15 THE PEOPLE OF THE
STATE OF CALIFORNIA,

16 Plaintiff,

17 v.

18 TRENDWEST RESORTS, INC.,

19 Defendant.
20

CASE NO.

COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES AND OTHER
EQUITABLE RELIEF

21 —
22 Plaintiff, the People of the State of California (“Plaintiff” or the “People”), by and
23 through Bill Lockyer, Attorney General of the State of California, and James P. Fox,
24 District Attorney of the County of San Mateo, on information and belief alleges the
25 following:
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27 ///

28 **I.**

1 **JURISDICTION**

2 1. The authority to bring this action is derived from Business and Professions
3 Code Sections 17204, 17206, 17535 and 17536.

4 2. Defendant, at all times mentioned herein has transacted business within and
5 from the County of San Mateo and throughout the State of California. The violations of
6 law hereinafter described have been and are now being committed within and from the
7 County of San Mateo and elsewhere within the State of California.

8 **II.**

9 **DEFENDANT**

10 3. Trendwest Resorts, Inc., (hereinafter, "Trendwest") is and at all relevant
11 times mentioned herein was a corporation registered to do business in the State of
12 California, having filed with the Secretary of the State of California, under number
13 C16447560, and has CSC - Lawyers Incorporating Service, 2730 Gateway Oaks Drive,
14 Ste. 100, Sacramento, CA 95833, as its registered agent for service of process in the state.
15 Defendant's principal office is in Redmond, Washington.

16 4. Defendant markets and sells timeshare and vacation contracts, and provides,
17 furnishes, contracts for, arranges, or advertises that it can or may arrange, or has
18 arranged, wholesale or retail air or sea transportation. As such, Defendant is subject to
19 Department of Real Estate (hereinafter, "DRE") laws and regulations and to the laws
20 affecting a "seller of travel," as defined in Business and Professions Code section
21 17550.1.

22 **III.**

23 **NATURE OF DEFENDANT'S BUSINESS**

24 5. Defendant Trendwest markets and sells timeshare interests and related
25 vacation products, goods and services. Defendant uses a variety of marketing methods to
26 get prospective purchasers to come to meetings at which Trendwest attempts to sell
27 timeshare interests and related vacation products, goods and services. Trendwest uses
28 oral and written methods to communicate its offers to consumers.

1 6. Trendwest uses travel certificates in its marketing to induce members of the
2 public to attend sales presentations or to make a purchase. Typically, the certificates
3 purport to offer the recipient either a short stay at one or more of various destinations or a
4 short cruise. The travel certificates contain numerous conditions which are initially
5 undisclosed and which, when belatedly disclosed, are difficult to comply with by the
6 consumer. Even consumers who complied with the certificates' conditions had difficulty
7 obtaining the promised incentive. Consumers who were successful in utilizing the
8 incentive sometimes found that the incentive was different and of lesser value than was
9 initially represented.

10 7. Defendant's real estate marketing and sales activities are closely regulated
11 in the State of California by the Department of Real Estate; Trendwest also operates
12 under license and regulation of other jurisdictions. Nevertheless, Trendwest has sold
13 products, goods and services which it was not authorized to sell and engaged in marketing
14 and sales which were in violation of its permits.

15 8. Defendant has used misrepresentations in the marketing of its products and
16 services that were prohibited by Business and Professions Code section 17500 and
17 Defendant has engaged in unfair and unlawful business practices in its sales practices, all
18 of which are prohibited by Business and Professions Code section 17200 et seq.

19 9. Defendant failed to afford the rescission and cancellation rights to which the
20 consumers who purchased Defendant's products were entitled.

21 **IV.**

22 **FIRST CAUSE OF ACTION**

23 **Untrue and Misleading Statements in Violation of**

24 **Business and Professions Code Section 17500**

25 **(By Plaintiff Against Defendant Trendwest)**

26 10. Plaintiff realleges and incorporates by this reference paragraphs 1 through 9
27 of this complaint as though fully set forth herein.

28 11. Defendant Trendwest, within the past three years, with the intent to induce

1 members of the public to attend a sales presentation for a timeshare product and related
2 services, has made untrue or misleading statements. The untrue or misleading statements
3 were disseminated before the public in California, orally and in writing. Defendant
4 Trendwest's communications, which violate Business and Professions Code Section
5 17500, include but are not limited to the following:

6 A. Informing consumers that they were finalists in winning a certain
7 promotional item or that they had already won a specific prize when such was not
8 true;

9 B. Misrepresenting to consumers the value of prizes, incentives, or
10 promotional items by stating that the incentives have a higher retail value than the
11 incentives actually have;

12 C. Misrepresenting to consumers the value and utility of promotional
13 incentives by offering the incentives without disclosing at the time of the offer all
14 of the terms, limitations or conditions which must be followed in order to utilize
15 the incentive;

16 D. Misrepresenting to consumers the nature of what is necessary to
17 receive a promotional incentive, gift or prize, by failing to state the requirement to
18 attend a sales presentation to obtain the promotional incentive;

19 E. Misrepresenting to consumers the nature of the vacation credits to be
20 purchased by failing to adequately disclose that the credits expire;

21 F. Misrepresenting to consumers the nature of the vacation credits
22 offered for sale, allowing the purchaser to believe the credits have a fixed value or
23 exchange rate, when the credits are actually subject to change in their valuation;

24 G. Misrepresenting to consumers the nature of a timeshare purchase as
25 having good value as a financial investment;

26 H. Misrepresenting to consumers the location of resorts or availability
27 of services;

28 I. Misrepresenting to consumers the quantity of vacation credits

1 needed to stay at a particular resort at a particular time or misrepresenting the
2 quantity of vacation credits sufficient to obtain any other benefit or service;

3 J. Misrepresenting to consumers the ability or ease with which an
4 owner may check the availability of a property or service, make a reservation, or
5 exchange vacation credits;

6 K. Prior to the execution of any contract, misrepresenting to consumers
7 the period of time that must elapse before a purchaser may use and/or make a
8 reservation to stay at a resort or other facility, or use any other goods, service, or
9 benefit;

10 L. Prior to the execution of any contract, misrepresenting to consumers
11 the future annual cost of participating in an exchange program and/or the cost of
12 annual maintenance and association dues;

13 M. Misrepresenting to the consumer, by failing to adequately disclose,
14 that part of the timeshare contract involves a negative option contract;

15 N. Representing that an offered "reduced" price of a timeshare interest
16 (vacation credits) may only be accepted at the time of the current sales
17 presentation, when such was not true; and

18 O. Misrepresenting to the consumer that Trendwest was not responsible
19 for verbal representations made by its agents.

20 P. Misrepresenting to consumers the estimated length of the sales
21 presentation they are scheduled to attend.

22 12. Defendant knew, or by the reasonable exercise of care should have known,
23 that the statements or omissions of material fact set forth in paragraph 11 above were
24 untrue or misleading at the time such statements were made.

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28 V.

1 **SECOND CAUSE OF ACTION**

2 **Acts of Unfair Competition in Violation of**
3 **Business and Professions Code Section 17200**
4 **(By Plaintiff Against Defendant)**

5 13. Plaintiff incorporates by reference paragraphs 1 through 12 of this
6 complaint as though fully set forth herein.

7 14. Within four years prior to the filing of this complaint, Defendant Trendwest
8 engaged in the following acts, among others, of unfair competition as defined in Business
9 and Professions Code section 17200:

10 A. Using and offering a gift, prize, or promotional incentive in an
11 untrue or misleading manner, in violation of Business and Professions Code
12 sections 17537, 17537.1 and 17537.2;

13 B. Offering a promotional incentive without disclosing all of the terms
14 and conditions of the offer, in violation of Business and Professions Code sections
15 17537.1 and 17537.2;

16 C. Offering a promotional incentive without sending the required
17 written confirmation of the offer, in violation of Business and Professions Code
18 sections 17537.1;

19 D. Offering a promotional incentive without disclosing that a certificate,
20 coupon, or rain-check redeemable for fulfillment for goods and/or services will be
21 provided as a promotional incentive, in violation of Business and Professions Code
22 Sections 17537.1(c), (d), or (e);

23 E. Failing to disclose prior to the execution of any contract or offer, in
24 clear and conspicuous language, that accrued vacation credits are subject to
25 expiration if not used within a stated period of time;

26 F. Failing to disclose prior to the execution of any contract or offer,
27 that vacation credit valuations and redemption schedules are subject to adjustment
28 up or down, and that an association decision could result in a diminution of

1 vacation credit values;

2 G. Stating that a timeshare purchase constitutes a financial investment;

3 H. Failing to provide to WorldMark members the easy ability for an
4 owner to check the availability of a property or service, or make a reservation or
5 exchange vacation credits, when having represented such existed;

6 I. Failing to adequately disclose, prior to the execution of any contract,
7 the period of time that must elapse before a purchaser may use and/or make a
8 reservation to stay at a resort or other facility, or use any other goods, service, or
9 benefit;

10 J. Failing to adequately disclose, prior to the execution of any contract,
11 the annual cost of participating in an exchange program and/or the cost of annual
12 maintenance and association dues, when applicable;

13 K. Failing to adequately disclose to the consumer the expected costs for
14 initial and renewal terms and to obtain the express written authorization from the
15 consumer for any purchase, subscription or enrollment which Defendant arranges
16 that results in automatic charging or billing of initial or periodic amounts to the
17 consumer;

18 L. Selling products, including a trial program with a rebate, without the
19 required authorization from the Department of Real Estate;

20 M. Failing to post the Public Report in a conspicuous and unobstructed
21 manner where Defendant is selling timeshare interests, in violation of
22 Section 11018.1(b) of the Business and Professions Code;

23 N. Failing to adequately inform prospective purchasers that he or she
24 can take as much time as he or she requires in order to read the Public Report and
25 any and all other documents necessary to consummate a sale before leaving the
26 premises or signing a contract or not allowing prospective purchasers the time and
27 opportunity to do so;

28 O. Attempting to disclaim responsibility for the verbal representations

1 made by its agents;

2 P. Failing to adequately disclose the consumer's right of rescission, in
3 violation of Section 11024 of the Business and Professions Code;

4 Q. Failing to provide to consumers all of the procedures necessary to
5 effectively cancel the purchase and failing to fully and promptly honor the
6 consumer's right of rescission when consumers properly exercised their right of
7 rescission;

8 R. Acting as a seller of travel within the definition of Business and
9 Professions Code Section 17550.1, and receiving money or other valuable
10 consideration, without being registered under Business and Professions Code
11 Section 17550 et seq;

12 S. Acting as a seller of travel within the definition of Business and
13 Professions Code Section 17550.1, but failing to give the disclosures required by
14 Business and Professions Code Section 17550 et seq;

15 T. Failing to comply with the requirements of any applicable federal or
16 California law relating to a "do not call list," including but not limited to the
17 requirements to forbear from making calls or failing to comply with a consumer's
18 request to place the consumer's name and number on the "do not call list";

19 U. Using telephonic marketing methods unlawful in California, such as
20 use of an automatic dialing device without an unrecorded introduction;

21 V. Offering as a promotional incentive any travel certificate or coupon
22 which will not be readily redeemed without the consumer paying for an upgrade at
23 additional cost to the consumer;

24 W. Misleading consumers as to the estimated length of the sales
25 presentation they are scheduled to attend, in violation of Business and Professions
26 Code section 17537.1;

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28 X. Having a consumer execute a contract in a language other than a

1 language in which the consumer appears to be fluent, and other than the language
2 in which material portions of the sales presentation was given;

3 Y. Failing to investigate consumer complaints which allege unlawful
4 business practices purportedly made during the solicitation, sales presentation, or
5 at any time within the applicable cancellation period, and to take appropriate
6 corrective action;

7 Z. Contacting a consumer in violation of applicable debt collection laws
8 or any bankruptcy orders;

9 AA. Allowing sales agents to continue a sales presentation, over the
10 objections of the consumer, and by allowing sales agents to follow a consumer
11 outside of the sale presentation building to the consumer's car or residence; and

12 BB. Making those misrepresentations in violation of Business and
13 Professions Code section 17500 as alleged in paragraph 11 of the First Cause of
14 Action, which are incorporated herein by this reference as though fully set forth.

15 **VI.**

16 **PRAYER**

17 WHEREFORE, plaintiff prays for judgment as follows:

18 1. A permanent injunction be issued pursuant to Business and Professions
19 Code Sections 17203 and 17535, and the Court's inherent equity powers, restraining and
20 enjoining the Defendant Trendwest, its agents, employees, and representatives, and all
21 persons acting under, by, through or on behalf of Defendant, who have actual or
22 constructive notice of this Permanent Injunction from engaging in or performing directly
23 or indirectly any or all of the following:

24 A. Making any of the misrepresentations set forth in the First Cause of
25 Action, or any other misrepresentation proscribed by Business and Professions
26 Code section 17500;

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28 B. Doing those acts of unfair competition described in the Second

1 Cause of Action, or performing any other act of unfair competition in violation of
2 Business and Professions Code section 17200.

3 2. Pursuant to Section 17536 of the Business and Professions Code, Defendant
4 Trendwest be assessed a civil penalty of two thousand five hundred dollars (\$2,500) for
5 each and every untrue or misleading representation made by them, according to proof at
6 the time of trial.

7 3. Pursuant to Section 17206 of the Business and Professions Code, Defendant
8 be assessed a civil penalty of two thousand five hundred dollars (\$2,500) for each act of
9 unfair competition in violation of section 17200 of the Business and Professions Code,
10 according to proof at the time of trial.

11 4. Plaintiff be given such other and further relief as the nature of this case may
12 require and this court deems proper to fully and successfully dissipate the effects of the
13 untrue and misleading representations and the acts of unfair competition alleged in this
14 complaint.

15 Dated: October 29, 2003

BILL LOCKYER,
Attorney General
HERSCHEL T. ELKINS,
Senior Assistant Attorney General
ALBERT SHELDEN,
Supervising Deputy Attorney General
MICHAEL B. HUGHES,
Deputy Attorney General

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21 By: MICHAEL B. HUGHES, Deputy Attorney General
Attorneys for Plaintiff,
People of the State of California

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24 Dated:

JAMES P. FOX, District Attorney

25
26 By: CHUCK FINNEY, Deputy District Attorney
Attorneys for Plaintiff,
People of the State of California