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1 **ARIZONA CORPORATION COMMISSION**
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SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

8 ARIZONA CORPORATION COMMISSION,)
9 Plaintiff,)
10 vs.)
11 MICHAEL EUGENE KELLY, a married man;)
12 YUCATAN RESORTS, INC., a former Indiana)
13 Panamanian corporation; RESORT HOLDINGS)
14 INTERNATIONAL, INC., a former Nevada)
15 corporation; and RESORT HOLDING)
16 INTERNATIONAL, S.A., a Panamanian)
17 Corporation;)
18 Defendants.)

CV 2006-001547

No. CV _____

COMPLAINT

**(Other Civil – Securities Registration
Violations, Securities Fraud)**

17 For its Complaint against defendants, Plaintiff Arizona Corporation Commission pleads as
18 follows:

19 1. The plaintiff in this matter, the Arizona Corporation Commission (“ACC”), is a
20 governmental entity charged with enforcing the Securities Act of Arizona, A.R.S. §44-1801 *et seq.*
21 (hereinafter, the “Securities Act”).

22 2. Defendant Michael Eugene Kelly (“Kelly”) is a married man now residing in Cancun,
23 Mexico and/or Panama City, Panama. Kelly was the founder, president and owner of Yucatan
24 Resorts, Inc., and was a director, officer and owner of Yucatan Resorts, S.A. Kelly is the founder,
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1 chairman and owner of defendant Resort Holdings International, Inc., and is the controlling party for
2 Resort Holding International, S.A.

3 3. Defendant Yucatan Resorts, Inc. ("Yucatan") was an unincorporated entity based out of
4 South Bend, Indiana. Yucatan, along with Defendant Yucatan Resorts, S.A., designed, promoted
5 and operated a purported "Universal Lease" timeshare program involving investments in hotel
6 units in Cancun, Mexico and other Central American locales from approximately March 2000 to
7 December 2002. Yucatan sold hundreds of Universal Leases to investors in Maricopa County and
8 throughout the state of Arizona during this period.

9 4. Defendant Yucatan Resorts, S.A. ("Yucatan-SA") was a foreign corporation that was
10 registered in Panama City, Panama on or about June 30, 1998. Serving as the Central American
11 affiliate to Yucatan, Yucatan-SA contracted with Arizona sales agents and assisted in the
12 marketing of the same Universal Lease timeshare program from approximately March 2000 to
13 December 2002. Yucatan-SA was formally dissolved in Panama City, Panama on or about
14 December 23, 2003.

15 5. Defendant Resort Holdings International, Inc., ("RHI"), is a Nevada corporation that
16 incorporated on or about July 16, 1999. RHI began replacing Yucatan as the primary promoter
17 and operator of the Universal Lease timeshare program within the state of Arizona in
18 approximately May 2002, and RHI continued in that capacity until approximately September
19 2003. RHI was formally dissolved in Nevada on or about December 20, 2004.

20 6. Defendant Resort Holding International, S.A. ("RHI-SA") is a foreign corporation that
21 was registered in Panama City, Panama on or about April 16, 2002. Serving as the Central
22 American affiliate to RHI, RHI-SA contracted with Arizona sales agents and assisted in the
23 marketing of the same Universal Lease timeshare program from approximately May 2002 to
24 September 2003. Upon information and belief, RHI-SA remains an active company based out of
25 Panama City, Panama.

26 7. All defendants may collectively be referred to herein as "Defendants."

1 8. At all times relevant to this Complaint, Defendants conducted business within or from
2 Maricopa County, Arizona.

3 9. The ACC brings this action pursuant to A.R.S. §§ 44-2031 and 44-2032. Venue is proper
4 in this County pursuant to A.R.S. §§ 44-2031(B).

5 **GENERAL ALLEGATIONS**

6 10. Since at least 2000, Defendants have been directly or indirectly engaged in the offer and
7 sale of securities to the general public in Arizona in the form of investment contracts as defined by
8 A.R.S. § 44-1801(26).

9 11. Defendants' investment contract was marketed as a Universal Lease timeshare program
10 ("Universal Lease"), a scheme that purportedly offered investors the opportunity to purchase
11 timeshare units in one of various hotel properties in Cancun and Acapulco, Mexico, as well as
12 parts of Central America.

13 12. Defendants Kelly, Yucatan and Yucatan-SA designed, marketed and operated this
14 Universal Lease during a period from approximately March 2000 through December 2002.
15 During this time, over 242 Arizona investors invested over \$16 million dollars into this program.

16 13. In the summer of 2002, defendants RHI and RHI-SA began replacing defendants
17 Yucatan and Yucatan-SA as the primary entities responsible for marketing and managing the
18 Universal Lease. In so doing, RHI and RHI-SA generated and distributed Universal Lease
19 promotional materials, recruited sales agents throughout Arizona, and performed administrative
20 and banking functions relating to the Universal Lease.

21 14. During the period from May 2002 to September 2003, defendants Kelly, RHI, and RHI-
22 SA directly or indirectly sold over \$8.8 million worth of Universal Leases to over 127 Arizona
23 investors.

24 15. During the period from 2000 to mid 2003, Defendants deposited Universal Lease
25 investment funds into a series of bank accounts at the National City Bank of Indiana. By June
26

1 2003, RHI and RHI-SA began depositing Universal Lease funds into a Hemisphere National Bank
2 account in Florida and, several months later, a Dresdner Bank AG account in New York.

3 16. Arizona investors were told that Universal Lease investment funds were being used to
4 purchase more resort properties, indicating that investor funds were being pooled to provide
5 financing for new acquisitions.

6 17. Universal Lease investor funds were in fact wired to a number of undisclosed locales,
7 including dozens of companies and individuals in Mexico.

8 18. With respect to the Yucatan Resorts accounts, a substantial amount of Universal Lease
9 investor funds were remitted directly back to other Universal Lease investors in the form of
10 monthly, quarterly or annual interest payments.

11 19. Still another amount of Universal Lease funds from these accounts were used to fund a
12 number of U.S. entities, including defendant Kelly's Avanti Motor Company in Georgia and
13 defendant Kelly's former investment program, Yucatan Investments, Inc.

14 20. With respect to the RHI accounts in Indiana and later Florida, a substantial amount of
15 Universal Lease investment funds were wired directly to bank accounts held by the purported
16 third-party servicing agent in the Universal Lease program, World Phantasy Tours, Inc. These
17 funds were then subsequently redistributed directly back to investors in the form of monthly,
18 quarterly or annual interest payments.

19 *Specifics of the Universal Lease Program*

20 21. Under the terms of the Universal Lease program, investors were required to invest a
21 minimum of \$5,000 dollars, but they were allowed to invest any amount in excess of that sum.
22 Investment funds were made payable to Yucatan or Yucatan-SA and, subsequently, to RHI or
23 RHI-SA.

24 22. Prospective investors were given the option to roll part or all of their IRA portfolios into
25 the Universal Lease program. In doing so, investors were effectively replacing their existing
26 retirement savings with the Universal Lease timeshare program. The Universal Lease application

1 contained a specific form to facilitate the transfer of investors' retirement portfolios into
2 Defendants' investment program.

3 23. According to Universal Lease promotional materials, investors were afforded the
4 opportunity to select one of three separate Universal Lease "options." In practice, options 1 and 2
5 were illusory, effectively leaving option 3 as the sole Universal Lease Program alternative.

6 24. Under the Universal Lease's alleged "Option 1," investors could choose to forego any
7 returns on their investments, and instead elect to utilize a timeshare unit themselves. Under this
8 option, Defendants would "assign" to the investor, at Defendants' own choosing, a specific unit, for a
9 specific week, and at a specific location, and only after a \$5,000 sum (or more) had been paid. The
10 investor would have no input into the date, quality or location of this timeshare assignment.

11 25. Additionally, an Option 1 purchaser was required to pay annual management fees, ranging
12 from \$380 to \$645 per year (with such amounts subject to Consumer Price Index increases). This
13 translated into an effective surcharge of \$9,000 to \$16,125 (or more) over the life of the 25 year
14 timeshare lease. For a \$5,000 purchaser, this would ultimately equate to a total payment of \$14,000
15 to \$21,125 in return for 12 weeks of timeshare access (over a 25 year period) at an unknown unit, at
16 an undisclosed location, during an undisclosed time of year.

17 26. This "vacationing" selection was minimally included in Universal Lease promotional
18 materials, and the selection received no coverage in Universal Lease recruitment seminar for
19 prospective salesmen. This option had no applicability to the many elderly investors placing
20 retirement funds into the Universal Lease Program.

21 27. Upon information and belief, not one Arizona investor opted for "Option 1" of the
22 Universal Lease program, and not a single Arizona Universal Lease sales agent sold a Universal
23 Lease under "Option 1."

24 28. The Universal Lease "Option 2," which presented investors the opportunity to rent out
25 assigned timeshare units themselves, contained many of the same prohibitive costs and conditions as
26 that of Option 1.

1 29. Option 2 again required the purchaser to forego any guaranteed investment returns, and
2 instead imposed substantial annual maintenance fees on the purchaser for the full 25 year lease term.
3 Prospective Option 2 purchasers had to also await a determination by the Defendants, after the
4 purchase had been made, as to the location, resort type and permitted dates of use for the timeshare.
5 Defendants' brochures warned that this self-renting option would not bring in the same level of
6 revenues as would a professional third party servicing agent as offered in Option 3.

7 30. Defendants' promotional materials provided a discussion of the financial disincentives, but
8 no discussion, comments or guidance over the advantages of selecting option 2, other than the brief
9 suggestion that this self-renting option could be carried out through the "placing of an advertisement
10 in the local paper."

11 31. As with Option 1, Option 2 of the Universal Lease Program was not included in
12 Defendants' recruitment and training of Arizona sales agents. During a seminar, a recruiter admitted
13 to prospective sales agents that the only Universal Lease option of interest for sales agents was the
14 investment option, Option 3.

15 32. Upon information and belief, not one Arizona investor opted for "Option 2" of the
16 Universal Lease program, and not a single Arizona Universal Lease sales agent sold a Universal
17 Lease under "Option 2."

18 33. Defendants' Universal Lease literature focused on Option 3. According to Universal Lease
19 promotional brochures, investors who "selected" Option 3 would be eligible to receive a guaranteed
20 11 percent (subsequently lowered to 9 percent) annual return on their timeshare investments for a
21 period of 25 years, after which time the lease would be renewable for another 20 years.

22 34. For an investor to reap the 11 and later 9 percent per annum return under this Universal
23 Lease option, the investor was required, as part of his investment, to hire a "third party" management
24 company to lease the investor's timeshare unit. The Universal Lease materials identified the
25 Panamanian company World Phantasy Tours, Inc. ("World Phantasy") as the designated
26 management company for this servicing function.

1 35. The selection of World Phantasy as the “independent third party leasing agent” was the
2 only listed means under which investors could earn the promised 11 or 9 per cent rate of return on
3 their Universal Lease investments.

4 36. To select World Phantasy as the servicing agent, investors were instructed to complete a
5 formal “Management Agreement” with the company. This World Phantasy Management Agreement
6 was bundled with the Universal Lease promotional and application materials, and was the single
7 management company identified for servicing the various participating resorts.

8 37. Upon information and belief, no legitimate independent third party management companies
9 were actually available to lease out and service the Universal Lease timeshare units.

10 38. Once investors had made their investments in Defendants’ Universal Lease program and
11 had signed the Management Agreement with World Phantasy, the investors were contractually
12 guaranteed to receive an 11 and later 9 percent per annum return on their investments for the life of
13 the Universal Lease. The investors had no duties or responsibilities following their investments, and
14 only Defendants and/or World Phantasy were responsible for developing new units and/or managed
15 existing rental units to generate the rental profits that would purportedly support the investors’
16 investment returns.

17 39. According to Defendants’ marketing literature, Option 3 of the Universal Lease provided a
18 multitude of advantages to more traditional investments. Among these was the claim that Option 3
19 of the Universal Lease program provided a far superior rate of return than most other investments. A
20 second claim was that the Universal Lease was supported by “debt-free” resort properties, and that as
21 a result the Universal Lease program was fully safe and secure.

22 40. Option 3 was also the only of the Universal Lease options that also allowed investors to
23 recoup up to 5 percent of any liquidation penalty incurred during the process of rolling other
24 investments into the Universal Lease program. This feature was an added incentive for investors to
25 exchange their existing investment portfolios into Option 3 of the Universal Lease Program.
26

1 47. Defendants also failed to disclose that defendant Kelly had actually purchased World
2 Phantasy Tours in early 1999. At the time, World Phantasy Tours was just a small travel agency in
3 Panama City, with only two or three employees.

4 48. Defendants also failed to disclose that defendant Kelly retained explicit control over the
5 corporate affairs of the purportedly independent servicing company World Phantasy during a period
6 from at least 2001 to 2002. Corporate resolutions reveal that the officers and directors of defendants
7 Yucatan-SA and RHI-SA were also acting as officers and directors of World Phantasy during the
8 same periods of time.

9 49. Defendants also failed to disclose that Yucatan Investment Corp. ("Yucatan Investments")
10 was the subject of an administrative order by the New Mexico Securities Division on May 18, 1999,
11 for the sale of unregistered, non-exempt securities - in the form of 9 month promissory notes -
12 through unlicensed sales agents. Defendant Kelly was the sole incorporator, statutory agent,
13 president and secretary of Yucatan Investments, and Yucatan Investments was based out of the same
14 business address as defendants Yucatan, Yucatan-SA, RHI, and RHI-SA. Yucatan Investments'
15 operation was the immediate predecessor to Defendants' current Universal Lease program.

16 50. Defendants also failed to disclose that Yucatan Investments was the subject of an
17 administrative order by the South Carolina Securities Division on July 26, 1999, for the sale of
18 unregistered, nonexempt securities - in the form of 9 month promissory notes - through unregistered
19 sales agents.

20 51. Defendants also failed to disclose that Yucatan Investments was the subject of a Cease and
21 Desist order by the Minnesota Department of Commerce on October 4, 1999, for the sale of
22 unregistered, nonexempt securities. Defendant KELLY, endorsing as the company's president,
23 consented to this Order on September 15, 1999.

24 52. Defendants also failed to disclose that Yucatan Investments was the subject of an
25 administrative order by the Connecticut Department of Banking, on November 7, 2000, for the sale
26

1 of unregistered, nonexempt securities – in the form of promissory notes - through unlicensed sales
2 agents.

3 53. Defendants also failed to disclose that defendants Kelly and Yucatan-SA were the subject
4 of an administrative order by the Wisconsin Securities Division on March 28, 2001, for the sale of
5 unregistered securities by an unlicensed sales agent and for securities fraud in violation of Wisconsin
6 law.

7 54. Defendants also failed to disclose that on October 28, 2002, Yucatan-SA was the subject of
8 an administrative cease and desist order from the Pennsylvania Securities Commission arising out of
9 multiple registration and fraud violations as proscribed by the Pennsylvania Securities Act.

10 55. Upon information and belief, Arizona investors had no knowledge that each of Yucatan
11 Investments, Yucatan, Yucatan-SA, and Kelly had been the subject of previous sanctions based on
12 multiple violations of state securities laws.

13 *Recent Developments*

14 56. In the summer of 2004, World Phantasy notified investors that it was ending its association
15 with the Universal Lease program. World Phantasy announced that a company by the name of
16 Galaxy Property Management (“Galaxy”) would be taking over the “servicing functions.” Arizona
17 investors were not an explanation for, or choice in, this replacement.

18 57. Arizona investors were given no information as to who owns Galaxy, who manages
19 Galaxy, where the company is based, whether the company is solvent, and what - if any - relationship
20 it has with the Defendants.

21 58. Until recently, an individual by the name of Gabriel Escalante had been signing
22 correspondence to Universal Lease investors on behalf of Galaxy. Gabriel Escalante previously
23 served as the president and director of World Phantasy.

24 ...

25 ...

26 ...

1 59. Despite repeated marketing claims that the Universal Lease program was safe and
2 guaranteed, quarterly interest payments to Universal Lease investors have been repeatedly missed
3 since Galaxy took over in August 2004. Only a few months of partial interest payments have been
4 received since that time.

5 60. In correspondence, Galaxy suggested that passing hurricanes were responsible for the
6 delinquent interest payments over the past 14 months or so. Galaxy gave no explanation why
7 insurance would not cover these missed payments.

8 61. Arizona investors have now received no outstanding Universal Lease interest payments
9 since April 2005.

10 **COUNT ONE**

11 **VIOLATION OF A.R.S. § 44-1841**

12 **(Offer and Sale of Unregistered Securities)**

13 62. The ACC incorporates by reference all allegations set forth in paragraphs 1 through 61 of
14 this complaint.

15 63. During the period from approximately May 2000 through at least September 2003,
16 Defendants offered and sold securities in the form of investment contracts, within or from Arizona.

17 64. The securities referenced above were not registered pursuant to Articles 6 or 7 of the
18 Securities Act.

19 65. This conduct violates A.R. S. § 44-1841.

20 **COUNT TWO**

21 **VIOLATION OF A.R.S. § 44-1842**

22 **(Transactions by Unregistered Dealers or Salesmen)**

23 66. The ACC incorporates by reference all allegations set forth in paragraphs 1 through 65 of
24 this Complaint.
25
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1 67. During the period from approximately May 2000 through at least September 2003,
2 Defendants offered and sold securities within or from Arizona while not registered as dealers or
3 salesmen pursuant to Article 9 of the Securities Act.

4 68. This conduct violates A.R. S. § 44-1842.

5
6 **COUNT THREE**
7 **VIOLATION OF A.R.S. § 44-1991**
8 **(Fraud in Connection with the Offer and Sale of Securities)**

9 69. The ACC incorporates by reference all allegations set forth in paragraphs 1 through 68 of
10 this Complaint.

11 70. In connection with the offer or sale of securities within or from Arizona, Defendants
12 directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue
13 statements of material fact or omitted to state material facts which were necessary in order to make
14 the statements made not misleading in light of the circumstances under which they were made; and
15 (iii) engaged in transactions, practices or courses of business which operated or would operate as a
16 fraud or deceit upon offerees and investors. Defendants' conduct includes, but is not limited to, the
17 following:

18 a) Defendants misrepresented to investors that investments in the Universal Lease
19 Program were fully safe, secure, and guaranteed, when in fact investing in this purported Central
20 American timeshare program was inherently risky, including (without limitation):

- 21 i. The fact that the viability of the Universal Lease Program depended upon the
22 solvency of each of the various entities associated with this venture;
23 ii. That annual investment returns from this Program were necessarily dependent
24 upon the profitability of the third party leasing agent in successfully renting a
25 sufficient number of resort units throughout the 25 year lease period; and
26 iii. That, in the event of a hurricane or other natural disaster, the undisclosed
value of Defendants' corporate assets would fall short and/or not be used to
offset the amount of funds invested into the Universal Lease Program.

1 73. Pursuant to A.R.S. § 44-2032(3), the ACC requests that this Court enter an Order restoring
2 to current investors monies or property Defendants have acquired or transferred in violation of the
3 Securities Act.

4 **WHEREFORE**, the ACC prays that this Court enter judgment as follows:

- 5 1. Order that Defendants be permanently enjoined from violating the Securities Act;
- 6 2. Order restoration to Arizona investors of all money and property Defendants have acquired or
7 transferred in violation of the Securities Act;
- 8 3. Order Defendants to take affirmative action to correct the conditions resulting from their
9 acts, practices and transactions, including a requirement to make restitution pursuant to A.R.S. § 44-
10 2032;
- 11 4. Order that Defendants pay the State of Arizona civil penalties in the amount of up to five
12 thousand dollars (\$5,000) per violation of the Securities Act in accordance with A.R.S. § 44-2037, as
13 the Court considers to be just and proper;
- 14 5. Order that Defendants pay the State of Arizona reasonable costs, including attorney fees,
15 pursuant to A.R.S. § 44-2032(1)(b);
- 16 6. Order any other relief that the Court deems appropriate.

17 Dated this 2nd day of February, 2006.

18 **ARIZONA CORPORATION COMMISSION**

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21 By: _____

Mark Dinell

Attorney for the Securities Division of the
Arizona Corporation Commission