

**IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE**

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**JAMES AND JULIE ARCHAMBEAULT, )  
ROBERT BARBU AND )  
HOLLY HERRICK, )  
CARL AND DARLA BELL, )  
AGGIE BOY, )  
CHARLES AND CYNTHIA GARNER, )  
HARRY AND DOROTHY HODGES, )  
ELWOOD AND THERESE OCHSNER, )  
BARBARA ROBERTS, )  
DALE GLEN AND MARYILN SLUSSER, )  
MONEKA WILSON, )**

Case No. \_\_\_\_\_

**Plaintiffs,**

v.

**WYNDHAM WORLDWIDE OPERATIONS, )  
INC., WYNDHAM VACATION RESORTS, )  
INC., WYNDHAM VACATION OWNERSHIP, )  
INC., DAVIS LABELLE, AND )  
BLAIR BRASWELL, )**

**Defendants.**

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**COMPLAINT**

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COME NOW the Plaintiffs, and for their Complaint (hereinafter "Complaint") against Wyndham Worldwide Operations, Inc; Wyndham Vacation Resorts, Inc; Wyndham Vacation Ownership; Davis LaBelle, and Blair Braswell (hereinafter collectively referred to jointly as "Defendants" or "Developer") state as follows:

**PARTIES**

1. At all times, Plaintiffs James and Julie Archambeault, were a married couple residing in Kendallville, Indiana.
2. At all times, Plaintiffs Robert Barbu and Holly Herrick were residing in Avon Lake, Ohio.
3. At all times, Plaintiffs Carl and Darla Bell were a married couple residing in Kalkaska, Michigan.
4. At all times, Plaintiff Aggie Boy was residing in Syracuse, Kansas.
5. At all times, Plaintiffs Charles and Cynthia Garner were a married couple residing in Moulton, Alabama.
6. At all times, Plaintiffs Harry and Dorothy Hodges were a married couple residing in Jefferson City, Tennessee.
7. At all times, Plaintiff Barbara Roberts was residing in Cullman, Alabama.
8. At all times, Plaintiffs Elwood and Therese Oschner were a married couple residing in Eagan, Minnesota.
9. At all times, Plaintiffs Dale Glen and Marilyn Anne Slusser were a married couple residing in Canal Fulton, Ohio.
10. At all times, Plaintiff Moneka Wilson was residing in Duffield, Virginia.
11. Defendant Wyndham Worldwide Operations, Inc. (hereinafter referred to as “WWO,” “Developer” or “Defendants” or “Wyndham”) is a corporation formed in Delaware and operating in the State of Tennessee, with a principal office of business as 22 Sylvan Way, Parsippany, NJ 07054 and a registered agent, Corporate Creations Network Inc, 205 Powell Place, Brentwood, TN 37027. Developer’s SOS Control Number is 000511564.
12. Defendant Wyndham Vacation Resorts, Inc. (hereinafter referred to as “WVR,” “Developer” or “Defendants” or “Wyndham”) is a corporation formed in Delaware and operating in the State of Tennessee, with its principal office at 6277 Sea Harbor Drive, Orlando, FL 32821,

and a registered agent, Corporate Creations Network Inc., 205 Powell Place, Brentwood, TN 37027. Developer's SOS control number is 000045299.

13. Defendant Wyndham Vacation Ownership, Inc. (hereinafter referred to as "WVO," "Developer" or "Defendants" or "Wyndham") is a corporation formed in Delaware and operating in the State of Tennessee, with its principal office of business at 6277 Sea Harbor Drive, Orlando, FL 32821-8043, and a registered agent, Corporate Creations Network Inc., 205 Powell Place, Brentwood, TN 37027-7522. At all times relevant to this lawsuit, Developer operated Wyndham Vacation Ownership, Inc., located at 6277 Sea Harbor Drive, Orlando, FL 32821-8043. Developer's SOS control number is 000491614.

14. Defendant Davis ("Dave") LaBelle was the Regional Vice President and/or Manager for Defendants during part or all of the actions by Defendants described herein. In this capacity, he supervised, managed and was otherwise over the Nashville, Tennessee, sales center. He can be served at 3748 Sloan Rd., Springfield, Tennessee, 37172.

15. Defendant Thomas "Blair" Braswell was an agent and/or employee of Defendants, representing and acting as Quality Assurance Manager for Wyndham Vacation Ownership, Inc. at the time the Plaintiffs bought their timeshare in Nashville. The Quality Assurance Manager generally has the duty of getting purchasers to sign paperwork. Braswell is now an Affiliate Broker at Jon Jones Real Estate and can be served at Jon Jones Real Estate, 239 John Rice Blvd., Suite A, Murfreesboro, TN 37129. He is a Tennessee licensed real estate agent, #295182.

### **JURISDICTION AND VENUE**

16. This Court has jurisdiction and venue over this Complaint pursuant to Tenn. Code Ann. §20-4-104(1) as a substantial part of the events or omissions giving rise to this cause of action

accrued in Davidson County. Moreover, the timeshare contract or agreement which is the subject matter of this lawsuit was executed at Developer's place of business in Davidson County.

17. This Court has jurisdiction and venue over this Complaint pursuant to Tenn. Code Ann. §20-2-214(a)(6) as Defendants purposely availed themselves of the privilege of transacting business in Tennessee to such an extent that the activity has reasonably foreseeable impact on commerce in Tennessee; and Tennessee has enough interest in the controversy to make it reasonable to compel Defendants to defend themselves in Tennessee. Specifically, the Defendants negotiated and executed at least one agreement with the Plaintiffs at the Defendants' place of business in Nashville, Tennessee.

18. Jurisdiction is proper in the State of Tennessee because:

- a. WWO is registered to do business in Tennessee under Secretary of State Control Number 000511564.
- b. WVR is registered to do business in Tennessee under Secretary of State Control Number 000045299.
- c. WVO is registered to do business in Tennessee under Secretary of State Control Number 000491614.
- d. Wyndham transacted business with Plaintiffs within the State of Tennessee; therefore, Wyndham has conducted business in Tennessee. Tenn. Code Ann. § 20-2-201(b).
- e. The acts and omissions made the subject of this Complaint occurred within the State of Tennessee while Wyndham was transacting business in this state; therefore, Wyndham has submitted to this jurisdiction. Tenn. Code Ann. § 20-2-214(a) and (c).
- f. Defendants LaBelle and Johndoe are or were employees/agents of Wyndham, who conducts business in the State of Tennessee. Wyndham is vicariously liable for the fraudulent, intentional and/or negligent acts or omissions of Defendants LaBella and Johndoe by the doctrine of *respondent superior*.

- g. The Defendants have “continuous and systematic” contacts with the State of Tennessee sufficient to establish personal jurisdiction.
- h. Defendants Braswell and Calfee are residents who do business in Tennessee. They are material witnesses to this action.
- i. In addition, WVR owns and/or operates at least four (4) timeshare properties and other resorts located in Tennessee (Wyndham Nashville, Wyndham Resort at Fairfield Glade, Wyndham Smoky Mountains and Wyndham Vacation Resorts Great Smoky Mountains Lodge).
- j. Wyndham has several offices located in Tennessee, including offices in Nashville, Crossville (Fairfield Glade), and Sevierville, Tennessee.
- k. Wyndham conducts large scale marketing and sales activities within the State of Tennessee, including but not limited to direct mail, email, telemarketing, internet distribution channels, travel agencies and other partners.
- l. Wyndham markets and sells its products and services directly to the Plaintiffs and other Tennessee residents using the internet. Wyndham’s 2013 Annual Report (10k) filed this year states that, “Given the increasing interest of our members and rental customers to transact on the Internet, we invest and will continue to invest in cutting edge and innovative online technologies to ensure that our members and rental customers have access to similar information and services online that we provide through our call centers.” Wyndham Worldwide Corporation’s 2013 Annual Report, p. 20, Section entitled “Internet.”
- m. Wyndham marketed and sold Vacation Ownership Interests (“VOIs”) to the Plaintiffs within the State of Tennessee.
- n. Plaintiffs bought a timeshare interest in Club Wyndham Access (CWA).
- o. CWA contains a collection of real property known as component sites.

- p. One of these component sites are physically located in Davidson County, Tennessee, therefore jurisdiction and venue are appropriate with this Honorable Court.
  - q. The Wyndham Defendants are contractually obligated to render services at CWA components sites, including the component site located in Davidson County, Tennessee.
  - r. Plaintiffs were damaged at each of these locations including Davidson County, Tennessee.
  - s. Plaintiffs have the right to use facilities in the Tennessee component sites.
  - t. Plaintiffs have the right to obtain reservations at the component sites located in Tennessee.
  - u. Plaintiffs have the right to rent to 3<sup>rd</sup> parties the facilities at the component sites in Tennessee.
  - v. Defendants have employees that work in Tennessee at the various component sites.
  - w. Plaintiffs have the right to use, possess and enjoy the component sites located in Tennessee.
  - x. WVR filed several Tennessee Timeshare Public Offering Statements with the Tennessee Real Estate Commission and annually submits renewal applications to the Commission including payment of renewal fees using a WVR or WVO check and has agreed to be regulated by the Tennessee Real Estate Commission.
  - y. Plaintiffs purchased Wyndham timeshares and was induced into signing timeshare documents in the State of Tennessee.
  - z. Plaintiffs purchased Wyndham timeshare resort vacation units actually located at Wyndham resort properties located in Tennessee.
19. Venue is proper in Davidson County because:
- a. The unfair and deceptive acts and practices described herein took place, and continue to take place, in Davidson County, Tennessee.

- b. Wyndham has a sales office at and the sale of at least one of Plaintiffs' timeshare transactions occurred in Davidson County, Tennessee.
- c. Defendants own component sites located in Tennessee and the Plaintiffs have usage and possessory rights to these sites.

20. Defendant LaBelle was Vice President and Regional Manager over Nashville at the time of Plaintiffs' purchase there. Defendant Braswell was a Quality Assurance Manager in Nashville during the time of Plaintiffs' purchases. Wyndham is vicariously liable for the fraudulent, intentional and/or negligent acts or omissions of Defendants LaBelle and Braswell by the doctrine of *respondent superior*.

21. Any purported forum selection clause Plaintiffs allegedly agreed to is invalid, to the extent that the contract at issue in this case, and each portion thereof, was fraudulently induced, as well as each transaction Plaintiffs have ever had with Wyndham. Specifically, in Tennessee, "fraud in the underlying transaction renders a contract clause, such as the forum selection clause at issue here, unenforceable." See *Lamb v. Megaflight*, 26 S.W.3d 627 (Tenn. Ct. App. 2000).

22. Since the Plaintiffs are seeking rescission of the contract at issue in this case pursuant to the Tennessee Time-share Act of 1981, and Tennessee common law, and since Plaintiffs entered into at least one of these contracts in Davidson County, Tennessee, jurisdiction and venue are proper in Davidson County, Tennessee, irrespective of any statements to the contrary in the fraudulently induced documents.

23. The Plaintiffs would not have entered into any portions of their contracts, including the forum selection clause, had it not been for the misrepresentations, duress, and/or abuse of economic power, and the unconscionability of the entire agreements.

24. Venue and Jurisdiction are proper in Tennessee because any other state would be a substantially less convenient place for the trial in this action.

25. It is not unreasonable or unfair to the Defendants to defend the action in Tennessee as they own multiple properties in Tennessee, have a registered agent in this state, and conduct widespread marketing and sales in the state of Tennessee. Plaintiffs' purchased from Defendants in the State of Tennessee and the Defendant LaBelle is a resident of Tennessee.

### **FACTS**

26. This action is brought by a group of similarly situated Wyndham timeshare owners who all experienced intentional and/or negligent misrepresentations and violations of the Tennessee Timeshare Act during a sale occurring in Nashville, Tennessee, and who have also suffered violations of their contracts since their purchases.

27. Plaintiffs and their purchases are listed at Exhibit A.

### **Defendants**

28. WVR is part of WVO, one of the world's largest timeshare companies.

29. During fiscal 2016 Wyndham's revenue was \$5.6 billion.

30. WVR markets, sells and finances Vacation Ownership Interests (VOIs), provides property management services to property owners' associations, and develops vacation ownership resorts.

31. WVO, a member of WWO's family of companies, is one of the world's largest vacation ownership business, as measured by the number of vacation ownership resorts, individual vacation ownership units, and owners of VOIs.

32. WVO develops, markets and sells VOIs, provides consumer financing to owners, and manages properties through its three primary consumer brands: Wyndham Vacation Resorts, WorldMark by Wyndham, and Wyndham Vacation Resorts Asia Pacific.

33. WVO made and/or serviced loans made to the Plaintiffs in the course of Wyndham selling timeshares to the Plaintiffs.

### **Background of Wyndham Timeshare Sales Mode of Operation**

34. All persons who own VOIs receive a symbolic point allocation based upon their ownership interest.
35. These membership points are renewed annually or biennially for alternate year ownership, and are used to reserve accommodations through a reservation system owned and maintained by Wyndham.
36. Historically, when a VOI owner bought a timeshare from Wyndham they received a deed for the unit portion of the property, or undivided real property interest, they purchased. The value of their ownership, however, is represented by points.
37. Deeds are issued many weeks past the actual purchase date.
38. Based on knowledge and belief, the more timeshare properties one buys, the more points that are allocated to their account. Wyndham represented to the Plaintiffs that the points allocated to Plaintiffs' account could be used to book a reservation at any Wyndham resort, because they bought into a trust which includes over 75 resorts called "Club Wyndham Access."
39. Approximately 70% of all Wyndham timeshare sales are upgrades to existing members.
40. Wyndham does not disclose that timeshare points are an illiquid asset with no aftermarket, making it impossible for the Plaintiffs or other owners to resell their Wyndham timeshares.
41. Plaintiffs only discovered this fact after they attempted to sell their Wyndham timeshares and discovering there is no market to purchase their Wyndham timeshare points.

## **FACTS COMMON TO PLAINTIFFS' TRANSACTIONS**

### **The Sales Process**

42. Plaintiffs were told that they were buying a vacation dream, but, it turned into a nightmare.

43. Wyndham timeshare owners are coerced, forced, and/or required to attend “owner update” or other meetings that are intended for no purpose other than to manipulate and pressure the owners to buy additional timeshare points.

44. Such high pressure by Wyndham often confused the Plaintiffs, causing them to misunderstand what they were purchasing, what they were trading, and the actual terms and conditions of the purchase. For example, Plaintiffs get home and find charges on a Barclay rewards card, or PayPal account, which they did not authorize or understand that they were authorizing.

45. Plaintiffs and other similarly situated timeshare owners end up owning more points than they can use, because after the initial purchase, they are told each time they vacation that they had to attend an owner “update” meeting, which every is led to believe is mandatory. These updates are supposed to last 45 minutes, but in reality, they usually end up being a 4-5 hour high pressure sales job.

46. During the multi hour-long high-pressure sales presentations, Plaintiffs were not allowed to leave, causing confusion and misunderstanding regarding the nature of what the Plaintiffs were purchasing, the actual terms and conditions of the timeshare purchases, the value of Plaintiffs’ timeshares (being traded or purchased), and the authority of the Defendants to negotiate the terms of the timeshare transactions.

47. Consequently, Wyndham and its agents made material false statements upon which the Plaintiffs relied in deciding to purchase Wyndham timeshares, and then misleading them into buying additional largely worthless timeshare points without actually offering anything of value in return.

48. Wyndham engaged in a variety of other deceptive sales tactics. These deceptive tactics are used company-wide with the knowledge, endorsement and encouragement of senior management.

49. Wyndham's deceptive tactics are part of its corporate philosophy to make every sale at any cost. This corporate philosophy is pervasive and drives the need for the use of these deceitful tactics.

50. At each meeting, Plaintiffs are told by Wyndham sales representatives that need to purchase additional Wyndham timeshare points in order to achieve several of Plaintiffs' "goals," including the future sale or use of their existing Wyndham timeshares.

51. A sales tool that has long been used by Wyndham to entice owners to upgrade to a higher level of ownership is the Wyndham VIP Program, thus creating ongoing sales to existing owners.

52. The Wyndham VIP Program has three levels: VIP, VIP Gold and VIP Platinum.

53. Wyndham represented to the Plaintiffs that each VIP level offered significant benefits not available at the lower levels, enticing the Plaintiffs and other owners to purchase up to the next level of ownership.

54. Wyndham has made an array of specific self-serving changes to the VIP Program which has significantly diluted and devalued the property interests of the Plaintiffs, and has placed severe impediments on Plaintiffs' ability to use, rent or convey the vacation interests they own.

55. These numerous VIP and other program changes, along with several new Wyndham marketing and sales programs, have unlawfully diluted and devalued Plaintiffs' timeshare ownership interests.

56. Defendants now mostly sell timeshares with a "points" system, rather than a traditional "fixed week" or deed.

57. With points, there is no limit to the amount of inventory that can be sold, monitored for overuse, and ownership is highly diluted.

58. During the sales presentation in Nashville, Plaintiffs were told numerous false statements by Wyndham's sales agents to induce them to purchase the additional Wyndham timeshare points including but not limited to the following:

- a. Plaintiffs had to purchase the Club Wyndham Access in order to lower their maintenance fees;
- b. Plaintiffs were told that if they consolidated into a new “Power Deed” their timeshares resale value would greatly increase.
- c. Plaintiffs were told they could rent the timeshare out for profit. That was not the case. In addition, they were told that they could rent their points to offset maintenance fees. This was also not the case.
- d. Plaintiffs were told they had to purchase additional timeshare points to lower their maintenance fees. In addition, they were told that by upgrading to more points and getting a better status (Called “VIP:”) it would allow them to get reservations “Anytime Anywhere,” but they found out that that they could not, and they did not have any better success in getting reservations.
- e. Plaintiffs were told that if they were Presidential Platinum members that their maintenance would never increase.
- f. They were told by numerous Wyndham sales agents that they did not need to worry about the high interest rate financing the purchase through Wyndham, because when they got home they could just refinance with their bank. They were even told which banks and what interest rates would be available to them. They found out that was untrue and they could not, and they were stuck with a high interest rate financing their last purchase, which they would not have made had they known the truth that refinancing would not be an available to them.

### **The “Pathways” Scam**

59. Many timeshare owners are concerned about an “exit strategy” to get out of their timeshares and relieve themselves of the never-ended maintenance fees, or to find a way to keep the burden from passing to their heirs.

60. As such, Defendants created a deceptive scheme called Pathways”, pitched and sold to Plaintiffs and other similarly situated timeshare owners, which is supposedly a buyback program where Wyndham would buy their timeshare back if Plaintiffs no longer wanted it.

61. However, to participate in this buyback scheme, one must buy a minimum of 105,000 points. In exchange, Wyndham sales agents told the Plaintiffs that the company would buy back any timeshares they did not want or their children did not want to inherit.

62. However, the “catch” is never explained: Pathways never truly obligates Wyndham to purchase anyone’s timeshare points. A careful reading of the “Terms and Conditions” reveals that Wyndham does not actually promise to buy back your timeshare points. To the contrary, the contract states that “WVR has no obligation to purchase Owner’s eligible timeshare contract(s).”

63. In Wyndham’s own words, it only has to purchase some or all of Plaintiffs’ timeshare contracts if it “elects to purchase” under the Program. The buyback program merely gives the owner the right to “provide Wyndham Vacation Resorts, Inc. (WVR) an opportunity to purchase the ownership interest,” an opportunity that it is never obligated to exercise.

64. Moreover, Plaintiffs were not told that they needed to have all their debt on their timeshare paid off before the Pathways Program would even be something they could use, and it would only be after Plaintiffs owned for five (5) years.

65. Finally, IF the Defendant did do a buyback, it would only be for 20 cents on the dollar – basically the same price as what the Plaintiffs purchased in buying the 105,000 additional points to be part of the program.

66. This program caused so many complaints by owners that Defendants have now discontinued selling this “program.”

### **Unavailability of Reservations, Unlawful Taking**

67. One of the most common ongoing problems Plaintiffs have experienced with their timeshares is the unavailability when trying to make reservations.

68. However, when resorts and dates are blacked out and unavailable on the Wyndham reservation system, the resorts show availability for the same time on various travel websites.

69. Even Plaintiffs who have upgraded to the highest levels, including “Presidential Reserve” or “VIP” statuses cannot get reservations.

70. Upon information and belief, reservations are difficult for Plaintiffs and other similarly situated Wyndham timeshare owners because Defendants are manipulating the reservation

system in order to obtain access to accommodations, reservations, and rooms for its own financial interests and contrary to the interest of the timeshare owners.

71. Defendants will rent these accommodations through various means such as online marketing companies, and keep the revenue for company profit, all the while denying timeshare owners access to these reservations.

72. Furthermore, Defendant uses the rooms as marketing tools so as to give free or low cost vacation rentals to potential timeshare purchasers, which also decreases availability of rooms, also denying timeshare owners access to accommodations – accommodations the Plaintiffs and other similarly situated owners have paid for, and continue to maintain through yearly maintenance fees.

73. This is possible because Wyndham controls all aspects of the reservation system, through its association with the FairShare Vacation Plan Use Management Trust, which constitutes an illegal civil conspiracy, since these entities deprive the Plaintiffs and other similarly situated timeshare owners of their personal and real property rights.

### **The Rental Pitch**

74. There is a limited universe of new client prospects capable of and willing to buy timeshares.

75. Therefore, Wyndham had to find other potential sources to buy timeshare points. One available source was current owners. Wyndham, therefore, developed ways to entice current owners to buy more timeshare points. Wyndham created the “Rental Pitch” and trained its sales representatives to use the “Rental Pitch” as a tactic to lure current owners, including Plaintiffs, to buy more points.

76. Each time Plaintiffs attended a sales meeting, the Wyndham sales agents told them that the timeshares would greatly increase the amount of rental income Plaintiffs would receive

because the timeshares being purchased from Wyndham were in very high demand and would bring in more income from rentals of the timeshares.

77. Plaintiffs were told that the VOI would pay for itself in that the amount of rental income Plaintiffs would receive would cover the mortgage and maintenance fees. Sales persons often tell Plaintiffs and similarly situated timeshare owners they could rent their timeshare for \$300-\$500 per night.

78. However, Plaintiffs were not told that Wyndham's own program, called "Extra Holidays," receives a 40% commission to assist owners in renting their extra points. Thus, the return any Owner like the Plaintiffs get in renting is almost nothing compared with making enough money to pay maintenance fees or actually earn a living.

79. In addition, Wyndham controls inventory allotment. The biggest and best rooms at the nicest resorts are in greater demand, and can be rented for higher prices. Wyndham has control over inventory allotted to Wyndham itself.

80. Wyndham deliberately restricts the quantity and quality of the inventory available to rent, so the average Owner does not get a big price on their rental. This is not ever explained or told the Owners, and it was never explained to Plaintiffs.

81. Plaintiffs are also not told they will be competing with Wyndham on the open market who rents out the resorts on the Internet on sites like Orbitz, Hotels.com, and Hotwire.

82. Wyndham has an internal sales compliance manual that on its face prohibits certain sales tactics. One such tactic related to "Rental Income." The manual prohibits:

- a) Discussing the likelihood of an owner being able to rent the product or the amount an owner could expect to receive for the rental of the product.
- b) Providing examples, third party experiences, and opinions regarding the amount an owner could expect to receive, or indicating that owners typically receive a certain amount of money when renting their timeshare.

- c) Suggesting that an owner can rent their timeshare to cover their maintenance fees or that an owner can pay for their purchase by renting out their timeshare.
  - d) Recommending or endorsing a particular rental company.
83. Defendants' sales agents, with the knowledge and approval of Wyndham management, routinely violate their own manual that prohibits them from giving Plaintiffs and other similarly situated owners and potential owners the "Rental Pitch" in order to induce them into buying more points and more timeshare products.
84. Defendants have this policy against the Rental Pitch because it is inherently misleading, gives false assurances, is a high-pressure sales tactic that lures people into buying more than they can afford, and is a violation of Timeshare laws in many states.
85. However, Wyndham's deceptive tactic is to have Plaintiffs and similarly situated timeshare owners then sign a document saying they were not told or promised rental as part of the sales presentation, when in reality, it is a pitch Plaintiffs got with each purchase, and it is routinely done by Wyndham agents.
86. For example, Dennis and Sharon Miles were specifically told by their sales agent not to write down that they were told about being able to make rental income as a reason for their purchase, and to keep quiet about that.

### **The Closing Process Is Part of the Scam**

87. It is the common practice and scheme of the Defendants, through its agents, to purposely make misrepresentations during the sales presentation. This is done with the full knowledge of Defendants and the management, including Defendant LaBelle.
88. However, in order to limit their liability, Defendants then, during the "closing" process, which includes signing documents, deliberately and fraudulently attempt to get Plaintiffs to sign statements that disavow that such fraudulent statements were made by the sales agents.

89. This is a common scheme involving multiple employees and agents of the Defendants, in a civil conspiracy.

90. In other words, Wyndham knows the misleading or false statements the sales agents will be using to con or induce sales to Plaintiffs and other similarly situated timeshare owners or potential owners, but then have people sign something during closing saying they were not told false statements or that violations of the Tennessee Timeshare Act occurred.

91. Moreover, each Wyndham timeshare contract closing required the Plaintiffs to sign and/or initial numerous separate contracts or other documents often numbering up to 30 separate agreements and/or documents, and some documents numbering over 700 pages.

92. Wyndham required the Plaintiffs to sign numerous contracts or documents that internally referred to separate additional documents that were never presented to or signed by the Plaintiffs or were hundreds of pages long, and could not possibly be reviewed in one sitting, and especially without a lawyer. For example, Plaintiffs were forced to sign documents stating that they had received them, but in reality, there was no way for Plaintiffs to review such complicated and lengthy legal documents.

93. Plaintiffs were never afforded an opportunity to seek legal or accounting advice before signing any of the Wyndham timeshare contracts and/or documents, which is shocking to the conscience, when the Plaintiffs are indebting themselves to tens of thousands of dollars of long-term debt, at high interest rates, with little aftermarket re-sale value.

94. Plaintiffs were not allowed to read through the Wyndham timeshare contracts and other documents. In addition, Plaintiffs were on vacation, but were told they would only expend “45 minutes” at their owner’s update meeting, but it turned into hours. To review all the documents, Plaintiffs would have spent countless hours of precious vacation time having to look at all the documentation at that time.

95. Plaintiffs often signed the Wyndham timeshare contracts without being given an opportunity to read them because of being tired, hungry, pressured, harassed, and/or bullied into signing. For example, James Willson is diabetic, and after a four hour presentation, his blood sugar was low and he had not been allowed to leave to eat, and he and his wife signed just to be able to get out of there. However, theirs is not an isolated incident.

96. Wyndham's employees, agents and/or representatives, would not allow the Plaintiffs an opportunity to read the timeshare contracts or other documents without a Wyndham agent or representative being present.

97. Wyndham rushed the Plaintiffs through the execution of each timeshare contract and other documents.

98. The timeshares purchased by the Plaintiffs were represented by Wyndham's employees agents and/or representatives as sound financial investments, stating that because the unit was prime real estate, the timeshare would increase in value.

99. Plaintiffs were often rushed through the contract closing process by Wyndham sales agents in order to hide certain material terms and conditions of the timeshare contracts, including that the Plaintiffs were or were not trading one or more timeshares to purchase additional timeshares, or consolidating all of their Wyndham timeshare properties and explaining to them the value/credits/trade-in they would be receiving, causing significant confusion and misunderstanding on the part of the Plaintiffs.

100. Plaintiffs were not read the documents out loud and the federal legal requirements regarding lending were not met as they were not gone over line item.

### **Consumer Affairs Complaints**

101. Wyndham engages in a pattern, practice, habit and routine of racketeering through deceptive sales practices, high pressure sales, and exploitation of the elderly.

102. Attorneys General across the nation have had hundreds of complaints filed by Wyndham timeshare owners, including Florida, Tennessee, Missouri, Wisconsin and California, and consent orders have been lodged against Wyndham for their practices, and settlements have even been paid out to victims, such as in Wisconsin.

103. Wyndham's sales agents are allowed to continue to use deceptive, high pressure, and misleading sales tactics, and even ones that violate their own internal rules.

104. Sales Compliance Reports are prepared quarterly, and they show violations of Wyndham's sales policies broken down by individual sales persons, including violations for pitching rent.

105. These reports are categorized by individual salespersons and show how many violations each person committed and the nature of each violation.

106. These reports show individuals with 30, 40, and even as high as 57 cited violations, including pitching rent violations. Wyndham did not terminate these sales representatives despite these high number of violations.

107. These complaints were filed and Wyndham was sanctioned, all before the Plaintiffs were deceived by the sales people they encountered, because Wyndham refuses to put a stop to these practices, as they would rather continue making money than clean up their act.

108. According to the Better Business Bureau, their files indicate that Wyndham Vacation Ownership, Inc. has a pattern of complaints concerning misrepresentation in selling practices. Consumer complaints report that the verbal representations are inconsistent with the written agreement. According to complaints, claims include:

- (a) Representations that the purchase is an "investment" and the same as "real estate" in that it will increase in value.
- (b) Owners report mandatory meetings that they are led to believe are to introduce new features and benefits but result in a sales presentation to purchase or upgrade their points.

- (c) In some instances, owners are encouraged to complete a survey or questionnaire which results in another sales presentation to purchase additional points.

109. Plaintiffs were the victim of all these deceptive practices. Wyndham sales agents intentionally misrepresented numerous material terms of the transactions in order to induce the Plaintiffs to upgrade, and trade or purchase additional Wyndham timeshare properties, as stated above.

110. Wyndham sales agents would often conceal from or fail to disclose to the Plaintiffs certain significant provisions in the timeshare supplemental contracts, including but not limited to the Settlement Statement.

111. Wyndham sales agents would often conceal from or fail to disclose to the Plaintiffs the Public Offering Statement required under the State's Time-share Act, or force Plaintiffs to sign something saying they had received it, knowing that no one could possibly review a document that was hundreds of pages long in one sitting or without professional advice about its contents.

112. Wyndham sales agents would often conceal from or fail to disclose to the Plaintiffs certain significant provisions in the timeshare supplemental contracts, including but not limited to material financing terms such as the interest rate, term of loan, total interest, or total of payments.

113. Defendants required Plaintiffs to sign numerous contracts or documents that internally referred to separate additional documents that were never presented to or signed by Plaintiffs.

114. Plaintiffs were strongly encouraged to use Wyndham Rewards Program with Wyndham Card Services, so that Plaintiffs were lured into a false hope that these points would be valuable or offset the high payments they were getting themselves into.

115. On more than one occasion, Wyndham sales agents failed to properly disclose, or actually lied to the Plaintiffs about the statutory rescission or "cooling off period" giving Plaintiffs the right to cancel within a certain number of days after the purchase.

### **Psychological Tactics**

116. During sales presentations, a team of commissioned sales agents apply pre-scripted psychologically based sales tactics designed to pressure the consumer to purchase (or “upgrade”) a timeshare interest, overcoming the consumer’s objections that they did not want and/or could not afford to own the pitched product.

117. For example, Plaintiffs were told by Wyndham sales agents that they were getting special discounted pricing to upgrade or purchase additional timeshares and/or timeshare points.

118. Plaintiffs were offered by Wyndham special reduced pricing and/or unique favorable terms on certain timeshare contracts (“Special Offers”), but then represented that such offers had expired or were no longer available.

119. Most of the time, Plaintiffs were told by Wyndham agents that certain Special Offers were only valid that day, and that if Plaintiffs declined the Special Offer, they would never again be allowed to participate in the Special Offer.

120. They are often told they are getting a one-time offer, and sometimes the “Manager” would be brought in to the meeting to tell them that this was the best deal they had ever done for anyone.

121. If they said no to one sales agent, another would be brought in to try different tactics and to continue to work them over into breaking down their resolve, and convincing them to make a purchase they did not want or need.

122. In addition, Wyndham sales agents made numerous intentional or negligent misrepresentations to the Plaintiffs designed by Wyndham to create a false sense of urgency, pressuring the Plaintiffs to purchase new or additional timeshares. For example, they were told new programs were being introduced but Plaintiffs would not be able to use their points unless they enrolled.

123. Plaintiffs were concerned about the high-interest rates on loans, often in the teens, but when they raised such concerns, they were intentionally or negligently told by Wyndham sales agents that they could take a timeshare deed to their bank, mortgage company, credit union or other financial institution to refinance the loan made by Wyndham to the Plaintiffs at a much lower interest rate. This is a falsehood.

### **Retaliation for Making A Complaint**

124. On February 9, 2017 counsel for the Defendants notified the Plaintiffs through counsel that their timeshare accounts were being frozen and therefore as a consequence Plaintiffs would not be able to use any current reservations or make any additional reservations indefinitely. (See Exhibit B).

125. Moreover, any clients they had in the future that sent Wyndham a “demand letter” detailing their dissatisfaction with Wyndham and asking for a refund would be treated the same way.

126. On February 17, 2017 Plaintiffs’ counsel responded to Defendants’ letter asking that Plaintiffs’ accounts not be frozen and for further assurances that the Plaintiffs’ accounts would in fact not be frozen. (See Exhibit C)

127. There has been no further communication from defense counsel confirming or denying the current state of the Plaintiffs’ accounts or any plans to unfreeze said accounts.

### **COUNT I (FRAUD - INTENTIONAL MISREPRESENTATION)**

128. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

129. As detailed herein above, Defendants made numerous material false representations to the Plaintiffs including but not limited to timeshare and timeshare contract terms and conditions, timeshare resale, rental, exchange, and other benefits or provisions of the Wyndham timeshares

purchased by the Plaintiffs, and the parties' access, capabilities, maintenance and administration of the Wyndham timeshares.

130. These misrepresentations occurred each time Plaintiffs attended a sales presentation, including their purchase in Nashville, Tennessee, as well as other times Plaintiffs attended sales presentations, but ultimately did not decide to buy.

131. Plaintiffs recalls that the sales agents who made these misrepresentations, who were Wyndham employees and/or agents, with authority to make the statements, occurring during Wyndham sales presentations. Wyndham has all the records of where and when Plaintiffs were at the time the sales were made, and who the sales agents were, if there were others.

132. Other falsehoods that Defendants' sales agents told Plaintiffs, and upon which statements Plaintiffs justifiably relied when deciding to make them purchase are including, but not limited to, the following:

a. Plaintiffs would have to purchase the Club Wyndham Access and were told that if they traded to new property, maintenance fees would go down or "stabilize".

b. The salespersons made out they was going to be the new the gatekeeper of the account, and take care of Plaintiffs forever more. In reality they had NO intention to be the person they promised.

c. Plaintiffs were told they could rent the timeshare out to cover their monthly fees, or even for profit. That was not the case. Sales person told them that they could rent their timeshare for hundreds of dollar per night. This was also not the case.

d. Plaintiffs specifically purchased because they wanted an exit strategy, and they were told by sales agents that there was a "buy back" of the property if they chose, called Pathways. They were falsely told they did not have to have their mortgage paid off to qualify. They were additionally told explicitly that Wyndham would buyback 20% of the Plaintiffs' points if they were VIP Platinum members. In reality, there are many conditions on the program, and it is also simply a right of first refusal.

e. Plaintiffs were told they had to purchase additional timeshare points to lower their maintenance fees. In addition, they were told that by upgrading to more points and getting a better status (Called "VIP") it would increase their

“Reservation Power”. But Plaintiffs found out that that they could not, and they did not have any better success in getting reservations, which was already poor.

f. Sales person promised to do rentals for owner, and told them all they had to do was wait for checks.

g. Defendants sales agents assured Plaintiffs they would be their personal representative, telling Plaintiffs to call them if they ever needed help, and even giving them their personal cell phone number to do so (which then they never answered).

h. Plaintiffs were told by sales agents that they had missed out on an invitation that was the best release that ever was on offer but it was only to selected VIP. Plaintiffs never received the invite/offer and ironically Defendants’ sales agents went away and got it approved to be honored. There never was an invitation sent to them and it was all a ploy to create a fear of loss/missing out, which is a high-pressure sales tactic.

i. Sales persons told Plaintiffs That they did not need to worry about the high interest rate of financing from Wyndham, because when they got home they could just refinance with their home bank. That was untrue. They were also told they could cash in points for maintenance fees at a falsified rate of exchange.

j. Sales person grossly misrepresented the value of using timeshare points for airline tickets, cruises, car rentals, hotel stays, and entertainment venues.

k. Plaintiffs Were told that sales agents were a “member services rep”, “personal adviser”, or “count on me representative” and also told that they were not paid on commission.

133. Defendants’ false representations were intended to provide a measure of security to the Plaintiffs that buying points and upgrading was a viable investment.

134. At the time of each sale to Plaintiffs, Defendants agents knew that the representations were false and/or were misleading, in order for Defendants to induce Plaintiffs into making purchases.

135. Defendants and their agents engaged in making false statements to induce the Plaintiffs to buy, in order to enrich themselves.

136. Defendants’ knowing misrepresentations have harmed Plaintiffs, resulting in financial losses plus mental pain and suffering.

137. Plaintiffs were induced to purchase the Wyndham timeshares at issue as a result of Defendants' false and misleading representations.

138. These representations made by the Defendants were false, and Defendants knew or should have known they were false when making such misrepresentations.

139. Plaintiffs justifiably relied upon Defendants' false representations to their detriment.

140. Defendants made these misrepresentations intentionally, recklessly, and willfully.

141. Defendants made the misrepresentations in order to induce the Plaintiffs to purchase timeshares, upgrades, programs, memberships and points.

142. Defendants made the misrepresentations in order to gain a financial benefit.

143. Shortly after the purchase, Plaintiffs discovered the full extent of the falsity of these representations and the true intent of the Defendants.

144. Had the Plaintiffs been informed of the truth they would never have entered any contract with Wyndham, they would never have closed the sale, they would never have purchased the time-share interest, and they would absolutely never have paid any purchase funds.

145. Wyndham has knowingly engaged in a wide-spread, company-wide scheme of making false promises, omissions, and high-pressure sales tactics to make sales at all costs, in order to enrich themselves, and they have been sued hundreds of times in court across America, and hundreds of complaints have been filed all across the nation for the exact same allegations Plaintiffs are making here.

146. Plaintiffs have suffered damages as a result of the action of Wyndham, by making the statements set forth herein.

147. WHEREFORE, premises considered, Plaintiffs seek compensatory and punitive damages plus interest and costs. Plaintiffs pray for such other and further relief this Court deems appropriate.

## COUNT II

**(FRAUD - FRAUD IN THE INDUCEMENT)**

148. Plaintiffs repeat and re-avers the allegations in the foregoing paragraphs as if fully set forth herein.

149. Defendants' misrepresentations, set forth in Count I above, and all the facts listed in the foregoing paragraphs induced Plaintiffs to purchase the VOIs at issue in this Complaint, all done by Defendants' sales agents.

150. Defendants' misrepresentations, set forth in Count I above, and throughout this Complaint, induced Plaintiffs to purchase the vacation ownership interests at issue in this Complaint.

151. Defendants sales agents represented to Plaintiffs that they needed to buy more points to participate in a "buy back" program, that they would be their personal representative, that they could rent out their timeshare to cover their fees, could sell their timeshare for a profit, all of which were untrue.

152. Defendants' sales agents represented to Plaintiffs that they needed to buy more points, that they would be their personal representative, that they could rent out their timeshare to cover their fees, all of which were untrue.

153. Defendants' sales agents represented to Plaintiffs that if they bought more points, and became VIP Platinum members they would be guaranteed reservations at Presidential resorts until 30 days before the reservation date. This was untrue.

154. Wyndham sales agents falsely represented to the Plaintiffs that the Wyndham timeshares being purchased by the Plaintiffs have sponsorship, approval, characteristics, uses, benefits or quantities that they did not have.

155. Plaintiffs were falsely told by Wyndham sales agents that the timeshares purchased would be a great investment.

156. Plaintiffs were falsely told by Wyndham sales agents that the timeshares purchased could easily be rented for a profit.

157. Plaintiffs were falsely told by Wyndham sales agents that the timeshares purchased could be sold for a profit.

158. Defendants advertised the timeshares, and made timeshare presentations to the Plaintiffs with ulterior intents to sell them timeshares contrary to the described timeshares in the advertisements and presentations.

159. Defendants advertised the timeshares sold to the Plaintiffs with intent not to sell them as advertised.

160. Plaintiffs were falsely told by Wyndham that the meetings they would be attending were merely to present owners with new amenities to their current ownership, when the meetings were always intended by Wyndham to sell the owners additional or new timeshares.

161. Wyndham's conduct relating to their sales presentations constituted a "bait and switch" tactic "...advertising items to lure consumer, then inducing the consumers to buy different and more expensive items..." in violation of Tennessee law. Tenn. Code Ann. § 47-18-103(1).

162. Defendants made false or misleading statements of fact concerning the reasons for, existence of, or amounts of timeshare price reductions for timeshares being sold to the Plaintiffs.

163. Plaintiffs were falsely told by Wyndham that one or more timeshares they were being sold were priced well below fair market value.

164. Defendants represented that the timeshares being sold to the Plaintiffs had benefits that the Plaintiffs did not currently have with their existing timeshare, such as better reservation-making power, the ability to be rented, and that the deal they were getting was a special offer good for that day only.

165. Plaintiffs reasonably relied on these misrepresentations to their detriment.

166. Plaintiffs have suffered damages as a result.

167. Plaintiffs just recently discovered the full extent of the falsity of these representations and the true intent of Wyndham.

168. Plaintiffs' reliance on the Defendants' statements were reasonable under the circumstances.

169. Plaintiffs had the right to rely on the statements made by Defendants.

170. As a result of their reasonable reliance, Plaintiffs entered into the timeshare contracts with Wyndham and have been substantially injured as a result.

171. Wyndham's agents had them sign documents saying the opposite of what they told them verbally, in order to deceive and confuse them.

172. WHEREFORE, premises considered, Plaintiffs seek compensatory and punitive damages plus interest and costs. Plaintiffs pray for such other and further relief this Court deems appropriate.

**COUNT III  
(BREACH OF CONTRACT)**

173. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

174. Plaintiffs and Defendants entered into several contracts described above. They are in the possession of the Defendants and Plaintiffs do not have copies of the contracts. Other contracts were oral promises, as described above, such as promising to be them personal representative and that they would answer their cell phones. Some terms of the contract are incorporated by reference and are not in the possession of Plaintiffs, such as the Trust Agreement, and the Public Offering Statement.

175. These contracts were adhesive in nature, and the Plaintiffs were not allowed to negotiate the terms and conditions of these contracts.

176. Defendants were to provide certain benefits and services, and perform certain obligations under each contract. Some of the contracts were oral, as enumerated herein.

177. These benefits and services are set forth in numerous places, including: a) In the contracts themselves; b) In various ancillary documents and agreements; and c) In membership directories issued each year according to the Wyndham membership program and/or VIP levels.

178. Plaintiffs performed all of their obligations under the contracts.

179. Defendants breached said contracts by failing to provide, changing or eliminating certain benefits and services.

180. The Defendants promised to deliver various services to Plaintiffs. Incidental to the purchase of the time-share interest was the purchase of the services necessary to utilize the time-share interest-specifically, the booking, reservations, customer service, and support services that would allow the Plaintiffs to utilize their interest with Wyndham, and with Wyndham affiliates around the world, such as RCI.

181. However, the Defendants failed to provide the services as they had been described. The Defendants refused to provide clear answers to Plaintiffs' basic inquiries about booking and their owner's nights. Despite sales people giving the Plaintiffs their alleged cell phone numbers to call for assistance in renting or booking, the Plaintiffs had their calls and messages avoided and ignored.

182. Furthermore, Defendants breached said contracts by alerting the Plaintiffs that their accounts would be frozen and they would no longer would have any access to their timeshare beginning on February 28, 2017.

183. Defendants' stated that Plaintiffs cannot book with points already paid for, and reservations already made would be cancelled.

184. Defendants statements have now put Plaintiffs in limbo over whether they can book vacations, use their points to book vacations or pay maintenance fees, rent their timeshare, or otherwise use the timeshare.

185. Defendants' February 9, 2017 letter and subsequent lack of assurances or response to Plaintiffs' February 17, 2017 letter has made it impossible for the Plaintiffs to reasonably exercise their rights under the contracts even if they have apparent ability to do so.

186. Alternatively, even if the accounts have not been frozen, Plaintiffs cannot reasonably attempt to access their property without knowing if and when their rights under the contract might be blocked because of additional monetary loss that could incur such as, travel expenses and alternate lodging among other things.

187. Defendants letter, which states they will prevent Plaintiffs from using their paid-for timeshares, violates the implied covenant of good faith and fair dealing that is inherent in all contracts.

188. Throughout their ownership, Plaintiffs were repeatedly denied reservations when rooms were available, because Wyndham was renting them on the open market, such as via internet travel sites, and for Wyndham marketing purposes, instead of making sure they were available to Plaintiffs and other similarly situated Wyndham owners, in order to enrich themselves.

189. None of the funds Defendants obtained from rental income through the open market or their own marketing purposes, was retained for the benefit of Wyndham owners, and/or Plaintiffs.

190. By doing so, Wyndham breached their contracts with Plaintiffs because Plaintiffs were denied access to the properties and benefits to which they are entitled under the terms of the contract.

191. Plaintiffs were damaged as a result of said breaches.

192. WHEREFORE, premises considered, Plaintiffs seek compensatory and punitive damages plus interest and costs. Plaintiffs pray for such other and further relief this Court deems appropriate.

**COUNT IV  
(NEGLIGENT MISREPRESENTATION)**

193. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

194. Wyndham's sales agents and employees, acting in the course of their employment or service, and motivated by their pecuniary interest in making a commission from selling the

Plaintiffs a timeshare, either negligently or recklessly supplied false information to the Plaintiffs as enumerated above, as well as the following:

- a. Plaintiffs had to purchase the Club Wyndham Access and Were told that if they traded to new property, maintenance fees would go down or “stabilize”.
- b. Multiple salespersons, on the dates of purchase, stated that they were going to the Plaintiffs’ personal representative, the gatekeeper of the account, and take care of Plaintiffs forever. Each went as far as to give the Plaintiffs their personal cell phone number so they could always be in touch. In reality, they had no intention to do this and never contacted the Plaintiffs again
- c. Plaintiffs were told they could rent the timeshare out for profit. That was not the case. In addition, they were told that they could rent their points to offset maintenance fees. Sales persons told them that they could rent their timeshare for hundreds of dollars per night. This was also not the case.
- d. Plaintiffs specifically purchased because they wanted an exit strategy, and they were told by sales agents that there was a “buy back” of the property if they chose, called Pathways. Sales agents in each transaction told Plaintiffs that any points paid for could be bought back for 20% of their price. In reality, there are many conditions on the program, and it is also simply a right of first refusal.
- e. Plaintiffs were told they had to purchase additional timeshare points to lower their maintenance fees and that at a certain level their maintenance fees would never increase again. In addition, they were told that by upgrading to more points and getting a better status (Called “VIP”) it would increase their “Reservation Power”. But Plaintiffs found out that that they could not, and they did not have any better success in getting reservations, which was already poor.
- f. Plaintiffs were told by sales agents that they had missed out on an invitation that was the best release that ever was on offer but it was only to selected VIP. Plaintiffs never received the invite/offer and ironically Defendants’ sales agents went away and got it approved to be honored. There never was an invitation sent to them and it was all a ploy to create a fear of loss/ missing out, which is a high-pressure sales tactic.
- g. That they did not need to worry about the high interest rate of financing the purchase on a PayPal Bill Me later, because when they got home they could just refinance with them bank. That was untrue. They were also told they could cash in points for maintenance fees at a falsified rate of exchange.
- h. Salespersons intentionally hid the fact that they were incentivized in numerous ways to enroll Plaintiffs into high interest financing plans such as PayPal Bill Me Later.
- i. Salespersons grossly misrepresented the value of using timeshare points for airline tickets, cruises, car rentals, hotel stays, and entertainment venues.

j. On at least one occasion, Plaintiffs never even received a copy of their contract, so that they were unable to review it or find out the information for rescission if they chose to.

195. Such false information supplied by Wyndham's sales agents and employees was meant to guide and/or manipulate the Plaintiffs in making a decision to purchase, exchange, trade or upgrade a Wyndham timeshare.

196. Wyndham's sales agents and employees failed to exercise reasonable care in how such information was obtained, or such information was communicated to the Plaintiffs.

197. The Plaintiffs were justified in relying on the information being supplied by Wyndham.

198. Defendants had a duty to follow and enforce its internal sales compliance procedures and to act with reasonably prudent care in the administration of Plaintiffs' vacation ownership points.

199. Defendants breached this duty by not following and enforcing its internal sales compliance procedures and by making it difficult, if not impossible, for Plaintiffs to utilize their points to the fullest extent possible.

200. For example, Defendants' sales agents are not supposed to make representations regarding the ability to rent and rental income that can be obtained, yet the sales agents told the Plaintiffs, as well as similarly situated timeshare owners, that they can rent out their timeshares and make enough money to cover their maintenance fees.

201. Defendants are not supposed to offer "special deals" and say they are good for that day only, or some other special deal, in violation of Tennessee Timeshare Laws, yet Defendants sales agents did just that.

202. Wyndham knows that it is engaging in deceptive sales tactics, and often the sales agents, told Plaintiffs one thing orally, then had them sign a document saying the opposite.

203. The numerous State complaints to Attorneys' General, the Better Business Bureau complaints, and hundreds and/or thousands of lawsuits filed against Wyndham all alleging the

very same misrepresentations that happened to Plaintiffs, as well as violations of their own Sales Compliance Manual, and psychological tactics to overcome Plaintiffs' ability to say no, prove that Wyndham knew it was making false representations through its agents.

204. As a result of said breaches, Plaintiffs suffered damages.

205. WHEREFORE, premises considered, Plaintiffs seek compensatory damages plus interest and costs. Plaintiffs pray for such other and further relief this Court deems appropriate.

**COUNT V  
(NEGLIGENT HIRING, TRAINING, SUPERVISION AND RETENTION)**

206. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

207. Wyndham owed Plaintiffs a duty to exercise reasonable care in the hiring, selection, training, supervision, and retention of its employees, agents and sales persons.

208. Wyndham failed to exercise reasonable care in the hiring, selection, training, supervision, and retention of its employees, agents and sales persons.

209. Defendant Dave LaBelle was Vice President and Manager over the region that included Nashville during times relevant to this complaint, and had full supervisory responsibility for the conduct of the marketing, sales, and advertising occurring in Nashville.

210. Defendant LaBelle knew Wyndham sales agents were not properly trained, and/or that they agents were routinely violating the Tennessee Timeshare Act, making false and misleading statements during sales presentations, and he failed to correct, train, discipline or otherwise put an end to the fraudulent, negligent and deceptive conduct going on in Nashville.

211. In addition, WWO, WVO, and WVR each owed a duty of reasonable care to the Plaintiffs in hiring, training and supervising of their officers, employees and agents.

212. WWO is responsible for electing the Board and/or Officers of many of the other Defendants including WVO and WVR.

213. WWO failed to exercise reasonable care in the hiring, selection, training, supervision, and retention of the Board and/or Officers of many of the other Defendants including WVO and WVR.

214. As a proximate result of this negligence, Plaintiffs suffered damages.

215. WHEREFORE, premises considered, Plaintiffs seek compensatory damages plus interest and costs. Plaintiffs pray for such other and further relief this Court deems appropriate.

**COUNT VI  
(PROMISSORY FRAUD)**

216. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

217. Wyndham, its employees and agents intentionally made numerous material misrepresentations to the Plaintiffs.

218. These false representations were made knowingly or without belief in their truth, and/or recklessly without regard to their truth or falsity.

219. Wyndham, its employees and agents made promises to the Plaintiffs relating to the future value of the Wyndham timeshares.

220. Wyndham, its employees and agents made promises to the Plaintiffs relating to how the Plaintiffs could use the Wyndham timeshares in the future, such as telling them VIP or Presidential Reserve status could get them the reservations they wanted without difficulty, which was untrue.

221. Wyndham, its employees and agents made promises to the Plaintiffs relating to Wyndham helping the Plaintiffs rent out their Wyndham timeshares in the future, as well as telling them they could rent to cover maintenance fees or cover the cost of ownership. However, no Wyndham agent ever answered their phone or assisted the Plaintiffs in renting out their timeshare.

222. Wyndham, its employees and agents made promises relating to Wyndham exchanging the Plaintiffs' timeshares and/or timeshare points in the future for vacations, time or use of or at other resorts. Plaintiffs account is for all intents and purposes frozen, they either are or will be unable to use their timeshare, as of February 28, 2017.

223. Wyndham, its employees and agents made specific and unambiguous promises relating to the advantages of upgrading a timeshare and/or purchasing additional points, and claiming maintenance fees would be covered if Plaintiffs rented out their timeshare.

224. Wyndham, its employees and agents made specific and unambiguous promises relating to the ability to get out, with the deceptive Pathways Programs, which was sold as a buy-back program but it only a right of first refusal.

225. The Plaintiffs reasonably relied on Wyndham's misrepresentations to them detriment.

226. At all times Wyndham's employees and agents represented themselves as experts in the field of timeshares, and advised the Plaintiffs that they should rely on the representations of the Wyndham employees and agents in making Plaintiffs' decisions to purchase, upgrade, modify, trade and/or sell their timeshares.

227. Wyndham's misrepresentations related to promises of future action without the present intention to carry out such promises.

228. As a proximate result, Plaintiffs has suffered damages.

229. WHEREFORE, premises considered, Plaintiffs seek compensatory damages plus interest and costs. Plaintiffs pray for such other and further relief this Court deems appropriate.

**COUNT VII  
(VIOLATION OF THE TENNESSEE TIMESHARE ACT)**

230. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

231. Tennessee law, specifically Title 66, Chapter 32 of the Tennessee Time-Share Act of 1981 (the “Act”) governs timeshare sales in the State of Tennessee (“Timeshare Act”). Tenn. Code Ann. § 66-32-101.

232. Any person affected by a violation of this act has a claim for appropriate relief. Tenn. Code Ann. § 66-32-118.

233. Among other things, the Timeshare Act requires that timeshare sellers and developers must prepare and register a Time-share Public Offering Statement (“POS”) with the Tennessee Real Estate Commission (“TREC”) prior to offering time-share contracts for sale. Tenn. Code Ann. § 66-32-123.

234. Further, § 66-32-112 of the Act requires that the POS be provided to the prospective purchasers of the timeshare prior to closing any sale.

235. No POS was provided to the Plaintiffs by Wyndham, prior to the purchase of one or more Wyndham timeshares in a meaningful way.

236. The POS on file with the TREC was not provided to the Plaintiffs in a meaningful way, because it is hundreds of pages and the Plaintiffs were not advised what was in it or how much there was to review prior to signing, by Wyndham, prior to the purchase of one or more Wyndham timeshares.

237. Wyndham neither with nor without a properly delivered POS, failed to fully and accurately disclose to the Plaintiffs the information required under Tenn. Code Ann. § 66-32-112 of the Timeshare Act.

238. The POS did not properly disclose initial or special fees due from the Plaintiffs at closing, nor provide an accurate description of the purpose and method of calculating fees. Tenn. Code Ann. § 66-32-112.

239. The transaction entailed several special fees due from the Plaintiffs that were not disclosed in the POS, or were not properly disclosed with the description of the purpose and calculation method.

240. Pursuant to the Act, the POS must provide “A description of any liens, defects, or encumbrances on or affecting the title to the time-share interval.” Tenn. Code Ann. §66-32-112(7).

241. Furthermore, the Timeshare Act states that Wyndham must disclose “(11) Any restraints on alienation of any number of portion of any time-share intervals.” Tenn. Code Ann. §66-32-112(11).

242. Wyndham failed to make the required disclosures, including but not limited to liens, defects, encumbrances and restraints on alienation to the Plaintiffs as required under the Timeshare Act.

243. Wyndham violated Tenn. Code Ann. § 66-32-132 of the Timeshare Act entitled Advertising Specific Prohibitions.

244. Wyndham, its agents and employees, violated Section 66-32-132 of the Timeshare Act by advertising and marketing the Wyndham timeshares to the Plaintiffs in such ways that omitted material information and/or made fraudulent, deceptive, misleading statements or representations, including but not limited to the following:

- a. Made representations to the Plaintiffs as to the availability of a resale program and/or rental program offered by or on behalf of Wyndham or its affiliate without the program being made a part of the offering and submitted to the commission;
- b. Made representations that the timeshares offered to the Plaintiffs were limited as to quantity or restricted as to time without the numerical quantity and/or time applicable to the offer being conspicuously disclosed;
- c. Made statements concerning the availability of the timeshares being sold to the Plaintiffs at a particular price without properly disclosing the number of such timeshares then for sale at the price being disclosed or set forth to the Plaintiffs;
- d. Misrepresented the size, nature, extent, qualities, or characteristics of the accommodations or facilities which comprise the timeshares being purchased by the Plaintiffs;

e. Misrepresented to the Plaintiffs the nature or extent of any services incident to the timeshares purchased by the Plaintiffs, including but not limited to rental, advisory, exchange and resell services;

f. Misrepresented to the Plaintiffs that certain facilities and/or services available to the Plaintiffs were for their exclusive use;

g. Made misleading and/or deceptive representations to the Plaintiffs with respect to the contents of the timeshares and/or timeshare programs being sold to the Plaintiffs, as well as misleading and/or deceptive representations regarding the purchase contract, the purchaser's rights, privileges, benefits or obligations under the Plaintiffs' timeshare contracts;

h. Misrepresentations to the Plaintiffs regarding the conditions under which the Plaintiffs may participate in one or more exchange, rental or resell programs as enumerated above;

245. Wyndham violated Tenn. Code Ann. § 66-32-131 of the Timeshare Act entitled Misleading Advertising Unlawful.

246. Wyndham, its agents and employees violated Section 66-32-131 of the Timeshare Act in that they sold the Plaintiffs' timeshares in Tennessee using certain advertisements, publications, materials, pictorial representations and other marketing material that contained false and/or misleading statements.

247. Wyndham violated Tenn. Code Ann. § 66-32-133 by failing to clearly and conspicuously disclose the approximate duration of the sales presentation when they told the Plaintiffs they were only required to stay for 45 minutes but pressured them into staying for over many hours.

248. Every time Plaintiffs purchased, they were told they were being offered a special deal, good for that day only, or that they had been sent a special offer which in truth was never sent in order to create a fear of loss, which is a violation of this Act in 66-32-132(2), as it creates a false sense of urgency and is a high pressure sales tactic.

249. Wyndham violated 66-32-132(10) when they misrepresented or implied that the timeshares and services were available for the exclusive use of the Plaintiffs, when in actuality,

anyone can rent a Wyndham timeshare by going on internet travel websites. Furthermore, Wyndham rents them out to the public, without owner authorization, to the public.

250. Defendants violated section h by failing to disclose that the contract was of perpetual duration. This is couple with the fact that Defendants sold Plaintiffs the “Pathways” program and did not truthfully disclose the way the program worked.

251. As a proximate result, Plaintiffs suffered damages, for which Plaintiffs seek compensatory damages plus interest and costs, and such other and further relief this Court deems appropriate.

252. Plaintiffs further seek punitive damages, as such conduct was malicious, intentional, fraudulent and/or reckless.

**COUNT VIII  
(ANTICIPATORY BREACH)**

253. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

254. The Wyndham Defendants voluntarily repudiated said contracts on February 9, 2017 when Defendants’ counsel delivered a letter stating that Plaintiffs’ accounts were to be frozen.

255. Defendants stated that Plaintiffs cannot book with points already paid for, and reservations already made, would be cancelled.

256. The Defendants’ repudiation was stated in plain language and unequivocal.

257. Defendants’ repudiation was further made unequivocal when Defendants failed to respond when asked, by Plaintiffs’ counsel, for assurances that said accounts were not frozen.

258. Defendants’ letter stating Plaintiffs’ accounts had been frozen rendered Plaintiffs unable or apparently unable to continue using their timeshare in accordance to their contract.

259. Defendants’ failure to provide assurances, as requested in to Plaintiffs’ February 17, 2017 letter, that their accounts were left active has constructively breached said contracts.

260. No reasonable person could continue to try and book reservations and travel on vacation not knowing if their accounts would be active upon arrival.

261. Plaintiffs have been damaged by Defendants' actions.

262. The relationship between the parties is irreconcilable and irretrievably broken.

263. Due to Defendants' bad faith actions, as well as their unqualified breaches of contract, which were done maliciously to harm the Plaintiffs, punitive damages should be assessed.

264. The contract should be rescinded and actual, consequential, and incidental damages, should be assessed to Defendants.

### **COUNT IX (ELDER ABUSE)**

265. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

266. Defendants target the elderly for their deceptive and fraudulent schemes.

267. Defendants usually offer some kind of "incentive" to people to attend a sales presentation.

268. However, in order to attend a Wyndham sales presentation, Defendants require people/households to meet a minimum household income criteria, which is \$60,000.

269. However, if someone is 55 years or older, or "fully retired," there is no minimum annual household income required.

270. Most elders are on a fixed income, and would not qualify for the usual minimum household income criteria necessary to attend a sales presentation, let alone purchase, and after they purchase a timeshare, they are devastated financially, which often causes great mental anguish.

271. Defendants tell Plaintiffs the sales presentation will be "90 minutes" but it almost always goes on for several hours, while Plaintiffs are deprived of food. This is especially a harsh sales

tactic as elderly suffer from diabetes, and other health ailments, that make them weak and vulnerable when worn down and hungry.

272. Often elders are suffering from cognitive decline, making them susceptible to being worn down during hours-long, high-pressure sales jobs, and they are easily confused when signing voluminous amounts of legal paperwork with fine print, especially if they get tired, suffer from sitting for long periods, or get hungry. They are then easy to scam and defraud.

273. T.C.A. § 71-6-120 provides a right of recovery for elderly persons who are abused or defrauded, who are sixty (60) years of age or older, who have some mental or physical dysfunction, including any resulting from age.

274. In addition to other remedies provided by law, under this Act, an elderly person has a right of recovery for compensatory damages for abuse or neglect of exploitation, or for theft of their money or property, whether by fraud, deceit, coercion, or otherwise.

275. All Plaintiffs, except for James and Julie Archambeault, are all at least 60 or older and are therefore consider elderly persons who are protected under this Act.

276. Defendants deprived the elderly Plaintiffs of their money and/or property by:

- A) fraudulently inducing them into buying timeshares, as enumerated above,
- B) fraudulently inducing them into upgrading their timeshares beyond anything Plaintiffs could afford or use,
- C) selling them timeshares “products” such as Pathway, without fully explaining or disclosing how the Pathway program worked,
- D) Depriving Plaintiffs from their property by constructively preventing Plaintiffs from using their timeshares by overselling the resorts, or by Defendants using up available rooms by marketing them and renting them out on the Internet so availability by owners like Plaintiffs and other similarly situated owners can not get reservations
- E) Tricking Plaintiffs into timeshare purchases by telling them one thing orally, then slipping documents past them rapidly to sign during closing that say another.

277. As such, Defendants have committed violations of this Act, and Plaintiffs, excluding the Archambeault Plaintiffs, have suffered damages as a result.

278. Plaintiffs were harmed by Defendants' actions as described herein, resulting in damages, for which they seek compensatory damages, as well as attorneys' fees pursuant to T.C.A. 71-6-120(d).

**COUNT X  
(CONVERSION)**

279. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

280. Defendants stated that on the date of February 28, 2017, they were dispossessing Plaintiffs of their property rights by freezing their Wyndham timeshare accounts, in accordance with Defendants' February 9 letter.

281. Defendants announcement put them in the sole control of Plaintiffs' account, because even if Plaintiffs are able to make a reservation, they do not know when and if Defendants will cancel a reservation, as Defendants stated that they would.

282. The Defendants' freezing of Plaintiffs' accounts is in direct defiance to the Plaintiffs' purchased property rights in the timeshares, and as a result, Plaintiffs has suffered damages.

283. Plaintiffs further aver that Defendants converted Plaintiffs' property, as they have a routine practice of renting resort rooms/reservations to the general public, and collecting and retaining the funds and compensation from such rental, all the while denying Plaintiffs the availability to the rooms and reservations which they purchased, and Plaintiff pays to maintain.

284. The rental income is kept as the sole property of the Defendants and is not used in any way to compensate the Plaintiffs, and other similarly situated timeshare owners, for the loss of use and enjoyment of their timeshare properties.

285. The retention of these funds by the Defendants constitutes conversion as the Defendants have acted in defiance of the Plaintiffs' property rights.

286. This practice is an ongoing occurrence by the Defendants and thus, is an ongoing conversion of the Plaintiffs' timeshare assets, as well as other similarly situated timeshare owners.

**COUNT XI  
(TRESPASS)**

287. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

288. Defendants removed Plaintiffs' access to use of their account, and prevented Plaintiffs' real property rights when they notified Plaintiffs that their right to enter and have access to their VOI was no longer valid starting on February 28, 2017.

289. Defendants' notification of such action is an intentional interference with Plaintiffs' real property rights.

290. Plaintiffs did not consent to this interference with their rights and alerted Defendants to this fact in writing on February 17, 2017.

291. Defendants are continuing in their ongoing invasion of Plaintiffs' possession of their property with their announced intention to prevent Plaintiffs from making reservations, or using their points, which are already paid for.

292. Plaintiffs is suffering ongoing damages as a result of this trespass to their real estate.

**COUNT XII  
(INJUNCTIVE RELIEF)**

293. The Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

294. The timeshare contracts between the parties are perpetual contracts, which the Plaintiffs did not intend.

295. Tennessee law holds that in the absence of an explicit agreement as to date of termination, the contract is terminable at will by either party.

296. Plaintiffs would request that the Court hold that the contracts at issue in this Complaint are of an indefinite duration and order that the contracts be declared void ab initio.

297. There is no way to calculate damages for a perpetual contract, as the payments are without end. Therefore, injunctive relief is required to end these contracts between the parties.

298. Furthermore, Plaintiffs aver that Defendants have already repudiated the contract(s) between them according to the February 9, 2017 letter, and thus, the contract(s) should be rescinded by this Court.

299. The Defendants claim that the Plaintiffs are obligated to pay maintenance fees associated with the Plaintiffs' timeshare contracts.

300. The Plaintiffs are suffering ongoing harm by having to service debt related to the timeshare purchases.

301. The validity of the Plaintiffs' timeshare contracts is in dispute at this time.

302. If the Plaintiffs are required to pay additional funds to the Defendants at this time, they have and will suffer further irreparable and needless harm, such as inability to pay other financial obligations, and harm to their credit.

303. The Plaintiffs will be irreparably harmed should the Defendants be allowed to make disparaging remarks about their credit.

WHEREFORE, the Plaintiffs request an injunction against the Defendants barring the Defendants from collecting or acting in any way to collect further fees, costs, or expenses from the Plaintiffs until such time as this matter is fully adjudicated.

WHEREFORE, the Plaintiffs request an injunction barring Defendants from continuing to violate the Tennessee Timeshare Act.

WHEREFORE, Plaintiffs further request that the court declare the contracts void and return all money paid by Plaintiffs.

**PREMISES CONSIDERED, PLAINTIFFS PRAY:**

1. That process issue and the Defendants be required to respond in accordance with the “Tennessee Rules of Civil Procedure”;
2. That the be awarded compensatory damages and punitive or treble damages in an amount of \$10,000,000.00;
3. For attorneys’ fees as provided for under the Tennessee Timeshare Act or Elder Abuse Act;
4. That all discretionary costs be awarded to the Plaintiffs;
5. That the costs of this cause be taxed to the Defendants; and
6. For such other and general relief the Court deems just and proper.

Respectfully submitted,

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This is Plaintiffs’ First Application for Extraordinary Relief.