



willful failure to pay overtime to Plaintiffs and all others similarly-situated, in the course of their employment with the Defendant.

3. Accordingly, Plaintiffs bring this action on behalf of themselves and other employees similarly-situated.

## **II. JURISDICTION AND VENUE**

4. The Plaintiffs' claims arise under the Fair Labor Standards Act ("FLSA").  
29 U.S.C. §201 *et. seq.* Accordingly, this Court has jurisdiction over the subject matter of this action under 29 U.S.C. §216(b) and 28 U.S.C. §1331.
5. Venue is proper in the District of South Carolina because a substantial portion of the events forming the basis of this suit occurred in the District of South Carolina. Venue is also proper in the District of South Carolina because Defendant regularly conducts business in the District of South Carolina.

## **III. PARTIES**

1. Plaintiff Richard Reynolds, resides in Littler River, South Carolina.
2. Plaintiff Sharon Linick, resides in Myrtle Beach, South Carolina.
3. Plaintiff Linda Neely, resides in North Myrtle Beach, South Carolina.
4. Plaintiff Joseph Schubert, resides in Myrtle Beach, South Carolina.
5. Plaintiff Doreen Mastandrea resides in Littler River, South Carolina.
6. Defendant, Wyndham Vacation Resorts, Inc. is incorporated in the State of Delaware with its principal place of business in Orlando Florida doing regular business in the State of South Carolina. Defendant may be served with process by serving its registered agent, Corporate Creations Network Inc, at 6650 Rivers Avenue,

North Charleston, South Carolina, 29406 or at any other place they may be found.

**IV.  
COVERAGE OF THE FLSA**

7. At all material times, Defendant has been an employer within the meaning of the FLSA.
8. At all material times, Defendant has operated an enterprise within the meaning of the FLSA.
9. At all material times, Defendant has operated an enterprise engaged in commerce and/or in the production of goods for commerce within the meaning of the FLSA.
10. At all material times, Plaintiffs were employees who were engaged in commerce as required by the FLSA. Like the Plaintiffs, the members of the Plaintiffs Class were employees engaged in commerce in performing their duties for the Defendant.

**V.  
CLASS ALLEGATIONS**

11. Plaintiffs file this case an “opt-in” class action as specifically allowed by 29 U.S.C. §216(b).
12. The class that the Plaintiffs seek to represent may be described as follows:  
  
All current and former timeshare sales representatives of Wyndham Vacation Resorts, Inc., (“**Sales Consultants**”) or equivalent titles, who (1) sold timeshare properties and (2) who worked more than forty (40) hours per week without receiving payment for overtime at one and half times their regular rate.

13. Plaintiffs seek to represent only those members of the above-described group who, after appropriate notice of their ability to opt-in to this action, have provided consent in writing to be represented by Plaintiffs' counsel as required by 29 U.S.C. §216(b).
14. Those persons who choose to opt in collectively referred to as the "Plaintiffs Class" will be listed on subsequent pleadings and copies of the written consents to sue will be incorporated here by reference.
15. Plaintiffs contend that this action is appropriate for class action status because the Defendant herein has acted in the same manner with regard to all members of the Plaintiffs Class.
16. The members of the Plaintiffs Class are similarly-situated to Plaintiffs and are owed overtime wages for the same reasons as the Plaintiffs. These employees should be notified of this case and given the opportunity to join this suit.
17. Timeshare sales agents have been certified in collective actions before. *Gonzales v. Go Relax Travel, LLC*, 2009 WL 3817119, at \*3-5 (M.D.Fla. 2009); *Williams v. Trendwest Resorts, Inc.*, 2007 WL 2429149 at \*1 (D.Nev. 2007).

**VI.  
FACTUAL ALLEGATIONS**

18. At all times relevant to this action, Defendant has been subject to the requirements of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 201 *et seq.*
19. For purposes of this action, the "relevant period" is defined as such period commencing on the date that is three years prior to the filing of this action, and continuing thereafter.

20. Defendant's timeshare sales representatives ("Sales Consultants") worked for Defendant giving tours of timeshare properties in order to sell interests in timeshare properties.
21. Defendant's Sales Consultants did not make sales at the customer's place of business or residence.
22. Defendant's Sales Consultants were therefore not subject to the outside sales exemption to the FLSA. 29 C.F.R. 541.502.
23. Defendant paid its Sales Consultants an hourly rate, and also paid a commission for sales completed.
24. However, Defendant did not pay Sales Consultants for their hours of work in excess of forty (40) at one and a half (1.5) times their regular rate.
25. Defendant Wyndham Vacation Resorts, Inc. did not provide goods to the public.
26. Defendant Wyndham Vacation Resorts, Inc. did not provide "services for the comfort and convenience of [the] public in the course of its daily living." 29 C.F.R. 779.318(a).
27. Defendant Wyndham Vacation Resorts, Inc. was therefore not a retail or service establishment within the meaning of 29 U.S.C. 207(i). *Davidson v. Orange Lake Country Club, Inc.*, 2008 WL 254136, at \*5-6 (M.D.Fla. 2008)(upheld on motion for reconsideration, 2008 WL 596120, at \*4); *Williams v. Trendwest Resorts, Inc.*, 2007 WL 2429149 at \*7-8 (D.Nev. 2007).

**VII.**  
**UNPAID OVERTIME COMPENSATION AND FRAUDULENT RECORDS**

28. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully re-written herein.

29. Defendant's Sales Consultants routinely worked more than forty (40) hours per week for Defendant.
30. However, Defendant required its Sales Consultants to work more hours than Defendant recorded, by directing the Sales Consultants to clock out and then continue to work.
31. However, Defendant only paid the Sales Consultants for the hours that were recorded on the punch clock.
32. The Defendant did not pay for the additional, unrecorded hours that it required the Sales Consultants to work before the Sales Consultants clocked in and after the Sales Consultants clocked out.
33. Thus, Defendant failed to keep complete and accurate records of the hours worked by Sales Consultants in violation of the FLSA.
34. However, Defendant did not pay its Sales Consultants for their hours of work in excess of forty (40) per week at one and a half (1.5) times their regular rate, as required by the FLSA.
35. The Sales Consultants were and are non-exempt employees.
- 36.** Defendant has not made a good faith effort to comply with the FLSA. Rather, the Defendant knowingly, willingly, and/or with reckless disregard carried out its illegal pattern or practice regarding minimum wages and overtime compensation.

**VIII.  
COLLECTIVE ACTION ALLEGATIONS**

37. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully re-written herein.

38. Other employees have been victimized by this pattern, practice, and policy of the Defendants that is in violation of the FLSA.
39. Thus, from discussion with their co-workers, Plaintiffs are aware that the illegal practices and policies of Defendant have been imposed on other workers.
40. Other, similarly-situated employees are being denied their lawful wages.
41. Other, similarly-situated employees are having less than their full work hours recorded by Defendant.
42. Accordingly, Defendant's pattern or practice of failing to pay the employee's overtime pay (at time and one-half) as required by the FLSA results from Defendant's general application of policies and practices, and does not depend on the personal circumstances of the Sales Consultants.
43. Thus, Plaintiffs' experiences are typical of the experience of the Sales Consultants.
44. All employees who meet the description in Paragraph 22 above are similarly situated.
45. Although the issue of damages may be individual in character, the facts related to liability are common to the Sales Consultants.
46. Plaintiffs and the Plaintiff Class (the "Sales Consultants") seek an amount of back pay equal to the overtime compensation which has been unlawfully withheld in a period beginning three years prior to the filing of this lawsuit and continuing until the date of trial.

**IX.**

**CAUSE OF ACTION: FAILURE TO PAY OVERTIME**

47. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully re-written herein.
48. Defendant's failure to pay overtime wages to the Sales Consultants was and is in violation of the FLSA. Accordingly, the Plaintiffs and the Class are entitled to overtime in an amount equal to one and one-half times their regular rates of pay for each hour worked over forty in each workweek.
49. Additionally, the Plaintiffs and the Plaintiffs' Class are entitled to an amount equal to all their unpaid wages as liquidated damages.
50. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully re-written herein.
51. Plaintiffs and the Plaintiffs Class are entitled to recover attorneys' fees and costs of this action as provided by the Fair Labor Standards Act, 29 U.S.C. §216(b).

**X.**

**CAUSE OF ACTION: FAILURE TO PAY MINIMUM WAGE**

52. For the hours of work that Defendant permitted the Plaintiffs to record, Defendant paid a rate which was equal the prevailing minimum wage.
53. However, Defendant paid nothing for the unrecorded hours of work.
54. There were some pay periods in which the Sales Consultants did not receive a commission. For these pay periods, dividing the amount paid to the Sales Consultants by the real total hours of work results in an effective rate below the prevailing minimum wage.



**XI.  
JURY DEMAND**

55. The Plaintiffs hereby demand a jury trial.

**XII.  
PRO HAC VICE**

56. The Plaintiffs' attorneys who are not already admitted to this district on a full time basis will comply with all the requirements for admission Pro Hac Vice as soon as Defendant appears and the parties are able to confer on the motion.

**XIII.  
PRAYER**

WHEREFORE, the Plaintiffs request that this Court award them and the Plaintiffs Class judgment against Defendant for the following relief:

- a. A declaration that Defendant has violated the Fair Labor Standards Act, specifically 29 U.S.C. 207, by failing to pay Plaintiffs and all other similarly-situated employees overtime pay at one and one half times their regular rate for all hours in excess of forty (40) worked during each seven-day work period.
- b. Damages for the full amount of their unpaid overtime compensation;
- c. An equal amount as liquidated damages;
- d. Reasonable attorney's fees, costs, and expenses of this action;
- e. Such other and further relief as may be allowed by law.

Respectfully submitted,

By: /s/William J. Luse

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