

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Dale E. North, individually, and on
behalf of all others similarly situated,)

Plaintiff,)

vs.)

Wyndham Worldwide Operations, Inc.,)
Wyndham Vacation Ownership, Inc.,)
and Wyndham Vacation Resorts, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

15

3038

COMPLAINT
(Jury Trial Demanded)

HORRY COUNTY
2015 APR 23 AM 8:00
MELANIE HUGGINS-WARD
CLERK OF COURT

Plaintiff, complaining of the Defendants, would respectfully show unto the Court
the following:

PARTIES, JURISDICTION and VENUE

1. Plaintiff brings this action on behalf of himself and all others similarly situated to remedy violations of the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. § 201, *et seq.*, South Carolina Payment of Wages Act, South Carolina Code Ann. § 41-10-10 *et seq.*, and the common law of South Carolina.

2. Plaintiff is a citizen and resident of Horry County, South Carolina.

3. Venue of this action lies in the circuit court of Horry County as this is where the actions complained of occurred and where the Defendants own property and conduct business.

4. Defendant Wyndham Worldwide Operations, Inc. (hereinafter collectively referred to with the other Defendants as "Wyndham"), upon information and belief, is a

corporation organized and existing under the laws of a state other than South Carolina, but is authorized to conduct business in South Carolina, and at all pertinent times herein, was doing business in Horry County, South Carolina and other counties. Starwood is engaged in an industry affecting commerce and is an employer within the meaning of 42 U.S.C. § 2000-e(b).

5. Defendant Wyndham Vacation Ownership, Inc. (hereinafter collectively referred to with the other Defendants as "Wyndham"), upon information and belief, is a corporation organized and existing under the laws of a state other than South Carolina, but is authorized to conduct business in South Carolina, and at all pertinent times herein, was doing business in Horry County, South Carolina and other counties. Wyndham is engaged in an industry affecting commerce and is an employer within the meaning of 42 U.S.C. § 2000-e(b).

6. Defendant Wyndham Vacation Resorts, Inc. (hereinafter collectively referred to with the other Defendants as "Wyndham"), upon information and belief, is a corporation organized and existing under the laws of a state other than South Carolina, but is authorized to conduct business in South Carolina, and at all pertinent times herein, was doing business in Horry County, South Carolina and other counties. Wyndham is engaged in an industry affecting commerce and is an employer within the meaning of 42 U.S.C. § 2000-e(b).

7. This Court has both personal jurisdiction over the parties and subject matter jurisdiction.

8. Plaintiff is informed and believes and thereon alleges that at all relevant

times each Defendant was the franchisor, franchisee, principal, agent, partner, joint venture, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants and engaged in a joint enterprise for profit, and bore such other relationships so as to be liable for each other's conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to, and within the scope of, the relationships alleged above, that each Defendant knew or should have known about and authorized, ratified, adopted, approved, controlled, and aided and abetted the conduct of the other Defendants.

BACKGROUND FACTS

9. Plaintiff was hired by Defendants on or about May 26, 2006, to work as a sales associate at its Wyndham Ocean Boulevard resort, located in North Myrtle Beach, South Carolina, selling vacation ownership.

10. Plaintiff excelled in his position and was soon, within two (2) months, promoted by Defendants to Sales Manager. In 2009, however, Plaintiff voluntarily elected to return to a sales association position because he could earn substantially more income selling than managing employees.

11. As a sales associate, Plaintiff was to be paid a base salary of \$40,000 annually, with overtime pay as required by law and commission based upon sales performance. Throughout his employment as a sales associate, however, Plaintiff and other non-exempt staff were routinely instructed to clock out and remain at work. Plaintiff worked a minimum of sixty (60) hours each week and usually seventy (70) hours per

week, including nights and weekends, and was never paid overtime compensation because Defendants required Plaintiff and other employees to falsify their time records to reflect forty (40) hour work weeks when such was not the case.

12. Plaintiff excelled in his position, earning over \$200,000 annually, being recognized as a member of the President's Club (top ½ of all salesmen company-wide) each year, and earning numerous awards, trips, incentive awards and other accomplishments and recognition prizes.

13. In 2013, Plaintiff sold an upgrade in vacation ownership to a couple which were already owners but wanted to buy for their family to join them on vacations as well. Specifically, the couple purchased an upgrade to the Presidential Reserve ownership program level. The couple's name was Mizelli and Plaintiff personally knew them. Mr. and Mrs. Mizelli were concerned and sought assurance that the entire family, consisting of at least four (4) children and four (4) grandchildren, would be able to stay together at the same resort during the same time period and in very close proximity to one another. Moreover, the Mizellis specifically wanted to stay in adjacent or adjoining homes or units so the family could be together. Plaintiff assured them that would be the case and, in fact, was told and aware that a member of the Mizelli family was recording the conversation.

14. On or about July 9, 2013, Regional Human Resource Manager Rae Ellen Saksa called Plaintiff into her office, where they were joined by Krystal Vick, Director of Sales at the Ocean Boulevard resort location, Senior Sales Manager John Jones and Vice-President of Sales Butch Gunter. Gunter told Plaintiff that Mr. and Mrs. Mizelli had

recorded him saying "some bad things". When Plaintiff asked what he was talking about, Gunter informed Plaintiff he had been overheard talking about either rental value or resale value of the vacation ownership, both of which are prohibited by Defendants' policies only if such representations are used to induce the sale.

15. Plaintiff told them he did not recall making any representations about those issues because the Mizellis were long-term owners who were well aware of the program and did not ask any questions about rental or resale but only about the ability of the family to vacation together in close proximity. In fact, Mr. and Mrs. Mizelli had specifically told Plaintiff they had no intention of ever selling but intended to pass down the vacation ownership to their children and grandchildren.

16. Plaintiff was terminated the same day for the alleged policy violation of misrepresenting resale or rental value to sell the vacation ownership upgrade, which was untrue. Additionally, Plaintiff knew at least one other employee who was only suspended for five (5) days even after affirmatively representing to a potential customer they could earn "\$28,000 per year" by investing in the property.

17. Later, Plaintiff learned that Mr. and Mrs. Mizelli had complained about the inability of their family to confirm previously made reservations where the family could all stay together at the same resort at the same time in close proximity to one another and that Defendants had, in fact, moved one group of family members despite the written and confirmed reservations. Plaintiff learned the Mizellis had made NO complaint about misrepresentations of rental or resale value to induce the sale of the upgrade.

18. Approximately fifteen (15) days later, Plaintiff met again with Butch Gunter, Vice-President of Sales for the company. After discussing the matter, Gunter agreed the termination had been improper and wrong based upon the facts and agreed to reinstate Plaintiff. Gunter specifically told Plaintiff he would bring him back to work and said "you have my word". Gunter further said "I will tell Krystal not to interview or hire anyone for your position."

19. Based specifically upon the assurances and promises of Gunter, Plaintiff turned down a similar job at Orange Lakes, a vacation ownership resort in Myrtle Beach owned and operated by Holiday Inn, and told them he had his old job back.

20. During the course of the next two (2) months, Plaintiff tried over and over to confirm his reinstatement with Gunter and set a date for his return. Plaintiff then decided to schedule a meeting with Gunter to discuss and pin down the return date. Over the next two (2) months, Plaintiff scheduled six (6) meetings with Gunter, two (2) of which Plaintiff appeared for but Gunter did not show and four (4) of which Gunter's assistant cancelled the day before the meeting. After two months of no income to support his wife and young child, and unable to meet with Gunter to schedule his return date, Plaintiff contacted Wyndham Worldwide CEO Stephen Holmes. Plaintiff and Holmes had a mutual acquaintance through soccer and Plaintiff just wanted to return to work.

21. Holmes told Plaintiff that while he was sorry to hear the circumstances he would have to contact and defer to Franz Hanning, CEO of Wyndham Vacation Ownership, since the matter was under his line of command and indicated he would contact Hanning immediately about the matter.

22. Shortly thereafter, on October 3, 2013, Gunter called Plaintiff and was furious that he went over his head and actually contacted the CEO of Wyndham Worldwide and told Plaintiff that his return would "never" happen now and that he would "never" work for Wyndham again.

23. Defendant Wyndham Worldwide has an employment manual or handbook, titled A Code of Conduct for Employees, which is undated and was presented to Plaintiff at some point in time during his employment, and Defendant Wyndham Vacation Ownership has an employment manual or handbook, titled Employee Policy Handbook, which is dated April 1, 2008 and was presented to Plaintiff at some point in time during his employment. While both of these documents claim they does not constitute a contract, neither document complies with South Carolina Code Ann. Section 41-1-110, in that the purported disclaimers are not in capital letters, are not underlined, and do not appear on the first page of the documents. Therefore, the documents create an express or implied contract as a matter of law.

24. Defendants breached their employment contract with Plaintiff in several particulars, including, but not limited to, regular performance reviews and conferences, failing to follow its progressive disciplinary policy, and terminating Plaintiff in contravention of the disciplinary policy.

25. Defendants instructed Plaintiff and other sales associates, who are specifically not exempt from the overtime provisions of the FLSA, to work off the clock and continue to work after they clocked out for the sole purpose of avoiding overtime pay. Defendants had actual knowledge of this conduct and not only failed to prevent it but, in

fact, knowingly and willfully and intentionally instructed Plaintiff and other employees to do so.

26. As a result, Plaintiff and other sales associates were never paid overtime pay for hours worked in excess of forty (40) each week.

27. Time spent on job tasks conducted during any given week were for the Defendants' benefit.

28. Plaintiff and the other sales associates were not paid for their overtime hours.

29. Plaintiff and the other sales associates were entitled to be compensated at the lawful rate for all overtime hours.

30. Defendants willfully refused to compensate Plaintiff and other sales associates for their overtime hours.

31. Throughout the time period Plaintiff worked for Defendants he regularly worked more than sixty (60) hours per week.

32. The additional persons who may become plaintiffs in this action are current and former sales associates who worked, but were not paid for, overtime hours for the benefit of Defendants.

33. The records, if any, concerning the number of hours actually worked by Plaintiff and the compensation actually paid to Plaintiff and others are in the possession and custody of Defendants.

34. Plaintiff has retained undersigned counsel to represent him in this action, and pursuant to 29 U.S.C. § 216(b), is entitled to recover all reasonable attorney's fees

and costs incurred in this action.

PLAINTIFF'S INDIVIDUAL CLAIMS

FOR A FIRST CAUSE OF ACTION
**(Breach of Contract and Breach of Implied
Covenant of Good Faith and Fair Dealing)**

35. The allegations contained in the preceding paragraphs realleged as if restated verbatim herein.

36. The actions of the Defendants in terminating Plaintiff from employment constitute a breach of contract.

37. As a direct and proximate result of the Defendants' breach of contract, the Plaintiff has suffered, and continues to suffer, actual damages, including, but not limited to, lost wages and benefits.

38. Plaintiff is entitled to judgment against the Defendant for actual damages for breach of contract.

39. There exists in every contract entered into in the State of South Carolina, including employment contracts, an implied covenant of good faith and fair dealing.

40. The Defendants' actions and conduct in terminating Plaintiff constitute a breach of the implied covenant of good faith and fair dealing.

41. As a result of the intentional acts complained of herein, Plaintiff has suffered and will continue to suffer the loss of a career with Defendants and the loss of salary, bonuses, benefits and other compensation which such employment entails, and plaintiff has also suffered future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses. Plaintiff has further experienced

severe emotional and physical distress. Plaintiff seeks actual damages, punitive damages, attorneys' fees and costs under this cause of action.

42. Plaintiff is informed and believes he is entitled to judgment against the Defendants, jointly and severally, for actual damages and punitive damages for breach of implied covenant of good faith and fair dealing.

FOR A SECOND CAUSE OF ACTION
(Promissory Estoppel)

43. Paragraphs 1 through 42 are realleged and reasserted as if restated verbatim herein.

44. Defendants, by and through their duly authorized agent, servant and/or and employee, made a promise, unambiguous in its terms, to reinstate Plaintiff to his sales associate position.

45. Plaintiff reasonably relied on the promise.

46. Plaintiff's reliance was expected and foreseeable by the employee who made the promise.

47. Plaintiff relied to his detriment and sustained damages as a result of his reliance on the promise.

48. As a result of the intentional acts complained of herein, Plaintiff has suffered and will continue to suffer the loss of a career with both defendant Wyndham and Orange Lakes and the loss of salary, bonuses, benefits and other compensation which such employment entails, and plaintiff has also suffered future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.

Plaintiff has further experienced severe emotional and physical distress. Plaintiff seeks actual damages, punitive damages, attorneys' fees and costs under this cause of action.

49. Plaintiff is informed and believes he is entitled to judgment against the Defendants, jointly and severally, for actual damages based upon the doctrine of promissory estoppel.

FOR A THIRD CAUSE OF ACTION
(Violation of the South Carolina Payment of Wages Act)

50. Paragraphs 1 through 49 are realleged and reasserted as if restated verbatim herein.

51. Plaintiff was not paid all wages due and payable.

52. Defendants willfully failed to pay Plaintiff wages which were due for all hours worked, according to law.

53. Plaintiff is informed and believes Defendants willfully violated the South Carolina Payment of Wages Act by failing to pay all wages due for all hours worked in contravention of the statute.

54. Plaintiff brings this cause to remedy violations of the South Carolina Payment of Wages Act, which provides that an employer shall pay all wages due to the employee within the time frame set forth on the notification required by statute or within forty-eight (48) hours of the time the employment is terminated or the next regular payday, which may not exceed thirty (30) days. S.C. Code Ann. § 41-10-50.

55. Further, the Payment of Wages Act provides that in case of any failure to pay wages due to an employee as required by Section 41-10-40 or Section 41-10-50, the

employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the Court may allow. S.C. Code Ann. 41-10-80(C).

56. As is alleged herein, Defendants have engaged and are engaging in ongoing material violations of the Payment of Wages Act in that they failed to pay Plaintiff all wages due according to law. Defendants have thus deprived Plaintiff of rights granted him under the Act, including his right to receive all wages due him within the statutorily mandated time.

57. Defendants, without any legal right to do so, have unlawfully, wilfully and intentionally and fraudulently withheld wages from Plaintiff in direct violation of law.

58. As a result of the intentional acts complained of herein, Plaintiff has suffered and will continue to suffer the loss of substantial damages, including lost wages.

59. Plaintiff is informed and believes he is entitled to judgment against the Defendants, jointly and severally, for actual damages, treble damages and attorney's fees as permitted by statute.

CLASS ACTION ALLEGATIONS

60. This case is brought as a class action under Rule 23 of the Federal Rules of Civil Procedure. The proposed class would be defined as follows:

All current and former sales associates of Defendants, who are not exempt from the overtime provisions of the FLSA, and who worked overtime hours for the benefit of Defendants and were not paid overtime pay.

61. This case is properly brought as a class action under Rule 23 of the Federal

Rules of Civil Procedure for the reasons set forth in the following paragraphs.

- a) The persons constituting the Plaintiff class are so numerous that individual joinder of all parties is impracticable;
- b) Common questions of law and fact exist between the class representative and the unnamed members of the class;
- c) The class representative's claims are typical of the claims of the class;
- d) Defendants' defenses against the class representative, to the extent any will be asserted, are typical of the claims of the class;
- e) The named Plaintiff is representative of the class and members of the class and is so situated as to provide adequate representation for the unnamed class members;
- f) There are common questions and issues of law and fact involved in this matter which predominate over questions affecting individual employee class members; and
- g) The prosecution of separate actions by employee class members will create a serious risk of inconsistent or varying adjudication which may prejudicially affect the claims of the other class members and subsequent litigation.

62. The prosecution of separate actions by individual class members present the risk that separate adjudication respecting individual employee class members would not be entirely dispositive of the interest of class members not parties to the litigation but would otherwise substantially impair or impede the ability of the class members to protect

their interests.

63. The class action is a superior procedural vehicle for this litigation because the primary objective of the class action, economies of time, effort and expense, will be achieved and the class action may be more easily managed than some other procedural vehicle considering the opportunity to afford reasonable notice of significant phases of the litigation, including, *inter alia*, discovery to the class members and the Defendants.

64. The named Plaintiff's employee damages are not substantially different from the damages of other members of the class. The named Plaintiff will fully and adequately protect the interests of the other members of the class, who are too numerous to be named individually and to individually appear in this proceeding.

65. The named Plaintiff and members of the class have suffered damages as a result of Defendants' failure to compensate them for overtime hours worked for the benefit of Defendants.

66. Further, Defendants should be enjoined from their continued refusal to pay for all hours worked, including overtime hours, at the lawful rate.

67. There is a well-defined community of interest and the questions of law and fact affecting the parties to be represented.

68. The claims or defenses of the representative parties are typical of the claims or defenses applicable to the entire class.

69. The named Plaintiff has retained counsel competent in the prosecution of this type of litigation.

70. The questions of law and fact applicable to the entire class predominate

over questions that may affect individual employee members, including the following determinative critical issues:

- a) Whether class members worked overtime hours or "off the clock" for the benefit of Defendants;
- b) Whether class members were paid for overtime hours worked for the benefit of Defendants;
- c) Whether Defendants' failure to pay class members for the overtime hours worked for the benefit of Defendants is a violation of the FLSA overtime provisions;
- d) Whether Defendants' conduct was willful.

71. Because of the size of some of the individual class member claims, few, if any, class members could afford to seek legal action for the wrongs complained of herein.

72. The named Plaintiff and the class alleges that Defendants failed to compensate them for overtime hours worked each week.

FOR A FOURTH CAUSE OF ACTION
(Violation of the Fair Labor Standards Act)

73. Paragraphs 1 through 72 are realleged and reasserted as if restated verbatim herein.

74. Plaintiff and all others similarly situated are and were entitled to be paid overtime pay at the lawful rate for all hours worked for the benefit of their employer in excess of forty (40) each week.

75. Plaintiff and other sales associates worked in excess of forty (40) hours each week for the benefit of Defendants.

76. Defendants willfully failed to pay Plaintiff and other sales associated overtime wages which were due for all hours worked in excess of forty (40) each week, according to law.

77. Plaintiff is informed and believes Defendants willfully violated the Fair Labor Standards Act by failing to pay overtime wages due for all overtime hours worked each week, in contravention of the statute.

78. As a result of the intentional and wilful acts complained of herein, Plaintiff and other class members have suffered and will continue to suffer the loss of substantial damages, including lost wages.

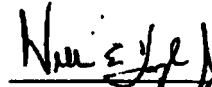
79. Plaintiff is informed and believes he is entitled to judgment against the Defendants, jointly and severally, for actual damages, liquidated damages, attorney's fees and costs as permitted by statute.

JURY TRIAL DEMANDED

Plaintiff, individually and on behalf of all others similarly situated, demands a jury trial on all issues so triable.

WHEREFORE, having set forth his Complaint, Plaintiff prays for judgment against the Defendants, jointly and severally, both individually and on behalf of all others similarly situated, for actual and compensatory damages, liquidated damages, statutory damages, back pay, front pay, economic losses, mental pain and suffering, attorneys' fees and costs, punitive damages, pre-judgment interest and such other relief as this Court may deem just and proper.

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April 21, 2015

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