

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

John Carmichael and Susan Carmichael,)	Civil Action No.: 9:16-cv-01641-PMD
)	
Plaintiffs,)	COMPLAINT
)	(Jury Trial Requested)
v.)	
)	
Hilton Head Island Development Company,)	
LLC, Sunrise Vacation Properties, Ltd.,)	
Jesse Bellamy, Sheldon Stanhope, and)	
Sherri J. Smith,)	
)	
Defendants.)	
)	

COME NOW Plaintiffs complaining of Defendants and would respectfully show unto the Court and allege as follows:

SUMMARY OF CAUSES OF ACTION

Plaintiffs are victims of fraud and violations of various statutory and common laws and seek the certification of a class action alleging against Defendants, being a timeshare developer and seller, a timeshare sales company, timeshare salespeople, and broker-in-charge, the following causes of action:

- (1) Fraud/Intentional Misrepresentation;
- (2) Violation of the South Carolina Vacation Timeshare Act (“Timeshare Act”);
- (3) Violation of the South Carolina Unfair Trade Practices Act (“UTPA”);
- (4) Violation of the South Carolina Consumer Protection Code (“CPC”);
- (5) Negligent/Grossly Negligent Misrepresentation;
- (6) Declaratory Judgment;
- (7) Negligent/Grossly Negligent Hiring;
- (8) Negligent/Grossly Negligent Selection;
- (9) Negligent/Grossly Negligent Contracting;
- (10) Negligent/Grossly Negligent Training;
- (11) Negligent/Grossly Negligent Supervision; and
- (12) Negligent/Grossly Negligent Retention.

PARTIES AND JURISDICTION

1. Plaintiffs are citizens and residents of the State of Maryland.
2. Defendants Hilton Head Island Development Company, LLC and Sunrise Vacation Properties, Ltd. are companies and corporations organized and existing under the laws of the State of South Carolina with their agents, employees, and principal places of business in Beaufort County, South Carolina, upon information and belief.
3. Defendants Jesse Bellamy, Sheldon Stanhope, and Sherri J. Smith are citizens and residents of Beaufort County, South Carolina, upon information and belief.
4. Jesse Bellamy is the “Vacation Counselor” or salesperson, upon information and belief; the identity of the salespeople is known to Defendants and the same information is in the possession and/or control of Defendants, upon information and belief.
5. Sheldon Stanhope is the “Verification Officer” or deeder; the identity of the deeder is known to Defendants and the same information is in the possession and/or control of Defendants, upon information and belief.
6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000.000, exclusive of interest and costs, and because there is complete diversity of citizenship between Plaintiffs and Defendants.
7. Venue is proper in the Beaufort Division insofar as a substantial portion of the events of the matter took place within Beaufort County, South Carolina.

FRAUDULENT TIMESHARE SALE

8. Plaintiffs incorporate the preceding Paragraphs as if fully set forth herein verbatim.
9. Plaintiffs were visiting Hilton Head Island for vacation in May of 2015.

10. Plaintiffs were at Coligny Plaza on Hilton Head Island when they were solicited by someone at a kiosk to take a timeshare tour and presentation.

11. The salesperson and deeder promised Plaintiffs that they could stay at their timeshare unit on Hilton Head Island for three (3) weeks each and every year.

12. The salesperson and deeder promised Plaintiffs that maintenance fees would cost only \$399.00 every three (3) years.

13. The salesperson and deeder promises Plaintiffs that, because Coral Resorts' timeshares were RCI Gold Crown, Plaintiffs would have stronger trading power with RCI than if they had purchased a non-Coral Resorts timeshare.

14. Defendants, namely the salesperson and deeder, and their related entities, agents, and individuals, did affirmatively make certain misrepresentations, including but not limited to those set forth herein, on behalf of Defendants concerning Defendants' sales offers, benefits, and contents of the contract documents, as well as such further and other representations as may be discovered during the investigation and prosecution of this matter and set forth at trial.

15. Following such representations and in reliance upon same, Plaintiffs signed the subject contract documents presented by Defendants, namely the salesperson and deeder.

16. Plaintiffs were provided with an incomplete copy of the Coral Sands Purchaser Loan Agreement on the date of purchase in violation of the Timeshare Act.

17. Plaintiffs were provided with an incomplete copy of the Title to Equitable Interest in Real Estate on the date of purchase in violation of the Timeshare Act and Plaintiffs have not received a fully completed copy of the same to date.

18. Upon information and belief, a second witness signed the Title to Equitable Interest in Real Estate without having any knowledge of Plaintiffs or their signing of the same

and falsely represented that the second witness witnessed Plaintiffs' signature on the same in violation of the Timeshare Act.

19. Plaintiffs were provided with a copy of the Coral Sands Horizontal Property Regime Purchaser's Understanding and Acknowledgements on the date of purchase which falsely represents that Coral Sands is the seller of the timeshare and falsely represents that the Purchase Contract contains the entire agreement between the seller and Plaintiffs.

20. Plaintiffs were provided with a Purchaser Loan Agreement and contract that did not contain the arbitration provision on page one thereof in bold type in violation of the law.

21. Plaintiffs received an incomplete copy of the RCI Points Participation Agreement lacking witness signatures and a date for Mr. Carmichael's signature.

22. Defendants required that Plaintiffs purport to agree to waive their rights under the Timeshare Act to receive a fully completed copy of their contract on the date of purchase.

23. Defendants failed to provide Plaintiffs with a fully completed copy of the loan agreement on the date of purchase, the same containing blanks that, by Defendants' design, are later completed by K. Michael Barfield, and the completed copy is only later provided to Plaintiffs.

24. Defendants failed to provide Plaintiffs with a fully completed copy of the title to equitable interest in real estate by having it fraudulently witnessed the same outside of Plaintiffs' presence and without their knowledge.

25. Defendants provided Plaintiffs with a public offering statement devoid of the enumerated information required to be contained in the same pursuant to the Timeshare Act, namely the Trustee's Fees.

GENERAL ALLEGATIONS

26. Plaintiffs incorporate the preceding Paragraphs as if fully set forth herein verbatim.

27. Upon information and belief and to be determined during the investigation and prosecution of this matter, during all times complained of herein, each and every agent and/or employee of each and every Defendant was working as an agent and/or employee of one or more or all of the other Defendants and, as such, each and every Defendant is responsible for the acts and/or omissions of all other Defendants, their agents, and employees at all times set forth herein. Alternatively, upon information and belief and to be determined during the investigation and prosecution of this matter, during all times complained of herein, each and every Defendant was working as an alter ego of one another and was acting in the capacity of a joint enterprise and as such is responsible for the acts and/or omissions of all other Defendants, their agents, and/or employees at all times set forth herein.

28. Sunrise Vacation Properties, Inc. has a contract with the sellers of timeshares, namely Hilton Head Island Development Company, LLC, to sell timeshares on their behalf.

29. Upon information and belief, Sunrise Vacation Properties, Inc. does not and/or cannot sell timeshares for any other resorts.

30. Upon information and belief, Hilton Head Island Development Company, LLC does not and/or cannot contract with any other entity to sell their timeshares.

31. Upon information and belief and to be determined during the investigation and prosecution of this matter, the salesperson or “Vacation Counselor” and/or the deeder or “Verification Officer” were independent contractors of Sunrise Vacation Properties, Inc., Hilton Head Island Development Company, LLC, Sherri J. Smith, and/or the sellers of the timeshares

pursuant to independent contractor agreements which contain indemnification clauses. Alternatively, upon information and belief and to be determined during the investigation and prosecution of this matter, the salesperson or “Vacation Counselor” and/or the deeder or “Verification Officer” were employees of Sunrise Vacation Properties, Inc., Hilton Head Island Development Company, LLC, Sherri J. Smith, and/or the sellers of the timeshares pursuant to employee/employer relationships.

32. The salesperson and deeder made and/or affirmed to Plaintiffs the misrepresentations described herein.

33. The deeder confirmed the misrepresentations made to Plaintiffs by the salesperson.

34. Upon information and belief, salespersons and/or deeders were required to conform their conduct to industry standards, laws, regulations, sound business practices, and basic principles of good faith and fair dealing.

35. Upon information and belief, salespersons and/or deeders were supervisees of Defendant Sherri J. Smith.

36. Upon information and belief, Supervisees were hired, selected, contracted, trained, supervised, and/or retained by Sunrise Vacation Properties, Inc., Hilton Head Island Development Company, LLC, and/or Sherri J. Smith.

37. Upon information and belief, Defendant Sherri J. Smith was at all relevant times herein the Broker-in-Charge of all salespersons and/or deeders described or referenced herein.

38. Upon information and belief, Defendant Sherri J. Smith was at all relevant times herein the supervisor of all salespersons and/or deeders described or referenced herein.

39. Upon information and belief, Defendant Sherri J. Smith had a contractual

relationship with other Defendants and/or third parties to supervise the salespersons and/or deeders to ensure that they conform their conduct to industry standards, laws, regulations, sound business practices, and basic principles of good faith and fair dealing.

40. As a result of the negligence/gross negligence of Sunrise Vacation Properties, Inc., Hilton Head Island Development Company, LLC, and/or Sherri J. Smith, the salespersons and/or deeders were permitted and did egregiously defraud Plaintiffs in making the misrepresentations described herein, and their conduct violated industry standards, laws, regulations, sound business practices, and basic principles of good faith and fair dealing.

41. The Broker-in-Charge for Sunrise Vacation Properties, Inc. was Dwight Trew until sometime in 2006; Terry Dale until sometime in 2010; and Sherri J. Smith through the present, upon information and belief.

42. Defendants, by and through their agent, sign, acknowledge, promise, and affirm in the Order of Registration that they are jointly and severally liable with the Broker-in-Charge and/or marketing and sales agency generally and specifically under the Timeshare Act and South Carolina Unfair Trade Practices Act.

43. The sellers of timeshares include but are not limited to Hilton Head Island Development Company, LLC, Sunrise Vacation Properties, Inc., the salespersons, the deeders, and/or the supervising managers.

44. Upon information and belief, the sellers of timeshares had marketing and sales agreements and contracts with Defendant Sunrise Vacation Properties, Inc.

45. Upon information and belief, such marketing and sales agreements were between the sellers of timeshares, Hilton Head Island Development Company, LLC, and/or Sunrise Vacation Properties, Ltd. and contained indemnification clauses making Sunrise Vacation

Properties, Ltd. liable for any compensation claims, sales and marketing claims, and/or sales and marketing misrepresentation claims.

46. Upon information and belief, such marketing and sales agreements described Sunrise Vacation Properties, Ltd.'s duties to recruit, hire, train, and compensate a sales force, such as salespersons and/or deeders, and to staff, manage, and/or supervise same.

47. Upon information and belief and pursuant to such marketing and sales agreements, Sunrise Vacation Properties, Ltd. agreed to abide by all laws related to timeshares and to conduct itself in ethical manner.

48. Upon information and belief, during the sales transactions described hereinabove, the salespersons and/or deeders, by and on behalf of their principals, did purposefully, recklessly, and/or negligently misstate information as to the essential terms of the subject contract with the purposeful, reckless, and/or negligent intent and/or effect of having the Plaintiffs sign written documents with essential terms contradictory to those verbally stated/misstated.

49. Upon information and belief, during the sales transactions described herein, the salespersons and/or deeders, by and on behalf of their principals, obstructed, omitted, changed, and/or obscured essential terms of subject contracts and documents when having Plaintiffs sign subject documents with the purposeful, reckless, and/or negligent intent and/or effect of having the Plaintiffs sign written documents with essential terms contradictory to those verbally stated/misstated.

50. Upon information and belief, during the sales transactions described herein salespersons and/or deeders, by and on behalf of their principals, used time pressures, distractions, mis-statements, mis-directions, and/or other deceptive techniques, when having Plaintiffs sign the subject documents with the purposeful, reckless, and/or negligent intent and/or

effect of having the Plaintiffs sign written documents with essential terms contradictory to those verbally stated/misstated.

51. Due to an exceedingly alarming number of complaints against these sellers of timeshares and their related entities and individuals for fraud received by the South Carolina Real Estate Commission, allegations strikingly similar to Plaintiffs' allegations today, Defendants promised to provide an attorney on site for purchasers to ask questions about the timeshare contracts on or about 2005.

52. Upon information and belief, the attorney was removed in 2009.

53. In the purchase contract, Plaintiffs purportedly waive their right and benefit under the Timeshare Act to obtain a fully completed copy of their contract documents on the date of purchase, and Plaintiffs purportedly agree to appoint K. Michael Barfield as Permanent Escrow Agent and Trustee for the seller of the timeshare and as Plaintiffs' closing agent to complete Plaintiffs' contract documents at a later date, the same being in violation of the South Carolina Timeshare Act.

54. The transaction documents contain multiple instances of false information.

55. The transaction documents contain multiple violations of the Timeshare Act.

56. A copy of certain of the transaction documents was provided to the purchasers on the date of purchase, though the documents are incomplete and the same is in violation of the Timeshare Act.

57. Upon information and belief, Defendants automatically sign up purchasers for RCI, LLC's membership with purchasers having no knowledge of the ramifications of same and/or that membership in the same is optional and is not required.

58. As a result thereof, Plaintiffs have suffered and continue to suffer damages and

losses.

59. Plaintiffs are informed and believe that they are entitled to actual, incidental, consequential, treble, and punitive damages in an amount to be determined at trial, as well as attorneys' fees, costs, and expenses, in an amount exceeding \$75,000.00, as permitted.

60. Plaintiffs' allegations are similar in fact, though more egregious, and pled under the similar Timeshare Act of Tennessee in which the Tennessee Court of Appeals very recently in 2015 affirmed a ruling in favor of the timeshare purchasers for \$500,000.00. Overton v. Westgate, No. E2014-00303 (January 20, 2015).

FOR A FIRST CAUSE OF ACTION
(Fraud/Intentional Misrepresentation)

61. Plaintiffs repeat and reiterate the foregoing Paragraphs as though fully restated herein verbatim.

62. During the course of such sales presentations, referenced above, Defendants and Defendants' agents made certain representations to the Plaintiffs including those set forth above, as well as those which may be further set forth at trial.

63. Specifically, misrepresentations were made by the salesperson, manager, and deeder to Plaintiffs, and the misrepresentations were confirmed to the Plaintiffs by the deeder.

64. Upon information and belief, only an individual trained in complex legal principals and the law could read and understand the subject contract documents after extensive review, and not all documents were provided to Plaintiffs on the date of purchase or to date.

65. Upon information and belief, it was impossible for Plaintiffs to take any further and reasonable measure of protection or precaution during the brief verification process with the deeder to protect their rights and ensure the accuracy of all of the misrepresentations in comparison with the contract documents reviewed at the time of purchase, contract documents

provided to them after the purchase, and contract documents that were never provided to them at any point before, during, or after the transaction, and not provided to Plaintiffs to date.

66. Upon information and belief, a well-trained attorney in contract, timeshare, horizontal property regime, and consumer law would require several days in order to review and understand all of the contract documents that should have been provided to Plaintiffs on the date of purchase and then compare the same with the representations made to Plaintiffs by Defendants.

67. Upon information and belief, Plaintiffs had no duty to read the subject contract documents because the deeder reviewed the documents with Plaintiffs and explained the contents thereof, inducing Plaintiffs' trust by the deeder's actions, promises, and title, as the deeder specifically intended that Plaintiffs rely upon the deeder's representations and not read the documents.

68. Upon information and belief, the deeder did not fully review the contents of the subject contract documents and had Plaintiffs sign the same with actual knowledge that Plaintiffs did not read the documents, had no knowledge of the contents thereof, and believed the documents to contain terms contrary to those contained in the documents.

69. Upon information and belief, the deeder reviewed the contents of the subject contract documents in such a cursory manner in such a short period of time and had Plaintiffs sign the same with actual knowledge that Plaintiffs did not read the documents and had no knowledge of most all of the contents of the contract documents.

70. Upon information and belief, the documents are printed in such small print and, due to numerous photocopies, with such reproduction quality as to make them very difficult to read.

71. Upon information and belief, Plaintiffs were not provided with a fully completed copy of their contract documents on the date of purchase and, as such, review of the same was and has been impossible at all times and to the present date.

72. Had the deeder verified all of the terms of the contract and corrected the misrepresentations of the salespeople, Plaintiffs would never have entered into the subject contract.

73. Upon information and belief, it is the pattern and practice of the deeder to not review the contract documents in full with purchasers, including Plaintiffs.

74. Upon information and belief, the first time a purchaser and the Plaintiffs had an opportunity to review some of the purchase documents was when they sat down with the deeder and the deeder purported to explain the contents and legal ramifications of the same to Plaintiffs.

75. Upon information and belief, the deeder did not permit Plaintiffs time to review all of the documents which, upon information and belief, would take multiple days to review by a highly trained attorney.

76. Upon information and belief, many of the documents which were purportedly provided to Plaintiffs were not purportedly provided to Plaintiffs until after the transaction was complete and Plaintiffs had already signed all of the contract documents.

77. All of the misrepresentations were essential to the transaction and were relied upon by Plaintiffs in entering into the contract.

78. All of the misrepresentations were made by Defendants with the knowing purpose and intent of fraudulently inducing Plaintiffs to sign the subject contract documents.

79. All of the misrepresentations made by Defendants vary from the terms of the written contract documents, both those that were provided to Plaintiffs on the date of purchase

and those that were not provided to Plaintiffs on the date of purchase.

80. Plaintiffs anticipate that they will discover further fraudulent conduct and misrepresentations during the investigation and prosecution of this lawsuit, and they reserve the right to supplement this lawsuit up to and during trial to conform with the evidence.

81. As to the misrepresentations and/or nondisclosures:

- i. The nondisclosures and/or representations were false;
- ii. The representations were material to the transaction;
- iii. The representations were known to Defendants to be false, and/or, alternatively, Defendants were reckless of their disregard of the truth or falsity of the representations;
- iv. Defendants intended that the Plaintiffs act upon the representations;
- v. Plaintiffs were ignorant of the falsity of the representations;
- vi. Plaintiffs relied upon the truthfulness of the representations and had a right to do so; and
- vii. As a consequence of same, Plaintiffs have suffered and continue to suffer damages as a proximate result thereof.

82. The fraud was committed in such a manner or under such circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of Plaintiffs' rights.

83. Defendants were conscious of and/or are chargeable with consciousness of their wrongdoing.

84. Such actions and misrepresentations are described within certain documents establishing the contractual relationships between certain Defendants and other Defendants

and/or third parties.

85. Upon information and belief, certain of such documents establishing the contractual relationships between certain Defendants and other Defendants and/or third parties do contain indemnification and other provisions placing such Defendants'/parties' legal positions at odds with all other Defendants/parties.

86. Upon information and belief, all Defendants are aware of and are in actual possession of thousands of complaints against Defendants for identical or nearly identical fraudulent activities.

87. Upon information and belief, all Defendants have actual knowledge of the existence of admitted certain past identical or nearly identical fraudulent activities.

88. Plaintiffs are informed and believe that they are entitled to judgment against Defendants, jointly and severally, for fraud and/or intentional misrepresentation for actual, incidental, consequential, and punitive damages in an amount to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Violation of the Timeshare Act)

89. Plaintiffs repeat and reiterate the foregoing Paragraphs as though fully restated herein verbatim.

90. "The General Assembly declares that . . . (E) the purchaser of an interest in a vacation time sharing plan in this State is afforded significant and unique consumer protections not available to purchasers of other forms of real property [and] (F) the process involved in the purchase and sale of interests in a vacation time sharing plan is unlike traditional residential real property and, due to the provisions of this act, require unique practices and procedures" S.C. Code Section 27-32-405(E) and (F) of the Timeshare Act.

91. Dismissing and preempting any arguments of ambiguity in the legislature's intent

and concerning the right of individuals to bring a private right of action to enforce the provisions of the Timeshare Act, the Timeshare Act clearly and unambiguously states that “[i]n addition to the penalties provided in this section [of the Timeshare Act], a contract for the sale of an interest in a vacation time sharing plan in violation of this chapter [32] is voidable at the sole option of the purchaser and entitles the purchaser to a refund of all consideration paid by him pursuant to the contract.” S.C. Code Section 27-32-120 of the Timeshare Act.

92. Although the Real Estate Commission is charged with the enforcement and implementation of the Timeshare Act pursuant to South Carolina Code Section 27-32-130, “[t]he provisions of this section do not limit the right of a purchaser or lessee to bring a private action to enforce the provisions of this chapter [32].”

93. In Jimmy Tench v. SCDLLR, 98-ALJ-11-0041-IJ, the Court confirms that “[m]atters relating to alleged violations of the South Carolina Vacation Time Sharing Plans Act and any investigations conducted by the Commission pursuant to that act, other than disciplinary proceedings against any real estate agents or brokers involved, are specifically reserved to the jurisdiction of the Circuit Court.” (citing S.C. Code Ann. Section 27-32-230 (Supp. 1997)).

94. The Court further states that “Mr. Tench may pursue a civil action against those persons or entities whom he feels have wronged him. Such a civil action is specifically authorized by the South Carolina Vacation Time Sharing Plans Act at S.C. Code Ann. § 27-32-130 (Supp. 1997).”

95. As expressly stated by the Timeshare Act, the purpose of which is explained by the General Assembly therein, and confirmed by the Court, Defendants have the indisputable and inalienable statutory right to pursue the instant claims against Defendants for violations of the Timeshare Act, none being disciplinary proceedings against real estate brokers or agents.

96. Upon information and belief, Defendants assert that there is no penalty for failure to comply with certain provisions of the Timeshare Act.

97. Defendants are sellers of a vacation time sharing plan and/or are in the business of selling interests in a vacation time sharing plan within the definition set forth in South Carolina Code Section 27- 32-10, et seq.

98. The timeshare property purchased by Plaintiffs, as set forth above, was part of a vacation time sharing plan as defined in South Carolina Code Section 27-32-10, et seq.

99. The timeshare property purchased by Plaintiffs, as set forth above, was intended to be part of vacation timesharing plans as defined in the Timeshare Act.

100. Defendants, by and through their agent, sign, acknowledge, promise, and affirm in the Order of Registration that they are jointly and severally liable with the Broker-in-Charge and/or marketing and sales agency generally and specifically under the Timeshare Act and South Carolina Unfair Trade Practices Act.

101. Further, as set forth above, Defendants, by and through their agents, made certain representations to Plaintiffs concerning the sale of a timeshare property within the state of South Carolina.

102. Such representations made by Defendants, by and through their agents, constitute prohibited practices as set forth in South Carolina Code Section 27-32-110, including but not limited to:

- i. Misrepresenting the amount of time or period of time the accommodations and facilities are available to a purchaser;
- ii. Misrepresenting or deceptively representing the location of the offered accommodations and facilities;

- iii. Misrepresenting the size, nature, extent, qualities, or characteristics of the offered accommodations and facilities;
- iv. Misrepresenting the nature and extent of services incident to the accommodations and facilities;
- v. Making misleading or deceptive representations with respect to the contents of the contract or the purchaser's rights, privileges, or benefits under it;
- vi. Failing to honor and comply with all provisions of the contract with the purchase;
- vii. Misrepresenting the conditions under which a purchaser may exchange his rights to an accommodation in one location for rights to an accommodation in another location;
- viii. Including in a contract a provision purporting to waive a right or benefit provided for purchasers pursuant to Chapter 32, Vacation Time Sharing Plans, or seeking or soliciting such a waiver during the effective period of these rules; and
- ix. Doing any other act of fraud, misrepresentation, or failure to make a disclosure of a material fact.

103. Defendants are in violation of the Timeshare Act, Section 27-32-30(2) and (3): “It is a violation of this chapter for a person offering vacation time sharing plans for sale to the public to fail to keep among its business records a . . . copy of the contract from each sale of the vacation time sharing plan, which contract must be retained for at least three years after parties to the vacation time sharing plan have completely performed all of their obligations under it; and

list of all employees, and their last known mailing addresses, which list must include all current employees and all previous employees whose employment was terminated within the preceding three years,” upon information and belief.

104. Defendants are in violation of the Timeshare Act, Section 27-32-40: “It is a violation of this chapter for the seller of a vacation time sharing plan to fail to utilize and furnish the purchaser a fully completed copy of a contract pertaining to the sale at the time of its execution.”

105. Section 27-32-100(11) of the Timeshare Act further states: “However, inclusion of this statement shall not impair the purchaser's right to bring any legal action based upon any cause of action arising from verbal statements.”

106. Defendants are in violation of the Timeshare Act, Section 27-32-180(D): “The seller shall supervise, manage, and control all aspects of the offering and sale of a vacation time sharing plan. A violation of this chapter by a registrant employed by a seller as an independent contractor, either directly or through a third party, in connection with the offering or sales of interests in vacation time sharing plans may be considered to be a violation by the seller as well as by the registrant who committed the violation, if the seller knew or should have known of the conduct constituting the violation.”

107. The seller should have known or, upon information and belief, knew of some and/or all of the violations of the Timeshare Act by seller’s registrant employees and/or independent contractors and is jointly and severally liable with the same.

108. Section 27-32-120(C) of the Timeshare Act provides that: In addition to the penalties provided in this section, a contract for the sale of an interest in a vacation time sharing plan in violation of this chapter is voidable at the sole option of the purchaser and entitles the

purchaser to a refund of all consideration paid by him pursuant to the contract.”

109. Although the Real Estate Commission is charged with enforcing the Timeshare Act, Section 27-32-130 confirms that “[t]he provisions of this section do not limit the right of a purchaser or a lessee to bring a private action to enforce the provisions of this chapter.”

110. Defendants required that Plaintiffs purport to waive their rights as it pertains to the contract documents outside of what Defendants purport to constitute the contract, being the five page purchase agreement and the loan agreement, despite that additional documents constitute part of the contract and Plaintiffs have statutory rights as to the same under the Timeshare Act.

111. Defendants required that Plaintiffs purport to waive their right to receive a fully completed copy of the loan agreement on the date of purchase and for K. Michael Barfield to have the right to complete the same at later date and then mail the same to Plaintiffs.

112. Defendants failed to timely provide the public offering statement to Plaintiffs in violation of the Timeshare Act, and the same fails to include Trustee’s Fees.

113. Plaintiffs are informed and believe that they are entitled to judgment against Defendants, jointly and severally, for violation of the Timeshare Act, for actual, incidental, and consequential damages in an amount to be determined at trial.

FOR A THIRD CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

114. Plaintiffs repeat and reiterate the foregoing Paragraphs as though fully restated herein verbatim.

115. As set forth above, Defendants made certain representations to Plaintiffs during the subject sales transaction which were false, misleading, and/or fraudulent.

116. The committing of such false, misleading, and/or fraudulent representations by

Defendants constituted an act or practice that is unfair or deceptive, and impacts the public within the meaning of the South Carolina Unfair Trade Practices Act.

117. The committing of such false, misleading, and/or fraudulent representations by Defendants is not only capable of repeatedly harming the public, but actually has been repeatedly harming the public as the same kind of actions have occurred in the past, thus making it likely that they will continue to occur absent deterrence, and the company's procedures create a potential for repetition of the unfair and deceptive acts.

118. Defendants, by and through their agent, sign, acknowledge, promise, and affirm in the Order of Registration that they are jointly and severally liable with the Broker-in-Charge and/or marketing and sales agency generally and specifically under the Timeshare Act and South Carolina Unfair Trade Practices Act.

119. Upon information and belief, all Defendants are aware of dozens of instances admitted fraudulent sales activity identical or nearly identical in nature to those fraudulent activities alleged by Plaintiffs in the instant lawsuit.

120. Upon information and belief, Defendants are or were in actual possession of audio and/or video evidencing fraudulent sales activity.

121. The policies and procedures of Defendants, including but not limited to the compensation structure, lack of adequate oversight, lack of adequate training, offsite closing in another city by K. Michael Barfield, having removed the attorney that was previously promised to the South Carolina Real Estate Commission to be available to purchasers with questions, and/or lack of proper retention and/or termination of various individuals, entities, and/or contractual relations has resulted in these longstanding and continuing fraudulent sales practices.

122. As a result thereof, there is little likelihood that the same conduct will cease or be

deterred in any way without a substantial civil judgment against a company that, upon information and belief, earns more than thirty million dollars (\$30,000,000.00) annually.

123. Upon information and belief, Plaintiffs can produce at trial as many witnesses to testify as to Defendants' identical or nearly identical fraudulent conduct and violations of the law as the Court will allow to be heard.

124. Upon information and belief, Defendants willfully violated the South Carolina Unfair Trade Practices Act.

125. As a result of same, Plaintiffs have suffered and continue to suffer damages.

126. Plaintiffs are informed and believe that they are entitled to judgment against Defendants, jointly and severally, for unfair trade practices in an amount to be determined at trial, such amount to be trebled in accordance with the South Carolina Unfair Trade Practices Act, consequential damages, and the costs, expenses, and attorneys' fees of this action.

FOR A FOURTH CAUSE OF ACTION
(Violation of South Carolina Consumer Protection Code)

127. Plaintiffs repeat and reiterate the foregoing Paragraphs as though fully restated herein verbatim.

128. Defendants define the purchase documents as a consumer credit contract and, in their current version of the purchase documents, state that "ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF."

129. A timeshare is a vacation experience, despite that a timeshare may be a quasi-real property interest, and, as such, the Timeshare Act provides that "the purchaser of an interest in a vacation time sharing plan in this State is afforded significant and unique consumer protections

not available to purchasers of other forms of real property.” S.C. Code Section 27-32-405(E).

130. The Timeshare Act defines timeshare purchasers as consumers and declares that purchasers of timeshares are entitled to consumer protections, despite that timeshares are quasi-real property.

131. Unlike real property, the Timeshare Act declares that timeshares cannot constitute a full time residence and are not an investment.

132. The subject agreement or transaction is a consumer credit transaction and consumer credit sale or consumer loan.

133. The subject agreement or transaction and/or material terms thereof were unconscionable at the time it was made, and the terms of the agreement or transaction are unconscionable.

134. Defendants secured the consumer loan, in whole or in part, by a lien on the subject timeshare real estate other than as a fixed, nonvariable loan finance rate.

135. Defendants are in violation of South Carolina Code Section 37-1-101, 37-3-101, et seq.

136. As a result thereof, Plaintiffs have suffered and continue to suffer damages.

137. Plaintiffs are informed and believe that they are entitled to judgment against Defendants, jointly and severally, for violation of the Consumer Protection Code for actual, incidental, and consequential damages in an amount to be determined at trial, as well as a declaration that the contract and/or its terms are unconscionable and unenforceable.

FOR A SIXTH CAUSE OF ACTION
(Negligent/Grossly Negligent Misrepresentation)

138. Plaintiffs repeat and reiterate the foregoing Paragraphs as though fully restated herein verbatim, and Plaintiffs would specifically reference the incorporation of the allegations

made under the fraud/intentional misrepresentation cause of action.

139. As set forth above, Defendants, by and through their agents, made one or more false representations to the Plaintiffs.

140. Defendants, by and through their agents, had a pecuniary interest in making such representations.

141. Defendants possessed expertise or special knowledge that would ordinarily make it reasonable for another to rely on Defendants' judgment or ability to make careful inquiry.

142. Defendants intended that Plaintiffs rely upon Defendants' representations.

143. Defendants made the false representations in the course of Defendants' business, profession, or employment.

144. Defendants owed a duty of care to Plaintiffs to see that truthful information was communicated to Plaintiffs.

145. Defendants breached the duty to Plaintiffs by failing to exercise due care.

146. Plaintiffs justifiably relied upon the representations.

147. Plaintiffs suffered a pecuniary loss as a direct and proximate result of reliance on the representations.

148. Plaintiffs are informed and believe that they are entitled to judgment against Defendants, jointly and severally, for actual, incidental, consequential, and punitive damages for negligent misrepresentation in an amount to be determined at trial.

FOR A NINTH CAUSE OF ACTION
(Declaratory Judgment)

149. Plaintiffs repeat and reiterate the foregoing Paragraphs as though fully restated herein verbatim.

150. Plaintiffs are informed and believe that they are entitled to a declaratory judgment

that no valid and binding contracts exist between the parties due to there being no meeting of the minds as to the contracts and for the reasons set forth herein above and below.

151. Plaintiffs are informed and believe that they are entitled to a declaratory judgment that, pursuant to Plaintiffs' election, the subject contract is void and Plaintiffs are entitled to a full refund of all monies paid pursuant to Section 27-32-120(C) of the South Carolina Timeshare Act.

FOR A TENTH CAUSE OF ACTION
(Negligent/Grossly Negligent Hiring)

152. Plaintiffs repeat and reiterate the foregoing Paragraphs as though fully restated herein verbatim.

153. Defendants Hilton Head Island Development Company, LLC, Sherri J. Smith, and/or Sunrise Vacation Properties, Ltd. owed Plaintiffs a duty to exercise reasonable care in the hiring of salespersons, the sales agency, the marketing agency, verification officer, President, General Manager, and others.

154. Defendants Hilton Head Island Development Company, LLC, Sherri J. Smith, and/or Sunrise Vacation Properties, Ltd. breached their duty to Plaintiffs.

155. As a result thereof, Plaintiffs have suffered and continue to suffer damages.

156. Plaintiffs are informed and believe that they are entitled to judgment against Defendants, jointly and severally, for negligent hiring in an amount to be determined at trial.

FOR AN ELEVENTH CAUSE OF ACTION
(Negligent/Grossly Negligent Selection)

157. Plaintiffs repeat and reiterate the foregoing Paragraphs as though fully restated herein verbatim.

158. Defendants Hilton Head Island Development Company, LLC, Sherri J. Smith,

and/or Sunrise Vacation Properties, Ltd. owed Plaintiffs a duty to exercise reasonable care in the selection of salespersons, the sales agency, the marketing agency, verification officer, President, General Manager, sellers of timeshares, Timeshare Resorts' owners' associations, and others.

159. Defendants breached their duty to Plaintiffs.

160. As a result thereof, Plaintiffs have suffered and continue to suffer damages.

161. Plaintiffs are informed and believe that they are entitled to judgment against Defendants, jointly and severally, for negligent selection in an amount to be determined at trial.

FOR A TWELFTH CAUSE OF ACTION
(Negligent/Grossly Negligent Contracting)

162. Plaintiffs repeat and reiterate the foregoing Paragraphs as though fully restated herein.

163. Defendants Hilton Head Island Development Company, LLC, Sherri J. Smith, and/or Sunrise Vacation Properties, Ltd. owed Plaintiffs a duty to exercise reasonable care in the contracting of salespersons, the sales agency, the marketing agency, verification officer, President, General Manager, Timeshare Resorts' owners associations, sellers of timeshares, and others.

164. Defendants breached their duty to Plaintiffs.

165. As a result thereof, Plaintiffs have suffered and continue to suffer damages.

166. Plaintiffs are informed and believe that they are entitled to judgment against Defendants, jointly and severally, for negligent contracting in an amount to be determined at trial.

FOR A THIRTEENTH CAUSE OF ACTION
(Negligent/Grossly Negligent Training)

167. Plaintiffs repeat and reiterate the foregoing Paragraphs as though fully restated

herein.

168. Defendants Hilton Head Island Development Company, LLC, Sherri J. Smith, and/or Sunrise Vacation Properties, Ltd. owed Plaintiffs a duty to exercise reasonable care in the training of salespersons, the sales agency, the marketing agency, verification officer, President, General Manager, sellers of timeshares, Timeshare Resorts owners' associations, and others.

169. Defendants breached their duty to Plaintiffs.

170. As a result thereof, Plaintiffs have suffered and continue to suffer damages.

171. Plaintiffs are informed and believe that they are entitled to judgment against Defendants, jointly and severally, for negligent training in an amount to be determined at trial.

FOR A FOURTEENTH CAUSE OF ACTION
(Negligent/Grossly Negligent Supervision)

172. Plaintiffs repeat and reiterate the foregoing Paragraphs as though fully restated herein.

173. Defendants Hilton Head Island Development Company, LLC, Sherri J. Smith, and/or Sunrise Vacation Properties, Ltd. owed Plaintiffs a duty to exercise reasonable care in the supervision of salespersons, the sales agency, the marketing agency, verification officer, President, General Manager, Timeshare Resorts' owners' associations, sellers of timeshares, and others.

174. Defendants breached their duty to Plaintiffs.

175. As a result thereof, Plaintiffs have suffered and continue to suffer damages.

176. Plaintiffs are informed and believe that they are entitled to judgment against Defendants, jointly and severally, for negligent supervision in an amount to be determined at trial.

FOR A FIFTEENTH CAUSE OF ACTION
(Negligent/Grossly Negligent Retention)

177. Plaintiffs repeat and reiterate the foregoing Paragraphs as though fully restated herein.

178. Defendants Hilton Head Island Development Company, LLC, Sherri J. Smith, and/or Sunrise Vacation Properties, Ltd. owed Plaintiffs a duty of reasonable care in the retention of salespersons, the sales agency, the marketing agency, verification officer, President, General Manager, Timeshare Resorts' owners' associations, sellers of timeshares, and others.

179. Defendants breached their duty to Plaintiffs.

180. As a result thereof, Plaintiffs have suffered and continue to suffer damages.

181. Plaintiffs are informed and believe that they are entitled to judgment against Defendants, jointly and severally, for negligent retention in an amount to be determined at trial.

WHEREFORE, having fully set forth their Complaint against Defendants, Plaintiffs pray that the Court inquire into the matters set forth herein and issues its Order as follows:

- A. Granting Plaintiffs judgment against Defendants, jointly and severally, for Fraud/Intentional Misrepresentation for actual, incidental, consequential, and punitive damages in an amount to be set forth at trial;
- B. Granting Plaintiffs judgment against Defendants, jointly and severally, for violation of the Timeshare Act for actual damages in an amount to be set forth at trial;
- C. Granting Plaintiffs judgment against Defendants, jointly and severally, for violation of the South Carolina Unfair Trade Practices Act in an amount to be set forth at trial, trebled, as well as the costs, expenses, and attorneys' fees of this action;

- D. Granting Plaintiffs judgment against Defendants, jointly and severally, for violation of the Consumer Protection Code for actual, incidental, consequential, and punitive damages in an amount to be determined at trial, as well as a declaration that the contract and/or its terms are unconscionable and unenforceable;
- E. Granting Plaintiffs judgment against Defendants, jointly and severally, for Negligent Misrepresentation for actual, incidental, consequential, and punitive damages in an amount to be set forth at trial;
- F. Declaring that no valid and binding contract exists between the parties due to there being no meeting of the minds as to the contract and as further set forth therein;
- G. Declaring that, pursuant to Plaintiffs' election, the subject contract is void and Plaintiffs are entitled to a full refund of all monies paid pursuant to Section 27-32-120(C) of the South Carolina Timeshare Act;
- H. Granting Plaintiffs judgment against Defendants, jointly and severally, for Negligent Hiring for actual, incidental, consequential, and punitive damages in an amount to be set forth at trial;
- I. Granting Plaintiffs judgment against Defendants, jointly and severally, for Negligent Selection for actual, incidental, consequential, and punitive damages in an amount to be set forth at trial;
- J. Granting Plaintiffs judgment against Defendants, jointly and severally, for Negligent Contracting for actual, incidental, consequential, and punitive damages in an amount to be set forth at trial;

- K. Granting Plaintiffs judgment against Defendants, jointly and severally, for Negligent Training for actual, incidental, consequential, and punitive damages in an amount to be set forth at trial;
- L. Granting Plaintiffs judgment against Defendants, jointly and severally, for Negligent Supervision for actual, incidental, consequential, and punitive damages in an amount to be set forth at trial;
- M. Granting Plaintiffs judgment against Defendants, jointly and severally, for Negligent Retention for actual, incidental, consequential, and punitive damages in an amount to be set forth at trial;
- N. Certify the Class and Sub-classes as detailed herein and Plaintiffs as class representatives; and
- O. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Zach S. Naert
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May 22, 2016
Hilton Head Island, SC