

IN THE CIRCUIT COURT OF CASS COUNTY, MISSOURI

FREDDIE FRANCY, )

Plaintiff, )

v. )

Case No.: )

SHUTTS & BOWEN LLP, )

Serve Registered Agent: )

Corporation Company of Miami )

201 S. Biscayne Blvd, Suite 1500 )

Miami, FL 33131 )

DANIEL J. BARSKY, )

Serve: )

200 S. Biscayne Blvd, Suite 4100 )

Miami, FL 33131 )

ALFRED J. BENNINGTON, JR., )

Serve: )

300 S. Orange Ave, Suite 1600 )

Orlando, FL 32801 )

GLENNYS ORTEGA RUBIN, )

Serve: )

300 S. Orange Ave, Suite 1600 )

Orlando, FL 32801 )

JONATHAN P. HART, )

Serve: )

525 Okeechobee Blvd, Suite 1100 )

West Palm Beach, FL 33401 )

WYNDHAM VACATION OWNERSHIP, )  
INC. )

Serve Registered Agent: )

Corporate Creations Network, Inc. )

12747 Olive Blvd, Suite 300 )

St. Louis, MO 63141 )

WYNDHAM VACATION RESORTS, )  
INC. )

Serve Registered Agent: )

Corporate Creations Network, Inc. )

12747 Olive Blvd, Suite 300 )

St. Louis, MO 63141 )  
 )  
 )  
 **Defendants.** )

**PETITION AND CLASS ACTION PETITION**

COMES NOW Plaintiff, by and through undersigned counsel, and for his Petition against Defendants, states:

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

1. Plaintiff Freddie Francy (hereinafter referred to as “Plaintiff Francy”) is an individual who is not a minor, and resides in Cass County, Missouri.
2. Defendant Shutts & Bowen LLP is a limited liability partnership organized and existing pursuant to the laws of the State of Florida and may be served through its registered agent Corporation Company of Miami at: 201 S. Biscayne Boulevard, Suite 1500, Miami, FL 33131.
3. Defendant Daniel J. Barsky is in individual residing in Florida, who may be served at his place of employment at 200 S. Biscayne Blvd, Suite 4100, Miami, FL 33131.
4. Defendant Alfred J. Bennington, Jr. is an individual residing in Florida, who may be served at his place of employment at 300 S. Orange Ave, Suite 1600, Orlando, FL 32801.
5. Defendant Glennys Ortega Rubin is an individual residing in Florida, who may be served at her place of employment at 300 S. Orange Ave, Suite 1600, Orlando, FL 32801.
6. Defendant Jonathan P. Hart is an individual residing in Florida, who may be served at his place of employment at 525 Okeechobee Blvd, Suite 1100, West Palm Beach, FL 33401.
7. Defendant Wyndham Vacation Ownership, Inc. (hereinafter referred to as “WVO”), is a corporation authorized to do business in Missouri, in good standing, which can be served

through its registered agent, Corporate Creations Network, Inc., 12747 Olive Blvd, Suite 300, St. Louis, MO 63141.

8. Defendant Wyndham Vacation Resorts, Inc., (hereinafter referred to as “WVR”) is a corporation authorized to do business in Missouri, in good standing, which can be served through its registered agent, Corporate Creations Network, Inc., 12747 Olive Blvd, Suite 300, St. Louis, MO 63141.
9. At all times herein mentioned, all Defendants were co-conspirators, agents, servants, employees, and joint-venturers of each other and were acting within the course and scope of said conspiracy, agency, employment, and/or joint-venture and with the permission and consent of each other.
10. Defendants WVO and WVR (collectively referred to as “Wyndham”) solicited Plaintiff Francy by mail at his home in Cass County, Missouri, and engaged in violations of the Missouri Merchandising Practices Act, as more fully described below.
11. Jurisdiction and venue are proper in this Court.
12. Chapter 407 RSMo. allows for a private cause of action for breaches of the Merchandising Practices Act (“the Act”) and certain of Plaintiff’s claims are brought pursuant to the act.
13. That the Merchandising Practices Act, § 407.025 RSMo, provides for a private cause of action, punitive damages, and attorney fees to a successful party who invokes its protections as Plaintiff does herein.
14. That the Merchandising Practices Act, § 407.010 RSMo, includes in the definition of “merchandise” the term service.
15. Defendants Wyndham are timeshare sales companies that provide services to the public.

**COUNT I – VIOLATIONS OF THE MISSOURI MERCHANDISING PRACTICES ACT**  
**(against Defendants Wyndham)**

COMES NOW Plaintiff Francy, and for Count I of his Petition against Defendants Wyndham states as follows:

16. This count is against Defendants WVO and WVR.
17. Plaintiff Francy purchased a timeshare from Defendants in or near Branson, Missouri on June 9, 2017.
18. According to copies of the purchase documents given to Plaintiff, Defendants Wyndham list Thomas Roach as the salesperson who received credit for the sale to Plaintiff which occurred in Branson, Missouri on June 9, 2017. The salesperson did not state his full name to Plaintiff during the sales process in Branson. Plaintiff has no reason to dispute Defendants Wyndham's assertion that Thomas Roach was the salesperson who met with him.
19. After initially soliciting Plaintiff in Cass County, Missouri, Defendants used high pressure sales tactics at their location in Branson to solicit and pressure Plaintiff into purchasing a timeshare for over \$134,000.00.
20. That during and after the contact with Defendants during the sales process, Defendants through its representatives and/or agents, made representations to Plaintiff in Branson, Missouri which amounted to deception, fraud, false pretenses, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of a material fact which are specifically described in the subparagraphs below, including but not limited to:
  - a. That Plaintiff he could sell his timeshare for a profit;

- b. That Plaintiff would be attending a 90-minute presentation, and the presentation lasted much longer. Plaintiff was detained at the sales presentation against his will for a lengthy period of time. The extended, unreasonable, lengthy time period of the sales presentation constituted duress and coercion to force Plaintiff to make a purchase before he was allowed to leave the premises;
  - c. That Plaintiff was attending an “Owner’s Update” meeting when in fact, Plaintiff was attending another sales presentation, and Plaintiff was subjected to another high-pressure sales pitch.
21. Defendants misrepresented the benefits of buying a timeshare from them.
22. That Defendants’ statements and assurances referenced in subparagraphs “a” through “c”, inclusive, and/or its concealment, suppression, or omission of those issues were material to Plaintiff Francy’s decision to purchase a timeshare from Defendants.
23. Because of the high-pressure sales tactics and the insistence that the purchase needed to be made immediately to receive the “benefits”, Plaintiff Francy was unable to independently research the claims made by Defendants.
24. That as a direct and proximate result of the misrepresentations, statements, assurances, and omissions made by Defendants, Plaintiff Francy has suffered an ascertainable monetary loss in the amount of \$134,623.64, plus interest, plus continuing maintenance fees and obligations.
25. That the conduct of Defendants in the foregoing respects was willful, intentional, and malicious and without just cause or excuse, entitling Plaintiff Francy to actual and punitive damages and attorney fees and costs herein incurred.

26. In addition, in purchasing this timeshare, Plaintiff paid to Defendants Wyndham, and Defendants Wyndham charged, a fee of \$349.00 for Document Processing Fees.

WHEREFORE, Plaintiff Freddie Francy prays this Honorable Court hear and determine the matter and enter Judgment in favor of Plaintiff Francy and against Defendants for actual and incidental and consequential damages, for punitive damages in an amount that is fair and reasonable, and for his attorney fees and expenses herein reasonably expended, and for such other and further relief as this Honorable Court may deem just and proper.

**COUNT II – RESCISSION**  
**(against Defendants Wyndham)**

COMES NOW Plaintiff Francy, by and through counsel, and for Count II of his Petition against Defendants Wyndham, state as follows:

27. This count is against Defendants WVO and WVR.

28. Plaintiff Francy incorporates by reference each and every preceding paragraph of this Petition as though fully set forth herein.

29. As a result of the fraudulent misrepresentations made by Defendants, by and through their agents and/or employees, as is set forth in Count I above, Plaintiff Francy is entitled to rescind the timeshare contract, minus amounts paid in document fees, and which claims for document fees Plaintiff Francy elects to pursue in the class claims set forth below. Plaintiff Francy is further entitled to a reimbursement of reasonable attorneys' fees incurred by Plaintiff Francy in bringing forth this cause of action, and in negotiating the resolution of this claim; and Plaintiff Francy is entitled to interest and consequential damages.

WHEREFORE, Plaintiff Francy prays this Court enter judgment in his favor against the Defendants, for an order rescinding the timeshare contract except for the document fees; trebled damages on the document fees; for damages that are fair and reasonable to restore

Plaintiff Francy to the position he was in prior to purchasing the membership from Defendants; for reasonable attorneys' fees, costs, and interest as allowed by law; and for any such other and further relief as the Court deems just and proper.

**COUNT III – VIOLATIONS OF RSMO 407.1249**  
**(against Defendants Wyndham)**

30. This count is against Defendants WVO and WVR.
31. Plaintiff Francy incorporates by reference each and every preceding paragraph of this Petition as though fully set forth herein.
32. Chapter 407.1252 RSMo. allows for a private cause of action for breaches of the Merchandising Practices Act (“the Act”) and all of Plaintiffs claims are brought pursuant to the Act, Chapter 407 RSMo; and 407.1249 RSMo.
33. Defendants Wyndham are travel clubs as defined in 407.1240 RSMo.
34. As travel clubs, Defendants are required to register as such with the Missouri Attorney General, pursuant to 407.1243 RSMo.
35. Individuals who purchase travel club memberships from a travel club that is not registered under Revised Statutes of Missouri, sections 407.1240 through 407.1252, shall have a non-waivable right for a period of three years, from the date of purchase, to rescind and cancel their travel club membership and receive a full refund within fifteen business days of such rescission.
36. Plaintiff resides in Cass County, Missouri, and is not a minor.
37. On or about June 9, 2017, Plaintiff entered into a contract with the Defendants.
38. That, at the time Plaintiff entered into the aforementioned contract with Defendants, the Defendants and subject matter of the contract were subject to the provisions of the Missouri travel club statutes, 407.1243 RSMo., et seq.

39. Because Defendants failed to register as a travel club, as set forth more fully above, Plaintiff had three years, from the date of the contract they entered into with Defendant, to rescind said contract and be returned all monies paid to Defendants.
40. Plaintiff made demand upon Defendants to rescind his contract and return all monies paid by him, and Defendants failed and refused to do the same and, therefore, are in violation of the statute as described above. Attached hereto, as Exhibit A, is a copy of Plaintiff's notice of rescission to the Defendants requesting a full refund in the amount of \$135,862.54.
41. The failure of Defendants to register as a travel club, as stated above, is a violation of Missouri law, as is the failure of Defendants to return all monies paid by Plaintiff, and is therefore, considered an unlawful practice constituting unfair practice in connection with the sale of merchandise in trade or commerce as defined by 407.020 RSMo.
42. Section 407.025 RSMo provides that the Court may award attorney's fees in connection with the aforementioned violations of the Missouri Merchandising Practices Act (MMPA).

WHEREFORE, on the foregoing facts and grounds, Plaintiff hereby prays for judgment in his favor, and against Defendants, in the amount of \$135,862.56, for his costs incurred herein, for reasonable attorney's fees, and for such other and further relief as the Court may deem fair and reasonable in the premises, all in a sum unknown with exactitude.

**CLASS-WIDE ALLEGATIONS FOR CLASS I**  
**(Against Defendants Wyndham)**

43. Defendants Wyndham are not licensed attorneys in the State of Missouri as is required by § 484.020 RSMo., for Defendants Wyndham to engage in law business for profit.



44. Defendants Wyndham are engaged in the business of selling and/or leasing memberships, timeshare, vacation packages, and/or interests in goods or property. As part of the sales and/or leasing process, Defendants Wyndham prepare and/or process deeds, purchase agreements, contracts, financing documents, and other instruments and/or documents of legal significance that affect and/or relate to secular rights and title to property. These instruments are documents of legal significance that affect or relate to the rights and title to property rights and memberships in clubs or organizations, other secular rights, interests in timeshares and vacation packages; and are collectively referred to herein as the “documents”.
45. Defendants Wyndham, as a general business practice, have charged a fee for the preparation and/or processing of the documents relating to these sales, in the amount of \$349.00, or similar amounts, to customers relating to transactions that involve Missouri property. Defendants Wyndham commonly refer to the fees as “Document Processing Fees”. (Hereinafter “document fees”). Said transactions that occur in the State of Missouri and/or which relate to Missouri property are governed by Missouri law, and Plaintiff seeks to represent all Class members whose claims are governed by Missouri law.
46. Defendants Wyndham have, as a general business practice, refused to return said documentation fees to their customers, including customers who rescind their timeshare and/or membership contracts.
47. This action is brought by Plaintiff, against Defendants Wyndham, to recover for Plaintiff, and for all others similarly situated (hereinafter “Class” or “the proposed Class”), all

document fees, by whatever name, paid by Plaintiff and the Class to Defendants Wyndham, and to recover all other damages allowed by law.

48. Plaintiff and the Class contend that it is unlawful for Defendants Wyndham to collect from their customers a document fee, in that receiving consideration for the preparation and processing of legal documents by an unlicensed individual is illegal and constitutes engagement in unauthorized law business and the unauthorized practice of law. Likewise, it is illegal, unlawful, and deceptive for Defendants Wyndham to charge Plaintiff and the Class for Defendants Wyndham's legal fees in a transaction in which Plaintiff and the Class members are on the opposite side of the transaction.
49. Plaintiff and the Class further contend that Defendants Wyndham are legally obligated to provide a refund to Plaintiff, and to all Class members, of all document fees charged and collected by Defendants Wyndham on all transactions and to pay, in addition statutory treble damages, the attorneys' fees incurred by customers herein, prejudgment and post-judgment interest, costs, and punitive damages.
50. For the reasons stated in more detail below, this case is properly brought as a class action, represented by the named Plaintiff.
51. At the time of Plaintiff's purchase set forth herein, Defendants Wyndham charged and collected documentation fees in the total amount of \$349 from Plaintiff in connection with Plaintiff's purchase.
52. Upon information and belief, the document fees were charged for the preparation, processing, and/or procuring of documents as that term is defined above, and Defendants Wyndham identify said purposes in the contracts.

53. The preparation and processing of contracts and/or documents necessary to purchase property, interests in property, timeshares, memberships, travel club memberships, vacation packages, goods, merchandise, services, and/or to effectuate a transaction for a fee and/or legal fees, is the “practice of law” business and constitutes engagement in “law business” as those terms are used and defined in RSMo. § 484.020.
54. Plaintiff proposes to represent the Class consisting of all persons or other entities who were charged and who paid a document fee to Defendants Wyndham, and who entered into said contracts in the State of Missouri and/or related to timeshares and packages relating to property in the State of Missouri (hereinafter “the Class”).
55. The Class is believed to consist of thousands of customers who were charged said document fees, the joinder of which is impracticable, and the members of the class are so numerous that it is impractical to bring all of them before the Court in this action. Moreover, the amount of damages suffered individually by each member of the Class as a result of the illegal document fee charges is so small as to make suit for its recovery by each individual member of the Class economically unfeasible.
56. Class treatment of the claims asserted herein will provide substantial benefit to both the parties and the Court system. A well-defined commonality of interest in the questions of law and fact involved affect all Plaintiffs and the proposed members of the Class.
57. There are common questions of law and fact applicable to the claims asserted on behalf of the Class. The common questions include:
- a. Whether Defendants Wyndham charged document fees for the preparation or processing of documents;

- b. Whether charging a document fee for the preparation of documents required by Defendants Wyndham to effectuate a transaction constitutes the unauthorized practice of law or law business within the meaning given those phrases under Missouri law;
  - c. Whether this action is maintainable as a Class Action;
  - d. Whether members of the Class have a right to recover the document fees paid to Defendants Wyndham;
  - e. Whether Defendants Wyndham are bound by the provisions of RSMo. § 484.020;
  - f. Whether the members of the Class are entitled to treble damages;
  - g. Whether Defendants Wyndham have engaged in fraud, unfair practices, material omissions, and/or deceptive practices as defined under the law; and
  - h. Whether Plaintiff is entitled to common law remedies implied in contract, including money had and received.
58. Plaintiff's claims are typical of the claims of the proposed Class, and Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does not have any interest antagonistic to those of the Class. Plaintiff has retained competent and experienced counsel in the prosecution of this type of litigation. The questions of law and fact common to the members of the Class, some of which are set out above, predominate over any questions affecting only individual members of the Class.
59. A Class Action is superior to other available methods for the fair and efficient adjudication of this controversy, because members of the Class likely number in the thousands and individual joinder is impracticable. The expenses and burden of individual litigation regarding these illegal document fee charges would make it impracticable or

impossible for proposed members of the Class to prosecute their claims individually.  
Trial of Plaintiff's claims is manageable.

60. Unless a Class is certified, Defendants Wyndham will retain monies unlawfully received as a result of their schemes to collect fees from Plaintiff and the Class. Unless a class-wide injunction is issued, Defendants Wyndham will continue to commit such violations against customers, there being no adequate remedy at law available to stop Defendants Wyndham's actions.
61. This action is maintainable as a class action pursuant to Missouri Law.

**CLASS COUNTS FOR CLASS I**  
**(Against Defendants Wyndham)**

**COUNT I: DAMAGES FOR VIOLATION OF RSMo. § 484.010, et seq.**

COMES NOW Plaintiff, individually and on behalf of all Class members of Class I herein, and for Count I of their Class Petition against Defendants Wyndham states as follows:

62. This count is against Defendants WVO and WVR.
63. Plaintiff hereby incorporates by reference all preceding paragraphs of this Petition as though fully set forth herein.
64. RSMo. § 484.010 prohibits any entity, association, or corporation, except a professional corporation organized pursuant to the provisions of RSMo. Chapter 356, from engaging in the practice of law or doing law business, and further provides that any association or corporation that violated this prohibition shall be subject to paying treble the amount paid to it for any services rendered in violation of this prohibition.
65. Defendants Wyndham are prohibited from engaging in the practice of law or doing law business.

66. Defendants Wyndham charge its customers a document fee for the preparation, processing, and procuring of documents necessary to effectuate its sales.
67. By charging a document fee to its customers, Defendants Wyndham have engaged in unauthorized law business, and are therefore liable to each customer to whom they charged such document fees.
68. By charging document fees to their customers, Defendants Wyndham have engaged in the doing of law business and are liable for treble damages to each such customer whom it charged such document fees within two (2) years prior to the date of the filing of Plaintiff's Class Action Petition; and actual damages, consequential damages, and interest thereon to customers who were charged such fees within five (5) years prior to the filing of this Petition, up to the present.
69. The conduct of Defendants Wyndham was outrageous, malicious, corrupt, and either intentional or reckless to a degree sufficient to support an award of punitive damages against Defendants Wyndham.

WHEREFORE, Plaintiff and the Class pray for the relief requested in the Request for Relief set forth below.

**COUNT II: DAMAGES FOR VIOLATION OF THE MISSOURI MERCHANDISING**

**PRACTICES ACT**

COMES NOW Plaintiff, individually and on behalf of all Class members, and for Count II of their Class Petition against Defendants Wyndham, state as follows:

70. This count is against Defendants WVO and WVR.
71. Plaintiff hereby incorporates by reference all preceding paragraphs of this Petition as though fully set forth herein.

72. RSMo. § 407.010 *et seq.* (The Missouri Merchandising Practices Act) makes unlawful the use of deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or the concealment, suppression, or omission of a material fact in connection with the sale of goods or merchandise. Plaintiff purchased goods or merchandise from Defendants Wyndham, to include a timeshare and/or travel club membership.
73. The charging of a document fee to Defendants Wyndham's customers, not allowed by law, was deceptive or unfair in violation of 407.010 *et seq.* The charging of document fees to Defendants Wyndham's customers was a result of Defendants Wyndham's misrepresentations, concealment, and omissions of material facts.
74. The charging of document fees constitutes unauthorized law business and is a *per se* deceptive practice under the laws of Missouri.
75. Defendants Wyndham engaged in sales practices that were deceptive, misleading, unfair, fraudulent, and unreasonable. Defendants Wyndham omitted, concealed, and/or suppressed material facts during the sale of goods and merchandise to their customers.
76. As a result of Defendants Wyndham's actions, Plaintiff and the Class suffered ascertainable loss.
77. Defendants Wyndham's conduct was outrageous, malicious, corrupt, and intentional and/or reckless to a degree sufficient to support an award of punitive damages against Defendants Wyndham.

WHEREFORE, Plaintiff and the Class pray for the relief requested in the Request for Relief set forth below in this Class Petition.

**COUNT III: MONEY HAD AND RECEIVED**

COMES NOW Plaintiff, individually and on behalf of all Class members, and for Count III of their Class Petition against Defendants Wyndham, state as follows:

78. This count is against Defendants WVO and WVR.
79. Plaintiff hereby incorporates by reference all preceding paragraphs of this Petition as if fully set forth herein.
80. Defendants Wyndham have received monies to which they are not entitled pursuant to their contracts with Plaintiff and the Class members.
81. Defendants Wyndham have received monies unlawfully which in equity and good conscience ought to be paid back to Plaintiff and to the Class. Implied in contract, Plaintiff is entitled to a return of all of said monies, plus other consequential damages.
82. The conduct of Defendants Wyndham, by and through their agents, was outrageous, malicious, corrupt, and intentional and/or reckless to a degree sufficient to support an award of punitive damages against Defendants Wyndham.

WHEREFORE, Plaintiff and the Class pray for the relief requested in the Request for Relief set forth below in this Class Petition.

#### **COUNT IV – RESCISSION**

COMES NOW Plaintiff, individually and on behalf of all Class members, and for Count IV of their Class Petition against Defendants Wyndham, states as follows:

83. This count is against Defendants WVO and WVR.
84. Plaintiff incorporates by reference each and every preceding paragraph of this Petition as though fully set forth herein.
85. As a result of the fraudulent misrepresentations made by Defendants Wyndham, by and through their agents and/or employees, as is set forth in Count I above, Plaintiff and the



Class are entitled to rescind their timeshare contracts, minus amounts paid in document fees, and which claims for document fees Plaintiff and the Class elect to pursue in Class Count I set forth above. Plaintiff and the Class are further entitled to a reimbursement of reasonable attorneys' fees incurred by Plaintiff and the Class in bringing forth this cause of action, and in negotiating the resolution of this claim; and Plaintiff and the Class are entitled to interest and consequential damages.

WHEREFORE, Plaintiff and the Class pray for the relief requested in the Request for Relief set forth below in this Class Petition.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff and each member of the proposed Class pray for judgment against Defendants Wyndham:

- a. Certifying the Class as requested herein;
- b. Entering an order appointing Montgomery and Newcomb, LLC as lead counsel for the Class;
- c. Awarding Plaintiff and members of the proposed Class treble damages in the sum of three times the document preparation fees charged within the last two (2) years prior to filing of the original suit up to the present, and for actual damages charged prior thereto;
- d. Awarding restitution to Plaintiff and members of the proposed Class, including any interest paid or to be paid on any illegal and/or improper fees that were financed by Plaintiff and the Class;
- e. Awarding declaratory and injunctive relief as permitted by law or equity including a preliminary and permanent injunction enjoining Defendants

Wyndham from continuing the unlawful practices as set forth herein and directing Defendants Wyndham to identify, with Court supervision, victims of their conduct and pay them restitution and disgorgement of all monies acquired by Defendants Wyndham by means of any act or practice declared by this Court to be wrongful;

- f. Rescission of all contracts entered into between Defendants Wyndham and members of the Class;
- g. Awarding punitive damages;
- h. Awarding prejudgment interest;
- i. Awarding post-judgment interest;
- j. Awarding attorneys' fees and costs;
- k. Awarding Plaintiff individual damages resulting from Defendants Wyndham's conduct, to include the amount paid, interest thereon, punitive damages, and consequential damages resulting from Defendants Wyndham's conduct set forth above; and
- l. Providing such further relief as this Court deems just and proper.

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS FOR CLASS II**  
**(Against All Defendants)**

86. Plaintiff incorporates by reference each and every preceding paragraph of this Amended Class Action Petition as if fully set forth herein.

87. Plaintiff seeks certification of a second class ("Class II").

88. All members of Class II sought and obtained the representation of a law firm, Montgomery and Newcomb, LLC, based in Missouri, to represent them and act as their agent to pursue their claims against Defendants Wyndham and to engage in a joint

venture to obtain all lawful remedies from Defendants Wyndham. All members of Class II and their chosen Missouri based law firm were joint-venturers of each other and were acting within the course and scope of their joint-venture to pursue their claims against Defendants Wyndham.

89. Defendants Wyndham own and operate a timeshare resort and travel club near Branson, Missouri, that does tens or hundreds of millions of dollars' worth of business every year in Missouri.

90. The Missouri Long Arm Statute states that: "Any person or firm, whether or not a citizen or resident of this state, or any corporation, who in person **or through an agent** does any of the acts enumerated in this section, thereby submits such person, firm, or corporation, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of such acts:(1) The transaction of any business within this state;(2) The making of any contract within this state;(3) The commission of a tortious act within this state;" *506.500. Actions in which outstate service is authorized--jurisdiction of Missouri courts applicable, when, MO ST 506.500.*

91. Jurisdiction is proper in this Court because Defendants Wyndham transact business within this state, made thousands of contracts within this state, and committed the tortious act of abuse of process in this state.

92. Defendants have sued Plaintiffs' and the Class Members' Missouri Counsel in Florida in a case known as Wyndham v. The Montgomery Law Firm, LLC, et al, Case No. 6:18-cv-02121 (Hereinafter, "the Florida Case") in the United States District Court for the Southern District of Florida on November 13, 2019.

93. The Florida Case, and the others filed like it by Attorney Defendants, has been instigated for the improper purpose of intimidating those timeshare owners who dare to assert their legal rights and attorneys who assist defrauded timeshare owners into silence and inaction and fear of public participation, and to chill access to counsel and to the Courts for victims of timeshare and travel club fraud.
94. In the Florida Case, Defendants have sued Plaintiff's and Class II members' undersigned counsel's law firm and individually in the State of Florida, even though Plaintiff's undersigned counsel have no continuous and systematic affiliations whatsoever with the State of Florida and practice law in the form of an LLC in Missouri as Defendants know. The complaint is replete with false allegations.
95. The Florida Case illustrates that the Defendants Wyndham and their law firm, Shutts & Bowen, LLP, which also represents Diamond and Bluegreen, and the lawyers named as Defendants herein are engaged in a pattern and practice of conduct designed to chill access to counsel and to the Courts for timeshare and travel club fraud victims and to prevent them from obtaining counsel and having their day in court.
96. In the same Florida case, Defendants Wyndham have sued The Montgomery Law Firm, LLC, Montgomery and Newcomb, LLC, and the individual Missouri Attorneys Scott Montgomery and Todd Newcomb.
97. Defendants Wyndham and their law firm are the architects of a scheme and conspiracy to file suit in Florida (or in Nevada in one instance) against attorneys practicing across the country who dare to represent victims of timeshare fraud. As the Federal District Court for the Western District of Missouri has rightfully noted, the scheme is designed to "intimidate" the attorneys, many of whom are solo practitioners or practice as small

firms, into refraining from representing victims of timeshare fraud, many of whom owe hundreds of thousands of dollars for points or timeshares that have no value whatsoever on the open market, and to chill access to counsel and to the Courts for the victims of the fraudulent sales practices perpetrated by the billion-dollar timeshare developers. For example, and in addition to local attorneys Montgomery and Newcomb, Defendants have orchestrated lawsuits against attorney Ken Privett from Oklahoma; and filed suit in *Wyndham v. US Consumer Attorneys, DC Capital Law Firm, et al.*, Case No. 9:18-cv-81251, *Diamond Resorts International, Inc. et al v. US Consumer Attorneys P.A.*, Case No. 9:18-cv-080311-RLR, and *Wyndham Vacation Ownership, Inc. et al v. Totten Franqui Davis & Burk, LLC et al*, Case No. 9:18-cv-81055-DMM in the Southern District of Florida; and filed suit in *Wyndham v. CLS* against Missouri Attorney Mary Clapp in the Southern District of Florida; and filed suit in *Wyndham Vacation Ownership, Inc. et al v. Reed Hein & Associates, LLC et al*, Case No. 6:18-cv-02171-PGB-TBS in the Middle District of Florida (Orlando). Additional lawsuits against attorneys who represent victims of timeshare fraud will be the subject of discovery in this case.

98. Plaintiff and proposed Class II Members' counsel filed a lawsuit in the Circuit Court of Taney County, Missouri, against Bluegreen, a client of Defendant Shutts & Bowen, bearing case number 1846-CC00204 on September 21, 2018; a lawsuit against timeshare developer Diamond, also a client of Defendant Shutts & Bowen, in the Circuit Court of Taney County, Missouri, bearing case number 1846-CC00179 on September 19, 2018; and undersigned counsel also filed suit against timeshare developer Wyndham, another client of Defendant Shutts & Bowen, in the Circuit Court of Taney County, Missouri,

bearing case number 1846-CC00155 on August 17, 2018. Using the same law firm (Defendant Shutts & Bowen) as Wyndham, Bluegreen has also sued the Missouri attorneys representing Bluegreen owners in retaliation for the filing of suit.

99. For the reasons stated in more detail below, this case is properly brought as a class action, represented by the named Plaintiff.

100. Plaintiff proposes to represent the Class consisting of all persons who obtained representation in Missouri by the Missouri based law firm of Montgomery and Newcomb, LLC, for their claims against Defendants, and who are listed on the attached Exhibit B (hereinafter “Class II”). As of the filing date, the class consists of 440 clients or client groups.

101. The Class consists of 440 clients or client groups, the joinder of which is impracticable, and the members of the class are so numerous that it is impractical to bring all of them before the Court in this action. Moreover, the amount of damages suffered individually by each member of the Class as a result of the abuse of process is so small as to make suit for its recovery by each individual member of the Class economically unfeasible.

102. Class treatment of the claims asserted herein will provide substantial benefit to both the parties and the Court system. A well-defined commonality of interest in the questions of law and fact involved affect Plaintiff and the proposed members of the Class.

103. There are common questions of law and fact applicable to the claims asserted on behalf of the Class. The common questions include:

- a. Whether Defendants engaged in the tort of abuse of process and committed a prima facie tort;
  - b. Whether this action is maintainable as a Class Action;
  - c. Whether members of the Class have a right to recover damages for abuse of process and prima facie tort;
  - d. Whether the members of the Class are entitled to punitive damages;
104. Plaintiff's claims are typical of the claims of the proposed Class, and Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does not have any interest antagonistic to those of the Class. Plaintiff has retained competent and experienced counsel in the prosecution of this type of litigation. The questions of law and fact common to the members of the Class, some of which are set out above, predominate over any questions affecting only individual members of the Class.
105. A Class Action is superior to other available methods for the fair and efficient adjudication of this controversy, because members of the Class number 440 clients or client groups, individual joinder is impracticable. The expenses and burden of individual litigation regarding these illegal document fee charges would make it impracticable or impossible for proposed members of the Class to prosecute their claims individually. Trial of Plaintiff's claims is manageable.
106. Unless a Class is certified, Defendants will be able to continue engaging in tortious abuse of process and their schemes to chill access to counsel and to the Courts for defrauded timeshare owners and to attempt to intimidate attorneys who represent them. Unless a class-wide injunction is issued, Defendants will continue to commit such tortious acts.

107. This action is maintainable as a class action pursuant to Missouri Law.

**PATTERN AND PRACTICE OF ABUSE OF PROCESS AND INTIMIDATION BY  
DEFENDANTS (CLASS II)**

108. As a part of the pattern and practice of abuse and intimidation, by e-mail dated January 8, 2019, during a dialogue regarding a civil case, Wyndham’s attorney Alfred Bennington attempts to intimidate Plaintiff’s counsel by stating and threatening that his cases cause “the initiation AG [sic] and criminal investigations as to some of the defendants as well as disbarment and sanctions for others where the lawyers were named” after boasting of “prosecuting cases” for 41 years. The email is attached as Exhibit C.

109. As a part of the pattern and practice of abuse of process and intimidation, on January 22, 2019 at 10:50 a.m., Shutts & Bowen attorney Glennys Ortega Rubin sent an e-mail to opposing counsel in the Florida case stating that Plaintiff’s counsel “are actively avoiding and evading service” which is a crime in Missouri and Florida. Nothing was further from the truth and none of the accused parties took any action whatsoever to avoid or evade service. The email chain is attached as Exhibit D.

110. Shutts attorney Daniel Barsky accused the Missouri attorneys of committing perjury in writing on April 10, 2019. Perjury is a crime in Missouri and Florida. That email is attached as Exhibit E.

111. Shutts attorney Barsky refers to disbarment in his email dated December 6, 2019. That email is attached as Exhibit F.

112. Missouri Firm Montgomery and Newcomb, LLC, hired additional attorneys to assist with the handling of the exploding number of cases for defrauded timeshare



owners, including attorney David Vaughn. At a deposition where he learned that Attorney Vaughn was now practicing with Montgomery and Newcomb, LLC, Shutts attorney Jon Hart told Mr. Vaughn that “you better not be doing timeshare litigation” as a not-so-veiled threat that Mr. Vaughn would also be sued or disciplined for daring to represent victims of timeshare fraud.

113. The propensity of the Defendants attorneys and agents to make false allegations against Plaintiff’s counsel and to sue attorneys who represent timeshare fraud victims, and to threaten criminal prosecution and disbarment and sanctions in connection with a civil case, and to accuse Class II members’ undersigned counsel in writing of committing crimes, constitutes abuse of process and a violation of basic tenets of legal representation.

114. Defendants and their Florida counsel do not adhere to basic legal tenets or the rules of civil procedure. As a part of a pattern and practice of abuse of process and intimidation, Defendants have violated numerous rules of civil procedure and basic tenets of legal representation as described in this section.

115. In Missouri, on February 19, 2019, during the deposition of a witness, Daniel Chudy, Attorney Alfred Bennington of Shutts & Bowen stated that real attorneys don’t appear on the other side of the “v.” from timeshare developers, obviously implying that Plaintiff’s counsel is not a real attorney in front of other members of the Missouri Bar, the court reporter, and other citizens of Missouri.

**DEFENDANTS’ ABUSIVE SUBVERSION AND MISUSE OF THE RULES OF  
PROFESSIONAL CONDUCT (CLASS II)**

116. As the Federal Court for the Western District of Missouri has rightfully noted during a phone conference, a civil lawsuit is the wrong forum or tribunal if Defendant

Wyndham wishes to air its concocted grievances about the manner in which victims of timeshare fraud choose to hire counsel. There is no tort of wrongful referral.

117. In the Florida Case, Defendant Wyndham asserts violations of the Florida Bar Rules of Professional Conduct and purport to use the Rules to gain an advantage in a civil case and to use them as a procedural weapon.

118. The acts of Wyndham described herein and throughout this petition constitute abuse of process, prima facie tort, interference with the administration of justice, failure to perform reasonable investigation into the facts regarding Plaintiff's counsel contained in the complaint in the Florida Case, and violations of basic tenets of legal representation, as well as intimidation and bullying.

119. In Defendants' complaint which was served in Missouri on Plaintiff and Class Members' counsel in the Florida Case, in order to gain an advantage in the Florida civil case, Defendants stated that Plaintiff's counsel has violated the Rules of Professional Conduct of the State of Florida. Plaintiffs' and Class Members' counsel does not practice law in Florida and never has.

120. Even if Plaintiff's counsel did practice law in Florida, in that Section entitled Scope, the Florida Rules of Professional Conduct state as follows:

“Violation of a rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a rule is a just basis for a lawyer's self-assessment, or for

sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the rule. Accordingly, nothing in the rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such duty.” The Missouri rules are similar, if not identical.

121. The Missouri Rules of Professional Conduct, in the section entitled Scope, state that:

[7] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.

122. Defendants have no standing whatsoever to use or attempt to enforce the Rules of Professional Conduct in either Florida or Missouri and their attempt to do so constitutes a subversion of those rules and an abuse of process and prima facie tort.

123. Because Defendants sued it also, they are obviously aware that Montgomery and Newcomb, LLC exists and was created for the purpose of conducting business, yet they have sued Plaintiff's counsel individually for alleged acts of the LLC, while making no allegations whatsoever in the Florida case that the corporate veil should be pierced for any reason. As Defendants also know, no demand letters or e-mails were sent by Plaintiff's counsel personally and were sent by the LLC. Plaintiff's counsel does not personally maintain any website.

124. The complaint that Defendants filed does not set forth any manner describing how Plaintiff's counsel allegedly did business with or otherwise conspired with the other Defendants in the Florida case. The complaint is devoid of any facts which show any improper relationship between Plaintiff's counsel and the other Defendants.

125. The contention that there is jurisdiction over Plaintiff's counsel in Courts situated in Florida is unsupported by any evidence and not warranted by law.

**ADDITIONAL GENERAL ALLEGATIONS COMMON TO ALL COUNTS FOR CLASS**

**II**

126. The filing of the lawsuit in Florida against Plaintiff's counsel and other lawyers and law firms who represent victims of timeshare fraud, constitutes abuse of process, prima facie tort, subversion of the rules of professional conduct, and interference with the administration of justice and violates basic tenants of legal representation.

127. In support of its decision to indefinitely suspend an attorney from appearing pro hac vice in the Western District of Missouri, the Court remarked that the record in the case was "replete with examples of [the Attorney's] violations of not only the Bankruptcy Code, Bankruptcy Rules, and Local Rules, but basic tenets of legal representation as

well.” Specifically, among other things, the Court referenced: —attorney’s failure to perform reasonable investigation into the facts contained in the petition and made other filings without conducting due diligence. — Attorney was described as acting like a “bully.”— *In re Miller Automotive Group Inc.*, 536 B.R. 828, 837 (8th Cir.BAP (Mo.),2015), emphasis added.

128. The factual contentions in the Florida Case regarding Plaintiff’s counsel are not supported by evidence and there was obviously no reasonable investigation into the facts performed by the defendants prior to the filing of suit.
129. Despite the knowledge that Plaintiff’s counsel does all business in the form of an LLC, Defendant Wyndham sued Plaintiff’s counsel individually and made no allegations whatsoever regarding any piercing of the corporate veil. This is a common practice of Wyndham’s attorneys who have sued Plaintiff’s counsel individually, when the Wyndham attorneys know well that the attorneys practice law in the form of an LLC. It is well known that, under Missouri law, individual shareholders of a corporation or LLC are not liable for the acts of the corporation or LLC.
130. Defendants do not set forth any manner whatsoever in its complaint in the Florida case describing how Plaintiff’s counsel did business with or otherwise conspired with the other Defendants in that case. The complaint constitutes a failure to conduct a reasonable investigation prior to filing suit.
131. Defendants have wrongfully acquired billions of dollars by defrauding elderly and unsophisticated consumers into purchasing worthless timeshares or points, sometimes for hundreds of thousands of dollars and saddling those consumers with massive life changing debt which often exceeds their home mortgage, and which ruins their credit and

their ability to pay their other financial obligations. The Florida lawsuit, and the others like it filed by Wyndham's attorneys, are designed to allow Wyndham to keep all of their ill-gotten gains and to continue to sell worthless timeshares and points in the future while suffering no legal repercussions.

132. In order to assist Wyndham with its schemes, the Attorney Defendants are orchestrating lawsuits against those attorneys around the country who represent victims of timeshare fraud. Defendant Bennington boasts that he has been handling such cases for five years.

133. The purpose of the Florida lawsuit is to cause Plaintiff's counsel to refrain from representing victims of timeshare fraud, as opposed to the purported relief allegedly sought in the complaint filed in the Florida case.

134. Defendants have instigated judicial proceedings against Plaintiff's counsel for an ulterior purpose and to harass and intimidate Plaintiff's counsel and to cause them to needlessly incur litigation expenses and expend their finite time and resources defending themselves against baseless allegations instead of defending the rights of defrauded timeshare owners who are members of the proposed Class II and pursuing their claims against Defendants.

135. The Federal District Court for the Western District of Missouri has stated that the Florida Case filed by the lawyers of the Shutts & Bowen firm and Wyndham constitutes intimidation.

136. Defendants and some of the many attorneys (over 300) at the firm of Shutts & Bowen conspired to instigate the Florida Case and other judicial proceedings in an attempt to intimidate Plaintiff's counsel from assisting or representing defrauded

timeshare owners whose lives have been severely negatively impacted by the massive debt (which can equal hundreds of thousands or even millions of dollars) that they owe to timeshare resorts for a timeshare or points with no value whatsoever that may not be sold on the open market.

**COUNT I – ABUSE OF PROCESS (CLASS II ONLY)**

137. On or about February 6, 2019, Defendants, acting by and through their hired agent, a process server, served process on Plaintiff’s Missouri-based counsel, Todd Newcomb, in Missouri.
138. On or about February 14, 2019, Defendants, acting by and through their hired agent, a process server, served process on Plaintiff’s Missouri-based counsel, Scott Montgomery, in Missouri.
139. The manner in which Defendants used process in a manner that is not warranted or authorized is described above in this Petition, is incorporated herein by reference, and need not be repeated here.
140. In doing the acts described herein, the Defendants committed the described willful acts in the use of process not proper in the regular conduct of the proceedings.
141. Plaintiff and the proposed members of Class II were thereby damaged. Plaintiff’s counsel has incurred and will incur substantial sums for attorney fees to defend against the abusive Florida lawsuit. Plaintiff’s and Class II members’ counsel have expended considerable time and money defending themselves against baseless contentions in the Florida Case instead of representing Plaintiff and Class II members who have been the victims of timeshare and travel club fraud.

142. Plaintiff and Class II members have suffered damages as a direct and proximate result of Defendants' misconduct in connection with the judicial proceedings in the Florida Case. As Defendants well know, every minute spent by Plaintiff's counsel defending against the frivolous and abusive Florida case is time that could not be spent upon the representation of Plaintiff and Class II members.
143. Defendants made use of a legal process that was improper and neither warranted nor authorized by law.
144. Defendants had an improper purpose in engaging in the improper use of process as described fully herein.
145. Plaintiff alleges an illegal, improper, perverted use of process that is not warranted or authorized, and that defendants had an improper purpose in the use of the process as described in this count and in this petition.
146. All of Defendants' actions and omissions described in this Petition support an award of punitive or exemplary damages.
147. Defendants' actions, omissions, and conduct described herein were outrageous because of the Defendants' evil motive or reckless indifference to the rights of others.
148. Plaintiff is entitled to an additional amount of punitive damages in such sum as the jury believes will serve to punish Defendants and to deter Defendants and others from like conduct.
149. Defendants' conduct showed complete indifference to and conscious disregard for the rights and safety of others.
150. Defendants have the ability to pay an award of punitive damages.



WHEREFORE, Plaintiff prays for judgment against Defendants for all damages allowed by law, including his attorney's fees incurred herein, for an award of punitive damages, and for interest thereon, and for such other and further relief that this Court deems just and proper.

**COUNT II – PRIMA FASCIA TORT (CLASS II)**  
**(Against All Defendants)**

**COME NOW** Plaintiff and the Class, by and through undersigned counsel, and for Count II of their Class Action Petition against Defendants, states and avers to the Court as follows:

151. Plaintiff and the Class specifically incorporate by reference each and every preceding paragraph of this Petition as though the same were set forth more fully herein.
152. Defendants intended that their actions described herein would cause harm to the Plaintiff and the Class or Defendants knew with certainty that their actions would cause harm to the Plaintiff and the Class.
153. Defendants' actions were a cause of Plaintiff and the Class's harm.
154. Defendants' conduct was not justifiable under all the circumstances as established by all of the facts set forth in this count.
155. The actions of Defendants described in this count were unlawful.
156. The facts described herein establish an absence of justification and insufficient justification for Defendants' actions.
157. All of Defendants' actions and omissions described herein support an award of punitive or exemplary damages.
158. Defendants' actions, omissions, and conduct described herein were outrageous because of the Defendants' evil motive or reckless indifference to the rights of others.

159. Plaintiff and the Class are entitled to an additional amount of punitive damages in such sum as the jury believes will serve to punish Defendants and to deter Defendants and others from like conduct.

160. Defendants' conduct showed complete indifference to and conscious disregard for the rights of others.

161. Defendants have the ability to pay an award of punitive damages.

**WHEREFORE**, Plaintiff and the Class pray for judgment in their favor, for nominal and actual damages, for punitive damages, for all prejudgment and post judgment interest allowed by law, for court costs incurred, and for all other relief this Court deems just and proper under the circumstances.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff and each member of the proposed Class pray for judgment against defendants:

- a. Certifying the Class as requested herein;
- b. Enter an order appointing Montgomery and Newcomb, LLC as lead counsel for the Class;
- c. Awarding damages in a fair and reasonable amount to Plaintiff and members of the proposed Class;
- d. Awarding restitution to Plaintiff and members of the proposed Class, including any interest paid or to be paid on any illegal and/or improper fees that were financed by Plaintiff and the Class;
- e. Awarding declaratory and injunctive relief as permitted by law or equity including a preliminary and permanent injunction enjoining Defendants from

continuing the unlawful practices as set forth herein and directing Defendants to identify, with Court supervision, victims of their conduct and pay them restitution and disgorgement of all monies acquired by Defendants by means of any act or practice declared by this Court to be wrongful;

- f. Rescission of all contracts entered into between Defendants and members of the Class;
- g. Awarding punitive damages;
- h. Awarding prejudgment interest;
- i. Awarding post-judgment interest;
- j. Awarding attorneys' fees and costs;
- k. Awarding Plaintiff individual damages resulting from Defendants' conduct, to include the interest thereon, punitive damages, and consequential damages resulting from Defendants' conduct set forth above; and
- l. Providing such further relief as this Court deems just and proper.

Respectfully submitted,

MONTGOMERY AND NEWCOMB, LLC

By: /s/ M. Scott Montgomery

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Wyndham Resorts Sells 'Worthless' Timeshares, Intimidates Owners' Attorneys](#)

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