

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

CAROLYN NOLEN, WINDY
KELLEY, CARA KELLEY, and
PAULA LITTON,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

FAIRSHARE VACATION OWNERS
ASSOCIATION,

Defendant.

Case No.: 6:20-cv-330-PGB-40EJK

CLASS ACTION

**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS'
AMENDED MOTION FOR CLASS CERTIFICATION**

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<u>Exhibit</u>	<u>Description</u>
Exhibit A	Excerpts from Deposition of Jodi Rogers
Exhibit B	Expert Report of Professor Randall Upchurch, Ph.D.
Exhibit C	Expert Report of Dwight J. Duncan, CFA
Exhibit D	Deposition of Carolyn (Nolen) Miller Jones
Exhibit E	Deposition of Paula Litton
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I. INTRODUCTION

Plaintiffs' amended motion for class certification should be denied. First, like the initial motion, the amended motion impermissibly seeks certification on the basis of an unpled theory of liability. Second, this Court has recognized that the surviving claims in the operative complaint depend on the claims this Court dismissed. As such, the surviving claims are not viable, which itself is a sufficient reason to reject certification. Third, Plaintiffs' remaining claims still demand sweeping changes to the Wyndham system, which puts Plaintiffs in fundamental conflict with the approximately 85% of Wyndham timeshare owners who are satisfied with the system as it is and would therefore be harmed by the relief Plaintiffs seek. This fundamental conflict means Plaintiffs cannot be adequate class representatives under Rule 23. The Eleventh Circuit affirmed Judge Conway's refusal to certify a similar class that previously attacked the Wyndham timeshare system, noting her finding that "fundamental conflicts of interest existed among the proposed class members." *Grimes v. Fairfield Resorts, Inc.*, 331 Fed. Appx. 630, 632 (11th Cir. 2007). The Court should follow *Grimes* by refusing certification here.

II. BACKGROUND

The Wyndham Timeshare System. Wyndham Vacation Resorts ("WVR") is the heart of the Wyndham system. WVR develops and manages properties, sells timeshare interests and upgrades, and fulfills other key functions.

Club Wyndham Plus ("CWP") is a popular program within the Wyndham system. CWP is what is known in the industry as an "internal exchange program." It

enables Wyndham timeshare owners who are members of CWP to stay at a variety of different resorts within the Wyndham system rather than just their home resort.

The foundation of the CWP program is the Fairshare Vacation Plan Use Management Trust (the “Trust”), created many years ago by WVR as settlor of the Trust.¹ Wyndham timeshare owners who join CWP do so by assigning their use rights to the Trust. Doc. 27-24 § 3.04; Doc. 27-4 (3d *whereas* clause); Doc. 27-10 (same). CWP members are free to terminate that voluntary assignment—and with it their membership—at any time. Doc. 27-4 (¶ 11); Doc. 27-10 (¶ 9).

Defendant Fairshare Vacation Owners Association (“Fairshare”) fulfills a specific function in the Wyndham system: it serves as Trustee of the Trust. Fairshare governs the Trust in accordance with the Trust Agreement and its Bylaws. *See* Doc. 27-24; Doc. 27-27. The Trust Agreement makes clear that Fairshare is a non-profit entity that has no rights in or derived from Trust property. Doc. 27-24 at 1 & §§ 6.01(a), 10.02, 10.03. Fairshare is not owned, in whole or in part, by any individual or entity (including WVR). *See* Jodi Rogers Depo. 23:11-24.

A Plan Manager is responsible for administering the Trust. The Trust Agreement calls for WVR to serve as initial Plan Manager of the Trust, Doc. 27-24 § 6.03, and it has remained in that role. WVR is thus responsible for “managing the operations of CWP, including its reservation system.” Expert Report of Professor

¹ Wyndham is not the only timeshare system to use a trust structure. *See* Expert Report of Professor Randall Upchurch, Ph.D. at 7 (“if a trust structure . . . is considered inappropriate, that decision will adversely impact the business model of multiple timeshare developers as well as timeshare owners” relying on that structure).

Randall Upchurch, Ph.D. at 16. The reservation system is how members of an internal exchange program or club like Club Wyndham Plus “gain access to club administration, provision of club services, resort reservations (exchanges), and related club benefits.” *Id.*

As Plan Manager, WVR also sets and collects a yearly fee that covers the costs of the CWP program. That fee is referred to as the “Program Fee.” Plaintiffs, like all CWP members, agreed to pay the yearly Program Fee when they chose to join CWP.² Doc. 27-10 ¶ 5; Doc. 27-4 ¶ 7.

In years where Fairshare’s revenues exceed its expenses (every year since at least 2011), Fairshare has a positive fund balance. Rogers Depo. 92:20-93:6; Doc. 82 (“Am. Class Motion”) at 7-8. Fairshare uses those balances for three purposes: (1) to keep its payables current; (2) to offset the Program Fee for future years; and (3) to avoid the need for special assessments to cover surprise expenses. Rogers Depo. 148:1-14. Fairshare had a positive fund balance in 2018, for example, that it used to offset the Program Fee for 2019. *Id.* 73:9-25; *see also* Expert Report of Dwight J. Duncan, CFA at 17-18 (explaining how this offset benefits proposed class members).

That WVR serves as Plan Manager is in keeping with “standard industry practice for major timeshare developers,” none of whom entrusts the management of its internal exchange program to a third party administrator. Upchurch Report at 16.

² In their assignment agreements, CWP members also agree to pay another fee, which is referred to as the “OA Fee.” Doc. 27-24 § 10.03. Each member’s OA Fee is used to cover her share of the maintenance and other costs for her home resort. *Id.* § 10.03(a). Plaintiffs do not seek certification of a class claim regarding the OA Fee.

WVR serves as Plan Manager pursuant to a Management Agreement between Fairshare and WVR. *See* Doc. 27-25. The Management Agreement provides that the Plan Manager will be paid a management fee of 5% of the yearly Program Fee and also will be reimbursed for certain expenses. *Id.* §§ 6.1, 6.2(a). This is consistent with the industry average for management fees. *See* Rogers Depo. 50:12-51:10. The Trust Agreement discloses to CWP members the existence of the Management Agreement. Doc. 27-24 § 6.03.

The Plaintiffs. There are four named Plaintiffs: Carolyn Nolen, Cara Kelley, Windy Kelley, and Paula Litton. Nolen purchased her timeshare interest with her ex-husband, but after their divorce she now owns it alone. Nolen Depo. 77:10-78:12. Cara and Windy Kelley are married, Paula Litton is Windy Kelley's mother, and the three of them own a timeshare interest together. Litton Depo. 19:3-9.

The Operative Complaint And The Amended Class Motion. When the Court decided Defendant's motion to dismiss the Amended Complaint, it granted dismissal of Counts 2-5 and denied dismissal of Counts 1 and 6. Doc. 67. When the Court struck the Second Amended Complaint, it ordered that the case proceed on Counts 1 and 6 of the Amended Complaint. Doc. 76 at 8. Counts 1 and 6 are thus the only live claims in the lawsuit.

Count 1 is a declaratory judgment claim, and Count 6 is for breach of fiduciary duty. Neither claim is alleged in enough detail to give it independent content—each takes up less than a page of the Amended Complaint. Doc. 45 (“Am. Compl.”) ¶¶ 39-44, 83-87. Each claim incorporates and depends on the theories of

liability pled in dismissed Counts 2-5 of the Amended Complaint, as the Court recognized in its Order striking the Second Amended Complaint. Doc. 76 at 8 n.7.

Thus, by seeking certification of the declaratory judgment and fiduciary duty class claims, Plaintiffs seek certification of a class asserting two theories of liability: (1) the Management Agreement Theory and (2) the Fund Balance Theory.³ The Management Agreement Theory is that Fairshare violated the Arkansas Trust Code by entering into the Management Agreement with WVR because WVR is allegedly an affiliate of Fairshare. *See* Am. Class Motion at 1. The Fund Balance Theory is that Fairshare violated the Arkansas Trust Code by profiting from governance of the Trust, as allegedly shown by Fairshare's positive fund balances. *See id.*

The Amended Complaint is clear about the relief Plaintiffs seek: removal of WVR as Plan Manager, removal of Fairshare as Trustee, and distribution of positive fund balances—both retrospectively and prospectively—to the beneficiaries of the Trust. Am. Compl. ¶ 11 (alleging that “Defendant is prohibited from entering into any transaction with an affiliated company”); *id.* ¶ 44 (alleging that “the Court should order removal of the Trustee”); *id.* ¶ 85(f) (alleging that Fairshare breached its fiduciary duty by “failing to return any Trust Fund Balance to the Beneficiaries of the Trust”).

Yet now, in their amended class motion, Plaintiffs say that they are not seeking “wholesale changes in the Wyndham timeshare system,” asserting that they

³ Counts 2-5 of the Amended Complaint also contain theories of liability relating to financing and securitization, but Plaintiffs did not pursue certification based on those theories in their initial motion nor do they do so in their amended motion.

merely want more “due diligence” from Fairshare with regard to WVR and for Fairshare to handle any positive fund balances “in accord with its duties and the terms of the relevant documentation.” Am. Class Motion at 21. This dramatic shift is impermissible. As Fairshare showed in response to the initial certification motion, “Plaintiffs may not reframe their claim for purposes of class certification.” *Carter v. L’Oréal USA, Inc.*, 2020 WL 1931270, at *20 (S.D. Ala. Apr. 21, 2020); *see also* Doc. 66 at 18-19 (citing several additional cases in support of that proposition). Indeed, in its Order striking the Second Amended Complaint, this Court warned Plaintiffs not to continue reinventing their claims in an amended class certification motion. The Court should reject this latest attempt at reinvention and hold Plaintiffs to the relief sought in the Amended Complaint.

III. CLASS CERTIFICATION STANDARD

Plaintiffs bear the burden of proving that the proposed class complies with the requirements of Rule 23. *Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1233 (11th Cir. 2016); *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1187 (11th Cir. 2003). The presumption is against class certification “because class actions are an exception to our constitutional tradition of individual litigation.” *Brown*, 817 F.3d at 1233. Doubts should result in denial of certification. *Id.* at 1233–34.

The Court must undertake a “rigorous analysis” to determine whether Rule 23’s requirements are satisfied. *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982); *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1265 (11th Cir. 2009). The Court should decide a merits question only insofar as it is relevant to the class certification analysis, but

when relevant, the Court “has a duty to actually decide it and not accept it as true or construe it in anyone’s favor.” *Brown*, 817 F.3d at 1234. A rigorous analysis demonstrates that class certification is not appropriate here.

IV. NEITHER THE DECLARATORY JUDGMENT NOR FIDUCIARY DUTY CLASS CLAIMS SATISFY CERTIFICATION REQUIREMENTS

A. Plaintiffs Should Not Be Permitted To Seek Certification On The Basis Of An Unpled Theory Of Liability

In their initial class certification motion, Plaintiffs sought certification on the basis of “previously unpled theories . . . not properly before the Court.” Doc. 76 at 7 n.5. The Court made clear that Plaintiffs were not to repeat this mistake in an amended motion. *Id.* at 9 (“Plaintiffs are warned that they may not advance new unpled theories of their case in any Class Certification Motion they may file.”). Yet Plaintiffs have done just that.

In both the Complaint and the Amended Complaint, Plaintiffs allege that Fairshare violated the Arkansas Trust Code by entering into the Management Agreement with WVR because WVR is allegedly an affiliate of Fairshare. Doc. 1 ¶ 59 (alleging that Fairshare violated the Arkansas Trust Code because it “entered into a Management Agreement with an affiliated entity”); Am. Compl. ¶ 11 (“Defendant is prohibited from entering into any transaction with an affiliated company”). This was their “theory of the case,” as the Court stated in its Order striking the Second Amended Complaint. Doc. 76 at 4.

The Court found that the Second Amended Complaint was an attempt by Plaintiffs to “scrap their theory of the case and replace it with three previously unpled

theories.” *Id.* at 7. Plaintiffs thus “substantially exceed[ed] the authority to re-plead that was granted by the Court in its Order” deciding Defendant’s motion to dismiss the Amended Complaint, which is why the Court struck the Second Amended Complaint. *Id.* at 1.

One of the three previously unpled theories identified by the Court was that “Fairshare violated the Arkansas Trust Code by failing to perform ‘any initial or ongoing analysis or due diligence regarding the selection of WVR as the Plan Manager, the amount of the Management Fee paid to WVR, WVR’s continuing services and rates, the amounts being charged by WVR for expenses, nor whether other independent third-parties could provide the same or similar services at a lower cost.” *Id.* at 5-6 (quoting Second Am. Compl. ¶ 104). Plaintiffs advanced that unpled theory not only in the Second Amended Complaint but also in their initial class certification motion. *Id.* at 7 n.5.

Despite the Court’s admonition, Plaintiffs advance that theory yet again in their amended class motion, including repeating word for word the lengthy description of the theory that the Court quoted from the Second Amended Complaint. Am. Class Motion at 7; *see also id.* at 14-15 (alleging Fairshare engaged in no “substantive oversight” of or “due diligence” regarding WVR as Plan Manager); *id.* at 19 (alleging Fairshare allowed “WVR to serve as Plan Manager and administer the Trust without any reasonable due diligence or oversight”). Plaintiffs should not be permitted to once again seek class certification on the basis of an unpled theory, and thus the Court should not certify a class asserting this “due diligence” theory.

B. Neither The Declaratory Judgment Nor The Fiduciary Duty Class Claims Can Be Certified Because Those Claims Are Not Viable

The Court recognized, in its Order striking the Second Amended Complaint, that the declaratory judgment and fiduciary duty claims depend on the other claims in the Amended Complaint and that the other claims have all been dismissed. “The Court appreciates that Count 1 (Declaratory Judgment) depends on Counts 2-5 which have been dismissed, and that Count 6 (Breach of Fiduciary Duty) similarly relies on the dismissed Counts.” Doc. 76 at 8 n.7. This means that the declaratory judgment and fiduciary duty claims are not viable. And class claims that are not viable cannot be certified.

The Eleventh Circuit has held that a class seeking injunctive relief cannot be certified when injunctive relief is not an available remedy under the statute that is the basis for the class claim. *See Christ v. Beneficial Corp.*, 547 F.3d 1292, 1298 (11th Cir. 2008) (“Because injunctive relief is not a remedy available under TILA to Christ and the plaintiff class, Rule 23(b)(2) certification under TILA was improper.”). The Fifth Circuit has held the same. *See Bolin v. Sears, Roebuck & Co.*, 231 F.3d 970, 977 n.39 (5th Cir. 2000) (“Of course, the unavailability of injunctive relief under a statute would automatically make (b)(2) certification an abuse of discretion.”).

The Sixth Circuit has nicely expressed the logic behind those holdings: “plaintiffs have no basis for complaining of a refusal to certify a proposed class where the representatives of the class cannot prevail on the merits.” *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998) (en banc). That logic, like its expression in

Sprague, is not limited to classes seeking injunctive relief. It is similarly true that plaintiffs have no basis to complain when a court refuses to certify a Rule 23(b)(3) class seeking damages where the class claim is not viable.

“Merits questions” are properly considered at the certification stage “to the extent . . . they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.” *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013). Applying that principle here, this Court should not ignore the obvious implications for class certification of merits findings it has made to this point. Indeed, in *Sprague* the Sixth Circuit explained that the district court rightly denied class certification because “by the time it made a certification decision . . . , [it] had rejected the primary claim of the named [] plaintiffs.” 133 F.3d at 397. This Court found, in its Order striking the Second Amended Complaint, that the declaratory judgment and fiduciary duty claims depend on claims it has already dismissed. Having reached that conclusion, this Court should follow *Christ*, *Bolin*, and *Sprague* by denying class certification on the ground that neither of the surviving class claims is viable.

C. No Class Asserting The Management Agreement Theory Satisfies Commonality, Typicality, Adequacy, Predominance, Or Superiority

As described above, the Management Agreement Theory is that Fairshare violated the Arkansas Trust Code by entering into the Management Agreement with WVR because WVR is allegedly an affiliate of Fairshare, and the relief Plaintiffs seek on this theory is removal of WVR as Plan Manager (along with removal of Fairshare

as Trustee). As a supposed basis for certification, this theory fails Rule 23's requirements of commonality, typicality, adequacy, predominance, and superiority.

1. Commonality And Predominance

Commonality is the requirement that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “That language is easy to misread, since any competently crafted class complaint literally raises common questions.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011).⁴ True commonality is found in questions that “generate common answers apt to drive the resolution of the litigation.” *Id.* at 350.

Plaintiffs assert that commonality is satisfied here by the existence of one common question: “Did Fairshare commit breaches of fiduciary duty?” Am. Class Motion at 13. But questions like this—akin to “did defendant violate the law?”—are too abstract to qualify. Indeed, at a “sufficiently abstract level of generalization, almost any set of claims can be said to display commonality.” *Sprague*, 133 F.3d at 397. At least one court has specifically held that the question “did defendant breach its fiduciary duty?” is too abstract to satisfy the commonality requirement. *Foster v. Merit Energy Co.*, 282 F.R.D. 541, 562 & n.21 (W.D. Okla. 2012).

Plaintiffs' own discussion of this abstract question demonstrates that answering it will not drive resolution of this litigation. Plaintiffs say they will offer “common evidence” that Fairshare has fiduciary duties as Trustee, Am. Class Motion at 14, but Fairshare admitted the truth of this incontrovertible proposition in

⁴ Brackets, citations, and internal quotation marks are omitted throughout.

its Answer, Doc. 83 ¶ 43(c). Plaintiffs bear the burden of proving that a rigorous analysis shows that commonality is satisfied here, and their superficial discussion of that requirement is hardly a sufficient basis for this Court to conclude that Plaintiffs have met their burden. And because the predominance requirement is “far more demanding than commonality,” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623–24 (1997), Plaintiffs also have not met their burden as to that requirement.

2. Typicality

Typicality refers to the individual characteristics of the plaintiffs in relation to the class. *Vega*, 564 F.3d at 1275. Plaintiffs “must be part of the class and possess the same interest and suffer the same injury as the class members.” *Dukes*, 564 U.S. at 348–49. No class asserting the Management Agreement Theory can satisfy typicality.

First, Plaintiffs do not possess the same interest as the absent class members. Eighty-five percent of Wyndham timeshare owners are satisfied with the Wyndham timeshare system as it is now.⁵ See Upchurch Report at 7. This is underscored by the fact that Wyndham timeshare owners purchase “upgrades at higher rates than the industry average.” *Id.* Plaintiffs, by contrast and as established above, seek dramatic changes to the Wyndham timeshare system, including removal of Fairshare as Trustee and removal of WVR as Plan Manager.

There is no record evidence, expert or otherwise, that a typical member of the proposed class desires the dramatic changes to the Wyndham timeshare system that

⁵ Almost all Wyndham timeshare owners choose to join CWP/Fairshare—exchange programs are popular across the timeshare industry (Upchurch Report at 6-7, 14)—so the satisfaction rate for CWP/Fairshare members is similarly high.

Plaintiffs demand. Professor Upchurch's findings to the contrary are thus unrebutted. Those findings show that no class asserting the Management Agreement Theory can satisfy typicality. *See E. Texas Motor Freight Sys. Inc. v. Rodriguez*, 431 U.S. 395, 405 (1977) (reversing certification of a class in part because members of the class voted to reject "a merger of the city- and line-driver collective-bargaining units" while the complaint demanded "just such a merger").

Plaintiff Carolyn Nolen's testimony further demonstrates that Plaintiffs do not possess the same interest as the absent class members. She has "no intention" of remaining a Wyndham timeshare owner. Nolen Depo. 62:1-63:20. The remedy Nolen wants is the return of every dollar she has ever paid as a Wyndham timeshare owner, and she would be willing to return her points to obtain it. *Id.* In other words, she wants all of her vacations through the CWP program to have been free. A dissatisfied Fairshare member who intends to exit the Wyndham system is in an appreciably different position than the many satisfied members who upgrade at rates higher than the industry-average.

The Kelleys and Ms. Litton are also atypical. They "plan to buy no more" points, Litton Depo. 36:2-37:23, and Windy Kelley acknowledges that she is opposed to any increase in fees because of her "particular financial circumstance," W. Kelley Depo. 46:22-47:15. Because their foremost concern is keeping fees down, these Plaintiffs are in an appreciably different position than satisfied members of the proposed class who will be adversely affected if services are diminished in order to minimize fees no matter the situation.

Second, no class asserting the Management Agreement Theory can satisfy typicality because Plaintiffs know almost nothing about the issues in this case or their responsibilities as class representatives. This became clear at their depositions.

Class representatives must “possess a sufficient level of knowledge and understanding to be capable of ‘controlling’ or ‘prosecuting’ the litigation.” *Berger v. Compaq Computer Corp.*, 257 F.3d 475, 482–83 (5th Cir. 2001); *see also London v. Wal-Mart Stores, Inc.*, 340 F.3d 1246, 1253 (11th Cir. 2003) (following *Berger*).⁶ Plaintiffs fail this requirement.

- Paula Litton, a Wyndham timeshare owner for 11 years, does not know what Fairshare does or why she sued Fairshare instead of a Wyndham entity. Litton Depo. 16:3-17:13. Until she learned otherwise at her deposition, Windy Kelley believed she had sued a Wyndham entity. W. Kelley Depo. 12:12-14.
- Cara Kelley believes that his only responsibility as a class representative is to tell the truth. C. Kelley Depo. 94:15-95:13.
- Carolyn Nolen testified that any facts she knows about this case, she learned from her lawyers. Nolen Depo. 101:16-24.
- Plaintiffs’ foremost complaint is that the fees they pay as CWP members have increased from year to year. *But see* Upchurch Report at 16-17 (noting that such fee increases are in alignment with the “industry pattern of incremental fee increases”). Indeed, Paula Litton acknowledged that this is her only complaint with the Wyndham system. Litton Depo. 6:4-17. But they cannot distinguish the fee that Fairshare charges them (the Program Fee) from the fee their respective home resorts charge them (the OA Fee), *id.* 12:13-20, even though Plaintiffs seek to certify class claims regarding only the former, not the latter. They also do not know why the fees have increased or whether the increase is justified. Nolen Depo. 80:10-20; W. Kelley Depo. 49:4-10; Litton Depo. 12:21-13:3. Despite the fact that Plaintiffs inarguably bear the burden of proving their claims, Plaintiffs’ position seems to be that merely because they have made unsubstantiated accusations about the Wyndham system, the burden has shifted to Fairshare to disprove those claims.

⁶ *Berger* and *London* make this point in terms of adequacy, but it has long been clear that the typicality and adequacy requirements “tend to merge.” *Falcon*, 457 U.S. at 158 n.13.

Typicality therefore is not satisfied because Plaintiffs have “abandoned prosecution of [their] claims to [their] attorneys.” *Hillis v. Equifax Consumer Services, Inc.*, 237 F.R.D. 491, 501 (N.D. Ga. 2006) (rejecting class certification where plaintiff’s “deposition testimony reveals that he lacks familiarity with the allegations in this case”).

3. Adequacy

Adequacy requires that plaintiffs “will fairly and adequately protect the interests of the class.” *Valley Drug*, 350 F.3d at 1188 n.13. The Court must “undertake a stringent and continuing examination” of their adequacy as representatives “at all stages of the litigation.” *London*, 340 F.3d at 1254.

Adequacy includes an inquiry into whether any substantial conflict of interests exists between the class representatives and the class. *Valley Drug*, 350 F.3d at 1188. A conflict “fundamental” to the specific issues in controversy will defeat certification. *Id.* Such a conflict exists where some class members claim to be harmed by the same conduct that benefits other class members. *Id.* at 1189.

Stated differently, the existence of “winners and losers” in the same class precludes a finding of adequacy. *Pickett v. Iowa Beef Processors*, 209 F.3d 1276, 1280 (11th Cir. 2000); *Almonor v. BankAtlantic Bankcorp., Inc.*, 261 F.R.D. 672, 677 (S.D. Fla. 2009) (adequacy not satisfied when class “collapses into distinct groups of winners and losers”).

In *Pickett*, the Eleventh Circuit reversed class certification where the class included cattle producers who claimed to have been harmed by a certain type of

contract with defendant—and who were seeking to prohibit defendant from entering into that type of contract—as well as cattle producers who benefited from that same type of contract with defendant. 209 F.3d at 1280. In *Valley Drug*, the Eleventh Circuit similarly observed that “no circuit has approved of class certification where some class members derive a net economic benefit from the very same conduct alleged to be wrongful by the named representatives of the class.” 350 F.3d at 1190.

Pickett and *Valley Drug* are controlling. As in *Pickett*, Plaintiffs seek to impose significant restrictions on the way Fairshare operates, including forcing Fairshare to remove WVR as Plan Manager. Plaintiffs are apparently comfortable seeking that relief because they are dissatisfied with the Wyndham timeshare system—but 85% of the class members they seek to represent are not. *See* Upchurch Report at 7 (the satisfaction rate for Wyndham timeshare owners in 2019 was 85%). As in *Valley Drug*, the practices Plaintiffs are attacking—including WVR serving as Plan Manager—are net beneficial to many members of the putative class, as Professor Upchurch has shown. *See id.* at 20 (“[S]atisfied owners will become losers as an outcome of this class action suit.”).

The crux of the Management Agreement Theory is that Arkansas trust law requires Fairshare to choose a third party other than WVR to serve as Plan Manager. Professor Upchurch, a leading expert on the timeshare industry, is clear about the risk that would be posed to Fairshare members if Fairshare were forced to make that choice: there is no guarantee that Fairshare “could find an outside vendor who could

provide the [CWP] program services at the same cost as WVR and provide the same level of service.” *Id.* at 17. His expert opinion is unrebutted.

Requiring Fairshare to break with “standard industry practice for major timeshare developers” by hiring a third party without knowledge of the Wyndham system to administer CWP would thus risk diminishing services, increasing fees, or both for Fairshare members. *Id.* at 16. The Plaintiffs should not be able to impose that risk on the 85% of Wyndham timeshare owners who, unlike themselves, are satisfied with the Wyndham system as it is. *See id.* at 7; *see also Valley Drug*, 350 F.3d at 1194 (“[F]or purposes of analyzing whether any antagonistic interests exist between the proposed representatives and the rest of the class, the defendant does not have to show actual antagonistic interest; the potentiality is enough.”).

The Eleventh Circuit’s decision in *Grimes v. Fairfield Resorts*, which involved an earlier attack on the Wyndham timeshare system, is highly persuasive authority that no class asserting the Management Agreement Theory should be certified. 331 Fed. Appx. 630 (11th Cir. 2007). In *Grimes*, a handful of CWP members challenged that program (along with Wyndham’s external exchange program), complaining that WVR and Fairshare “improperly modified [CWP] and thereby diluted [members’] timeshare interests.” *Id.* at 631. They alleged that this constituted self-dealing and breach of fiduciary duty. They defined the class broadly, including all Wyndham timeshare owners who were Fairshare members within the limitations period.

Judge Conway explained her decision to deny class certification as follows:

Under Plaintiffs' theory, all class members are harmed economically by a reduction in the value of the class members' timeshare interests. However, it seems obvious that some class members actually *prefer* [Wyndham's] programs which allow them to book stays at other [Wyndham] locations and at non-[Wyndham] properties with which [Wyndham] has a sharing arrangement. Thus, it appears that a significant number of class members enjoy the very programs about which Plaintiffs complain. In other words, the same practices Plaintiffs allege devalue putative class members' ownership interests seem to be viewed as beneficial by a large segment of the class. This poses a real and fundamental conflict of interest between the named Plaintiffs and class members, transcending the mere "potentiality" threshold sufficient to preclude class certification.

331 Fed. Appx. at 632–33 (quoting Judge Conway).

Judge Conway also explained that the benefit some class members obtain from the challenged practices does not have to be strictly "economic." "Perhaps these benefits can be quantified in economic terms; perhaps not." *Id.* The Eleventh Circuit affirmed. *Id.*

The logic of *Grimes* compels the conclusion that no class asserting the Management Agreement Theory should be certified here. As shown above, granting the relief Plaintiffs are seeking under the Management Agreement Theory would create winners and losers among the proposed class. This reveals irreconcilable conflicts of interests within the class, just as in *Grimes*. Therefore, no class asserting the Management Agreement Theory satisfies the adequacy requirement.

4. Superiority

Under Rule 23(b)(3), a class action that is not superior to other available methods for resolving the controversy may not be maintained. This requirement is not satisfied here because the remedies Plaintiffs seek create winners and losers in the

class, revealing “antagonisms” that defeat superiority. *Halverson v. Convenient Food Mart, Inc.*, 69 F.R.D. 331, 337 (N.D. Ill. 1974).

Additionally, Plaintiffs’ complaints can be addressed within the Wyndham timeshare system. They can, for example, convince their fellow Fairshare members to vote to remove WVR as Plan Manager. *See* Doc. 27-24 § 6.03 (Plan Manager will be removed if 75% of Fairshare members vote for its removal).⁷ And they can terminate their own Fairshare membership at any time. Doc. 27-4 (¶ 11); Doc. 27-10 (¶ 9). Those methods of resolving any controversy between Plaintiffs and Fairshare—democratic persuasion or leaving a private organization not to their liking—are superior to a class action that would impose Plaintiffs’ preferences on everyone else who chose to join Fairshare, including those who are satisfied with it.

D. No Class Asserting The Fund Balance Theory Of Liability Satisfies Commonality, Typicality, Adequacy, Predominance, or Superiority

The Fund Balance Theory is that Fairshare violated the Arkansas Trust Code by profiting from governance of the Trust, as allegedly shown by Fairshare’s positive fund balances. The relief Plaintiffs seek on this theory is that positive fund balances be distributed to beneficiaries of the Trust (and that Fairshare be removed as Trustee). The commonality, typicality, predominance, and superiority failings of this theory as a supposed basis for certification are essentially the same ones identified above for the Management Agreement Theory.

⁷ Plaintiffs generally have not taken advantage of the opportunities afforded them to participate in governance of the Trust. *See* Litton Depo. 27:17-29:5; W. Kelley Depo. 39:4-20; Nolen Depo. 107:21-108:13; C. Kelley Depo. 101:3-102:7.

As to the adequacy failing, Jodi Rogers, Fairshare's corporate representative, testified that Fairshare uses positive fund balances to serve several purposes, including to avoid the need for special assessments to cover unexpected expenses. Rogers Depo. 148:1-14. Just as some taxpayers choose a higher withholding rate to ensure they are not surprised by a tax bill at the end of the year, some satisfied Fairshare members no doubt prefer that Fairshare be administered such that they are not surprised by special assessments. By virtue of asserting the Fund Balance Theory, Plaintiffs are not adequate representatives of those class members who would be harmed—even potentially—by the relief they seek.

E. No Rule 23(b)(2) Class Should Be Certified

Plaintiffs briefly argue that the requirements for Rule 23(b)(2) certification are satisfied here. Am. Class Motion at 23-24. First, no class seeking injunctive or declaratory relief should be certified here because no such class satisfies the commonality, typicality, and adequacy requirements applicable to any putative class, as shown above. Second, “[t]he very nature of a (b)(2) class is that it is homogeneous without conflicting interests between the members of the class.” *Catron v. City of St. Petersburg*, 2010 WL 917609, at *3 (M.D. Fla. Mar. 11, 2010) (quoting *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1155 (11th Cir. 1983)). Conflicting interests between members of the proposed class have been amply demonstrated herein.⁸

⁸ Plaintiffs' perfunctory request for issue certification (Am. Class Motion at 24) should be rejected. Issue certification would not solve the adequacy and typicality problems detailed herein. It also would not materially advance the litigation. See *Rink v. Cheminova, Inc.*, 203 F.R.D. 648, 671-72 (M.D. Fla. 2001); *City of St. Petersburg v. Total Containment, Inc.*, 265 F.R.D. 630, 645-6 (S.D. Fla. 2010).

Respectfully submitted,

CARLTON FIELDS, P.A.

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Attorneys for Defendant

EXHIBIT A

CAROLYN NOLEN, ET AL. vs FAIRSHARE VACATION OWNERS ASSOCIATION
Confidential **Jodi Rogers on 02/05/2021**

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA
3 ORLANDO DIVISION
4 CASE NO.: 6:20-cv-00330-PGB-EJK
5 -----x
6 CAROLYN NOLEN, WINDY KELLEY,
7 CARA KELLEY and PAULA LITTON,
8 on behalf of themselves and all others
9 similarly situated,
10 Plaintiffs,
11 against
12 FAIRSHARE VACATION OWNERS
13 ASSOCIATION,
14 Defendant.

15 -----x
16 February 5, 2021
17 12:04 p.m. - 7:21 p.m.

18
19 Videotaped Videoconference Deposition
20 of JODI ROGERS, on behalf of Defendant,
21 taken by Plaintiff, before Roberta Caiola,
22 a Stenographic Reporter and Notary Public
23 of the State of New York.

24 (Confidential portion pages 61 - 112)

25

CAROLYN NOLEN, ET AL. vs FAIRSHARE VACATION OWNERS ASSOCIATION

Confidential

Jodi Rogers on 02/05/2021

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1 Q. What is its purpose, what does
2 it do?

3 A. The main purpose is an exchange
4 company. It also provides other services,
5 like filling in collections, reservations,
6 memberships through an exchange, those are
7 the bigger items, there's obviously a lot
8 of smaller. But management, overall
9 management of the company would be the
10 larger items.

11 Q. Is Fairshare, the entity
12 itself, is it owned by any individual or
13 entity?

14 A. No.

15 Q. Does it have shares or
16 interests of some kind, ownership interests
17 of some kind that have been disbursed in
18 some way?

19 A. I didn't hear the very end of
20 your question.

21 Q. Does it have shares or
22 ownership interests of some kind that have
23 been distributed in some way?

24 A. No.

25 Q. Do you know how Fairshare came

1 know the resorts, we know the inventory, we
2 know the systems, we -- we know this better
3 than anybody else.

4 Q. But has Fairshare ever
5 undertaken to figure out in some metric-
6 based way that WVR is the true -- is what
7 you just described, is the best person for
8 the job?

9 A. There's no metrics that I'm
10 aware of. I just know the industry and
11 know what our -- and know what we did.

12 Q. And so, Fairshare doesn't know
13 whether the amounts charged by WVR are
14 similar to those that would be charged by
15 other vendors, is that correct?

16 A. I would say Fairshare, and
17 specifically the board, are aware of
18 industry averages, but, I mean, we're aware
19 of industry averages, but not specific to
20 just the exchange company component.

21 Q. What do you mean by industry
22 averages?

23 A. For management fees in general.

24 Q. And what are those industry
25 averages for management fees?

1 A. My experience is 10 to
2 15 percent.

3 Q. What is WVR's percentage?

4 A. For the program, as program
5 manager it's 5 percent of selected program
6 fees.

7 Q. And your understanding is the
8 industry average is 10 to 15 percent?

9 A. Right, for all the management
10 fees, yeah.

11 Q. And that -- it's my
12 understanding that that amount of payment
13 is set out here in this agreement, in
14 section 6.1, which I'm scrolling down to.
15 Is that showing on your screen there?

16 A. Yes.

17 Q. Is the section 6.1, we're on
18 Bates page 399 of Exhibit 4. I'm sorry,
19 that's not right. We're on Bates page 402
20 of Exhibit 4, and it says, "Manager shall
21 receive a monthly compensation equal to
22 1/12th of 5 percent of the program fees,
23 special and other assessments, other than
24 the EOA fees collected from members in
25 connection with the operation of the

1 expense?

2 A. That's the billing and
3 collections of the program fees and OA
4 fees.

5 Q. What are the credit card fees?

6 A. That is more of a credit card
7 discount. So when credit cards with all
8 their privilege programs and rewards
9 programs, they charge anywhere from 2 to
10 3 percent for somebody to be able to use
11 the credit card.

12 So this is not only the program
13 fees, it also covers the OA credit card
14 discounts, and then any revenue in
15 Fairshare above that would be taken by
16 credit card.

17 Q. So this is relating to the
18 amount that Visa or MasterCard or whatever
19 discounts when their card is used?

20 A. Correct.

21 Q. And some of this amount is also
22 related to the OA fee that WVR, on behalf
23 of Fairshare, collects for the underlying
24 OA, owners' associations?

25 A. It's -- since Fairshare is

1 these total amount of related-party
2 transactions?

3 A. Yes.

4 Q. Do you know how much that total
5 is?

6 A. No.

7 Q. In this same note, but down
8 here on the next page, the second paragraph
9 here on Bates 3139, it says, "As part of
10 WVR's marketing program to sell the VOI
11 properties, WVR created a VIP program for
12 members," do you see that?

13 A. Yes.

14 Q. Is that consistent with your
15 understanding that the VIP program is a
16 marketing program created by WVR?

17 A. Yes.

18 Q. We talked about this earlier,
19 but it says, the second to last sentence in
20 this paragraph, "WVR paid a VIP marketing
21 fee to the trust to administer this VIP
22 program of \$19,382,133 in 2019," do you see
23 that?

24 A. Yes.

25 Q. Can you explain again what this

CAROLYN NOLEN, ET AL. vs FAIRSHARE VACATION OWNERS ASSOCIATION

Confidential

Jodi Rogers on 02/05/2021

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1 VIP program, what that is and why that's a
2 revenue?

3 A. It's a program that gives
4 people with certain point values higher
5 point values, additional benefits or
6 amenities, and Wyndham pays Fairshare to
7 administer the VIP program.

8 Q. And why would WVR pay Fairshare
9 for administering that?

10 A. I don't know why, I wasn't
11 there when it started.

12 Q. I'm going to put up what we
13 will mark as Exhibit 6.

14 (Exhibit 6, Fairshare Vacation
15 Plan Use Management Trust Financial
16 Statements Years Ended December 31,
17 2018 and 2017, Bates stamped
18 Wyndham_Nolen_003116 through
19 Wyndham_Nolen_003128, marked for
20 identification.)

21 Q. Go ahead, you can scroll
22 through if you like to make sure you are
23 familiar with this document. That will be
24 my first question, are you familiar with
25 it?

1 tidy, which if you stay seven days or more
2 and you are a VIP you get a very light
3 cleaning service, it's called the trash and
4 tidy. That's not all the benefits, those
5 tend to be the benefits that are the
6 biggest cost.

7 Q. Do you know why there was no
8 VIP program expenses in 2019?

9 A. There were, we broke them out.

10 Q. Into what?

11 A. Into their categories. So they
12 would be part of housekeeping, part of
13 reservations, so we gave it more details.

14 Q. And then we still see the same
15 list of these -- of expenses that we looked
16 at as to 2019, all the other things, credit
17 card fees, bad debt management, those are
18 all the same for this year?

19 A. The same description, yeah.

20 Q. And then again, the fund
21 balance, that's the excess money that's
22 still available in the -- in Fairshare's
23 bank account, essentially, correct?

24 A. Well, fund balance and cash
25 balance are different, but it is the fund

CAROLYN NOLEN, ET AL. vs FAIRSHARE VACATION OWNERS ASSOCIATION

Confidential

Jodi Rogers on 02/05/2021

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1 balance.

2 Q. Can you explain what you mean
3 by that?

4 A. Well, cash is cash in the bank.
5 This is the difference between revenue and
6 expenses run on an accrual method.

7 Q. If you wanted to determine the
8 amount of cash available for any given
9 year, is that reflected in this audit?

10 A. There's a balance sheet
11 section, the page before is the balance
12 sheet.

13 Q. And where is the cash on hand
14 that you reference?

15 A. It says cash and cash
16 equivalents.

17 Q. Is that any different than, and
18 I'm scrolling down here, now we're looking
19 at Bates page 3122. This reports cash and
20 cash equivalents at the beginning and the
21 end of the year, do you see that?

22 A. Um-hum, yes.

23 Q. Would that be reflective of the
24 cash on hand for Fairshare at any given
25 time?

1 A. The fund balance is used in a
2 large part for cash flow. To maintain the
3 payables for current status for the club we
4 need about 7 to 8 million to keep our
5 payables current. We also use that fund
6 balance to offset future program fees.

7 You saw in the audit that there
8 were many years that were a deficit, and
9 that is us using the prior year's fund
10 balance to offset that, and it helps us if
11 there are any surprises to not have to do a
12 special assessment. So we use it to pay
13 cash flow and to offset future program
14 fees.

15 Q. Is there a process by which how
16 the fund balance is going to be used is
17 arrived at?

18 A. We do an analysis every year.
19 It's part of the budget process every year
20 is to look at that.

21 Q. And what is that process for
22 determining that?

23 A. Kind of what I just described
24 about we need a certain amount to keep our
25 payables current, and then we look at the

EXHIBIT B

Nolen et al. v. Fairshare Vacation Owners Association, Case No. 6:20-cv-330-ORL-40EJK
(M.D. Fla.)

EXPERT REPORT OF PROFESSOR RANDALL UPCHURCH, PH.D.

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Preface to report

The opinions expressed within the enclosed report represent an analysis performed by Dr. Randall S. Upchurch.

I am the inaugural recipient of the American Resort Development Association (ARDA) 'Professorship in Timeshare Resort Operations.' You will find a complete summary of my expertise specific to timeshare development and resort operations outlined later within this report.

To be succinct, the following items address Plaintiffs' allegations as extracted from Case 6:20-cv-00330-PGB-EJK, document 45 filed on 10/08/20 along with Plaintiffs' depositions.

Structure of Report

My report is segmented into the following categories: In Part (I) I provide my expert witness credentials. In Part (II) I provide some background information on the timeshare industry and a comparison of various business model practices within the industry. In Parts (III) through (V), I offer expert opinions on Plaintiffs' allegations regarding consumer financing practices, resort management practices, and practices relative to club programs, services, and fees.

I. Credentials for Expert Witness: Dr. Randall S. Upchurch

I, Dr. Randall S. Upchurch, am retained to analyze issues raised by the Plaintiffs; and to testify at deposition or trial as required.

My hourly fees apply to this engagement are as follows:

- \$1,400 retainer for services
- \$350/hour for office work and testimony attrial or deposition Qualifications to Provide Expert

Opinion in this Matter

I am qualified to provide an expert opinion in this case based upon a combination of my education and experiences both as an academic scholar and consultant within the field of timeshare resort operations. In reference to my academic credentials, I hold a Doctor of Philosophy degree from the University of Missouri-Columbia, College of Education, in the disciplinary field of Practical Arts and Vocational Education.

I hold the rank of Professor within Florida Gulf Coast University's Resort & Hospitality Administration program, an academic unit within the Lutgert College of Business, Fort Myers, Florida. My resume included here provides evidence of my qualifications to offer an expert opinion in this matter.

My consulting experiences began in 2001 at which time I served as the principal investigator concerning timeshare owner usage and acceptance metrics for the Hilton Grand Vacations Company (a timeshare developer). In that same year, I received a Professorship titled from the American Resort Development Association ("ARDA") Professorship in Timeshare Resort Operations. That professorship enabled me to assist ARDA in revising their Timeshare Handbook which is a tool used for professional certification of timeshare resort managers. In addition, and as a result of ARDA's Professorship, I designed the timeshare resort management track for the Rosen College of Hospitality Management at the University of Central Florida. This consisted of industry specific courses in—introduction to timeshare resorts, timeshare sales, timeshare property operations, and timeshare financial strategies.

I have conducted eight industry funded timeshare consumer profile reports as noted below:

- Upchurch, Randall (2011). Hilton Grand Vacations. Elite Member Survey. Report to the Hilton Grand Vacation Company
- Upchurch, Randall (2009). Bluegreen Resorts Membership Survey. Report to the Bluegreen Resorts Corporation.
- Upchurch, Randall (2007). Annual HGVClub Membership Survey. Report to the Hilton Grand Vacations Company
- Upchurch, Randall (2006). Annual HGVClub Membership Survey. Report to the Hilton Grand Vacations Company
- Upchurch, Randall (2005). Annual HGVClub Membership Survey. Report to the Hilton Grand Vacations Company
- Upchurch, Randall (2004). Annual HGVClub Membership Survey. Report to the Hilton Grand Vacations Company

- Upchurch, Randall (2003). Annual HGVClub Membership Survey. Report to the Hilton Grand Vacations Company
- Upchurch, Randall (2002). Annual HGVClub Membership Survey. Report to the Hilton Grand Vacations Company

Per citations indices, I have generated the most timeshare research as published in refereed journals by any other academic. In total, there are twelve refereed publications as listed below:

- Lasten, Earney, Stiles, Jason, and Upchurch, Randall (2014). Car Club Membership – A Product Extension of Interval Ownership, *Quarterly Review of Business Disciplines*, November
- Kaufman, Tammie, Curtis, Catherine and Upchurch, Randall (2011). Timeshare Brand Affiliation Impacts. *International Journal Built Environment and Asset Management*. 1(1), 4-13
- Upchurch, Randall and Dipetro, Robin (2010). Timeshare Vacation Club Membership – An Analysis of Program and Service Relationships. *Hospitality Review*, 28(3), 1-20
- Carpenter, Monica and Upchurch, Randall (2008). A Five-Year content analysis of articles in the American Resort Development Association's *Developments* magazine (2002-2006). *Journal of Retail and Leisure Property*. 7(2), 149-160
- Lasten, Earney, Hahm, Jeannie, and Upchurch, Randall (2007). State of the Timeshare Industry - A Call for Research. *Journal of Retail and Leisure Property*, 6 (3), 221-230
- Kaufman, Tammie and Upchurch, Randall (2007). Vacation ownership: Gender positioning. *Journal of Retail and Leisure Property*, 6(1), 8-14
- Upchurch, R. and Rompf, P. (2006). A Case Study on Vacation Clubs Concerning Post-purchase Behavior. *Journal of Retail and Leisure Property*, 5(1), 173-184
- Upchurch, R, Rompf, P., Severt, D. (2005). Postpurchase Behavior: A Case Study into a Vacation Club Product, *Tourism Analysis*, 11 (1). 45-59
- Kaufman, T., Upchurch, R., Severt, D. (2005). Vacation Ownership: Understanding the Senior Market, *Journal of Retail and Leisure Property*. 5(2), 95-103
- Upchurch, Randall (2002) Product Design Evolution in the Vacation Ownership Industry: From fixed weeks to points and vacation clubs. *Journal of Retail and Leisure Property*, 3 (3), 239-253
- Upchurch, Randall (2002). Special issue on the state of resort timesharing in the 21st century, *International Journal of Hospitality Management*, 21 (3), 209-210
- Upchurch, Randall and Gruber, Kurt (2002). The evolution of a sleeping giant: resort timesharing, *International Journal of Hospitality Management*, 21 (3), 211-225

Furthermore, I have edited or authored two textbooks on timeshare resort management and operations. The textbook publications are a) *Timeshare Resort Operations*. (2005) by Butterworth-Heinemann, and b) the American Resort Development Association's *Timeshare Handbook* (2002, 2009), American Resort Development Association

Lastly, since 2002 I have served and continue to serve on the ARDA's Research committee and ARDA's Education/Professional Development committee.

I have not testified during the previous 4 years as an expert at trial or by deposition.

II. If participants in the Wyndham system, including Fairshare, are not permitted to follow accepted industry practices, the Wyndham system will suffer competitive harm.

In this section of my report, I describe how the timeshare business model established by Wyndham Vacation Resorts (“WVR”), including the establishment of the Fairshare Vacation Owners Association to operate Club Wyndham Plus, is consistent with standard industry practice.

Wyndham competes in the timeshare sector with entities that have similar investment objectives and business model practices. Wyndham Destinations’ primary competitors include Bluegreen Vacations, Diamond Resorts International, Disney Vacation Club, Hilton Grand Vacations, Holiday Inn Club Vacations, and Marriott Vacations Worldwide.

WVR’s business model for its timeshare resort products includes the following functions:

(a) resort development/acquisition; (b) timeshare sales and marketing; (c) the availability of exchange services, both internal and external, designed for owners to have access to multisite locations; (d) facility management of Wyndham resort properties; (e) management of a reservation system for scheduling vacation time and management of timeshare owner points; and point-of-sale purchase financing.¹ Fairshare Vacation Owners Association provides a limited sub-set of these services concerning reservations, point and use management, and the collection of certain fees charged to timeshare owners associated with their ownership interests.¹

These business divisions align with practices exercised by other timeshare developers (Ex. Diamond Resorts, Hilton Grand Vacations, Marriott Vacations Worldwide and other major competitors). The functions described above, that is, the development, sales and marketing, service provision, reservations/exchanges, and financing services provided to Wyndham and other timeshare customers, are all critical processes to the timeshare industry. The disruption of those services would have adverse effects on many timeshare customers as well as the timeshare brand as a whole.

It should be understood that the timeshare industry as a whole remains highly competitive, a point made in every annual 10-K SEC report that was reviewed. The companies reviewed included Bluegreen Resorts, Diamond Resorts, Disney, Hilton Grand Vacations, Holiday Inn Club Vacations, Marriott Vacations Worldwide, Westgate, and Wyndham Destinations. Unfortunately, ARDA does not collect market share data; however, by comparing SEC 10-K reports along with company website metrics, I was able to generally profile market share by considering the a) the total number of reported resorts, b) the number of reported owners, and c) the company’s annual sales of vacation ownership interests.

- A. When I compared the number of resorts. I determined that the respective market shares were (in order of highest percentage to the lowest): Wyndham Destinations is the highest with 36.9%, MVC (17.6%), Diamond Resorts (17.5%), Disney Vacation Club (2.4%), HGV (9.5%), Holiday Inn Club Vacations (4.5%), Bluegreen Resorts (7.2%), and Westgate Resorts (4.4%).

¹ Wyndham Destinations Inc SEC report 2019, page 73

- B. Relative to the total number of owners, Wyndham Destinations had the highest percentage (28.4%) followed by MVC (21.35%), Diamond Resorts (21.35%), HGV (10.5%), Holiday Inn Club Vacations (11.3%) and Bluegreen Resorts with 7.1%. Disney and Westgate are not included due to missing information.
- C. When using the reported sales associated with annual vacation ownership interest sales, Wyndham Destinations commands 34.5% of the market share followed by MVC at 29.3%, Diamond Resorts (14.3%), HGV (9.5%), Holiday Inn Club Vacations (7.6%), and Bluegreen Resorts (4.8%). Disney and Westgate were not included due to missing information. [see Table below for tabulations for A, B, and C.

In sum, the previous analysis indicates that Wyndham Destinations is the leader in all three approximations of market share. Nonetheless, Wyndham Destinations' market share is not so large as to make it a dominant player. It therefore follows that if participants in the Wyndham system, including Fairshare, are not permitted to follow accepted industry practices, the Wyndham system will suffer competitive harm.

Market share comparison	# of resorts	%	# of owners	%	Total VOI 2019	%	Source
Bluegreen Resorts	45	0.075	220000	0.080	255375	0.051	VOI sales 2019
Diamond Resorts	109	0.182	*660000	0.240	764963	0.154	2015
Disney Vacations	15	0.025	*		*		*Data co-mingled with parks and hotel data
Hilton Grand Vacations	59	0.098	326000	0.118	509000	0.102	VOI Sales 2019
Holiday Inn Club Vacations	28	.0945	350000	.1131	405600	.0757	Dun & Bradstreet report 2019
Marriott Vacation Club	110	0.184	660000	0.240	1569000	0.317	VOI sales 2019
Westgate Resorts	28	0.046	*		*		*Information cannot be verified
Wyndham Destinations	230	0.385	878000	0.319	1848000	0.373	VOI Sales 2019
Totals	596	1.0	2744000	1.0	4946338	1.0	

Industry Comparative Profile

According to ARDA, 10.5 million United States households own a timeshare product. Timeshare ownership can take the form of traditional timeshare weeks, points, fractional or private residence clubs. According to ARDA's *Economic Impact of the Timeshare industry 2020* report, the U.S. timeshare industry generated \$97.4 billion of economic output through operations, vacation

expenditures and capital expenditures in 2019 for a direct economic impact of \$38.7 billion as well as an estimated \$58.8 billion in indirect and induced output. In addition, the timeshare industry directly supported employment of 293,386 people in 2019. This direct employment supported indirect employment at suppliers and other businesses, resulting in 318,839 additional jobs. Combining direct and indirect employment, the total employment contribution of the timeshare industry is estimated to be 612,225 jobs. For each direct job within the timeshare industry, an additional 1.1 jobs in other industries result. According to Ernst & Young, the total income contribution of the timeshare industry is estimated to be \$37.0 billion in 2019, including an estimated direct income impact of \$18.0 billion and an indirect impact of \$19.1 billion (2020 U.S. State of the Vacation Timeshare Industry and Economic Impact Survey, 2020).

In that same report (2020 State of the Vacation Timeshare Industry: United States Study), the U.S. timeshare industry sales increased for the 10th straight year by nearly 3% from \$10.2 billion in 2018 to \$10.5 billion in 2019. The study also states that over the past five years, sales volume increased by more than 22% since 2015 – an average of 5% annually (Ernest & Young, 2020 State of the Vacation Timeshare Industry: United States Study).

All of the major, publicly traded, timeshare companies have highly integrated business operations. Their business models include all of the following functions: (1) acquisition and development of resort properties; (2) sales and marketing of VOIs; (3) member reservation systems; (4) VOI exchange systems; (5) property management; and (6) financing.

Furthermore, my experience with three of the large timeshare companies, Diamond Resorts International, Hilton Grand Vacations, and Marriott Vacations Worldwide, confirms that they too have integrated business models offering all of the services provided by the big public companies.

Wyndham's business model also consists of those same six major components: (1) resort acquisition and development; (2) sales and marketing of VOIs; (3) reservation system for VOI customers; (4) property management for the resorts; (5) VOI exchange systems; and (6) customer financing. As noted earlier, these six major business functions are common practices used by both Wyndham and Wyndham's major competitors. The interrelated nature of the timeshare business model (e.g. sales, marketing, financing, property management, and owner services) means that all timeshare companies must organize their business operations in a similar fashion.

Moreover, and as implied previously within the above paragraphs, consumer interest in purchasing points and therefore the ability to visit other resorts and/or use services offered by timeshare vacation clubs is a preferred way to enjoy the timeshare product, therefore, making it a normal industry practice. For instance, the ARDA International Foundation (AIF) report entitled *United States Owners Report 2020*, noted that:

- 79% of the timeshare owners polled had either used, exchange, or converted; 60% had used their vacation time for family use, 22% had exchanged to another resort, and another 20% had converted their points into other travel or hotel stay options.

When timeshare owners were asked about future vacationing,

- 37% planned on vacationing at their home resort, 25% were going to exchange their time, and 22% would use their points for their home resort or vacation club. (Source: AIF United

States Owners Report 2020)

Then in this same report the timeshare owners were asked about their plans 'within the next two years:

- 36% planned on buying more time
- 30% were going to upgrade by room type or a higher season with their same company
- 25% planned on buying more points
- 19% planned on converting their traditional week into the points system, and
- 16% planned on upgrading into a fractional resort or private resident club

Perhaps the most telling when it comes to consumer satisfaction and usage of timeshare services, nearly nine out of ten owners rated their home resort as good, very good or excellent (89%). The following overall attitudes pertaining to their ownership were also based upon the combined ratings of excellent, very good, or good:

- 89% were satisfied with their home resort;
- 87% were satisfied with their overall ownership experience;
- 93% were satisfied with the location of their home resort;
- 90% were satisfied with their home resort amenities;
- 88% were satisfied with the service provided at their home resort;
- 88% were satisfied with activities provided at their home resort;
- 80% were satisfied with the internal exchange process; and
- 79% were satisfied with the external exchange process.

According to the ARDA 2020 State of the Industry report as conducted by the accounting firm of Ernest & Young, 76% of all timeshare interests were deeded or fee simple real estate, 32% had interests within a trust, 14% were right-to-use interests via a contractual agreement, and 1% were classified as other. Using simple math, the number of owners who possess a timeshare under a trust structure could be as high as 3.2 million consumers. Given the 87% level of owner satisfaction reported by the American Resort Development Association (ARDA) with timesharing as noted later in this document, it is rather apparent that timeshare owners are satisfied with their product and service offerings. Therefore, if a trust structure, as practiced by the timeshare companies, is considered inappropriate, that decision will adversely impact the business model of multiple timeshare developers as well as timeshare owners using those models.

As also discussed above, the vast majority of United States timeshare owners are satisfied with their timeshare ownership. Not only do these United States owners report that they are satisfied with their experience, 79% have plans to continue to use those services either through and exchange, use of their home resort, or convert their points into hotel stays or some other vacation option offered by their company.

In comparison, Wyndham reports that satisfaction levels noted by existing owners in 2019 was 85%. The fact that Wyndham's owners are overwhelmingly satisfied with their timeshare ownership and the benefits they receive as part of the Wyndham system makes a compelling statement of their overall acceptance of Wyndham's business practices.

Therefore, when I compare the growth of the industry, the range of integrated services offered to

owners via resort services, internal exchange services, and external exchange services, it is apparent that the Wyndham timeshare system, including Fairshare, is in alignment with industry-wide integrated business practices and services. Moreover, WVR consumer usage and satisfaction indices relative to current practices and future plans align with, and often exceed, those industry practices.

Expert Opinion

It is my opinion that, in light of these satisfaction ratings and because of the competitive nature of the timeshare industry, a timeshare company that omits any of these core features from its program and as facilitated through an entity such as Fairshare would find itself at an extreme disadvantage in competing with other timeshare companies. Put another way, those timeshare owners who value core program features would be disadvantaged by the absence of some or all of them compared to other timeshare owners who may or may not value them to the same extent.

III. If the result of a decision in this case is that WVR is no longer allowed to follow industry consumer financing practices, some Wyndham timeshare owners will benefit and others will suffer.

As a preliminary matter, as confirmed by the testimony of Jodi Rogers on February 5, 2021, I note that Fairshare does not provide consumer financing, has no agreements with any Wyndham entity to do so, and plays no role in the sales process, including any financing extended to consumers who choose to utilize such arrangements for their purchase. In other words, the Defendant in this case, Fairshare Vacation Owners Association, has nothing to do with the financing that is or is not offered to individual timeshare owners within the Wyndham system.

Nonetheless, I understand that Plaintiffs make a contention about consumer financing in the Amended Complaint. As such, I address the impact on existing and future owners of the Plaintiffs' expressed concerns with consumer financing, property management, and excessive program fees as alleged in the Amended Complaint. One must place those concerns within the context of the normative practices of the timeshare industry as a whole.

Not all customers finance their timeshare purchases, although approximately 60.2% of timeshare companies provide financing to prospective buyers. In 2019 developer financing accounted for \$3.718 billion US dollars out of a total \$6.181 billion in sales for that year.²

In regards to Wyndham's consumer financing profile, the numbers are in alignment with industry practices. For example, in 2019 WVR provided financing for 56% of its vacation ownership sales (Wyndham Destinations Inc, SEC report 2019, page 10).³

To-date, there are but a few external organizations that offer consumer financing service to timeshare purchasers. This is largely because a timeshare interest, and certainly one under a points program, is not accepted as collateral. For those companies that do offer consumer loans those are transacted as personal loans and therefore are not collateralized in a manner of a real estate type loans.⁴ As of the date of this report, there are three third-party lender agencies offering timeshare

² AIF, 2020 Economic Impact report, ARDA

³ Wyndham Destinations Inc SEC Report 2019, page 10

⁴ <https://www.sec.gov/ix?doc=/Archives/edgar/data/1361658/000136165820000012/wynd->

consumer loans. The three companies are LightStream, Upgrade, and Upstart (<https://lendedu.com/blog/timeshare-loan/>). An analysis conducted on Lightstream, Upstream, and Upstart loan terms notes that those companies offer loans ranging from \$5,000 to \$100,000, with annual percentage rates ranging from 5.95% to 35.99% (APR). The acceptable consumer credit range acceptable to those firms ranged from bad to excellent as associated with a 0% to an 8% origination fee. My analysis indicates that the lending option provided by a timeshare developer is definitely in the owner's best financial interest in that the fees charged by these outside vendors can exceed the fees charged by a timeshare company.

To facilitate the sales of timeshare interests related to development projects or acquired inventory, it is common practice for timeshare companies or their affiliates to offer financing to prospective owners and to perform all collection activities on the loans. The typical timeshare loan is evidenced by a promissory note and secured by a mortgage or security interest on the related timeshare interest. The loans typically amortize, whereby the entire amount of the loan is repaid over the term of the loan.

Timeshare companies often engage in comprehensive marketing strategies to generate sales. Timeshare companies may screen targeted prospective owners based on minimum income, job stability, past vacationing patterns and prior ownership of timeshare products. It is fairly common for timeshare companies to invite prospective owners to visit one of their timeshare resorts, absorbing the cost associated with the visit that may include free night stays, reduced rates, vouchers for meals and entertainment as well as discounted airfare. The rate of conversion from prospect to a closed consumer loan tends to average around 14% or less for new buyers and higher for upgrades of existing owners. (Source: 2020 State of the Timeshare Industry report, Ernst & Young).

Because approximately one-third of Wyndham timeshare owners do not finance their timeshare purchase transaction, if WVR is forced to pay monetary damages for financing activities, some in the putative class would receive payments of varying amounts, but 33% would not receive payments. Furthermore, if WVR is prohibited from earning a profit on financing activities, it will either be forced to cease financing or to increase product prices to make up the lost profit and offer financing at no net profit. Under those scenarios the result will be reduced future sales, fewer resorts developed, fewer build out of existing resorts, and fewer people having realistic access to the WVR timeshare product. This will limit the future choices of resorts and limit the availability of intervals for class members, whether or not the member financed his or her purchase. The harm is neither uniform nor equitable.

Again, and within the context that limited options are available for external consumer financing, all major timeshare companies, including branded and independent companies, provide internal financing to potential buyers. All of the leading timeshare companies offer consumer financing by use of developer funds, they then warehouse those loans and ultimately package them in syndications. This is a common industry practice.

As reported within ARDA's International Foundation (AIF) 2020 Economic Impact Report, 60.2% of timeshare developers offer financing to potential buyers. In comparison, in 2016 consumer financing by Hilton was 65%, Marriott Vacation Club was 59%. As noted in Wyndham

20191231x10k.htm#s6110F7D8B7B3523BB524DD7040C9ADEE

Destinations annual SEC 10-K report, consumer financing was reported to be 56%.⁵

It should be noted that among the plaintiffs listed only Litton took advantage of WVR financing (Litton and Kelley Depositions). The Kelleys were aware of external funding sources but for varied reasons elected to not pursue external financing. (C. Kelley deposition, 2020, pages 41-44). Yet, in this case the Plaintiffs are seeking to (a) prevent WVR from earning any profit for providing financing to its customers, and in doing so (b) pay monetary damages to the class for WVR's financing activities, among other things. If this relief is granted, it would result in winners and losers in the class. For example, some class members, composed of the 56% who financed their purchase, would receive a benefit. Yet even for them, that benefit would likely come at a cost since no financing may be available in the future if and when they wish to upgrade and purchase more timeshare. However, the 41% who did not finance their purchase would not benefit.

Expert Opinion

If WVR is precluded from earning a reasonable profit on providing financing to its customers who want it, WVR will be forced to either: (a) stop providing loan financing or (b) continue to provide financing but raise its prices on timeshare sales or other post-sale charges to offset the loss in profit and revenues. Publicly traded, for-profit companies, must earn a reasonable return on their invested capital to remain in business. The loss of financing income would have to be made up in some way if the activity is to continue without the opportunity to earn a reasonable profit on the capital that must be invested to support financing activity. Therefore, the adaptive response of WVR, if the Plaintiffs' requested relief were granted, will result in additional costs to the putative class in terms of additional service charges, higher VOI pricing, or fewer future resort options and services. This higher timeshare pricing would harm these customers who would have to pay more and may not even be able to afford additional timeshare benefits they wish to purchase. Therefore, the relief requested would result in disparate impacts within the putative class.

IV. If the result of a decision in this case is that WVR is no longer allowed to manage club program services on behalf of Fairshare, as is a customary arrangement within the industry, then Wyndham timeshare owners will be negatively impacted.

During the property development phase and/or prior to the sale of unsold timeshare vacation ownership interests, the unsold ownership interests are owned by the timeshare company. The timeshare company will bear the costs associated with the maintenance on all unsold Timeshare Interests which is a practice leveraged by Diamond Resorts, Hilton Grand Vacations, Marriott Vacations Worldwide, and Westgate Resorts. Therefore, the timeshare company is typically contracted to manage the property and the reservation system, although these responsibilities can sometimes be overseen by a third party. One such third-party provider of property management services is Goodman Property Management. Regardless, the owners' vacation experience is influenced by the condition of the resort and their ability to make a reservation when and where desired. As a result, the management capabilities of the timeshare resort manager can have an impact on future timeshare loan performance. Within that context, it is a common industry practice for timeshare developers to provide property management services to their resorts under a fee-for-service structure (Ex. Diamond Resorts, Hilton Grand Vacations, and Marriott Vacations Worldwide). These companies offer services that include: property administration, budget and

⁵ Wyndham Destinations Inc SEC Report 2019, page 10

reserve planning, staffing, maintenance fee billing and collections, procurement, property maintenance, rental and marketing programs, and owner/guest relations.⁶ As noted with the Program Fee section of this report (see pp. 15-20), the percentage of timeshare company revenues associated with resort operations and club services are 10% for Hilton Grand Vacations, Diamond Resorts averages between 10 to 15%, and Marriott Vacations Worldwide is 11% of their total revenue stream.

According to the Ernest & Young study, 69% of all timeshare resorts are managed by the timeshare developer, 26% are managed by an external management company, 4% are managed by the homeowner association, and 1% have another arrangement. In general, resort management duties entail keeping the resort property in pristine condition so that owner's vacation needs are met or exceeded. It should also be noted that the median percentage of budget/ operating expenses that was allocated to resort management fees was 10% in this Ernest & Young study. This suggests that Wyndham is therefore in alignment with this industry resort management practices, services, and charging of fees related to those services.

In a similar vein as property management services companies, the timeshare industry leverages a 'fee for service' strategy particular to the property maintenance, property renovation activities, business modeling and forecasting, asset modeling, cash flow management, oversight of daily housekeeping, engineering, grounds, physical plant operations, recreational services, foodservice services, and retail merchandising, procurement, and the provision and delivery of on-site owner and non-owner services of which aggregated services require special expertise.

The primary goal therefore is to ensure that existing owners and future owners receive the highest quality vacation experience. In simple terms, timeshare program fees are applied to the upkeep of the timeshare property. Landscaping, utilities, staffing, management companies, taxes, insurances, and other similar services are essential to keep a vacation property running at its top performance level. With so many vacationers visiting each year, there will always be upgrades and other changes that will happen to common areas as well as within units to keep everything fresh and attractive for owners and potential buyers.

In addition, the Owner Association fees are determined by the property owners' associations at each resort and not by the timeshare developer/company, or, in this case, Fairshare.⁷ Most, but not all property owner associations in the Wyndham system (including those in CWP) have resort management oversight contracts with Wyndham Vacation Management, Inc. ("WVM"). The plan manager fee charged for management services provided pursuant to the Management Agreement is set at 5% of selected fees, paid monthly. The act of charging a management fee is a standard industry practice.

It should be noted that there is no guarantee that if WVM cannot earn a reasonable profit from this activity, it would continue providing it. The impact on the putative class may be positive or negative and is likely to vary by resort since costs vary by resort. Thus, the impact on the putative

⁶ <https://www.marriottvacationsworldwide.com/our-company/exchange-third-party-management/>; <https://www.hiltongrandvacations.com/en/about-us/development>; https://www.annualreports.com/HostedData/AnnualReportArchive/d/NYSE_DRII_2015.pdf; <https://www.westgateresorts.com/owners/>

⁷ Section 10.03 of Trust Agreement

class will be an inconsistent mix of possible winners and losers.

According to the 2020 State of the Vacation Timeshare Industry: United States Study, the weighted average maintenance fee charged per interval or interval equivalent was \$1,080 in 2019. The average maintenance fee also varies by size ranging from \$690 per interval for studios to \$1,380 per interval for 3+ bedroom units. The average billed maintenance fee has increased by approximately 5.3% from 2015 to 2019 (Source: 2019 State of the Shared Vacation Timeshare Industry: United States Study, conducted by E&Y for the AIF). This State of the Industry study was conducted among all U.S. timeshare resorts annually. Specifically, the average maintenance fee in 2015 was \$1053 and that amount increased to \$1109 in 2019 for an overall increase of 5.3%. It is important to note that the amount of maintenance fees charged are set by each specific resort's homeowners association(s) and not by the timeshare developer.

Source: The American Resort Development Association, AIF State of the Vacation Industry Timeshare Industry, 2020

Unit type	Average maintenance fee	Active sales resorts	Sold out resorts
Studio	690	670	730
1BR	860	860	870
2BR	1110	1120	1040
3BR+	1380	1390	1320
Average	1080	1120	1010
Maintenance fee distribution			
<\$700	11%		
700 to 799	9%		
800 to 899	14%		
900 to 999	19%		
1000 to 1099	11%		

The average annual maintenance fee billed was \$1,080 per interval. The above table shows the average maintenance fees charged by unit type, and the distribution of maintenance fees by dollar amount. Studio units averaged \$690 annually in maintenance fees, one-bedroom units averaged \$860, two-bedroom units averaged \$1,110, and three-bedroom units or larger averaged \$1,380 annually. Approximately 11% of resorts have maintenance fees averaging less than \$700, while another 20% have maintenance fees averaging \$1,300 or more. Maintenance fees for active-sales resorts average 11% more than those for sold-out resorts. Approximately 91.1% of maintenance fee accounts were current in 2019.

The method of allocating how the operating expenses are determined as declared in a document submitted to the applicable municipality or government office where the timeshare resort is recorded for the purpose of creating and governing the rights of owners. States such as California and Hawaii require that the budget and methodology be provided by an expert in the subject and that an accountant opine of the reasonableness of the budget and allocation method. Therefore, given the unique business model along with the timeshare developer's desire to maintain brand quality it is no surprise that all the major timeshare developer's offer resort property management

services for a fee. Examples of branded companies are Diamond Resorts, Hilton Grand Vacations, Marriott Vacations Worldwide, and Westgate Resorts. Once again, WVR is following industry specific business practices in order to remain competitive.

As noted earlier in this report, the timeshare business model is complex in structure of which maintenance fees are just one component, albeit approximately 83% of a resort property's revenue stream. There are many different components that must be taken into consideration in determining maintenance fees:

- Square footage of the unit
- Season of the year
- Unit type (one bedroom, two-bedroom, etc.)
- Calculated by the number of points attributed to the unit week

All owners pay an equal amount of the total budget divided by the number of unit weeks) and fixed costs are equally shared. However, a differential does exist relative to the size of the unit. For example, a 30-unit timeshare property selling 50 weeks with two-week held back for maintenance for a total of 1,500 unit weeks as composed of one two bedroom units. Landscaping and Grounds costs are allocated by taking the total costs and dividing by 1500. So the total cost of maintaining Grounds is \$300,000 which means that each unit week pays \$300,000/1500 or \$200. However, the cost of housekeeping is different by unit type - - a one bedroom is \$120 and a two bedroom is \$175. You add up the per unit week costs to determine the maintenance fee by unit type. In addition, as economic conditions change due to inflation and resultant cost of services increase then this becomes a consideration. The underlying concept is that the operating expenses should be allocated as fairly as possible based on what it costs to run the property and provide the guest experience. It would not make sense to have a three-bedroom week have the same maintenance fee as a studio unit.

There are generally two interrelated entities associated with the offering of vacation club services. Those two entities are the timeshare company and the homeowners' association ("HOA". The HOA is typically managed by a board of directors, which comprises representatives from both the timeshare owners and the timeshare company. The timeshare company representative will typically have a more significant role when the resort, or phase of development in a resort, is not yet completed or completely sold. The HOA represents the interests of timeshare owners in connection therewith and typically enters into and maintains the contractual arrangement with the property manager. This relationship is often subjected to an external review of processes such as that provided by DBRS, a global rating agency. For instance, DBRS may review the interaction between the HOA and the property manager to assess the relationship and if the property manager is sufficiently being managed by the HOA. A key responsibility of the HOA is to maintain the operating budget for the management of the property and to ensure that the integrity of resort experiences (i.e., vacation club services) are maintained. The operating budget typically includes reserves for future capital improvement, maintenance, insurance and property management fees. (<https://www.dbrsmorningstar.com/document/333385.pdf>).

None of the Plaintiffs a) attended HOA meetings, b) requested to be part of the homeowners board, nor c) provided input to the home owner association's board relative to fees being charged (See Carolyn Nolen [12-9-2020], Paula Litton [12-17-2020], Windy Kelley [12-11-2020] and Cara Kelley [12-14-2020] depositions).

Again, the operational metrics associated with timeshare resort property management are unique to the timeshare industry sector, thus necessitating knowledge, skills and abilities pertaining to a very complex interplay between the resort developer and the individual property management entity. The model summarized within this section is a standard industry practice whereby a timeshare company who does not offer resort management services would be at a severe competitive disadvantage.

In turn, any lack of oversight by WVR relative to product and service integrity of CWP as overseen by Fairshare will negatively impact owners who have already expressed satisfaction with their resort experiences. For instance, in ARDA's 2020 AIF US Owners Report timeshare study 89% of timeshare owners were satisfied with their home resort experience AND 87% had an overall satisfactory experience (i.e., a rating of good, very good, or excellent).⁸ If Plaintiffs' in this lawsuit are able to separate WVR from this resort management process, and therefore, separate it from the owners' resort experience, then a modicum of timeshare owners will obtain what they want but the needs of the majority will not be represented.

Vacation ownership clubs, such as Club Wyndham Plus, WorldMark by Wyndham, Hilton Grand Vacations, Marriott Vacation Club, and Disney Vacation Club, give members the option to exchange both internally within their collection of resorts, or externally through vacation exchange networks such as RCI. According to annual reports produced by ARDA, membership in vacation clubs, meaning points oriented, have been the greatest driver of growth within the vacation ownership industry. In a similar manner, WVR continuously seeks new ways to add value to club membership, including enhanced product offerings, greater geographic distribution, broader exchange networks and further technological innovation, all of which drive better, more personalized vacation experiences and owner satisfaction.

The 2020 ARDA International Foundation State of the Vacation Timeshare Industry reported that 77% of the respondents had purchased points, of which 91% of those timeshare owners were represented resorts in active sales versus 52% represented sold out resorts. This long-term trend has had a positive impact upon the average number of exchange members and has resulted in an increase in the number of members exchanging within their respective clubs.⁹

A more compelling metric as extracted from ARDA's 2020 US Owners Report is that 79% had either used an exchange service or converted their points via a vacation club in 2019, and when asked about future plans 37% indicated they would vacation at their home resort, 25% planned on exchanging to another resort within their club or outside of their club network, and 22% planned on using their points at their home resort of vacation club. These metrics indicate that these United States timeshare owners see great value in vacation club offerings.

It is also important to reflect upon the 'brand' specific nature of a vacation club, as well as the context of onsite management of those respective club programs. The onsite administration of program services requires an integrated and watchful eye toward the consistent deployment of club products and services of which oversight is needed to maintain brand integrity as well as ensure continued owner satisfaction with those services. This onsite oversight of a brand's vacation club program and services is evidenced in the SEC 10-K reports reported by Diamond Resorts, Hilton Grand Vacations, and Marriott Vacation Club. All of those timeshare companies leverage a fee for

⁸ ARDA United States Owners Report, 2020

⁹ AIF State of the Vacation Timeshare Industry 2020

services provided as associated with club operations.

Therefore, if WVR is no longer allowed to manage club program services on behalf of Fairshare, two harmful outcomes are possible. First, potential harm exists for existing owners who by and large have reported very high satisfaction levels as noted earlier within my report. Second, WVR will no longer be competitive due to the disruption of its ability to maintain the integrity of its vacation club programs and services.

Expert Opinion

If Plaintiffs prevail, WVR would be forced either to provide those same Practices without profit or attempt to hire a third party to provide the Practices. It should be stressed again that all of the Defendants' major competitors provide the Practices as part of their integrated timeshare delivery systems, in order to maintain quality and control costs. Given the integrated nature of this reservation system within the context of both internal and external modes of exchange, the net result would be a less than acceptable owner experience due to severance from this widely coveted exchange and club service model.

Therefore, if the Plaintiffs prevail, WVR would be forced to: (a) stop offering the aforementioned resort management services, thereby denying their customers the benefits of the Practices and jeopardizing their business; (b) continue offering the Practices but shifting their costs to their product prices and/or to other services paid by their customers; or (c) some combination of the two.

Moreover, the management fee charged by WVM is a standard practice within the industry.¹⁴ If WVM cannot earn a reasonable profit from this fee-for-service activity then it is quite likely that this service would cease. Moreover, there is no third-party company that I am aware of in this industry that could be substituted in for WVM that would perform the services WVM provides without earning a reasonable cost-plus (i.e., profit) for the work. The impact on the putative class may be positive or negative and is likely to vary by resort since costs vary by resort.

V. If the result of a decision in this case is that Fairshare is required to lower its club program fees below a reasonable measure of its costs, then the quality of the system will suffer and Wyndham timeshare owners will be harmed

Revenues within the timeshare industry are a combination of sales associated with timeshare interests, resort property management fees, consumer loan sales, resort property rental programs, and, if differentiated from resort management fees, revenues associated with voluntary owner participation in the company's vacation club. To that very point, a statement extracted from Diamond Resorts 10-K (2012) summarizes my point quite nicely:¹⁰

Stable cash flow from hospitality and management services. The management fees from our hospitality management contracts are structured on a cost-plus basis. Most of our current management contracts are priced at cost plus a range of 10% to 15%. These costs include an allocation of a substantial portion of our overhead related to our provision of management services.

¹⁰ Diamond Resort International 2012 SEC report, <https://www.sec.gov/Archives/edgar/data/1514608/000151460813000008/diamondresorts-12312012x10k.htm>

Because the cost component of these contracts is included in each of our managed resorts' annual budgets, which are typically finalized in September of the prior year, our management fees are highly predictable. In addition, unlike typical hospitality management companies, our fees are not affected by average daily rates ("ADR") or occupancy rates at our resorts. Our management fees are paid with funds that we collect annually as part of an annual maintenance fee billed to owners by each resort's homeowners' association ("HOA"). These annual fees also include fees for our Collections and THE Club.

In comparison, the 2019 10-K report for Marriott Vacations Worldwide also noted that revenues associated with resort property management (called 3rd party management) included fees associated with resort property management, external exchanges, and club management.¹¹ MVC's revenues fees pertaining to resort property management and club operations were 11%. In comparison, Hilton Grand Vacations reported 10% fees within their 2019 SEC report, and noted previously, Diamond Resort Internationals fees ranged from 10 to 15%.

The Plaintiffs allege that WVR earns excessive revenue associated with club services. However, Section 6.1 of the management agreement with the plan manager specifies the formula levied for those services. Upon review of that document the fee charged is 5%. To be exact, the plan manager shall receive a monthly compensation equal to one twelfth of five percent of the Program fees, special and other assessments (other than POA fees) collected from Members in connection with operation of the Trust.

This program fee as assessed by WVR covers expenses associated with managing the operations of CWP, including its reservation system. Oversight of this type of in-house reservation system is a standard industry practice for major timeshare developers such as Diamond Resorts, Hilton Grand Vacations¹², Marriott Vacation Worldwide, and Westgate Resorts. Those services are part of their internal exchange process whereby owners gain access to club administration, provision of club services, resort reservations (exchanges), and related club benefits.

Relative to program fees, the plaintiffs claim that their program fees have continually increased over the years. Unfortunately, the reporting of program fees (i.e., club fees) are not collected by the American Resort Development Association; however, in reviewing timeshare company annual reports and trust reports I did find club fee data for HGV and MVC. HGV reported club fees to be \$159 in 2017 and \$186 in 2021. MVC's club fees ranged from \$185, \$225, and \$250 in 2017 and \$215, \$255, and \$280 for 2021.¹³ For HGV this represents an increase of 17% in annual club program fees between 2017 to 2021 and MVC's club fees increased from 12%, 13.3%, and 16.2% for their club membership categories.¹⁴ The implication is that increased club membership fees as associated with expanded program offerings and increasing consumer demand for those services.

¹¹ Marriott Worldwide Vacations 2019 SEC report, page 2
<https://www.sec.gov/ix?doc=/Archives/edgar/data/1524358/000152435820000011/a2019q410-kdocument.htm>

¹² Hilton Grand Vacations 2019 SEC report, page 72
https://www.sec.gov/ix?doc=/Archives/edgar/data/1674168/000156459020008097/hgv-10k_20191231.htm

¹³ MVC Trust Owners Association 2018; MVC Trust Owners Association 2021; <https://www.fidelityrealestate.com/blog/2021-hilton-grand-vacation-club-fees-dues/>

¹⁴ 2017, 2018, 2020, 2021 HGV fee document; 2017, 2020, 2021 MVC Trust fee document

As such WVR is in alignment with this industry pattern of incremental fee increases.

It is my opinion that if WVR is prevented from earning a reasonable profit on program costs, it will either have to: (a) attempt to have an outside vendor provide those functions or (b) shift the costs to other services rendered to the putative class members or to the cost of timeshare interest it sells. There is no guarantee that WVR could find an outside vendor who could provide the program services at the same cost as WVR and provide the same level of service to the putative class. Furthermore, I also am not aware of any third-party vendor who would provide the service without earning a reasonable profit for the work needed to provide program of equal quality and magnitude. Those class members who are satisfied with the reservation system and take advantage of CWP to stay at different resorts at different times will be negatively impacted.

Again, it is also important to note that the 2020 State of the Industry Report conducted by Ernst & Young determined that 69% of timeshare resorts were managed by the timeshare developer, 26% utilized a third-party timeshare property management company, 4% were managed by a homeowners' association, and another 1% were classified as other. Clearly if the capability to earn revenue from property management and support systems is removed, then the likelihood of maintaining the integrity of the timeshare product becomes problematic for an inordinate amount of people due to the fact that they will no longer be able to partake in the same level of resort experiences as currently provided by WVR.

As noted earlier, a significant part of the timeshare business model centers upon ensuring that existing owners and potential owners receive an array of services as stipulated within their contracts. Therefore, to develop a resort property and to leave it unattended would not be prudent of a timeshare development company. The implication is that it is in the best interest of the developer to ensure that each of their resorts is properly maintained and continue to offer the highest level of services year after year. This is exactly why the majority of timeshare developers offer property management and sales services on a 'fee for service' basis to the owner associations of their resorts. Examples of timeshare developers who offer fee-for-service property management services include Diamond Resorts, Hilton Grand Vacations (HGV), Holiday Inn Vacation Club, Marriott Vacation Club International (MVCI), and Wyndham Vacation Resorts (WVR).

It is my opinion that if WVR is no longer allowed to provide a) club program services, b) property management functions or c) consumer financing OR if those same services are reduced in an effort to contain costs, then this timeshare company is no longer competitive within the marketplace. Such a result would be catastrophic not only to the industry but to existing timeshare owners who are satisfied with the services being provided by WVR.

It is important to note that membership by an owner in the Club Wyndham 'Plus' program is voluntary and is not the same thing as resort maintenance fees. In reference to the CWP program, the exact contractual wording as noted in Cara Brent Kelley deposition is that "use and participation in the Club Wyndham Plus/Wyndham Rewards Program is completely voluntary and payment of any fee or other cost is only required upon such use or participation."¹⁵

¹⁵ Cara Brent Kelley deposition, page 71, line 9
Windy Kelley, deposition, page 36, line 2
Litton deposition, page 63, line 24

Furthermore, in reviewing all four depositions it is readily apparent that the Plaintiffs were not entirely clear as to the differentiation between their maintenance fees versus club fees (i.e., Club Wyndham 'Plus'). At this juncture, it is certainly worth mentioning that the Plaintiffs' vacations were the result of their participation in program services for which they enrolled. This is an important point given that participation in Club Wyndham offers access to 220 resorts across the country as well as 4,300+ worldwide exchange opportunities through RCI. What this means is that the Plaintiffs, by means of this WVR's specific reservation database in addition with RCI's exchange services allowed the Plaintiffs to gain access to exclusive resort, hotel, cruise, and getaways, or convert their points to hotel stays, airline tickets, and other travel related experiences. As noted within the depositions, all four Plaintiffs utilized 'club' services in order to vacation at resorts other than their respective home resorts often on an annual basis. In all cases, the Plaintiffs recognized that there are financial costs associated with the provision of program services and that those services were beneficial to their vacation experience (See Nolen pages 26-29; Litton pages 59-62; C Kelley 23-25; and W Kelley pages 26-30 depositions).

Concerning the 'Program Fee' in question, a program fee pays for the operations of CWP including its reservation system. Timeshare reservation systems are unique to the timeshare product, large, complicated, and vital components of an owner's experience. Each Plaintiff has utilized the reservation process as a means of utilizing their CWP features; however, aside from the limited problems cited within the depositions, of which reservation errors were addressed by Wyndham representatives, the Plaintiffs desire to continue using their club privileges remained evident.

Furthermore, three-quarters of owners took a vacation at a timeshare resort in 2019 (76%), for a period of eight days at a timeshare resort, three in ten owners booked between one to three months before their timeshare vacation began while 80% booked six months or less in advance; 79% used, exchanged, or converted their points, 60% personally used their timeshare, 22% exchanged their timeshare, and 20% converted their timeshare. In terms of future usage, 37% plan to vacation at their home resort, 25% will exchange their week(s) or points, and 22% will use their points for their home resort or vacation club. Even more telling of owner satisfaction surfaced with these timeshare owners were asked about their 'future timeshare plans' 36% indicated they planned on buying more timeshare weeks, 30% were going to upgrade their plans, and 35% were going to buy more points (ARDA: United States Owners Report, 2020).

Owners polled in this same study, in terms of the rating categories of good, very good, to excellent ratings, noted that 94% were satisfied with the location of their home resort, 90% were satisfied with their home resort amenities, 88% were satisfied with their services offered at their home resort, 88% were satisfied with offered activities at their home resort, 80% were satisfied with the internal exchange process, and 79% were satisfied with the external exchange service. Lastly, 75% (as reflective of the rating categories of definitely or probably would recommend) would endorse their home resort or vacation club to others. In aggregate, these indices are powerful in terms of usage and satisfaction patterns and especially so if you consider that approximately 9.9 million U.S. households own one or more timeshare products inclusive of weeks, points, fractional and/or private residence clubs. Wyndham reports that sales to existing customers represented 63%, 62%, and 65% of our net sales during 2019, 2018, and 2017.¹⁶ The fact that Wyndham's customers purchase additional upgrades at higher rates than the industry average demonstrates that Wyndham's customers are even more satisfied with their ownership interests than average industry

¹⁶ Wyndham Destinations Inc SEC Report 2019, page 8

owners.

In this same national study, when asked owners purchased a timeshare, the highest rated reason was resort location (42%), followed by overall flexibility (40%), saving money (38%), and then in descending order, own a vacation home, exchange opportunity, quality of accommodation, vacationing is a certainty, credibility of the timeshare developer, ability to pass it onto descendants, ability to travel with larger parties, invitation to a timeshare sales presentation, and the ability to convert points. However, there were differences when filtered by demographics whereby Gen-Z, millennial, and younger Gen-X owners versus older Gen-X and baby boomers were attracted by saving money. Furthermore, location and the quality of the resort and accommodations were more important to baby boomer owners versus Gen-Z, millennial, and Gen-X owners. Of recent purchasers who acquired a timeshare within the past 3 years (recent acquirers, 2017–2020), the Gen-Z owner demographic accounted for 80%, millennials represented 73%, younger Gen-X 61%, older Gen-X 50%, and baby boomers of Gen-Z respondents acquired a timeshare within the past 3 years and lowest among Boomer+ at 20% of purchases.

An observation stemming from the above national owner statistics denotes that owners do not hold uniform views of the industry or that their desire to purchase additional ownership interests are uniform. This means that given that variations do exist across owners, coupled with the fact that most owners are satisfied with their purchase and timeshare plan, the relief sought in this case would inevitably result in benefits to some and damage to the majority of others in the alleged class.

It is at this juncture that a deeper reflection upon Nolen, Kelley, and Litton depositions within the context of usage of Club privileges for future vacations is useful. These depositions collectively confirmed that WVR disclosed to them that program fees were applicable at the point of signing; Paula Litton found the resorts to always be in acceptable condition, admitted that it costs money to keep the properties in good condition, and that she was not willing to give up any features for a lowered maintenance fee; Windy Kelley enjoyed visiting and going places to with Wyndham, seeks a better overall experience in terms of availability via more options in different locations as well as available dates and reduced costs; Cara Kelley stated that ownership had value in that it offered benefits with reasonable costs associated, and that program costs were needed for the care and maintenance of resort properties with caveat being that those fees were not excessive; however they collectively expressed concerns that Fairshare fees continually increased yearly; and Carolyn Nolen stated that the HOA fees were necessary to keep everything in working order...however, she had no knowledge of how HOA assessments were calculated, was aware that enrolling in CWP allowed her to travel to other resorts other than her home resort (Bonnet Creek), admitted that enrollment in CWP was voluntary, and that the reservation system allowed her to engage in traveling, and allowed her family to travel to places they had not visited before, and stated she could not defend if the increase in program fees were justified or not. In closing, the Plaintiffs were actively involved in leveraging CWP services since the inception of their purchase and three of the four desire to remain active participants in club services.

It should also be pointed out the Plaintiffs collectively leveraged their program services for resort vacations via the exchange process on a consistent basis (Litton for eleven years and Nolen/Kelleys for five years). Litton indicated that she had visited Destin, Nashville, and Flagstaff and had not

taken issue with those resort experiences.¹⁷ Nolen has been an owner since 2015 and recalled that she traveled once in 2017, once in 2018, nothing in 2019, and two times in 2020. In reference to her last vacation resort stay in Pigeon Forge she had enjoyed her experience. She further stated that no concerns with the Pigeon Forge or Panama City's upkeep, maintenance, or facilities.¹⁸

Relative to the Plaintiffs' suggestion that the trustee had placed its interests above the beneficiaries, it is very important to reflect upon WVR's accounting practices associated with that particular trust fund. In an interview with Jodi Rodgers, Vice President of Club Accounting, Wyndham Vacation Ownership, on January 22, 2021 she explained that annual club statements were distributed to the owners that included a reference to expenditures and trust fund balance. During this session, the purpose of the trust fund was explained to be for coverage of fees associated with daily club operations (reservations, housekeeping fees, owner services), debt repayment, and to support a reserve fund associated with a lag in owner payments or loan default. In Wyndham's 2019 SEC report, under the heading of "Purchaser Financing" section, it was noted that they offer financing to purchasers which in the case of default, they are able to recover the inventory and resell it at full current value.¹⁹ Furthermore, the company is responsible for the payment of maintenance fees to the property owners' associations until the product is sold. As of December 31, 2019, Inventory on the Consolidated Balance Sheets included estimated inventory recoveries on loan defaults of \$281 million.

The use of a trust fund balance procedure is also practiced by Marriott Vacations Worldwide²⁰. CWP uses its reserve fund to help owners who fall behind on their payments or perhaps default on their loans thereby maintaining CWP's ability to continue providing services to existing timeshare owners. The complete CWP budget is submitted to and approved by the HOA board of directors per Section 2.2 of that agreement. In addition, the HOA budget is externally audited by an independent accounting firm to ensure that business practices comply with acceptable accounting standards. Therefore, the above national statistics concerning owner usage and satisfaction reinforce the fact that many that the disgruntled Plaintiffs bringing this action do not represent the class as a whole. In essence, millions of satisfied owners will become losers as an outcome of the class action suit. The aforementioned owner metrics reinforce the fact that the Plaintiffs allegations do not represent the class as a whole. In essence, millions of satisfied owners will become loser as an outcome of this class action suit.

Expert Opinion

If WVR stops providing Club Wyndham Program (CWP) services to its owners, it is uncertain whether a substitute firm can provide the same services, at the same quality for the same fee.

Furthermore, program services provided by RCI, the largest exchange company in terms of resorts, makes the combined program services extremely difficult to replicate. Therefore, there is no reason to believe that prohibiting Wyndham from earning normal profits for the provision of CWP services at industry standard pricing would produce any benefit to the putative class, if indeed it would produce any benefit to any putative class member. Instead, it exposes class members to

¹⁷ Litton Deposition, page 47, line 15-25

¹⁸ Nolen deposition, page 51, line 24 to page 52, line 25

¹⁹ Wyndham Destinations Inc SEC Report 2019, page 11

²⁰ Marriott Vacations Worldwide SEC report 2020

unnecessary risk.

Specific to WVR, there would be two primary disadvantages associated with not following standard industry practices. First, a timeshare developer/company who could no longer offer financing, property management, or club program services would be at an immediate competitive disadvantage within their competitive set.

Moreover, and in reference to both existing as well as future timeshare owners who value core timeshare plan features and services, both existing and future timeshare owners would be harmed by restrictions placed upon and/or removal of club plan options and services. Granted not all timeshare owners partake in products and services in the same exact manner. Still two statistics remain evident relative to the 'class' of timeshare owners. First, 89% of timeshare owners were completely satisfied with their timeshare home resort experience, and second, 87% were satisfied with their overall ownership experience (ARDA: United States Owners Report, 2020).

Closing Opinion Remarks

1. It is my opinion that, in light of these satisfaction ratings and because of the competitive nature of the timeshare industry, a timeshare company that omitted any of these core features from its program would find itself at a competitive disadvantage in competing with other timeshare companies.

The U.S. timeshare industry is very competitive. To remain in business the Defendants must provide high quality products and services at competitive prices, and, except for the FairShare, which is not-for-profit trust, earn at least a reasonable profit.

The challenged practices are integral components of the timeshare products sold by the defendant and by its competitors in the marketplace. Therefore, to compete effectively, defendant must continue to provide the practices to their owners.

The relief sought by the Plaintiffs would prevent Wyndham from earning any profit on the common industry practices. WVR would then be forced either to provide the practices without profit or attempt to hire a third party to provide the practices. All of the major competitors provide the practices as part of their integrated timeshare delivery systems in order to maintain quality and to control costs thus maintaining economy of scale and quality for their resort portfolio.

2. If WVR is precluded from earning a reasonable profit on providing financing to their customers who want it, WVR will be forced to either: (a) stop providing the financing or (b) continue to provide the financing but raise their prices or other charges to offset the loss in profit and revenue. Not all owners would be represented in an equitable manner.

Not all customers finance their purchases. Therefore, if WVR is forced to pay monetary damages for financing activities, some in the putative class would receive payments of varying amounts, but 41% would not receive payments. If WVR is prohibited from earning a profit on financing activities, it will either be forced to cease financing or to increase product prices to make up the lost profit and offer financing at no net profit. Either way the result is reduced future sales, fewer resorts developed, and fewer people having realistic access to the WVR timeshare product. This will limit the future choices of resorts and limit the availability of intervals for class members,

whether or not the member financed his or her purchase. Furthermore, seeking an outside vendor with the ability to offer the same services at the same cost structure is highly unlikely and if this was a possibility those cost-for-services would then be passed onto the consumer. The harm is neither uniform nor equitable;

3. If WVR is forced to stop offering the aforementioned resort management services to their owners they would in effect be denied benefits of the Practices or, alternatively, the costs of those services would then be passed onto them via outsourcing said services. It is very unlikely that an outside provider could provide the same level of integrated services at the same cost level. Those previously satisfied owners would then be subjected to product and services that no longer meet their needs.

In addition, the owner association fees are determined by the property owners' associations at each resort and not by the Defendant. The 10% management fee charged by WVM is standard for the industry. There is no guarantee that if WVM cannot earn a reasonable profit from this activity, it would continue providing it. The impact on the putative class may be positive or negative and is likely to vary by resort since costs vary by resort. Thus, the impact on the putative class will be an inconsistent mix of possible winners and losers.

4. If WVR stops providing Club Wyndham Program (CWP) services to its owners, it is uncertain whether a substitute firm could provide the same services, at the same quality for the same fee. The Program Fee covers WVR's cost to manage the operating expenses of CWP, including its reservation system. All major market competitors operate their own reservation systems and manage their club administration in house. Within the context of fees, the Plaintiffs demonstrated a lack of understanding about the Program and Owners' Association fees associated with their timeshare interests. These Plaintiffs acknowledged that all of the fees and costs associated with their timeshare purchase were fully disclosed within their documents.

Therefore, if WVR is precluded from earning a reasonable profit on the program costs, it will either have to shift costs to other services rendered to the putative class members or to the VOI interests it sells. There is no guarantee that the Defendants could find an outside vendor who could provide the program services at the same cost as WVR and provide the same level of service to the putative class. Those class members who are satisfied with the program services and reservation system features and take advantage of CWP to stay at different resorts at different times would be negatively impacted.

I hold the following opinions to a reasonable degree of certainty based upon my experience and background in the timeshare industry and the fact and data reviewed. I reserve the right to amend or supplement the opinions stated in this report if new or different facts are made available to me.



Professor Randall Upchurch, Ph.D.

EXHIBIT C

Nolen, et al.
v.
Fairshare Vacation Owners Association

Expert Report
of
Dwight J. Duncan, CFA

February 17, 2021



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1. Background And Scope

The current matter involves the purchase and management of timeshare properties. Plaintiffs purchased timeshare interests from Wyndham Vacation Resorts, Inc. (“WVR”). As part of the purchase, Plaintiffs assigned certain rights of their timeshare interests to Fairshare Vacation Owners Association (“Defendant” or “Fairshare”). This assignment allowed Plaintiffs to participate in a timeshare exchange program known as the “Club Wyndham Plus” program. Fairshare is the Trustee of the Fairshare Vacation Plan Use Management Trust Agreement (“Trust”).

In the Amended and Restated Class Action Complaint (“Amended Complaint”), Plaintiffs claim that they, and numerous allegedly similarly situated individuals, were harmed by Fairshare as it entered into (allegedly illegal) transactions with affiliated companies. Plaintiffs claim that “Fairshare has engaged in multiple form of self-dealing ...” in violation of the Arkansas Trust Code and Arkansas case law that “prohibit a trustee from hiring itself, or an entity related to the trustee, to manage trust property” (collectively “Alleged Actions”).¹

Plaintiffs seek to certify a class of consisting of the following individuals (“Proposed Class”):

“All persons and entities who are citizens of the United States of America and who on or after March 14, 2008: (1) purchased a timeshare with a Property Interest (or the Use Rights therein) subject to the Fairshare Vacation Plan Use Management Trust or (2) purchased (including upgrading or refinancing) a Property Interest (or the Use Rights therein) previously subject to the Fairshare Vacation Plan Use Management Trust.”

The class representatives are Carolyn Nolen, and Windy Kelley, Cara Kelley and Paula Litton (jointly referred to as “Kelley/Litton”). Ms. Nolen purchased a timeshare from WVR on July 31, 2015 and financed their purchase via a Wyndham Rewards Visa credit card. Kelley/Litton purchased their timeshare from WVR on January 5, 2016 and financed a portion of the purchase price through Wyndham Consumer Finance (“WCF”).²

Dwight J. Duncan of EconLit, LLC was asked by counsel for Defendant to evaluate if damages can be accurately ascertained on a class-wide basis using common proof, and if so, if such damages can also be allocated among the individual members of the Proposed Class (“Proposed Class Members”).

¹ Plaintiffs’ Response in Opposition to Defendants Motion to Dismiss the Amended Complaint, p. 2. See also the Amended Complaint for a more detailed description of the Alleged Actions.

² Ms. Nolen and Kelley/Litton will also be referred to as “Named Plaintiffs.”

2. Qualifications

Mr. Duncan is an economist and the Managing Director of EconLit, an economic research and consulting firm located in Phoenix, Arizona. Mr. Duncan has more than 25 years of experience involving economic consulting generally and the calculation of economic damages in commercial disputes specifically. Mr. Duncan has provided expert testimony before United States District Courts, State Courts, and regulatory bodies on numerous occasions. Mr. Duncan has also provided economic consulting and expert witness services to law enforcement agencies such as the Arizona State Attorney General's office, on multiple matters. **Appendix A** contains a summary of Mr. Duncan's background and qualifications. Mr. Duncan has been assisted in this engagement by EconLit's professional and administrative staff.

EconLit prepared this report based upon information known to date. If new, relevant information becomes available, EconLit may supplement this report. Additionally, EconLit may prepare illustrative or demonstrative exhibits for use at any related legal proceedings from the information contained in this report, any supplemental or rebuttal report, or the documents EconLit considered. **Appendix B** sets forth the documents EconLit relied upon in forming the opinions expressed in this report. **Appendix C** sets forth EconLit's compensation in this matter.

3. Liability Assumption

EconLit is not expressing an opinion regarding liability in the context of this matter.

4. Executive Summary

Plaintiffs seek to certify a class of individual consumers who purchased timeshare interest currently (or previously) subject to the Fairshare Vacation Plan Use Management Trust. Plaintiffs claim, inter alia, that because an "analytical framework permeate[s] Plaintiffs' and the putative Class's [sic] claims, class certification is proper."³ Further, Plaintiffs claim that "they only need to demonstrate that individual damage questions will not overwhelm the litigation ...[especially] when damages are based on a common formula or can be calculated using other easy or essentially mechanical methods."⁴ However, based on EconLit's analysis of Plaintiffs' damages claims, the application of commonly accepted damages quantification theory, review of the documentary evidence, and Dr. Randall Upchurch's report, I formed the following opinions.

1. **Claimed damages.** As per the Amended Complaint, Plaintiffs claim damages related to (i) above-market financing, (ii) above-market loan servicing fees, (iii) the failure of WCF to share loan securitization proceeds with Plaintiffs, and (iv) excessive Program Fees and OA Fees. As per Plaintiffs' Class Certification Motion, Plaintiffs seems to have excluded from class certification claims related to financing agreements and securitization (i.e., damages related to items (i) above-market financing, (ii) above-market loan servicing fees, and (iii)

³ Plaintiffs' Motion for Class Certification and Incorporated Memorandum in Support ("Plaintiffs' Class Certification Motion"), p. 2.

⁴ Plaintiffs' Class Certification Motion, p. 21.

the failure of WCF to share loan securitization proceeds with Plaintiffs). Since Plaintiffs have not indicated whether they completely abandoned class certification addressing these claims and any associated damages claims, EconLit addresses in this report, all damages issues raised by Plaintiffs in their Amended Complaint.

2. The damages quantification process. The computation of economic damages typically requires the use of the well-known and generally accepted damage framework that evaluates the difference between a plaintiff's economic position but-for the defendant's wrongful conduct (generally referred to as the "But-For" scenario), and the plaintiff's actual and projected actual economic position given the defendant's wrongful conduct (generally referred to as the "Projected Actual" scenario). In the current matter, the proper specification of Proposed Class Members' but-for economic position is critical as but-for the Alleged Actions, the Defendant would have entered into a series of contracts with 3rd party entities for the provisioning of services, if such 3rd party providers were available. If no such 3rd party services were available, a different economic analysis needs to be performed, as the members of the Proposed Class may or may not have purchased their timeshare interests.
3. Damages vary greatly among Proposed Class Members. As stated above, damages are dependent upon the specification of a Proposed Class Member's but-for and actual economic positions. The required analyses are dependent upon the type of damages claim and Class Member-specific economic factors. These factors include, but are not limited to, what type of financing would have been available in the absence of the Alleged Actions, what financing did the Proposed Class Members use, what benefits did the Proposed Class Members enjoy, over what time period (and in which resort) did they enjoy these benefits, when did the Proposed Class Members pay Program Fees, at what time did WVR run a "excess" fund balance, what is the Proposed Class Members' proportional share of the "excess" fund balance, was the "excess" fund balance subsequently used to fund future operations?
4. Only individualized analysis of Proposed Class Members' claims will result in an accurate assessment of damages. Based on the variety of claims and economic circumstances of the Proposed Class Members, it is my opinion that no formulaic approach is available to quantify Proposed Class Members' damages on an individual basis or in the aggregate to a reasonable degree of economic certainty. Only an individualized assessment of each Proposed Class Member's economic circumstances will result in a damages estimate that meets the criteria of reasonable economic certainty.

5. Claimed Damages As per Amended Complaint

As of the writing of this report, Plaintiffs have not submitted a report quantifying Plaintiffs' damages or damages for the Proposed Class. The following summary of claimed damages is based on the Amended Complaint and Plaintiffs' Response in Opposition to Defendant's Motion to Dismiss the Amended Complaint. Plaintiffs allege that all "[t]he Trustee's common course of

conduct caused Plaintiffs and all proposed Class Members the same harm.” As remedy, Plaintiffs, *inter alia*, ask for (i) the “disgorgement of profits,” (ii) “the tracing of trust property wrongfully disposed of and recovering the property or its proceeds,” and (iii) “compensatory damages.”⁵ Specifically, Plaintiffs have identified four categories of damages.

5.1. Above Market Interest Rates

Plaintiffs claim that “Defendant allow[ed] its affiliates WVR and ... WCF to serve as the exclusive lender and servicer of all timeshare loans involving Trust Properties.” Plaintiffs further allege that “WVR and WCF charge[d] the Beneficiaries of the Trust (i.e. timeshare purchasers) above-market interest rates”⁶

5.2. Above Market Loan Servicing Fees

Plaintiffs also allege that the members of the Proposed Class were required to use WCF as servicers of all timeshare loans and were charged above-market loan servicing fees.⁷

5.3. Failure To Share Income From The Securitization Of Timeshare-related Loans With Proposed Class Members

Plaintiffs allege that WCF securitized large pools of consumer timeshare loans, and that “none of the income from the securitization agreements [was] shared with the [Proposed Class].”⁸

5.4. Excessive Assessment Of Fees

Plaintiffs claim that the Trustee charged fees in excess of the “amount necessary to cover the cost of the operation and administration of the Trust and the operation, maintenance, repair and replacement of the Trust Properties.”⁹ Plaintiffs further allege that as the result of these (claimed) excess charges, the Trust now has a “surplus trust fund balance” and “continues to increase the amount of fees and revenues it collects from Plaintiffs and the class.”¹⁰

⁵ EconLit notes that with respect to the first item, disgorgement of profits, Plaintiffs did not specify from which entity profits ought to be disgorged. Throughout the Amended Complaint, Plaintiffs allege certain actions by the Trustee (i.e., the Defendant), WVR, and WCF (with the latter two entities not listed as Defendants in the current matter). For the purpose of this report, EconLit assumes *arguendo* that Plaintiffs can overcome the legal challenges in claiming disgorgement of profits from non-Defendant entities.

⁶ Amended Complaint, ¶ 16. In the absence of a report by a damages expert, EconLit notes that Plaintiffs’ damages claims are not well defined. For example, with respect to the disgorgement of profits, it is unclear if Plaintiffs want to disgorge all profits or just a portion of profits. It appears that Plaintiffs claim that only a portion of profits ought to be disgorged as they claim to have paid above market interest rates.

⁷ Amended Complaint, ¶ 16.

⁸ Amended Complaint, ¶ 17.

⁹ Amended Complaint, ¶ 20.

¹⁰ Amended Complaint, ¶ 21.

6. Claims As Per Plaintiffs' Motion For Class Certification And Incorporated Memorandum In Support

On February 13, 2021, at close of business, Plaintiffs filed their motion for class certification. Plaintiffs left their class definition unchanged from the Amended Complaint; however, Plaintiffs appear to have limited their claims by excluding from class certification "claims concerning financing agreements and securitization...." Plaintiffs states as follows:¹¹

"Plaintiffs move for class certification regarding their claims concerning Fairshare's transactions with WVR, the Fund Balance/Cash Surplus, and the related violations of the Trust Agreement and the other agreements incorporated by reference [sic] therein. Those claims are encapsulated in Counts 1, 2, 5, and 6 of the Amended Complaint (Doc. 45). Plaintiffs do not seek class certification related to their claims concerning financing agreements and securitization, as set out in Counts 3 and 4."

Since Plaintiffs have not indicated whether they abandoned class certification addressing claims concerning financing agreements and the securitization process of consumer loans, EconLit will address in this report all damages issues raised by Plaintiffs in their Amended Complaint.¹²

7. The Damages Quantification Process

The computation of economic damages typically requires the use of the well-known and generally accepted damage framework that evaluates the difference between a plaintiff's economic position *but-for* the defendant's wrongful conduct (generally referred to as the "But-For" scenario), and the plaintiff's *actual and projected actual* economic position given the defendant's wrongful conduct (generally referred to as the "Projected Actual" scenario). Additionally, a well-specified damages construct requires the use of estimates and/or assumptions. Those estimates and/or assumptions need to be grounded in reasonable and supportable analysis, hence producing a relevant and reliable opinion.¹³ **Figure 1** depicts the general damages framework.

¹¹ Plaintiffs' Class Certification Motion, p. 9.

¹² Plaintiffs' Class Certification Motion is silent as to the question if Plaintiffs still seek the same damages as outlined in the Amended Complaint.

¹³ For a discussion of the quantification of economic damages, see, for example: Weil, Roman L., Wagner, Michael J., and Peter B. Frank, "Estimating Lost Profits and Economic Losses," Litigation Services Handbook: The Role of the Financial Expert, Third Edition, Chapter 5; and Fannon, Nancy J., and Jonathan M. Dunitz, "Performing Credible Lost Profits Analyses," The Comprehensive Guide to Economic Damages, Fourth Edition, Chapter 10.

Figure 1
General Damages Framework

	But-For Economic Position
<i>less</i>	Actual Economic Position
=	Damages

In the instant matter, to quantify the profits to be disgorged, or the damages sustained by the Proposed Class (in the aggregate, or on a member-by-member basis), the but-for and actual economic positions of the Proposed Class Members have to be articulated. Among other issues, the following factors need to be addressed to specify Proposed Class Members' but-for economic positions:

1. In the absence of the Alleged Actions, WCF would not have provided Proposed Class Members the financing opportunities to purchase their timeshare. What other financing options would have been available at that time? For example, would Proposed Class Members have financed their purchases through a variety of credit card programs? What fees and interest rates would have been available?
2. Would certain Proposed Class Members not have qualified for any loan or any alternative financing options? In such an instance, the but-for economic position would be represented by the Class Member not having purchased the timeshare interest; yet, the Class Member has already consumed the benefits of having owned the timeshare interest.
3. With respect to the servicing fees, what servicing fees would have been charged by 3rd party consumer financing companies or credit card companies?
4. In the absence of the Alleged Actions, if 3rd party financing companies had underwritten the timeshare-related loans, would these 3rd party financing companies also have securitized their loans?
5. If in the absence of the Alleged Actions, WVR would not have managed the operation, maintenance, repair and replacement of trust properties. With respect to the Program Fees and OA Fee, how efficiently would have 3rd party management companies directed the timeshare exchange program and the maintenance, repair and replacement of the trust properties, respectively?

Besides the Proposed Class Members' but-for economic positions, the members' actual economic positions will have to be analyzed as well. Factors to be analyzed include, *inter alia*:

1. For each Class Member, how much of the purchase price was financed? At what rate was it financed? Did the Class Member make extra payments to pay-off the loan? Were loan payments made timely? Were late fees assessed? Were any of the late fees disputed?
2. What other service charges were paid?

3. How much Program Fees and OA Fees were paid?
4. What were the benefits received from being part of Club Wyndham Plus if Plaintiffs seek the repayment of all Program Fees?
5. What are WVR expectations regarding the use of year-end fund balances?

Without a full specification of the Proposed Class Members' but-for and actual economic positions, damages cannot be ascertained to any degree of reasonable certainty.

8. Damages Quantification Varies Greatly Among Members Of The Proposed Class

As indicated above, Plaintiffs have stated in their Motion for Class Certification that they "do not seek class certification related to their claims concerning financing agreements and securitization," yet it is unclear if Plaintiffs have completely abandoned the damages claims for the Proposed Class related to the above-market interest rates, above-market loan servicing fees, and the failure to provide Proposed Class Members with the "profits" from the securitization of the Proposed Class Members' loans. Therefore, EconLit will address, in the following sections, all of the damages claims as outlined in the Amended Complaint.

8.1. Claimed Above-Market Interest Rates

Plaintiffs claim that they and the Proposed Class Members paid above-market interest rates when they financed the purchase of their timeshare units. However, to ascertain whether this statement is true, and if so, by how much each member paid above-market rates, each member's but-for financing situation would have to be determined and then compared to their actual financing activity.¹⁴

8.1.1. 3rd Party Financing in the Absence of the Alleged Actions

The Alleged Actions center on the claim that Fairshare inappropriately used related entities to provide services for the Proposed Class Members. Therefore, in the absence of the Alleged Actions, the entire financing process of the timeshare units would have to be analyzed as Plaintiffs take issue with the financing being conducted by a related entity.

The first part of the analysis would require a determination if, in the absence of the Alleged Actions, financing had been available through a 3rd party entity. Based on Dr. Upchurch's Expert Report, EconLit understands that financing of timeshare interests is provided by only a few 3rd party entities. If members of the Proposed Class had been able to obtain 3rd party financing, the financing cost (i.e., the interest rate) would depend on factors that are relevant for consumer loans. These factors include, among others, the credit score of the consumer, the consumer's income, the down payment amount, the total amount financed, the financing horizon, etc. Each

¹⁴ This analysis only applies to those Class Members that financed their purchases. In 2019, Wyndham Destinations, Inc. financed approximately 64% of timeshare interests. However, certain purchases are financed for only a short term, and after 60 days, the percentage of financed timeshare purchases dropped to 56%. (Wyndham Destinations, Inc. 2019 Form 10-K, p 10.)

of these factors influences the interest rate, and ultimately, the amount of interest paid, by members of the Proposed Class (again, if financing was even available).

As per Dr. Upchurch, timeshare interests are typically not accepted as loan collateral. As a result, timeshare loans provided by 3rd party providers would be expected to carry a higher interest rate as compared to those provided by WCF. An analysis by Dr. Upchurch indicated timeshare loans provided by certain 3rd party providers have annual percentage rates ranging from 5.95% to 35.99%. Depending on the but-for interest rate, the Class Member would have made a decision of how much to finance (or to decide to finance with a different tool, such as using a credit card). Therefore, the but-for interest payment cannot be determined by a mathematical formula that “swaps out” the (claimed higher) interest rate with a (claimed lower) interest rate provided by a 3rd party financing provider.¹⁵

8.1.2. Use of Alternative Financing in the Absence of the Alleged Actions

If Class Member were not able to secure financing through a 3rd party lender, they could have turned to alternative financing options. Such options could include, *inter alia*, the use of personal credit cards or home equity loans. For example, EconLit understands that Ms. Nolen financed her timeshare purchase through the Wyndham Rewards Visa card.¹⁶ As with the financing provided by a 3rd party lender, the determination of the but-for interest payment is dependent on each Class Member’s personal financial situation. Would the Class Member have access to the home equity line of credit? What interest rate would be charged on the home equity line of credit? Did the Class Member forgo any other purchases that he/she had intended for the home equity line of credit? What interest rate would have been charged on the credit card? Would the credit card have offered any additional perks?¹⁷ Would the credit card have offered an interest free introductory period?

8.1.3. No Financing in the Absence of the Alleged Actions

Lastly, if no 3rd party financing or any alternative financing option had been available, the Class Member either would have to pay cash for the timeshare interest or not have purchased the interest at all.¹⁸ Assuming *arguendo* that the Class Member would not have purchased the timeshare interest at all, a vastly different analysis is required to determine the damages sustained by the Proposed Class Members falling into this category.

¹⁵ Even suppose a 3rd party consumer financing company would have offered a lower rate than WCF. The Class Member could then have decided to opt for a nicer timeshare unit (or acquired more timeshare points) and taken out a larger loan resulting in another outcome requiring individualized analyses. In this instance, a proper damages analysis would have to consider the additional benefits received by the Class Member from having enjoyed the more expensive timeshare unit/points.

¹⁶ The Visa card appears to have been issued by Barclays Bank.

¹⁷ EconLit understands that the Wyndham Rewards Visa card provides rewards points that can be used for future services/stays at Wyndham properties.

¹⁸ It will be unlikely that member of the Proposed Class would have made their timeshare purchase in cash in the absence of the Alleged Actions if they have used WCF to purchase their units.

From an economic perspective, it would be incorrect to argue that damages would simply be the interest paid by Proposed Class Members who would not have purchased a timeshare interest as these members already consummated the transaction, and therefore, benefited from the purchase by enjoying the timeshare properties. Any costs, financing or other, that Proposed Class Members have incurred would have to be offset by the benefits received from having owned and used the timeshare properties. To determine the monetary value of these benefits, an individualized analysis of each Proposed Class Members' timeshare activity would be required. For example, suppose that Miss Jones used her timeshare points to vacation at Club Wyndham Sedona. An analysis of the benefits received would include the cash value of her vacation (which would have been dependent on the time and length of her stay, and which amenities she would have enjoyed).

8.1.4. Financing Given the Alleged Actions

As discussed in **Section 7.0**, in addition to the but-for economic position, the Proposed Class Members' actual economic position has to be determined. In order to then ascertain how much interest might have been overpaid, if any, each actual financing transaction has to be linked to the but-for financing transaction. The actual interest paid depends on the time horizon of the loan, the financed amount, if additional down payments were made, or if payments were late or skipped, was the loan refinanced, etc. Based on the information provided in the Amended Complaint about the Plaintiffs' financing history, the complexity of determining class-wide damages using a single, unifying approach can be illustrated. **Table 1** summarized a few key aspects of the Plaintiffs' financing history. As **Table 1** illustrates, each Plaintiff's actual financing terms could vary significantly. Questions to be answered include how much of the purchase amount was financed, at what rate, over what duration, and was any secondary financing used. In the case of the Ms. Nolen's purchase, it appears that she financed the purchase via a Wyndham co-branded Visa card that provided her with rewards points to be used for discounts at Wyndham-affiliated properties.

Table 1
Summary of Named Plaintiffs' Financing Terms

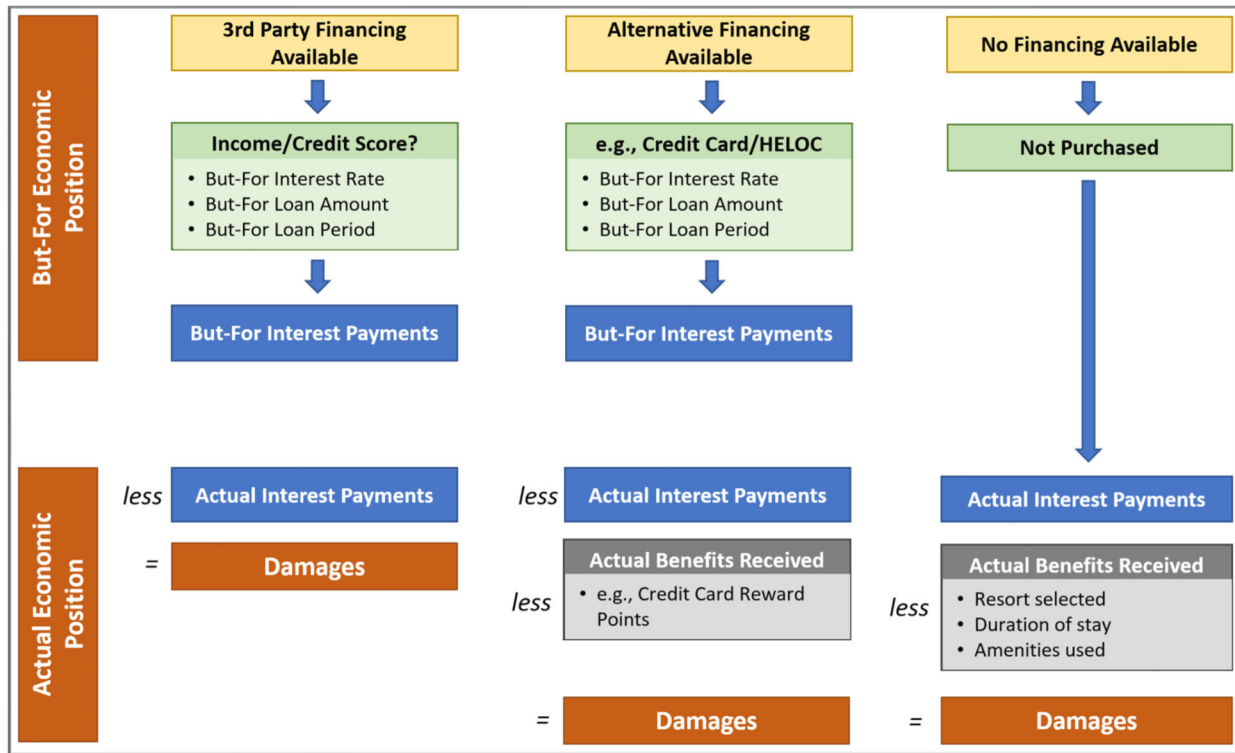
	The Nolen Transaction	The Kelley/Litton Transaction
Financing Source	Wyndham Rewards Visa	WVR
Total Purchase Price	\$21,414	\$207,048
Financed Amount	\$21,414 (100% of purchase price)	\$62,156 (30% of purchase price)
Interest Rate	14.99% (after initial six-month period of 0%) ¹⁹	11.49%
Other Factors	Obtained Visa rewards point to be used for future services/stays at Wyndham properties.	n/a

8.1.5. Damages Computation

As discussed in **Section 7.0**, damages are computed as the difference between a plaintiff's but-for economic position less the plaintiff's actual economic position. In the instant matter, this computation requires a multi-step process and analyses specific to each Class Member that cannot simply be accomplished by a mathematical formula. **Figure 2** depicts the general process of computing damages related to the claimed above-market financing costs.

¹⁹ Based on current promotional offers, the Wyndham Visa card "0% promotional APR on all "Wyndham Timeshare Purchases" for 6 billing cycles from the transaction date." (https://www.wyndhamrewardscreditcard.com/?referrerid=SearchGoogleSEP20PYOPKW2032&gclid=Cj0KCQiApY6BBhCsARIsAOI_GjYbz4dG1r0BwiYNPAm96P6VTqmi6tLCmi2EHKGz-Ss5cTj5arza--saAgfAEALw_wcB&gclsrc=aw.ds)

Figure 2
Above-Market Financing Costs Damages Computation Process



8.2. Claimed Above-Market Loan Servicing Fees

In an argument similar to the above-market financing fees damages claim, Plaintiffs claim that they were charged above-market loan servicing fees. Again, a but-for versus actual analysis would have to be performed to determine damages for the individual members of the Proposed Class. The required analyses mirror the analyses for the above-market financing fees. The required analyses differ between members of the Proposed Class that would have been able to obtain 3rd party financing, members that would have been able to use alternative financing options, and members that would not have been able to obtain any financing.

Proposed Class Members’ damages would be dependent on the outcome of but-for financing options available and the associated loan servicing fees, and the actual fees paid.

8.3. Claimed Failure To Share Income From The Securitization Of Timeshare-related Loans With Proposed Class Members

Plaintiffs claim that they have been harmed by Defendant as they were not compensated for the benefits received by WCF when WCF securitized loans that were guaranteed by Plaintiffs’ loan payments. Assuming *arguendo* that Plaintiffs have a legally valid claim against WCF, it is unclear that Plaintiffs actually have been harmed. Applying the now familiar but-for versus actual

analysis to determine Proposed Class Members' damages, each Proposed Class Members' but-for economic position is primarily determined by the availability (and type) of financing.

For example, if 3rd party financing was available, then the question arises whether the 3rd party lender would have securitized the timeshare loans as well, and if so, would have the Proposed Class Members benefited from the securitization process of the 3rd party lender in any different manner than with the securitization done by WCF.

8.4. Claimed Excessive Assessment Of Fees And Failure To Refund Fund Balances

8.4.1. Summary of Plaintiffs' Fee-Related Claims as per Plaintiffs' Class Certification Motion

With respect to the assessment (and collection) of fees, Plaintiffs make several allegations. These allegations, on a high-level, are as follows.²⁰

1. Payment of "tens of millions of dollars" to affiliated companies. Plaintiffs state that the "Management Agreement results in tens of millions of dollars in payments to WVR—and other Wyndham subsidiaries—every year."²¹ It is unclear if Plaintiffs only refer to the payment of the Club Wyndham Plus program fees ("Program Fees") or also include the payment of association fees for the individual timeshare resorts ("OA Fees").²² It is also unclear if Plaintiffs seek the refund of only a certain portion of the Program Fees and/or OA Fees, or the refund of all Program Fees and/or OA Fees.
2. Excess Fund Balance. WVR typically run a positive fund balance at the end of each calendar year.²³ Plaintiffs claim that any excess fund balance ought to have been subject to a vote whether (i) the fund balance should be refunded to the Proposed Class Members, or (ii) applied to Program Fees for the immediately succeeding year.²⁴

8.4.2. Program Fees and OA Fees in the Absence of the Alleged Actions

In the absence of the Alleged Actions, the services provided by WVR and the individual resort properties would have been provided by 3rd party management companies. Following the above outlined damages approach of specifying the but-for economic position and actual economic positions of Plaintiffs and the Proposed Class Members, damages would be dependent on the

²⁰ See Plaintiffs' Class Certification Motion for more detail on the specific allegations.

²¹ Plaintiffs' Class Certification Motion, p. 4.

²² Neither Fairshare nor WVR determine or levy the OA Fees. The OA Fees are determined by the individual resort properties; WVR only collected the OA Fees and then passes them along to the individual resorts.

²³ A positive fund balance indicates that WVR had more revenues in a given year than expenses. Typically, WVR required approximately \$7 million to \$8 million to service its payable accounts. In other words, the fund balance is needed to cover the payment of expenses when insufficient Program Revenues have been collected.

²⁴ Plaintiffs' Class Certification Motion, p. 4.

fees charged by such 3rd party management companies and the actual fees paid by the Plaintiffs and Proposed Class Members.²⁵

Further, as stated above, it is not clear if Plaintiffs seek to refund all Program Fees and OA Fees collected by Defendant, or only a portion of the fees that Plaintiffs deem to be excessive. For example, Named Plaintiff Carolyn Nolen testified that she wants all fees she paid to be refunded. Ms. Nolen testified as follows:²⁶

- Q. *All right. So what out of those moneys do you want returned? I'm not asking you to tell -- I'm not asking you to tell me what a jury or somebody else may award to you. I'm asking what -- what are you going to look at a jury and say, I paid these things in, and I would like these things returned to me as the restitution that you just identified?*
- A. ***So all of the fees that I've paid monthly, the assessment fees, the maintenance fees, as well as a refund for the timeshare.***

The notion that Plaintiffs want to have all fees reimbursed is consistent with Plaintiffs' statements in their Class Certification Motion. As per Plaintiffs' Class Certification Motion, "Fairshare is able to identify every owner that has ever been a part of the Trust, including contact information, it can determine the total amount any such individual [sic] paid in Program Fees, and it can determine all amounts it paid to WVR and other Wyndham entities, and/or amounts not paid to WVR/Wyndham entities."²⁷

If Plaintiffs claim the repayment of all fees, then but-for the Alleged Actions, Proposed Class Members would not have made any payments. However, the specification of the Proposed Class Members' actual economic position requires highly individualized analyzes since the Proposed Class Members have already "consumed" the services provided by WVR and the various resort properties. These benefits (as they have been received by the Proposed Class Members) will have to be deducted from any fees that the Proposed Class Members seek to have refunded. From an economic damages perspective, a full refund of all paid fees would overcompensate Proposed Class Members. As discussed above, an individualized analysis as to the market value of the Program Fees will be required. Similarly, with respect to the OA Fees, the market value of these fees will have to be ascertained. Questions to be answered will include the duration of each Proposed Class Members' Club Wyndham Plus membership, when the fees were paid (as the fees varied from year-to-year), which services were used by the Proposed Class Members, which resort assessed the OA fees,²⁸ etc.

²⁵ As per Dr. Upchurch, WVR is following management practices and fees charged that are in-line with the resort industry. This suggests that if operations would be conducted by an independent 3rd party management company, Class Members would be charged fees similar to those fees charged by WVR.

²⁶ Deposition of Carolyn Miller Jones, taken December 9, 2020 ("Nolen 2020 Deposition"), pp. 61-62.

²⁷ Plaintiffs' Class Certification Motion, pp. 8-9. (Emphasis added.)

²⁸ As discussed before, OA Fees are assessed independently assessed by each individual resort (and not by Fairshare or WVR). In the absence of the Alleged Actions, each resort would have to retain the services of a 3rd party resort management company. These companies would then set the applicable OA fees.

If Plaintiffs only seek a refund of a certain portion of the Program Fees and OA Fees, then the but-for analysis will have to establish how much a 3rd party management company would be charging the Proposed Class Members for the equivalent services they have received via WVR. Similarly, an analysis would have to be conducted how much resort management companies would be charging Proposed Class Members in lieu of the OA Fees that were assessed.

8.4.3. Damages Related to Excess Fund Balances are Duplicative of Program Fees Damages

Any excess in the fund balance is the result of the receipt of more Program Fees than expenses paid during a given one-year calendar period. Therefore, if Plaintiffs prevail and have all Program Fees refunded, then all excess fund balances have been refunded as well (and no additional fund balances can be paid).

If Plaintiffs prevail and have a portion of the Program Fees refunded, then an individualized analysis will have to be conducted to (i) determine how much of the excess fund balance was attributable to the individual Proposed Class Members and (ii) how much of the refunded portion of the Program Fee would need to be deducted from the excess fund balance attributable to each individual Class Member. **Table 2** illustrates this inquiry. Suppose we have two Proposed Class Members, Example A and Example B. After an analysis of Example A's and Example B's payment histories, their portion of the excess fund balance is determined to be \$2 and \$15, respectively. Next, if Plaintiffs prevail on their claim that Program Fee payments were in excess of market rates, an analysis will have to be conducted to determine the overpayment amount. Lastly, if the overpayment amount is more than the excess fund balance attributable to the specific Class Member (as is the case with Example A), no additional damages can be claimed by Example A. For Example B, the overpayment amount is less than the excess fund balance attributable. Therefore, Example B would be entitled to an additional \$5 payment, assuming liability can be established.

Table 2
Sample Illustration of Excess Fund Balance Damages

	Example A	Example B
Excess Fund Balance attributable to Class Member	\$ 2	\$ 15
Actual Program Fees Paid	\$ 500	\$ 700
But-For Program Fees	<u>\$ 495</u>	<u>\$ 690</u>
Claimed Overpayment of Program Fees	\$ 5	\$ 10
Excess Fund Balance Damages	none	\$ 5

8.4.4. Excess Fund Damages, if any, are Limited to a Subset of Proposed Class Members

In order to determine if there are any excess fund balance damages at all, an individualized analysis would need to be performed of what Program Fees were paid by each Class Member over the duration of the Class Member's membership in Club Wyndham Plus, when each Class

Member paid the program fees, and what expenses were incurred by WVR over the time the Class Member was a member in Club Wyndham Plus.

On a high level, WVR levies program fees for the operation of Club Wyndham Plus. The operations of the club require a certain level of fund balances to smooth out the receipt of Program Fees and the processing of WVR's payable accounts. Ms. Jodi Rogers estimates that WVR requires a fund balance of approximately \$7 million to \$8 million to finance the ongoing operations of Club Wyndham Plus. In addition to financing the ongoing operations, any excess in the fund balance is typically incorporated in the budget for the following year to offset any future expenses. Such an offset then **benefits** Proposed Class Members as this offset limits future increases in Program Fees. Ms. Rogers testified as follows when asked how the fund balance is used.²⁹

Q. *And what is that?*

A. *The fund balance is used in a large part for cash flow. To maintain the payables for current status for the club we need about 7 to 8 million to keep our payables current. We also use that fund balance to offset future program fees. You saw in the audit that there were many years that were a deficit, and that is us using the prior year's fund balance to offset that, and it helps us if there are any surprises to not have to do a special assessment. So we use it to pay cash flow and to offset future program fees.*

Given the above discussed use of any excess fund balances, a damages analysis has to consider if an individual Class Member benefited from reduced Program Fees. **Table 3** lays out two sample Proposed Class Members who experience different outcomes depending on the timing of the Program Fee payments and their membership status in Club Wyndham Plus.

²⁹ Deposition of Jodi Rogers, taken February 5, 2021 ("Rogers 2021 Deposition"), pp. 147-148.

Table 3
Sample Illustration of Excess Fund Balance Damages

	Example C	Example D	Example E
Year 1			
Program Fees Paid	\$ 200	\$ 200	Not yet part of Club Wyndham Plus
Allocated Club Wyndham Plus Expenses	<u>\$ 190</u>	<u>\$ 190</u>	
End of Year 1 Fund Balance (i.e., Excess Payment)	\$ 10	\$ 10	
Year 2			
Program Fees Paid	\$ 205	No longer member of Club Wyndham Plus	\$ 205
Allocated Club Wyndham Plus Expenses	<u>\$ 215</u>		<u>\$ 215</u>
Deficit	-\$ 10		-\$ 10
Prior Year Excess Payment	<u>\$ 10</u>		<u>\$ 10</u>
End of Year 2 Fund Balance	\$ 0		\$ 0
Potential Damages/Benefit³⁰	Damage: \$ 0	Damage: \$ 10	Benefit: \$ 10

For any Proposed Class Members that have an experience similar to Example C, the damages inquiry will result in zero damages. Only Proposed Class Members who exited Club Wyndham Plus prior to the use of any excess fund balances (above and beyond the approximately \$7 million to \$8 million that are needed for the operation of WVR) may experience economic damages. The proper inquiry will have to determine what excess fund balances are accumulated by a Class Member, the use of these balances over time, and then any potential remaining balance at the time when the Class Member existed Club Wyndham Plus (see Example D in **Table 3**).³¹

As a general matter, it is financially prudent to maintain an adequate fund balance to ensure the operation of the trust properties. Failure to maintain an adequate fund balance may trigger at times a special assessment or require the trustee to borrow the necessary funds. Neither of these alternatives are desirable as a special assessment would impose an unanticipated financial burden on the timeshare owners and obtaining outside financing would impose additional costs on the timeshare owners.

9. Conclusion

Plaintiffs seek to certify a class of individual consumers who a purchased timeshare interest currently (or previously) subject to the Fairshare Vacation Plan Use Management Trust. Plaintiffs claim, inter alia, that because an “analytical framework permeate[s] Plaintiffs’ and the putative

³⁰ Again, these damages are potentially duplicative of any damages claimed by Plaintiffs if Plaintiffs prevail on the refund (in total or partially) of the Program Fees as discussed in **Section 8.4.2**.

³¹ Note that any “damage” to one class member is a “benefit” to another class member that enjoys the reduced fees from application of prior “excess” funds to subsequent deficit years (see Example E in **Table 3**). In this regard, it appears that the Named Plaintiffs are not representative of those potential class members who seek a refund of “excess” funds when they were not able to reap the subsequent benefit of applying the “excess” funds to a deficit year.

Class's [sic] claims, class certification is proper."³² Further, Plaintiffs claim that "they only need to demonstrate that individual damage questions will not overwhelm the litigation ...[especially] when damages are based on a common formula or can be calculated using other easy or essentially mechanical methods."³³ However, based on EconLit's analysis of Plaintiffs' damages claims, the application of commonly accepted damages quantification theory, review of the documentary evidence, and Dr. Randall Upchurch's report, I formed the following opinions.

1. Claimed damages. As per the Amended Complaint, Plaintiffs claim damages related to (i) above-market financing, (ii) above-market loan servicing fees, (iii) the failure of WCF to share loan securitization proceeds with Plaintiffs, and (iv) excessive Program Fees and OA Fees. As per Plaintiffs' Class Certification Motion, Plaintiffs seems to have limited from class certification claims related to financing agreements and securitization (i.e., items (i) through (iii)). Since Plaintiffs have not indicated whether they completely abandoned class certification addressing these claims and any associated damages claims, EconLit addresses in this report all damages issues raised by Plaintiffs in their Amended Complaint
2. The damages quantification process. The computation of economic damages typically requires the use of the well-known and generally accepted damage framework that evaluates the difference between a plaintiff's economic position but-for the defendant's wrongful conduct (generally referred to as the "But-For" scenario), and the plaintiff's actual and projected actual economic position given the defendant's wrongful conduct (generally referred to as the "Projected Actual" scenario). In the current matter, the proper specification of Proposed Class Members' but-for economic position is critical as but-for the Alleged Actions, the Defendant would have entered into a series of contracts with 3rd party entities for the provisioning of services, if such 3rd party providers were available. If no such 3rd party services were available, a different economic analysis needs to be performed, as the members of the Proposed Class may or may not have purchased their timeshare interests.
3. Damages vary greatly among Proposed Class Members. As stated above, damages are dependent upon the specification of a Proposed Class Member's but-for and actual economic positions. The required analyses are dependent upon the type of damages claim and Class Member-specific economic factors. These factors include, but are not limited to, what type of financing would have been available in the absence of the Alleged Actions, what financing did the Proposed Class Members use, what benefits did the Proposed Class Members enjoy, over what time period (and in which resort) did they enjoy these benefits, when did the Proposed Class Members pay Program Fees, at what time did WVR run a "excess" fund balance, what is the Proposed Class Members' proportional share of the "excess" fund balance, was the "excess" fund balance subsequently used to fund future operations?

³² Plaintiffs' Class Certification Motion, p. 2.

³³ Plaintiffs' Class Certification Motion, p. 21.

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4. Only individualized analysis of Proposed Class Members' claims will result in an accurate assessment of damages. Based on the variety of claims and economic circumstances of the Proposed Class Members, it is my opinion that no formulaic approach is available to quantify Proposed Class Members' damages on an individual basis or in the aggregate to a reasonable degree of economic certainty. Only an individualized assessment of each Proposed Class Member's economic circumstances will result in a damages estimate that meets the criteria of reasonable economic certainty.

As previously stated, information received after the date of this report may affect EconLit's analysis. Therefore, EconLit reserves the right to modify its opinions and analysis based on such information.



Dwight J. Duncan, CFA
Managing Director
EconLit, LLC

February 17, 2020

Date

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Appendices

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Appendix A

EconLit LLC

Economic and Litigation Consulting

Dwight J. Duncan, M.S., CFA

Position

Mr. Duncan is the founder and Managing Director of the Phoenix, Arizona based firm of EconLit LLC. He is an economist who also holds the Chartered Financial Analyst designation and has over 24 years of experience in economic and financial consulting. Areas of expertise include economic analysis, intellectual property analysis, securities litigation, valuation of closely-held businesses, environmental damage quantification, class certification/class action analysis, general lost profits analysis and minority shareholder disputes. He has consulted with and been engaged as an independent expert witness for companies ranging from sole proprietorships to Fortune 500 in a wide range of industries throughout the U.S.



Selected Experience

Economic Analyses

Evaluated the economic feasibility of a proposed project to store Central Arizona Project (“CAP”) water in natural underground water tables. The project consisted of an analysis of the “market” for storing immense quantities of water for later use by large municipal water authorities throughout the Southwest. Demographic studies of developing metropolitan areas were conducted to project future water demand. Anticipated water supply given existing legal water rights and given proposed legislation to allow the buying and selling of water across state boundaries was also analyzed.

Analyzed the impact of a multimillion-dollar advertising campaign on the brand value of an international insurance corporation. The analysis was centered on expenditures tied to the Summer Olympic Games.

Evaluated the economic impact of the horse and greyhound dog racing industry on the local economy. Conducted primary research to quantify the impacts of the racing industry for use in proposed gaming legislation. Analysis included an assessment of the employment and income multiplier effects on other sectors of the local economy.

Analyzed the economics of the “Rent-To-Own” industry. Performed survey research to model the economic paradigm utilized by “Rent-To-Own” stores in a wide variety of business segments:

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Economic and Litigation Consulting

consumer electronics, computers, appliances, and furniture. Parameters studied included typical rental terms, financing implications, percentage of rentals through term to buyout, and profitability by segment.

Analyzed the sub-prime auto industry for a potential investment of approximately \$30 million. Conducted primary research into the underlying economic forces facing the industry and evaluated likely outcomes under different sets of assumptions regarding the economy overall and the industry in particular.

Evaluated development fees assessed by various municipalities for reasonableness in relationship with the impact imposed by both proposed and existing developments. Fees analyzed include sewer connection fees, water connection fees, emergency service fees, and public library fees.

Commercial Litigation

Lost Profits / Breach of Contract Analyses

Analyzed prevailing macroeconomic factors, changing demographics, changes in competing operations, customer trends, and media analysis. Statistical analyses included econometric modeling of historical sales in relation to overall sales and models to quantify damages arising from the alleged breaches of contract, business slander, breaches of fiduciary duties, breaches of franchise agreements, anticompetitive behavior, and other general commercial damage claims.

Industries analyzed include compressed natural gas distribution and retail sales, retail jewelry, gas stations and convenience stores, collectible dolls, hearth product distribution and retail operations, food distribution, electronics distribution, real estate brokerages, securities brokerages, internet application service providers, internet retail operations, specialty wheel manufacturers, microchip manufacturers, high-tension power line equipment manufacturers, chiropractic practices, steel rebar fabricators, brake service franchises, health care providers, asset disposal service providers, contract research organizations, restaurants, apartments, commercial real estate, master-planned communities, medical practices, dental practices, accounting practices, tankless water heater distribution and retail operations.

Minority Shareholder Disputes

Conducted financial and economic analysis to evaluate corporate actions as potentially oppressive to minority shareholders. Quantified economic damages to minority shareholders as a result of oppressive actions. Industries analyzed include national self-storage facilities, real estate lending, steel rebar fabrication, electrical power management devices, architectural firms,

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medical practices, dental practices, accounting practices, construction companies, and casino gaming.

Legal Malpractice

Quantified damages related to alleged legal malpractice in divorce proceedings. Analyzed the timing and implications of corporate restructuring, multiple issued financial statements versions, historical store-level company operations, industry trends and the value of the underlying business.

Personal Injury / Wrongful Death / Wrongful Termination

Analyzed complex personal injury, wrongful death and wrongful termination claims involving multiple company pension funds, company retirement saving funds, bonus eligibility and other related compensation issues. Professions analyzed include nurses, medical doctors, engineers, construction workers, barbers, highway workers, professional services, and business owners.

Wage and Hour Class Action

Conducted comprehensive analyses of compliance with wage and hour meal break, rest break and vacation day regulations. Industries analyzed include pest control services, retail home décor, women's clothing, reservation call center for rail transportation, retail auto sales, payday loans, and utilities distribution.

Bankruptcy

Analyzed and evaluated the feasibility of various plans presented to the court in bankruptcy proceedings. Industries analyzed include apartments, condominiums, timeshare units and housing construction. Analysis included industry trends, local real estate trends, macroeconomic factors and detailed financial statement modeling.

Finance / Securities Instruments

Evaluated a complex financial model developed to ascertain the financial feasibility of a 30 million peso international joint venture. Evaluated partnering alternatives, branding strategies, and profitability impacts on the United States joint venture partner.

Analyzed a financial model of a collateralized mortgage obligation instrument consisting of 18 types of bonds from multiple commercial and residential mortgages. The work involved discounted cash flow analysis and extensive sensitivity analysis.

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Evaluated potential corporate restructuring alternatives in connection with a multi-million dollar collateralized transaction of self-storage properties. Also determined associated impacts on the value of the underlying business and consulted on appropriate modifications to the transaction to maximize business value.

Construction Defects

Analyzed construction defect claims associated with various types of real asset assets including single family residential, apartments, condominiums, hotels, and office. Performed extensive statistical analysis of sampling design, identification of appropriate sampling frames, statistical sample size selection sufficient to achieve meaningful confidence levels and associated margins of error and evaluation of proposed extrapolation of sampling results.

Intellectual Property Analyses

Analyzed the economics of the United States beef industry in connection with licensing arrangements for an innovative tenderization technique subject to a patent. Analyzed competing technologies, the economic feasibility of the proposed process, the applicable market segment, pricing strategies, partnering strategies, and image branding through packaging and advertising. The analysis was used by the licensor in successfully negotiating a license fee arrangement for use of the technology.

Performed a detailed apportionment analysis in a case alleging infringement of a software copyright agreement. The project included a detailed industry analysis, development of an extensive database of software products, analysis of advertising, packaging and customer usage, as well as customer satisfaction surveys. Prepared a report to refute the \$28 billion damage claim.

Developed disgorgement damage and lost profits claim for a mainframe utility software program. Analyzed the infringing company's financial statements and determined appropriate deductible expenses to arrive at disgorgement profits. Also performed in-depth worldwide analysis of the subject company's customers to determine which customers switched to the infringing software.

Analyzed the golf industry accessory markets domestically and internationally to evaluate a claim arising from an allegedly lost international patent. Developed damage model to evaluate lost licensing opportunities in foreign markets.

Performed lost profits and reasonable royalty calculations for use in trial in a case alleging infringement of patented, coded optical-traffic preemption systems. The analysis included a definition of the relevant market and detailed analysis of the *Panduit* factors as well as the *Georgia Pacific* factors.

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Analyzed economic damages arising from the theft of trade secrets. Industries analyzed include mortgage brokerage, high-tension power lines, and residential real estate renovation and resale.

Securities Litigation

Quantified damages stemming from an alleged manipulation of an international commodity market. Analyses included data identification and collection, development of a database of commodity price explanatory variables, econometric model specification and estimation, and the projection of prices in the absence of the alleged manipulation.

Valuation of Closely-Held Businesses

Determined the fair market value of closely held businesses. Valuations included three major types of analyses. Income Approach analyses included review of pro-forma financial statements, discounted cash flow analyses, and financial ratio analyses. Market Approach analyses included extensive research of different industries, assembling financial information on selected companies, and analyses of financial statements for comparison purposes. Cost Approach analyses included researching relevant historical information on asset costs, estimating appropriate depreciation rates, and making adjustments to reflect current market conditions.

Conducted valuation assignments in various industries including international trucking distribution, restaurant supply, restaurants, international ice-cream franchise, dairy distribution, national self-storage facilities, specialized shipping containers, educational seminars, fast-food franchises, real estate general partnerships, dental supply distribution, latex glove distribution, family limited partnerships, residential home builders, investment general partnerships, hotel joint ventures, educational materials publishers, commercial and retail tire companies, tire retreading operations, internet application service providers, workman compensation service providers, insurance brokerage houses, contract research organizations, temporary staffing agencies, securities brokerages, real estate brokerages, architectural firms, engineering firms, medical practices, dental practices, autistic music therapy, and accounting practices.

Environmental Damage Quantification

Commercial / Residential Environmental Damages

Quantified the magnitude of property value diminution in a wide array of residential and commercial property arising from environmental contamination using economic analyses. Analyses included utilizing demographic and/or census data to determine areas comparable to the subject areas, extensive primary research to develop sales transaction histories over extended time periods, and complex multivariate regression analysis to analyze the property

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value diminution claims by comparing the subject areas to unimpacted areas. Media coverage of the contamination issues was also analyzed.

Analyzed numerous sources of environmental contamination including soil, air, and groundwater contaminated with radioactive materials, TCE's, PCB's and various other chemicals. Also conducted this type of analysis in relation to landfill citings, landfill operations, and wastewater treatment facilities. Range of geographic experience includes: Alabama, Arizona, California, Colorado, Florida, Georgia, Illinois, Missouri, Nevada, New Mexico, New Jersey, New York, Oklahoma, Texas, Utah, Virginia, and Washington D.C.

Natural Resource Damages

Consulted in the cooperative assessment of natural resource damages for the PCB contamination of the 39-mile Fox River in Wisconsin. Analyses included the review of survey design, survey implementation, data gathering, data interpretation, and extensive statistical modeling of revealed and stated preference data.

Analyzed a multi-billion dollar NRD assessment associated with groundwater contamination in the southwestern United States. Analyses included evaluation of water replacement models, hedonic regression analysis and lost state tax revenue claims.

Class Certification / Class Action Analyses

Conducted economic analysis to develop evidence relating to the evidentiary requirements of class certification as outlined in Federal Rule of Civil Procedure 23. Performed extensive analyses of census data, geographic characteristics, exposure pathways, and potentially intervening factors when evaluating the appropriateness of class certification.

Merger & Acquisition Analysis

Analyzed the potential effects on a company's income statement, balance sheet, and statement of cash flows resulting from the acquisition of another company. The companies had a combined market value of \$450 million.

Advised a privately held company during an acquisition by a publicly held corporation. Performed financial statement analysis, business valuation and various due diligence activities on behalf of the client. Advised the client on alternative deal structures and associated implications.

Consulted with the board of directors of a national milling company on a complex real estate project. The project involved joint ventures to develop a hotel, four office towers, 150,000 square feet of retail space and hundreds of residential units. Analyses included evaluation of

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financing alternatives through Improvement District bonds, assessment of cash flow probabilities, review of key zoning proposals and modeling of the entire project's cash flows. Ultimately presented the results of sophisticated monte-carlo financial simulations to the board of directors who used the findings to determine the company's strategy for the project.

Teaching Experience

Graduate Macroeconomic and Microeconomic Principles

Topics covered included application of microeconomic analysis to managerial decision-making at the firm-level in areas of supply and demand, production, cost and pricing as well as evaluation of competitive strategies and the economics of the firm.

Macroeconomic Principles and Intermediate Macroeconomics

Topics covered included unemployment/full employment, inflation/price stability, economic growth/gross national product, determination of national income, and monetary and fiscal policies.

Microeconomic Principles

Topics covered included functioning of markets (demand and supply analysis), elasticity's, theory of the firm (profit maximization), industry performance, allocation of resources, and government regulation.

Other Courses

Taught economics-related sections of annual Power Learning Series for Financial Advisory Services (a national training seminar for PricewaterhouseCoopers): 1995, 1996, 1997, and 1999.

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Publications (Previous 10 years)

“Arizona Blue Chip Economic Forecast”; Monthly Forecast Panel Member, 1995 – Present.

“Western Blue Chip Economic Forecast”; Monthly Forecast Panel Member, 1995 –Present.

Professional History

EconLit LLC, Managing Director (2000 – Present)¹

Arizona State University, Adjunct Professor of Economics in the ASU MBA program (2001 - 2004)

PricewaterhouseCoopers LLP, Director (final position) -- Financial Advisory Services (Dispute Analysis & Investigations Group / Economics and Statistics Practice, 1994 – 2000)

Arizona State University, Faculty Associate / Teaching Assistant in the Department of Economics (1992 – 1993)

Orbital Sciences Corporation, Consultant to the Chief Financial Officer (1992 –1994)

Education and Training

Chartered Financial Analyst (CFA[®]) conferred by the CFA Institute.

M.S., Economics, Arizona State University. Areas of specialization: Microeconomics, Macroeconomics, Finance, International Finance, and Econometrics.

B.S., Economics, Arizona State University, Summa cum Laude.

Other

NITA (National Institute for Trial Advocacy), Board of Trustees (2009, 2010, 2011)

- Audit Committee – Chair (2010, 2011)
- Executive Committee (2010, 2011)
- Investment Committee (2010, 2011)

¹ EconLit LLC was an independent subcontractor to Lancaster Consulting LLC on certain engagements during 2000 - 2004.

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Testimony History (Previous 4 Years)

Turnkey Solutions Corporation, vs. Hewlett-Packard Company (United States District Court, District of Colorado).

Deposition – February 15, 2017

Neal Cohen; Darren Chaffee; and SSL Assets, LLC, vs. Jaffe, Raitt, Heuer & Weiss, P.C. et al. (United States District Court, Eastern District of Michigan).

Deposition – March 21, 2017

Trial – September 29, 2017

Ronald Shurts et al. vs. Phil S. Flemming et al. (Superior Court of Arizona, Maricopa County).

Deposition – March 27, 2017

City of Glendale, Arizona vs. Vieste SPE, LLC. et al. (Superior Court of Arizona, Maricopa County).

Deposition – May 4, 2017

Timber Mesa Fire and Medical District dba Lakeside Fire District, Applicant (Office of Administrative Hearings, Arizona).

Hearing – June 30, 2017

Jeffrey Soffer, Turnberry Development vs. The Bank of Nova Scotia, New York Agency, et al. (District Court, Clark County Nevada).

Deposition – July 12, 2017

The Mark Condominium Owners Association vs. The Mark Condominiums, LLC, (Superior Court of California, County of San Diego, Central Branch).

Deposition – September 8, 2017

ZarCalRes Tempe, LLC vs. Mill Avenue Apartments Limited Partnership et al. (Superior Court of Arizona, Maricopa County).

Deposition – October 6, 2017

First Texas Holdings Corporation et al. vs. Byron Harding, et al. (Superior Court of Arizona, Maricopa County).

Deposition – October 19, 2017

John C. Pritzlaff, III, et al. vs. Anne Pritzlaff Symington et al. (Superior Court of Arizona, Maricopa County).

Deposition – December 13, 2017

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Ventures Edge Legal, PLLC vs. GoDaddy.com, LLC (United States District Court, District of Arizona).
Deposition – January 24, 2018

Lake Washington Homeowners Association, Inc. vs. D.R. Horton, Inc. (Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida Civil Division).
Deposition – February 9, 2018

Dream Games of Arizona Inc, et al. vs. Lightning Games LLC et al. (Superior Court of Arizona, Maricopa County).
Trial – March 26, 27 and April 6, 2018

Arbor Real Homeowners Association vs. Western Pacific Housing, Inc. (JAMS Arbitration).
Deposition – May 6, 2018
Arbitration -- June 26, 2018

Litmath, LLC vs. United States Fire Insurance Company et al. (Superior Court of Arizona, Maricopa County).
Deposition – May 10, 2018

Bamford Realty, Inc. et al. vs. Toll Brothers, Inc. et al. (Superior Court of Arizona, Maricopa County).
Deposition – June 7, 2018

Fidelity National Title Insurance Company et al. vs. Centerpoint Mechanic Lien Claims et al. (Superior Court of Arizona, Maricopa County).
Deposition – June 28, 2018

Arizona Biltmore Hotel Villas Condominiums Association vs. The Conlon Group Arizona, LLC et al. (Superior Court of Arizona, Maricopa County).
Trial - July 10, 2018

Marilyn Beltran vs. Rafel Sifuentes (United States District Court, District of Arizona).
Deposition – August 9, 2018

4Front Advisors, LLC vs. CWNevada, LLC et al. (American Arbitration Association).
Trial – November 9, 2018

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Jose Mendez, vs. AVIS Budget Group, Inc. et al. (United States District Court, District of New Jersey)

Deposition – January 9, 2019

One Marina Owners Association vs. One Marina Homes, LLC, et al. (JAMS Arbitration).

Deposition – March 22, 2019

Trial – April 22, 2019

Andrew Kunasek vs. Christopher Johnson, et al. (Superior Court of Arizona, Maricopa County).

Trial – April 30, 2019

Green Cross Medical, Inc. vs. John V. Gally (Superior Court of Arizona, Navajo County).

Deposition – June 18, 2019

VIP Construction, Inc. vs. Bahia Live/Work Lofts and Townhomes, LLC (American Arbitration Association).

Deposition – October 1, 2019

Trial – October 17, 2019

MedImpact Healthcare Systems, Inc. et al. vs. LMGW Certified Public Accountants, LLP et al. (Superior Court of the State of California, County of San Diego).

Deposition – October 22, 2019

Trial – November 18, 2019

HRH, LLC vs. Teton County, Wyoming et al. (United States District Court for the District of Wyoming).

Deposition – November 7, 2019

Nolan Ryan vs. Timothy Hammer, et al. (American Arbitration Association).

Deposition – January 3, 2020

Trial – July 31, 2020

Windsor Capital Group, Inc. vs. John Moller et al. (Superior Court of the State of California, County of Santa Barbara).

Deposition – February 12, 2020

Asset Refresh, LLC et al. vs. Anthony S. Warren et al. (Superior Court of Arizona, Maricopa County).

Deposition – August 5, 2020

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Fresh Start BVBA et al. vs. Jaffe Raitt Heuer & Weiss, P.C. et al. (Private Arbitration).

Trial – August 5, 2020

Gamino adv. Legacy Construction (Private Arbitration)

Trial – November 19, 2020

Johnson vs. Hodges (Second Judicial District Court of the State of Nevada in and for the County of Washoe)

Deposition – December 18, 2020

Pellerin vs. FerrellGas, L.P. (Superior Court of Arizona, Mohave County)

Deposition – December 22, 2020

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Appendix B

Documents Considered

Note: Although an attempt has been made to list all the documents and information that EconLit considered, this list may need to be supplemented if it is determined that certain documents and/or information have been inadvertently omitted. Additionally, some of the documents listed consist of filenames as they appeared in the electronic production to EconLit. Therefore, while some documents listed appear to be incomplete, they are listed using the filenames that were provided to EconLit.

1. 2008.02.05-Final FVOA Board Minutes.pdf
2. 2008.05.08-Final FVOA Board Minutes.pdf
3. 2008.08.12-FVOA Board Minutes.pdf
4. 2008.09.24-Final FVOA Board Minutes special meeting.pdf
5. 2008.11.12-Final FVOA Board Minutes.pdf
6. 2008.12.17-Final FVOA Board Minutes.pdf
7. 2009.03.26-Final FVOA Board Minutes.pdf
8. 2009.05.28-Annual Meeting-Draft.pdf
9. 2009.07.14-Final FSVOA Board Minutes.pdf
10. 2009.11.05-Final FSVOA Board Minutes.pdf
11. 2009.11.23-Final FSVOA Board Minutes.pdf
12. 2010.11.11-Final FSVOA Board Minutes.pdf
13. 2010.12.15-Final -Special Meeting FSVOA Board Minutes.docx
14. 2011-04-05-BOD-FINAL.pdf
15. 2011-10-11-FINAL.pdf
16. 2012-02-09-BOD-Special-FINAL.pdf
17. 2012-04-26-BOD-FINAL.pdf
18. 2012-05-24-ANNUAL-FINAL.pdf
19. 2012-08-08-BOD-FINAL.pdf
20. 2012-08-16-BOD-Special-FINAL.pdf
21. 2012-09-10-BOD-Special-FINAL.pdf
22. 2012-11-02-BOD-FINAL.pdf
23. 2013-03-28-BOD-FINAL.pdf
24. 2013-05-16-ANNUAL-FINAL.pdf
25. 2013-07-13-BOD-FINAL.pdf
26. 2013-08-15-BOD-FINAL.pdf
27. 2013-09-26-BOD-FINAL.pdf
28. 2013-10-30-BOD-FINAL.pdf
29. 2013-11-25-BOD-FINAL.pdf
30. 2014.09.11-BOD-FINAL.pdf
31. 2014.10.30-BOD-FINAL.pdf
32. 2014.12.19-BOD-FINAL.pdf
33. 2014-02-20-BOD-FINAL.pdf
34. 2014-07-16-BOD-FINAL.pdf
35. 2015.04.17-ANN-FINAL.pdf
36. 2015.06.18-BOD-FINAL.pdf
37. 2015.11.04-BOD-FINAL.pdf
38. 2016 - CWP Budget Registration.pdf
39. 2016 and 2017 Audited Financials.pdf
40. 2016.03.31-BOD-FINAL.pdf
41. 2016.05.19-ANN-FINAL.pdf
42. 2016.10.16-BOD-BudgetWkshp-FINAL.pdf
43. 2016.11.04-BOD-FINAL.pdf
44. 2017 - CWP Budget Registration.pdf
45. 2017.03.10-BOD-FINAL.pdf
46. 2017.03.17-BOD-FINAL.pdf
47. 2017.07.20-BOD-FINAL.pdf
48. 2017.08.02-ANNUAL-FINAL.pdf
49. 2017.10.23-BOD-BudgetWkshp-FINAL.pdf
50. 2017.12.18-BOD-DRAFT.pdf

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51. 2017.12.18-BOD-FINAL.pdf
52. 2017-09-25 - Michael Lewis Deposition - mini (Vol 1)_(113034851_1).PDF
53. 2017-09-25 - Michael Lewis Deposition - mini (Vol 2)_(113034853_1).PDF
54. 2017-09-25 - Michael Lewis Deposition (Vol 1)_(113034849_1).PDF
55. 2017-09-25 - Michael Lewis Deposition (Vol 2)_(113034850_1).PDF
56. 2017-11-06 - Durkee, Thomas - Deposition Transcript - mini_(113322784_1).PDF
57. 2018 - CWP Budget Registration.pdf
58. 2018 Audited Financials.pdf
59. 2018.05.15-BOD-FINAL.pdf
60. 2018.10.04-ANNUAL-DRAFT.pdf
61. 2018.10.17-BOD-FINAL.pdf
62. 2018.10.30-BOD-FINAL.pdf
63. 2019 Audited Financials.pdf
64. 2019 CWP Budget FINAL.pdf
65. 2019.02.01-AWOM.pdf
66. 2019.04.30-BOD-FINAL.pdf
67. 2019.05.16-BOD-FINAL.pdf
68. 2019.07.29-AWOM.pdf
69. 2019.08.19-BOD-FINAL.pdf
70. 2019.10.28-BOD-FINAL.pdf
71. 2020 CWP Budget FINAL.pdf
72. 2020.01.07-UWA-Appt Dir-Gustafson.pdf
73. 2020.03.24-BOD-FINAL.pdf
74. 2020.04.10-BOD-FINAL.pdf
75. 2020.05.21-BOD-FINAL.pdf
76. 2020.08.03-BOD-FINAL.pdf
77. 2020.08.05-BOD-FINAL.pdf
78. 2020.09.02-ANNUAL-FINAL.pdf
79. 2020.10.05-BOD-FINAL.pdf
80. 2020.11.02-BOD-DRAFT.pdf
81. 2020.11.12-UWA-Appt Dir-Henderson.pdf
82. 2020-05-26 [DE 27] Fairshare_RCI_Wyndham_s Motion to Dismiss & Memo of Law (bookmarked)_(122360002_1).PDF
83. 2020-10-08 [DE 45] Amended and Restated Class Action Complaint (bookmarked) (Wyndham - Nolen)_(123769379_1).PDF
84. 2020-11-05 [DE 48] - Fairshare_s Motion to Dismiss Amended Complaint (Wyndham - Nolen)_(124026889_1).PDF
85. 2020-11-19 [DE 49] - RESPONSE in Opposition re [48] MOTION to Dismiss Amended Complaint (bookmarked) (Wyndham - Nolen)_(124157246_1).PDF
86. 2020-11-19 [DE 49] - RESPONSE in Opposition re [48].PDF
87. 2020-12-01 [DE 52] - Fairshare_s Reply in Support of Motion to Dismiss Amended Complaint (Wyndham - Nolen)_(124221004_1).PDF
88. 2020-12-04 Nolen_s Responses to Fairshare_s 1st RFPs_(124320372_1).PDF
89. 2020-12-04 Nolen_s Responses to Fairshare_s RFAs_(124320373_1).PDF
90. 2020-12-09 Transcript of Carolyn Nolen_Carolyn Miller Jones (Condensed)_(124395257_1).PDF
91. 2020-12-09 Transcript of Carolyn Nolen_Carolyn Miller Jones (Exhibits)_(124395323_1).PDF
92. 2020-12-09 Transcript of Carolyn Nolen_Carolyn Miller Jones (full)_(124392053_1).PDF
93. 2020-12-09 Transcript of Carolyn Nolen_Carolyn Miller Jones (Index)_(124395297_1).PDF
94. 2020-12-11 Transcript of Windy Lea Humphries Kelley (condensed)_(124559070_1).PDF
95. 2020-12-11 Transcript of Windy Lea Humphries Kelley (exhibits)_(124559106_1).PDF
96. 2020-12-11 Transcript of Windy Lea Humphries Kelley (full)_(124559015_1).PDF
97. 2020-12-11 Transcript of Windy Lea Humphries Kelley (index)_(124559024_1).PDF
98. 2020-12-14 Transcript of Cara Kelley (condensed)_(124557770_1).PDF
99. 2020-12-14 Transcript of Cara Kelley (full)_(124557751_1).PDF
100. 2020-12-14 Transcript of Cara Kelley (index)_(124557763_1).PDF
101. 2020-12-17 Transcript of Paula Litton ((index)_(124557427_1).PDF
102. 2020-12-17 Transcript of Paula Litton (condensed)_(124557450_1).PDF
103. 2020-12-17 Transcript of Paula Litton (full)_(124557417_1).PDF
104. 2021-02-17 Signed Upchurch Report.pdf

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105. 327139 Errata.pdf
106. 327139 Rogers.Jodi 020521.RS.pdf
107. 35975 Duncan.Michael 071317.full_(112269480_1).PDF
108. 35975 Duncan.Michael 071317.mini_(112269492_1).PDF
109. 35975 Duncan.Michael Plaintiff_s Exhibit 1_(112269647_1).PDF
110. 35975 Duncan.Michael Plaintiff_s Exhibit 15_(112269649_1).PDF
111. 35975 Duncan.Michael Plaintiff_s Exhibit 27_(112269650_1).PDF
112. 35975 Duncan.Michael Plaintiff_s Exhibit 3_(112269648_1).PDF
113. 35975 Duncan.Michael Plaintiff_s Exhibit 47_(112269651_1).PDF
114. 35975 Duncan.Michael Plaintiff_s Exhibit 48_(112269652_1).PDF
115. 35975 Duncan.Michael Plaintiff_s Exhibit 49_(112269653_1).PDF
116. 35975 Duncan.Michael Plaintiff_s Exhibit 59_(112269654_1).PDF
117. 35976 Rogers.Jodi 071417.full_(112269664_1).PDF
118. 35976 Rogers.Jodi Plaintiff_s Exhibit 17_(112269669_1).PDF
119. 35976 Rogers.Jodi Plaintiff_s Exhibit 31_(112269670_1).PDF
120. 35976 Rogers.Jodi Plaintiff_s Exhibit 61_(112269671_1).PDF
121. 36212 Stolt.Robert 072617.full_(112501005_1).PDF
122. 36212 Stolt.Robert 072617.mini_(112501006_1).PDF
123. 36212 Stolt.Robert Plaintiff_s Exhibit 19_(112501011_1).PDF
124. 36212 Stolt.Robert Plaintiff_s Exhibit 62_(112501013_1).PDF
125. 36212 Stolt.Robert Plaintiff_s Exhibit 63_(112501014_1).PDF
126. 36212 Stolt.Robert Plaintiff_s Exhibit 64_(112501015_1).PDF
127. 36212 Stolt.Robert Plaintiff_s Exhibit 65_(112501016_1).PDF
128. 36212 Stolt.Robert Plaintiff_s Exhibit 66_(112501017_1).PDF
129. C. Kelley Exhibit 5010.pdf
130. C. Kelley Exhibit 5011.pdf
131. C. Kelley Exhibit 5012.pdf
132. C. Kelley Exhibit 5013.pdf
133. C. Kelley Exhibit 5014.pdf
134. C. Kelley Exhibit 5015.pdf
135. C. Kelley Exhibit 5016.pdf
136. C. Kelley Exhibit 5017.pdf
137. C. Kelley Exhibit 5018.pdf
138. C. Kelley Exhibit 5019.pdf
139. C. Kelley Exhibit 5020.pdf
140. C. Kelley Exhibit 5021.pdf
141. C. Kelley Exhibit 5022.pdf
142. C. Kelley Exhibit 5023.pdf
143. C. Kelley Exhibit 5024.pdf
144. Embree Tommy 08.03.17_(112601981_1).PDF
145. Exhibit 01_(112601944_1).PDF
146. Exhibit 02_(112601945_1).PDF
147. Exhibit 03_(112601938_1).PDF
148. Exhibit 04_(112601939_1).PDF
149. Exhibit 05_(112601940_1).PDF
150. Exhibit 06_(112601941_1).PDF
151. Exhibit 07_(112601942_1).PDF
152. Exhibit 08_(112601943_1).PDF
153. Exhibit 1 - Durkee Deposition_(113807912_1).PDF
154. Exhibit 1 - Fishkind Deposition_(113807935_1).PDF
155. Exhibit 2 - Durkee Deposition_(113807913_1).PDF
156. Exhibit 2 - Fishkind Deposition_(113807936_1).PDF
157. Fairshare Vacation Owners Executed Engagement Letter.pdf
158. Final Expert Report of Thomas Durkee_(113263945_1).PDF
159. Jodi Rogers 02-05-2021.txt
160. Jodi Rogers 02-05-2021_cond.pdf
161. Jodi Rogers 02-05-2021_full.pdf
162. Kelley, Cara 12-14-2020.mp4

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163. Kelley, Windy 12-11-2020.mp4
164. Lewis 01 - Amended Notice of Video Deposition_(113034689_1).PDF
165. Lewis 02 - Subpoena_(113034685_1).PDF
166. Lewis 03 - Response to Defendants_ Subpoena_(113034681_1).PDF
167. Lewis 04 - Documents Considered_(113034682_1).PDF
168. Lewis 05 - Management Trust Agreement_(113034687_1).PDF
169. Lewis 06 - Operating Results of Reportable Segments_(113034686_1).PDF
170. Lewis 07 - Club Wyndham Plus 2012 Budget_(113034691_1).PDF
171. Lewis 08 - Division of Corporations_(113034690_1).PDF
172. Lewis 09 - Receivable Entries for Tommy Embree_(113034683_1).PDF
173. Lewis 10 - Affidavit of Michael Lewis_(113034692_1).PDF
174. Lewis 11 - Master Summary_(113034684_1).PDF
175. Lewis 12 - 2016 Form 10-K_(113034688_1).PDF
176. RodgersJ-1.pdf
177. RodgersJ-10.pdf
178. RodgersJ-11.pdf
179. RodgersJ-2.pdf
180. RodgersJ-3.pdf
181. RodgersJ-4.pdf
182. RodgersJ-5.pdf
183. RodgersJ-6.pdf
184. RodgersJ-7.pdf
185. RodgersJ-8.pdf
186. RodgersJ-9.pdf
187. ROUGH DRAFT Fishkind.Henry - Transcript.full_(113178136_1).PDF
188. ROUGH DRAFT Fishkind.Henry - Transcript.mini_(113178135_1).PDF
189. Wyndham (Nolen) Motion for Class Certification (Final - Redactions Highlighted).pdf
190. Wyndham_Nolen_000001 - 000634_(124410147_1).pdf
191. Wyndham_Nolen_000635 - 001141_(122025631_1).pdf
192. Wyndham_Nolen_001202 - 001241_(122044936_1).PDF
193. Wyndham_Nolen_001283 - 002413_(122045130_1).pdf
194. Wyndham_Nolen_002414 - 002452_(122045207_1).PDF
195. Wyndham_Nolen_002453 - 002455_(122045421_1).PDF
196. Wyndham_Nolen_002456 - 002460_(122045451_1).PDF
197. Wyndham_Nolen_002461 - 002663_(122045565_1).PDF
198. Wyndham_Nolen_002664 - 002722_(122045690_1).PDF
199. Wyndham_Nolen_002723 - 002725_(122045709_1).PDF
200. Wyndham_Nolen_002726 - 002838_(122045785_1).PDF
201. Wyndham_Nolen_000001 .PDF
202. Wyndham_Nolen_000635 .PDF
203. Wyndham_Nolen_001142 CONFIDENTIAL.PDF
204. Wyndham_Nolen_001202 .PDF
205. Wyndham_Nolen_001242 CONFIDENTIAL.PDF
206. Wyndham_Nolen_001269 CONFIDENTIAL.PDF
207. Wyndham_Nolen_001283 .PDF
208. Wyndham_Nolen_002414 .PDF
209. Wyndham_Nolen_002453 .PDF
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Appendix C

Compensation

EconLit's billing rates range from \$130 to \$495 per hour, as follows:

Managing Director	\$495
Directors	\$395
Managers	\$300
Senior Consultants	\$200
Consultants	\$115
Para-professional services	\$130

EconLit's compensation is not dependent upon the substance of the opinions contained in this report.

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CAROLYN NOLEN, WINDY KELLEY,
CARA KELLEY, and PAULA LITTON,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

-vs-

CASE NO. 6:20-CV-330-PGB-40EJK

FAIRSHARE VACATION OWNERS
ASSOCIATION,

Defendant.
_____ /

VIDEOTAPED
VIDEOCONFERENCE
DEPOSITION OF:

CAROLYN MILLER JONES

DATE TAKEN:

Wednesday, December 9, 2020

TIME:

10:32 a.m. to 2:36 p.m.

PLACE:

All participants appearing
remotely via Zoom videoconference

REPORTED BY:

Beverly Replogle, RPR
Notary Public

1 APPEARANCES:

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14

15 Appearing via Zoom videoconference on
16 behalf of the Defendant

16

ALSO PRESENT:

17

Deverick Sheftall, Videographer, appearing via
18 Zoom videoconference

19

20

21

22

23

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25

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1 THE VIDEOGRAPHER: Good morning. We are
2 now on the record for the video deposition of
3 Carolyn Jones taken in the case of Carolyn
4 Nolen, et al., versus Fairshare Vacation Owners
5 Association.

6 Today is Wednesday, November [sic] 9, 2020,
7 and the time is 10:32 a.m. This deposition
8 today is being held via Zoom Communication
9 Systems. I'm Deverick Sheftall. I'm the
10 videographer. And the court reporter today is
11 Bev Replogle.

12 Would all counsel present please introduce
13 themselves, after which the court reporter will
14 swear in the witness.

15 MR. MILLER: I'm Rodney Miller representing
16 the plaintiff and, for purposes of this
17 deposition, Ms. Carolyn Jones.

18 MR. BARTHLE: Also on behalf of the
19 plaintiffs, Patrick Barthle, from Morgan &
20 Morgan.

21 MR. McCOY: This is Kevin McCoy on behalf
22 of Fairshare, the defendants in this matter.

23 THE COURT REPORTER: Before I swear in the
24 witness, I need for the attorneys participating
25 in this deposition to acknowledge that I, the

1 court reporter, am not present with the witness
2 and that I will be reporting the proceedings and
3 administering the oath remotely. This
4 arrangement is pursuant to the Florida Supreme
5 Court Administrative Order AOSC20-16 (and
6 extended by AOSC20-23). The parties and their
7 counsel consent to this arrangement and waive
8 any objections to this manner of reporting.

9 Please indicate your agreement by stating
10 your name and your agreement on the record,
11 starting with counsel for the plaintiff.

12 MR. MILLER: I, Rodney Miller, on behalf of
13 the plaintiffs, acknowledge and agree.

14 MR. McCOY: Kevin McCoy, on behalf of
15 Fairshare, the defendant, acknowledge and agree.

16 THE COURT REPORTER: Will each party,
17 including the witness, acknowledge by saying
18 "yes," that they are agreeable that I, a Florida
19 notary, will be swearing in the witness via
20 videoconference means today starting with the
21 plaintiffs' counsel?

22 MR. MILLER: Rodney Miller on behalf of
23 plaintiffs; I agree.

24 MR. McCOY: Kevin McCoy on behalf of
25 Defendant Fairshare; I agree.

1 MS. JONES: Carolyn Jones; I agree.

2 THE COURT REPORTER: Ms. Jones, would you
3 please raise your right hand for me, please? Do
4 you swear or affirm that the testimony you're
5 about to give in this cause will be the truth,
6 the whole truth, and nothing but the truth?

7 THE WITNESS: Yes, I do. I swear.

8 CAROLYN MILLER JONES,
9 having been first duly sworn, was examined and testified
10 upon her oath as follows:

11 DIRECT EXAMINATION

12 BY MR. McCOY:

13 Q All right. Good morning, Ms. Jones. We met
14 shortly before we started the deposition. I don't -- I
15 hope we won't be terribly long today. It's my goal to
16 try to get through this pretty quickly. I think we'll
17 have some administrative things to start with, just kind
18 of the nuts and bolts of a deposition; some background in
19 terms of you, who you are; some stuff about the claims;
20 and then we'll probably finish with some discussion over
21 some particular documents in the case.

22 Have you ever given a deposition before?

23 A I have.

24 Q All right. How long ago was that?

25 A It's been a couple of years. It was not

1 personal. It was with work.

2 Q Besides that one deposition, have you given any
3 other depositions in your lifetime?

4 A I've only done two, and they were both with
5 work.

6 Q Okay. A couple of ground rules. We have a
7 stipulation between counsel that we're proceeding under
8 here with some of the remote technology; but in terms of
9 us communicating, you and me, it's -- even though we
10 have a video and we have a court reporter and we have a
11 camera, it's very hard to get answers to questions and
12 get a clean record if we talk over each other or if you
13 say "uh-huh," "huh-uh," or head shakes or anything like
14 that.

15 So for purposes of us getting a clean
16 back-and-forth, is it okay with you if -- you know, I'll
17 try and finish my question before you answer and we not
18 talk over each other. It's natural sometimes. You
19 anticipate what the question is. You're ready to get on
20 with your day and get out of here and you want to give
21 me the answers so we can move on; but if we can just not
22 talk over each other and you'll give me verbal
23 responses, that will help. Is that okay with you?

24 A Yes.

25 Q From time to time, I can promise you I may ask

1 a question, it sounds fantastic in my mind. I
2 completely understand what I'm asking, and I can usually
3 tell by the look on somebody's face that they don't
4 understand at all what I'm asking. Just let me know if
5 you don't understand my questions. I'll be happy to
6 rephrase them to the extent that I can and make them
7 clear for you.

8 If you answer my questions, though, I'll --
9 implied in there is that you understood the question and
10 you didn't need a clarification. Is that okay with you?

11 A Yes.

12 Q Any medications or illnesses or any other thing
13 that isn't apparent to all of us sitting here that would
14 prevent you from giving truthful testimony pursuant to
15 the oath that you just gave?

16 A No.

17 Q Is there anyone with you today in the room
18 where you are located for this remote deposition?

19 A No.

20 Q And where are you physically located today?

21 A I'm at my home, which I have two small dogs, so
22 you may hear them moving around, but that is it.

23 Q All right. So other than the two dogs there,
24 there's no one else in the home with you today?

25 A My daughter is upstairs in her room, but she's

1 been told not to come out until I tell her she can.

2 Q Understood. That leads to another thing that I
3 didn't bring up. This isn't a marathon. Like I said, I
4 don't think we'll be terribly long today; but if at any
5 point you need to take a break for any reason, just let
6 me know, and we'll take a break so you can go do
7 whatever it is you need to do.

8 I presume that pursuant to the -- is that okay
9 with you?

10 A Yes.

11 Q I tend to just keep going so we can get done;
12 but if at any point you need to take a time out, you let
13 me know.

14 A Okay.

15 Q Any -- pursuant to our stipulation, you
16 shouldn't have any kind of devices or anything other
17 than your camera that we're going to use to communicate.
18 Is that -- is that correct?

19 A Okay. So I should put my phone in a different
20 room?

21 Q Yes. You should not have --

22 A Okay.

23 Q -- a phone --

24 A Okay.

25 Q -- with you right now.

1 A Okay.

2 Q And so beyond our communication through this
3 kind of remote portal, that's the only communication
4 that should be happening.

5 Now, obviously at breaks, if you need to go
6 talk to others, then that's -- that's fine --

7 A Yeah.

8 Q -- but if you could do that.

9 A Okay. Let me place this in a -- in another
10 room.

11 Q That would be great. Thank you.

12 A Okay.

13 (The witness left the room.)

14 MR. MILLER: And, Kevin, while she does that --

15 MR. McCOY: Sure.

16 MR. MILLER: -- am I correct that you want me
17 to just limit my objections to the form?

18 MR. McCOY: That would be great, yeah.

19 MR. MILLER: Okay.

20 THE WITNESS: Okay.

21 (The witness returned.)

22 MR. McCOY: Obviously, Rodney, if there are --
23 if there are some objections where I need a
24 clarification, you know, I'll let you know.

25 MR. MILLER: Okay.

1 BY MR. McCOY:

2 Q All right. Well, let's get started on the
3 stuff that we're really here to talk about.

4 So, Ms. Jones, will you give us your -- your
5 current full name?

6 A Carolyn Miller Jones.

7 Q And you mentioned this before we got started.
8 When did you get remarried and take on the last name
9 "Jones"?

10 A October 26th of last year, 2019.

11 Q And what is your current husband's name?

12 A Christopher Kyle Jones.

13 Q What was your prior husband's name -- what is
14 your prior husband's name?

15 A Justin Emmett Nolen.

16 Q And when were you married to Mr. Nolen?

17 A December 15, 2001, and we divorced in 2017. I
18 don't recall the exact date that it was final.

19 Q And how old are you today?

20 A I'm 39.

21 Q What's your date of birth?

22 A 10/10/81.

23 Q How many children do you have?

24 A I have two biological children and two
25 stepchildren.

1 Q Your biological children, were they children
2 with Mr. Nolen?

3 A Yes.

4 Q And what are their names?

5 A Brantley Emmett Nolen and Anaclaire Maria
6 Nolen.

7 Q And how old is Brantley?

8 A He is 16.

9 Q And I think you said Emma Clair?

10 A Annaclaire.

11 Q Annaclaire? How old is she?

12 A She is 14.

13 Q What do you do for employment, Ms. Jones --
14 Mrs. Jones?

15 A I work for Hartzell Engine Technologies. I'm
16 their director of materials and supply chain.

17 Q What do you do in that role as the director of
18 supply chain?

19 A So I manage all of the incoming supplies to
20 support production of our plant. I also oversee the
21 shipping and receiving areas as well as packaging,
22 material handling, and I'm over all of the inventory
23 control.

24 I manage the demand plan, what we plan to sell
25 and ship, and make sure that we have the right materials

1 on order to support the demand plan.

2 Q And just kind of an estimate, how big is the
3 operation that you work for in terms of size of a
4 company?

5 A Like number of employees --

6 Q Sure.

7 A -- or --

8 Q Let's start with that.

9 A Okay. Around 120.

10 Q And do you know roughly how big an annual
11 revenue the business is?

12 A Just under 35 million.

13 Q How long have you been in your position as the
14 director of supply chain? I know you had some other
15 elements to your role, but that's kind of what I was
16 able to write down.

17 A Around two years. I've been with the company
18 until -- a total of 12 years.

19 Q What was your position before you took on the
20 current position of director of supply chain?

21 A The planning manager, which that was over the
22 scheduling.

23 Q How long were you in the role of a planning
24 manager dealing with scheduling?

25 A I don't recall specifically how many years.

1 Q So it's 2020. I have you roughly 2018 coming
2 into your current role. Any estimate of just how far
3 back into, say 20- -- the 2010s, I guess, you may have
4 taken on that position if you've been with the company
5 12 years?

6 A I mean, I was hired in 2008 as a manager of
7 planning and other things; and then a few years after
8 that, was over planning and inventory or materials; and
9 then 2018, then took on the supply chain added to it.
10 So my job along the years just got more things added to
11 it. Nothing was really taken away.

12 Q Understood. So you've -- you've had additional
13 responsibilities given to you since you joined the
14 company; fair to say?

15 A Right.

16 Q Do any of your responsibilities in any of your
17 job titles deal with contracts and -- and dealing with
18 contracts for the company?

19 A The only thing that I deal with currently would
20 be a tooling contract where we have an agreement with a
21 supplier to manage our tooling. Besides that, the only
22 other contract that I've really dealt with in the last
23 few years would be something like an LTA, long-term
24 agreement, to hold pricing or agree to supply for a
25 period of time.

1 Q So the contract supply -- the contract that you
2 deal with with your tooling supplier, what do you --
3 what is your involvement in that contract? Are you --
4 are you part of the team that sets the terms, or are you
5 part of the team that deals with the contract and how
6 it's going to be implemented or met or enforced or
7 anything like that?

8 A So I'm part of the team that sends these
9 agreements to suppliers to get them to sign the
10 contract. Occasionally there is some negotiation back
11 and forth of, okay, they agree to do this part but not
12 this part. But all of that is actually -- any changes
13 to a contract is ran through our legal counsel that --
14 that represents our company.

15 Q Understood. But you're still part of the team
16 that is involved in the discussions over the terms and
17 the elements of the contract; is that true?

18 A Yes.

19 Q The LTA, you mentioned that was something
20 associated with holding pricing of some sort?

21 A Well, it's a pricing agreement where -- between
22 us and the suppliers.

23 Q And that's negotiating what they'll supply to
24 you for a price over, say, a period of time, months or
25 years --

1 A Correct.

2 Q -- or whatever; is that true?

3 A Yes.

4 Q All right. And I would imagine that in many of
5 these contracts, there's -- besides just the price and
6 time, there's just other terms that are part of the
7 contract in terms of how -- how the relationship is
8 supposed to work, correct?

9 A Yes.

10 Q Is it fair to say that -- that you are someone
11 who's capable of reading and understanding contracts?

12 A For the most part, yes.

13 Q All right. Do you have -- we'll get into this
14 a little bit more, but do you have, like, a personal
15 counsel that you use for reviewing your own personal
16 contracts outside of -- not -- not the counsel in this
17 case unless that's who your counsel is. Kind of like a
18 primary-care physician would be who's just -- this is
19 our family lawyer. We run our contracts through them
20 for our -- for our own personal life. Do you have
21 somebody like that?

22 A No. I have --

23 Q Okay.

24 A -- different ones that I've used over the years
25 for different things but not like a regular person that

1 I would run every contract through.

2 Q Do you have any work history in timeshares?

3 A No.

4 Q Have you ever worked in the hospitality
5 industry?

6 A No.

7 Q Do you have any legal training?

8 A No.

9 Q Any training in real estate?

10 A No.

11 Q Do you have any work for nonprofit entities?

12 A I'm not sure what you mean.

13 Q Yeah. So it might be a charitable organization
14 or any work in a space where the purpose of the company
15 is not to -- to actually earn a profit and, you know,
16 distribute that. It's, you know, every year this is our
17 budget, this is how much we make, we try to spend what
18 we earn, and so there's no profit. Do you have any
19 experience working in that space?

20 A But you're not talking about, like,
21 volunteering --

22 Q No, not at all.

23 A -- you're talking about actually being
24 employed --

25 Q Correct.

1 A -- right? Okay. No.

2 Q All right. Your educational background,
3 what -- did you graduate high school?

4 A I did.

5 Q And what year?

6 A 2000.

7 Q Did you attend schooling after high school?

8 A I did.

9 Q Where?

10 A At the Montgomery Massage Therapy School.

11 Q And did you graduate from that program?

12 A Yes.

13 Q What degree or what -- what was the --

14 A It was a certification for massage therapy.

15 Q Any other schooling after high school besides
16 that certification?

17 A No.

18 Q I understand that you have a number of lawyers
19 who represent both you and the other plaintiffs who are
20 identified in the case. Some of them are here today.
21 There are others. We don't need to go through the list.

22 What caused you to hire an attorney in this
23 case?

24 A It was really the frustration with the fees and
25 my -- my dealings with Wyndham over the years

1 specifically with this particular transaction. They
2 made claims to me in order to get us to buy the
3 timeshare that -- in regards to financing and other
4 things that were not true. And so when we got back home
5 and we could not refinance and do the things that they
6 said we could, this has, in turn, cost me a lot more
7 money over the years to maintain as well as the
8 assessment fees are excessive and continue to go up.

9 And so through -- after my divorce, I was
10 speaking with a local attorney that then put me in
11 contact with the counsel I have today because they have
12 experience in these type cases.

13 Q And who's the local attorney?

14 A Joel Connell -- or Connally.

15 Q And where is counsel located?

16 A Montgomery, Alabama.

17 Q You mentioned -- and this will be important
18 just so we're talking about the same thing here going
19 forward. You mentioned "Wyndham." And do you
20 understand that the defendant in this case right now is
21 not Wyndham?

22 A Yes.

23 Q All right. And you understand that the
24 defendant in -- in the case right now is Fairshare
25 Vacation Owners Association?

1 A Yes.

2 Q So I want to -- I want to ask -- I want to keep
3 these kind of separate so I can understand, you know,
4 what the claims are and what the grievances may be with
5 the different entities as we go along.

6 Let me ask you specifically: As to Fairshare
7 Vacation Owners Association, what is it specifically
8 that Fairshare Vacation Owners Association did that
9 caused you to file the claim against that entity?

10 MR. MILLER: Object to form.

11 A So --

12 BY MR. McCOY:

13 Q You can answer.

14 A Okay.

15 MR. MILLER: You can still answer.

16 A So Fairshare being the trustee, I believe, has
17 not managed the funds properly; and Fairshare, which is
18 responsible for managing those funds, should be looking
19 out for the beneficiaries, which are the owners of the
20 points. And the beneficiaries are having to pay more
21 and more money for their points and are not seeing the
22 benefits of the trust.

23 BY MR. McCOY:

24 Q And what -- what is it -- what do you
25 understand the trust does?

1 A I'm not exactly sure on all of the ins and
2 outs. That's why I've hired the counsel that I have.

3 Q Well, you -- you said just a moment ago that
4 the trust has not managed the funds properly, and so I'm
5 trying to understand. Do you have any understanding of
6 what the trust does and does not do?

7 A Some understanding, yes.

8 Q And what --

9 A So --

10 Q -- is that?

11 A So they're responsible for doing the
12 assessments or they have hired people that then do these
13 assessments and manage these companies, and all of those
14 funds feed back into -- Wyndham ends up benefitting from
15 that because all of the people that are hired and that
16 are involved in those transactions are all Wyndham-type
17 companies.

18 Q And you used the term "funds" a couple of
19 times. What -- what specific funds are you referring to
20 when you use that word?

21 A Profits.

22 Q Well, setting aside a label of -- of -- of
23 whether something is or is not a profit. What I'm
24 trying to understand is so presumably you're talking
25 about money that you paid, right, as part that would

1 create a fund?

2 A Through -- yeah, through fees.

3 Q Okay. And what -- so maybe let me come at it a
4 different way. What fees in particular do you believe
5 that Fairshare Vacation Owners Association is charging
6 you?

7 A Well, it's through the Club Wyndham, which is
8 the maintenance fees and the owner fees, which is like
9 the HOA portion of our monthly fees that we have to pay
10 in order to keep and use our points across any of the
11 timeshare locations.

12 Q So you -- your belief is that Fairshare
13 Vacation Owners, as the trustee, is charging you a fee
14 for the maintenance of the various properties?

15 A I don't know that it's specifically Fairshare,
16 but it's through those channels. They may be -- it may
17 be through a -- a different company. I don't recall the
18 specific of how it's managed and all of the different
19 companies involved with that.

20 Q Okay. Well, is it fair to say for purposes of
21 today and this deposition, do you know what Fairshare
22 Vacation Owners Association is -- is charging you as a
23 fee and what it's for as opposed to other Wyndham
24 entities are charging you and what those fees are for?

25 A I believe it's all laid out in -- in the court

1 documents.

2 Q I understand that. And that's the complaint
3 that you have filed. I'm asking you -- this is the only
4 time I get to ask -- to talk to you as opposed --

5 A Okay.

6 Q -- to reading what lawyers have written in the
7 papers here that I'm holding up --

8 A Okay.

9 Q -- so I'm asking you, as the plaintiff who's
10 suing my client, can you -- can you tell me what fees
11 Fairshare Vacation Owners is charging you and for what
12 versus what Wyndham or some other entity is charging you
13 and for what?

14 MR. MILLER: Object to the form.

15 BY MR. McCOY:

16 Q You can answer.

17 A No, I cannot tell you the specifics of the
18 breakdown of I pay this portion and it goes to this
19 company or I pay over here, and it goes to somebody
20 else.

21 Q All right. Did you do anything to prepare for
22 your deposition today?

23 A Yes.

24 Q And what did you do to prepare for your
25 deposition today?

1 A I spoke with my attorneys.

2 Q And -- and who on the attorney team was
3 involved in that prep session?

4 A I believe everyone that's there, but the main
5 one that I've been speaking with is James, which is ill
6 today and was unable to attend.

7 Q And when was your session with -- with your
8 counsel to prepare for today? When did that take place?

9 A On Monday.

10 Q How long was that session?

11 A An hour and a half to two hours.

12 Q Did you review any documents to prepare for
13 your testimony today?

14 A Yes, I did review some.

15 Q Okay. Is it fair to say that the category of
16 documents that you reviewed, are they all documents that
17 pertain to your transactions, or were there other
18 categories of documents besides transaction documents?

19 A It was transaction documents and some of the
20 documents that you have.

21 Q When you say --

22 A So like the complaint --

23 Q Okay.

24 A -- and then the discovery documents, which you
25 also have copies of.

1 Q So documents that have been exchanged in the
2 case?

3 A Yes.

4 Q All right. All right. You mentioned -- a
5 moment ago we were talking about some of the things
6 that -- that you claim have happened to cause you to
7 hire a lawyer. Did you ever write a lawyer -- or write
8 a letter or an email or any form of communication at all
9 to Fairshare expressing any of the concerns or
10 complaints or issues that you just identified for me a
11 moment ago?

12 A No. Nothing was in writing. The only
13 conversations I've had have been verbal.

14 Q And you have had conversations with
15 representatives of Fairshare concerning --

16 A No.

17 Q Okay. Who have you had conversations with, the
18 verbal conversations?

19 A Wyndham.

20 Q Okay. Do you have a log, or did you take notes
21 of any of those conversations or anything that would
22 memorialize what was discussed during those
23 conversations?

24 A No.

25 Q When did the conversations take place with

1 someone from Wyndham?

2 A I don't recall the specific dates.

3 Q Do you know if it was within the last year?

4 A No. They were not within the last year.

5 Q Within -- would it have been within the last
6 three years?

7 A Yes.

8 Q How many calls would we be talking about?

9 A I would say at least two calls, and I had a
10 verbal conversation face to face with a Wyndham
11 representative at one of their sales presentations.

12 Q The two calls, do you know who you spoke with
13 at Wyndham?

14 A No.

15 Q And do you know how long the calls were?

16 A No.

17 Q The face-to-face conversation with someone from
18 Wyndham, do you know the name of the individual that you
19 spoke with?

20 A I remember his first name, and it was Sam.

21 Q And where did the sales presentation take place
22 where this conversation happened?

23 A Wyndham Panama City.

24 Q Do you remember when you would have been at the
25 Wyndham Panama City?

1 A Yes. That would have been June of 2019.

2 Q Were you at the Wyndham Panama City because you
3 were using your points as part of the Club Wyndham Plus?

4 A No, and I wasn't actually staying at the
5 Wyndham Panama City. It was one of the -- the vacations
6 where you pay, you know, \$200 and they put you in a room
7 with an affiliated resort for three nights, but you have
8 to come listen to a one-hour sales pitch. It was one of
9 those.

10 Q So it was kind of like a promotional --

11 A Yes.

12 Q -- deal?

13 And what did you communicate to Sam in June of
14 2019 at the Wyndham Panama City meeting?

15 A That I was very unhappy with my Wyndham
16 ownership. He was trying to get me to purchase more
17 points or upgrade my -- my ownership status. And so I
18 explained to him the reasons why he would not be able to
19 sell me these things, which was in regards to the last
20 time that I purchased points, I was told by that same
21 location that I could take out a mortgage to finance
22 these points once I returned home, and that was not the
23 case. So I had debt that was placed on PayPal accounts
24 and Wyndham Visa accounts that I had to figure out
25 another means to pay off in order to avoid substantial

1 finance charges or interest charges.

2 Q And -- sorry. Go ahead.

3 A And so I just walked him through that scenario
4 as well as a couple of other scenarios of why I was
5 unhappy with my ownership.

6 Q Did you come to -- did you -- did you engage in
7 the promotional stay at the affiliated resort knowing
8 that you weren't looking to upgrade or purchase more
9 from Wyndham?

10 A Yes.

11 Q All right. And so what was Sam's response when
12 you relayed this information to him?

13 A He said he understood and he was -- I mean, he
14 did say, you know, "I'm sorry, I don't know who told you
15 that or if they even work here anymore."

16 And then he went on to tell me that the plan
17 that I purchased they consider to be obsolete. They
18 don't even sell this plan anymore, and they never sell a
19 plan to an individual thinking this is going to be the
20 last amount of points that they buy. They expect that
21 over time people just add to it in order to keep their
22 VIP status or whatnot. And then he shared with me how
23 many points he owns and what he uses them for, so on and
24 so forth.

25 Q Do -- did you have any further communications

1 with Sam after that day?

2 A No.

3 Q Did you have any further communications with
4 anyone at Wyndham after that day?

5 A No.

6 Q So the next step, as I understand it, was you
7 talked to the lawyer that we've already discussed in
8 Montgomery, who put you in touch with your current
9 counsel?

10 A Yes.

11 Q The transaction that you were just describing
12 to me about debts on your accounts, what trans- -- what
13 year was that transaction?

14 A 2015, whenever I signed this contract.

15 Q It's my understanding that you subsequently
16 made a transaction in 2018 as well; is that correct?

17 A Yes.

18 Q And you have rescinded, or otherwise canceled,
19 that particular transaction; is that true?

20 A Yes, because --

21 Q All right.

22 A -- there were a lot of false statements that
23 were made to me during that, and I was able to get that
24 one canceled.

25 Q All right. Okay. Do you take exception with

1 anything -- let me back up.

2 Did Sam say anything to you that day concerning
3 Fairshare Vacation Owners Association?

4 A No, not specifically that company.

5 Q When you say "not specifically," was there --
6 was there something else that was said that would
7 implicate Fairshare Vacation Owners?

8 A No.

9 Q All right. In terms of the -- well, we can
10 deal with that in a minute. Let's go through here a
11 little bit more.

12 What -- do you know what your credit score is?

13 A Between 7- and 800. I don't know the specific
14 number.

15 Q Have you ever been turned down for credit?

16 A Not that I recall.

17 Q Have you ever filed bankruptcy?

18 A No.

19 Q Ever been convicted of a crime?

20 A No.

21 Q The home where you are at today, do you own
22 that home?

23 A It is mortgaged.

24 Q And what is the physical address of that home?

25 A 975 Bon Terre Boulevard. That's Pike Road,

1 Alabama.

2 Q You say that that's mortgaged. Is the title of
3 the home in your name and your current husband's name?

4 A Yes.

5 Q All right. Is that in a -- is that part of an
6 HOA?

7 A Yes.

8 Q And do you pay community assessments as part of
9 the HOA?

10 A We do, but we haven't had to pay that yet.
11 We've only lived here a few months, and it was paid for
12 by the people that sold the home.

13 Q So they had kind of paid in advance, and so far
14 there hasn't been a new HOA assessment?

15 A Right.

16 Q How often do you have to pay the HOA assessment
17 for your current home?

18 A I believe it's coming up in January.

19 Q Do you know --

20 A I'm not sure of the payment arrangement yet. I
21 think there's a few different options.

22 Q Do you know if the HOA is increasing this year
23 or not?

24 A I haven't heard.

25 Q Do you know what the assessments that your HOA

1 makes, what that money goes for, what the money is
2 applied to do?

3 A Yes.

4 Q And what does the money go to for your HOA?

5 A So we have a clubhouse here. We also have a
6 community pool. We have multiple ponds around the
7 property that they keep stocked with fish, and then
8 there's a lot of green space as well as a -- I'm
9 thinking jungle gym, but playground area for small
10 children.

11 So the HOA fees are to maintain all of that
12 property, keep everything in working order, stock the
13 ponds.

14 Q Have you studied the budget that is proposed
15 for your particular HOA to see how much of the fees that
16 are collected are associated with each one of those
17 activities that you just identified?

18 A Not yet. I believe we're supposed to get a
19 statement breakdown in January when they do the new plan
20 for the year.

21 Q Would it be your expectation that, in the
22 budget, there -- there would be a budget to do these
23 things and that budget would have enough in there to
24 include things that may not be expected that could
25 happen to the pool when they weren't identified or known

1 when the budget was prepared?

2 A I'm not sure what you mean.

3 Q Sure. So, you know, HOA may be the same with
4 your home ownership, you know, do you have a -- do you
5 have a slush fund or an amount that's set aside every
6 year that's part of your personal home ownership? You
7 know, I've got a runny toilet. I got -- I got to call a
8 plumber --

9 A Yes.

10 Q -- or the garage door's broken today?

11 All right. And so you have money set aside to
12 fix those types of things?

13 A Right, emergency fund.

14 Q Okay. Emergency fund?

15 A Yes.

16 Q And that would be for things that maybe will or
17 will not happen, right? The garage door may not break.
18 The toilet may not have a problem; is that true?

19 A Right. Yes.

20 Q And do you then carry over those funds to fix
21 other things or to be prepared in the event that the
22 emergencies that you were planning for come to pass?

23 A Yes, or I'll end up spending them on -- to
24 upgrade something.

25 Q All right. Fair enough. So to make something

1 **better, an improvement --**

2 A Yes.

3 Q -- to your property?

4 A (Witness nods head.)

5 Q Is that -- is that true?

6 A Yes.

7 Q All right. Prior to your current address,
8 **where did you live?**

9 A Also in Pike Road. The address was 644
10 Dreyspring Way.

11 Q Did you own that home?

12 A Yes.

13 Q Was that mortgaged?

14 A Yes.

15 Q And was that title held by you and your
16 **ex-husband, Mr. Nolen?**

17 A No. That was only in my name. It's what I
18 purchased after the divorce.

19 Q All right. Did that home have an HOA?

20 A Yes.

21 Q All right. And how long did you live at that
22 **residence?**

23 A For around three years.

24 Q And did you pay the HOA fees associated with
25 **the residence you just identified?**

1 A Yes.

2 Q Was it the practice of the HOA at your -- at
3 your prior residence, the one -- tell me again the name
4 of the road.

5 A Dreyspring Way.

6 Q Dreyspring Way. We'll call that the
7 "Dreyspring home."

8 Is that the same HOA that you're associated
9 with now, or is that a different part of Pike Road?

10 A It's a different part of Pike Road.

11 Q All right. So that was a different HOA?

12 A Yes.

13 Q When you paid the assessment each year to your
14 HOA for the -- for the Drey home, if they didn't use all
15 of the moneys that were collected in a particular year,
16 did they refund those, or did they carry those over for
17 use for property maintenance and -- and whatnot the
18 following year?

19 A I'm not sure.

20 Q Did you ever get a refund from your HOA for the
21 Drey home for any of the fees that you paid to the HOA?

22 A No.

23 Q Do you know if the HOA at the Drey home used
24 all of the funds that were collected at a given year for
25 the various purposes that had been identified in the

1 budget?

2 A No.

3 Q Prior to the Drey home, where did you live?

4 A Ray Drive in Montgomery, Alabama.

5 Q Is that a home that you shared with Mr. Nolen?

6 A Yes.

7 Q And did you-all have title to that home
8 jointly?

9 A Yes.

10 Q Mortgage?

11 A Yes.

12 Q Was that home in an area with an HOA?

13 A No.

14 Q Okay. All right. Have you ever owned a
15 condominium?

16 A No.

17 Q What about a townhome?

18 A No.

19 Q What caused you to explore a timeshare as a --
20 as an investment when you made your first purchase in
21 2015? Do I have that right, the first transaction that
22 you engaged in to -- for any kind of timeshare
23 opportunity was in 2015?

24 A Yes.

25 Q All right. What caused you to explore that as

1 a -- as an investment opportunity?

2 A We weren't really exploring --

3 MR. MILLER: Object to the form.

4 A -- or looking for an investment property. It
5 was a promotion vacation as well where we stayed a few
6 nights at a place for a discount; and, in return, we had
7 to listen to a one-hour sales pitch at the Wyndham
8 Panama City.

9 So it was during that sales pitch that Justin
10 and myself attended, and that's where we did the
11 transaction in 2015.

12 BY MR. McCOY:

13 Q All right. So how did you hear about the
14 promotional opportunity?

15 A A friend of mine at work actually put my name
16 in for them to call me and offer -- because she was a --
17 a Wyndham owner.

18 Q So they called -- someone called you from --
19 from Wyndham. And for purposes of keeping the entities
20 separated, it would have been from Wyndham Vacation
21 Resorts --

22 A Yes.

23 Q -- or do you know?

24 A I don't know specifically.

25 Q All right. Someone from -- saying they were

1 from Wyndham called about this promotion; is that fair?

2 A Yes.

3 Q And they offered you to be able to stay for
4 free for three nights down in the Panama City area and
5 in -- or was it free, or was it for \$200?

6 A It was for 200 or \$300, and then you'd get a
7 portion of that money back on a Visa card if you
8 attended the sales presentation.

9 Q All right. And so you traveled from -- at the
10 time it would have been in Montgomery, Alabama?

11 A Yes.

12 Q Down to Panama City?

13 A Yes.

14 Q And what time of year would that have been?

15 A That was the end of summer, so end of July.

16 Q July 2015?

17 A Yes.

18 Q And you -- when was the presentation that you
19 had to attend? Was that the front end of the three-day
20 stay or middle or back end?

21 A It was the middle.

22 Q Middle?

23 And you and your former husband, after the
24 presentation, decided to purchase a timeshare?

25 A Yes.

1 Q Now, as I understand it, the timeshare that you
2 initially purchased had a home resort. Are you familiar
3 with that term?

4 A Yes.

5 Q And what was your home resort?

6 A The home resort they assigned to me was
7 Bonnet Creek.

8 Q Where is that resort located?

9 A Orlando. It's near Disney World.

10 Q Did you have any problem with the Bonnet Creek
11 resort being your home resort?

12 A I didn't really understand or know how that
13 impacted the ownership. They -- they asked, "Where do
14 you visit the most?" And we say, "The beach, typically
15 Panama City," but they said there wasn't any
16 availability for Panama City to be our home resort. So
17 that is why they chose Bonnet Creek, I guess, because
18 it's also in Florida, but...

19 Q Did you -- did you complain to anybody or tell
20 them, "No, I don't want Bonnet Creek to be my home
21 resort"?

22 A No, because the person that was -- that did
23 this said, "Okay. We're going to do Bonnet Creek, but
24 it doesn't really matter where your home resort is,
25 because you're going to put your points in this program

1 and you get to travel to any of the Wyndhams. The home
2 resort doesn't make a difference for you."

3 Q In terms of the Bonnet Creek home resort, you
4 agree that in -- for purposes of what you purchased, it
5 was a timeshare interest in that home resort, correct?

6 A I do not understand.

7 Q So what -- what you purchased, what you were
8 buying, was a timeshare interest in the Bonnet Creek
9 Resort in Orlando, Florida. You understand that?

10 A I understand that they assign you a home
11 resort, but that doesn't tie you to that resort for
12 travel.

13 Q Well, we'll break it down with some of the
14 documents in a little bit. I'm just trying to
15 understand what you may or may not understand.

16 Did you read the contracts before you signed
17 them in purchasing the 2015 timeshare interest?

18 A I read some of them.

19 Q Did you read all of them?

20 A No.

21 Q Did you talk to your ex-husband, Justin, about
22 the timeshare purchase?

23 A He -- he was with me, yes.

24 Q And did he understand and read the contracts?

25 A No. He did not read all of them.

1 Q All right. So -- so you signed contracts, and
2 you didn't take the time to read all of the contracts;
3 is that fair?

4 A Yes.

5 Q All right. The contract that you signed for
6 the actual timeshare interest, what rights do you think
7 you had once you signed that particular contract? Is it
8 your belief that you could travel to any resort that was
9 within the Wyndham system by purchasing a time -- just a
10 timeshare interest?

11 A Yes.

12 Q And what did you understand the Club Wyndham
13 Plus was?

14 A A point system.

15 Q Okay.

16 A You were buying points and you would trade in
17 those points to travel to any resort in their book that
18 they gave us.

19 Q And do you understand that -- that you could --
20 when you first purchased your timeshare interest, your
21 interest was for the Bonnet Creek Resort, which is why
22 they assigned that to you. Do you understand that?

23 MR. MILLER: Object to the form.

24 A I understand they had to assign me to a home
25 resort because that home resort is what they use for

1 calculating assessments. But they said, "That doesn't
2 tie you to anything for travel," but they just have to
3 assign you to one.

4 BY MR. McCOY:

5 Q And the way that you could travel to other
6 Wyndham resorts was becoming a participant in the Club
7 Wyndham Plus Program, correct?

8 A Well, those points are deposited in a fund that
9 then is pulled out from in order to use to travel to any
10 of the resorts.

11 Q Understood. But we have a -- I'm asking a --
12 I'm asking something that's earlier in the timeline
13 here.

14 A Okay.

15 Q So the Club Wyndham Plus program exists if you
16 want to be able to travel to properties besides your
17 home resort. Do you agree with that?

18 A I don't know.

19 Q Do you know what the Club Wyndham Plus program
20 even is?

21 A I mean, I know that Club Wyndham Plus is what I
22 sign into in order to schedule --

23 Q And do you --

24 A -- a vacation.

25 Q Do you understand that if you didn't want to

1 travel to the other Wyndham properties, then you would
2 not join the Club Wyndham Plus program?

3 A Okay. That was not explained to me at the time
4 of purchase.

5 Q Okay. Did you ask those particular types of
6 questions of whomever you were speaking with at the time
7 of purchase?

8 A No.

9 Q Would it surprise you, if we go through these
10 documents, that the documents talk about these issues?
11 Would that be the first time that you maybe are learning
12 about what you agreed to in reviewing the documents here
13 today?

14 MR. MILLER: Object to the form.

15 A I've reviewed the documents, so I know that
16 it's in there about joining Club Wyndham Plus, joining
17 this other program, depositing the points; but I'm
18 telling you during the sales presentation, none of that
19 is ever presented as "These are your options."

20 When you go in to sign this paperwork with the
21 finance guy, they are automatically enrolling you in
22 these other programs and saying, "Okay, this is now the
23 plan, and this is what you have to do in order to use
24 your points in other places or in order to have this
25 package that we've offered to you for sale."

1 BY MR. McCOY:

2 Q Understood. So if you want -- let me make sure
3 I understand what you're -- what you're relaying to me.

4 If you want to be able to travel to other
5 resorts besides, in your circumstance, Bonnet Creek, you
6 have to enroll in the Club Wyndham Plus program?

7 A Yes.

8 Q And so the flip side of that is if you don't
9 want to en- -- to travel to these other properties, then
10 you don't enroll in the Club Wyndham Plus program, true?

11 A True. I understand that now.

12 Q Okay. And so do you agree with me that
13 enrollment in the Club Wyndham Plus program is -- is
14 voluntary if you want to travel to the other Wyndham
15 properties in the system?

16 A No.

17 Q Okay. Help me understand how it's not a
18 voluntary -- how it was not voluntary, how it was
19 mandatory for you to -- to enroll in Club Wyndham Plus.

20 A Because if it was voluntary, then they would
21 tell you, "These are your options. You can do this.
22 You can take this path if you only want to travel to
23 Bonnet Creek or you can take this path if you want to
24 travel to other resorts."

25 Q Had you already expressed an interest to

1 **wanting to be able to travel to other resorts as part of**
2 **any purchase?**

3 A That was the whole point of the -- of the
4 purchase. The home resort meant nothing to us. They
5 even tell you, "Your home resort means nothing, because
6 you're going to do these things that allow you to travel
7 and just use your points anywhere."

8 Q Okay. So as I understood -- as I understand
9 your particular situation, you had a desire from the
10 outset to be able to have a participation in the Club
11 Wyndham Plus program so you could travel to resorts
12 besides Bonnet Creek, correct?

13 A Yes. I've never even been to Bonnet Creek.

14 Q All right. And so you got what you asked for
15 in terms of your enrollment in Club Wyndham Plus,
16 correct?

17 MR. MILLER: Object to the form.

18 BY MR. McCOY:

19 Q I'm just trying to understand. You're not --
20 you're not complaining in this lawsuit that you're --
21 that you are a member of Club Wyndham Plus, correct?
22 It's not the fact that you're in the club; it's
23 something about your experience once you got in the
24 club; is that correct?

25 A Yes.

1 Q Okay. And so once you joined Club Wyndham
2 Plus, then you assigned points so that those could be
3 used for you to travel to other resorts within the
4 Wyndham system; is that true?

5 A Yes.

6 Q And that becomes just kind of a piggybank of
7 points equal credits if -- if you want to call it credit
8 or a point; but if you wanted to go, say, to Panama City
9 Wyndham, it would cost you X points on this particular
10 date based upon demand or if you wanted to go skiing in
11 ski season, it might cost you so many points. Is that
12 generally how the system works?

13 A Yes.

14 Q And you said when you want to book a vacation,
15 you log in somewhere. Is that -- where do you log in to
16 do that?

17 A At Club Wyndham website.

18 Q And in there, I would imagine you have kind of
19 an account that shows you how many points you have?

20 A Yes.

21 Q And does -- if you click on a property -- let's
22 say Wyndham Crested Butte, Colorado. Does it tell you
23 on a particular date whether it's available; and if it
24 is available, how many points it would cost you to stay?

25 A Yeah. You pick your property, and you pick

1 your date range that you want to travel, and then it
2 searches for available rooms. So then it displays the
3 type of rooms that are available and what points they
4 cost.

5 Q All right. I've never logged in to the system,
6 but what I would imagine it's like is kind of like
7 whether it's Expedia or Travelocity or even a Marriott
8 system. If I wanted to reserve a hotel, it's kind of
9 just a -- it's kind of just a reservation system; is
10 that fair to say based upon your --

11 A Yes.

12 Q -- experience?

13 All right. And that is something -- you don't
14 take exception with the idea that Club Wyndham Plus
15 offers you a reservation system, do you?

16 A No.

17 Q Have you found that useful in your experience
18 with interacting with Club Wyndham Plus?

19 A I have found it useful but also frustrating at
20 times just because of the availability.

21 Q Understood. Set aside, you know, "I want to go
22 here and it's in high demand," and maybe you can't for
23 whatever reason. I'm just talking about your customer
24 experience with the -- with the reservation system.

25 You would --

1 A Yes.

2 Q -- agree that that has value to you in being --

3 A Yes.

4 Q -- able to interact in that way?

5 A Yes.

6 Q All right. And do you pay a fee to participate
7 in the Club Wyndham Plus program?

8 A I believe so.

9 Q Do you know?

10 A I don't know.

11 Q Do you know what the program fee -- have you
12 ever heard of a "program fee"?

13 A Yes.

14 Q And what do you understand the program fee is?

15 A That, I don't know.

16 Q Do you know how much you pay for the program
17 fee?

18 A No. I know there's a lot of -- there's several
19 different fees that are on the -- the closing documents.
20 Most of them are around that \$60 mark for annual
21 membership. So I -- I don't know specifically if that
22 was the -- the Wyndham Club -- the Club Wyndham Plus,
23 but I believe it is.

24 Q Okay. Do you have any reason to contest or
25 claim that you should not be charged a fee for the

1 reservation system that is made available to you and
2 you've just described?

3 A I mean, if you're an owner, you should just be
4 able to get into a website and use your points and not
5 have to pay to have access to book your points online.

6 Q And is that just a -- that's just a personal
7 belief that you hold, or does that originate from
8 somewhere else?

9 A No, that's a personal belief that I hold.

10 Q Do you know if any other timeshare company that
11 offers a similar service charges a fee or not?

12 A No, I don't.

13 Q Do you know how the Wyndham -- the Club Wyndham
14 Plus program compares to any other timeshare program
15 offered by another -- another company --

16 A No.

17 Q -- in terms of service offering?

18 A No, I don't.

19 Q In terms of price?

20 A No.

21 Q In terms of customer service?

22 A No.

23 Q In terms of any other charges, whether they're
24 more, less, comparable or not?

25 A No.

1 Q Let's talk for a moment about some of your --
2 and I should say we've gone for about an hour. If you
3 need to take a break, let -- we can take one. If not,
4 like I said, I push through. I have water here, and
5 that's about all I need.

6 A We can take a quick break.

7 MR. McCOY: Let's take a five-minute break.
8 It's 11:35 where I sit in the world. Why don't we
9 come back at 11:40.

10 THE WITNESS: Okay.

11 MR. McCOY: 10:40 for you.

12 THE WITNESS: Okay.

13 MR. McCOY: Okay. Thanks.

14 THE VIDEOGRAPHER: We're going off the record.
15 The time is 11:35 a.m.

16 (Recess taken from 11:35 a.m. to 11:41 a.m.)

17 THE VIDEOGRAPHER: We're back on the record.

18 The time is 11:41 a.m.

19 BY MR. McCOY:

20 Q All right. Ms. Jones, we're back. We had a
21 short break. Are you okay to proceed?

22 A Yes.

23 Q All right. I want to go back to the July 2015
24 time at Panama City where you were discussing the
25 timeshare purchase that we're talking about today.

1 Did you have to sign any documents that day, or
2 were you given the option to stop and think it over and
3 come back, "We're always here selling timeshares" kind
4 of thing?

5 A No. We had to sign that day. We were told if
6 we walked away, the price would be different the next
7 day.

8 Q All right. So you had to sign --

9 A They couldn't guarantee the price.

10 Q Okay. All right. So if you -- if you signed
11 that day, it would be one price. If you signed a day or
12 two later, it may -- it may or may not be a different
13 price; is that fair?

14 A Yes.

15 Q All right. But they were always going to be
16 selling timeshares?

17 A Yes. I assume so.

18 Q All right. What vacations did you take within
19 the Wyndham system since you made the timeshare purchase
20 in July of 2015?

21 A I don't recall the specific dates of the first
22 few. I had answered some questions last week regarding
23 the -- the last ones that I remember.

24 So I have traveled twice this year, and then I
25 traveled in 2017 and 2018.

1 Q So you've traveled two times in 2020. How many
2 times do you think you traveled in 2018?

3 A 2018, I believe, was just once. That was to
4 Pigeon Forge.

5 Q And in 2019?

6 A Nothing in 2019.

7 Q When you went in 2018, who traveled with you?

8 A 2018 was my sister, her husband, and two kids,
9 and then myself and my two kids.

10 Q And how long were you at Pigeon Forge?

11 A I don't recall exactly how many days but a few
12 days.

13 Q Did you enjoy the experience?

14 A Yeah.

15 Q Did you have any complaints about the -- the
16 property itself in terms of upkeep? Maintenance?
17 Facilities? Anything like that?

18 A No.

19 Q 2019, no use of any points. And then 2020, two
20 times this particular year.

21 Where did you go on the first trip?

22 A Both trips were to Panama City.

23 Q I thought you told me before there was another
24 Panama City trip in 2018 where you -- I thought that was
25 the discussion with Sam. Is that one that happened in

1 **2020?**

2 A So I'm sorry. The -- the 2019 discussion with
3 Sam was not through using Wyndham points.

4 **Q Okay.**

5 A That was that promotion.

6 **Q Got it. Got it. I was confused. Okay. So**
7 **we're talking -- and fair clarification --**

8 A So -- right. You --

9 **Q -- about just using points.**

10 A You only wanted to know what I've used points
11 for, right?

12 **Q Right. Right.**

13 A Okay.

14 **Q Two times to Panama City. And that's a Wyndham**
15 **property in Panama City?**

16 A Yes.

17 **Q Were there any -- did you enjoy the first trip?**

18 A Yes.

19 **Q Did you enjoy the second trip?**

20 A Yes.

21 **Q Any complaints about the property?**

22 **Maintenance? Upkeep? Offerings? Anything like that?**

23 A No.

24 **Q So to summarize your experience, at least that**
25 **we've gone through, there are at least three trips that**

1 you've taken through the Club Wyndham Plus program, and
2 you've had no complaints in terms of your experience
3 using the system; is that correct?

4 A That's correct.

5 Q Have you taken vacations or trips outside of
6 using your points through Wyndham that we haven't talked
7 about?

8 A You mean other vacations --

9 Q Yes, ma'am.

10 A -- that's completely separate from Wyndham?

11 Q Yes, ma'am.

12 A Yes.

13 Q Can you share with me the -- let's go back to,
14 say, 2018. Can you remember any trips that you took
15 where you stayed at a facility that was not a Wyndham
16 property?

17 A I don't recall any in 2018. I know I traveled
18 to a separate non-Wyndham property in 2019.

19 Q Was that, like, a hotel, or was that something
20 that was a timeshare through a -- offered through
21 another company?

22 A It was actually a timeshare-type company, but I
23 was just a guest. It was booked by my parents. I was
24 only a guest.

25 Q And what's the name of the company?

1 A Westgate. It's in the Smoky Mountains.

2 Q And is that the name of the -- the property,
3 like --

4 A That's the name of the property. I don't know
5 if that's the name of the actual company or not.

6 Q Do your parents have timeshare -- timeshare
7 ownerships?

8 A No. They rented this through a friend at
9 church. They don't --

10 Q Got it.

11 A -- own any.

12 Q So somebody had a timeshare interest, and they
13 were renting out either their use points or something
14 like that?

15 A Yes.

16 Q How was your experience at Westgate?

17 A It was good.

18 Q Any other experiences that you have had staying
19 at a non-Wyndham timeshare property?

20 A No, I don't think so.

21 MR. MILLER: I'm sorry, Kevin. Was there a
22 time frame regarding that question? Because earlier
23 y'all were just talking about 2018 and then 2019.

24 BY MR. McCOY:

25 Q Yeah. Well, 2020, any experiences that you can

1 **remember this year at a non-Wyndham property?**

2 A No. The only -- the only two places I've
3 traveled this year were Wyndham Panama City and last
4 year the place with my parents. And then earlier in the
5 year was a Wyndham-affiliated property, but it was not
6 through points; it was that promotional offer.

7 Q Got it. We had talked -- going back to 2018,
8 we didn't -- you purchased the timeshare interest with
9 Wyndham in July of 2015. Did you do any travel through
10 the Wyndham system in 2015? 2016? 2017?

11 A I do not believe we did anything in 2015,
12 because our -- the -- so the -- the point system that we
13 purchased was an every-other-year type of plan. So we
14 would get all of our points on the even years. So
15 that's why you would see that on the even years, we were
16 traveling more. And on the odd years, there probably
17 wasn't any points left over for us to travel much with
18 Wyndham, which -- which means if we purchased in 2015,
19 we probably didn't get all of our points until -- well,
20 we would have gotten bonus points that probably were
21 available immediately; but the -- our regular points for
22 the plan were only every even year.

23 Q Okay. Have you ever had an issue where your
24 points were not calculated correctly or misapplied or
25 you had a discrepancy of how many points something

1 **should cost through any of your experiences using the**
2 **Wyndham system?**

3 A Yes.

4 **Q Okay. What -- what can you tell me about that?**

5 A So that was -- I know that it was in 2017 where
6 they had to make an adjustment to points. I had booked
7 some -- I had booked a reservation, and then they said I
8 had X amount of points left.

9 So I went to book a second reservation to use
10 up the points, and that's when they -- the person I was
11 talking to on the phone in the reservation line was
12 saying that my points weren't adding up.

13 So she had to send it over to another
14 department, which I guess there's a special department
15 that reviews the point transactions. And I got a phone
16 call the next week from Wyndham that said there was an
17 error, my account was showing overstated, so I didn't
18 have as many points as what the website said I had.

19 So in order to make that second reservation
20 that I wanted, I actually had to pay out of pocket and
21 rent the points I was missing in order to do that.

22 **Q And did you pay out of pocket to get those**
23 **points?**

24 A Yes. In order to complete -- complete that
25 second reservation, I paid out of pocket.

1 Q But that particular -- was that resolved to
2 your satisfaction in terms of who was contending what
3 about the points? I mean, you agreed you didn't have
4 the points, so you paid the points. And in terms of
5 that transaction, that was the end of it; is that fair?

6 A I mean, yeah, pretty much.

7 Q Okay. And you understand that you are a
8 plaintiff in a -- in a lawsuit that -- that is sought to
9 be brought by a class of plaintiffs. Do you understand
10 that?

11 A Yes.

12 Q And so you are seeking to represent all of the
13 people who have participated in the Club Wyndham Plus
14 program?

15 A Yes.

16 Q Do you understand that?

17 A (Witness nods head.)

18 Q Have you, besides the other named individuals
19 in this lawsuit -- Windy Kelley, Cara Kelley, and
20 Paula Litton, have you talked to anybody else who might
21 be a member of a class in this case about any of the
22 issues in the case?

23 A No.

24 Q Have you talked to any of the individuals who
25 may be a member of a class about their experiences using

1 Club Wyndham Plus?

2 A No.

3 Q Fair to say -- well, let me back up.

4 Have you talked to Windy Kelley about this
5 case?

6 A No.

7 Q Have you ever met Windy Kelley?

8 A No.

9 Q What about Cara Kelley? Have you ever met
10 Cara Kelley?

11 A No.

12 Q Paul -- Paula Litton? Have you ever met
13 Paula Litton?

14 A No.

15 Q So is it fair to say you have not talked to any
16 of your other co-plaintiffs in this case about this
17 case? True?

18 A True.

19 Q Never talked to them about their experiences
20 using Club Wyndham Plus?

21 A Right.

22 Q Never talked --

23 A I have never talked to them about anything.

24 Q Right. To short-circuit it, you've never
25 talked to anybody, either in the system or as a named

1 plaintiff or who could be part of a putative class about
2 any of the allegations that you are individually making
3 against the Defendant Fairshare; is that true?

4 A Right. The only people I've talked to are my
5 attorneys.

6 Q Have you ever thought about how your claims in
7 this case would impact the people who you are seeking to
8 make part of your putative class action?

9 A Rephrase that.

10 Q Sure. Let me back up with a different
11 question.

12 What do you want out of this lawsuit? What do
13 you, Mrs. Jones, want out of this lawsuit?

14 A I would like for the company to be held
15 responsible for their actions. I am trying to seek
16 restitution for myself, as well as all of the class
17 members, and prevent this from happening to other
18 people.

19 Q All right. When you say "restitution," what
20 exactly -- that -- I suppose that's a term you're using
21 to mean you want money that you've paid to be returned
22 to you --

23 A Yes.

24 Q -- is that fair?

25 A Yes.

1 Q What -- what moneys that you have paid do you
2 want Defendant Fairshare Vacation Owners Association to
3 pay back to you?

4 A I will leave that up to the courts to decide
5 what they believe is fair.

6 Q Well, that's not my question. My question is a
7 different one. You've paid money in to the system --

8 A Yes.

9 Q -- true? Okay.

10 A Yes.

11 Q You -- you pay money on some kind of basis,
12 whether it's monthly or annually or biannually, true?

13 A Yes.

14 Q And that money is for different things, true?

15 A Yes.

16 Q All right. So what out of those moneys do you
17 want returned? I'm not asking you to tell -- I'm not
18 asking you to tell me what a jury or somebody else may
19 award to you. I'm asking what -- what are you going to
20 look at a jury and say, I paid these things in, and I
21 would like these things returned to me as the
22 restitution that you just identified?

23 A So all of the fees that I've paid monthly, the
24 assessment fees, the maintenance fees, as well as a
25 refund for the timeshare.

1 Q So you want all of the money you have paid for
2 all of your experience with Wyndham returned to you. Is
3 that -- is that what you would like?

4 A Yes, because I have no intention of trying to
5 keep a timeshare.

6 Q And you would like that returned -- are you --
7 even though you have used the system, you want
8 100 percent of what you've paid in even though you have
9 traveled and used the resorts?

10 A Yes, because the point system that you buy is
11 to keep forever, and I've only had it for five years.

12 Q Okay.

13 A The points never expire --

14 Q Yeah.

15 A -- or, you know --

16 Q Yeah.

17 A -- you're --

18 Q Understood. What -- what -- are you suggesting
19 you should have all of your money -- you want all of
20 your money paid back, but you would like to keep the
21 points to be able --

22 A No.

23 Q -- to continue to use those in the system?

24 A No.

25 Q Okay.

1 A I -- I would return the points.

2 Q Okay. But you would -- but for those points,
3 the points represent a credit. I think we talked about
4 that earlier, right?

5 A Right.

6 Q And that's -- that's a value that you use to,
7 in exchange, get the ability to stay at a resort. Is
8 that true?

9 A Yes.

10 Q And you have stayed at Wyndham properties,
11 true?

12 A Yes.

13 Q And so you would still like to have all of your
14 money returned even though you have stayed at the
15 properties; is that correct?

16 A Yes.

17 Q And I think we went through, you've never had a
18 complaint about your experience at those properties,
19 correct?

20 A Right.

21 Q All right. Is there anything else that you
22 want -- you used a term you want to hold -- you want the
23 company held responsible for their actions.

24 The company in this case is Defendant Fairshare
25 Vacation -- let me get the name completely right here --

1 **Vacation Owners Association.**

2 **What specific actions, so we can write those**
3 **down, do you want Fairshare Vacation Owners Association**
4 **held accountable for?**

5 MR. MILLER: Object to the form. You can go
6 ahead.

7 A I would say the -- the way that they are
8 managing the trust. If there are benefits from the
9 trust, those should be getting passed on to the
10 beneficiaries, which are the owners of the point system.
11 So if there is profits, those profits could be used to
12 reduce the prices, reduce the fees, reduce the expenses
13 of the owners that have already invested money by buying
14 the point system.

15 BY MR. McCOY:

16 **Q All right. So -- and by the fees, you're**
17 **talking about the fees associated with upkeep and**
18 **maintenance and replacing or substituting in properties**
19 **into the program?**

20 A Yes, as well as there's finance fees on -- when
21 people take out loans in order to buy these timeshares.
22 Like in my particular case, I was told that I would be
23 able to take out a mortgage for a much lower interest
24 rate and even be able to claim that interest on my tax
25 returns when there isn't a mortgage loan option for a

1 point-system timeshare --

2 Q All right.

3 A -- so --

4 Q I'm sorry. Go ahead.

5 A -- if I would have not been able to secure my
6 own personal loan through other channels and get that
7 interest rate lowered, I would have been stuck with the
8 debt and the high interest rates for this purchase,
9 which would have been a huge long-term financial impact
10 on me. It was already -- had an impact because I was
11 not able to get a mortgage-type interest rate, and I
12 wasn't able to claim that interest on my tax returns
13 like they said were the benefits that I would be able to
14 get.

15 Q And -- and I want to be very specific here to
16 get your understanding. I'm talking about -- do you
17 contend that Defendant Fairshare Vacation Owners
18 Association sold you your timeshare?

19 A They are affiliated with the Wyndham.

20 Q Was the individual who you talked to in 2015 in
21 Panama City -- did he at any point identify himself as
22 being a representative or employee of Defendant
23 Fairshare Vacation Owners Association?

24 A No.

25 Q Okay. So fair to say when at least from in

1 speaking with this individual who you were talking to
2 about this purchase, nobody identified Fairshare
3 Vacation Owners Association as having anything to do
4 with the transaction that you entered into to purchase
5 your timeshare; is that true?

6 A No, that's not true.

7 Q Okay.

8 A Fairshare was where we would deposit our points
9 in order to use them to travel.

10 Q Okay. But what I'm trying to understand is --
11 do you understand the difference between corporations?
12 So you work for a corporation, right? You work for a
13 company?

14 A I -- I work for an LLC.

15 Q Okay. But that's a -- you understand that's a
16 business entity?

17 A Yes.

18 Q So you understand the concept of a business
19 entity, and you understand there's a Wyndham Vacation
20 Resorts business entity. Do you understand that?

21 A Yes.

22 Q All right. Now, in terms of who sold you a
23 timeshare interest, do you understand that Fairshare
24 Vacation Owners Association did not sell you the
25 timeshare interest?

1 A Yes.

2 Q Okay. So in terms of the fees that you're
3 talking about, the fees are fees assessed by whom? The
4 upkeep, maintenance, property elements that you just
5 talked about, who is -- who do you understand -- what
6 entity name do you understand assesses those fees?

7 A That is Wyndham executives that are hired to do
8 those assessments, but that is all affiliated and
9 managed through Fairshare.

10 Q Okay. And -- and when you pay these various
11 fees, whenever you pay them, do you pay by check?

12 A No. We were enrolled at the time of purchase
13 in to a Wyndham Visa card, so all of the fees are
14 charged automatically every month to that -- to those
15 credit cards.

16 Q When the fee comes through each month, what
17 does it say -- who does it say on your statement the fee
18 is being paid to?

19 A I don't recall.

20 Q Okay. So you have a recurring monthly payment
21 that goes out associated with your timeshare interest,
22 and you do not know who the payee is on that
23 transaction; is that fair?

24 A Yes, that's fair.

25 Q All right. You used the word "profits" earlier

1 to talk about various things. Do you consider the
2 moneys that your HOA collects, your personal HOA, that
3 are not used because, say, the pool didn't break, but
4 they hold that over to the next year -- do you consider
5 that to be a profit?

6 A It depends on what they choose to do with it.

7 Q Well, if they just hold it -- they hold
8 it until something else breaks so that they can use it
9 for that purpose, do you consider that to then be a
10 profit to your HOA?

11 MR. MILLER: Object to the form.

12 A No, I guess not.

13 BY MR. McCOY:

14 Q All right. So similarly here, if there's an
15 assessment that's being made associated with your
16 timeshare and they had budgeted, let's call it for
17 you -- let me start the question over.

18 If you pay, let's say, \$1,000 a year as part of
19 an assessment associated with your timeshare ownership
20 and that's been budgeted for whatever reason but they
21 have an excess at the end of the year, you agree if
22 they're holding that to be used for the benefit of
23 improving the property, that's -- that's similarly not a
24 profit?

25 MR. MILLER: Object to the form.

1 A Right. It's not a profit.

2 BY MR. McCOY:

3 Q Okay. As part of the relief that you're asking
4 for in this lawsuit -- let me just look at the complaint
5 here.

6 So as I look at the Amended and Restated Class
7 Action Complaint that was filed on October 8, 2020, at a
8 certain point I think you asked for removal of the
9 trustee, and let me -- yes, removal of the trustee. So
10 that's at least a relief that you're seeking in Count V,
11 if not other counts.

12 Who do you propose would be a substituted
13 trustee if you were granted that relief? Have you
14 looked into that?

15 MR. MILLER: Object to the form.

16 A No, I have not.

17 BY MR. McCOY:

18 Q Do you know if removal of the trustee in this
19 case would result in a decrease in the fees that you're
20 complaining about here, or do you -- would that result
21 in an increase in the fees that you're paying in this
22 case?

23 MR. MILLER: Object to the form.

24 A I do not know.

25 BY MR. McCOY:

1 Q Does that matter to you in terms of your
2 pursuit of that relief?

3 MR. MILLER: Object to the form.

4 A Yes --

5 BY MR. McCOY:

6 Q And --

7 A -- it would.

8 Q And what -- what result would you like to see
9 happen as -- if the trustee was removed? That the fees
10 would go up or that they would go down?

11 A That they would go down.

12 Q In sitting here, just so I'm clear, in terms of
13 whether there's a -- a -- an acceptable substitute for
14 the trustee that would be able to produce a -- a lower
15 fee, you have no idea in that regard; is that fair?

16 A Yes.

17 Q All right. What status did you have within the
18 Club Wyndham Plus system? So, you know, I -- like I
19 love Delta, and I can be a silver, bronze, platinum,
20 medallion, double medallion kind of status. Was there
21 any kind of layers based upon points or participation
22 within the Club Wyndham Plus system?

23 A Yes.

24 Q And what status did you have?

25 A Well, when I first purchased, I had VIP status

1 but only because of the bonus points that I received at
2 the time of purchase, which were only good for, I
3 believe, two years.

4 And then after the bonus points went away, I
5 lost the VIP status. So I am not sure what status I
6 have right now, but it's likely one of the lowest ones.

7 Q And is that a function of you depleting points
8 through the travel that we talked about, and you have
9 not bought in to purchase any additional points; is that
10 true?

11 A Well, it's based on your ownership points. So
12 my ownership is 238,000 points every even year, which
13 equates to 119 a year, if you divided it out; so my
14 ownership status is based on that amount.

15 Q Okay. You talked earlier when we were going
16 through kind of the what -- what's-wrong-here series of
17 questions, you talked about financing.

18 And as I understand it, you did not finance
19 your transaction in 2015 through any Wyndham entity. Is
20 that your understanding as well?

21 A Yes.

22 Q All right. So in terms of financing issues,
23 you would agree that you don't -- you're not bringing a
24 claim against Defendant Fairshare Vacation Owners
25 relative to any financing that you did or did not

1 receive; is that true?

2 A That's true.

3 Q And you would not be seeking to represent
4 anyone who did finance through any Wyndham entity
5 because you did not yourself finance through Wyndham; is
6 that correct?

7 A I don't know the answer to that.

8 Q Okay. What was the total cost to you in 20- --
9 your first full year within the Club Wyndham Plus, what
10 was the total cost to you of any fees that you paid, not
11 counting, you know, what -- what the purchase price was,
12 if you understand what I'm saying. Let me ask it a
13 different way. This is one of those moments where I
14 think I can probably do better on my question, so let me
15 start over.

16 So you made a purchase in July 31, 2015, right?

17 A Yes.

18 Q And there was -- there was a cost associated
19 with that just to be in the system and have a timeshare
20 ownership. And then I think you said on a monthly
21 basis, you pay out for various fees; is that true?

22 A Yes.

23 Q And in 2016, how much did you pay for those
24 fees that we've talked about here today?

25 A I don't have that statement any longer. I've

1 checked my different online accounts. They don't go
2 back that far. But I tried to gather that as part of
3 discovery, and I could not locate it.

4 Q Do you know how much you paid for those fees in
5 2017?

6 A No. I do know for 2018 and 2019, and I believe
7 that was provided. Those assessment statements were
8 provided as part of discovery.

9 Q And do you know how much of an increase there
10 was between 2018 and 2019?

11 A No.

12 Q In 2020, do you know how much of an increase
13 year over year the fee assessments were between 2019 and
14 2020?

15 A I could calculate that number, but I don't have
16 it in front of me right now.

17 Q Do you know it on either a -- we're to the end
18 of the year, but do you know just monthly just by
19 looking at your statements how much that was more per
20 month, if it was more between the two years?

21 A Yeah. I mean, I could access my credit card
22 statement and know that number, but I don't know the
23 exact number off the top of my head.

24 Q Okay. Do you know what the property owners
25 association fee is?

1 A I've -- I've heard the -- the term, but I -- I
2 believe it is like an HOA, but I don't know the
3 specifics behind it.

4 **Q Do you know if that is similar to an HOA that's**
5 **associated with your home resort?**

6 A I'm not sure.

7 MR. McCOY: All right. Well, I'll tell you
8 what. It's 12:20. I was going to go through some
9 documents. I don't know if you guys had planned to
10 take a lunch break. I think if I had the benefit of
11 half an hour to organize myself, this would go
12 faster on the back end just to cut through some
13 stuff I don't need to go through at this point.
14 But, Ms. Jones and Rodney, you tell me your -- your
15 preference here.

16 MR. MILLER: I'll defer to you-all. I'm
17 working from home, so if we take a lunch break, I'm
18 not going anywhere, and I can do it quickly. I'll
19 follow y'all's schedule.

20 MR. McCOY: Okay. Why don't we do this: Why
21 don't we adjourn until, let's say, just 1 o'clock --
22 and that's 1 o'clock my time -- and do whatever you
23 need to do. And then we'll come back, and I should
24 be ready to get going here, and we can be efficient
25 with the afternoon session.

1 MR. MILLER: So that will be noon our time. Is
2 that okay with you, Carolyn?

3 THE WITNESS: Yes, that's fine.

4 MR. McCOY: All right. Great. We'll reconvene
5 at noon your time, 1:00 here.

6 MR. MILLER: Okay.

7 MR. McCOY: Thanks.

8 THE WITNESS: Okay.

9 THE VIDEOGRAPHER: We're off the record. The
10 time is 12:21 p.m.

11 (Recess taken from 12:21 p.m. to 1:01 p.m.)

12 THE VIDEOGRAPHER: We are back on the record.
13 The time is 1:01 p.m.

14 BY MR. McCOY:

15 Q Hello, Ms. Jones. Welcome back to the
16 afternoon session. Okay to proceed?

17 A Yes.

18 Q Did you speak to anybody during our break about
19 any of the testimony that you've given so far?

20 A No.

21 Q Okay. I want to try to do this -- you know,
22 we're in a new world of technology here where we go
23 through some documents. I'm going to try to put them up
24 on the screen for you so everybody can see them, and
25 this folder will all be shared with folks. This is all

1 stuff that are part of your transaction documents.

2 So one question I had, you had mentioned your
3 bank statements. I was looking through the production
4 that's been made in the case. I could not find any bank
5 statements that would show the charges that we discussed
6 in terms of what's been charged on a monthly or annual
7 basis over the years since you've been enrolled in the
8 program.

9 Is it your recollection that you have gathered
10 those and they were to be produced?

11 A No. It's not my bank statement. The -- the
12 only thing -- you asked about accessing my 2020
13 charges --

14 Q Uh-huh.

15 A -- and the only way I could do that would be to
16 look at a recent Wyndham credit card statement to see
17 what the charge was on there. I haven't printed those,
18 but I could if I need to submit those for discovery.
19 The --

20 Q Are --

21 A -- 2018 and 2019 papers I submitted are the
22 actual assessments from Wyndham --

23 Q Okay.

24 A -- so that's what's getting charged every month
25 during those years.

1 Q All right. Are all of the charges that have
2 been paid since you enrolled in any of the programs
3 starting in 2015 -- have those all gone onto the Wyndham
4 Visa rewards card through the --

5 A Yes.

6 Q -- auto pay?

7 A They were originally possibly on my
8 ex-husband's credit card; but I know for the last few
9 years, they've been on my Wyndham credit card.

10 Q Does -- does Justin Nolen have any involvement
11 at this point with any of the timeshare interests?

12 A No. No.

13 Q Was --

14 A As part of our divorce settlement when we were
15 dividing up debts, this was one that was assigned to me.

16 Q And what is the basis for this having been
17 assigned to you? Is there a particular reason that you
18 got this debt?

19 A Well, I was the main one using it, so...

20 Q All right. So before, I guess, did your
21 husband -- did Justin Nolen work during the period while
22 you two were married?

23 A Yes.

24 Q And so during the period that you were married,
25 were you kind of a dual-income household?

1 A Yes.

2 Q And then as part of the divorce, you and -- you
3 took on any of the debt associated with the Wyndham
4 timeshare; is that true?

5 A As well as the ownership.

6 Q Right. Understood. But you took that on by
7 yourself?

8 A Yes.

9 Q He was not contributing any further to whatever
10 that debt was, nor was he able to participate in the
11 ownership?

12 A Right.

13 Q And has your new -- has your current husband in
14 any way taken on that debt, or do you share that debt,
15 or is that something that you still have as kind of your
16 own responsibility at present?

17 A Well, it's my own responsibility, but our --
18 our incomes are combined into the same bank account.

19 Q Okay. All right. Did the Wyndham timeshare
20 expenses become more burdensome for you after you did
21 not have -- after you took them on solely yourself?

22 A Yes. I mean, the -- our income was -- my -- my
23 income was reduced because I wasn't married anymore.

24 Q Is it fair to say that you would like to be
25 done with your ownership of the timeshare interest at

1 **this point?**

2 A Yes.

3 **Q Were you the primary person, as between you and**
4 **Justin Nolen, who was interested in pursuing the**
5 **timeshare when you were in Panama City at that**
6 **promotional event in 2015?**

7 A I would say so.

8 **Q And what were the benefits that you -- what was**
9 **attractive about the program to you?**

10 A Just being able to travel with my family and
11 maybe visit places that we haven't visited before.
12 And the -- the main thing that was attractive to me was
13 the idea of once I pay off this purchase, then I have
14 something to pass on to my children.

15 Now I would feel bad about passing it on to
16 them because that would make them responsible for paying
17 monthly fees that maybe they wouldn't be able to afford
18 down the road.

19 **Q To be clear, you're not contending that when**
20 **you made your timeshare purchase in 2015, fees were not**
21 **disclosed to you, correct? You knew there were fees**
22 **ongoing?**

23 A Correct, yes.

24 **Q And -- and the fees that you've been charged**
25 **over time, those have all been disclosed to you? I just**

1 want to be sure that there's not a claim here that you
2 have been charged fees that you weren't told about?

3 A Right.

4 Q The issue is you do not like that the fees have
5 gone up over time?

6 A Right --

7 Q All right.

8 A -- and it's only been a short period of time,
9 so...

10 Q And do you, sitting here right now, have any
11 understanding of why the fees have been increased, what
12 the money, the increased money over what you were
13 originally charged, why they went up, what they were
14 for?

15 A No.

16 Q So sitting here right now, you don't know if
17 those fees would be justified or not in terms of
18 expenses that were incurred for upkeep or for program
19 fees or for anything else; is that true?

20 A That's true. I do not know.

21 Q And without knowing that information -- I think
22 we talked before the break -- you would still like to
23 have a refund of all of the fees that you have paid in
24 even though you don't know whether or not the fees were
25 for some purpose to improve the property or the

1 timeshare experience, true?

2 A That's true.

3 Q I want to walk through -- let's see if we can
4 conquer technology here and go through a few documents.
5 Well, let's just do this. Let me see if I can -- all
6 right. Can you see that, Ms. -- Mrs. Jones?

7 A Yes.

8 MR. McCOY: All right. Rodney, can you see
9 that, too?

10 MR. MILLER: I can.

11 BY MR. McCOY:

12 Q If you can't see something once I get it up --
13 it looks big to me, but I've got a screen -- let me
14 know. I'll try to blow it up and do whatever. Let me
15 know, and we'll work through this.

16 The first document that I want to show you is a
17 document that's entitled a Purchase and Sale Agreement
18 dated 7/31/2015. And if you'd like for me to do so, I'm
19 happy to scroll through.

20 This looks like it's a -- what I have here is a
21 three-page document, and there are signatures here that
22 I'm showing to you that purport to be Justin Nolen and
23 Carolyn Nolen on July 31, 2015.

24 My question is: Do you recognize that
25 document, Mrs. Jones?

1 A Yes.

2 Q And you understand that that was the purchase
3 and sale agreement by which you purchased your timeshare
4 ownership --

5 A Yes.

6 Q -- true?

7 And that was the timeshare ownership that you
8 were purchasing in that Bonnet Creek Resort, true?

9 A I was in the Panama City location.

10 Q Right. I'm saying that this is --

11 A Okay.

12 Q This is where you are purchasing an interest in
13 the Bonnet Creek -- if you see here, Fairfield at
14 Orlando Bonnet Creek Resort.

15 A Okay.

16 Q Do you see that in Section 1?

17 A Yeah.

18 Q And that's the home property that we talked
19 about at the beginning of the deposition?

20 A Okay.

21 Q You understand that?

22 A Yes.

23 Q And so you understand that in your purchase and
24 sale agreement --

25 MR. McCOY: -- which, Rodney, do you remember

1 in the stipulation -- I think I'm supposed to start
2 with Defendant's like 5000 as my first number?

3 MR. MILLER: Let's see. I have that pulled up
4 here. I'm trying to find it.

5 MR. BARTHLE: I think that's right.

6 MR. MILLER: Okay.

7 MR. McCOY: Okay. Thank you, Patrick. So
8 we'll mark this as Defendant's 5000 for purposes of
9 identification.

10 (Exhibit Number 5000 marked for identification.)

11 BY MR. McCOY:

12 Q So Ms. -- Mrs. Jones, you understood that when
13 you signed this document, you were agreeing to buy your
14 timeshare ownership in the Bonnet Creek Resort in
15 Orlando, true?

16 A Yes.

17 Q All right. And now, because you are in
18 Alabama, I found this document, and that will be
19 Defendant's 5001.

20 (Exhibit Number 5001 marked for identification.)

21 BY MR. McCOY:

22 Q You recognize Defendant's 5001, which looks
23 like a one-page document here? It's an Alabama Contract
24 Addendum.

25 A Yes.

1 Q And do you see that this looks like it has what
2 maybe I'll call a "cooling-off provision," which is
3 you're in a -- you have five days after you sign the
4 contract to cancel? Do you see that in all bold, all
5 caps?

6 A Yes.

7 Q And that's your signature there down at the
8 bottom --

9 A Yes.

10 Q -- along with -- I believe that would be your
11 husband. Would you recognize his signature?

12 A Yes.

13 Q Do you remember signing this document?

14 A I do.

15 Q And so you understood or do you understand that
16 when you signed this, notwithstanding whatever the price
17 may be today versus tomorrow and whatever sales was
18 going on; once you signed the agreement, you had five
19 days to look back and think about whether you wanted to
20 cancel your purchase or not, correct?

21 A Yes.

22 Q All right. And then you never -- you did not
23 exercise that right within that five-day cooling-off
24 period, correct?

25 A Right, because five days wasn't enough for me

1 to get the answer that I needed from the mortgage
2 company.

3 MR. McCOY: So let's talk about that
4 particular -- well, we talked earlier about the Club
5 Wyndham Plus Rewards Program, and we'll mark this as
6 Defendant's 5002.

7 (Exhibit Number 5002 marked for identification.)

8 BY MR. McCOY:

9 Q And just take a minute to look at that.

10 This looks to me like another document that you
11 signed with Justin Nolen on July 31, 2015. Do you
12 recognize the document?

13 A Yes.

14 Q And is this a document that you would have
15 signed that same day?

16 A Yes.

17 Q And did you understand -- did you read this
18 document?

19 A Yes.

20 Q All right. And do you see here that in Section
21 2 -- if you would just read that section out to the jury
22 in this case so that we can both make sure we're looking
23 at the same thing. Will you read that for all of us,
24 please?

25 A Item Number 2?

1 Q Yes, ma'am.

2 A "Use and participation in the Club Wyndham
3 Plus/Wyndham Rewards Program is completely voluntary,
4 and the payment of any fee or other cost is only
5 required upon such use or participation."

6 Q And if you'll go ahead and read Number 5 --

7 A "The continued" --

8 Q -- if you don't mind.

9 A "The continued availability of the Club Wyndham
10 Plus/Wyndham Rewards Program is not necessary for a
11 purchaser's use of [sic] enjoyment of any accommodation
12 in the timeshare plan purchased."

13 Q And then if you would just read Number 6 to the
14 jury, please.

15 A "If you cancel your purchase contract within
16 the stated cancellation period, the Club Wyndham
17 Plus/Wyndham Rewards Program will not be available."

18 Q And so is it fair to say that in signing this
19 document, you understood that, one, participation in
20 Club Wyndham Plus was, in fact, voluntary, and that's
21 what you were agreeing to here?

22 A It's voluntary if you want to use your points
23 and travel everywhere.

24 Q Right. If -- if -- it's voluntary if you want
25 to be -- being in Club Wyndham Plus is voluntary. Do

1 you agree with that?

2 A Yes.

3 Q Okay. And if you want to be in the club, then
4 the -- the use and participation and the payment of the
5 fee is only required if you voluntarily join the club,
6 correct?

7 A Yes.

8 Q All right. And then it says down here, you
9 were also agreeing that if you canceled your purchase
10 contract within the stated cancellation period -- and we
11 just talked about at least one of those -- that
12 cooling-off period, the Club Wyndham Plus/Wyndham
13 Rewards Program will not be available. You were
14 agreeing to that, too?

15 A Yes.

16 MR. McCOY: All right. Give me a moment here.
17 We'll mark this next document as Defendant's
18 Exhibit 5003.

19 (Exhibit Number 5003 marked for identification.)

20 BY MR. McCOY:

21 Q And if you'll take a minute to look at this.
22 Have you ever seen this document before, Mrs. Jones?

23 A Yes, I believe so.

24 Q They say -- someone wrote here, and I don't
25 know if it's -- do you recognize the name

1 Summer Williams that's up at the top --

2 A Yeah.

3 Q -- of Defendant's 5003?

4 Who's Summer Williams?

5 A She was our sales rep. She was the one doing
6 the sales presentation to us after the group session.

7 Q There looks to be a line and something
8 handwritten in here that says "Ryno." Is that a name
9 that you recognize, or do you even know what that is? I
10 don't, so I'm legitimately asking if you know what that
11 is.

12 A I don't know what that -- what that is.

13 Q At the bottom here, it says, "They talked about
14 refinance with some banker back home. Also, Bonnet was
15 a surprise to them. Seemed like they were okay."

16 Did you talk with a banker back home before you
17 came to the sales presentation about this mortgage
18 issue?

19 A No. Sum- -- Summer, and there was -- so that
20 Ryno could be the other sales rep that would come by and
21 speak, but I don't remember his name. But there was a
22 male sales rep that would come by and do follow-up
23 questions with the other sales reps. So that could be
24 who that is.

25 But Summer and the other sales rep are the ones

1 that brought up about refinancing this once we got back
2 home with a mortgage company. So every time I talked to
3 a new person, I was sure to bring that up, because I
4 wanted to make sure that that was a real option.

5 But, no, this was on a weekend, so we couldn't
6 really talk to somebody that fast and get any
7 information about a refinance.

8 **Q Well, certainly whether it was a Saturday or**
9 **Sunday -- and we could look that up -- within that**
10 **five-day cooling-off period, that would have fallen on a**
11 **business day, I would have to think; is that fair?**

12 A Yeah, at some point in the five days; but,
13 like, we came back from vaca- -- because this was in the
14 middle of our vacation, so this wasn't the last day we
15 were there. So we finished up our vacation, then got
16 back home. Then I started reaching out to people. And
17 we were already outside of the five days before I
18 figured out the options, because I ended up speaking to
19 a couple of different companies before I came to the
20 conclusion that this is not going to be an option for
21 real.

22 **Q Okay. But at no -- no point was anybody from**
23 **Wyndham or anybody else -- Fairshare or anybody else --**
24 **telling you that they would offer any kind of**
25 **alternative financing or mortgage or put you in touch**

1 with somebody about that? That was an option you were
2 exploring on your own as -- as a financing option,
3 correct?

4 A No, they're the ones that said I would have
5 that option to pursue on my own. They weren't going to
6 help me with it, but they said these --

7 Q Okay.

8 A -- are the benefits, and this is something you
9 can do on your own if you choose to.

10 Q And if you could find a lender who would lend
11 on a timeshare, true?

12 A Yes.

13 Q All right.

14 A Yes.

15 Q But they weren't offering to put you in touch
16 with a lender or -- they were saying if you want to
17 explore this and you find someone who will do it, then
18 fine, essentially; is that correct?

19 A Yes.

20 Q Yes? Okay.

21 A Yes, but they --

22 Q All right.

23 A -- made it sound like it would be an option.

24 MR. McCOY: Okay. We'll mark this next exhibit
25 just for purposes of identification as Defendant's

1 5004.

2 (Exhibit Number 5004 marked for identification.)

3 BY MR. McCOY:

4 Q This is the "Congratulations, Welcome to
5 Wyndham" email.

6 And will you just confirm that you recognize
7 this -- I'm sorry. It's not an email. It's a -- it's a
8 document.

9 But is that your handwriting or is that your
10 husband's handwriting that is on this particular
11 document?

12 A That's my husband's.

13 MR. McCOY: All right. And this next document
14 will be Defendant's 5005.

15 (Exhibit Number 5005 marked for identification.)

16 BY MR. McCOY:

17 Q This is the Buyer's Acknowledgment document.

18 Do you recognize those signatures, Mrs. Jones?

19 A Yes.

20 Q That's your signature there on the right and
21 your former husband's signature on the left?

22 A Yes.

23 Q And these would have been executed on July 31,
24 2015 as part of your contract documents?

25 A Yes.

1 **Q** All right. And, again, this is reflecting to
2 you that you are buying your ownership interest, meaning
3 the tenant-in-common kind of partial ownership of the
4 property in the **Fairfield Orlando at Bonnet Creek**
5 **Resort?** Do you see that in all bold, caps, in the first
6 paragraph?

7 A Yes. But on that other piece of paper that you
8 showed me --

9 **Q** Yes, ma'am.

10 A -- where somebody had made a note about the
11 financing, they had --

12 **Q** Yes. Yes.

13 A -- also made a note that we were surprised
14 about Bonnet Creek --

15 **Q** Yes.

16 A -- and it's because when we got to closing,
17 which closing is just you go in the separate office with
18 a finance guy to sign your documents. That's the guy
19 who filled out that form and he -- when he was showing
20 us our paperwork, it said "Bonnet Creek," and that was
21 the first time we even saw anything that said our home
22 resort was going to be Bonnet Creek.

23 **Q** Understood.

24 A Previously, they had asked, "Where do you
25 travel the most?" And we said "Panama City." So we

1 actually walked in to closing thinking that our home
2 resort was going to be Panama City.

3 Q The -- and notwithstanding learning that it was
4 going to be Bonnet Creek, you continued through with the
5 sales transaction, correct?

6 A We did, because they said, "The home base
7 doesn't matter. You have the availability to use those
8 points and travel anywhere."

9 Q Give me a moment. When I'm flipping pages like
10 this, that's a good thing. It means we're going faster.

11 MR. McCOY: Just so we are very clear -- and
12 maybe, Rodney, you can help me with this -- none of
13 the claims in -- in this case, as they pertain to
14 Mrs. Jones relate to anything other than her 2015
15 transaction; is that correct?

16 MR. MILLER: I -- yeah, that's my
17 understanding, that the 2018 one was rescinded, and
18 I don't -- I don't understand it to be an issue.

19 MR. McCOY: Okay.

20 MR. MILLER: I can reach out to Jimbo just to
21 confirm with him real quick to make sure that's
22 correct, but that is my understanding.

23 MR. McCOY: That would be great, because if we
24 could stipulate to that, there's a ton that I don't
25 need to ask about. But I do have just some general

1 questions about 2018 without needing to get into the
2 nitty-gritty if we have that stipulation.

3 MR. MILLER: Okay. I'll confirm with him on
4 our next break just to make sure.

5 MR. McCOY: Okay. Perfect.

6 BY MR. McCOY:

7 Q Okay. So, Mrs. Jones, walk me through the
8 thought process in entering into the new transaction in
9 2018 and why -- why you did it.

10 A Right. So in 2018, I was already on a trip --
11 February 2018 -- with my sister and her family, and
12 that's when we were in Tennessee. And they -- they had
13 a -- a thing where just like every time you check into a
14 Wyndham, you know, when you check in, they're -- they'll
15 say, "Hey, we're doing an owner's breakfast. If you
16 come to this breakfast and sit through a sales
17 presentation, then you earn a \$100 gift card, you know.
18 Your kids can spend it in the arcade or whatever y'all
19 want to do with it."

20 So we went ahead and signed up. So we
21 actually -- everyone that was in my -- staying in my
22 condo at the time all went to the breakfast, and then I
23 had to stay after to go through the sales presentation
24 since I was the only owner.

25 So I did that. And I was pulled aside because

1 you -- after a presentation, you always get assigned a
2 sales rep that you work one-on-one with. So the sales
3 rep that was assigned to me that particular day, he --
4 the whole plan was you're paying these assessment fees,
5 and we have a plan where, if you upgraded, you could be
6 investing -- the money you spend every month on these
7 fees, you could just be investing into more points, and
8 essentially all of the fees would go away. I would
9 invest money in upgrading my points, and I wouldn't have
10 monthly fees anymore.

11 So there were a lot of different flags along
12 the way that did not make sense to me. This particular
13 transaction -- I was accustomed to if you're going to be
14 signing or doing some sort of closing, that is typically
15 in a room that's recorded.

16 This particular transaction, he insisted coming
17 to the actual condo, the hotel room we were staying in,
18 and he brought all of the documents there to be signed.

19 Well, come to find out, I get back, I get a
20 bill that is double the assessment fees, not where the
21 assessment fees went away. So I immediately started
22 reaching out to complain, and they put me in contact --
23 I think it's a customer care center where you have to
24 file complaints.

25 And I opened up a case against that particular

1 transaction that, you know, this sales rep just
2 blatantly lied to get me to sign up for this upgrade.
3 And so they were able to track him down, I guess, and
4 talk to other individuals, and they sent me an offer to
5 cancel and completely refund what they had charged.

6 Q Do you feel that -- that Wyndham acted
7 responsibly in response to your complaint about that
8 particular transaction?

9 A Yes.

10 Q And setting aside whatever did or didn't happen
11 relative to that transaction, is it fair to say that in
12 coming into that transaction and agreeing to that
13 transaction, you were wanting, at least in 2018, as of
14 the date of that transaction, to stay in the Wyndham
15 system, true?

16 A True.

17 Q In fact, you wanted to expand what you had
18 already in the Wyndham system through this new
19 transaction?

20 A Yes, but it would have done away with monthly
21 fees that are ongoing.

22 Q Well, you would have -- you would have paid --
23 what was the amount you were paying for the 2018
24 transaction?

25 A I don't remember the exact amount.

1 Q You were going to pay money in, correct?

2 A Right. Yeah.

3 Q And your understanding is that it would either
4 reduce or eliminate the monthly fees?

5 A It was supposed to eliminate the monthly fees;
6 and instead, I would be investing those funds into
7 having more points.

8 Q Got it. Okay. And so up until whatever
9 happened with the 2018 transaction, the points that you
10 wanted to get would have allowed you greater access to
11 properties within the Wyndham system, true?

12 A True.

13 Q Yeah. All right. Have you ever taken any
14 steps to become a member of the board of trustees that
15 governs the trust holding your use rights?

16 A No.

17 Q Okay. Have you ever tried to nominate a member
18 to the board?

19 A No.

20 Q Why not?

21 A I'm not really sure. I don't really know any
22 Wyndham owners. I used to know one a long time ago.
23 She's the one that signed -- helped sign me up for that
24 first promotion, but she no longer works with me.

25 Q Can -- can you tell me -- as to the particular

1 trustees who managed the Fairshare Vacation Owners
2 Association Trust, can you tell me what those particular
3 trustees did wrong in your opinion, not -- I don't want,
4 you know, all of this thing of whatever. What did
5 those -- those are people. So what did those people do
6 wrong?

7 MR. MILLER: Object to the form.

8 BY MR. McCOY:

9 Q Do you understand my question, Mrs. Jones?

10 A For the most part, yes.

11 Q Okay.

12 A So, in my opinion, they have not managed funds
13 and taken the interest of the beneficiaries in mind.

14 Q All right. Let's start with that general
15 premise and drill down to understand what facts support
16 that.

17 So you said they -- they have not -- in your
18 opinion, they have not managed funds and taken the
19 interest of the beneficiaries, I think you said, maybe
20 to heart or taken in the interest of the beneficiaries.

21 How have they not managed funds?

22 A I cannot tell you specifically. That's why I
23 hired attorneys and people that can -- that are smarter
24 than me.

25 Q Understood. But what I'm trying to understand,

1 I don't -- I don't need to know the legal theories and
2 the things that -- that Mr. Miller and others are
3 putting together on the legal side; but as the plaintiff
4 who wants to prosecute your claim and the class claims,
5 I'm asking, factually, what are you aware of? And if
6 the answer's nothing, then that's fine; but I just -- I
7 have to know what facts are out there that you are aware
8 of.

9 A So I have things that I believe. I don't have
10 a document to hand you that says, "These are the facts,
11 and this is where I got it from."

12 Q Okay. What do you believe? And -- and -- and
13 we're talking about managed the funds, and then we're
14 going to separately talk about taking the interests of
15 the beneficiaries to heart. But I want to talk about
16 what do you believe that the trustees of the Fairshare
17 Vacation Owners Association have done to not manage
18 funds?

19 MR. MILLER: Object to the form.

20 A So I believe that they are profiting from the
21 fees that they are charging the owners. The not
22 managing side is -- or let's just say not managing in
23 the -- with the beneficiaries in mind is they -- they're
24 all hiring Wyndham executives to make those decisions.
25 So there's a big circle of Wyndham entities that are all

1 incorporated in this instead of hiring a group that
2 doesn't -- that isn't affiliated with Wyndham and so
3 that the -- the money just all stays in the Wyndham
4 circle.

5 It would be like with the company I work for
6 always hiring other companies that are affiliated with
7 my company to perform different jobs so that all of the
8 money funnels through my company.

9 BY MR. McCOY:

10 Q And you would contend if your company did that,
11 that would be a problem because why?

12 A Well, it's different. It would be different
13 for my company, because we're not trustees that are
14 managing a trust --

15 Q Uh-huh.

16 A -- where other people have made deposits and
17 are beneficiaries.

18 Q So everything you just relayed to me about the
19 trustees, that's a belief that you have as opposed to a
20 fact that you are aware of; is that true?

21 A I can't tell you the specifics of how all of
22 that works; but, yes.

23 Q Okay. And, in fact, as you sit here right now,
24 you don't know that any one of the trustees has ever
25 used even the first dollar in -- in -- in an

1 inappropriate way; is that true?

2 A That is true. That's why I have attorneys, to
3 do that investigation.

4 Q Well -- well, you've made an allegation. You,
5 ma'am, have made an allegation against my client that
6 that has happened. That's -- that's not -- we're going
7 to -- it's -- so I'm trying to understand, what is the
8 factual basis for you to have made that allegation in
9 this lawsuit that has us here today?

10 MR. MILLER: You mean having conversations with
11 attorneys?

12 MR. McCOY: No, I'm asking -- I don't want to
13 know what information has been shared with her or
14 theories or whatever you guys want to accomplish.

15 BY MR. McCOY:

16 Q I want to know what facts do you have, not --
17 if you don't know anything apart from what your lawyers
18 have told you, then that's fine; just tell me that, if
19 it's all from your lawyers.

20 Do you have any independent set of facts that
21 would support any of your beliefs, or is that all stuff
22 that's learned from lawyers? And then I don't get to
23 know about that.

24 A I do not have any independent facts.

25 Q In your efforts to find a way to get

1 independent financing through a mortgage or whatever
2 arrangement you were talking about, is it fair to say
3 you never found a lender who would lend by taking a
4 mortgage or some type of interest in your timeshare
5 ownership?

6 A Right. And I was told because it was a point
7 system, it wasn't -- like I wasn't investing in a
8 physical condo location.

9 I even explained to them, you know, we were
10 assigned a home resort, and they said, "Well, that
11 doesn't matter. It has to be a specific unit in the
12 resort that you now have ownership in."

13 They do not offer any type of mortgage-type
14 financing for point-system-type timeshares.

15 Q In terms of the financing allegations in your
16 complaint, do you agree that there would be people who
17 are members of the same class that you want to represent
18 who would be fine with the fact that Wyndham Consumer
19 Finance offers them financing so that they can actually
20 make this purchase?

21 MR. MILLER: Object to the form.

22 A Yes, I imagine some may.

23 BY MR. McCOY:

24 Q Do you -- do you -- the reservation system that
25 we talked about before, is it -- is it your belief that

1 the ability to reserve -- well, strike that. Strike
2 that whole line of questions there.

3 If you could continue on using the Wyndham --
4 the Wyndham program, Wyndham Club Plus Program for free,
5 would you do it?

6 MR. MILLER: Object to the form.

7 A You mean would I withdraw my name from the
8 lawsuit or --

9 BY MR. McCOY:

10 Q No, no. I'm not asking about that. I'm saying
11 if -- if you could continue to travel around and use
12 Wyndham facilities for free, would you do that?

13 MR. MILLER: Object to the form.

14 A I feel like this is a trick question.

15 BY MR. McCOY:

16 Q No. I'm just asking if that's something that
17 you would do.

18 A I mean, yes. I mean, if there's free
19 vacations, I guess anybody would agree to that.

20 Q And in terms of what we talked about already in
21 this deposition, you've already taken at least three
22 vacations through the Wyndham Club system, correct? We
23 talked --

24 A Yes.

25 Q -- about Panama City and Pigeon Forge.

1 And, in essence, what you would like, through
2 this lawsuit, is to get all of the fees that you've paid
3 back so you would be able to have taken those vacations
4 for free?

5 MR. MILLER: Object to the form.

6 A No. That's not why I'm doing this.

7 BY MR. McCOY:

8 Q Okay. But you would also like to be out of
9 your timeshare ownership. Did I hear that correctly?

10 A Yes.

11 Q What do you understand are your duties in
12 serving as a -- as a possible class representative, if
13 there is a class in this case?

14 A To help gather documents, to help by
15 participating in depositions to represent all of the
16 parties associated in the class, and then to -- to not
17 pursue for my personal gain but to consider and take --
18 to take into consideration the interests of the entire
19 class.

20 Q On that particular topic, what have you done to
21 take in the interests of the entire class so far since
22 you've been involved in this lawsuit?

23 MR. MILLER: Object to the form.

24 A I'm not sure what you mean.

25 BY MR. McCOY:

1 Q You just told me that part of what you
2 understood your duties to be would be to represent the
3 interests of the entire class, not just your personal
4 gain. We're now --

5 A Right.

6 Q -- pretty -- pretty well into this lawsuit.
7 What have you done between the time you first contacted
8 your lawyers and today to investigate what the interests
9 of the putative class would be --

10 MR. MILLER: Object to the form.

11 BY MR. McCOY:

12 Q -- (inaudible) --

13 THE COURT REPORTER: I'm sorry. Would you mind
14 doing that question again? I got an objection in
15 the middle of it, and I didn't hear some of the
16 words.

17 MR. McCOY: Sure.

18 BY MR. McCOY:

19 Q Since -- since you got involved in this lawsuit
20 and today, what have you done to evaluate what the best
21 interests of the class would be if you were to be a
22 class representative?

23 MR. MILLER: Object to the form.

24 A So I've hired attorneys that have experience
25 with class-action cases, and I have spent a lot of time

1 talking with them about just my experiences, sharing my
2 documents so that they could understand if there's other
3 people that share those same issues that I have.

4 BY MR. McCOY:

5 Q Okay. But in terms of getting out and -- and
6 talking to other people whose interests you may impact
7 through what you're asking for in this lawsuit, you've
8 not done any of that, correct?

9 A Correct.

10 Q Okay. Did you read the complaint in this case
11 before it was filed?

12 A Yes.

13 Q All right. And you authorized counsel to file
14 the complaint on your behalf before it was filed?

15 A Yes.

16 Q And they were acting as your agents in -- in
17 filing that complaint?

18 A Yes.

19 MR. MILLER: Object to the form.

20 BY MR. McCOY:

21 Q Do you have any knowledge as to why the class
22 that you would seek to represent dates back to March of
23 2008?

24 A It has to do with one of the documents that was
25 in my closing package that relates to the Fairshare, the

1 depositing of the points into the Fairshare, and that
2 was the date on that document.

3 **Q Depositing of the points relating to your**
4 **points or just -- just points in general?**

5 A That's when that whole arrangement within
6 Wyndham -- I guess that's the date that that was
7 established as to that process. That's why that
8 particular document has that date on it.

9 MR. McCOY: So I have a segment here, Rodney,
10 also maybe when you talk with Jimbo -- as I
11 understand it, Mrs. Jones has no financing claims.
12 Those would pertain to others and, as a result, also
13 has none of the securitization claims. If when you
14 talk with Jimbo, maybe we can talk about a stip on
15 only 2015, no financing claims and no securitization
16 claims for Mrs. Jones, that will shorten this as
17 well.

18 MR. MILLER: Okay. I'll speak with him on our
19 next break.

20 BY MR. McCOY:

21 **Q For the program fee, the Club Wyndham Plus**
22 **program fee, have you ever attended a Club Wyndham Plus**
23 **annual meeting?**

24 A No.

25 **Q Have you ever read the minutes of a board**

1 meeting?

2 A No.

3 Q Have you ever requested the minutes of a board
4 meeting?

5 A No.

6 Q Have you ever read any of the financials of
7 Club Wyndham Plus?

8 A No.

9 Q And you understand that when I -- when I'm
10 using "Club Wyndham Plus" and have been throughout here,
11 I'm using that interchangeably with Fairshare Vacation
12 Owners Association? Do you understand that?

13 A Yes.

14 Q Okay.

15 MR. MILLER: Well, real quick, Kevin. Are you
16 talking about like in this line of questioning
17 regarding the board of directors and the minutes, or
18 are you talking about all today?

19 MR. McCOY: Well, I'm talking about all day;
20 but if that changes anything she's -- I had assumed
21 that so far; but if that changes something, I'm
22 happy to revisit it and clarify it. I thought
23 everybody knew that Fairshare Vacation Owners
24 Association was being used interchangeable with Club
25 Wyndham Plus; but if that's a problem --

1 MR. MILLER: And I don't know if it changes any
2 of her testimony. I just wasn't sure when you made
3 that comment if it was --

4 MR. McCOY: Sure.

5 MR. MILLER: -- involving the board, the
6 minutes and stuff, or everything. I'll let
7 Ms. Jones, you know, give that some consideration.

8 BY MR. McCOY:

9 Q Yeah. Mrs. Jones, if that causes you to think
10 you need to revisit any of your testimony when I've been
11 asking you about Club Wyndham Plus. Club Wyndham Plus
12 and Fairshare Vacation Owners Association just get used
13 interchangeably, so we've been talking -- I might have
14 used one earlier and then I'm using one now; but if for
15 some reason you think you should change any prior
16 testimony because you were confused, just let me know,
17 please, and we'll do that.

18 A No, I don't think so. I don't recall ever
19 reading minutes from any of the board meetings.

20 Q Okay. Have you ever asked for minutes of a
21 board meeting from we'll -- we'll -- we'll -- we'll call
22 it "Club Wyndham Plus" for purposes of simplifying it
23 right now?

24 A I've never asked for minutes. I know that they
25 mail out some -- I don't know if that's minutes or just

1 an agenda or what; but they do -- they mail out a
2 notification when there's going to be a board meeting.
3 I know I've received those type of things in the mail
4 before. And then they also mail out after there's been
5 a meeting, but I've never taken the time to read them.

6 **Q So in terms of a notice --**

7 A So I don't know if that's minutes or what all
8 is included in that.

9 **Q So in terms of a notice that the Club Wyndham
10 Plus board is going to meet and giving you the date and
11 time, you've -- you've never showed up or dialed in or
12 done anything to participate; is that true?**

13 A That's true.

14 **Q And then you said after a meeting, you get,
15 what, like an agenda showing what was discussed or the
16 outcomes of some sort?**

17 A Yeah. I think it's just like an outline of,
18 like, changes and whatnot.

19 **Q And you've never read those particular
20 documents?**

21 A No.

22 **Q All right.**

23 A Because it all relates to a location that I've
24 never even visited. It all relates to the Bonnet Creek
25 place.

1 Q The home -- your home resort where you own a
2 timeshare interest?

3 A Yeah.

4 Q Do you know how Club Wyndham Plus negotiates
5 its contracts?

6 A No.

7 Q Do you even know the names of the current
8 members of the Club Wyndham Plus Fairshare Vacation
9 Owners Association board?

10 A Not off the top of my head.

11 Q Have you ever undertaken any efforts to
12 determine how members of the Club Wyndham Plus board can
13 be removed?

14 A No.

15 Q Have you ever done anything to investigate if
16 the trust can terminate Wyndham Vacation Resorts as the
17 plan manager?

18 A No.

19 Q Any idea what Club Wyndham Plus, Fairshare
20 Vacation Owners Association takes into account when it
21 sets the annual budget?

22 A No.

23 Q Have you been promised anything, any kind of
24 payment or anything else in exchange for serving as a
25 putative class representative in this case?

1 A No.

2 MR. McCOY: Rodney, I'm going to look over my
3 notes. If maybe you can check on those three
4 categories, we could probably button this up rather
5 quickly, depending on those answers.

6 MR. MILLER: Okay. Yeah, I'll give Jimbo a
7 call right now just to get confirmation on that, and
8 I'll let you know.

9 MR. McCOY: Thank you. Let's take five minutes
10 if that's not enough for you, Rodney, or do you
11 think you need more?

12 MR. MILLER: That should be fine.

13 MR. McCOY: All right. Let's take five, and
14 we'll be back at 2:06 my time, 1:06 your time.

15 THE WITNESS: Okay.

16 THE VIDEOGRAPHER: We're going off the record.
17 The time is 2:01 p.m.

18 (Recess taken from 2:01 p.m. to 2:19 p.m.)

19 THE VIDEOGRAPHER: We are back on the record.
20 The time is 2:19 p.m.

21 MR. McCOY: All right. I think we have a
22 stipulation that there are no claims in this case
23 relating to any transactions other than the July 31,
24 2015 transaction for Carolyn Nolen Jones; is that
25 correct, Mr. Miller?

1 MR. MILLER: Yeah, I don't know the exact date
2 of 2015, so it may be safer to say that the 2018
3 transaction is not at issue in this one.

4 MR. McCOY: Okay. Fair enough. So we have
5 that stipulation.

6 The -- all right. So now we'll turn to some
7 questions just so I can understand a few things.

8 BY MR. McCOY:

9 Q Mrs. Jones, in terms of financing for the 2015
10 timeshare purchase, do you agree that you did not obtain
11 financing through Fairshare Vacation Owners Association?

12 A That is true.

13 Q Okay. You did not obtain financing for the
14 2015 timeshare purchase from any Wyndham entity for that
15 matter; is that true?

16 A That is not true. They -- so they -- they
17 charged a portion of the cost to the Wyndham Visa cards
18 that they opened in our name on that day, and then they
19 charged the rest to PayPal accounts that they also
20 opened that day.

21 Q Okay. But maybe -- maybe I'm not clear. Do
22 you even -- do you know who even extended you the credit
23 to make those purchases? Do you understand -- do you
24 understand what entity gave you the credit to be able to
25 make the purchase?

1 A You mean for the Wyndham Visa?

2 Q Yes, ma'am. You're making a -- let me back up.
3 Let me help you here.

4 A Okay.

5 Q You're going to buy a timeshare interest,
6 right --

7 A Right.

8 Q -- in 2015?

9 You need funds to be able to do that, right?

10 A Right.

11 Q You weren't paying cash, correct?

12 A I was not paying cash.

13 Q All right. And so you needed a creditor to
14 lend you credit, right --

15 A Right.

16 Q -- so you could make the payment?

17 A Yes.

18 Q What's the name of the creditor who lended you
19 credit so you could make the payment for your timeshare
20 interest?

21 A PayPal. And I believe the other one is
22 Barclay, which is the Wyndham Visa company.

23 Q All right. So the name of the card that you
24 got was a Wyndham Visa Rewards, right?

25 A I believe it just says "Wyndham Visa."

1 Q Okay. But do you know who actually extended
2 you the financing? You mentioned Barclays. Was that
3 the financial institution?

4 A Barclay U.S. is the name of the website that I
5 go to to make payments.

6 Q Okay. So you understand you're paying Barclays
7 U.S. back on a loan that was made to you from Barclays
8 U.S., correct?

9 A Okay.

10 Q You understand that?

11 A Yes.

12 Q Okay. All right. And so the fact that it says
13 "Wyndham Visa" on your card, you understand Wyndham did
14 not extend you credit?

15 A Okay.

16 Q You understand that?

17 A Yes.

18 Q Okay.

19 MR. MILLER: Object to the form.

20 BY MR. McCOY:

21 Q Well, if you -- if you dispute it, then I would
22 like to work through it. I had hoped we could stipulate
23 this out, but we're going to work through it. Did --

24 A No --

25 Q -- any -- is there any Wyndham entity that's

1 serving as your creditor in lending the moneys that you
2 used to pay for your Wyndham timeshare ownership, or
3 were those other entities?

4 A They were other entities.

5 Q Okay. So you agree with me that you did not
6 finance your 2015 timeshare purchase through a Wyndham
7 entity, correct?

8 A Right.

9 Q All right. And given that there is no
10 financing that was extended to you on behalf of any
11 Wyndham entity or by any Wyndham entity, you have no
12 reason to believe that a loan that doesn't exist was
13 part of this securitization part of the claim that's in
14 this case, correct?

15 A I don't understand what "securitization" is.

16 Q Do you even know what that claim is in the case
17 that you are a named plaintiff in?

18 A I don't understand that -- that word.

19 Q Okay. So in the complaint that you said you
20 read, there are claims in here about the securitization
21 of loans. Do you have any idea what that is?

22 A No.

23 Q Okay. Do you intend to represent any members
24 of the class in terms of any financing that they secured
25 to purchase their timeshares, any financing through any

1 Wyndham entity for their timeshare ownership?

2 MR. MILLER: Object to the form.

3 A I'm not sure.

4 BY MR. McCOY:

5 Q Can you explain here today how any member of a
6 putative class or any other plaintiff in this case would
7 have been injured through any of the securitization
8 allegations that are in this case?

9 MR. MILLER: Object to the form.

10 A No, I cannot explain that.

11 BY MR. McCOY:

12 Q I have one more document we may go to. Let's
13 see. This would be Defendant's 5006. Let's see if I
14 can screen share again.

15 (Exhibit Number 5006 marked for identification.)

16 BY MR. McCOY:

17 Q I was able to pull up this document,
18 Mrs. Jones, and I could not locate any of the credit
19 statements or anything of that sort as having been
20 produced in this case. We talked about that a little
21 bit. But I do have this document, and so what I'm
22 trying to understand -- and maybe this document will
23 refresh your recollection and help through this -- this
24 issue. Do you recognize this document? Sorry.

25 A Yes.

1 Q All right. And Defendant's 5006 for
2 identification is the Preauthorized Auto Pay Plan Set-Up
3 Form.

4 This looks like some kind of an auto
5 enrollment?

6 A That's the auto pay for the Club Wyndham and
7 Club Wyndham Plus fees.

8 Q All right. And every month it looks like you
9 were authorizing for payment -- you see this section
10 down here that says "Authorization For Payment"?

11 A Yes.

12 Q And if you read this, it says that the -- "Any
13 agreement related to the contracts described above
14 payable to Wyndham Vacation Resorts, Inc., or any of its
15 affiliates, including Wyndham Consumer Finance, Inc." --
16 do you understand that you were paying each month --
17 your money was not going to -- you're not paying your
18 money to Fairshare Vacation Owners Association; you're
19 paying a different entity?

20 A Yes.

21 Q All right. So in terms of -- of money and
22 restitution, you understand -- we talked about those
23 concepts earlier. You understand that every month, in
24 terms of where the money goes, the money's not coming
25 out of your account and being paid to Defendant

1 Fairshare Vacation Owners Association. Do you
2 understand that?

3 A Yes.

4 Q Okay. And you don't take exception with that,
5 having reviewed Defendant's 5006, do you?

6 MR. MILLER: Object to the form.

7 A No. I mean, you said earlier that Club Wyndham
8 and Fairshare were interchangeable.

9 BY MR. McCOY:

10 Q Okay. And I'm talking about: Where does the
11 money go? Where does the money go? I'm trying to make
12 sure I understand.

13 You're not claiming that the moneys that come
14 out of your account are sitting in some account; that
15 they leave your account and they go over to Defendant
16 Fairshare Vacation Owners Association?

17 When you get a -- when you get a draw every
18 month, there's a payment that happens. Who -- where is
19 it going to? What does it say on your statement? I
20 just don't have the statements or I would read them. Do
21 you know?

22 A I don't know, but I can work on sending those
23 documents.

24 Q Okay. That would be helpful. And maybe -- you
25 know, I don't know if we would need to reconvene or not

1 based upon what's in the statements; but however these
2 payments are made --

3 A I'm only going to be able to pull, like, this
4 year. I mean, it only goes back so far, because I've
5 tried looking to see if I could pull, like, my total
6 charges for a period of time, and it only lets me go
7 back, like, 11 or 12 months.

8 Q Okay. That's fine. Whatever you can access --

9 A Okay.

10 Q -- is what I would just -- I would like to look
11 at just so I can see what your records reflect in terms
12 of who's being paid the money.

13 A Okay.

14 MR. McCOY: Okay. That's all the questions
15 I -- I think I have subject to, of course, needing
16 to follow up on any -- any, you know, further
17 discovery that we get. But we're well under any
18 kind of seven-hour limitation.

19 I'll leave it to you, Mr. Miller, to let
20 Mrs. Jones know about her rights to read, waive,
21 sign; all of that stuff, and then I think with that,
22 we will -- we will adjourn unless there are
23 questions that you intend to ask, Mr. Miller.

24 MR. MILLER: I'm not sure. I may. Let me --
25 let me take a quick break of maybe five minutes, and

1 then we'll come back and then I'll let you know for
2 sure.

3 MR. McCOY: Okay. Thanks.

4 THE VIDEOGRAPHER: We're going off the record.
5 The time is 2:31 p.m.

6 (Recess taken from 2:31 p.m. to 2:34 p.m.)

7 THE VIDEOGRAPHER: We are back on the record.
8 The time is 2:34 p.m.

9 MR. MILLER: Okay. The plaintiffs will not
10 have any follow-up questions, but we will have
11 Ms. Jones read and sign.

12 MR. McCOY: Okay. Thanks. I think that's it
13 for today subject to, you know, any follow-up, as I
14 noted. But I think that's all I have for today.

15 Thank you for your time, Mrs. Jones.

16 THE WITNESS: Uh-huh. Thank you.

17 MR. McCOY: All right.

18 THE VIDEOGRAPHER: This concludes the videotape
19 deposition. The time is 2:35 p.m.

20 THE COURT REPORTER: Kevin, do you want this
21 typed up?

22 MR. McCOY: Yes, please.

23 THE COURT REPORTER: Rodney, do you want to
24 purchase a copy?

25 MR. MILLER: I'm not sure how we'll be doing it

1 in this case. I'll have my assistant reach out to
2 you.

3 (Deposition concluded at 2:36 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, BEVERLY REPLOGLE, RPR, Court Reporter and Notary Public, do hereby certify that I was authorized to and did stenographically report the foregoing deposition of CAROLYN MILLER JONES; that a review of the transcript was requested; and that the foregoing transcript, pages 1 through 122, is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED December 14, 2020 at Tampa, Hillsborough County, Florida.


BEVERLY REPLOGLE, RPR
Notary Public

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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, BEVERLY REPLOGLE, RPR, Notary Public, State of Florida, certify that the witness, CAROLYN MILLER JONES, appeared before me via Zoom videoconference on December 9, 2020 and was duly sworn.

WITNESS my hand and official seal this date:
December 14, 2020.

Identification:

Personally Known _____
Or Produced Identification _____ X _____

Type of Identification Produced: Driver's License

Beverly L. Replogle

BEVERLY REPLOGLE, RPR
Notary Public, State of Florida
MY COMMISSION GG 946680
EXPIRES 2/25/24



1 E R R A T A S H E E T

2 IN RE: CAROLYN NOLEN, et al., vs. FAIRSHARE VACATION
OWNERS ASSOCIATION

3 DEPOSITION OF: CAROLYN MILLER JONES
4 TAKEN: 12/09/2020

5 DO NOT WRITE ON THE TRANSCRIPT - ENTER CHANGES HERE

6 Please sign, date, and return this sheet to our office.
7 If additional lines are required for corrections, attach
additional sheets.

8 At the time of the reading and signing of the
deposition, the following changes were noted:

9	PAGE	LINE	CHANGE	REASON
10	_____	_____	_____	_____
11	_____	_____	_____	_____
12	_____	_____	_____	_____
13	_____	_____	_____	_____
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21	_____	_____	_____	_____

22 Under penalty of perjury, I declare that I have read my
23 deposition and that it is true and correct subject to
any changes in form or substance entered here.

24 SIGNATURE OF DEPONENT: _____

25 DATE: _____

1 December 14, 2020

2 Rodney E. Miller, Esquire
3 Methvin, Terrell, Yancey, Stephens & Miller, P.C.
4 2201 Arlington Avenue South
5 Birmingham, Alabama 35205

6 In Re: Carolyn Nolen, et al., vs. Fairshare Vacation
7 Owners Association

8 Dear Mr. Miller:

9 Enclosed please find the original errata page with your
10 copy of the transcript so CAROLYN MILLER JONES may read
11 and sign. Please have her make whatever changes are
12 necessary on the errata page and sign it. Please make a
13 copy of the errata page and place it in your copy of the
14 transcript. Please then forward the original errata
15 page back to our office at 101 South Franklin Street,
16 Suite 101, Tampa, Florida 33602.

17 If the errata page is not signed by the witness within
18 30 days after this letter has been furnished, we will
19 then process the transcript without a signed errata
20 page. If CAROLYN MILLER JONES wishes to waive her right
21 to read and sign, please have her sign on the signature
22 line at the bottom of this letter and send it back to
23 our office.

24 Your prompt attention to this matter is appreciated.

25 Sincerely,

Beverly Replogle, RPR
Anthem Reporting

I do hereby waive my signature

CAROLYN MILLER JONES

cc: Kevin P. McCoy, Esquire

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CAROLYN NOLEN, WINDY KELLEY,
CARA KELLEY, and PAULA LITTON,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

-vs-

CASE NO. 6:20-cv-330-PGB-40EJK

FAIRSHARE VACATION OWNERS
ASSOCIATION,

Defendant.
_____ /

VIDEOTAPED
VIDEOCONFERENCE
DEPOSITION OF:

PAULA LITTON

DATE TAKEN:

Thursday, December 17, 2020

TIME:

10:30 a.m. to 12:39 p.m.

PLACE:

All participants appearing
remotely via Zoom videoconference

REPORTED BY:

Beverly Replogle, RPR
Notary Public

1 APPEARANCES:

JAMES M. TERRELL, ESQUIRE

2 RODNEY MILLER, ESQUIRE

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9

Appearing via Zoom videoconference on
10 behalf of the Plaintiffs

11

KEVIN P. McCOY, ESQUIRE

12 Carlton Fields, P.A.

4221 West Boy Scout Boulevard, Suite 1000

13 Tampa, Florida 33607

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14 kmccoy@carltonfields.com

15

Appearing via Zoom videoconference on
16 behalf of the Defendant

17

ALSO PRESENT:

18

Bill Watson, Videographer, appearing via
19 Zoom videoconference

20

21

22

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I N D E X

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- - - - -

E X H I B I T S

(None)

1 THE VIDEOGRAPHER: The time is 10:31 a.m.
2 Eastern Standard Time on December 17, 2020.
3 Will the court reporter please swear in the
4 witness.

5 THE COURT REPORTER: Before I swear in the
6 witness, I need for the attorneys participating
7 in this deposition to acknowledge that I, the
8 court reporter, am not present with the witness
9 and that I will be reporting the proceedings and
10 administering the oath remotely. This
11 arrangement is pursuant to the Florida Supreme
12 Court Administrative Order AOSC20-16 (and
13 extended by AOSC20-23). The parties and their
14 counsel consent to this arrangement and waive
15 any objections to this manner of reporting.

16 Please indicate your agreement by stating
17 your name and your agreement on the record,
18 starting with counsel for the plaintiff.

19 MR. MILLER: Rodney Miller; I acknowledge
20 and agree.

21 You're muted, Kevin.

22 MR. McCOY: Kevin McCoy, on behalf of
23 Defendant Fairshare; I acknowledge and agree.

24 THE COURT REPORTER: Will each party,
25 including the witness, also acknowledge by

1 saying "yes," that they are agreeable that I, a
2 Florida notary, will be swearing in the witness
3 via videoconference means today and that there
4 are no objections to this arrangement?

5 MR. MILLER: Rodney Miller, on behalf of
6 the plaintiffs; I agree.

7 MR. McCOY: Kevin McCoy, on behalf of the
8 Defendant Fairshare; I agree.

9 THE COURT REPORTER: And, Ms. Litton, do
10 you agree?

11 THE WITNESS: Yes, I do.

12 THE COURT REPORTER: Ms. Litton, would you
13 please raise your right hand for me.

14 Do you swear or affirm that the testimony
15 you're about to give in this cause will be the
16 truth, the whole truth, and nothing but the
17 truth?

18 THE WITNESS: I do.

19 PAULA LITTON,
20 having been first duly sworn, was examined and testified
21 upon her oath as follows:

22 DIRECT EXAMINATION

23 BY MR. McCOY:

24 Q Good morning, Mrs. Litton. Can you hear me
25 okay?

1 A Yes, I can.

2 Q Will you tell the jury your full name, please?

3 A Paula Jean Litton.

4 Q Mrs. Litton, in your words, will you tell the
5 jury what you believe my client, Defendant Fairshare
6 Vacation Owners Association, did wrong?

7 A Wrong?

8 Q Yes, ma'am.

9 A I just -- the fees keep going up exorbitantly to
10 me.

11 Q The fees keep going up exorbitantly to you?

12 A Yes.

13 Q Is there anything else other than that the fees
14 keep going up that you would identify that my client,
15 Defendant Fairshare Vacation Owners Association, did
16 wrong?

17 A No.

18 MR. MILLER: Object to the form. You can
19 answer.

20 A No.

21 BY MR. McCOY:

22 Q What specific fees are you referring to that
23 keep going up?

24 A Maintenance fees.

25 Q Maintenance fees? Any other fees?

1 A No.

2 Q When you are referring to "maintenance fees,"
3 what does that mean? What -- what specific fees are
4 maintenance fees?

5 A I pay monthly to the organization; and to my
6 understanding, it was to keep the property up.

7 Q So when you talk about the maintenance fees
8 going up, you're talking about the fees that you pay each
9 month for the upkeep of the property?

10 A It was my understanding.

11 Q Are there any other things that the maintenance
12 fee that you've just identified go towards that you're
13 aware of?

14 A No.

15 Q How much do you pay each month for a maintenance
16 fee?

17 A Presently, \$729 per month.

18 Q Do you pay any more each month for anything
19 other than a maintenance fee?

20 A No.

21 Q So the total amount you pay per month is \$729
22 and -- what was the change?

23 A 14 cents.

24 Q -- and 14 cents?

25 A I think.

1 Q That's the total --

2 A Uh-huh.

3 Q -- fees that you pay associated with your
4 timeshare interest; is that true?

5 A That's the maintenance fees.

6 Q Okay. Are there other fees, though?

7 A Not that I pay.

8 Q Does someone else pay other fees associated with
9 your timeshare interest?

10 A My son-in-law and daughter would have to ask
11 that -- answer that.

12 Q All right. So in terms of what you understand
13 you pay each month, it's \$729.14, and that is maintenance
14 fees for the upkeep of the property?

15 A That's what I understood, yes.

16 Q Do you know which property those fees are
17 associated with, the maintenance and upkeep?

18 A No.

19 Q Do you have a home club at this -- or a home
20 resort at this point?

21 A No.

22 Q Do you know where or how that \$729.14 that you
23 pay each month is used?

24 A No.

25 Q When did you start paying \$729.14 a month?

1 A 2020.

2 Q So January 1, 2020, you started paying \$729.14
3 per month; is that correct?

4 A Correct.

5 Q What were you paying prior to January 1, 2020
6 for the maintenance fees that you're describing?

7 A 694. \$694.

8 Q Even?

9 A No. I don't recall the cents.

10 Q And was that the maintenance fee that you paid
11 for the entire year of 2019?

12 A Correct.

13 Q What did you pay for the maintenance fee in
14 2018?

15 A I don't recall.

16 Q Do you know if it was more or less than \$694?

17 A It was less.

18 Q Do you know by how much? Just -- was it more
19 than \$100 less?

20 A No. I don't know. I don't recall.

21 Q All right. So the only thing that you know of
22 right now is you paid less than \$694 for maintenance fees
23 in 2018; is that right?

24 A Yes.

25 Q Do you know if the maintenance fees went up

1 **between 2017 and 2018?**

2 A Yes.

3 Q **By how much?**

4 A I don't recall.

5 Q **The -- stepping back to this maintenance fee, do**
6 **you get a bill each month, and the total fees are for**
7 **\$729.14, and then you collect fees from your daughter and**
8 **your son-in-law to contribute towards that total amount?**

9 A Yes.

10 Q **How did you come about the arrangement of -- so**
11 **how much do they pay you each month out of the \$729.14**
12 **that you have paid in 2020?**

13 A \$267 a month.

14 Q **And that's based upon an arrangement that you**
15 **have with Cara Kelley and --**

16 A Windy.

17 Q **-- Windy Kelly; is that correct?**

18 A Correct.

19 Q **Is that pursuant to some kind of written**
20 **agreement as to how much they will pay you as part of the**
21 **\$729.14 per month that you've been paying in 2020?**

22 A It's not a written. It's a verbal agreement.

23 Q **And how did you come up with the number of \$267**
24 **as the amount that they pay to you each month?**

25 A We -- we looked at how much it went up and just

1 kind of made an agreement that they'd pay so much of it.

2 Q And how did you come about the percentage or
3 the -- how did you arrive at \$267?

4 A We just talked it over, and I agreed to accept
5 that.

6 Q Now, as I understand it, they've paid you \$267
7 for at least the last two years; is that correct?

8 A Correct.

9 Q When did you first have the conversation and
10 reach an agreement that they would pay you \$267 per month
11 for their, quote-unquote, share of the total fees that
12 you pay?

13 A When they originally purchased, we agreed, and
14 it was a lesser amount. It was -- I don't recall exactly
15 how much it was, but they've gone up as the fees went up.

16 Q Well, when did they first start paying you the
17 \$267?

18 A 2020. No, 2019. I'm sorry.

19 Q So your recollection is that they started paying
20 you \$267 per month for their share of the maintenance
21 fees beginning in 2019?

22 A I don't recall specifically when.

23 Q How do they --

24 A I don't.

25 Q How do they pay you their contribution towards

1 the fees?

2 A By check.

3 Q Has that been the same throughout the time that
4 they've been paying you the fees?

5 A Correct.

6 Q Is that an electronic check, or do you get a
7 check in the mail each month for that amount?

8 A Check in the mail.

9 Q Have they always paid you by check throughout
10 the time that they've been paying their share, whatever
11 the amount is, for the maintenance fees?

12 A Yes.

13 Q Do you know what the -- what an OA fee is?

14 A No.

15 Q Do you know what a program fee is?

16 A No.

17 Q Do you know if you pay an OA fee?

18 A No.

19 Q Do you know if you pay a program fee?

20 A No.

21 Q Other than the fact that the fee has gone up --
22 well, let me -- let me ask you this. Do you -- have you
23 ever investigated why the fee has gone up, the
24 maintenance fee?

25 A No.

1 Q Do you know if that's because expenses have
2 increased?

3 A No.

4 Q Why didn't Windy and Cara Kelley start paying
5 you more than \$267 a month even though the maintenance
6 fee that you're paying went up in 2019?

7 A They were paying less than that before then.

8 Q I understand. But as I understand it from the
9 testimony, they've been paying you \$267 a month for --
10 for more than just 2020. They were paying you that in
11 2019, correct?

12 A I don't recall exactly when they started.

13 Q Okay. I've taken their depositions, and we'll
14 let that testimony be what it may be; but my
15 understanding is they've, at least for the last few
16 years, paid you the same amount even though the total
17 fees that you pay have gone up. Is that consistent with
18 your memory or not?

19 MR. MILLER: Object to the form.

20 BY MR. McCOY:

21 Q You can answer, ma'am.

22 A Yeah. Say it -- please say it again.

23 Q Yes, ma'am.

24 My understanding is that they have paid you the
25 same amount for at least the last two years even though

1 the amount of the fees that you pay have gone up. Why
2 have they not paid you more as the fees have gone up that
3 you pay?

4 MR. MILLER: Object to the form. You can
5 answer, Paula.

6 A We just stuck with the agreement.

7 BY MR. McCOY:

8 Q Besides the maintenance fees, is there anything
9 else that you identify that my client, Defendant
10 Fairshare Vacation Owners Association, has done wrong to
11 you?

12 A No.

13 Q So let me put it another way. If the fees that
14 you're talking about here as the maintenance fees were
15 staying the same every year, you would have no issue with
16 Defendant Fairshare Vacation Owners Association; is that
17 true?

18 MR. MILLER: Object to the form.

19 A I can --

20 BY MR. McCOY:

21 Q You can answer, ma'am.

22 A Yes, I would not have an objection if they
23 didn't keep going up.

24 Q And in terms of the fees going up -- well, just
25 so I'm clear, you don't -- you don't even know how the

1 fees are used, correct?

2 A Correct.

3 MR. MILLER: Form.

4 BY MR. McCOY:

5 Q Have you asked -- ever asked for any documents
6 from Fairshare Vacation Owners Association to show how
7 the fees are collected?

8 A No.

9 Q Have you ever asked for documents to show why
10 the fees are collected?

11 A No.

12 Q Have you ever asked for documents to show what
13 the fees are used for?

14 A No.

15 Q Does that matter to you in terms of the fees
16 going up as to what the fees are actually used for?

17 A I would speak to their salespeople, who were
18 supposed to be educating us on how to handle our stuff,
19 and they never gave me any answers, and so I did not
20 pursue it any further.

21 Q When you say you have spoken to their
22 salespeople, what -- what does that mean?

23 A They supposedly have sessions when you go stay
24 at a resort to teach you how to manage Wyndham and their
25 accounts, you know, your -- your account, I should put it

1 that way. And I never received any of that type of
2 information.

3 Q How long have you been in the Wyndham timeshare
4 system?

5 A Since 2009.

6 Q So 11 years, as we sit here today?

7 A Yes.

8 Q In about -- about three weeks, it will be
9 12 years?

10 A I think -- I can't recall exactly the month I
11 bought.

12 Q Fair enough. So as we sit here right now, it's
13 at least 11 years?

14 A Yes.

15 Q And during that time, you've been an owner of a
16 timeshare interest through Wyndham, correct?

17 A Yes.

18 Q Do you -- do you know what Defendant Fairshare
19 Vacation Owners Association does?

20 A No.

21 Q Do you know -- when you pay your fees each
22 month, the maintenance fees that you're talking about,
23 who do you make that payment out to?

24 A It's automatically charged to my charge card
25 through my Wyndham account.

1 Q Do you know what the charge says as to who the
2 payee is?

3 A I do not recall off the --

4 Q Do you know if it says that the money is going
5 to Wyndham, or does it say that it's going to someone
6 else?

7 A I don't recall. I'd have to look at the...

8 Q Do you know, sitting here right now, why you
9 have sued Defendant Fairshare Vacation Owners Association
10 as opposed to Wyndham or an entity named Wyndham?

11 MR. MILLER: Object to the form. You can
12 answer.

13 A No.

14 MR. McCOY: Okay. I just heard a ding.
15 Who was that with?

16 MR. MILLER: That was with me.

17 MR. McCOY: Okay. No problem.

18 BY MR. McCOY:

19 Q There are a couple of things -- we jumped right
20 into it, Mrs. Litton. There's a few things I wanted to
21 back up and make sure I'm -- I'm good on here with you.

22 If you need to take a break at any time, you let
23 me know, okay?

24 A Okay.

25 Q You gave an oath when we started this deposition

1 to tell the truth under penalty of perjury. Do you
2 remember that?

3 A Yes.

4 Q Is there any condition, health, medicine,
5 alcohol -- anything that -- that is going on with you
6 right now that would prevent you from giving the absolute
7 truth and adhering to that oath?

8 A No.

9 Q All right. Is everything that you've told me so
10 far been your best answer and your best truth, subject to
11 that oath?

12 A Yes.

13 Q We have a stipulation here. I just want to make
14 sure we're -- we're good because I didn't go through it.
15 You don't have any other phones or any other means of
16 communicating or chatting or anything else with you at
17 the location where you're giving this deposition?

18 A No.

19 Q Is there anyone in the room with you? This room
20 looks like you're at the home of Cara and Windy Kelley.

21 A No.

22 Q We had a double negative, meaning I'm correct,
23 no one's in the room with you?

24 A That's correct; no one's in the room with me.

25 Q And you are at the home of Windy and Cara Kelley

1 right now?

2 A Correct.

3 Q Cara Kelley is your son-in-law?

4 A Correct.

5 Q Windy Kelley is your daughter?

6 A Correct.

7 Q You own your timeshare interest in conjunction
8 with the two of them, correct?

9 A Correct.

10 Q Did you do anything to prepare for your
11 deposition today?

12 A I learned how to use Zoom, which I had never
13 used before, and my lawyers kind of taught me how to do
14 that.

15 Q Understood. Did you spend any time speaking
16 with your lawyers to prepare for your deposition today?
17 And I want to be clear. I don't want to know what you
18 talked about. I just want to know if you met with them
19 to prepare for today.

20 A Yes.

21 Q And when did you meet with them to prepare for
22 today?

23 A Yesterday.

24 Q How long did you meet?

25 A An hour half.

1 Q And who participated in that session to prepare
2 for your testimony today?

3 A Rodney Miller, Jim Terrell; and the other
4 gentleman's name was Patrick, and I for- -- I can't
5 retain the last name.

6 Q Understood. All right. I think we can figure
7 out who that is. Patrick -- Patrick Barkley -- Barthle?
8 Does that sound right?

9 A It could be. I don't recall.

10 Q Understood. And so you spent an hour and a half
11 yesterday with three lawyers to prepare for your
12 testimony today. Is that -- am I understanding that
13 right?

14 A Yes.

15 Q All right. Do you understand that you filed
16 this lawsuit on behalf of a class that you want to have
17 the court certify?

18 A Yes.

19 Q What do you -- what do you want to get? What do
20 you want to accomplish on behalf of the class that you
21 want to represent in this case?

22 A What the law --

23 MR. MILLER: Object to the form.

24 A Excuse me?

25 MR. MILLER: You can answer.

1 A What the law legally allows me to have. I mean,
2 that's all I can say.

3 BY MR. McCOY:

4 Q You want to obtain for the class what the law
5 legally allows you to have. Did I get that right?

6 A To -- yes.

7 Q And what would that be?

8 MR. MILLER: Object to the form.

9 A A resolution to this situation.

10 BY MR. McCOY:

11 Q What resolution would you like to the situation?

12 MR. MILLER: Object to the form.

13 A That they not continually go up.

14 BY MR. McCOY:

15 Q The maintenance fees?

16 A Correct.

17 Q Anything else?

18 A No.

19 Q Have you talked to anybody else who's a
20 timeshare owner outside of Windy and Cara Kelley, your
21 co-owners of your timeshare interest, who have ever
22 complained to you about the maintenance fees that you're
23 describing here?

24 A No.

25 Q Is it your position that you would like the

1 maintenance fees to stay where they are at the total
2 amount that you pay each month for forever, or is there a
3 point where you would like to see the maintenance fees --
4 do you want the maintenance -- let me start my question
5 over.

6 Do you want the maintenance fees that you're
7 currently paying to stay the same just in -- forever, or
8 do you want them to go back down to a fee that you were
9 paying at some time in the past?

10 MR. MILLER: Object to the form.

11 A I would prefer they go down, because I feel
12 they're exorbitant to what I need to be paying.

13 BY MR. McCOY:

14 Q They're -- you would prefer that they go down.
15 And what would be the amount that you would like to see
16 them go down to each month?

17 A That, I cannot answer.

18 Q Is there a certain amount where the maintenance
19 fees were at at some point in the past that you found
20 acceptable compared to where they are now?

21 MR. MILLER: Object to the form.

22 A Yes, of course. It was when they were less.

23 BY MR. McCOY:

24 Q And what -- what was the amount when they were
25 less that you found acceptable?

1 MR. MILLER: Object to the form.

2 A I cannot recall an amount at this moment.

3 BY MR. McCOY:

4 Q So if they're \$729.14 a month that you've been
5 paying in 2020, it looks like they were \$694 in 2019.
6 Was \$694 an acceptable amount in your opinion?

7 MR. MILLER: Object to the form.

8 A Better than the 729.

9 BY MR. McCOY:

10 Q Do you have a number that -- is the number that
11 you would find acceptable, is that just based upon your
12 own personal finances and how much you would like to pay
13 for maintenance fees?

14 MR. MILLER: Object to the form.

15 A Well, yes. I mean, they continue to go up is my
16 issue.

17 BY MR. McCOY:

18 Q I understand. What I'm asking: You would agree
19 with me that your issue with the maintenance fees going
20 up, that's an issue that's personal to you based upon
21 your financial circumstances --

22 MR. MILLER: Object to the form.

23 BY MR. McCOY:

24 Q -- correct?

25 MR. MILLER: That is not what she has

1 testified to, Kevin. Please don't put those
2 words in her mouth. You just asked her that.

3 MR. McCOY: No, Rodney. Rodney, please,
4 sir --

5 MR. MILLER: No, (inaudible) --

6 MR. McCOY: -- please. She can answer the
7 question. You can object to form.

8 THE COURT REPORTER: Wait, wait, wait,
9 wait, wait.

10 MR. MILLER: -- testify to, and you know
11 it.

12 MR. McCOY: Okay. Yeah. Well, I'm asking
13 her the question. She doesn't even know what
14 her claims are about in this lawsuit, so please
15 let me --

16 MR. MILLER: She does. It's about the
17 exorbitant fees. She's told you that several
18 times.

19 MR. McCOY: Okay. Okay. It's about the
20 fees. We're not going to get into that debate.

21 MR. MILLER: Well, has she told you that or
22 not? You said she hasn't. Have you not heard
23 that?

24 MR. McCOY: Do you -- we're not going to
25 debate this right now. I have heard that loud

1 and clear.

2 MR. MILLER: Okay.

3 MR. McCOY: I've heard that loud and clear.
4 We'll talk about this offline when we get out of
5 this deposition.

6 MR. MILLER: Okay. Well, please don't try
7 to tell her what she's testified to when she
8 hasn't testified to -- if you have a question,
9 you're fine to ask it, obviously.

10 MR. McCOY: Understood.

11 MR. MILLER: Don't sit there and put words
12 into her mouth.

13 MR. McCOY: Okay. I can ask a leading
14 question. I think I'm entitled to do that under
15 the evidence rules.

16 MR. MILLER: You are.

17 MR. McCOY: You can object to form. Very
18 well.

19 BY MR. McCOY:

20 **Q Mrs. Litton, the issue of the fees that you pay**
21 **is based upon your personal financial situation and how**
22 **much you can afford to pay, correct?**

23 MR. MILLER: Object to the form. Again,
24 that's not what she testified to.

25 BY MR. McCOY:

1 Q Well, is that true?

2 MR. McCOY: I'm asking her: Is that true?

3 MR. MILLER: Well, then, why don't you ask
4 her the question.

5 BY MR. McCOY:

6 Q Is it true -- is it true, Mrs. Litton, that your
7 complaint about the fees going up is based upon your
8 personal financial situation? Is that true?

9 MR. MILLER: Object to the form.

10 A No. Not entirely, no.

11 BY MR. McCOY:

12 Q Okay. Help me understand. Help me understand
13 why that's not entirely true.

14 MR. MILLER: Object to the form. I don't
15 even understand that question.

16 MR. McCOY: Well, you don't need to.

17 A You're really confusing me.

18 MR. MILLER: You've asked her if it's true,
19 and she's said no. Now you're wanting her to
20 explain why it's not.

21 MR. McCOY: Correct. She said not entirely
22 true, and I would like to know why that's not
23 true. I think that's a fair question.

24 MR. MILLER: Object to the form.

25 A I just -- okay.

1 BY MR. McCOY:

2 Q You can answer, ma'am.

3 A I feel -- I feel it's not fair to all
4 participants.

5 Q There we go. What's not clear to all
6 participants, Mrs. Litton?

7 A I didn't say "clear." I said "fair."

8 Q "Fair." I'm sorry.

9 What is not fair to all participants? I
10 couldn't -- I couldn't hear.

11 A That these fees continue to go up.

12 Q All right. And who have you talked to that's a
13 participant who has ever expressed to you that it's not
14 fair that the fees are going up?

15 A No one, but I assume it's done to all.

16 Q All right. Thank you.

17 Let's go through a couple other issues here.

18 Have you ever attended an annual meeting of the Fairshare
19 Vacation Owners Association?

20 A No.

21 Q Have you ever read the minutes of any meeting
22 from a Fairshare Vacation Owners Association board
23 meeting?

24 A No.

25 Q Have you ever requested the meeting minutes of a

1 Fairshare Vacation Owners Association board meeting?

2 A No.

3 Q Have you ever read the financials of Fairshare
4 Vacation Owners Association?

5 A No.

6 Q Do you know how Fairshare Vacation Owners
7 Association calculates the program fee?

8 A I don't recall.

9 Q Do you know whether the Fairshare Vacation
10 Owners Association board endeavors to keep the program
11 fee flat?

12 A No.

13 Q Do you know how Fairshare Vacation Owners
14 Association negotiates its contracts?

15 A No.

16 Q Do you know who the members of the Fairshare
17 Vacation Owners Association board are?

18 A No.

19 Q Have you ever done anything to try to remove a
20 member of the Fairshare Vacation Owners Association
21 board?

22 A No.

23 Q Have you ever expressed a desire for Fairshare
24 Vacation Owners Association to terminate Wyndham Vacation
25 Resorts as the plan manager?

1 A No.

2 Q Do you know what the plan manager does?

3 A No.

4 Q Do you know what the plan manager is?

5 A No.

6 Q Did you finance the -- I believe your
7 transaction that we're talking about here today is the
8 one for January 5, 2016. Does that sound like the right
9 day of your transaction?

10 A Yes, it sounds right.

11 Q That's the time -- I'm sorry. Go ahead.

12 A It sounds correct. I'm not sure.

13 Q And did you finance that transaction?

14 A Three of us together did.

15 Q And you financed that transaction through
16 Wyndham Vacation Resorts?

17 A Yes.

18 Q Do you agree that Fairshare Vacation Owners
19 Association had nothing to do with your financing of the
20 transaction on January 5, 2016?

21 A I don't recall.

22 Q Do you know one way or another?

23 A No.

24 Q Do you agree that whatever's in your transaction
25 documents would be the best evidence of that issue?

1 A Yes.

2 Q Do you agree, ma'am, that it was disclosed to
3 you in the trust documents that Wyndham would serve as
4 the plan manager?

5 A I don't recall.

6 Q Would you defer to the documents as being the
7 best evidence of whatever they say on that issue?

8 A Yes.

9 Q In terms of your entire transaction, do you
10 agree with me that the documents that you signed and you
11 were provided, those would be the best evidence of what
12 the terms are governing your relationship for your
13 timeshare interest?

14 A Yes.

15 Q And there -- there weren't any kind of
16 subsequent conversations with Wyndham or any other party
17 that you are pointing to that would change the terms that
18 were in your -- your documents, correct?

19 A Correct.

20 Q Have you ever talked to anybody else who owns a
21 timeshare interest who has expressed a problem of any
22 kind with Defendant Fairshare Vacation Owners
23 Association?

24 A No.

25 Q Did you read the lawsuit that was filed in this

1 case before it was filed?

2 A I've read it, but I don't know if it was before.
3 Yes, it was before. Yes.

4 Q And you authorized that lawsuit to be filed?

5 A Yes.

6 Q Did you agree with the allegations that the
7 lawyers were making in that lawsuit?

8 A Yes.

9 Q If you have to pay the costs of this lawsuit,
10 will you be able to do that?

11 MR. MILLER: Object to the form.

12 A Yes.

13 BY MR. McCOY:

14 Q Have you ever talked to any other Wyndham
15 timeshare owners to discuss whether they are happy with
16 their timeshare ownership or not?

17 A No.

18 Q Fair to say the only Wyndham timeshare owners
19 that you have talked to about their experience would be
20 your daughter, Windy Kelley, and your son-in-law,
21 Cara Kelley?

22 A Correct.

23 Q And they are your co-plaintiffs in this case?

24 A Correct.

25 Q Do you know Carolyn Nolen Jones?

1 A No.

2 Q Have you read the amended complaint that was
3 filed in this lawsuit?

4 A Yes.

5 Q And you authorized your lawyers to file that on
6 your behalf?

7 A Yes.

8 Q Do you agree with the allegations that are made
9 in there?

10 A Yes.

11 Q When you've traveled to Wyndham properties
12 through your timeshare ownership, have you ever had a
13 problem with the facilities in terms of them not being
14 kept up or them being run-down?

15 A No.

16 Q Are they -- have they always been in acceptable
17 condition?

18 A Yes.

19 Q Would you like to see the Wyndham properties
20 remain in good condition?

21 A Yes.

22 Q Do you agree that it costs money to keep the
23 properties in good condition?

24 A Yes.

25 Q Do you agree that things generally get more

1 expensive over time?

2 A Yes.

3 Q Are there any features of your timeshare
4 ownership that you would be willing to give up in
5 exchange for a lower maintenance fee that you pay?

6 A Not that I can think of.

7 Q Fair to say you would like to receive the same
8 level of experience when you visit a property, but you
9 just don't want to pay any more over time, correct?

10 A As they keep adding members also, yes --

11 Q What does that --

12 A -- I would not like. I mean --

13 Q What does that mean?

14 A -- they keep selling points and they're getting
15 more maintenance fees.

16 Q What -- what understanding do you have of a
17 relationship between selling points and adding
18 maintenance fees?

19 A I don't understand the question.

20 Q You -- you just told me something about they
21 keep selling more points, and I'm trying to under- --

22 A Because I -- as I buy points, my maintenance
23 fees went up. So as people are buying points, there are
24 maintenance fees included in that deal.

25 Q Understood. So as I understand it, as -- your

1 experience has been as you buy more points, you have
2 taken on greater maintenance fees; is that correct?

3 A Correct.

4 Q And what is the purpose of buying more points?

5 A To be able to go to more places and do more
6 things.

7 Q So with more points, you can access more
8 properties?

9 A Not nece- -- properties, yes.

10 Q Meaning -- it was probably a poor question. I
11 guess the number -- is the number of properties that you
12 can access the same, but you could spend more time at
13 properties within the system? Is that a better way to
14 say that?

15 A Yes.

16 Q All right. And would you like to see additional
17 properties added to the system, meaning there are new
18 properties in new locations that would be available to
19 you as part of your -- your program access?

20 A At the moment you can't get to some of those
21 anyway; so I mean, it would be hard to say yes or no in
22 that situation.

23 Q You would be fine to see the system stay the
24 same with the same number of properties and no expansion
25 in terms of adding properties that you could visit; is

1 **that --**

2 A At the moment --

3 Q -- your position?

4 A At the moment, yes.

5 Q All right. And so you would -- if you want the
6 **fees to stay the same, you would like to be able to spend**
7 **more time at properties but pay the same maintenance**
8 **fees; is that true?**

9 MR. MILLER: Object to the form.

10 A I would like to see them be handled in a legal,
11 fair manner, which is what I'm trying to achieve in this
12 suit.

13 BY MR. McCOY:

14 Q Understood. And I understand those are -- those
15 words. What I'm trying to understand is the facts of
16 what's going on to -- to help me understand that in this
17 suit. So here's what -- let me ask you a different
18 question. Start -- start a new question.

19 Would you be willing to reduce the number of
20 points that you have in exchange for lower maintenance
21 fees?

22 MR. MILLER: Object to the form.

23 A I'm thinking. Say that again.

24 BY MR. McCOY:

25 Q Yes, ma'am. You -- let me -- let me just give

1 you the context. I'm trying to understand.

2 You -- you said that as you buy more points,
3 your maintenance fees have increased, correct?

4 A Correct.

5 Q Would you be willing to decrease the number of
6 points you hold if your maintenance fees would go down?

7 MR. MILLER: Object to the form.

8 A No.

9 BY MR. McCOY:

10 Q Okay. So you would like to have more -- you
11 would like to be able to get more points and access to
12 the system but have the maintenance fees stay the same?

13 MR. MILLER: Object to the form.

14 A The points are paid for separately than the
15 maintenance fees, so it's a different situation.

16 BY MR. McCOY:

17 Q I understand, ma'am. The only reason I'm asking
18 you about it --

19 A So I've already paid for the points.

20 Q I understand. You told me a moment ago that as
21 you buy more points, your fees have gone up --

22 A Correct.

23 Q -- correct?

24 So I'm trying to understand the relationship as
25 you're explaining it to me and how they're connected.

1 That's why I'm asking you these questions.

2 So I guess my question is: Would you like to be
3 able to buy more points but your maintenance fee stays
4 the same? Is that what you would like to achieve?

5 MR. MILLER: Object to the form.

6 A Well, I plan to buy no more, so it's hard to
7 answer that question. I'm sorry. I can't -- say it one
8 more time, and maybe I can grasp.

9 BY MR. McCOY:

10 Q Yes, ma'am.

11 A You want me to say I can't -- I want to buy more
12 fees [sic] but -- but -- but keep my maintenance fee. I
13 want the maintenance fee to be not exorbitant and handled
14 correctly is what I want.

15 Q Understood. Here's what I'm trying to -- the
16 word "exorbitant," what is that based upon? Is that
17 based upon -- what information do you have that the fee
18 is exorbitant other than it's more than you would like to
19 pay?

20 MR. MILLER: Object to the form.

21 A If you take a calculator and say 12 times \$729,
22 that's \$8,000-and-something, if I'm correct, which is a
23 lot of money. That makes it exorbitant to me.

24 BY MR. McCOY:

25 Q That's where I was about 10 minutes ago. The

1 fees and their -- your perception of them being
2 exorbitant, that's a personal issue to you, correct?

3 A I think it is to everyone that is paying them.

4 Q All right. And who have you talked to that
5 would support that answer under oath here today?

6 A My daughter and her husband.

7 Q All right. And they don't even pay that same
8 amount that you pay, correct?

9 A Correct.

10 Q All right. Do you know what the
11 Club Wyndham Plus assessment is?

12 A No.

13 Q Do you know how it's calculated?

14 A No.

15 Q I presume you don't know what it's for?

16 A No.

17 Q Do you know if it's too high or too low?

18 A No.

19 Q Do you know how much it would cost if a party
20 other than Wyndham was serving as the plan manager?

21 A No.

22 Q Do you know if the costs for the class that you
23 want to represent would go up or down?

24 A No.

25 Q Do you know if it would be a good thing or a bad

1 thing to replace the plan manager?

2 A No.

3 Q Is it fair to say that at the end of this
4 lawsuit, you still want to have a timeshare ownership;
5 you just don't want to pay fees, increased fees over
6 time?

7 MR. MILLER: Object to the form.

8 A No.

9 BY MR. McCOY:

10 Q That's not correct?

11 MR. MILLER: Object to the form.

12 BY MR. McCOY:

13 Q Fair -- fair objection. Let me -- let me -- I'm
14 trying to understand your answer.

15 Do you want out of your timeshare ownership, to
16 no longer have a timeshare ownership through Wyndham?

17 A No.

18 Q So you would -- oh, I'm sorry. I didn't mean to
19 cut you off. Go ahead.

20 A No. I just said "no."

21 Q All right. So you'd like to keep your timeshare
22 ownership, but you just don't want fees to increase over
23 time, true?

24 A True.

25 Q All right. Did you try to find financing

1 outside of the arrangement with Wyndham when you bought
2 the 2015 interest that we're talking about here today?

3 A No.

4 Q Do you know --

5 A My --

6 Q I'm sorry?

7 A My son-in-law did.

8 Q All right. Do you know if he found any lenders
9 who would lend on a timeshare ownership outside of what
10 Wyndham was offering?

11 A He did not.

12 Q Do you know how many Wyndham timeshare owners
13 finance through Wyndham?

14 A No.

15 Q Do you know what loan securitization is?

16 A No.

17 Q Do you know how it would impact owners in the
18 Wyndham system if Wyndham discontinued financing of
19 timeshare interests?

20 A No.

21 Q Do you care?

22 A I -- no, not really.

23 Q There's an allegation that the trustee in this
24 case placed its interests above the beneficiaries,
25 including you. What did the trustee do to place its

1 **interests above your interests?**

2 A I do not know. My lawyers would.

3 **Q What did the trustee do to violate any duty of**
4 **care owed to you?**

5 MR. MILLER: Object to the form.

6 A I would refer to my attorney on that.

7 BY MR. McCOY:

8 **Q You're not aware of any facts outside of what a**
9 **lawyer may have told you?**

10 A Correct.

11 **Q Can you identify any acts that the trustee has**
12 **taken that is not in the best interests of the**
13 **beneficiaries?**

14 A No.

15 MR. MILLER: Object to the form.

16 BY MR. McCOY:

17 **Q Do you get copies of -- do you get notices of --**
18 **of meetings for the board of the Fairshare Vacation**
19 **Owners Association?**

20 A When I purchased with my daughter and son-in-law
21 in 2016, they received most of the correspondence.

22 **Q Do you get any of the correspondence?**

23 A I have not got any.

24 **Q All right. Was that part of just an election**
25 **that you made to send everything to them to manage?**

1 A Correct.

2 Q All right. So you get your information about
3 what's going on or not going on relative to the timeshare
4 through Cara Kelley and Windy Kelley; is that correct?

5 A Correct.

6 Q And that's -- that's by design? That's a
7 deliberate thing?

8 A Yes. We agreed to that.

9 Q What transactions with related entities has
10 Fairshare entered into that have not been in the best
11 interests of the beneficiaries?

12 MR. MILLER: Object to the form.

13 A I would have to refer to my lawyer on that.

14 BY MR. McCOY:

15 Q Do you know what the relationship is between
16 Wyndham Vacation Resorts and Fairshare Vacation Owners
17 Association?

18 MR. MILLER: Object to the form.

19 A No.

20 BY MR. McCOY:

21 Q Who is the trustee of the trust that is the
22 subject of your lawsuit?

23 A I have no knowledge of that.

24 Q Do you know who the members are of the -- well,
25 do you know what -- who the beneficiaries are of the

1 trust that is the subject of this lawsuit?

2 A All Wyndham shareowners, I presume.

3 Q Would that include you?

4 A Yes.

5 Q All right. Do you know what happens to any
6 excess program fees that are collected in a given year
7 that are not spent?

8 A No.

9 Q Has there ever been a period of time since you
10 have been a Wyndham timeshare owner where the fees from
11 one year to the next stayed the same?

12 A I do not recall.

13 Q Have you ever done anything, as a beneficiary of
14 the trust, to vote for a refund of any of the fees that
15 you have paid in?

16 A To my -- no.

17 Q Do you know if you've ever had an opportunity to
18 vote for a refund of any excess program fees?

19 A I do not recall any.

20 Q Have you ever had a conversation with
21 Cara Kelley or Windy Kelley about you having the right to
22 vote for the return of any excess program fees?

23 A No.

24 Q How often did you travel to a Wyndham property
25 in 2018 as part of your timeshare ownership?

1 A Annually, we go to Destin every year. That's a
2 family trip, and I know that. I do not recall the others
3 that I attended specifically in that year.

4 Q All right. So we got Destin in 2018. You think
5 there were others, and you just can't remember the
6 locations?

7 A Yes.

8 Q Do you know how many others there may have been?

9 A Two.

10 Q So a total of possibly three trips in 2018?

11 A Correct.

12 Q How many -- Destin in 2019?

13 A Correct.

14 Q How many others?

15 A No more than two.

16 Q Do you know where they were?

17 A I do not recall.

18 Q Did people go with you on the other two trips?

19 A Yes.

20 Q Who traveled with you on those trips?

21 A Friends.

22 Q What are their names?

23 A I don't recall who all went. I mean, Melanie
24 and Dexter Hamilton and Frank and Judy Guidas.

25 Q Melanie and Dexter Hamilton and Frank and

1 **Judy Guidas?**

2 A Correct.

3 Q **And where do the Hamiltons live?**

4 A Montgomery, Alabama.

5 Q **And where do the Guidas folks live?**

6 A They now live in San Antonio.

7 Q **And did all -- all of you travel together on**
8 **both trips, or were -- was it one group on one trip and**
9 **one group on another trip?**

10 A One group on one trip and one on the other.

11 Q **And now having thought back to the two trips and**
12 **who was with you, does that help you remember where you**
13 **traveled to on the two trips?**

14 A One of them was Flagstaff, but I do not recall
15 the year.

16 Q **And the other?**

17 A I can't remember -- I think it was Nashville.

18 Q **Do you know the name of the Flagstaff property?**

19 A Flagstaff is all I know.

20 Q **What about the Nashville property?**

21 A The same, Wyndham Nashville.

22 Q **And did -- were -- are the Hamiltons or the**
23 **Guidases, are they timeshare owners in the Wyndham**
24 **system?**

25 A No.

1 Q So they were traveling under your timeshare
2 ownership with you?

3 A Yes.

4 Q Have you ever sold any of your timeshare
5 ownership points?

6 A No.

7 Q Have you ever explored that option?

8 A No.

9 Q Did you charge the Hamiltons for -- as part --

10 A No.

11 Q -- of the trip?

12 A No.

13 Q Did you charge the Guidases as part of the trip?

14 A No.

15 Q And in 2020, have you traveled to any Wyndham
16 properties?

17 A Destin --

18 Q Destin?

19 A -- and Nashville.

20 Q When -- when is the annual trip to Destin?

21 A In June, just whatever day.

22 Q And so you went -- did you -- and so you went in
23 June of 2020 to Destin?

24 A Correct.

25 Q And how long?

1 A A week.

2 Q **And then you went to Nashville when?**

3 A December the 6th. I just got back. I can
4 remember that, December 6th.

5 Q **You just -- December the 6th. How long were you
6 in Nashville?**

7 A Until the 11th. Until the 11th. To -- I left
8 on the morning of the 10th. I'm sorry. I got there on
9 the 6th and left there on the 10th.

10 Q **So December 6th through the 10th --**

11 A Correct.

12 Q **-- you were on a trip to the Wyndham property in
13 Nashville?**

14 A Yes.

15 Q **And I think we covered this before. I want to
16 be clear. Wyndham Property Nashville, any complaints
17 about its upkeep or maintenance or anything else?**

18 A No.

19 Q **The Destin property that you go to each year,
20 any complaints about its upkeep, maintenance, or anything
21 of that sort?**

22 A No.

23 Q **Flagstaff, when you were there, any complaints
24 about its maintenance or upkeep?**

25 A No.

1 Q Have you received any communication about what
2 the maintenance fees are going to be for 2021?

3 A No.

4 Q Do you have any trips to a Wyndham property
5 booked for 2021?

6 A Destin.

7 Q Will that happen again in June?

8 A Correct.

9 Q Is that kind of a summer family get-together --

10 A Correct.

11 Q -- reunion?

12 A Correct.

13 Q So that's all -- that's already booked in the
14 system?

15 A Correct, and one in San Antonio.

16 Q And when is the San Antonio trip booked?

17 A The 5th of December.

18 Q Of 2021?

19 A Correct.

20 MR. MILLER: Hey, Kevin. I don't want to
21 mess up your -- your line of questioning; but
22 when you get to a stopping point -- and no
23 rush --

24 MR. McCOY: Yeah.

25 MR. MILLER: -- if we could take a short

1 break.

2 MR. McCOY: Fair enough. Let me just
3 finish up real quick, and then we'll -- we'll do
4 that --

5 MR. MILLER: Yeah, no problem.

6 MR. McCOY: -- because we have been going a
7 while.

8 BY MR. McCOY:

9 Q The San Antonio property, is that the same one
10 that you referenced concerning an earlier trip? It was a
11 poor question.

12 The San Antonio property that you've booked for
13 2021, is that the same one that you traveled to before?

14 A I have never stayed in this one.

15 Q Okay.

16 A That's why I was questioning. I don't know
17 where I mentioned -- you got --

18 Q I had it -- sorry. Go ahead.

19 A I haven't stayed in this San Antonio
20 establishment yet.

21 Q All right. Have you ever stayed at a
22 San Antonio Wyndham property?

23 A No.

24 Q All right. I'm sorry. My notes were poor,
25 then.

1 **And who is expected to travel with you in**
2 **December 5, 2021 to San Antonio?**

3 A Patty and Gene Miller.

4 **Q Where do they live?**

5 A Montgomery.

6 **Q The June reunion, who typically attends that**
7 **gathering?**

8 A Both my daughters, their families. My -- Windy,
9 my oldest daughter, has five children, and it's kind of
10 who can come, and their children; the whole -- you know,
11 their families.

12 **Q And what's -- what's the name of the Destin**
13 **property? Does it have a formal name?**

14 A Majestic -- Majestic Sun.

15 MR. McCOY: Let's take a -- let's take that
16 break. That's -- that's good. How long do you
17 guys want? Do you want five minutes, or do you
18 want ten?

19 MR. MILLER: Five minutes is fine unless
20 you need more.

21 MR. McCOY: I do not. Five minutes it is.
22 It's 11:36. We'll come back at 11:41, 10:41
23 your time.

24 THE WITNESS: Gotcha.

25 THE VIDEOGRAPHER: The time is 11:36 a.m.

1 We're now off the record.

2 (Recess taken from 11:36 a.m. to 11:49 a.m.)

3 THE VIDEOGRAPHER: The time is 11:49 a.m.

4 We're now back on the record.

5 BY MR. McCOY:

6 Q Okay. Mrs. Litton, are you okay to continue?

7 A Yes.

8 Q All right. We just took a short break. And
9 during the period of the break, did you speak to anybody?

10 A My daughter.

11 Q Did you talk about any of the testimony that
12 you've given or any of the issues in the case?

13 A Yes. I just said it was harrowing.

14 Q Harrowing?

15 A Yes.

16 Q Well, I -- other than sitting for a deposition,
17 I hope -- would you agree I've been fair to you today?

18 A Yes.

19 Q Okay. I have been nice to you. You agree with
20 that?

21 A Yes.

22 Q All right.

23 A But it's still harrowing to me.

24 Q Fair enough. What is your date of birth?

25 A 12/10/1943.

1 Q Have you ever been deposed before?

2 A No.

3 Q I usually ask this at the beginning, but I'll
4 just clarify it now. So if you answer my questions, I'll
5 assume you understand them unless you ask for
6 clarification; is that fair with you?

7 A Yes.

8 Q In any of the questions I've asked you so far
9 when you've given an answer, have you understood my
10 questions?

11 A To the best of my knowledge, yes.

12 Q And if you didn't understand my question, you've
13 asked for clarification?

14 A Yes.

15 Q What is your -- do you work currently?

16 A No. I am retired.

17 Q And what -- what did you do for a living while
18 you were working?

19 A I worked as an IT operations manager for the
20 State of Alabama and ran a computer room.

21 Q How long did you do that?

22 A 45 years.

23 Q What year did you retire?

24 A 2009.

25 Q Is that -- is that the same year that you

1 purchased your first timeshare?

2 A Yes.

3 Q And what was the reason that you wanted to get a
4 timeshare interest?

5 A I wanted my family to be able to go places
6 together and have -- just enjoy family time.

7 Q Has that been your experience in your timeshare
8 ownership since you purchased it?

9 A Yes. My family has met every year since then.

10 Q Do you have any legal training?

11 A No.

12 Q Any real estate training?

13 A No.

14 Q Any experience in the timeshare business?

15 A No.

16 Q Have you ever worked for a nonprofit company?

17 A No.

18 Q Do you own a home?

19 A I'm purchasing a home, yes.

20 Q Have you ever owned a home?

21 A No. I've always been -- I've never paid it off.
22 Let's put it that way.

23 Q Understood. So you -- you've purchased homes in
24 the past, but you've had a mortgage?

25 A Correct.

1 Q All right. So you've had -- you've had title,
2 but then you've paid to the bank?

3 A Correct.

4 Q And how long have you been a homeowner? Let me
5 ask you a different question.

6 Have you always lived in like a single-family
7 home, or have you lived in anything that's like a
8 townhome or a condo?

9 A I live in a townhome now, a patio home.

10 Q So you live in a townhome as of today?

11 A Correct.

12 Q And you said you're purchasing new property
13 soon?

14 A No. I said I am paying a mortgage on that
15 property.

16 Q All right. How long have you lived in your
17 current townhome?

18 A 2002.

19 Q What's the address?

20 A 4007 Ware Hill Drive -- that's two words --
21 Montgomery. ZIP is 36109.

22 Q Do you live at that address with anyone else?

23 A No.

24 Q Are you married?

25 A No.

1 Q Have you ever been married?

2 A Yes.

3 Q What terminated your marriage?

4 A He left.

5 Q All right.

6 A We divorced. We divorced.

7 Q Understood. I didn't know if there was a --

8 A Death?

9 Q Yes, ma'am. I was trying to --

10 A Okay.

11 Q -- dance around that.

12 What year were you divorced?

13 A '92.

14 Q All right. Since that time, have you -- you've

15 lived alone?

16 A Yes.

17 Q The townhome where you presently live, do you

18 pay HOA fees?

19 A No.

20 Q Do you pay any monthly fees associated with your

21 home ownership?

22 A Just the mortgage.

23 Q Who takes care of the maintenance of the grounds

24 and the lawn -- the lawn and the shrubbery?

25 A I do.

1 Q Who does all of that?

2 A I hire people to do it in most cases.

3 Q So you're responsible -- is -- is your townhome,
4 are there multiple units where you live?

5 A It's really a patio home. It's a separate home.
6 It's not connected to another home. That's what I call a
7 townhouse. A patio, we -- I'm separate. There's --

8 Q Aah.

9 A You understand?

10 Q I think I do. Is it -- is it kind of like
11 there's a house and then there's another house on the
12 property?

13 A They're real close together. That's a patio
14 home in my neighborhood of what we call.

15 Q Okay.

16 A A townhouse is connected to another house.

17 Q Yes, ma'am. That's what I traditionally think
18 of. And you have a --

19 A I am not connected to another house.

20 Q Do you own the dirt underneath the house?

21 A Yes. The lot, I do.

22 Q The lot?

23 A Yes.

24 Q And there are no other homes on that lot?

25 A No.

1 Q So you're responsible for maintaining your lot
2 and the house yourself?

3 A Correct.

4 Q And you -- you said you hire people to do -- do
5 you hire people, like a lawn service?

6 A Yes.

7 Q What other folks do you hire to perform work at
8 your current home besides a lawn service?

9 A Just when it's needed. Well, termite control
10 and the rest is --

11 Q Termites. Do you have a pool?

12 A No.

13 Q So lawn service; termites when it's needed.
14 Anything else where you kind of outsource or contract to
15 have services performed?

16 A Only when repair is needed.

17 Q Now, do you know how the lawn service calculates
18 how much it's going to charge you to do your yard each
19 time it comes?

20 A No. He just gives --

21 Q Do you know how --

22 A He's been mowing my yard five -- five years, and
23 he's gone up \$5 in those five years.

24 Q Five years, \$5?

25 A Yes. He went from 30 to 35 this year.

1 Q That's -- that's for each cut?

2 A Yes.

3 Q Do you know if he charges based upon the size of
4 the yard that he's got to mow? Like, for a bigger yard,
5 does he charge more?

6 A Yes, he does. I have a friend that he uses. He
7 does work --

8 Q Your yard is bigger or smaller than the friend?

9 A Smaller.

10 Q And does he charge your friend more?

11 A Yes.

12 Q Is it because your friend has a bigger yard?

13 A Correct.

14 Q Do you generally agree that, in terms of
15 services, if you're consuming more services, you pay
16 more?

17 A Yes.

18 MR. MILLER: Object to the form.

19 BY MR. McCOY:

20 Q How did you first -- what led you to seek out
21 legal counsel in this case?

22 A I had an incident where they screwed -- messed
23 up my reservation, and I was terribly upset about it.
24 And I am -- I know Gene Miller, which is Rodney's father
25 and his stepmother. And I asked if Rodney would overlook

1 if I had any recourse in that incident of the reservation
2 being messed up, and it led on down the line to this.

3 Q I think I talked about this particular -- was
4 that at Destin?

5 A Correct.

6 Q Ultimately, that reservation issue was resolved,
7 correct?

8 A What do you mean? We didn't stay together like
9 we'd always stayed at that -- when it was resolved, what
10 do you -- say it again.

11 Q Yes. No problem.

12 Whatever res- -- I understand you didn't get to
13 stay together, but you were given credits or you were
14 given something, and whatever that was was resolved.

15 A Only by me contacting the CEO of Wyndham did I
16 get it resolved and writing letters, numerous letters.

17 Q So you contacted the CEO and wrote letters about
18 the reservation issue?

19 A Yes, I did.

20 Q And that --

21 A It --

22 Q -- ultimately got a response?

23 A Yes, he did.

24 Q And -- and -- and what did Wyndham do to try to,
25 you know, make that right, if you will?

1 A He restored the points.

2 Q So restored the points that you would have
3 otherwise spent if they had done the reservation
4 correctly?

5 A Correctly, yes.

6 Q So, in other words, you -- that trip, you took,
7 but it cost no points?

8 A It cost points, because I paid the points for
9 the other. He restored the points that was -- it was
10 basically, yes, he did restore the points; but it's -- it
11 wasn't the same. It wasn't the same holiday because it
12 ruined the vacation for us.

13 Q Oh, no, I understand that in terms of -- of
14 your --

15 A Yes. He restored the points.

16 Q Okay. So you -- you stayed there and you
17 didn't -- you weren't charged the points for the stay?

18 A In a different place, correct.

19 Q Yes, ma'am. All right. When the current
20 situation came up, did you write any letters to the CEO?

21 A No, I did not.

22 Q Have you done anything other than filing this
23 putative class action to address your concern about the
24 maintenance fees?

25 A No. I left it to my lawyers.

1 Q Have you ever lived in a community where you had
2 to pay a homeowners association fee?

3 A No, I have not.

4 Q Do you know if the gentleman who does your yard
5 for \$35 -- do you know if he makes a profit off of that?

6 A No, I do not.

7 Q Does it matter to you?

8 A He makes a living, yes. Because he makes a
9 living, yes.

10 Q Have you ever looked at the timeshare offerings
11 made available by any other company besides Wyndham?

12 A No.

13 Q Do you know how your timeshare experience
14 compares to anything offered by another brand, say
15 Marriott or Disney or any other company?

16 A No, I don't.

17 Q Do you know how your maintenance fees compare to
18 those charged by any other brand to their members?

19 A I have not discussed it with anyone.

20 Q Have you ever looked into that in terms of
21 researching it or trying to figure out whether your --
22 your maintenance fees are fair or not compared to someone
23 else in the same industry?

24 A No.

25 Q Does that matter to you, in terms of what you're

1 **paying, what other companies would be charging?**

2 MR. MILLER: Object to the form.

3 A I'd have to say yes, it would matter.

4 BY MR. McCOY:

5 **Q And why? Why would that matter to you?**

6 A I would want to know if it's even distribution
7 between the organizations.

8 **Q If there was even distribution between the
9 organizations?**

10 A Of the fee -- of the fees. I mean, you know,
11 they're fair on both accounts.

12 **Q Meaning the fee charged by another company would
13 be fair compared to the fee that you -- that you pay?**

14 A Yes.

15 **Q Other than the one issue with the Destin -- oh,
16 I wrote it down. The name of that resort down there?**

17 A Majestic Sun.

18 **Q -- Majestic Sun, that reservation issue, are
19 there any other issues that you have had in terms of
20 reserving time for a timeshare?**

21 A A lot of time they're not available, different
22 org- -- different locations.

23 **Q You say "a lot of time." How many times has
24 that happened?**

25 A Probably five or six times.

1 Q Since -- in the 11 years since you've been a
2 timeshare owner?

3 A Yes.

4 Q Do you know what Club Wyndham Access is?

5 A Yes.

6 Q What is it?

7 A It means you have -- to my knowledge, it means
8 you have 13 months out to book. You can book 13 months
9 in advance.

10 Q Anything else you know about Club Wyndham
11 Access?

12 A I don't recall anything else.

13 Q Do you know what Club Wyndham Plus is?

14 A I've heard the term. I do not know.

15 Q Do you know what rights it does or doesn't give
16 you associated with your timeshare ownership?

17 A No.

18 Q Do you know what fees you pay associated with
19 Club Wyndham Plus?

20 A I don't know how they're broken down, no.

21 Q Do you know if you pay fees as part of
22 Club Wyndham Plus?

23 A No.

24 Q Do you agree that you voluntarily assigned your
25 use rights to Club Wyndham Plus when you enrolled into

1 that program?

2 A Say it again.

3 Q Yes, ma'am. Do you agree that you voluntarily
4 assigned your use rights when you enrolled in
5 Club Wyndham Plus?

6 A I don't recall.

7 Q Fair to say you'd defer to whatever the
8 documents say on that --

9 A Correct.

10 Q -- particular issue?

11 A Correct.

12 Q Did you read the documents that were associated
13 with your January 2016 timeshare contract?

14 A Yes.

15 Q And you signed those documents after you read
16 them?

17 A Yes.

18 Q And did you discuss the purchase with
19 Cara Kelley and Windy Kelley?

20 A Yes.

21 Q And they signed the same documents that you did
22 concerning your January --

23 A Yes.

24 Q -- January 5, 2016 purchase?

25 A Yes.

1 Q You agree that the contracts that you signed
2 contained promises?

3 A Promises?

4 Q Yes, ma'am. You know, you're -- do you
5 understand just conceptually that a contract is you're
6 making promises to do things and -- and the other party
7 is making promises to do things?

8 A Yes.

9 Q All right. Are there any specific promises that
10 you can think of that Fairshare Vacation Owners
11 Association has not lived up to?

12 A No.

13 Q Are there any specific promises that you can
14 think of that Wyndham Vacation Resorts has not lived up
15 to?

16 A No.

17 Q And, again, when I'm talking about "promises,"
18 I'm talking about the promises that were made in your
19 written agreements. You understand that, right?

20 A Correct. Yes.

21 Q When was the last time that you made a points
22 upgrade?

23 A In January --

24 Q Of?

25 A -- 2016. Yes, of --

1 Q Sorry.

2 A -- 2016.

3 Q Why were you seeking more points at that time?

4 A I joined with my daughter and son-in-law. I was
5 not actually seeking more points; but by combining our
6 points, it gave us more points.

7 Q So, essentially, you wanted to combine your
8 interests into one account; is that fair?

9 A Correct.

10 Q If the maintenance fees that you pay in for a
11 given year are held over to be applied towards the costs
12 for the following year, do you have a problem with that?

13 MR. MILLER: Object to the form.

14 A Would you say it would lower the next year or --
15 I mean, I don't understand.

16 BY MR. McCOY:

17 Q Sure. I guess, just conceptually, if -- if you
18 pay in the amount that you calculated when you mentioned
19 the calculator earlier. Let's say it was the 8,000ish
20 dollars, right?

21 A Right.

22 Q If only 7500 of that is actually needed in a
23 given year, do you have a problem with that \$500 being
24 rolled into the next year for use?

25 MR. MILLER: Object to the form.

1 A No, if it prohibits raising the costs.

2 BY MR. McCOY:

3 Q What if it -- what if the cost still goes up but
4 it's not as much as it would have because they've applied
5 funds from the year before?

6 MR. MILLER: Object to the form.

7 A I would have to -- that's just a -- if they do
8 that, they're not going to go up. I mean, there's -- but
9 I can't answer that because I don't -- I'm not in that
10 situation right now, so I'll say no.

11 BY MR. McCOY:

12 Q We may be almost done. Just give me a second
13 here. There we go. All right. Give me one moment. I'm
14 trying to get a document up, and this thing had one job,
15 and it can't do it right now, which is to display this
16 document.

17 Let me just ask you this question, then maybe we
18 don't even need the document, Mrs. Litton.

19 You agree that you were told that the fees
20 associated with your timeshare ownership could go up or
21 down?

22 A Yes.

23 Q All right. There are allegations, Mrs. --
24 Ms. Litton, in your amended complaint about the trustee
25 earning a profit. Do you know what facts support the

1 allegation that the trustee has earned a profit?

2 A I have to turn that over to my attorneys.

3 Q You're not aware of anything to support that
4 allegation?

5 A Not at the present.

6 Q Do you have an amount of money in mind that you
7 want to have returned to you that you have paid in as
8 part of your timeshare ownership?

9 MR. MILLER: Object to the form.

10 A Only what's legally decided in this -- in this.

11 BY MR. McCOY:

12 Q You agree that in terms of whatever you would
13 want back, you're not asking someone to allow you to have
14 a timeshare for free, right?

15 A Correct.

16 Q You want to pay what's fair based upon your use
17 of your timeshare interest, correct?

18 A Correct.

19 MR. MILLER: Object to the form.

20 BY MR. McCOY:

21 Q And how much you use your timeshare may be
22 different than someone else who has a timeshare with
23 different points, correct?

24 A Correct.

25 Q And you're not suggesting that you should not

1 have to pay any of the maintenance fees that we've been
2 talking about today; is that correct?

3 A Correct.

4 Q But there's some number between the current fees
5 that you pay and zero is where you would like to be in
6 terms of the maintenance fees?

7 A Correct.

8 Q And your maintenance fees that you pay are
9 connected to the amount of points that you hold through
10 your timeshare ownership, correct?

11 MR. MILLER: Object to the form.

12 A To my knowledge, yes.

13 BY MR. McCOY:

14 Q And so the amount that others may pay based upon
15 their points would differ, correct?

16 MR. MILLER: Object to the form.

17 A Yes.

18 BY MR. McCOY:

19 Q And you're not asking anybody to void your
20 contract such that you will no longer have a timeshare
21 interest, correct?

22 A Correct.

23 Q How much time have you spent working on this
24 case?

25 A Well, you mean hourswise?

1 Q Yes, ma'am.

2 A Okay. Well, I had to drive -- probably seven
3 hours look- -- reading documents and driving here.

4 Q How far was your drive to the location where
5 you're at today?

6 A 75, 80 miles.

7 Q An hour and a half?

8 A Yes.

9 Q That's each way?

10 A Correct.

11 Q So that's three hours out of the seven?

12 A Correct.

13 Q So that leaves four hours. And you did an hour
14 and a half of prep yesterday?

15 A Yes.

16 Q So that leaves 2.5 hours that you've spent
17 otherwise working on the case?

18 A Just reading documents.

19 Q Besides the complaint and the amended complaint,
20 what other documents have you read in this case?

21 A That -- that's all.

22 Q So you've spent the 2.5 hours that we figured
23 out was left reading the complaint and the amended
24 complaint?

25 A Correct.

1 Q Were you involved in preparing answers to any of
2 the written questions that have been served in this case?

3 A No.

4 Q Have you ever heard of a thing called an
5 interrogatory?

6 A Yes.

7 Q And do you know what that is?

8 A It's a written question.

9 Q You weren't involved in providing answers to any
10 interrogatories?

11 A I reviewed them.

12 Q You reviewed the answers?

13 A Correct.

14 Q Did you provide any of the content in the
15 answers, or did other people provide that?

16 A By conversation, they provided it.

17 Q Help me understand what that means.

18 A By talking with Windy, Brent, and me, they
19 provided the answers.

20 Q Do you know, if you looked at the interrogatory
21 answers, what you provided as opposed to what Windy and
22 Brent provided?

23 A No.

24 Q You understood -- did you sign a verification
25 that the answers that were provided to the

1 interrogatories were made under penalty of perjury?

2 A Yes.

3 Q You understood that's the same oath that you
4 gave to give testimony here today?

5 A Yes.

6 Q And are all of the answers that you had signed
7 as being true under penalty of perjury -- are there any
8 changes you would make to those answers today?

9 A No.

10 Q Have you ever read Wyndham Worldwide
11 Corporation's 2015 Form 10-K filed with the United States
12 Securities and Exchange Commission?

13 A No.

14 Q Do you know what's in that document?

15 A No.

16 Q Do you recall having a conversation with Windy
17 or Brent about that document as part of any interrogatory
18 response in this case?

19 A No.

20 Q Do you know where a reference to that document
21 would have come from in the interrogatory responses that
22 you swore to?

23 MR. MILLER: Object to the form.

24 A No. I said "No."

25 BY MR. McCOY:

1 Q I heard you. I was just looking at something
2 else.

3 A Okay.

4 Q You agree that Wyndham employees would be the
5 people most knowledgeable about their properties and
6 their timeshare system?

7 MR. MILLER: Object to the form.

8 A Yes. Yes.

9 BY MR. McCOY:

10 Q Do you agree that the people who spend the time
11 maintaining the properties, the Wyndham timeshare
12 properties and the facilities, should be paid for their
13 services?

14 A Yes.

15 Q Do you agree that the individuals in charge of
16 Wyndham would be in the best position to know what
17 properties need maintenance and which do not?

18 MR. MILLER: Object to the form.

19 A Yes.

20 BY MR. McCOY:

21 Q Have you ever stayed at a property that is under
22 a different brand, like Marriott or others in the
23 timeshare industry?

24 A No.

25 Q Do you know what any of the details are

1 concerning the management agreement with Wyndham Vacation
2 Resorts that allows Wyndham Vacation Resorts to serve as
3 the exclusive plan manager?

4 A No.

5 Q Have you ever read the plan that the -- the
6 contract concerning the plan manager?

7 A No.

8 Q Do the details of that contract matter to you?

9 MR. MILLER: Object to the form.

10 A I -- I -- no.

11 BY MR. McCOY:

12 Q I am almost done, Mrs. Litton, if this box will
13 work. Let's give it one more chance.

14 MR. MILLER: Kevin, who is the host for the
15 Zoom? Is it you?

16 MR. McCOY: No, I think Anthem is the host.

17 MR. MILLER: Okay. Do you know under
18 security if it allows participants to share
19 screen? I know that's a problem I've had in
20 these before.

21 MR. McCOY: Oh, I haven't even tried to do
22 that yet.

23 MR. MILLER: Oh, okay. I'm sorry. I
24 thought that was the holdup. My apologies.

25 MR. McCOY: This thing -- we can stay on

1 the video. We'll go off the stenographic.

2 (Recess taken from 12:30 p.m. to 12:31 p.m.)

3 BY MR. McCOY:

4 Q Mrs. Litton -- we can go back on the
5 stenographic.

6 Ms. Litton, you agree that you're not required
7 to enroll or participate in Club Wyndham Plus as part of
8 your timeshare ownership, correct?

9 A Not required?

10 Q Yes, ma'am.

11 A I'm sorry. You'll have to explain that. What
12 do you mean?

13 Q Sure. Let me -- let me ask you a better
14 question.

15 A Yes. Please do.

16 Q Being part of Club Wyndham Plus is an add-on
17 feature that you're not required to have to be a
18 timeshare ownership, correct?

19 A I've never heard it put that way.

20 Q Well, it having been put that way, do you agree?

21 A Yes.

22 Q Fair to say that are you not aware of any facts
23 to suggest that Fairshare Vacation Owners has ever
24 misused even the first penny of any money that you've
25 paid in?

1 MR. MILLER: Object to the form.

2 A I'm not aware.

3 BY MR. McCOY:

4 Q You're not aware of any facts that would -- that
5 would suggest that, correct?

6 A Correct.

7 MR. MILLER: Object to the form.

8 BY MR. McCOY:

9 Q Am I correct that you do not want any outcome in
10 this case that would result in an increase of the
11 maintenance fees that you are currently paying?

12 A Yes.

13 Q And you would not want any outcome in this case
14 that would increase the fees paid by the individuals that
15 you want to be part of the class, correct?

16 A Correct.

17 Q Do you agree there may be members of the class
18 that you want to represent who are just fine with the
19 fees that they are paying?

20 MR. MILLER: I object to the form.

21 A Yes.

22 BY MR. McCOY:

23 Q And would you agree that you do not want any
24 outcome in this case that would result in the timeshare
25 properties that are subject to the Wyndham system having

1 a decrease in maintenance or upkeep?

2 A Yes.

3 Q As it stands right now, given that you've not
4 spoken to anyone besides your daughter and your
5 son-in-law, you would agree that at least as it pertains
6 to your issues with Wyndham, you are in a class of three?

7 MR. MILLER: Object to the form.

8 A No.

9 BY MR. McCOY:

10 Q Okay. Who else would share the same issues that
11 you've expressed here that you would add in to the class
12 beyond you, your daughter, and your son-in-law?

13 MR. MILLER: Object to the form.

14 A The other owners.

15 BY MR. McCOY:

16 Q Of whom you've -- you've not spoken to any,
17 correct?

18 A Correct.

19 Q And you don't know what any other owners'
20 particular circumstances financially may be relative to
21 their timeshare interest, correct?

22 A Correct.

23 MR. McCOY: All right. Ms. Litton, I
24 appreciate your time. I think I'm done for
25 today unless there's a reason to do follow-up.

1 Mr. Miller, do you have anything?

2 MR. MILLER: I do not. We will do read and
3 sign with her, like we've done with the others,
4 but I do not have any questions.

5 MR. McCOY: All right. I appreciate your
6 time. Thank you. We're done for today, so
7 everybody take care.

8 THE VIDEOGRAPHER: The time is 12:37 p.m.
9 We're now off the record.

10 THE COURT REPORTER: Kevin, do you want
11 this typed up?

12 MR. McCOY: Yes, please.

13 THE COURT REPORTER: Do one of you guys
14 want to purchase a copy?

15 MR. MILLER: I think Patrick's assistant
16 may have emailed about wanting to get copies of
17 all of it but not -- not the rough or the quick
18 version but just once the final was done.

19 (Deposition concluded at 12:39 p.m.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, BEVERLY REPLOGLE, RPR, Court Reporter and Notary Public, do hereby certify that I was authorized to and did stenographically report the foregoing deposition of PAULA LITTON; that a review of the transcript was requested; and that the foregoing transcript, pages 1 through 78, is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED December 31, 2020 at Tampa, Hillsborough County, Florida.


BEVERLY REPLOGLE, RPR
Notary Public

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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, BEVERLY REPLOGLE, RPR, Notary Public, State of Florida, certify that the witness, PAULA LITTON, appeared before me via Zoom videoconference on December 17, 2020 and was duly sworn.

WITNESS my hand and official seal this date:
December 31, 2020.

Identification:

Personally Known _____
Or Produced Identification _____ X _____
Type of Identification Produced: Driver's License

Beverly L. Replogle

BEVERLY REPLOGLE, RPR
Notary Public, State of Florida
MY COMMISSION GG 946680
EXPIRES 2/25/24



1 E R R A T A S H E E T

2 IN RE: CAROLYN NOLEN, et al., vs. FAIRSHARE VACATION
OWNERS ASSOCIATION

3 DEPOSITION OF: PAULA LITTON TAKEN: 12/17/2020

4 DO NOT WRITE ON THE TRANSCRIPT - ENTER CHANGES HERE

5 Please sign, date, and return this sheet to our office.
6 If additional lines are required for corrections, attach
additional sheets.

7
8 At the time of the reading and signing of the
deposition, the following changes were noted:

9	PAGE	LINE	CHANGE	REASON
10	_____	_____	_____	_____
11	_____	_____	_____	_____
12	_____	_____	_____	_____
13	_____	_____	_____	_____
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19	_____	_____	_____	_____
20	_____	_____	_____	_____
21	_____	_____	_____	_____

22 Under penalty of perjury, I declare that I have read my
23 deposition and that it is true and correct subject to
any changes in form or substance entered here.

24 SIGNATURE OF DEPONENT: _____

25 DATE: _____

1 December 31, 2020

2 Rodney Miller, Esquire
3 Methvin, Terrell, Yancey, Stephens & Miller, P.C.
4 2201 Arlington Avenue South
5 Birmingham, Alabama 35205

6 In Re: Carolyn Nolen, et al., vs. Fairshare Vacation
7 Owners Association

8 Dear Mr. Miller:

9 Enclosed please find the original errata page with your
10 copy of the transcript so PAULA LITTON may read and
11 sign. Please have her make whatever changes are
12 necessary on the errata page and sign it. Please make a
13 copy of the errata page and place it in your copy of the
14 transcript. Please then forward the original errata
15 page back to our office at 101 South Franklin Street,
16 Suite 101, Tampa, Florida 33602.

17 If the errata page is not signed by the witness within
18 30 days after this letter has been furnished, we will
19 then process the transcript without a signed errata
20 page. If PAULA LITTON wishes to waive her right to read
21 and sign, please have her sign on the signature line at
22 the bottom of this letter and send it back to our
23 office.

24 Your prompt attention to this matter is appreciated.

25 Sincerely,

Beverly Replogle, RPR
Anthem Reporting

I do hereby waive my signature

PAULA LITTON

cc: Kevin P. McCoy, Esquire

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CAROLYN NOLEN, WINDY KELLEY,
CARA KELLEY, and PAULA LITTON,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

-vs-

CASE NO. 6:20-cv-330-PGB-40EJK

FAIRSHARE VACATION OWNERS
ASSOCIATION,

Defendant.
_____ /

VIDEOTAPED
VIDEOCONFERENCE
DEPOSITION OF:

WINDY LEA HUMPHRIES KELLEY

DATE TAKEN:

Friday, December 11, 2020

TIME:

9:30 a.m. to 11:35 a.m.

PLACE:

All participants appearing
remotely via Zoom videoconference

REPORTED BY:

Beverly Replogle, RPR
Notary Public

1 APPEARANCES:

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9

Appearing via Zoom videoconference on
10 behalf of the Plaintiffs

11

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15

Appearing via Zoom videoconference on
16 behalf of the Defendant

17

ALSO PRESENT:

18

Rob Fulton, Videographer, appearing via
19 Zoom videoconference

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1 I N D E X

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1 THE VIDEOGRAPHER: We are going on the
2 record at 9:30 a.m. Today is Friday,
3 December 11, 2020. We're here for the
4 video-recorded deposition of Windy Kelley in
5 case Carolyn Nolen, Windy Kelley, Cara Kelley,
6 and Paula Litton, on behalf of themselves and
7 all others similarly situated, v. Fairshare
8 Vacation Owners Association, Case Number
9 6:20-CV-330-PGB-40EJK in the United States
10 District Court, Middle District of Florida,
11 Orlando Division. This deposition is being
12 conducted via Zoom video conference.

13 Can the court reporter please swear in the
14 deponent?

15 THE COURT REPORTER: Before I swear in the
16 witness, I need for the attorneys participating
17 in this deposition to acknowledge that I, the
18 court reporter, am not present with the witness
19 and that I will be reporting the proceedings and
20 administering the oath remotely. This
21 arrangement is pursuant to the Florida Supreme
22 Court Administrative Order AOSC20-16 (and
23 extended by AOSC20-23). The parties and their
24 counsel consent to this arrangement and waive
25 any objections to this manner of reporting.

1 Please indicate your agreement by stating
2 your name and your agreement on the record,
3 starting with counsel for the plaintiff.

4 MR. TERRELL: James Terrell; we agree.

5 MR. McCOY: Kevin McCoy, on behalf of
6 Defendant Fairshare; and I agree.

7 THE COURT REPORTER: Will each party,
8 including the witness, also acknowledge by
9 saying "yes," that they are agreeable that I, a
10 Florida notary, will be swearing in the witness
11 via videoconference means today, starting with
12 the plaintiff.

13 THE WITNESS: Yes.

14 MR. TERRELL: Yes.

15 MR. McCOY: Yes, for Fairshare.

16 THE COURT REPORTER: Ma'am, would you raise
17 your right hand for me, please.

18 Do you swear or affirm that the testimony
19 you're about to give in this cause will be the
20 truth, the whole truth, and nothing but the
21 truth?

22 THE WITNESS: I do.

23 WINDY LEA HUMPHRIES KELLEY,
24 having been first duly sworn, was examined and testified
25 upon her oath as follows:

1 DIRECT EXAMINATION

2 BY MR. McCOY:

3 Q All right. Good morning, Mrs. Kelley. How are
4 you today?

5 A I'm good; thank you.

6 Q I understand through your counsel you have some
7 time restrictions today and you need to be done in order
8 to get to your job at a certain point. Is that still the
9 case?

10 A Yes, sir.

11 Q What time do you need to be done today?

12 A 2 p.m. Central time.

13 Q All right. I feel pretty confident that we will
14 meet that deadline and be well ahead of that deadline;
15 but if for some reason we aren't and that's -- and we're
16 wading into that territory, you let me know.

17 Along those same lines, if you need to take a
18 break for any reason, just for -- it doesn't really
19 matter what the reason is, you just let me know. I tend
20 to just push through and try --

21 A Okay.

22 Q -- to get these things done, but just tell me,
23 "I need to take a time out, stretch my legs." You don't
24 even need to tell me why. Just tell me we need to take a
25 quick break, and we will.

1 You just took an oath. You understood that oath
2 was to tell the truth today?

3 A Yes, I do.

4 Q Any reasons why you wouldn't be able to do that
5 today, either because you have some kind of illness,
6 condition, you've taken medication, you've taken any kind
7 of drug; anything that would impair your ability to give
8 the complete truth today?

9 A No, there is not.

10 Q Have you ever given a deposition before?

11 A No, I have not.

12 Q We'll go over just a few more ground rules that
13 will help us move faster and make sure everything moves
14 smoothly. The first is it's natural -- it's Friday -- we
15 both want to get this done quickly. You may anticipate
16 my question, and I'm going to anticipate your answer
17 based upon any number of things, and it's -- sometimes
18 it's -- we talk over each other. That's when we get in
19 big trouble with the court reporter.

20 So if you'll let me finish, I'll let you finish.
21 And if you will give me verbal answers even though we
22 have a video recording and this is being recorded for use
23 at a trial in this case, it's very important that
24 "uh-huh," "huh-uhs," head shakes -- that's very hard for
25 the court reporter to write down what that was supposed

1 to mean. So anything -- any problem with those rules so
2 far?

3 A No.

4 Q If you don't understand a question, I can
5 promise you that at some point today I'm going to ask you
6 a question, in my mind it makes a lot of sense. I
7 understand it. But I can usually tell looking at
8 somebody's face, they kind of have a look like "I don't
9 know what that means." Let me know. Ask me to rephrase
10 a question if you don't understand it, and I'll do my
11 best to try to make it clear. Otherwise, if you answer
12 my question, I'll assume you understood the question. Is
13 that okay with you?

14 A Yes, it is.

15 Q We are taking this deposition remotely,
16 obviously, and pursuant to a stipulation between counsel
17 concerning kind of protocols of how this will happen.
18 Boiling them down, do you have any phone or any method to
19 communicate with you in the room where you are located
20 today at the moment?

21 A I just have my phone in here for time.

22 Q All right. Pursuant -- and -- and I don't know
23 how much of this you've gone into; but if you'll make
24 sure that there are no communications in terms of texts
25 or chat or anything else enabled while we're giving

1 testimony -- is that okay with you?

2 A Yes. Would you like me to remove my phone,
3 then?

4 Q That would be great or just put it back
5 somewhere else. If you have an issue with time, that's
6 fine; but, yeah, that's good enough for me.

7 And where are you located today?

8 A In my husband's office at my home.

9 Q All right. And is there anyone else located in
10 the room with you right now?

11 A No.

12 Q All right. Will you give us your full name,
13 please?

14 A Windy Lea Humphries Kelley.

15 Q And your date of birth?

16 A 9/20/63.

17 Q What is your current occupation?

18 A School bus driver and a Mother's Day workout
19 employee.

20 Q How long have you been a school bus driver?

21 A 23 1/2 years.

22 Q Is that full-time?

23 A It's considered full-time, yes, sir.

24 Q Who is your employer?

25 A Shelby County Schools in Alabama.

1 Q And then you said you have another job as --
2 tell me that again.

3 A It's a Mother's Day preschool program that I
4 work at.

5 Q And is that a volunteer, or is that a paid
6 position?

7 A It's paid.

8 Q How long have you been doing that work?

9 A Five years.

10 Q Have you ever done any work in the timeshare
11 industry?

12 A No, sir.

13 Q Ever done any work for any employer in the
14 hospitality industry?

15 A No.

16 Q Did you graduate high school?

17 A I did.

18 Q What year?

19 A Oh, '80- -- 1981.

20 Q Do you have any post high school education,
21 formal education?

22 A One year at a technical school.

23 Q Did you complete any programs at the technical
24 school?

25 A I did.

1 Q And did you get a certificate or a diploma of
2 some sort?

3 A I did.

4 Q For what?

5 A Secretarial.

6 Q Any training in real estate?

7 A No.

8 Q Any kind of education or training in timeshares?

9 A No.

10 Q Have you ever worked as an employee for a
11 nonprofit?

12 A No.

13 Q Have you ever volunteered for a nonprofit?

14 A No.

15 Q I understand you are represented by several
16 lawyers in this case. What caused you to hire the
17 lawyers that you have in this case?

18 A We hired them because of the inabilities -- or
19 the opportunities of not being able to -- too much
20 expenses being paid on our maintenance fees and stuff.

21 Q Too many expenses being paid on maintenance
22 fees?

23 A Yes. They keep going up.

24 Q And that's associated with your timeshare?

25 A Yes.

1 Q Any other fees that were the cause of you to
2 hire the lawyers that you have in this case?

3 A No.

4 Q The maintenance fees that you just mentioned, do
5 you know what those maintenance fees were for?

6 A Not exactly, no.

7 Q Do you know who they were paid to?

8 A Wyndham.

9 Q Do you know the name of the Wyndham entity to
10 which the maintenance fees were paid?

11 A I'm just aware of Wyndham.

12 Q Do you understand who the present defendant is
13 in this case?

14 A Wyndham.

15 Q Have you ever heard of Fairshare Vacation Owners
16 Association?

17 A Yes.

18 Q And do you know what that is?

19 A It is the -- the people that we bought our
20 timeshare from that it was put into a trust with.

21 Q It's your understanding that you bought your
22 timeshare interest from Fairshare Vacation Owners
23 Association?

24 A No.

25 Q All right. Help me understand, then, what you

1 understand Fairshare Vacation Owners Association, the
2 defendant in this case, to -- to be.

3 A Well, I understood that we were buying it from
4 Wyndham. I had later learned that it was really with the
5 timeshare, that it was a trust, and it was with the
6 timeshare people -- the Fairshare. Excuse me.

7 Q What -- what was with Fairshare?

8 A Our trust was put in there when we purchased the
9 Wyndham timeshare.

10 Q Your -- "your trust," meaning like you would
11 trust someone or a -- a trust like a legal trust?

12 A A legal trust.

13 Q What do you understand the role of Fairshare
14 Vacation Owners Association to be relative to a trust?

15 MR. TERRELL: Object to the form. You can
16 answer.

17 A Oh, okay.

18 I understand that it was to be -- when we
19 purchased the timeshare, it is later put -- it was put
20 into this trust that it would take care of all of our --
21 our needs, and they would be fair to us in the way they
22 distributed things and did things.

23 BY MR. McCOY:

24 Q When you say "distributed and did things," what
25 things are you talking about?

1 A That the fees were taken care of in a reasonable
2 manner, that they would be fair in distribution, that we
3 would be able to see -- visit all of the properties that
4 supposedly Wyndham owns, that we would be able to
5 maintain costs.

6 **Q And what facts do you have, sitting here today,**
7 **that Defendant Fairshare has not maintained any fees you**
8 **have paid in a reasonable manner?**

9 A The fees keep getting extraordinarily high every
10 year. They keep going up. We're not able to visit all
11 of the properties in a reasonable time because they're
12 always booked.

13 **Q Are you aware of -- besides the fees going up,**
14 **are you aware of any other conduct by Defendant Fairshare**
15 **relative to your fees being handled in a relative -- in a**
16 **reasonable manner?**

17 MR. TERRELL: Object to the form.

18 A Pardon me?

19 BY MR. McCOY:

20 **Q You can answer.**

21 MR. TERRELL: I just objected. You can
22 answer.

23 A Oh, okay. Not -- no, no. No.

24 BY MR. McCOY:

25 **Q You mentioned an issue concerning distribution,**

1 and I took that to mean distribution of -- of your fees.

2 Is that an issue that you have with Defendant Fairshare?

3 A I guess the way I mean that is that they -- they
4 collected all of these fees, yet we're still not able to
5 visit the sites that we want to see and do, and that they
6 keep getting extra -- getting higher, and so it's
7 becoming unreasonable to me or to probably any of the
8 other people.

9 Q Do you know how the fees that you are -- that
10 you have paid in have been distributed?

11 A No.

12 Q Do you know what they've been used for?

13 A No.

14 Q Sitting here today, do you know if even \$1 of
15 any fee you've ever paid has been used for something
16 improper?

17 A No.

18 Q You just -- well, you mentioned that you cannot
19 visit all of the properties because they're always
20 booked. Can you give me a list of properties that you
21 have wanted to visit that you have not been able to
22 visit?

23 A We weren't able to visit the ones in
24 North Carolina or South Carolina. We haven't been able
25 to see the ones in Utah very often, and there's a couple

1 in Florida that we haven't gotten to see -- be able to go
2 to.

3 Q Have you raised the issue of being able to visit
4 the North Carolina, South Carolina, Utah, Florida
5 properties with someone at Wyndham?

6 A We have spoken to people on the phone about
7 things, and it's just basically that's how it is. We've
8 got to book far enough in advance. We have 13 months
9 out, and you still get an all full.

10 Q You've tried to book it at the North Carolina,
11 South Carolina, Utah, and Florida properties, all of them
12 13 months out, and they've been full?

13 A Yes.

14 Q I'm sorry. Was that "yes"?

15 A Yes. Sorry. Yes.

16 Q All right. How did you find the lawyers that
17 you hired in this case?

18 A Through a mutual friend of my mother's.

19 Q What's that friend's name?

20 A Rodney Miller's mother. I'm not quite sure of
21 her first name.

22 Q So Rodney Miller, counsel in this case's mother,
23 referred you to -- was it Rodney Miller first as -- as
24 your lawyer?

25 A No, she -- she referred my mother and then --

1 Q Understood.

2 A -- and then my mother just told us about it, and
3 we joined.

4 Q And what's your mother's name?

5 A Paula Litton.

6 Q So Paula Litton spoke with Rodney Miller's
7 mother, and then you spoke with -- with Paula Litton
8 about being a plaintiff in this lawsuit?

9 A Yes. We discussed it.

10 Q The timeshare interests that are part of these
11 claims, at least from -- from your perspective, you share
12 those time interests with Paula Litton?

13 A Yes, we do.

14 Q And Cara Kelley, who is that?

15 A That is my husband. He goes by "Brent."

16 Q Brent?

17 A That's the name he goes by. It's his middle
18 name.

19 Q Understood. When did you first have a
20 conversation with Paula Litton about joining this
21 litigation?

22 A I would say about a year ago.

23 Q What do you recall about that conversation?

24 A We just discussed the maintenance fees and
25 stuff, and that this was a suit that was going on and

1 that we needed to join it. We thought we should join it.

2 Q And did you reach out to -- who was the first
3 lawyer in the group of lawyers that have been retained
4 here that you spoke with?

5 A I believe it was Rodney at first via email.

6 Q Did you reach out to Mr. Miller, or did he reach
7 out to you?

8 A I believe he reached out to us.

9 Q Did you do anything to prepare for your
10 deposition today?

11 A We had a brief discussion yesterday with our
12 attorneys.

13 Q And who was -- who participated in that
14 discussion?

15 A Mr. Terrell and Mr. Miller.

16 Q Was it just Mr. Miller, Mr. Terrell, and you, or
17 were Ms. Litton and Brent Kelley in that meeting as well?

18 A My husband was as well.

19 Q How long was the meeting?

20 A Roughly an hour and 45 minutes or so.

21 Q Did you review any documents?

22 A Yes.

23 Q Are there any documents that you reviewed
24 outside of your transaction documents or documents that
25 have been produced in this case?

1 A No.

2 Q Have you reviewed the testimony from

3 **Mrs. Nolen Jones?**

4 A No.

5 Q Do you know Mrs. Nolen Jones?

6 A No.

7 Q Have you ever spoken with Mrs. Nolen Jones?

8 A No.

9 Q Do you know what your credit score is?

10 A No.

11 Q Have you ever been denied credit?

12 A No.

13 Q Ever filed for bankruptcy?

14 A No.

15 Q Ever convicted of a crime?

16 A No.

17 Q What's your current address?

18 A 1204 Dunham Circle, Helena, Alabama 35080.

19 Q How long have you lived at Dunham Circle?

20 A 26 years.

21 Q Do you own the home?

22 A Yes.

23 Q Is there a mortgage?

24 A Yes.

25 Q Who holds the mortgage?

1 A My husband and I.

2 Q I should say what financial institution?

3 A Oh.

4 Q Do you know the name of the creditor?

5 A Yeah. USAA Federal Housing.

6 Q Do you know if USAA Federal Housing has
7 securitized the mortgage that you have on your home?

8 A I do not, no.

9 Q Does that matter to you?

10 A No.

11 Q Do you have an HOA at the Dunmore [sic] Circle?

12 A No.

13 Q Have you ever lived in a community with an HOA?

14 A No.

15 Q Is your first experience owning a property where
16 you had to pay in monthly assessments to an association
17 your timeshare interest?

18 A Yes.

19 Q Have you ever owned a condominium or a townhome?

20 A No.

21 Q When was the first time that you purchased --
22 well, let me ask you a different question.

23 How did you ever come to hear about Wyndham
24 timeshares as a vacation option?

25 A My mother originally had purchased, and we were

1 down -- we went to Florida and sat in one of the meetings
2 there.

3 Q So Paula Litton had a timeshare interest?

4 A Yes.

5 Q That was with Wyndham?

6 A Yes.

7 Q What year did she purchase her timeshare
8 interest?

9 A I'm not sure.

10 Q Do you know what kind of timeshare interest she
11 purchased from Wyndham?

12 A No.

13 Q You went down to Florida in what year for a
14 presentation?

15 A I do not recall.

16 Q It looks like the transaction at issue in your
17 case was in 2016. Does that sound right?

18 A Yes.

19 Q So would it have been before 2016?

20 A Yes.

21 Q Was your 2016 transaction the first timeshare
22 transaction that you had with Wyndham?

23 A No.

24 Q What year was the first transaction you had with
25 Wyndham?

1 A I do not recall.

2 Q Does 2014 sound right?

3 A Yes.

4 Q When you -- what -- what city did you go down to
5 the presentation in for that first presentation?

6 A It was Destin, Florida.

7 Q Did you stay at a Wyndham facility down there?

8 A Yes.

9 Q Did you pay for that stay?

10 A No. We were on my mother's timeshare.

11 Q Did you make the first purchase while you were
12 there at the Destin property? Did you --

13 A Yes.

14 Q -- purchase the first timeshare while you were
15 there for the promotional visit?

16 A Yes. Yes. I believe so.

17 Q Do you know what type of timeshare interest you
18 purchased for that first purchase?

19 A No.

20 Q Do you know the different types of timeshare
21 interests that are available in terms of -- so, for
22 example, a timeshare interest, Club Wyndham Access, Club
23 Wyndham Plus. Do you know the difference between those
24 different programs?

25 A I have heard the difference. I do not recall

1 what makes them different.

2 Q Do you know whether you have a membership in
3 Club Wyndham Access?

4 A Yes.

5 Q Meaning you do have -- you do have a membership?

6 A Yes, I believe we do. It's Access, yes.

7 Q Do you have a membership in Club Wyndham Plus?

8 A I do not recall.

9 Q Out of the fees that you said are increasing
10 that we talked about earlier, do you know if those fees
11 are assessed by Club Wyndham Access or Club Wyndham Plus?

12 A No, I do not.

13 MR. McCOY: So, Jimbo, we may be at a
14 breaking point a little bit earlier for that
15 discussion that we talked about before we
16 started --

17 MR. TERRELL: Okay.

18 MR. McCOY: -- just so we can figure out if
19 we can streamline this.

20 MR. TERRELL: Yeah, yeah. Why don't we do
21 this, Windy. I'm going to have a quick
22 discussion with Rodney and Patrick, and then
23 we're going to talk with Kevin. So why don't
24 we -- why don't we go back on the record at
25 maybe 9:15. Just tell her to come back in the

1 room at 9:15. Does that work for you, Kevin?

2 MR. McCOY: Yeah. That's fine with me.

3 MR. TERRELL: Okay. So you can just take a
4 break, and we'll have a discussion probably
5 outside your presence. And why don't we come
6 back at 9:15?

7 THE WITNESS: Okay.

8 THE VIDEOGRAPHER: Going off the record --

9 MR. TERRELL: Thank you.

10 THE VIDEOGRAPHER: Going off the record at
11 9:57 a.m.

12 (Recess taken from 9:57 a.m. to 10:14 a.m.)

13 THE VIDEOGRAPHER: We are back on the
14 record at 10:14 a.m.

15 MR. McCOY: All right. We're back on the
16 record. During the break I had a chance to talk
17 with Mr. Terrell, and I believe the parties are
18 prepared to stipulate that there are no claims
19 pleaded in the operative pleading concerning
20 fees or membership for Club Wyndham Access as to
21 any of the plaintiffs.

22 The only claims pleaded in the operative
23 complaint would be those associated or charged
24 by Club Wyndham Plus. Is that an accurate
25 stipulation, Mr. Terrell?

1 MR. TERRELL: That's correct. Thank you.

2 MR. McCOY: Wonderful.

3 BY MR. McCOY:

4 Q All right. Mrs. Kelley, we'll -- with this
5 stipulation, this will go even faster. I think you will
6 make your -- your bus route today.

7 A Okay.

8 Q Let me ask you about just some other issues.
9 Have you ever looked into timeshare offerings by any
10 other company other than those offered through Wyndham?

11 A No.

12 Q Have you ever read any information about any
13 other timeshares offered by another company or attended a
14 promotional event or anything of that sort?

15 A No.

16 Q Do you know the names of any other timeshare
17 brands or companies that offer a similar product to that
18 of Wyndham?

19 A I've heard of Marriott.

20 Q Marriott? Any others?

21 A No. No.

22 Q Is it fair to say the reason that you bought
23 your Wyndham timeshare interest in the first place was
24 because of your mother's involvement with the program?

25 MR. TERRELL: Object to the form.

1 A I think we enjoyed the idea of things. We have
2 five children, and we really wanted to create those
3 vacations and memories for them since they now are grown
4 and live all over the country.

5 BY MR. McCOY:

6 Q What was -- what was your understanding about
7 your ability to travel to other timeshare properties
8 within the Wyndham system when you bought your interest?

9 A That you will be able to have these locations
10 all over the country, even the world, and go and see
11 things and do things that you might not ordinarily get to
12 do because that's what's the expense of all of that.

13 Q Have you been able to use -- well, let's walk
14 through the times that you've used your points for a
15 Wyndham -- stay at a Wyndham timeshare property since you
16 first purchased into the system.

17 How many times did you visit a property in 2014?

18 A Well, we go to Florida regularly every year.
19 I'm not quite sure. No, I'm not quite sure how many
20 places we visited in 2014.

21 Q Did you travel to any Wyndham properties in
22 2014?

23 A I'm sure we did, but the -- I'm not quite -- I
24 can't recall.

25 Q Do you -- did you have a -- a good experience in

1 your travel in 2014 in going to Wyndham properties?

2 A Yes.

3 Q How many properties did you travel to in 2015?

4 A Maybe two. Two.

5 Q Did you have a good experience at those two?

6 A Yes.

7 Q And what properties did you travel to?

8 A We've traveled to the one in North Carolina to
9 see the Biltmore. We've gone to Florida.

10 Q The -- the North Carolina property, is that in
11 Asheville?

12 A Yes.

13 Q Do you know the name of the property?

14 A No, not off the top of my head.

15 Q What about the Florida property? Is that the
16 Destin property or a different one?

17 A We have been both to the Majestic Sun and the
18 other one. I forget what they call it.

19 Q So those would have been -- those would have
20 been in 2015?

21 A I believe so.

22 Q 2016, do you recall where you traveled in the
23 Wyndham system in 2016?

24 A To Florida, and I'd also booked one in
25 Williamsburg, Virginia; but my daughter and son-in-law

1 went to that one.

2 **Q Same property in Florida in 2016?**

3 A Yes.

4 **Q And you said that's the Majestic?**

5 A The Majestic Sun.

6 **Q Thank you.**

7 **2017?**

8 A The Majestic Sun, and I believe that was it.

9 **Q Only one trip to Majestic Sun in 2017?**

10 A Yes.

11 **Q 2018?**

12 A The Majestic Sun.

13 **Q One time?**

14 A Yes.

15 **Q Any others in 2018?**

16 A I don't believe so.

17 **Q 2019?**

18 A We went to the Majestic Sun, and we had some
19 other ones booked, but we were able -- we had to cancel.

20 **Q Did you cancel for your own reasons, or was that**
21 **something associated with Wyndham?**

22 A Personal reasons.

23 **Q And the Majestic Sun in 2017 was only one**
24 **stay -- or one trip, I should say?**

25 A Yes.

1 Q What about this year?

2 A This year we went to the Majestic Sun, but...

3 Q Just one time?

4 A Yes.

5 Q In terms of the trips that you just described to
6 me from -- from 2015 through 2020, how did you go about
7 booking those reservations?

8 A My mom usually books the one for the Majestic
9 Sun, and others we went online to book.

10 Q Where did you go online?

11 A To the Wyndham owner's log-in site to book.

12 Q Is that kind of like a portal where you can go
13 in and see what's available on what dates and it will
14 tell you how many points it would cost you to stay at a
15 particular property?

16 A Yes.

17 Q Have you ever had any problems in using that
18 reservation system other than learning that a property
19 wasn't available that you wanted to go to?

20 A Yes.

21 Q What other problems have you had?

22 A You just couldn't navigate it very well at
23 times. So it was -- I mean, I couldn't explain exactly
24 what the navigation problems were, but you just couldn't
25 navigate it very well.

1 Q Well, can you -- can you give me any other
2 details about -- this is something that you experienced,
3 right? Your -- this is something that you saw yourself?

4 A Yes, I did; but I will be honest, I'm not tech
5 savvy very well, so it was just difficult. If you
6 couldn't get on and book, it would shut itself down
7 sometimes. It wouldn't give you the right answers that
8 you were looking for, I guess.

9 Q What are some examples of the right answers that
10 you weren't getting in trying to book using the online
11 system?

12 A The type of rooms that were available.

13 Q So the system -- you experienced the online
14 booking system giving you incorrect information about the
15 type of rooms that were available?

16 A Yes.

17 Q In -- in which one of the reservations that we
18 went through here did you experience that?

19 A With the Park City in Utah.

20 Q I missed that in my list. Where -- what year
21 was that in?

22 A Well, I think I just said "Utah." I'm sorry if
23 I didn't say it. I think that was in 2017.

24 Q Other than that one experience, are there any
25 other examples you can give where the online system gave

1 you incorrect room-type information?

2 A No.

3 Q You said that sometimes the system would shut
4 itself down. What happened?

5 A It would just freeze.

6 Q So the system would freeze, or -- do you know if
7 that was something in the system, or was that something
8 with your computer?

9 A I believed it was with the system.

10 Q And how did it unfreeze, then? What did you do
11 to unfreeze it?

12 A I just waited it out a little bit.

13 Q And about how long would it take for the system
14 to unfreeze?

15 A I would say three to five minutes, maybe.

16 Q How many times did that happen?

17 A Once or twice.

18 Q So in terms of your experience using the online
19 reservation system, you had one experience where the type
20 of rooms for your Utah reservation was not accurate, and
21 you had one to two times where you had to wait three to
22 five minutes for the system to unfreeze; is that correct?

23 A Yes.

24 Q Otherwise, your experiences in interfacing with
25 the system were fine?

1 A Yes.

2 Q Now, the transaction that we're dealing with
3 here is one in 2016; is that correct?

4 A Yes.

5 Q What caused you to enter into that transaction
6 in 2016?

7 A We were, if I believe -- if I can remember it
8 correctly, we were trying to get back in to Access and be
9 able to -- we had to purchase more points to do that and
10 get back so we could see everything, go to everywhere.

11 Q So the 2016 purchase was because you wanted to
12 get back into Club Wyndham Access?

13 A From a previous transaction, if I'm remembering
14 correctly, is that we got out of it, unbeknownst to us;
15 and then we had to get back into it so that we could sell
16 back -- the opportunity to sell it back to Wyndham. If
17 we wanted to, we had to get back into Access.

18 Q That's Club Wyndham Access?

19 A Yes, sir.

20 Q Was there anything about Club Wyndham Plus that
21 caused you to enter into the 2016 transaction?

22 A I do not recall.

23 Q Do you know if you enrolled in Club Wyndham Plus
24 as part of the 2016 transaction?

25 A I do not recall.

1 Q Did you finance the 2016 transaction?

2 A Yes.

3 Q And how did you finance that transaction?

4 A Through Wyndham.

5 Q Do you know the name of the Wyndham entity that
6 provided the financing?

7 A No.

8 Q Do you understand that the defendant in this
9 case, Fairshare Vacation Owners Association, is a
10 different entity than Wyndham?

11 MR. TERRELL: Object to the form.

12 A Pardon? Answer?

13 MR. TERRELL: Yes, please.

14 A Oh. Yes. I do now, yes.

15 BY MR. McCOY:

16 Q And do you agree that Defendant Fairshare
17 Vacation Owners Association did not provide you financing
18 for your 2016 transaction?

19 A Could you repeat that, please?

20 Q Yes, ma'am. Do you agree that Defendant
21 Fairshare Vacation Owners Association did not provide you
22 financing for the 2016 transaction?

23 A I don't recall.

24 Q I want to attach -- this might help us move
25 faster today. So Defendant's -- Jimbo, help me remember.

1 In our stipulation, I know we started the other day at
2 Defendant's 5000. We went through 5006. Should I start
3 at 5007 for continuity?

4 MR. TERRELL: That makes sense to me, yeah.

5 BY MR. McCOY:

6 Q All right. I'm going to attach as Defendant's
7 5007 -- it's a composite exhibit that will be the
8 production, Mrs. Kelley, that your counsel made in this
9 case. It runs from 1 through 75. And I will share those
10 documents with you momentarily so we can talk through
11 some of these things to understand a few issues.

12 (Exhibit Number 5007 marked for identification.)

13 BY MR. McCOY:

14 Q All right. Let's do this. Let me see if I can
15 screen share here.

16 All right. Ms. Kelley, are you able to see the
17 document that I have in front of you --

18 A Yes.

19 Q -- on the screen?

20 A Yes.

21 Q So this is Kelley Litton Production Document 38.
22 It will be part of Defendant's 5007.

23 And this looks like it names the financing
24 arrangements relative to the loan that you were getting
25 for the 2016 transaction. Do you see those numbers in

1 the upper left-hand corner?

2 A Yes.

3 Q And do you see down here where it says "lender"?

4 A Yes.

5 Q And can you read the name of the lender that's
6 identified in this document?

7 A "Wyndham Vacation Resorts, Incorporated."

8 Q And would you agree with me that the name of
9 that company is different than Fairshare Vacation Owners
10 Association?

11 A Yes.

12 Q And with the benefit of this document, do you
13 agree Defendant Fairshare Vacation Owners Association did
14 not provide the financing for your 2016 transaction?

15 MR. TERRELL: Object to the form. You can
16 answer.

17 THE WITNESS: I can answer?

18 MR. TERRELL: Yes.

19 A Yes.

20 BY MR. McCOY:

21 Q I want to go through some other issues quickly.
22 The Club Wyndham Plus, do you understand that there are
23 allegations in this action about Club Wyndham Plus?

24 A Yes.

25 Q Do you know what those are?

1 A Not -- I cannot recall exactly.

2 Q Do you agree that the points that you assigned
3 for your participation in Club Wyndham Plus were assigned
4 voluntarily?

5 MR. TERRELL: Object to the form.

6 A Yes.

7 BY MR. McCOY:

8 Q Do you agree that Defendant Fairshare Vacation
9 Owners Association had nothing to do with the
10 securitization of any loans that you were extended by
11 Wyndham Vacation Resorts?

12 MR. TERRELL: Object to the form.

13 THE WITNESS: Do I answer?

14 MR. TERRELL: Yes, ma'am.

15 BY MR. McCOY:

16 Q Yes.

17 A Okay. I can't quite hear you all the time.

18 MR. TERRELL: Oh, that's okay.

19 A Yes.

20 BY MR. McCOY:

21 Q Do you know what the program fee is that you
22 pay?

23 A No.

24 Q Sitting here, you don't know what that is used
25 for?

1 A No.

2 Q Do you know how much it is?

3 A Are you saying that is our monthly dues?

4 Q I'm asking how much of whatever you pay is for
5 the program fee.

6 A No, I do not.

7 Q Do you know how much you pay for an owner's
8 association fee?

9 A It's around 400, I believe.

10 Q That's -- that's what you pay specifically for
11 the owner's association fee?

12 A If that's the monthly fee we pay, if I'm
13 understanding.

14 Q Do you know what components go into the monthly
15 fee that you pay?

16 A No.

17 Q Is it fair to say that your issue is that the
18 total amount you pay each month has gone up, but you
19 don't know out of that fee what components make up the
20 entire fee have gone up or down or have stayed the same?

21 MR. TERRELL: Object to the form, but you
22 can answer.

23 A Yes.

24 BY MR. McCOY:

25 Q There are allegations in your complaint,

1 Mrs. Kelley, about Defendant Fairshare Vacation Owners
2 Association earning a profit off of the fees that you
3 have paid. Are you aware of that allegation? Have
4 you -- have you read it?

5 A Yes.

6 Q And what is -- what is your understanding of the
7 profit that Defendant Fairshare Vacation Owners
8 Association has made off of the fees that you have paid?

9 A I'm not sure.

10 Q Do you have any facts to support that allegation
11 that you can share with me today?

12 A No.

13 Q You were aware when you entered into the 2016
14 timeshare transaction that you would be charged a program
15 fee?

16 A I do not recall.

17 Q Were you aware that you would be charged an
18 owner's association fee?

19 A I do not recall.

20 Q Do you know whether that was disclosed to you in
21 the documents that you signed as part of that
22 transaction?

23 A I do not recall.

24 Q Are there any moneys that you have been charged
25 by Defendant Fairshare Vacation Owners Association that

1 were different than -- than fees that were disclosed to
2 you?

3 A I'm not aware.

4 Q Do you know who the board of directors is made
5 up of for Defendant Fairshare Vacation Owners
6 Association?

7 A No.

8 Q Have you ever reviewed the board minutes for any
9 meeting of the board members of Defendant Fairshare
10 Vacation Owners Association?

11 A No.

12 Q Have you ever asked to see the minutes?

13 A No.

14 Q Have you ever asked to see a budget for
15 Defendant Fairshare Vacation Owners Association?

16 A No.

17 Q Do you know whether any fees that you have paid
18 are more or less than what have been budgeted by
19 Defendant Fairshare Vacation Owners Association?

20 A No.

21 Q Can you explain to me in your own words exactly
22 what it is that Defendant Fairshare Vacation Owners
23 Association has done to breach any duties to you?

24 A I believe that they have not allowed us to be
25 able to see the properties that we were told that we

1 would be able to visit.

2 I believe the fees are going up, and paying
3 those type of fees has been limiting to us because of not
4 being able to travel because of the extensive fees.

5 Q And when did the fees go up that limited your
6 ability to travel? Was that -- what year did that start?

7 A They go up every year.

8 Q But at a certain point did they reach a
9 threshold where you were not able to travel to Wyndham
10 properties because the fees became too much?

11 A I do not recall when they started -- got to that
12 point.

13 Q Was there a point, a time, when you determined
14 you -- you wanted to take a trip to a Wyndham property
15 but you could not because the fees were -- the fees that
16 you're speaking of were too high?

17 A I cannot recall.

18 Q Sitting here right now in this deposition, you
19 cannot recall an instance where you did not book a trip
20 to a Wyndham property because the fees had gone up; is
21 that true?

22 A Yes, but I believe it limits our travel distance
23 to go to.

24 Q Help me understand that. What do you mean?

25 A So between paying airline tickets or what,

1 et cetera, you know, it just gets to be expensive.

2 Q The fees that you pay for your timeshare
3 interest impact your airline tickets how?

4 A Well, the cost of an airline ticket versus
5 paying those fees every month.

6 Q Did the cost of airline tickets go up?

7 A Yes.

8 Q Can you share with me a specific instance where
9 you were going to book a trip and you couldn't travel by
10 air because the fees that you were paying for your
11 timeshare made that too expensive?

12 A We were trying to go out West one time, and
13 that -- between the airline fees, the lack of rooms, and
14 that kind of thing, yeah.

15 Q What year was that in?

16 A That would have been last year, 2019.

17 Q 2019?

18 A Yes, sir.

19 Q What month were you trying to do that travel?

20 A December.

21 Q Where out West?

22 A Salt Lake.

23 Q What property?

24 A We were trying to go to Park City.

25 Q Is there a specific Wyndham property in

1 **Park City?**

2 A Yes, there is.

3 Q **What's its name?**

4 A Wyndham at Park City, I believe.

5 Q **You wanted to go to the Wyndham in Park City in**
6 **December of 2019?**

7 A Yes.

8 Q **And when were you trying to book that?**

9 A For December of 2019.

10 Q **Understood. What month were you planning to**
11 **go -- were you in December of 2019 and you wanted to go**
12 **to the Wyndham Park City in December of 2019, or were you**
13 **earlier in 2019 trying to plan for December?**

14 A Earlier in the year trying to plan for December.

15 Q **What month?**

16 A I think it was July or August, maybe.

17 Q **Other than that one instance, was there any**
18 **circumstance where the fees, combined with prices of**
19 **airline or -- or other things, prevented you from**
20 **traveling, as you've described it?**

21 A No.

22 Q **Have you ever done anything to determine who**
23 **should or should not be a member of the board of**
24 **directors of Fairshare Vacation Owners Association?**

25 A No.

1 Q Have you ever nominated someone to be a member
2 of the board of Defendant Fairshare Vacation Owners
3 Association?

4 A No.

5 Q You entered into another transaction with
6 Wyndham in 2018; is that correct?

7 A Yes.

8 Q What led to that transaction?

9 A I believe that's when we were in the mountains.
10 We had been told that we were not a part of Access, I
11 believe. And in order for us to get back into Access, of
12 course we had to buy more points. We did -- doing so
13 because we wanted to be part of Access and later found
14 out that we were a part of Access. So we had that part
15 of that contract canceled.

16 Q Everything you just described was associated
17 with Club Wyndham Access, not Club Wyndham Plus, correct?

18 A I believe so, yes. I believe we're both -- a
19 part of both, but...

20 Q But everything that you're talking -- that you
21 just relayed to me, that was specific to Club Wyndham
22 Access, correct?

23 A Yes, I did.

24 Q What was the outcome of the issues with the 2018
25 contract? You said that part of it was canceled?

1 A Yes, sir. It was canceled, and we were restored
2 back to the original contract that we had previous to
3 that.

4 Q So that would be the 2016 contract?

5 A Yes, sir.

6 Q And that's the contract that you're still using
7 today for purposes of your membership?

8 A Yes.

9 Q Do you want out of your timeshare contract?

10 A I enjoy visiting and going places to -- with
11 Wyndham. I believe it has created quite a -- it's not
12 always been pleasant dealing with them at times.

13 Q Was -- sorry. Go ahead.

14 A No. Just at times we've had some real issues,
15 and it's taken a lot to get through it.

16 Q Was that -- specifically what you just relayed
17 to me about having some issues, was that primarily
18 focused on the interactions over the 2018 contract?

19 A That, and we -- previously, like I said, we went
20 to -- we go to Florida every year. They've canceled our
21 trip when all of our children flew in from all over the
22 country to visit.

23 They -- we got there the day of, and they
24 canceled our reservations for the entire week. We had to
25 deal with that, and they were very little help in that.

1 Q What year was that?

2 A I believe that was 2017.

3 Q So that happened the year prior to entering into
4 the 2018 contract?

5 A I'm not quite sure of the dates, but I believe
6 so, yes.

7 Q And so notwithstanding that particular event,
8 you were interested in entering into, and did enter into,
9 the 2018 contract with Wyndham, correct?

10 A We did, under the pretense of not being in the
11 Access.

12 Q When you raised the issues concerning the 2018
13 contract to Wyndham, did they ultimately resolve that in
14 a -- in a fashion that satisfied you?

15 A Yes.

16 Q What happened with the 2017 trip cancellation?
17 Did you -- were you provided with other accommodations?

18 A They did provide us. We were not together. We
19 were in different places. They gave us a few gift cards,
20 and said "Oh, well" kind of thing.

21 Q Did you do anything else to raise that issue to
22 anyone else at Wyndham in terms of management or
23 otherwise?

24 A Yes. My mother wrote a letter to, I believe,
25 the CEO at the time.

1 Q That would have been Paula Litton?

2 A Yes, sir.

3 Q Did she get any response?

4 A Yes, she did get a response.

5 Q Who was the response from?

6 A I do not recall.

7 Q Do you know what the response said?

8 A I think basically we got some of our points
9 back.

10 Q Was that satisfactory to you in terms of a
11 resolution of that particular issue?

12 A No, not really.

13 Q What else did you want to have happen as a
14 result of that reservation cancellation?

15 A I just think it was handled very
16 inappropriately. Since it's an annual thing that we do,
17 I don't believe we got all of our points back, and just
18 very in- -- very dissatisfied with how it was handled on
19 the local level and the steps we had to go through to get
20 it taken care of. It took quite some time to get what we
21 got.

22 Q You say in the -- in the pleadings and in some
23 interrogatories that you've provided that the trustee did
24 not act in the best interests of beneficiaries. What do
25 you -- what do you mean by that? What did the trustee

1 not do to act in the best interest of beneficiaries?

2 A I guess with the maintenance fees going up, it
3 just continues not to be beneficial to us to be able to
4 travel.

5 Q Is that something that is specific to you and
6 your particular financial circumstance?

7 A Yes.

8 Q Do you know if that impacts anybody else who's a
9 member of Club Wyndham Plus?

10 A No.

11 Q So other than the -- other than the costs going
12 up that impacts your specific ability to travel, anything
13 else that you would identify as the trustee not acting in
14 the best interests of the beneficiaries?

15 A Nothing comes to mind.

16 Q You also say that the trustee violated its duty
17 of care. What specific acts did the trustee do that
18 would violate a duty of care?

19 A Looking out for our well-being as far as it
20 being the trustee.

21 Q And what does that mean? Give me exam- -- I
22 understand those are -- those are words, but what are the
23 actual things that the person did to not look out for
24 your interests?

25 A I don't know.

1 Q So you would have no facts that you could
2 identify that would show that the trustee did not look
3 out -- or violated its duty to you; is that correct?

4 MR. TERRELL: Object to the form.

5 THE WITNESS: Can I answer?

6 BY MR. McCOY:

7 Q Yes, ma'am.

8 MR. TERRELL: Yes.

9 A Oh. Well, that's why we hired the lawyers.

10 BY MR. McCOY:

11 Q Understood. I'm asking you as the person who
12 hired the lawyer. I'm not asking about legal theories or
13 anything else. I'm asking about your experience that
14 happened at some point before you hired a lawyer that you
15 would say shows that the trustee, who here is Fairshare
16 Vacation Owners Association, breached a duty to you.

17 What did they do to you?

18 A I do not recall.

19 Q There's another allegation about the trustee
20 placing interests of WVR and other Wyndham entities above
21 other beneficiaries. What does that mean? What
22 happened?

23 A They're placing their own interests above the
24 owners.

25 Q How?

1 A By financial gain.

2 Q How?

3 A Inflating the fees.

4 Q And, again, coming back to the fees that we're
5 talking about, your sole basis for that is just the fact
6 that the fees have gone up?

7 A Every year.

8 Q Understood. But you have no basis to know
9 whether that's justified or not, true?

10 A True.

11 Q You understand that you are in this case as a
12 potential representative of a class?

13 A Yes.

14 Q And what do you hope to achieve on behalf of the
15 class that you want to represent?

16 A That everyone's treated fairly; that we -- that
17 this doesn't happen going forward; and that there's some
18 restitution made.

19 Q How do you want everyone to be treated fairly?
20 What -- what do you want to change?

21 A The fees, the opportunities to book.

22 Q You want the fees to not go up?

23 A To be more fairly and just in what they're
24 needing to use them for.

25 Q Well, help me understand. I thought we just

1 established you don't know how the fees have been used,
2 correct?

3 A Well, they don't --

4 MR. TERRELL: Object to form.

5 A -- explain that very -- I'm sorry?

6 MR. TERRELL: No. You can answer.

7 A They don't explain that very well.

8 BY MR. McCOY:

9 Q And have you ever done anything to investigate
10 how the fees are being used?

11 A No.

12 Q So it may be that they explain it in good
13 detail, but you've never done anything to actually
14 investigate how the fees are being used, correct?

15 MR. TERRELL: Object to the form.

16 A Well, I was going -- pardon me?

17 MR. TERRELL: You can answer.

18 A Oh. I was going off of what I was being told at
19 the sales presentations of how things work, so...

20 BY MR. McCOY:

21 Q All right. The issue of the fees, do you -- do
22 you know if anybody else in the class that you want to
23 represent shares the same view about the fee increases
24 and the problems that it causes in terms of booking?

25 A Only my mother.

1 Q Your mother. So outside of you and your mother,
2 you're not aware of anybody else who has an issue with
3 the fees as it would impact their ability to book a trip;
4 is that true?

5 A No -- yes.

6 Q Do you know of anybody else who -- besides your
7 mother -- who complains about the fees going up?

8 A No.

9 Q You said you don't want -- you said you want
10 restitution. What does that mean?

11 A Whatever to the courts seem fair.

12 Q What -- what would you -- well, that's got to be
13 based upon some kind of ask of what you want. So I'm
14 asking what -- what do you expect to get as restitution?

15 A The amounts that we were overpaid -- we overpaid
16 into.

17 Q Again, that goes back to the fees?

18 A Yes.

19 Q You understand that the beliefs that you have
20 concerning the amounts of the fees and -- and how high
21 they are or that they're going up are specific to you?

22 MR. TERRELL: Object to the form. You can
23 answer.

24 A Yes, I do realize they are specific to me.

25 BY MR. McCOY:

1 Q Do you know how many Club Wyndham Plus members
2 there are in the system?

3 A No.

4 Q Do you know how many Club Wyndham Plus members
5 are satisfied with their experience in the system?

6 A No.

7 Q Do you know how many are dissatisfied?

8 A No.

9 Q You agree that if we wanted to figure out how
10 many of the folks have the same specific issue concerning
11 the fees, we'd need to go ask each one of them to
12 determine that?

13 MR. TERRELL: Object to the form. You can
14 answer.

15 A Yes.

16 BY MR. McCOY:

17 Q And some of those people may be just fine with
18 the fees that they're paying. Would you agree with that?

19 A Yes.

20 Q And some of those people may be just fine with
21 their experience in the Club Wyndham Plus program. Would
22 you agree with that?

23 A Yes.

24 Q Some of those people may be just fine with the
25 current activities of the board of directors of Club --

1 or Fairshare Vacation Owners Association. Would you
2 agree with that?

3 A Yes.

4 MR. TERRELL: Object to the form.

5 THE WITNESS: Oh. Sorry.

6 MR. TERRELL: You're okay.

7 BY MR. McCOY:

8 Q Do you have any way to know what would happen to
9 the level of service that is provided to all of the
10 members of the class if the fees that you are challenging
11 were paid back?

12 A No.

13 MR. McCOY: Let's take a five-minute break.

14 I'm going to go through my notes, and we could
15 be pretty close to done.

16 MR. TERRELL: Okay. Thank you.

17 THE VIDEOGRAPHER: Going -- going off the
18 record at 11:02 a.m.

19 (Recess taken from 11:02 a.m. to 11:14 a.m.)

20 THE VIDEOGRAPHER: We are back on the
21 record at 11:14 a.m.

22 BY MR. McCOY:

23 Q All right. Mrs. Kelley, okay to proceed?

24 A Yes.

25 Q Wonderful. There are allegations in your

1 complaint about the fund balance maintained by Fairshare
2 Vacation Owners Association. What do you know about the
3 fund balance?

4 A I do not know.

5 Q Are you aware of any facts that would support
6 your allegations concerning the fund balance?

7 A No.

8 Q Do you know if the fund balance is appropriate,
9 not appropriate, if there's anything wrong with it?
10 Anything you can share with me during our visit here
11 today?

12 A No.

13 (Exhibit Number 5008 marked for identification.)

14 BY MR. McCOY:

15 Q We'll mark as Defendant's 5008 the interrogatory
16 responses that were provided in this case for -- for you
17 and Cara Kelley. Can you see my screen?

18 A Yes, sir.

19 Q And do you recognize -- do you recall providing
20 answers to these questions that I have in front of you?

21 A Yes, we did. Yes.

22 Q All right. And you provided a verification.
23 This isn't the page, but let me get to that page if I can
24 here.

25 And I don't have it here, but we will mark for

1 purposes of identification the verification page that you
2 provided for those interrogatories.

3 (Exhibit Number 5009 marked for identification.)

4 BY MR. McCOY:

5 Q Did you understand you were swearing to those
6 interrogatories under penalty of perjury with the same
7 way you've done concerning your testimony here today?

8 A Yes.

9 Q All right. All right. So let's go back to
10 Defendant's 5008. We'll work through a couple of things
11 here.

12 Have you ever read the 10-K filed with the
13 United States Securities and Exchange Commission for
14 Wyndham Vacation Resort?

15 A No.

16 Q In your response here, it indicates that you
17 were referring Defendant to that particular document.
18 You've never read that document?

19 A Oh. I thought you were speaking of something
20 else. I didn't -- I've read this document, yes, sir.

21 Q And that's -- I'm sorry. I asked a bad
22 question.

23 So when you said you've read this document,
24 you've read the responses that were provided under oath
25 to the interrogatories that we're looking at as

1 Defendant's 5008, correct?

2 A Yes, I believe so. Yes.

3 Q But you've never -- you've never read the
4 Wyndham Vacation Resort Form 10-K filed with the
5 United States Securities and Exchange Commission; is that
6 correct?

7 A Yes.

8 Q All right. Give me a moment.

9 In assigning rights to the Fairshare Vacation
10 Owners Association as part of Club Wyndham Plus, do you
11 understand what rights you were assigning? Do you know?

12 A I do not recall.

13 Q Fair to say you would defer to the documents
14 that you executed in terms of what rights you were and
15 were not assigning to be part of Club Wyndham Plus?

16 A Can you say that again, please?

17 Q Sure.

18 A Repeat.

19 Q Whatever rights you were or were not assigned,
20 you would rely upon the documents that you signed; is
21 that fair to say?

22 A Yes.

23 Q Do you want the plan manager for the Wyndham --
24 the Wyndham Club Plus to be replaced?

25 MR. TERRELL: Object to the form. You can

1 answer.

2 A I don't know who that is; but, yes, if they're
3 not conducting business accordingly, yes.

4 BY MR. McCOY:

5 Q Do you -- do you know what the Wyndham plan
6 manager is?

7 A No.

8 Q You don't know what the Wyndham plan manager
9 does?

10 A No, I do not know their duties.

11 Q Fair to say you wouldn't know, then, if the
12 Wyndham plan manager is adhering to their duties or not
13 in any way, true?

14 A Yes. Yes.

15 Q Do you want an outcome in this case that would
16 disrupt the experience that the rest of the class that
17 you want to represent has with their Wyndham timeshares?

18 MR. TERRELL: Object to the form. You can
19 answer.

20 A No.

21 BY MR. McCOY:

22 Q Have you given any thought to how the relief
23 that you have put in your complaint would affect the
24 experience that other members of the class that you want
25 to represent -- how it would affect their Wyndham

1 **experience?**

2 MR. TERRELL: Object to the form. You can
3 answer.

4 A Yes. I just would hope it would be a better
5 overall experience at less cost.

6 BY MR. McCOY:

7 Q When you say "a better overall experience," do
8 you mean more service offerings? What does that mean?

9 A Just availability offered up more in different
10 locations and cost, yes.

11 Q More availability. So meaning more properties?

12 A No, not necessarily more; just dates available
13 at the properties.

14 Q When you've had the experience of dates not
15 being available, do you understand why they're not
16 available?

17 A No.

18 Q Do you know if that's because other members in
19 the timeshare program have booked them?

20 A I assumed that's what it is to some extent. I
21 think some of it is when I can book 13 months out in
22 advance, it doesn't make a whole lot of sense to me.

23 Q So you would like to have more availability,
24 right? That was one thing you identified?

25 A Yes, sir.

1 Q And you want that at lower cost?

2 A Yes.

3 Q And that is meaning lower monthly fees?

4 A Yes.

5 Q Do you pay the fees associated with your
6 timeshare interest on a monthly basis?

7 A Yes.

8 Q How much do you pay per month?

9 A My mother handles that.

10 Q Do you share in that payment? Do you split it
11 with her, or does she make the payment?

12 A We split it with her.

13 Q How much -- what percentage of the monthly fees
14 do you pay?

15 A Around 260, 270.

16 Q 260 to \$270 per month?

17 A Yes, sir.

18 Q That's your share. Does she -- how much does
19 your mother pay per month?

20 A I'm not sure.

21 Q Do you know if it's more or less?

22 A I believe it's more.

23 Q How much did the fees that you have talked about
24 here today go up between 2019 and 2020?

25 A I'm not aware.

1 Q How much did they go up between 2018 and 2019?

2 A I do not recall.

3 Q What about between 2017 and 2018?

4 A I do not recall.

5 Q What about 2016 and 2017?

6 A I do not recall.

7 Q 2015 and 2016?

8 A I do not recall.

9 Q 2014 and 2015?

10 A I do not recall.

11 Q Between -- do you know -- even remember what the
12 fees were between 2014 and 2015?

13 A No.

14 Q And I take it you don't know what the total fees
15 associated with your timeshare interest are at present;
16 you only know that you pay 260 to \$270 out of the total?

17 A Correct. We share our -- we've combined our
18 points, so...

19 Q How did you come about -- how did you determine
20 the amount out of the total fees that you would pay as
21 opposed to those that Paula Litton would pay?

22 A My husband did that.

23 Q Do you know if you even pay any of the fees as
24 part of the 260 to \$270 a month that you pay -- you and
25 your husband pay, I should say. Let me start my question

1 over.

2 Out of the 260 to \$270 a month that you and
3 Mr. Kelley pay, do you know if that includes any of the
4 fees associated with Club Wyndham Plus?

5 A No, I do not.

6 Q As you -- without knowing whether you are even
7 paying any of the fees associated with Club Wyndham Plus,
8 you agree it's entirely possible that there are no fees
9 that you're actually paying that we've been talking about
10 here in terms of Club Wyndham Plus?

11 MR. TERRELL: Object to the form. You can
12 answer.

13 A Yes.

14 BY MR. McCOY:

15 Q The 260 to \$270 a month, that's a fee that you
16 and Mr. Kelley pay; that's not each of you paying that
17 amount? Is that correct?

18 A Correct.

19 Q Whatever the balance of the amounts owed for the
20 timeshare interest associated with the 2016 contract
21 falls to Paula Litton?

22 A Can you rephrase that, please?

23 Q Sure. Fair enough. Whatever is owed beyond the
24 260 to \$270 a month that you and Mr. Kelley pay is the
25 responsibility of Paula Litton; is that correct?

1 A Yes. We are also paying on a loan to Wyndham.

2 Q Do you have any kind of document as between
3 Mr. Kelley and you and Paula Litton that sets out who's
4 responsible for what part of the fees that you pay for
5 your timeshare?

6 A No.

7 Q Is that just done kind of as an informal
8 agreement between family?

9 A Yes.

10 Q How long has the arrangement been in place for
11 you and Mr. Kelley to pay a portion of the monthly fees?

12 A Four years.

13 Q So that started in 2016 with the transaction
14 that we're talking about here today?

15 A Yes.

16 Q Does the amount out of the total fees that you
17 and Mr. Kelley pay go up proportional to the total each
18 year, or have you been paying 260, 270 for the last
19 couple of years?

20 A Yes. For the last couple of years, we have been
21 paying that amount.

22 Q So a "couple of years" to me means two years.
23 We're in 2020. Is it fair to say that since 2018 your
24 contribution towards the monthly fees has remained at the
25 260 to \$270 amount?

1 A Yes.

2 Q And that's been pursuant to the agreement that
3 you have with Paula Litton?

4 A Yes.

5 Q Do you pay Paula Litton every month your
6 percentage of the total, or do you make a direct payment
7 for the 267 -- 260 to \$270 a month direct to Wyndham?

8 MR. TERRELL: Object to the form. You can
9 answer.

10 A I pay it to my mother.

11 BY MR. McCOY:

12 Q So your mother gets the total bill -- is that
13 right -- and then you pay what you've agreed upon with
14 your mother to offset the total amount of fees; is that
15 fair?

16 A Yes.

17 Q And your mother has not increased the amount
18 that she asks you to pay to her even if the total fees
19 have gone up; is that correct?

20 A Yes.

21 Q Then as I understand what we've just worked
22 through, in terms of your personal experience, your fees
23 that you pay every month have remained the same, at least
24 as they pertain to what you actually pay out of your
25 account; is that correct?

1 MR. TERRELL: Object to the form. You can
2 answer.

3 A Yes.

4 MR. McCOY: Counsel, I think that's all my
5 questions for Mrs. Kelley. I appreciate her
6 time.

7 And I hope we've been efficient with your
8 time, Mrs. Kelley. I don't know if there's
9 questions of counsel -- other counsel; but
10 otherwise, we could give the instruction on
11 read, sign, waive, and we'll be done.

12 MR. TERRELL: I just have a couple of very
13 quick questions.

14 CROSS-EXAMINATION

15 BY MR. TERRELL:

16 Q Mrs. Kelley, I understood your testimony earlier
17 that the only Wyndham timeshare owner that you've spoken
18 about the increase in fees is your mother; is that
19 correct?

20 A Yes --

21 Q Okay.

22 A -- besides my husband.

23 Q Do you -- okay. Can you think of any situation
24 where a Wyndham timeshare owner would want to pay higher
25 fees if they could receive the same level of service at a

1 **lower price?**

2 MR. McCOY: Form.

3 A No.

4 MR. TERRELL: That's all the questions I
5 have.

6 REDIRECT EXAMINATION

7 BY MR. McCOY:

8 **Q Mrs. Kelley, do you agree, as a general**
9 **proposition, that things get more expensive over time?**

10 A Yes.

11 **Q So the costs to fly on an airplane five years**
12 **ago was probably cheaper than it is today?**

13 A Yes.

14 MR. McCOY: And -- well, it doesn't matter.
15 That's all the questions I have.

16 MR. TERRELL: Okay. We're done.

17 THE VIDEOGRAPHER: Read or waive?

18 MR. TERRELL: Yeah. We'll read and sign.

19 THE VIDEOGRAPHER: Going off the record at
20 11:34 a.m.

21 MR. McCOY: Thank you, everybody. Have a
22 great weekend.

23 THE COURT REPORTER: Kevin, do you want
24 this typed up?

25 MR. McCOY: Nope.

1 (Deposition concluded at 11:34 a.m.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, BEVERLY REPLOGLE, RPR, Court Reporter and Notary Public, do hereby certify that I was authorized to and did stenographically report the foregoing deposition of WINDY LEA HUMPHRIES KELLEY; that a review of the transcript was requested; and that the foregoing transcript, pages 1 through 66, is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED December 17, 2020 at Tampa, Hillsborough County, Florida.


BEVERLY REPLOGLE, RPR
Notary Public

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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, BEVERLY REPLOGLE, RPR, Notary Public, State of Florida, certify that the witness, WINDY LEA HUMPHRIES KELLEY, appeared before me via Zoom videoconference on December 11, 2020 and was duly sworn.

WITNESS my hand and official seal this date:
December 17, 2020.

Identification:

Personally Known _____

Or Produced Identification _____ X _____

Type of Identification Produced: Driver's License

Beverly L. Replogle

BEVERLY REPLOGLE, RPR
Notary Public, State of Florida
MY COMMISSION GG 946680
EXPIRES 2/25/24



1 E R R A T A S H E E T

2 IN RE: CAROLYN NOLEN, et al., vs. FAIRSHARE VACATION
OWNERS ASSOCIATION

3 DEPOSITION OF: WINDY LEA HUMPHRIES KELLEY
4 TAKEN: 12/11/2020

5 DO NOT WRITE ON THE TRANSCRIPT - ENTER CHANGES HERE

6 Please sign, date, and return this sheet to our office.
7 If additional lines are required for corrections, attach
additional sheets.

8 At the time of the reading and signing of the
deposition, the following changes were noted:

9	PAGE	LINE	CHANGE	REASON
10	_____	_____	_____	_____
11	_____	_____	_____	_____
12	_____	_____	_____	_____
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21	_____	_____	_____	_____

22 Under penalty of perjury, I declare that I have read my
23 deposition and that it is true and correct subject to
any changes in form or substance entered here.

24 SIGNATURE OF DEPONENT: _____

25 DATE: _____

1 December 17, 2020

2 James M. Terrell, Esquire
3 Methvin, Terrell, Yancey, Stephens & Miller, P.C.
4 2201 Arlington Avenue South
5 Birmingham, Alabama 35205

6 In Re: Carolyn Nolen, et al., vs. Fairshare Vacation
7 Owners Association

8 Dear Mr. Terrell:

9 Enclosed please find the original errata page with your
10 copy of the transcript so WINDY LEA HUMPHRIES KELLEY may
11 read and sign. Please have her make whatever changes
12 are necessary on the errata page and sign it. Please
13 make a copy of the errata page and place it in your copy
14 of the transcript. Please then forward the original
15 errata page back to our office at 101 South Franklin
16 Street, Suite 101, Tampa, Florida 33602.

17 If the errata page is not signed by the witness within
18 30 days after this letter has been furnished, we will
19 then process the transcript without a signed errata
20 page. If WINDY LEA HUMPHRIES KELLEY wishes to waive her
21 right to read and sign, please have her sign on the
22 signature line at the bottom of this letter and send it
23 back to our office.

24 Your prompt attention to this matter is appreciated.

25 Sincerely,

Beverly Replogle, RPR
Anthem Reporting

I do hereby waive my signature

WINDY LEA HUMPHRIES KELLEY

cc: Kevin P. McCoy, Esquire

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CAROLYN NOLEN, WINDY KELLEY,
CARA KELLEY, and PAULA LITTON,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

-vs-

CASE NO. 6:20-cv-330-PGB-40EJK

FAIRSHARE VACATION OWNERS
ASSOCIATION,

Defendant.
_____ /

VIDEOTAPED
VIDEOCONFERENCE
DEPOSITION OF:

CARA KELLEY

DATE TAKEN:

Monday, December 14, 2020

TIME:

10:29 a.m. to 1:05 p.m.

PLACE:

All participants appearing
remotely via Zoom videoconference

REPORTED BY:

Beverly Replogle, RPR
Notary Public

1 APPEARANCES:
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3 RODNEY E. MILLER, ESQUIRE
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27 Appearing via Zoom videoconference on
28 behalf of the Defendant
29
30 ALSO PRESENT:
31 Rob Fulton, Videographer, appearing via
32 Zoom videoconference
33
34
35

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1 THE VIDEOGRAPHER: We are going on the
2 record at 10:29 a.m. Today is Monday,
3 December 14, 2020. We're here for the
4 video-recorded deposition of Cara Kelley in case
5 Carolyn Nolen, Windy Kelley, Cara Kelley, and
6 Paula Litton, on behalf of themselves and all
7 others similarly situated, v. Fairshare Vacation
8 Owners Association, Case Number
9 6:20-cv-330-PGB-40EJK in the United States
10 District Court, Middle District of Florida,
11 Orlando Division. This deposition is being
12 conducted via Zoom videoconference.

13 Can the court reporter please swear in the
14 deponent.

15 THE COURT REPORTER: Before I swear in the
16 witness, I need for the attorneys participating
17 in this deposition to acknowledge that I, the
18 court reporter, am not present with the witness
19 and that I will be reporting the proceedings and
20 administering the oath remotely. This
21 arrangement is pursuant to the Florida Supreme
22 Court Administrative Order AOSC20-16 (and
23 extended by AOSC20-23). The parties and their
24 counsel consent to this arrangement and waive
25 any objections to this manner of reporting.

1 upon his oath as follows:

2 DIRECT EXAMINATION

3 BY MR. WRIGHT:

4 Q All right. Good morning, Mr. Kelley. As you
5 heard just a couple of moments ago, my name is
6 David Wright, and I'm an attorney for the defendant in
7 this case. How are you doing today?

8 A Nervous. It's Monday morning, but I'm doing
9 good.

10 Q Okay. All right. Totally understandable and,
11 you know, we'll get through it as painlessly as we can.

12 So, if you could, just state your full name on
13 the record for me one more time.

14 A My name -- full name is Cara Brent Kelley.

15 Q Okay. And what was your date of birth?

16 A 12/29/1958.

17 Q And have you ever been deposed before?

18 A No. No, sir.

19 Q Okay. So just a couple of ground rules. To
20 help the court reporter out, I'll try to wait until
21 you're done answering a question. If you could try to
22 wait until I'm done asking the question, that will just
23 help keep the record clear.

24 When you answer a question, if it's a yes-or-no
25 answer, try to verbalize your response, because we can't

1 capture head nods. Same for "uh-huhs" and "huh-uhs." It
2 leaves a vague record, right? So try to say "yes" --

3 A Yes.

4 Q -- or "no" if that's what the answer --

5 A Yes.

6 Q -- supports.

7 A Yes.

8 Q And I'm sure during today I'm going to ask a
9 question that makes sense in my mind, and it probably
10 won't make sense to you. So if you have any difficulties
11 understanding what I'm asking, feel free to let me know,
12 and I'll rephrase the question for you. Does that sound
13 fair?

14 A It sounds fair. Thank you.

15 Q And then if at any point during today you need a
16 break, coffee, bathroom, just let me know, and we can
17 take a break. Otherwise, I'll try to just power through
18 and get us done as quickly as possible.

19 A Sounds good.

20 Q All right. And are you taking any medications
21 today that might affect your ability to testify?

22 A No.

23 Q Okay. And what do you currently do for work?

24 A I currently have -- I'm currently not employed.

25 On the 2nd of September, IBM released me from the

1 contract where I've been working for many years with AT&T
2 and was AT&T employed, and IBM contractor for a year.
3 And they outsource the work to India, so I'm currently
4 not employed.

5 **Q Okay. And what sort of work did you do for IBM?**

6 A I was a senior systems engineer, and I performed
7 a lot of technical areas in terms of system
8 administration, capacity planning, and team lead-type
9 responsibility over the years, and -- but, you know, with
10 the last few years, I was a capacity planner with AT&T
11 and IBM.

12 **Q And when you say "capacity planner," that's sort**
13 **of like, what, doing network load management or something**
14 **different?**

15 A Sys- -- the systems itself, the
16 compute resources; so the -- the memory, CPU, and IO
17 activity on systems, that type assessment for capacity,
18 and where it was -- what needed to be forecasted out for
19 when they run out of the capacities.

20 **Q Okay. So then I take it that you don't have any**
21 **employment related to timeshares?**

22 A No, sir --

23 **Q Okay. And also --**

24 A -- just com- -- just computers.

25 **Q And so I'm guessing, then, too that you have no**

1 **employment related to selling real estate?**

2 A No, none at all.

3 **Q And did you graduate from high school?**

4 A Yes, I did.

5 **Q Did you attend university after that?**

6 A Some years later I did. I went to -- in -- I
7 went and finished school. I was married and children,
8 and so I finished at the University of Alabama in 1990.

9 **Q Okay. And what degree did you get from the**
10 **University of Alabama?**

11 A It was business -- business administration, but
12 it was a focus in industrial management.

13 **Q Okay. Was there any other degrees that you**
14 **obtained?**

15 A No, there has --

16 **Q Any --**

17 A -- not been.

18 **Q Oh, sorry. I just broke one of the rules.**
19 **Any -- any certificates?**

20 A I'm sure there have been. I just kept focused
21 on the work and the detailed learning because it's a
22 constant evolution technology that took place when --
23 over the years that I've been involved in the ind- -- in
24 the industry. So I -- I went to -- I can't recall any of
25 them offhand.

1 **Q Okay. But it would be like just continuing**
2 **education to stay current on new technologies?**

3 A Yes, absolutely. Absolutely.

4 **Q And have you ever worked for a not-for-profit?**

5 A I don't -- as best I can recall, I don't think I
6 have; but if I did, it's been so long the memory cells
7 have gone.

8 **Q Okay. Fair enough. All right. So in**
9 **preparation for today, without telling me the substance**
10 **of any communication you had with your counsel, did you**
11 **do anything to prepare for today's deposition?**

12 A I just tried to review somewhat the historical
13 experiences I've had and what we were -- what my
14 experiences have been with the -- the entities that are
15 involved to -- you know, for the -- being the owner of
16 this timeshare properties and -- and things that I kind
17 of perceive and recognize in terms of normal business
18 understandings to my, you know, privileges and rights and
19 just preparation for what possibly could happen in
20 thinking of -- given my complaints, what that could mean
21 for fair treatment, et cetera.

22 **Q Okay. Did you meet with any of your attorneys**
23 **to prepare for today?**

24 A Yes. We had a couple of meetings to talk
25 about -- since this is my first time doing deposition,

1 "Hey, you want to do this"; how to answer, et cetera,
2 and -- and keep it -- keep it straightforward, on point.
3 Watch out for -- we don't -- I do -- the nature of my job
4 being deep and analytical, I got to be careful to -- to
5 not build a watch for you so that -- because it -- it's
6 not what -- it's pertinent to the situation.

7 And I've learned that through business
8 experience, too. I'm awful guilty of that in the -- in
9 my business responsibilities. Like, "It's okay, Brent.
10 You said fine. Let us go."

11 **Q Okay, sir. And how many hours would you say**
12 **that you met with your attorneys?**

13 A I'd say probably two hours, maybe; two and a
14 half.

15 **Q Okay. Was it just you and the attorneys, or was**
16 **there anyone else present?**

17 A My wife was with me. So both of us were -- were
18 talking with the lawyers and trying to understand, you
19 know, what our situation was and how to proceed and
20 what -- what's the -- how to interpret what -- what we
21 thought and what occurred.

22 **Q Okay. And have you talked with your wife about**
23 **her deposition?**

24 A We reviewed some of the basics of what she felt.
25 She had a lot of anxiety and nervousness and didn't feel

1 that she really accomplished much, and -- but, you know,
2 she's tried to be truthful. And I say, "Well, that's
3 fine. That's all they want." So just the, you know,
4 nature of questions that she asked and what she could
5 answer, what she couldn't.

6 **Q Okay. Did you review any documents when you**
7 **were preparing for today?**

8 A I just reviewed the -- you know, the documents
9 that were submitted on our behalf by the lawyers and
10 seeing the -- the case and -- and some of the Q-and-A,
11 questions back and forth and the answers provided,
12 et cetera, and trying to understand as best I could.

13 **Q Okay. When you say Q and A documents, are you**
14 **referring to a specific set or --**

15 A Just what you do to be ready for preposition
16 [sic] and that -- you know, just the general template
17 they utilized to prepare us for tes- -- people to testify
18 at a disposition [sic] in general; and then when we --
19 the documents that were -- that were legally provided to
20 you is all of the documents that I'm aware of that I've
21 -- I've been viewing and seeing.

22 **Q Okay. And a little bit ago you said you were**
23 **sort of going over in your mind the entities involved and**
24 **the experiences that you had. You agree with me that**
25 **there's just one defendant in this case, correct?**

1 A I can't say that it's one defendant because of
2 the corporate nature of things that were associated.
3 Often the presentation was that I -- the points I owned
4 was that of -- was in the trust, and so I should be
5 treated for benefits of being a beneficiary of a trust.
6 And so my points owned by the trust and being treated
7 accordingly, I -- I don't think that limits us out to one
8 entity in general, because they're several people that
9 end up going in and supporting that overall situation
10 that I -- that I understand. So I don't see it as one
11 defendant. I look at it as whatever the business takes
12 place or takes place for representing myself as a member
13 of the trust --

14 **Q Okay.**

15 A -- and whatever's been -- whatever's been set up
16 for that, because that's -- that was the forefront of the
17 documents we've been provided and we made sale and
18 explained to us our benefits, et cetera, along those
19 lines.

20 **Q Okay. Let me just -- I'm going to share my**
21 **screen and see here -- okay. And can everyone see that?**

22 MR. MILLER: Yes.

23 A Yes.

24 MR. WRIGHT: Okay. I'll try to make it a
25 little bigger.

1 All right. Madam Court Reporter, do you
2 have a record of where we left off in terms of
3 exhibits from the last deposition?

4 THE COURT REPORTER: Yes, sir. I believe
5 we are on Exhibit 5010, but give me one second
6 to make double sure.

7 MR. WRIGHT: Okay. Thank you.

8 THE COURT REPORTER: I'm correct; 5010.

9 MR. WRIGHT: Okay. So this would be 5010
10 to be submitted?

11 THE COURT REPORTER: Yes, sir.

12 MR. WRIGHT: Okay. Thank you.

13 BY MR. WRIGHT:

14 Q Mr. Kelley, I've put up on the screen the
15 Amended and Restated Class Action Complaint, which is the
16 operative complaint in this case.

17 When you look at this for me, when you look down
18 at the case caption, it lists Carolyn Nolen;
19 Windy Kelley, who I understand is your wife, correct?

20 A I'm a little confused on the wording of the
21 people. I am -- my wife, Windy, and I'm Cara. Is that
22 what you're stating?

23 Q Yes. So we have Carolyn Nolen, who's --

24 A Yes.

25 Q -- one plaintiff?

1 A Correct.

2 Q And then Windy Kelley is your wife?

3 A Yes. Yes.

4 Q Cara Kelley would be you?

5 A That's correct.

6 Q And then Paula Litton?

7 A That's correct.

8 Q And is Paula Litton related to you?

9 A She's my mother-in-law.

10 Q Okay. And so those are all the plaintiffs,
11 right?

12 A Yes, that's what I had understood.

13 Q And then where it lists the defendant, it says
14 "Fairshare Vacation Owners Association," correct?

15 A Right. That's correct.

16 Q There's just one defendant there, isn't there?

17 A Yes.

18 Q Okay. So there is just one defendant entity in
19 this case, correct?

20 A I mean, by the court documents, that's correct.
21 By the documents and proceedings that I acted under, they
22 all would -- I would think -- what I'm used to, they're
23 all treated the same. One has to be set aside to act on
24 behalf of others and stuff. So whatever the rights of
25 Fairshare has, that's what the entities must be

1 representing Fairshare or -- Fairshare complaintive
2 [sic], et cetera.

3 Q Okay. All right. Let me take this down. I'm
4 not going to use this as an exhibit just yet. We might
5 come back to it, but not right now.

6 Okay. Sort of changing gears here, Mr. Kelley,
7 do you know your credit score?

8 A No, sir, I do not.

9 Q Have you ever had your credit score -- well,
10 have you ever checked your credit score?

11 A I don't make it a habit of doing it. I just
12 strive to do the things I need to do on a regular basis
13 to, you know, stay -- keep it as best possible given the
14 ups and downs of life experiences.

15 Q Sure. And have you ever been turned down for
16 credit?

17 A I'm sure I probably have. At what time and
18 when, I have no idea.

19 Q Have you ever filed for bankruptcy?

20 A No, I have not.

21 Q And have you ever been convicted of a crime?

22 A No.

23 Q Okay.

24 A I mean, when you say "crime," I don't know what
25 degree. I mean, did traffic violations or something. So

1 I don't know, you know, how literally defined that would
2 be.

3 Q Sure.

4 (Mr. McCoy joined the videoconference.)

5 BY MR. WRIGHT:

6 Q Anything of a felony? Anything punishable by a
7 year or more?

8 A No, no, no, no, no.

9 Q And how long -- or what's your current address?

10 A 1204 Dunham Circle, Helena, Alabama.

11 Q And how long have you lived there?

12 A Since 1984.

13 Q Okay. So quite a while?

14 A Yes, sir.

15 Q And do you own your home?

16 A Yes, we do.

17 Q And is it part of an HOA?

18 A No, it's not.

19 Q No sort of restrictions on what you can do in
20 your yard or common maintenance fees?

21 A Nope. No.

22 Q Have you ever lived in a home that was within a
23 homeowners association?

24 A No, I have not, not to -- you know, not that I
25 can recollect, because -- because I -- I didn't -- I'm

1 not that familiar with them in general.

2 Q Okay. And before the home that you currently
3 lived in, do you remember where you lived before that?

4 A I lived in the same city. I was in
5 Plantation Estates here in Helena.

6 Q Okay. And that was not in an HOA?

7 A Not that I'm aware of, no.

8 Q Okay.

9 A We -- no, no, just subdivision, small town
10 that's being developed.

11 Q Gotcha. So -- and both of the homes that we
12 just talked about, neither were in a gated community?

13 A No. No. Absolutely not.

14 Q Have you ever owned a condominium?

15 A No, sir.

16 Q And when you purchased your homes, did you do
17 any sort of calculation about how much house you could
18 afford?

19 A I mean, yeah, I tried to see what my living
20 elements were and what I could potentially afford and
21 et cetera.

22 Q Did you consider utilities in that?

23 A Yes, I did.

24 Q Maintenance fees?

25 A Yes.

1 Q Obviously, the mortgage payment itself?

2 A Well, correct.

3 Q Okay. Insurance?

4 A Yes.

5 Q Okay. And did you attend the closing for the
6 home you currently live in?

7 A Yes, I did.

8 Q Did you read the documents at closing?

9 A I tried to, as best I could, to understand them
10 and glean through the few business points and details as
11 best I can understand them.

12 Q And do you make it a habit anytime you enter
13 into a transaction, a big transaction where you're
14 purchasing something, to read the contracts?

15 A I -- I strive to. I can't say that I'm -- you
16 know, can walk away with a -- with a detailed knowledge.
17 I'm one of those ones that has to know where to go
18 read -- study it per se, but I try to see major points
19 and elements that are being done and, as things have
20 improved over times, to highlight APR, et cetera,
21 et cetera, and say, "Okay, these are major folks that are
22 the focus of business to pay attention to." That's what
23 I've done and tried to utilize to help me out to make
24 choices.

25 Q Okay. At the closing for the home you currently

1 **live in, did you have an attorney with you?**

2 A I don't think so. I think the normal operations
3 for doing mortgages over the years never really required
4 an attorney there as far as representing me personally,
5 just one to preside over the business arrangement.

6 **Q If you didn't understand something in a**
7 **contract, do you ask questions about it, or what do you**
8 **do in that situation?**

9 A Yeah, I try to ask questions and try to
10 understand what their meanings and implications are.

11 **Q All right. Fair enough. We're going to switch**
12 **gears here again.**

13 **So tell me a little bit about the vacations you**
14 **like to take.**

15 A Generally, in general, or just lo- -- recently,
16 over time, because it's -- I've got a very diverse
17 background with raising five children --

18 **Q Okay.**

19 A -- and where they're at now, and then we've got
20 grandkids scattered all over. So that definition has
21 definitely blossomed to grow and be more meaningful --

22 **Q Okay.**

23 A -- versus where -- what it was when we first
24 started being engaged in the -- in our con- -- in our
25 relationship with both Wyndham and Fairshares, et cetera.

1 **Q** All right. Fair enough. Let me try to break it
2 down a little bit more. Let's say over the last, I don't
3 know, ten years, how often do you take vacations? Is it
4 once a year? Twice a year?

5 **A** We would try to do a couple of times a year and
6 maybe three; but the essence of vacations is maybe little
7 small getaways, and then we'll try to work toward a
8 yearly get-together as a -- as, you know, a large
9 extended family. And so that's kind of the methodology
10 or combinations of things that we have used over the
11 years in the last ten years. And that's gotten more
12 defined as grandchildren -- I think our oldest
13 grandchildren -- grandchild is eight, and she was born
14 over in Guam. So when things did, we got together, and
15 the grandchildren were available.

16 **Q** Okay. So -- and some- -- sometimes you go on
17 vacation, and it's just you and your wife?

18 **A** There were times we've done that, yes.

19 **Q** And then sometimes, it's the whole family gets
20 together for a big reunion?

21 **A** Right. So that's my variability for a, quote,
22 vacation. It's like which one am I -- which one am I
23 trying to, you know, have a normal life with, et cetera,
24 and experiences with and building relationships and time,
25 et cetera.

1 Q Sure. Okay.

2 A So it's covered quite the gamut.

3 Q Great. And on those vacations, whether it was
4 just with your wife or if it was a big reunion, did you
5 always go to the same spot, or did you like to try
6 different locations?

7 A We started off in the beginning going to a
8 central spot there in Destin and -- for the family
9 get-togethers; and then as we got more mature and
10 finances available, we'd venture out to other areas,
11 going out to the mountains and going down to -- you know,
12 down along the coastline between New Orleans or Destin
13 and -- and Panama City and then -- et cetera.

14 Q Okay. So you mentioned the mountains, I heard
15 there.

16 A Uh-huh, yes.

17 Q I think Destin. That's a beach location, right?

18 A Yes, that's correct.

19 Q Any other? Was it, like, history tours or
20 any -- anywhere else?

21 A I would -- like, when I say "mountains," it's
22 Smoky Mountains, and it's also part of where we went
23 to -- what's that place called? Nashville. I think we
24 went to Nashville a couple of times over the years and
25 met family there. And then in the last two or three

1 years, we went -- all gathered together in Washington,
2 D.C. Went to the Blue Ridge Mountains with my parents
3 and my wife. And so it's been a lot of variation of
4 family members, which is the core reason that we try to
5 participate and be part of Wyndham and -- and the
6 timeshare experience -- timeshares organization and
7 experience and the trustee that we believe we are -- we
8 are --

9 **Q Okay.**

10 A -- or beneficiary. Excuse me. I don't want --
11 I say terms not knowing that I may -- I may not be -- I
12 may be misquoting the particular role, but the
13 arrangements that we got into with Wyndham, as we
14 understood it, and the business arrangement with the
15 business -- the arrangement of our points and ownership
16 as a -- as a -- in the trustee for -- for Fairshares.

17 **Q And when did you first decide to join the**
18 **Wyndham timeshare, WVR, which is Wyndham Vacation**
19 **Resorts?**

20 A The kids were young. I think the oldest was
21 maybe 8 to 10, and he's 30, so that's been 15 -- I'm
22 speculating offhand. I don't know the literal time. I
23 would have to go and do some research and see when that
24 exact year was that it began, et cetera, because we
25 started off very small. And my mother-in-law is the one

1 who did -- presided [sic] those first experiences for us;
2 and with us having five children, we realized -- that
3 after four or five years of doing it, we realized we
4 needed to think a little more longevity for us, which is
5 part of the reason for the timeshare ownership and the
6 experience that was being sold with Wyndham and those
7 experiences to say, "Hey, you know, we want to give you
8 an opportunity to be with family and have family
9 experiences." And so that's what we looked for, too, and
10 that's what we've been -- been able to accomplish.

11 **Q Okay. So fair to say it was somewhere between**
12 **10 and 15 years ago that you joined Wyndham?**

13 A I don't know.

14 **Q Okay.**

15 A I really don't. I don't even know how to
16 categorize it. My point is my work side is very -- has
17 been -- was very intense for technical knowledge and
18 training; so I would keep the rye level -- the high-level
19 overview of it. My wife would carry -- carry one side of
20 it; and as things grew relationshipwise, my mother-in-law
21 would -- would -- we ended up being all three on the same
22 contract so we could get more consistencies and more
23 efficiencies than what we were doing and how to work
24 together to help make it stronger for all of our
25 families --

1 **Q Okay.**

2 A -- and being fair and respectful to each other,
3 because that's one thing; I don't try to take advantage
4 of my mother-in-law or any of that stuff. I hope that
5 she can say we've been fair and honest with her. She's
6 helped work with us. We've worked with her in the
7 experiences, et cetera, so...

8 **Q When you say be fair to your mother-in-law, are**
9 **you talking about in terms of how you split the costs of**
10 **the timeshare or use of the timeshare? What are you**
11 **referencing?**

12 A Probably on most of the -- I'm talking about we
13 carry our own costs and then the use of the points.
14 Sometimes we might run a little beyond what we have or
15 need to utilize them, and she would utilize them, and
16 et cetera. So between the two core subgroups in the
17 family, that's -- it's -- those responsibilities are --
18 my wife represented us to -- between her and her mom to
19 make decisions on how to execute and -- and perform
20 utilization of the timeshares and the properties that
21 we -- that we owned or --

22 **Q Okay.**

23 A -- timeshare points that we owned as owners.

24 **Q So the sort of -- I want to call them, for lack**
25 **of a better term, decision-makers with respect to**

1 **splitting of fees and points was your wife and your**
2 **wife's mother, Mrs. Litton?**

3 A No. My wife would consult me on what to do and
4 what sounded to be reasonable, and I'd say okay. And
5 then given when we were in discussions, my wife and I
6 were in discussions with the -- with the representatives,
7 we would talk together, think it through, and then we
8 would talk to her mom about things. And so it was --
9 what we pay today is what we would do if we were
10 independent. It wasn't we were paying part of her fees
11 or she's paying for part of ours.

12 The loan side is what we generated for our own
13 for us and the fees of maintenance on those points is
14 what we have. So it's pretty -- trying to be realistic
15 to what's -- what's in the, quote, system for Wyndham
16 and -- and the timeshare organ- -- business trust of
17 what's going on.

18 So I mean, I did at one point sit down and look
19 at percentages and just said, "Okay, it's pretty much the
20 same. Just stay with that," and -- and tell my
21 mother-in-law -- explain to my wife and my mother-in-law,
22 "Here's what I think those points mean and, you know,
23 this is what it would be if we were separate versus
24 together."

25 So my point is there's no smoke and mirrors to

1 whatever. It's pretty straightforward that whatever
2 those -- however Wyndham operates is how we tried to
3 operate to be fair to us, being myself and Windy making
4 choices, and then my mother-in-law making choices,
5 because we represented two different households, and we
6 respected that and didn't try to utilize anything to
7 get -- get unreasonable, you know, benefits that would
8 help one more than the other.

9 Q Okay. When you first decided to join WVR -- I'm
10 going to use that abbreviation for the rest of today; and
11 when I do that, I'm just referring to Wyndham Vacation
12 Resorts. So --

13 A Well, when you utilize that, I mean, the
14 contract -- the -- this is where I've -- in my world and
15 different things I do for IT, I realize how the one that
16 presides over it is a partner in hand. So that's where
17 the relationship being this is a trust is supposed to
18 take care of the beneficiaries of that trust, and so I
19 don't look at any difference between timeshares, Wyndham,
20 whoever, what group ever they do. So they're all
21 considered the same because that's what the timeshare's
22 being authorized and supposed to be looking after my
23 interest.

24 So I don't make a distinction between any of
25 those entities because of what I thought to be the core

1 business elements and -- and legal rules that would be in
2 place to say you should act in the best interests of the
3 timeshare unit as well as whatever business objective
4 Wyndham finance people or manager of the points or
5 scheduling groups, et cetera. Because we've had multiple
6 experiences through the years where they would tell us
7 something's going to happen, we're going to change this
8 and improve and make it better for the owners, and it
9 didn't really come about the way they would describe to
10 us.

11 So I just am trying to be clear, so I don't look
12 to be pigeon-holed one way or the other that one is more
13 so than the other. They all should be equal, in my
14 opinion, because that's the -- that's why I felt
15 confident entering into it as timeshares and doing the --
16 become the beneficiary of the trust that owned the
17 points.

18 **Q When you say --**

19 A And that's -- that's what they would explain to
20 us when they would write the contracts and say the points
21 are -- are deeded to the trust, and I'd go, "Okay. If
22 it's part of the trust, I'm trying to follow the trust."
23 I'm not trying to follow something that's a one-off, so
24 to speak.

25 **Q Okay. So let's break that down a little bit.**

1 **When you say -- you said, "They should all be treated**
2 **fairly." Who is the "they" in that sentence?**

3 A The beneficiaries of the trust, you know, which
4 I'm taking to be, you know, members of the trust. So I
5 meant members of the trust.

6 **Q Okay. So --**

7 A Because I'm an owner. I'm not a -- I'm an owner
8 of points that are part -- that are part of the trust,
9 and that's what I -- I was purchasing. I wasn't -- so
10 that's what I had understood from a technical standpoint,
11 and I don't -- I consider them all the same.

12 And I thought everything in the documentation
13 and experiences was always from the very beginning
14 communicated that way to create a confidence factor about
15 why I'm doing what I'm doing. It's not a normal
16 situation as far as just me going out and trying to buy a
17 piece of property. Yes, it's a piece of property, and
18 it's treated the same; but here's where you're different.
19 You're part of the trust. You've got responsibilities,
20 things that should be obligated to you, et cetera.

21 **Q Okay. And, again, when you're saying "they**
22 **should all be the same," you're referring to the members**
23 **of the trust?**

24 MR. MILLER: Object to the form. You can
25 go ahead and answer.

1 A Okay. I'm not sure -- the entities I dealt with
2 that I -- that I said I'm an owner -- and I would say me
3 and whoever else are owners, how we all should be treated
4 being owners, a part of this property that we own as
5 being a -- being owned by a trust and we receiving the
6 beneficiaries [sic]; so that -- that's the presiding
7 relationship that goes into what the experience is taking
8 place, et cetera. And Wyndham is the executor of that, I
9 presume.

10 BY MR. WRIGHT:

11 Q **Okay.**

12 A But what -- but what go -- but what all are
13 behind the scenes, that's all legal stuff; and all I can
14 do is assume the laws and -- they're executing the laws
15 to be done in a fair and equitable way according to
16 the -- to the legal rules that exist.

17 Q **Okay. Let's walk through some documents, and**
18 **we'll break it down a little bit --**

19 A Okay.

20 Q **-- so --**

21 A Yeah, and I say -- because when you introduce
22 WVR, of course, that's all I dealt with was an acronym;
23 and you always have to understand that an acronym, in its
24 truth when you're dealing with other people -- and for me
25 in the technical environment, I had to make sure they

1 understood technically what I'm speaking about because
2 I'm not covering the network capacity. I'm not covering
3 the -- the element, the storage. This is just the
4 computed memory, and you need to go see the other people
5 to get better quality experience in the overall
6 environment. But it was all considered AT&T, and so we
7 all had to recognize it was the entry to things. So
8 that's why my mindset is oriented that way, and I don't
9 want to break beyond that to look like I'm pursuing my
10 personal agenda because that's not the case at all.

11 Q Okay.

12 A I'm trying to act -- I'm trying to act in good,
13 stellar, and good fellowship and good member of what
14 looks to be a reasonable -- like, this is considered a
15 class action, saying I'm trying to look as representation
16 to the company and, in this case, the class owners that's
17 involved.

18 Q Okay. Let's -- we'll work through all of that.
19 We'll break it down. So let's start with some documents.

20 All right. So I'm going to put up on the
21 screen. This will be Defendant's Exhibit 5010.

22 (Exhibit Number 5010 marked for identification.)

23 BY MR. WRIGHT:

24 Q And, Mr. Kelley, can you see what I've put up on
25 the screen?

1 A Yes.

2 Q All right. And this is a copy of a Security
3 Agreement. And if we see here, it says "Club Wyndham
4 Access Vacation Ownership Plan, Retail Installment
5 Contract," and let's see here. They have a contract
6 number, which will help us later. It's 1851403576. And
7 I'm going to scroll down, and I just want to show you the
8 whole document briefly. So lots of terms. And if we go
9 all the way down to the bottom, we come to some
10 signatures.

11 And is that your name --

12 A Yes, sir.

13 Q -- on the signature line?

14 A Yes, sir.

15 Q And below you, that is your wife, Mrs. Kelley?

16 A That's correct.

17 Q And under your signature, it identifies you as
18 an owner; is that right?

19 A That's correct.

20 Q Okay. So now let's go back up to the top. And
21 can you read -- can you start reading that first
22 paragraph for me where my cursor is? If you could read
23 it out loud for me.

24 A Oh. "Wyndham Vacation Resorts, a Delaware
25 corporation, agrees to sell to the owner a membership

1 interest ownership in PTVO Owners Association, a
2 nonstock, nonprofit Delaware corporation."

3 Q Okay. That's good.

4 So Wyndham Vacation Resorts -- WVR -- that's
5 identified in this document as the seller, right?

6 A Yes.

7 Q And owner -- we just went over that on page 7 --
8 that's you and your wife, correct?

9 A Correct.

10 Q Okay. So the seller here is WVR. The owner is
11 you and your wife. And you're purchasing a membership
12 interest in PTVO Ownership Association, Inc.

13 Did I read all of that correctly?

14 A Yes, as I understand.

15 Q Okay.

16 A I mean...

17 Q And --

18 A I mean, this predates the one that's on file for
19 the leadership -- for the executor of the 2014 -- 2016
20 where it brought all three of us together. And that was
21 one of the selling points they utilized so that we make
22 sure to treat them all the same.

23 So, again, why it's led to my trying to be
24 consistent with what I understood from the beginning, to
25 what was done at the time, to what's done at this time.

1 It's all consistent. And if there's changes, I didn't
2 know -- I didn't know and didn't understand, and that
3 would be something that's a change.

4 So I just -- I'm only offering clarity of
5 understanding one way or the other so it's like I thought
6 we would have a consistency of experiences --

7 Q Okay.

8 A -- in what we -- in what we expected as owners.

9 Q Okay. When you say "there were changes," do you
10 just mean -- what changes specifically are you referring
11 to -- between the 2014 and 2016 purchases, or what
12 changed?

13 A I don't know what changed. My -- I'm saying our
14 objective between 2014 and 2016 was being treated the
15 same, thinking we -- if we buy more points, then that
16 would allow us to bind things together to allow us to
17 have stableness [sic] over the several years to come as
18 both owners, both my mother-in-law and myself and my
19 wife, so that we're all treating things fairly and
20 equally, whatever that would mean, because my
21 mother-in-law would be able to convey one set of things
22 and she was oftentimes confused; and we were also
23 confused of what she thought, so we were trying to get it
24 all on the same page. And this is part of the -- so
25 whatever the combinations of things that take place, we

1 always tried to preserve what we thought to be good
2 benefits for us to work -- work in as owners of -- of the
3 -- of the points and the property that we thought we had
4 access to and the processes and programs that were in
5 place to support us as observers.

6 Q Okay. So I think I understand. So the change,
7 if I -- and correct me if I'm wrong -- between 2014 and
8 2016 was that you decided to join into a single contract
9 between -- well, with your wife, you, and your
10 mother-in-law so that all three of you could have a more
11 equitable decision-making process on your end; is that
12 right?

13 A I don't know if it's on our end or just across
14 the board. There's not -- you know, for us to make
15 choices and then go find out, well, how does that apply
16 to my -- to Paula to how does that apply to myself and my
17 wife, for our kids, and perpetual perpetuity and that
18 sort of stuff, it just seemed like we were creating more
19 headaches than problems [sic].

20 And the consistency of sales item that they
21 would utilize to say, "Well, this helps make you and your
22 mother-in-law whole, so to speak, in that you're all
23 working to get the same benefits and the same rights and
24 points and owner agreements," et cetera.

25 Q Okay. Let's go to the 2016 purchase. So I've

1 put this up on the screen, and this will be Defendant's
2 Exhibit 5011.

3 (Exhibit Number 5011 marked for identification.)

4 BY MR. WRIGHT:

5 Q Can you see the document?

6 MR. MILLER: The amended complaint that you
7 showed earlier, did you make that an official
8 exhibit?

9 MR. WRIGHT: I did not, no.

10 MR. MILLER: Okay. I was just --

11 MR. WRIGHT: Yeah.

12 MR. MILLER: -- checking to make sure my
13 numbering wasn't off. Thanks.

14 MR. WRIGHT: Yep.

15 BY MR. WRIGHT:

16 Q Mr. Kelley, can you see the document I've put up
17 on the screen?

18 A Yes, I do.

19 Q And let's see. I'll just make that a little bit
20 bigger. There we go.

21 And if we look here, can you read for me who is
22 selling the property? It's in that first paragraph. Let
23 me help you out.

24 So it says, "This vacation ownership assignment
25 agreement and use restriction is made the 28th day of

1 **March." Oh. This is still the --**

2 A That's the old one. That's where I'm confused.

3 Q Well --

4 A You're giving me the idea it's a new --

5 Q **Yeah. Let's see here. There we go. This is**
6 **the 2016 one.**

7 Okay. So we see in this first paragraph,
8 **Wyndham Vacation Resorts, WVR, right --**

9 A Yes.

10 Q -- is identified as the seller?

11 A Yes.

12 Q And then it says -- so WVR agrees to sell
13 **Windy Kelley, Paula Litton, and Cara Kelley owner --**

14 A Yep.

15 Q -- a membership interest in PTVO Owners
16 **Association, Inc., right?**

17 A Yes.

18 Q Okay. So this is the contract that is governing
19 **your current timeshare, right?**

20 A Yes.

21 Q And you agree with me, based off of what we just
22 **read, that Fairshare is not listed as the seller of the**
23 **timeshare, right?**

24 A All of the documents we had at the time of the
25 **sale did not -- did show Fairshare as part of it. It**

1 was -- this was just one section of it. So this is just
2 one single part of the process that we went through to
3 sell things. So that --

4 Q Okay.

5 A So what I'm trying to say is in con- -- in
6 con- -- from the very beginning, we were always
7 communicated that we were owners as respective to the
8 trustee and the points allocated in what's owned in
9 Fairfield [sic]. So I always felt like we were the
10 fundamentals in Fairfield [sic] in its trust
11 organization. So --

12 Q Okay.

13 A -- that's where I took all of this as the
14 execution of what Fairfield [sic] put in play is
15 processes and procedures for allowing us to be treated
16 fairly and respectfully as owners of Fairfield [sic]. I
17 don't see a difference.

18 Q Okay. When you say "Fairfield," do you mean to
19 refer to Fairshare?

20 A Yes, yes, yes.

21 Q Okay. But you agree -- so -- and we'll go
22 through other documents, but looking at this security
23 agreement, the document that's been marked as 5011, based
24 off of the language in this contract, it is Wyndham
25 Vacation Resorts that sold the timeshare to you, your

1 wife, and Mrs. Litton, correct?

2 A Yes.

3 MR. MILLER: Object to the form.

4 BY MR. WRIGHT:

5 Q Okay. And let's just scroll down a little bit
6 further. Okay. And we're still on Exhibit 5011. Scroll
7 down to paragraph 20.

8 And paragraph 20, in bold, says "Regular
9 Assessments," and then it lists out -- it is disclosing
10 what an assessment is as part of the ownership -- owner's
11 ownership.

12 Do you see that there, Mr. Kelley?

13 A Yes.

14 Q Okay. And if we scroll down a little further,
15 we come to paragraph 29, and this is -- says it's a
16 disclosure required by the Federal Truth in Lending Act
17 and state law, right?

18 A Correct.

19 Q And who does it list as the creditor?

20 A State law, Wyndham Vacation Resorts. Is that
21 what you're talking about? No.

22 Q Yep.

23 A Credit term.

24 The first line is what you're -- I take it
25 you're talking about, or is it something else I'm

1 supposed to read?

2 Q Yes, sir, the first line of paragraph 29.

3 A Okay. So --

4 Q Who is that -- what entity is identified as the
5 creditor in the first line of paragraph 29?

6 A It talks about credit terms, and they're
7 disclosed, and the FTC, state law, and then it lists out
8 Wyndham Vacation Resorts as, you know, the person in --
9 that is the entity and the location of it.

10 Q Okay. So reading paragraph 29, it says
11 "Creditor: Wyndham Vacation Resorts." Do you see that?

12 A Yes.

13 Q Okay. So Wyndham Vacation Resorts is the
14 creditor for this agreement?

15 A I -- I pre- -- I'm -- I'm not sure what the
16 point of that is. I -- I -- am I misunderstanding that
17 I'm not the one involved here or not in the -- in the
18 transaction?

19 Q No, sir. Let me -- I'll clarify.

20 So looking at paragraph 29, is it correct to say
21 that you, your wife, and your mother-in-law financed the
22 purchase of the 2016 timeshare, meaning you borrowed
23 money to do the purchase?

24 A Yes.

25 Q Okay. And you have to borrow the money from

1 someone, right?

2 A Yes.

3 Q Okay. And that person who lent the money is
4 also called a creditor, right?

5 A Correct.

6 Q Okay. And this -- and paragraph 29 is
7 identifying the creditor as Wyndham Vacation Resorts,
8 Inc., right?

9 A Yes.

10 Q Okay. And then -- so Wyndham Vacation Resorts
11 loaned you money, and paragraph 29 gives you several
12 disclosures.

13 So if we work across, it tells you the annual
14 percentage rate. Do you see that?

15 A Yes.

16 Q The finance charge?

17 A Yes.

18 Q The amount financed?

19 A Yes.

20 Q Your total payments?

21 A Yes.

22 Q The total sale price?

23 A Yes.

24 Q And then it breaks down what your payment will
25 be each month, right?

1 A Yes.

2 Q Okay. So looking at paragraph 29, the person
3 who loaned you the money to -- or I'm sorry -- the entity
4 that loaned you the money for the 2016 timeshare was not
5 Fairshare, correct?

6 A Not by this document, no.

7 Q Okay. All right. Now, we are going to go to a
8 different one. We'll go to -- this will be Defendant's
9 5012.

10 (Exhibit Number 5012 marked for identification.)

11 BY MR. WRIGHT:

12 Q Mr. Kelley, I've put up on the screen a document
13 called "Club Wyndham Access Vacation Ownership Plan
14 Purchase and Security Agreement Addendum." Do you see
15 that?

16 A Yes, I do.

17 Q And your signature is the second signature down
18 here at the -- sort of midway through the page?

19 A Yes.

20 Q And if we go to the second paragraph, the one
21 all in bold, the first line, it's telling you that you
22 can cancel your timeshare purchase within five days,
23 right?

24 A Yes.

25 Q And you chose not to cancel your 2016 purchase,

1 correct?

2 A I didn't choose not to. I -- they --

3 MR. MILLER: Object to the form.

4 A I had -- again, this is repeated, the same
5 thing. This is -- I had the five days, but by the time I
6 finished the vacation and got back home, then the ability
7 to refinance was not there. Because it's very limited in
8 entities that will finance this type, because it looks --
9 it looks to be and has always treated me like a mortgage;
10 and, of course, with mortgages, I've had refinances,
11 et cetera, and there's lots of lenders available to do
12 that with.

13 But as I've experienced with this, this does not
14 allow me the opportunity to seek someone; and as I have
15 looked at in the past, they're -- there are hardly any
16 people that will -- any lenders. I haven't found any
17 lenders that will lend it to me.

18 BY MR. WRIGHT:

19 Q Okay. Let's go back to 5011 really quickly.

20 So we're back onto the purchase agreement that
21 we were just looking at. And if we go to paragraph 20,
22 it's disclosing an ownership regular assessment, correct?

23 A Yes.

24 Q And it says that the assessment is \$6,496.96,
25 right?

1 A Right.

2 Q Okay. And do you see here in the second
3 sentence right where my cursor is -- can you read that
4 for me?

5 A "Regular assessments may be increased annually,
6 subject to club instruments. Regular assessments shall
7 be used for club costs, including maintenance and
8 operations of club accommodations, including for
9 reserves."

10 Q Okay.

11 A "For operation" --

12 Q So that second sentence was telling you that
13 your assessments could go higher than the \$6,496 that was
14 disclosed, right?

15 A It was also disclosed in the sale they could go
16 less because it varies per site based on a combination of
17 factors and the formulas that they use to do things,
18 which I'm thinking if they're making assessments, it
19 should be fair share -- shares; and being a trustee, I
20 should be able to have some benefits of being an owner,
21 not being used to financial -- finance other areas and
22 paying for those -- those additional costs.

23 Q Sure. Okay. But just -- let's stay on this
24 document. We'll look at others.

25 But this document, like you just read, is

1 telling you regular assessments may be increased
2 annually, right?

3 A That's correct.

4 Q Okay. Now, let's go and, again, let's scroll
5 down to paragraph 29.

6 Paragraph 29 is telling you your monthly payment
7 for the loan that you took out to purchase the 2016
8 timeshare, right?

9 A Yes.

10 Q Okay. Now, let's go back to 5012. Whoops.
11 Let's see. That's the wrong one.

12 So as we just went over, you knew what your
13 assessment was going to be, your annual assessment,
14 right?

15 A Yes.

16 Q You knew that the annual assessment could go up,
17 right?

18 A That's correct.

19 Q You knew the terms of the loan you took out from
20 Wyndham Vacation Resorts to purchase the 2016 timeshare,
21 right?

22 A I knew what? I knew what again?

23 Q The terms of your loan to purchase.

24 A Yes.

25 Q Okay.

1 A Yes.

2 Q So knowing all of that, you have then got notice
3 that you could cancel the contract within five days,
4 right?

5 A By the letter of the law, that's correct.

6 Q Okay. But you chose not to cancel your
7 contract, despite knowing how much the assessments were
8 going to be and what the terms of the loan were?

9 A I didn't consciously choose to. I didn't have a
10 fair opportunity to.

11 Q You didn't cancel, right?

12 A Again, I'm on vacation. I'm not doing a
13 business arrangement. I'm in the middle of a vacation,
14 so it's probably the most weakened time to conduct
15 business obligations and verifications, during a --
16 during a vacation. So I -- that was one thing that has
17 always puzzled me, is this a reasonable effort allotted
18 to owners to make reasonable, thoughtful choices?

19 Q And that time period that's in here, the
20 Exhibit 5012, the Addendum for Alabama -- and, sir, you
21 live in Alabama, right?

22 A That's correct.

23 Q So if that time period was set by Alabama law,
24 is that just, you know, an issue with Alabama law, or is
25 that Wyndham Vacation Resorts' problem?

1 MR. MILLER: Object to the form.

2 A I have -- all I know is these are the elements
3 that comed [sic] about to create an environment from
4 which I'm to operate from. Who sets it and the elements
5 to it, I didn't think I had to be a lawyer or a business
6 element to figure that out.

7 BY MR. WRIGHT:

8 Q Okay. And we'll go to 5013.

9 (Exhibit Number 5013 marked for identification.)

10 BY MR. WRIGHT:

11 Q Mr. Litton [sic], can you see the document I've
12 put up on the screen, which is Defendant's Exhibit 5013?

13 A Yeah.

14 Q I'm sorry. Mr. Kelley?

15 A Yes, I can.

16 Q And we talked a little bit ago that you traded
17 in or you made a change between 2014 and 2016 where you
18 decided to put yourself, your wife, and your
19 mother-in-law all onto the same contract, correct?

20 A I'm sure that was one or two of the con- --
21 driving points to it. There's not always that one that's
22 involved.

23 Q Okay. Do you remember, as part of the 2016
24 purchase, trading in your 2014 timeshare as sort of a
25 credit down, so to speak, onto the 2016 one?

1 A Yes.

2 Q Okay. And all this document is really doing is
3 memorializing that you had a timeshare in 2014 with some
4 equity in it and that you wanted to apply that equity to
5 the 2016 purchase, correct?

6 A That's correct.

7 Q Okay. And we'll go to Defendant's Exhibit 5014.
8 (Exhibit Number 5014 marked for identification.)

9 BY MR. WRIGHT:

10 Q And, Mr. Kelley, I put up on the screen the
11 closing disclosure for your 2016 transaction. Do you see
12 that?

13 A Yes.

14 Q And if we just run through some of this. Who
15 does the closing disclosure identify as the borrowers?

16 A Myself and my wife and my mother-in-law, it
17 looks like.

18 Q Okay. And who is identified as the seller?

19 A Wyndham Vacation Resorts.

20 Q And who is identified as the lender?

21 A Wyndham Vacation Resorts.

22 Q So looking at the entities identified as the
23 seller and lender, you'd agree with me, then, that
24 Fairshare is neither of those?

25 A I wouldn't agree with that, no.

1 **Q Okay.**

2 A Again, I'll trow to the overall aggregate that
3 this is -- I'm part of the timeshare experience via the
4 trust that's -- makes the vehicles what -- what is to
5 happen. And so the trust would execute as a higher
6 responsibility over this, and that's what I've always
7 maintained.

8 **Q But looking at this document, if we look at the**
9 **literal language of it, you see that the seller is**
10 **Wyndham Vacation Resorts?**

11 A Yeah.

12 THE WITNESS: I mean, does this obligate me
13 to anything, Rodney, to -- one way or the other
14 or just --

15 MR. MILLER: No, he's just asking you what
16 this particular document that's been marked
17 5014, the closing disclosure, who -- which
18 entity it specifically identifies as the seller.
19 So you're fine to answer that question.

20 THE WITNESS: Sure. And then, as it's
21 asked -- excuse me. It's, as you're describing,
22 the seller and the lender as the same entity.

23 BY MR. WRIGHT:

24 **Q Okay. And neither of those entities are**
25 **Fairshare, correct?**

1 A Correct.

2 Q Okay. And we went over this a little bit before
3 in the actual security agreement; but this document,
4 again, is telling you your loan amount, your interest
5 rate, your monthly payment and principal and interest.
6 Do you see those?

7 A Yes.

8 Q All right. And we'll go to -- this will be
9 Defendant's Exhibit 5015.

10 (Exhibit Number 5015 marked for identification.)

11 BY MR. WRIGHT:

12 Q Mr. Kelley, I've put up a document called
13 "Payment Preference Form." Do you see that?

14 A Yes, I do.

15 Q Okay. And we'll just scroll down so we can get
16 a whole view really quickly. And what I would like to
17 focus on is paragraph 3. So if we read paragraph 3, we
18 have sub (a) through (e). And sub (a) is telling you the
19 number of points that you have allocated, correct?

20 A Correct.

21 Q And then it's telling you -- paragraph 3(b)
22 says, "The annual Club Wyndham Plus program fee is
23 \$720.48."

24 Do you see that?

25 A Yes.

1 Q And paragraph 3(c) says, "The annual HOA fee and
2 real estate taxes are \$6,496.96." Do you see that?

3 A Yes.

4 Q And that 6,496, we saw that in the purchase
5 agreement, too, right?

6 A That's correct.

7 Q And then paragraph 3(d) gives the annual
8 Club Wyndham Plus assessment; and, in parentheses, it
9 tells you how to come to that figure. You add together
10 3(b) and 3(c). So it's telling you your Club Wyndham
11 Plus assessment is \$7,217.44, right?

12 A Right.

13 Q And then it -- and then in 3(e) it's dividing
14 that \$7,212 -- or I'm sorry -- \$7,217.44 by 12 to give
15 you your monthly payment. Do you see that?

16 A Yes, I do.

17 Q Okay. And then one more time the form tells you
18 what your total monthly Club Wyndham Plus assessment
19 payment amount is. Do you see that?

20 A Yes.

21 Q Okay. And now we'll go to Defendant's 5016.

22 (Exhibit Number 5016 marked for identification.)

23 BY MR. WRIGHT:

24 Q So, Mr. Kelley, as part of your 2016 purchase of
25 a timeshare, I think we can both agree there were a lot

1 of documents, right?

2 MR. MILLER: Object to the form.

3 A Yes. Yes.

4 BY MR. WRIGHT:

5 Q And --

6 THE WITNESS: Thank you, Rodney.

7 BY MR. WRIGHT:

8 Q And this is one of them, and this document is
9 called "Receipt for Timeshare Documents." Do you see
10 that?

11 A Receipt -- yes, I do.

12 Q And among other things, this document -- or
13 let's scroll down a little further just so we can get to
14 the signatures.

15 We see here "Windy Kelley." That's your wife,
16 correct?

17 A That's correct.

18 Q And then we have your signature just below hers?

19 A Yes.

20 Q And Paula Litton also signed it as well, right?

21 A Correct.

22 Q So now if we come back up -- let's see. So if
23 we go down to sort of the bottom, it says -- it's giving
24 you the list of all of the documents for the timeshare
25 you purchased. Do you see that there?

1 A Yes, I do.

2 Q And then above that, it's telling you that you
3 received a list of resorts that are part of Club Wyndham
4 Access, right, in Table 1?

5 A Yes.

6 Q Okay. And you also have the purchase and
7 security agreement addendums as well as the retail
8 installment contract. Both of those we went over before,
9 right?

10 A Right.

11 Q Okay. Now we'll go to Defendant's 5017.

12 (Exhibit Number 5017 marked for identification.)

13 BY MR. WRIGHT:

14 Q And, Mr. Kelley, I put up the document called
15 "Club Wyndham Plus Vacation Ownership Assignment
16 Agreement and Use Restrictions." Do you see that?

17 A Yes, I do.

18 Q All right. And let's scroll down to the bottom
19 just briefly. And is that your signature just below your
20 wife's?

21 A Yes.

22 Q Okay. And let's see. If we go down to the
23 second "whereas" clause, right where my cursor is, it
24 says, "Owner is the purchaser -- purchaser of an
25 ownership interest."

1 So owner, that's partly you, and the other two
2 would be your wife and your mother-in-law, right?

3 A Correct.

4 Q And you were owners in the Club Wyndham Access
5 Vacation Ownership Plan, correct?

6 A Correct.

7 Q And then if we go down a little further to the
8 third "whereas" clause where my cursor is now, it says,
9 "The owner desires to subject the above-described
10 ownership interest to the trust agreement and assign the
11 use, occupancy and possessory rights in said ownership to
12 the trust."

13 Did I read that correctly?

14 A It seems that you did, yes.

15 Q Okay. Now, we'll go down to paragraph 2. And
16 if you could just read paragraph 2 for me out loud,
17 please.

18 A Okay. "Owner hereby subjects the ownership of
19 the trust agreement and assigns the use, occupancy and
20 possessory rights in the ownership to the trust."

21 So everything's transferred, "to be administered
22 in accordance with the terms, restrictions, and
23 conditions set forth in the trust agreement and agrees
24 that the owner's rights shall be subject to the terms and
25 provisions of the same." Okay.

1 Q So you agreed that, by assigning your use rights
2 by this assignment agreement, you were going to follow
3 the terms and provisions of the trust agreement; is that
4 right?

5 A Yes.

6 Q Okay. And let's go down to paragraph 5. And if
7 you could, just read the first sentence of paragraph 5
8 for me.

9 A "Owner hereby" --

10 Q Let me zoom in a little.

11 A I think I can do it.

12 "Owner agree -- owner hereby agrees to pay to
13 the trust on behalf of the association an annual Club
14 Wyndham Plus -- Plus assessment for certain expenses
15 attributable to the plan in accordance with the
16 provisions of the trust agreement," which you need to go
17 back to my left.

18 Q Let's see.

19 A There we go. That's about -- the pictures are
20 getting me on my side. "Which annual assessment shall
21 include owner's share of the expenses associated with
22 operation and maintenance of the plan, herein referred to
23 as the program fee, and may include owner's proportional
24 [sic] share of the owner's regular assessment
25 attributable to the ownership herein referred to as HOA

1 fee."

2 Q Okay. So that first sentence says that you are
3 agreeing to pay to the trust the program fee, and that
4 fee may include your proportionate share of the regular
5 assessment, which is called an HOA fee, correct?

6 A Correct.

7 Q Okay. And we talked about your assessment
8 already when we went over the purchase contract, right?
9 It was that \$6,000 figure, right?

10 A Correct.

11 Q Okay. And let's see.

12 A And then I guess 6 is what else gives me
13 reinforcement where it talks about they -- I become a
14 member of the Fairshare Vacation Owners Association. So
15 I take that's part of the trust or not?

16 Q Well, let's read Number 6. It says, "Owner, by
17 subjecting the ownership to the trust agreement and
18 assigning the use, occupancy and possessory rights" --
19 let's see -- "rights and the ownership to the trust
20 becomes a member of the Fairshare Vacation Owners
21 Association and as such agrees to abide by all
22 requirements set forth in the articles and bylaws of the
23 association. Owner also has the right to vote his
24 interest as a member of the association."

25 So this paragraph -- let's break it down. It

1 says that you became a member of Fairshare, right?

2 A Right.

3 Q And it also says that, because you became a
4 member of Fairshare, you agreed to abide by all of the
5 requirements set forth in the articles and bylaws of the
6 association, right?

7 A And that the articles and bylaws is the key
8 thing I would -- I focused on in my contract here in
9 relationship because I'm thinking I'm in part of a
10 trust --

11 Q All right.

12 A -- so -- okay.

13 Q Okay? So the bylaws are pretty important,
14 right?

15 A True.

16 Q And if we stay on paragraph 6, it also says,
17 "Owner has the right to vote his interest as a member of
18 the association," and "association" is Fairshare, right?

19 A Correct.

20 Q Okay. So in the time that you've -- since 2016,
21 when you purchased the timeshare and then joined
22 Club Wyndham Plus, have you ever attended a board of
23 directors meeting for Fairshare?

24 A No, I have not.

25 Q Have you ever voted at a board members meeting

1 **for Fairshare?**

2 A Not since 2016, no.

3 Q Okay. So in 2016, you did vote --

4 A No.

5 Q -- in a --

6 A No. I'm just saying we've been associated with
7 this for some years, and so I had voted, you know, in
8 previous times, not understanding completely, but I
9 thought it would be voting to do what's right there.

10 I -- but I -- it -- I don't know how -- how -- I get a
11 lot of things corporatewise, so that's where I'm just
12 thinking that I did participate in some point in time --

13 Q Okay.

14 A -- in voting, but I don't -- I haven't focused
15 on it in recent years, leaving a lot of that up to my
16 wife and my mother-in-law.

17 Q Okay. But it's your recollection that at some
18 point since you've been in Club Wyndham Plus, that either
19 you or your wife has voted prior to 2016 in a board of
20 directors meeting for Fairshare?

21 A I mean, I'm thinking they send us an election
22 form to vote on something, and that's usually what we
23 would vote in.

24 Q Okay. All right. Now, let's go to -- this will
25 be Defendant's 5018.

1 (Exhibit Number 5018 marked for identification.)

2 BY MR. WRIGHT:

3 Q And, Mr. Kelley, I put up a document called
4 "Preauthorized Auto Pay Plan Set-Up Form." Do you see
5 that?

6 A Yes.

7 Q And if we just scroll down briefly to the
8 bottom, we see your signature and your wife's signature,
9 right?

10 A Correct.

11 Q Okay. So we go up, and the first sort of gray
12 lined -- it's telling you -- there's an X through it, and
13 it says "contract payment down payment," and it's giving
14 an auto due date. Do you see that?

15 A Yes.

16 Q And then it lists the credit card that will be
17 charged and the name on the card that -- or the name on
18 the card. Do you see that?

19 A Yes.

20 Q And it discloses the amount that will be charged
21 every month, right?

22 A Correct.

23 Q And if we go down to the second gray box, it
24 says "Club Wyndham Plus," right?

25 A Correct.

1 Q It gives the due date for the payment?

2 A Uh-huh.

3 Q The frequency of payment?

4 A Yes.

5 Q And the form also tells you how much is being
6 charged each month, right?

7 A Correct.

8 Q And if we look down at the credit card that's
9 being charged, it's a Visa, right?

10 A Uh-huh.

11 Q And the name is Paula J. Litton, correct?

12 A That's correct.

13 Q So the Club Wyndham Plus was being charged
14 directly to Mrs. Litton, your mother-in-law, correct?

15 A Correct.

16 Q And do you and your wife on the one hand, and
17 Mrs. Litton on the other, have an arrangement between the
18 three of you about how that Club Wyndham Plus fee gets
19 divided?

20 A Yes.

21 Q Okay. What is that arrangement?

22 A I think we're paying a portion of that that
23 would be reflective of the amount of points that we own.

24 Q Okay.

25 A So that's -- that's an aggregate amount, and

1 then we pay 260 or \$70, something like that. And then
2 the -- we pay for the mortgage there, the payment.

3 Q Okay. And has that 270, 260 that you just
4 referenced, since that's point-based, you would agree
5 with me that your share of the Club Wyndham Plus hasn't
6 gone up, correct?

7 MR. MILLER: Object to the form.

8 A I mean, that's what it started at. It's not
9 that amount at this point. It's definitely more than
10 that.

11 BY MR. WRIGHT:

12 Q Okay. So your monthly share --

13 A I mean, it -- when I'm saying "270," that's what
14 we're doing today. It started off less than that as far
15 as the balance. The number that it was at that time in
16 2016, I would have to go back and figure out what that
17 was. I mean, I haven't -- you know, four years, I
18 haven't paid 270.

19 We made adjustment at some point in time along
20 the way, but it's respective of the cost that this had
21 gone up.

22 Q Okay. So --

23 A I'm just trying -- trying to say that it's
24 simple, and it just correlates with what is transpiring
25 on a yearly review scenario. That's all I'm trying to

1 say. I'm not trying to say we do more then, more, less.
2 It's like we've been consistent in paying whatever our
3 fair share is.

4 Q Okay. So if -- if your wife had testified that
5 over the last few years the monthly payment had remained
6 the same, would that be inaccurate then?

7 MR. MILLER: Object to the form.

8 A I -- I -- I -- I know we did make an adjustment.
9 At what point, what time, I do not know. And I don't
10 know that what she may have attested to or got confused
11 by because she does do more of the coordinating and
12 scheduling. And then myself and my mother-in-law will
13 verify the finances on it. And when she explains between
14 the two of us, that's what we agree to. And I know for a
15 fact we have made an incremental cost adjustment to our
16 mother-in-law for the -- that she's -- she's doing the --
17 she's handling the fee on a monthly basis, I can
18 definitely attest to that; but then she'll attest to us
19 paying -- paying that monthly pay -- payment to her,
20 also.

21 BY MR. WRIGHT:

22 Q Okay.

23 A You see what I'm saying? The mother-in-law can
24 better vouch for it because I'm just trying to convey
25 that all three of us are trying to be viewed as equal as

1 far as this relationship and the entities as owners.

2 BY MR. WRIGHT:

3 Q Okay. So of -- it's almost the end of 2020.

4 A Right.

5 Q Have you paid your and your wife's share of the
6 Club Wyndham Plus program fee to your mother-in-law yet?

7 A Yeah. Yeah, we've been paying it regularly,
8 monthly. On a monthly basis, we send her a check.

9 Q Okay. How much for the year have you paid?

10 A Whatever the 260 --

11 MR. MILLER: Object to the form.

12 A -- or 270 -- 270 is times those months unless
13 there's something that my wife asked for a reprieve for a
14 month or so, so -- but, I mean, we've -- it's been pretty
15 consistent with doing that.

16 BY MR. WRIGHT:

17 Q Okay. So it was about either 260 to \$270 a
18 month this year --

19 A Yes.

20 Q -- is what you paid to Mrs. Litton?

21 A That's correct.

22 Q Okay. And was it the same for 2019?

23 A That's the part I've said, I don't know when it
24 changed or how often it changes, but I do know that it's
25 changed.

1 Q Okay. Would that be reflected in bank
2 statements?

3 A Checking accounts, yes. Bank statements, yeah.

4 Q Okay. Would you be able to pull those bank
5 statements and provide them to us?

6 A Well, the -- that would be payments from us to
7 Mrs. Litton, is what you're saying? Yes, we can do that.

8 Q Great.

9 MR. WRIGHT: Rodney, we'll just make a
10 request for those bank statements.

11 MR. MILLER: Okay. Yeah, we'll look over
12 that when we get it.

13 MR. WRIGHT: All right. Thank you.

14 BY MR. WRIGHT:

15 Q Okay. And we're going to stay on this form,
16 which is Defendant's 5018.

17 And if we go down to the authorized for payment
18 form -- let's see -- and if we go to the last sentence of
19 the first paragraph, right where my cursor is, can you
20 read that for me, Mr. Kelley, out loud, please?

21 A Sure. "I/we understand and agree that the
22 amounts due may increase or decrease from time to time
23 and that this is authorize [sic] will remain in effect
24 notwithstanding any increases or decreases."

25 Q Okay. So this form is telling you that the

1 amount due for the Club Wyndham Plus might go up,
2 correct?

3 A Go up or down, yes.

4 Q Okay.

5 A I mean, isn't that what it said, it goes up or
6 down?

7 Q Yes, it does. So it says, "I/we understand and
8 agree that the amounts due may increase or decrease from
9 time to time."

10 A Yes. Yes.

11 Q Okay.

12 A And I'm just trying to convey consistency in my
13 expectations, and I'm not just saying something that's a
14 moment in time. It's kind of reflective of the whole
15 body of the process, et cetera, that that's where these
16 points are saying, it's -- you know, that they are
17 pos- -- these are what is the terms of what's going to
18 happen or possible happen, et cetera.

19 Q Okay. The documents that we're going over now
20 are laying out the structure for your --

21 A Yeah.

22 Q -- transaction, right?

23 A Yes.

24 Q Okay.

25 A And expectations behind the property owned,

1 et cetera, et cetera.

2 Q Okay.

3 A I try to hear -- hear the details and sum it up,
4 summarize things up to what it implies to me. So that's
5 where I convey my expectations based on the documents
6 that I've signed and what I think to be reasonable
7 elements of business and -- and -- and -- and
8 expectations of the ownership of points and how they --
9 how things will be executed, whether they be the cost or
10 the maintenance fees or the programs that exist that
11 we're engaged in, et cetera.

12 Q **And your expectations are set because of the**
13 **framework set by the documents, right?**

14 A The documents --

15 MR. MILLER: Object to form.

16 A -- the trust relationship.

17 THE WITNESS: What's that, Rodney?

18 MR. MILLER: You can go ahead and answer.

19 THE WITNESS: Okay. Yeah.

20 MR. WRIGHT: Okay. We will go to -- this
21 will be Defendant's 5019.

22 (Exhibit Number 5019 marked for identification.)

23 BY MR. WRIGHT:

24 Q **So, Mr. Kelley, I put up the "Buyer's**
25 **Acknowledgment Form." Do you see that?**

1 A Yes, sir.

2 Q Okay. And if we go down just really quickly,
3 that is your name and -- right here, right?

4 A Correct.

5 Q And then your signature? It's a little bit hard
6 to read, but --

7 A Yeah.

8 Q -- it's just under your wife's name, correct?

9 A Correct.

10 Q Okay. So if we go up to paragraph 2 of the
11 Buyer's Acknowledgment, it says, "Assignment to
12 Club Wyndham Plus. Purchaser understand the use rights
13 in the ownership interests are being assigned to
14 Club Wyndham Plus. In exchange, purchaser will be
15 allocated 1,264,000 Club Wyndham Plus points annually
16 based on the use rights stated in purchaser's contract
17 and that use is -- that use year is January 1st through
18 December 31st."

19 Did I read that right?

20 A Yes, sir.

21 Q So you knew that you were assigning your
22 ownership interest to Club Wyndham Plus, right?

23 A Again, that's back to the original question, and
24 you asked about Fairshare, and that's why I tried to
25 summarize there's not just one; it's actually multiple

1 entities. And I tried to account for that in my process.
2 So this document specifies one of those entities that's
3 engaged here --

4 Q Okay.

5 A -- in this process.

6 Q Okay.

7 A And I'm saying because that's one of my core --
8 core components in having confidence in what takes place
9 and how it takes place, that it's being executed within
10 the context of me having the beneficiaries of the
11 Fairshare, et cetera, responsibilities, interests,
12 et cetera.

13 Q So are you saying your expectations were set by
14 the documents governing the trust?

15 A Well --

16 MR. MILLER: Object to form.

17 A -- I'm -- I mean, I can't say that, because I
18 can't say I've gone off and studied the -- studied that.
19 I'm just saying being typically part of a trust, that's
20 set up with certain higher levels of standards than the
21 normal business agreement as far as my expectation goes,
22 my understanding on business arrangements, et cetera.

23 BY MR. WRIGHT:

24 Q Okay. Have you read the trust agreement that is
25 for Fairshare?

1 A Whatever has been available to me, I've read
2 portions of it and tried to look over the wholeness of
3 the document. I can't say I've studied in detail or --
4 and tried to make myself aware of what's going on and --
5 and read through it as best I can understand.

6 **Q Have you read the bylaws for Fairshare?**

7 A If that was part of the documents I was
8 provided, yes, I've tried to read over that.

9 **Q What set of documents -- who provided you the**
10 **set of documents you're referring to?**

11 A This would have come from these -- this
12 transaction here in Wyndham --

13 **Q Oh, okay.**

14 A -- because that's where --

15 **Q I see what you mean.**

16 A -- you know.

17 **Q The documents you received during the 2016**
18 **transaction?**

19 A Right. That's what they've always quoted in
20 references to who we're a part of, the owners and the
21 Fairshare folks and this, you know. So that's the
22 overall aggregate entities.

23 **Q Okay. We'll go to 5020.**

24 **(Exhibit Number 5020 marked for identification.)**

25 BY MR. WRIGHT:

1 Q Let's see here. And, Mr. Kelley, I put up the
2 "Acknowledgment and Disclosure Statement." Do you see
3 that?

4 A Yes, sir. Yes, sir.

5 Q And paragraph 2, can you read that for me out
6 loud, please?

7 A "The use and participation in the
8 Club Wyndham Plus and Wyndham Rewards Program is
9 completely voluntary, and the payment of any fee or other
10 cost is -- is only required upon such use or
11 participation."

12 Q So -- and you're agreeing, then, by this form,
13 that joining Club Wyndham Plus was completely voluntary?

14 A I'm -- I'm not understanding what you're
15 conveying as to Wyndham Plus and this statement trying to
16 say that there's a choice of completely volunteering,
17 which means you may not have to do it, so I -- I thought
18 it was a requirement fee based on owning -- ownership and
19 putting that ownership in the trust. So the way this is
20 being done in terms of questioning, I'm confused by it,
21 because the explanation I've been -- took from it and
22 have understood is where the Club Wyndham -- Club Wyndham
23 itself had these arrangements. Well, I can't describe --
24 what is the Wyndham Plus? Help me understand what you're
25 talking about.

1 The rewards program, I thought was the credit
2 card stuff; but the Wyndham Plus, what is that program
3 that you're referring to here?

4 **Q Sure. So Club Wyndham Plus is just Fairshare --**

5 **A Okay.**

6 **Q -- so --**

7 **A So that's -- that's where they're one and the**
8 **same. Fairshare and Club Wyndham is one and the same.**
9 **Is that not correct?**

10 **Q Well, this is -- let's just stick with the**
11 **language of what this form is telling you, which is part**
12 **of the transaction.**

13 **And if we just look at the words, it says, "Use**
14 **and participation in Club Wyndham Plus/Wyndham Rewards is**
15 **completely voluntary," right? That's what that says?**

16 **A Okay.**

17 **Q "And payment -- and the payment of any fees or**
18 **other costs is only required upon use -- such use or**
19 **participation."**

20 **A Yeah. This independent line doesn't seem to**
21 **make sense from a legal standpoint as far as I'm saying.**
22 **I can see where it's optional with the rewards program**
23 **being the Visa card, but I can't see where we're required**
24 **to be part of Wyndham Plus and pay the fair share program**
25 **and not have access to the points.**

1 Q Okay. Well, let's look at paragraph 5. That
2 might give some clarity.

3 It says, "The continued availability of the
4 Club Wyndham Plus/Rewards Program is not necessary for a
5 purchaser's use and enjoyment of any accommodations in
6 the timeshare plan purchased."

7 Did I read that right?

8 A Yes, you did.

9 Q So is -- is it fair to say that paragraph 5 is
10 telling you that regardless of whether Club Wyndham Plus
11 is around or not, you can still use your timeshare?

12 A Again, how does Club Wyndham Plus correlate to
13 Fairshare's ownership?

14 Q Well, if you could just answer the question. I
15 had a specific question.

16 A Well --

17 Q And this is my only chance to ask you questions,
18 Mr. Kelley. So I just need you to answer the question.

19 A Am I trying to answer it -- I'm trying to
20 understand what I'm answering to, where I have a premise
21 of understanding that my points and whatnot are part of
22 the Fairshare trust program, and that trust and its
23 obligations it's going here with these vehicles, why
24 something could be laid out as optional but yet it's
25 required to participate. So that's where I'm confused.

1 Q Okay. So let's -- let's break it down a little
2 bit. Earlier, we went over the timeshare purchase
3 agreement. Do you remember that?

4 A Yes.

5 Q And that agreement is where you actually in 2016
6 purchased a timeshare in PTVO Owner's Association. You
7 purchased an interest in that entity, right?

8 A Okay.

9 Q Well, do you -- do you agree with me, that's
10 what you did?

11 A I thought you were trying to help me understand
12 what Club Wyndham Plus was --

13 Q We'll get there.

14 A -- so that's why...

15 Q There's building blocks to it, so let's -- we'll
16 go back to -- let's see. I need to go back one more.

17 All right. So we're going to go back to what
18 was previously marked as Defendant's Exhibit 5011. This
19 is a security agreement from 2016. We've gone over this
20 before, and it's saying in this first paragraph that
21 "Wyndham Vacation Resorts, the seller, agrees to sell
22 Windy Kelley, Paula Litton, and Cara Kelley, a membership
23 interest in PTVO Owners Association, Inc.," right?

24 A Okay.

25 Q And then we go down to paragraph 1, and it

1 says -- I'm going about halfway through the paragraph.

2 Let me zoom in so you can see it.

3 Right after that bold address, it says, "Each
4 ownership constitutes a Florida timeshare estate under
5 Chapter 721 Florida Statutes, and the club is a
6 multi-site timeshare plan called Club Wyndham Access
7 Vacation Owners Ownership Plan."

8 Did I read that correctly?

9 A So the club -- so let me just take a minute to
10 process what's being communicated --

11 Q Sure.

12 A -- okay?

13 Q Take your time.

14 A Can -- can you shrink it down just a little so I
15 can read from side to side?

16 Q Absolutely. Is that better? Do you need one
17 more?

18 A One more. And just scoot it to the right just a
19 little bit. There you go. There you go. That's good.

20 Q Okay.

21 A Yes, sir. So -- so is there a transition that
22 takes place between my PTVO and this Club Wyndham acc- --
23 Club Wyndham -- Club Wyndham Access Vacation Ownership
24 Plan, or is there one and the same?

25 Q Well, I'll answer that question by -- we'll look

1 at a different document; but right now, let's focus just
2 on this one. We'll finish this one up, this document,
3 and then we'll go to another one.

4 So just sticking on what was previously marked
5 as 5011, the purchase agreement, in paragraph 1, and as
6 well as the intro paragraph, this document is saying that
7 you bought an interest in PTVO Owners Association, right?

8 A Right.

9 Q Okay. Now we'll go to --

10 A So it looks like by PTVO Ownership is the
11 same -- it's that same rights as the Club Wyndham Access
12 because of that first sentence that was being -- being
13 stated here.

14 Q Well, it's -- let's go back. Let me pull it up
15 again.

16 A I mean, just from a common layman understanding,
17 what I'm reading there, which, again, built into my
18 assumptions of why I should not be distinguishing any
19 entity organization one over the other. They're all
20 considered part of the same element.

21 Q So this purchase agreement -- we're still on
22 5011.

23 A Right.

24 Q It says in the very beginning that Wyndham
25 Vacation Resorts agree to sell you, your wife, and your

1 **mother-in-law a membership interest in PTVO Owners**
2 **Association and -- right?**

3 A Which ownership includes the right to
4 participate in Club Wyndham Access Vacation Ownership
5 Plan.

6 **Q Right.**

7 A So I -- so that includes the rights and
8 privileges of the Club Wyndham Access. That's what I
9 have as PV -- PTVO Association. They're one and the
10 same.

11 MR. WRIGHT: Okay. If you just -- if you
12 guys could give me five to ten minutes, I just
13 need to use the restroom really quickly. We'll
14 just take a quick break. Is that all right?

15 MR. MILLER: Yeah, that's fine.

16 MR. WRIGHT: All right. Thank you.

17 THE VIDEOGRAPHER: Going off the record --

18 MR. WRIGHT: So we'll be back in -- let's
19 say 12:17.

20 THE VIDEOGRAPHER: Going off the record at
21 12:07 p.m.

22 (Recess taken from 12:07 p.m. to 12:19 p.m.)

23 THE VIDEOGRAPHER: We are back on the
24 record at 12:19 p.m.

25 BY MR. WRIGHT:

1 Q Okay. Mr. Kelley, we're back from just a quick
2 break, and --

3 A Yes, sir.

4 Q -- we were talking about Defendant's
5 Exhibit 5011, right?

6 A Yes, sir.

7 Q All right. So I just need -- this is a
8 yes-or-no question, and I just need to know if I read the
9 following sentence correctly.

10 "Wyndham Vacation Resorts, Inc., a Delaware
11 corporation (Seller) agrees to sell to Windy Kelley,
12 Paula Litton, and Cara Kelley (Owner) a membership
13 interest, ownership, in PTVO Owners Association, Inc."
14 Did I read that correctly?

15 A Yes, sir.

16 Q Okay. Now we're going to go to what was
17 previously marked as Defendant's Exhibit 5017, and this
18 is the Vacation Ownership Assignment Agreement.

19 And, Mr. Kelley, please tell me if I read this
20 correctly or not: "Owner hereby subjects the ownership
21 to the trust agreement and assigns the use, occupancy,
22 and possessory rights in the ownership to the trust to be
23 administered in accordance with the terms, restrictions,
24 and conditions set forth in the trust agreement, and
25 agrees that the owners's use rights shall be subject to

1 the terms of the provisions of same."

2 Did I read that correctly?

3 A Yes.

4 Q Okay. And now I believe this was Defendant's
5 5020. This is the Acknowledgment and Disclosure
6 Statement. And, Mr. Kelley, please tell me if I read
7 this sentence correctly. "Use and participation in the
8 Club Wyndham Plus" --

9 A Where are you? Where are you at again? Sorry.

10 Q Paragraph 2 --

11 A 2.

12 Q -- of the Acknowledgment and Disclosure
13 Statement.

14 A Yes. Okay.

15 Q And this paragraph says: "Use and participation
16 in the Club Wyndham Plus/Wyndham Rewards Program is
17 completely voluntary and payment of any fee or other cost
18 is only required upon such use or participation."

19 Did I read that correctly?

20 A Yes.

21 Q Okay. Now, we'll go to Defendant's 5021.

22 (Exhibit Number 5021 marked for identification.)

23 BY MR. WRIGHT:

24 Q And this is a Receipt for Disclosure Documents,
25 and your signature is down here at the bottom, correct?

1 A Correct.

2 Q And this document tells you that you received
3 the Club Wyndham Plus trust agreement and accompanying
4 documents, right?

5 A Yes.

6 Q Okay. Now, let's go to -- this will be
7 Defendant's 5022.

8 (Exhibit Number 5022 marked for identification.)

9 BY MR. WRIGHT:

10 Q And, Mr. Kelley, I've put up on the screen your
11 responses to Defendant's First Interrogatories. Do you
12 see that?

13 A Yes, sir.

14 Q Okay. And if we scroll down to Interrogatory
15 Number 5, it asks for you to "Describe in detail each
16 fact supporting your allegations in the amended complaint
17 that support your allegation that Fairshare is an
18 affiliated entity with Wyndham and Wyndham Consumer
19 Finance."

20 Do you see that?

21 A Yes.

22 Q Okay. And if we skip over the objections, it
23 says, "Plaintiffs state that Fairshare is governed by a
24 board of directors. This board of directors is composed
25 solely of high-ranking Wyndham executives. Serving as

1 the board of directors for Fairshare, these Wyndham
2 executives control the activity and decision-making
3 authority of Fairshare."

4 Did I read that correctly?

5 A Yes.

6 Q Okay. So if the bylaws for Fairshare said that
7 in order to be a member of the board of directors, you
8 had to be a member or someone else -- well, let me
9 rephrase that.

10 If the bylaws of the board of -- if the bylaws
11 of Fairshare said that a member could be on the board of
12 directors, would that surprise you?

13 MR. MILLER: Object to the form.

14 BY MR. WRIGHT:

15 Q You can answer, Mr. Kelley.

16 A Yes.

17 Q It would surprise you?

18 A Yes.

19 Q Okay. Have you ever read the bylaws for
20 Fairshare?

21 A Bylaws for Fairshare? I briefly scanned over
22 them a time -- well, no, I don't know if those technical
23 documents of Fairshare have been provided to me in these
24 allegations here. So if I haven't, that's what I'm
25 saying, I have read -- tried to read through over the

1 time and the experience. So is that it? Is that what
2 you're referring to associated with these documents here
3 in the -- in the documents of the receipt -- I mean, of
4 the -- the documents referenced in prev- -- you know,
5 that I said I had received?

6 Q No, Mr. Kelley. It's -- it's -- I -- the
7 question was: Did you ever read the bylaws for
8 Fairshare? If you don't remember, you can say you don't
9 remember; or if you did, you can say "yes."

10 A I just -- no, I'll say I don't remember.

11 MR. WRIGHT: Okay. So we'll go to what
12 will be marked as Exhibit -- I believe this is
13 5023; is that right, Madam Court Reporter?

14 THE COURT REPORTER: Yes.

15 (Exhibit Number 5023 marked for identification.)

16 BY MR. WRIGHT:

17 Q Okay. And, Mr. Kelley, this is a document that
18 says "Wyndham Vacation Resorts, Club Wyndham Plus," and
19 if you'll notice at the top there's something called a
20 Bates stamp that says "Kelley Litton Prod 00448."

21 A Okay.

22 Q And I'll represent to you that means this
23 document came from you -- well, from your attorneys on
24 behalf of you, okay?

25 A Okay.

1 Q And it says "Trust Agreement and Accompanying
2 Documents." Did I read that right?

3 A Yes.

4 Q Okay. And there's a Table of Contents. So if
5 we scroll down to the bylaws, which begins at 480.

6 Okay. Mr. Kelley, we're still on Defendant's
7 Exhibit 5023, and we've scrolled down to the page that
8 begins with Kelley Litton Prod 00480.

9 A Yes, sir.

10 Q And the document is called "Second Amended and
11 Restated Bylaws of Fairshare Vacation Owners
12 Association." Do you see that?

13 A I do.

14 Q Okay. So if we look at Membership -- this is
15 paragraph 1.1 -- it says, "The membership of the
16 association shall be composed of (the members) Wyndham
17 Resorts, Inc., (Wyndham) and all persons who either (a)
18 subject one or more property interests to the trust
19 agreement by the assignment to the trust established
20 pursuant to the trust agreement (the trust) of the use
21 rights attributable to such property interests or (b)
22 purchase one or more property interests which have been
23 previously subjected to the trust agreement."

24 Did I read that correctly?

25 A Yes.

1 Q Okay. It also says, "Each member shall be
2 entitled to only one vote in all instances in which a
3 vote of the membership is required, regardless of the
4 number of points allocated to the member and regardless
5 of the number of use rights assigned to the trust with
6 respect to property interests owned by such members."

7 Did I read that correctly?

8 A Yes.

9 Q And if we continue to scroll down, we see -- we
10 get to Section III, and it's titled "Board of Directors,"
11 correct?

12 A Yes, it is.

13 Q Okay. And this says, "The entire management and
14 control of the association shall be in its board of
15 directors, each of whom shall be a member or an officer
16 or employee of a corporate member or an employee or
17 officer of Wyndham, its successors or assigns."

18 Did I read that correctly?

19 A Yes.

20 Q So a member of the trust can be on the board of
21 directors, correct?

22 MR. MILLER: Object to the form.

23 A Yes.

24 BY MR. WRIGHT:

25 Q Okay. And then we go down to paragraph -- let's

1 see -- 3.3, and it says, "Each director, to be elected by
2 the members, shall be elected by written balloting of all
3 members."

4 Did I read that correctly?

5 A Yes.

6 Q And then if we go down to paragraph 3.4, it
7 says, among other things, "Nominations for the board of
8 directors to be elected by the members shall be made by
9 the members."

10 Did I read that correctly?

11 A Yes.

12 Q Okay. So you agree, then, that a member can
13 nominate other members to be on the board of directors,
14 right?

15 MR. MILLER: Object to the form.

16 A Yes.

17 BY MR. WRIGHT:

18 Q And did you ever nominate anybody to be on the
19 board of directors for Fairshare?

20 A No, I did not.

21 Q Did you ever vote for anyone other than a
22 Wyndham employee to be on the board of directors for
23 Fairshare?

24 MR. MILLER: Object to the form.

25 A I don't remember.

1 BY MR. WRIGHT:

2 Q Since 2016, have you ever attended a board of
3 directors meeting for Fairshare?

4 A Excuse me. Sorry for the -- for the cough
5 there.

6 Q That's okay. Take your time.

7 A Your question again? I'm sorry.

8 Q Since 2016, have you ever attended a board of
9 directors meeting --

10 A No.

11 Q -- for Fairshare?

12 A No, I have not.

13 Q Since 2016, have you ever voted for any of the
14 directors to be nominated to the board of directors for
15 Fairshare?

16 A I do not recall.

17 Q Okay. So we'll go back to -- this is
18 Defendant's 5022, which is the responses to the
19 interrogatories.

20 And if we go to Interrogatory Number 7, it says,
21 "Describe in detail the facts supporting your contention
22 that Fairshare violated its fiduciary duties, duties of
23 loyalty, or any other legal duty to you and the members
24 of the proposed class."

25 And then if we skip over objections, there are

1 eight different activities or nonactions that are listed
2 down there. So let's walk through each of them.

3 The first one is, "Defendant violated its
4 fiduciary duties and duties of loyalty to the plaintiffs
5 in the following ways: Number 1: By appointing
6 executives of Wyndham entities to serve as the only
7 directors of Fairshare's board of directors."

8 So let's explore that more. If members can --
9 are the ones who vote for the board of directors, where
10 is the breach of fiduciary duty?

11 MR. MILLER: Object to the form.

12 A I imagine there could be more than one way to do
13 it, but I don't know that I can see any -- you know, I'm
14 not sure at this point.

15 BY MR. WRIGHT:

16 Q Okay. Are there any specific actions that
17 you're aware of that you could tell me are what you're
18 complaining of in the breach of fiduciary duty?

19 MR. MILLER: Object to the form.

20 A I'm unsure of the nature of how you're asking
21 and trying to qualify your statement there.

22 BY MR. WRIGHT:

23 Q Okay. So you're alleging a breach of fiduciary
24 duty by Fairshare, right?

25 A Right.

1 **Q What is the specific action or actions that**
2 **you're complaining of constitute that breach?**

3 MR. MILLER: Object to the form.

4 A Well, for me, that's why I've engaged the lawyer
5 to help me clarify what's happening and what's going on,
6 and the ability to represent myself on a Fairshare --
7 fair basis.

8 I understand the logic that you're pursuing
9 here, but it's not necessarily inclusive of any and all
10 that's possible here, and that's where I think there's
11 been a violation of the fiduciary responsibilities of
12 folks in the trust itself --

13 BY MR. WRIGHT:

14 **Q Okay.**

15 A -- and the beneficiaries to it. And that's
16 where these all seem to be supporting of that and the
17 different ways in which that constitute that environment.

18 **Q So sitting here today, you don't have a concrete**
19 **example that you can give me, correct?**

20 MR. MILLER: Object to the form.

21 A I'm not prepared for one at this point in time,
22 no.

23 BY MR. WRIGHT:

24 **Q Okay. And you understand that this is a class**
25 **action -- or that you've brought a class action, correct?**

1 A Yes, sir.

2 Q Okay. And what's the end goal for bringing
3 the -- the suit?

4 MR. MILLER: Object to the form.

5 A My end goal is that all of the particular folks
6 that's in the same situation as myself to be treated in a
7 fair and equitable way and treated the same such that we
8 can receive benefits of being part of the association and
9 the trust, and the ownership has value and meaning to
10 give us the benefits and -- and reasonable costs and --
11 and having these use of properties and the care and
12 maintaining.

13 BY MR. WRIGHT:

14 Q Okay. I'm just going to take down the exhibit,
15 and we'll put up the amended complaint. And this time I
16 will mark it as an exhibit. This will be Defendant's
17 5024.

18 (Exhibit Number 5024 marked for identification.)

19 BY MR. WRIGHT:

20 Q So, Mr. Kelley, you understand that by bringing
21 a class action, you're seeking to represent not only your
22 interests but those of everyone who fits within the class
23 alleged in the complaint, correct?

24 A Yes.

25 Q Okay. And let's scroll down -- this is

1 Defendant's 5024. It's the amended complaint, and we'll
2 scroll down to paragraph 29, which is the proposed class.

3 Do you see that, Mr. Kelley?

4 A Yes, I do.

5 Q And the proposed class, the class that you are
6 proposing says, "All persons and entities who are
7 citizens of the United States of America and who on or
8 after March 14, 2018, (1) purchased a timeshare with a
9 property interest or use rights therein subject to the
10 Fairshare Vacation Plan Use Management Trust, or (2)
11 purchased (including upgrading or refinancing) a property
12 interest or use rights previously subject to the
13 Fairshare Vacation Plan Use Trust" -- or I'm sorry --
14 "the Plan Use Management Trust."

15 A Yes.

16 Q Did I read that correctly?

17 Why did you try to go back to March 4th -- or
18 I'm sorry -- March 14th, 2008 for the class?

19 MR. MILLER: Object to the form.

20 A I'll -- I think that's one of the -- I -- I
21 don't know in -- I don't know. I think it's associated
22 with the document, last formal published document of the
23 Fairshare Vacation Plan, and that made sense from a
24 class-action folks because I'm sure I'm not the only one
25 that's been impacted by the -- by the situation and

1 what's going on and the current way in which our owner
2 rights are being utilized by the -- by the entities that
3 are engaged.

4 **Q And do you think everyone in the class feels the**
5 **same way that you do about Fairshare?**

6 MR. MILLER: Object to the form.

7 A I imagine there's quite a few that are, but
8 that's just my own thinking given what my experience has
9 been, and so I don't think I'm alone.

10 BY MR. WRIGHT:

11 **Q Have you done anything to figure out if any of**
12 **the other people who fit within this class agree with**
13 **you?**

14 A Not on a formal basis. Indirectly, I've, you
15 know, tried to do research to look on the -- look to
16 gather information about folks and their satisfaction and
17 see comments of dissatisfaction with some of the elements
18 of how they've experienced it and then our own challenges
19 that we've experienced over the years where scheduling
20 and whatnot have been not properly done and points where
21 places are not availability [sic]; but I guess that gets
22 into other areas of -- of, you know, how the process
23 works. But, you know, this core one of making it fair
24 and representative for unit owners, I think that's a key
25 one to start off with.

1 Q Would it surprise you that 80 percent of the
2 people who purchased a Wyndham timeshare were happy with
3 the program?

4 MR. MILLER: Object to the form.

5 A I don't know what -- I don't know with
6 80 percent or 70 or 20 or 30 matters as long as we're all
7 treated equal. That's why we're all part of the trust.

8 BY MR. WRIGHT:

9 Q If -- okay. So you've done research. Have you
10 spoken to any other members of the Fairshare trust?

11 A I do not know any others besides my
12 mother-in-law.

13 Q Okay. So besides your mother-in-law, you
14 haven't spoken to any of the other members of the
15 Fairshare trust?

16 A No. I think she has had some exposure to some
17 others, and we've all collectively had to deal with
18 representing ourselves where, you know, we weren't
19 represented fairly between selling us things that didn't
20 exist because they were claiming we didn't have the
21 rights to have the perpetual -- perpetual-use rights or
22 returning the sell in, et cetera. You know, those are
23 some examples that we've experienced then.

24 Q So I just want to make sure I understand the
25 claims that are actually being brought here. You're

1 talking about someone telling you you don't have property
2 rights, but that's not in your amended complaint; isn't
3 it?

4 A It's not property rights. It's I have the
5 rights to properties and the access to them is -- is what
6 seems to be very subjective instead of fair and -- fair
7 and open to us.

8 Q You would agree with me that that allegation
9 isn't anywhere in your complaint, right?

10 A Well, that's correct. And some, we reserved to
11 try to pursue later in additional activities with our
12 lawyers.

13 Q Okay. So let's talk a little bit about the
14 Club Wyndham Plus assessment. If the fee were increased
15 because the trust had to engage a different land manager,
16 would you agree that some of the people who are currently
17 using the trust would be unhappy?

18 MR. MILLER: Object to the form.

19 A I imagine you can't do anything that's going to
20 be 100 percent accurate for everybody being satisfied, if
21 that's the nature of your question.

22 BY MR. WRIGHT:

23 Q So you agree with me that, by pursuing this
24 class action, some people who have used the trust will be
25 unhappy if there's a change?

1 MR. MILLER: Object to the form.

2 A I think a lot depends on the change.

3 BY MR. WRIGHT:

4 Q Well, if the costs go up, would people be
5 unhappy?

6 A Definitely, without proper justification and
7 what the benefit is to me as an owner.

8 Q And if people lose the ability to gain more
9 access to more properties, meaning the ability to use the
10 Club Wyndham Plus program goes away altogether, will --
11 will -- do you agree that some people could be unhappy?

12 MR. MILLER: Object to the form.

13 A I would speculate, yes, for sure.

14 BY MR. WRIGHT:

15 Q All right. Let's talk a little bit about what
16 it means to you to serve as a class representative.

17 What are you -- what do you understand your
18 duties are?

19 MR. MILLER: Object to the form.

20 A Just be honest and tell the truth in what I
21 know, what I've experienced, and how those plaintive of
22 areas that relate to my ownership rights and the rights
23 of everybody in the trust are subject to something that's
24 less than what's -- what's reasonable, legal by law, and
25 required by law.

1 BY MR. WRIGHT:

2 Q Okay. So if I -- if I'm understanding, you said
3 that you understand your duties are to tell the truth?

4 A Yes.

5 Q Anything else? Any other duties?

6 MR. MILLER: Object to the form.

7 A I mean, I haven't thought of it in that context,
8 so I don't -- I don't know what I -- duties I would
9 have --

10 BY MR. WRIGHT:

11 Q Okay.

12 A -- other than just to tell the truth as best
13 pursuant to what we've raised as complaints.

14 Q Okay. Are you -- if this goes to trial, are you
15 ready to sit through every day of trial?

16 A If that's what I need to do, yes.

17 Q And would you be prepared to testify at trial if
18 need be?

19 A Absolutely.

20 Q And did you contact your lawyers first, or did
21 they reach out to you?

22 MR. MILLER: Object to the form.

23 A Well, we had been talking, and my mother-in-law
24 told us about him, and we thought that was a good idea,
25 and so we reached out to them, to the lawyers.

1 BY MR. WRIGHT:

2 Q Okay. And did you read the amended complaint
3 before it was filed?

4 A I don't recall the timing.

5 Q Okay.

6 A It's been pretty hectic times for me personally.

7 Q If the Court certifies the class, how do you
8 intend to pay for the costs of notifying the other class
9 members about the lawsuit?

10 A Speculate this is not an unusual situation, and
11 those mechanisms and processes would be something we'd
12 have to figure out how to do.

13 Q So is it fair to say at this point, you don't
14 know?

15 MR. MILLER: Object to the form.

16 A I don't know about not knowing. I know that,
17 like, class actions has definitely models and ways of
18 doing it; and a lot of lawyers have opportunities to do
19 that, et cetera, so it's not just necessarily incumbent
20 to me as it is creating the right forum and -- for
21 Wyndham to give back -- give access to those contacts and
22 provide that information so they can be contacted to, you
23 know, have the same opportunity I have.

24 BY MR. WRIGHT:

25 Q All right. Well, you would agree with me that

1 **you're a plaintiff in this case, right?**

2 A Correct.

3 **Q And the plaintiff bears the burden, right?**

4 A Correct.

5 MR. MILLER: Object to the form.

6 BY MR. WRIGHT:

7 **Q Do you know how many people would fit within the**
8 **class definition that you proposed?**

9 A I -- I would not know and would, again, have to
10 take more time and research to get a better understanding
11 of what that is. I don't want to make any inapproved --
12 unapproved conclusions or just whatever. So it's hard to
13 even come up with that idea of how many it would be.

14 **Q Okay. Would you agree with me that financing**
15 **your 2016 purchase through WVR was not mandatory?**

16 A I did not see where there was any option for
17 timing and opportunity. You had to know about all of the
18 circumstances going into it; and we were on vacation, so
19 I didn't go into the situation knowing what all to
20 expect.

21 **Q Well, no one made you purchase a timeshare in**
22 **2016, right? That was a choice you made?**

23 A I mean, as far as a choice, yes.

24 **Q And, likewise, no one made you take out a loan**
25 **to pay for that purchase, right?**

1 A Correct.

2 Q Okay. And you agree with me that you received a
3 copy of the trust agreement, correct?

4 A Yes.

5 Q And that trust agreement discloses the owners
6 association fee as an annual fee, right?

7 A Yes.

8 Q It also discloses what the program fee is as
9 well?

10 A The beginning of it, at the time of signature.

11 Q So it's -- the answer is, yes, it does disclose
12 the program fee?

13 A Yes.

14 Q And doesn't the trust agreement also allow a
15 member to withdraw the assignment to the trust at any
16 time?

17 MR. MILLER: Object to the form.

18 A It sounds like a very relative question, and I'm
19 not sure of the nature how to answer that one.

20 BY MR. WRIGHT:

21 Q Well, it's a yes or no, so let me ask the
22 question again.

23 MR. MILLER: Or it could be (inaudible) --

24 BY MR. WRIGHT:

25 Q Does the trust agreement allow a member --

1 THE COURT REPORTER: Hold on. Hold on a
2 second. Hold on. You're both talking at the
3 same time. I don't have it.

4 MR. MILLER: Yeah, I just wanted to make
5 clear that it's not necessarily a yes-or-no
6 question as David represented.

7 You can go ahead.

8 BY MR. WRIGHT:

9 Q So the question is: Doesn't the trust agreement
10 allow a member to withdraw his use rights interests from
11 the trust at any time?

12 MR. MILLER: Object to the form.

13 A I'd have to further look in detail and research
14 that. I don't know. I don't know.

15 BY MR. WRIGHT:

16 Q Okay. Doesn't the -- don't the bylaws to the
17 trust allow the members to remove the plan manager if
18 75 percent of the members agree to vote the plan manager
19 out?

20 MR. MILLER: Object to the form.

21 A I don't know.

22 BY MR. WRIGHT:

23 Q Under the trust agreement, isn't the trustee
24 allowed to employ people necessary to assist it in its
25 fulfilling its obligations?

1 MR. MILLER: Object to the form.

2 A That would be -- I would think yes.

3 BY MR. WRIGHT:

4 Q Okay. And doesn't the trust agreement provide
5 that each member, other than Wyndham, is required to pay
6 the Fairshare Plus assessments?

7 A I'm a little bit challenged to understand the
8 scope of who's being referenced there.

9 Q So the trust agreement, does it tell you that
10 every member, other than Wyndham -- Wyndham Vacation
11 Resorts -- is required to pay the Fairshare assessment?

12 A This -- the question sounds rhetorical, because
13 it's the trust and the trustees and the members of it.
14 So that's the perspective I understand of who's going to
15 be responsible, that there's others outside that. I
16 don't know if you're trying to ask about that or not.

17 Q No, I'm just -- I'm trying to get your
18 understanding of the trust agreement.

19 Does the trust agreement tell you that each
20 member other than Wyndham Vacation Resorts is required to
21 pay the Fairshare Plus assessment --

22 A Yes.

23 Q -- yes or no?

24 A Yes.

25 Q Okay. Okay. And so we've talked before about

1 how you haven't attended a board of directors meeting for
2 Fairshare since 2016.

3 Have you ever requested the minutes of a board
4 of directors meeting?

5 A I don't recall.

6 Q Have you ever read the audited financials for
7 Fairshare?

8 A I have not.

9 Q Do you know how Fairshare calculates the program
10 fee?

11 A I don't know the particulars. The explanation
12 just refers to a formula that tries to take -- I take as
13 being a legal formula that can be proven to say where it
14 makes it fair for, you know, an even distribution of a --
15 of a fee to everybody. So that will be my assumption
16 with it.

17 Q Okay. But other than that assumption, you don't
18 actually know specifically how the program fee is
19 calculated?

20 A Not the technical, no.

21 Q Do you know who the current members of
22 Fairshare's board of directors are?

23 A No, I do not.

24 Q Do you know who sets the OA fee?

25 A I'm not aware.

1 Q Okay. Have you ever reviewed any of the budgets
2 for Fairshare?

3 A I have not.

4 Q Do you know what the board of directors for
5 Fairshare takes into account when it sets the annual
6 budgets?

7 A I do not.

8 Q Okay. Let's talk a little bit about sort of the
9 relief you're seeking by this -- this lawsuit. What are
10 the damages you're seeking to recover?

11 MR. MILLER: Object to the form. You can
12 answer.

13 A Okay. My -- my expectation is whatever seems
14 fair and reasonable to me as an owner and everybody in
15 the class as a -- as determined by, you know, a judge and
16 what he sees to be a, you know, a fair award to us so
17 that we can maintain good pol- -- a good positive
18 environment for all of us to be that much more confident
19 as owners and that the overall situation will be better
20 and improved going forward.

21 BY MR. WRIGHT:

22 Q Okay. Are you looking for a refund, or are you
23 looking for a change in the plan manager? What
24 specifically are you looking for?

25 A I imagine that to be part of the elements to

1 show and prove back to -- that we've got a fair and
2 balanced scenario of what's -- what takes -- what's being
3 spent and that the fees and whatnot are actually
4 appropriate --

5 Q So if you're --

6 A -- not -- not excessive.

7 Q So if you haven't reviewed the budgets, how can
8 you claim that the fees are excessive?

9 A By the rate of increase that I have experienced
10 and my -- and my wife and my mother-in-law.

11 Q So the contention that the fees are excessive is
12 solely based off of the amount that you're currently
13 paying?

14 MR. MILLER: Object to the form.

15 A I -- that's what I have at this point in time
16 and what led me to the frustration to seek out a better
17 understanding of what's involved. If I do more than
18 that, then I might as well get into the business of
19 running it and be more involved into the governance of
20 it. But I thought the governance should be beholdance
21 [sic] to its members, and that's where I don't see those
22 things being provided to us as owners.

23 BY MR. WRIGHT:

24 Q You agree with me that you're a member of
25 Fairshare, right?

1 A Yes, sir.

2 Q And we went through the bylaws, and the bylaws
3 said that you could nominate and vote for the board of
4 directors, right?

5 A Yes.

6 Q But you've never gone out and tried to become a
7 director for Fairshare?

8 A I was pursuing other responsibilities, but
9 that's where I've realized they were utilizing the money
10 that I use and spent potentially in a way that's not
11 consistent with us as being owners to give us benefits
12 that would equate to the amount that we pay on a monthly
13 basis.

14 Q So, Mr. Kelley, my question was: You have not
15 gone out and tried to become a director of Fairshare,
16 correct?

17 A I don't see why that would require me to do so,
18 so I have not, no.

19 Q Okay. So you have not, right?

20 A Correct.

21 MR. MILLER: Object to form.

22 BY MR. WRIGHT:

23 Q And you have not looked at the budgets or the
24 financials for Fairshare, right?

25 MR. MILLER: Object to the form.

1 A That's -- I don't understand how that applies,
2 so...

3 BY MR. WRIGHT:

4 **Q I need you to answer the question, Mr. Kelley.**
5 **It's either you have reviewed the financials for**
6 **Fairshare or you have not.**

7 MR. MILLER: Well, Mr. Kelley, you've
8 answered that, like, three times. Has your
9 answer changed?

10 THE WITNESS: No, sir.

11 MR. MILLER: Okay. Well, you -- I'll let
12 you answer it one more time.

13 A No, I have not.

14 MR. WRIGHT: Okay. Let me just look at my
15 notes really quickly, and I think I'm probably
16 done. But give me two minutes to look at my
17 notes.

18 MR. MILLER: Okay. We'll take a quick
19 break.

20 MR. WRIGHT: All right.

21 THE VIDEOGRAPHER: Going off the record at
22 12:58 p.m.

23 (Recess taken from 12:58 p.m. to 1:03 p.m.)

24 THE VIDEOGRAPHER: We are back on the
25 record at 1:03 p.m.

1 MR. WRIGHT: All right, Mr. Kelley. Thank
2 you. I'm done. And unless your counsel has any
3 questions for you, that will conclude today's
4 deposition.

5 MR. MILLER: I do not have any questions.

6 MR. WRIGHT: Okay. Then we are done.

7 THE VIDEOGRAPHER: Going off the record at
8 1:04 p.m.

9 THE COURT REPORTER: Wait. His right to
10 read and sign?

11 MR. WRIGHT: Oh, yes.

12 MR. MILLER: Please.

13 MR. WRIGHT: Mr. Kelley, you have the right
14 to read the deposition transcript that you gave
15 today; and if there are any errors in it, you
16 can sign and fill out what's called an errata
17 sheet. You can ask your counsel more specific
18 questions about that. But, Rodney, will you
19 guys be reading or waiving?

20 MR. MILLER: Yeah, we'll utilize the read
21 and sign.

22 MR. WRIGHT: Okay.

23 THE COURT REPORTER: Do you want this typed
24 up?

25 MR. WRIGHT: I do not.

1 THE VIDEOGRAPHER: Copies of the video?
2 MR. WRIGHT: Not right now.
3 MR. MILLER: Same.
4 (Deposition concluded at 1:05 p.m.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, BEVERLY REPLOGLE, RPR, Court Reporter and Notary Public, do hereby certify that I was authorized to and did stenographically report the foregoing deposition of CARA KELLEY; that a review of the transcript was requested; and that the foregoing transcript, pages 1 through 107, is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED December 31, 2020 at Tampa, Hillsborough County, Florida.


BEVERLY REPLOGLE, RPR
Notary Public

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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, BEVERLY REPLOGLE, RPR, Notary Public, State of Florida, certify that the witness, CARA KELLEY, appeared before me via Zoom videoconference on December 14, 2020 and was duly sworn.

WITNESS my hand and official seal this date:
December 31, 2020.

Identification:

Personally Known _____
Or Produced Identification _____ X _____
Type of Identification Produced: Driver's License

Beverly L. Replogle

BEVERLY REPLOGLE, RPR
Notary Public, State of Florida
MY COMMISSION GG 946680
EXPIRES 2/25/24



1 E R R A T A S H E E T

2 IN RE: CAROLYN NOLEN, et al., vs. FAIRSHARE VACATION
OWNERS ASSOCIATION

3 DEPOSITION OF: CARA KELLEY TAKEN: 12/14/2020

4 DO NOT WRITE ON THE TRANSCRIPT - ENTER CHANGES HERE

5 Please sign, date, and return this sheet to our office.
6 If additional lines are required for corrections, attach
additional sheets.

7
8 At the time of the reading and signing of the
deposition, the following changes were noted:

9	PAGE	LINE	CHANGE	REASON
10	_____	_____	_____	_____
11	_____	_____	_____	_____
12	_____	_____	_____	_____
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22 Under penalty of perjury, I declare that I have read my
23 deposition and that it is true and correct subject to
any changes in form or substance entered here.

24 SIGNATURE OF DEPONENT: _____

25 DATE: _____

1 December 31, 2020

2 Rodney E. Miller, Esquire
3 Methvin, Terrell, Yancey, Stephens & Miller, P.C.
4 2201 Arlington Avenue South
5 Birmingham, Alabama 35205

6 In Re: Carolyn Nolen, et al., vs. Fairshare Vacation
7 Owners Association

8 Dear Mr. Miller:

9 Enclosed please find the original errata page with your
10 copy of the transcript so CARA KELLEY may read and sign.
11 Please have him make whatever changes are necessary on
12 the errata page and sign it. Please make a copy of the
13 errata page and place it in your copy of the transcript.
14 Please then forward the original errata page back to our
15 office at 101 South Franklin Street, Suite 101, Tampa,
16 Florida 33602.

17 If the errata page is not signed by the witness within
18 30 days after this letter has been furnished, we will
19 then process the transcript without a signed errata
20 page. If CARA KELLEY wishes to waive his right to read
21 and sign, please have him sign on the signature line at
22 the bottom of this letter and send it back to our
23 office.

24 Your prompt attention to this matter is appreciated.

25 Sincerely,

Beverly Replogle, RPR
Anthem Reporting

I do hereby waive my signature

CARA KELLEY

cc: David R. Wright, Esquire