

**IN THE CIRCUIT COURT OF VAN BUREN COUNTY, ARKANSAS
CIVIL DIVISION**

**Gordon Jackson,
on behalf of himself and all others similarly situated,**

PLAINTIFF

VS. CASE NO. _____

**Wyndham Destinations, Inc.,
Wyndham Worldwide Corporation,
Wyndham Vacation Resorts, Inc.,
Wyndham Worldwide Operations, Inc.,
Fairfield Communities, Inc.,
Fairfield Communities Land Company,
Fairfield Glade Community Club,
Fairfield Bay Community Club, Inc., and
Companies X, Y, and Z**

DEFENDANTS

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

(“Plaintiff”), on behalf of himself and all others similarly situated, brings this action and demand for jury trial against Wyndham Destinations, Inc., Wyndham Worldwide Corporation, Wyndham Vacation Resorts, Inc., Wyndham Worldwide Operations, Inc., Fairfield Communities, Inc., Fairfield Communities Land Company, Fairfield Glade Community Club, Fairfield Bay Community Club, Inc., and Companies X, Y, and Z (collectively, “Defendant”), and states and alleges, upon personal knowledge as to himself and otherwise upon information and belief, as follows:

INTRODUCTION

41. Plaintiff brings this action on behalf of himself and other real property owners at the Fairfield Bay Ozark Mountain Lake Resort & Community (the “Resort”) located in Van Buren

County, Arkansas, who have suffered and continue to suffer loss due to Defendant's unlawful imposition and collection of so-called "assessments" on real property sold to them by Defendant (the "Class" members).

2. For at least the past 45 years, and perhaps earlier, Defendant has sold real property located within the Resort in single lots. Upon information and belief, Defendant has sold hundreds of these single parcels and has an unsold inventory of hundreds more.

3. At the time of sale Defendant requires purchasers to agree to become members of a "club" for which a monthly assessment must be paid. At the time of sale, purchasers are promised many benefits that will accrue to them from club membership, and the relevant documents recite club members "...shall be entitled to the rights, privileges, and benefits of a member...."

4. In reality, nothing accrues from club membership. Class members pay monthly assessments and receive absolutely nothing of value for their money. When they request an accounting, no accounting is provided. When they ask to withdraw from club membership, they are threatened with ruination of their credit rating if they try.

5. Accordingly, Plaintiff brings this action against Defendant on behalf of himself and the proposed Class members (a) for an accounting of all assessments collected by Defendant from the Class members and all disbursements made by Defendant of the assessments, for the time period beginning with the first assessment collected by Defendant and ending as of the date of the accounting, (b) alleging unjust enrichment on the part of Defendant, (c) alleging constructive fraud in the sale of real property and club memberships by Defendant, (d) alleging common law fraud in the sale of real property and club memberships by Defendant, and (e) for restitution of all assessments paid by Plaintiff and the Class members to Defendant. Plaintiff on behalf of himself and the proposed Class members, also requests the Court (f) to impose a constructive trust upon

all assessment funds in any manner related to, derived from, or based upon the Resort real property owned by the Plaintiff or the Class members currently held by Defendant and to enjoin the trustee to distribute them to the Plaintiff and Class members pro rata with respect to payments made by the Plaintiff and each of the Class members, with the trustee's fees and expenses to be paid separately by Defendant and not by the corpus of the trust, (g) to enjoin the trustee of the constructive trust established by the Court to correct the applicable real property records to reflect clean title in each of the Plaintiff and the Class members without any lien or other impairment of title arising due to the club membership assessments, with the trustee's fees and expenses to be paid separately by Defendant and not by the corpus of the trust, (h) to enjoin Defendant from continuing to collect assessments on the real property owned by the Plaintiff and the Class members, and (i) to enjoin Defendant from continuing its current fraudulent practices with respect to the sale of club memberships and administration of club funds.

THE PARTIES

6. The Plaintiff is an individual and resident of the State of Tennessee having an address of 262 German Oak Drive, Memphis, Tennessee 38018.

7. Defendant Wyndham Destinations, Inc. is a Delaware corporation having and address of 22 Sylvan Way, Parsippany, New Jersey 07054; upon information and belief, Defendant Wyndham Destinations, Inc., is the successor in interest to Defendant Wyndham Worldwide Corporation. Defendant Wyndham Worldwide Corporation is a Delaware corporation also having and address of 22 Sylvan Way, Parsippany, New Jersey 07054; in its most recent Annual Report on Form 10-K filed with the U.S. Securities and Exchange Commission, Defendant Wyndham Worldwide Corporation lists several entities that include the name "Fairfield" as assumed names through which this Defendant operates. Defendant Wyndham Vacation Resorts, Inc., is a Delaware corporation registered to do business in the State of Arkansas and whose registered agent

in Arkansas is Corporate Creations Network, Inc., 609 SW 8th Street #600, Bentonville, Arkansas 72712; Defendant Wyndham Vacation Resorts is listed in the Van Buren County tax records as owning several parcels of real property at the Resort and in Van Buren County. Defendant Wyndham Worldwide Operations, Inc., is a Delaware corporation registered to do business in the State of Arkansas and whose registered agent in Arkansas is Corporate Creations Network, Inc., 609 SW 8th Street #600, Bentonville, Arkansas 72712. Defendant Fairfield Communities, Inc., is, upon information and belief, no longer operating but is a predecessor to one or more of the other Defendants; Defendant Fairfield Communities, Inc., was the grantor on a deed to Plaintiff in 1983 whereupon the subject real property parcel in Van Buren County was conveyed to the Plaintiff. Defendant Fairfield Communities Land Company is, upon information and belief, no longer operating but is a predecessor to one or more of the other Defendants; in 1974 Defendant Fairfield Communities Land Company was the seller of the subject real property parcel purchased by the Plaintiff. Defendant Fairfield Glade Community Club is, upon information and belief, no longer operating but is a predecessor to one or more of the other Defendants; in 1974 Defendant Fairfield Glade Community Club was the club designated by Defendant Fairfield Communities Land Company to which the Plaintiff was directed to pay assessments related to the parcel of real property the Plaintiff purchased in Van Buren County. Defendant Fairfield Bay Community Club, Inc., is the current entity assessing the Plaintiff and the Class members; Defendant Fairfield Bay Community Club, Inc., is an Arkansas corporation whose registered agent is Rocky Nickles, 337 Snead Drive, Fairfield Bay, AR 72088; Defendant Fairfield Bay Community Club is listed in the Van Buren County tax records as owning several parcels of real property at the Resort and in Van Buren County. Defendants X, Y, and Z Companies are unknown to the Plaintiff at this time but included in this Action as a matter of caution in the event one or more of the Wyndham – Fairfield

web of business organizations not formally named in this Action are determined to be essential or indispensable parties to this Action. Upon information and belief, all of the business organizations named as the Defendant are or were at one time, in some manner or fashion, affiliated with one another and are jointly and severally liable to the Plaintiff and the Class members for the relief requested in this Action.

JURISDICTION AND VENUE

8. Plaintiff and all proposed Class members either purchased from Defendant real property that is located at the Resort, currently own real property at the Resort, or both. Defendant owns real property at the Resort, is registered to do business in the State of Arkansas, and in at least one instance is organized under the laws of the State of Arkansas. The Resort and the real property lots that are the subject of the constructive trust being sought by the Plaintiff and the Class members are located in Van Buren County.

9. Accordingly, this Court has jurisdiction over the parties and the subject matter of this action, and venue is proper.

COMMON FACTUAL ALLEGATIONS

10. The Plaintiff and the Class members either purchased from Defendant real property that is located at the Resort, currently own real property that is located at the resort, and/or once owned real property located at the Resort. During their ownership of real property at the Resort the Plaintiff and Class members were required by Defendant to pay assessments and have paid assessments to Defendant.

11. While the sales agreements recite the assessments paid by the Plaintiff and the Class members are for “rights, privileges, and benefits of a member” in the club at the Resort, there are neither rights, privileges, nor benefits pertaining to any of the real property parcels at the Resort.

Defendant has taken money from the Plaintiff and the Class members and done nothing to benefit them.

12. At the time of sale of the lots at the Resort, the Plaintiff and the Class members were induced to make their purchase decisions by statements made by Defendant's sales representatives to the effect that roads, water, electricity, and other improvements were planned and would be made. None were made.

13. Money was, however, collected from the Plaintiff and the Class members. Although requested from time to time, at no time have the Plaintiff and Class members received an accounting of the total assessments collected attributable to their real property at the Resort or the uses of the collected assessments by Defendant. Assuming an average number of lots at the Resort that were affected to be 300, ownership of their lots for an average of 30 years, and an average per lot assessment of \$30 per month, \$3.24 million in assessments have been collected by Defendant. The current assessment charged by Defendant to the Plaintiff and the Class members is \$59.20 per month.

14. In contrast, Defendant Wyndham Worldwide Corporation in its most recent Annual Report on Form 10-K filed with the U.S. Securities and Exchange Commission, reported "net revenues" of \$5.076 Billion and net income of \$871 Million. Other than indirectly through Defendant Wyndham Worldwide Corporation's filings with the U.S. Securities and Exchange Commission, the Plaintiff and the Class members have not received any financial information regarding the assessments they have paid to Defendant. It is not known whether or not Defendant takes the assessments collected from Resort property owners into income, holds the assessments in a separate account, or treats the funds in any other manner.

15. Whenever the Plaintiff or the Class members attempt to stop paying the monthly assessments on their Resort real property, they are threatened by Defendant with various economic harm, including injury to their credit ratings. This continuing behavior on the part of Defendant makes the fraud continuing and tolls the running of any otherwise applicable statute of limitations.

CLASS ALLEGATIONS

16. Plaintiff brings this action on behalf of himself and all others similarly situated pursuant to Arkansas Rule of Civil Procedure 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23(a) and (b).

17. The proposed class is defined as: All persons who purchased real property at the Resort and who paid assessments to Defendant.

18. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

19. Excluded from the Class are Defendant, and Defendant's parents, subsidiaries, affiliates, officers and directors, any entity in which any defendant has a controlling interest, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members, and members of the staffs of the judges to whom this case may be assigned.

20. The members of the Class are so numerous that joinder is impractical. While the exact number of members of the Class cannot be determined without discovery, Plaintiff believes that the Class consists of at least hundreds of members, the identity of whom, upon information and belief, can be readily determined upon review of records maintained by Defendant.

21. The claims of the representative Plaintiff are typical of the claims of the Class in that the representative Plaintiff, like all members of the Class, has paid thousands of Dollars to

Defendant and received nothing in return. As such, the factual basis of Defendant's misconduct is common to all members of the Class and represents a common thread of bad faith, unfair conduct, and/or unconscionable conduct resulting in injury to all members of the Class and potential and/or continuing injury to all members of the Class.

22. There are numerous questions of law and fact common to the Class and those common questions predominate over any questions affecting only individual Class members.

23. The predominating common questions of law and fact include:

a. Since the first sale of real property at the Resort, what amount of money attributable to assessments on Resort lots was collected by Defendant, from whom was that money collected, how was that money spent, and how much of that money is currently on hand;

b. Whether and under what circumstances the money from the assessments on Resort lots benefitted Defendant;

c. Whether and under what conditions or circumstances Defendant, as a general policy and business practice, made reckless or untrue statements to prospective purchasers of real property at the Resort for purposes of inducing the Plaintiff and the Class members to purchase the Resort lots;

d. Whether Defendant, as a general policy and business practice, allowed its employees and representatives to make reckless or untrue statements to prospective purchasers of real property at the Resort for purposes of inducing the Plaintiff and the Class members to purchase the Resort lots;

e. Whether Defendant's actions or omissions with respect to money collected as assessments deprived the Plaintiff and the Class of the benefits for which they paid the

assessments and to which benefits they were entitled, thus constituting unjust enrichment on the part of Defendant;

f. Whether Defendant's actions or omissions prior to the sale of the Resort real property its Business Tools constituted constructive fraud; and

g. Whether Defendant's actions or omissions prior to the sale of the Resort real property constituted common law fraud, and whether that fraud is continuing.

24. Other questions of law and fact common to the Class include:

a. The proper method or methods by which to measure damages;

b. The declaratory relief to which the Class is entitled; and

c. The scope of the constructive trust which may be imposed by the Court upon the real property at the Resort.

25. The Plaintiff's claims are typical of the claims of other members of the Class, in that they arise out of the same actions by Defendant, namely Defendant's sale of real property at the Resort to the Plaintiffs and Defendant's collection of assessments on that real property. The Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other member of the Class.

26. The Plaintiff is committed to the vigorous prosecution of this action and has retained competent attorneys experienced in the prosecution of class actions and, in particular, class actions on behalf of businesses and other persons against Defendant and other similar enterprises. Accordingly, the Plaintiff is an adequate representative and will fairly and adequately protect the interests of the members of the Class.

27. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is

small relative to the complexity of the litigation, and due to the financial resources of Defendant, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Class will continue to suffer losses and Defendant's misconduct will proceed without remedy.

28. Even if members of the Class themselves could each afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

FIRST CLAIM FOR RELIEF
An Accounting

29. The Plaintiff repeats and realleges the above paragraphs as if set forth herein.

30. When Defendant began collecting money from assessments imposed by Defendant upon or in any manner related to, derived from, or based upon ownership of the lots at the Resort owned by the Plaintiff and the Class members, that money was held *for the benefit of* the Plaintiff and the Class members, thereby creating a fiduciary relationship between Defendant, on the one hand, and the Plaintiff and the Class members on the other hand.

31. This fiduciary relationship was created during the sale by Defendant of real property at the Resort to the Plaintiff and the Class members. The Plaintiff and Class members had every reason to trust Defendant with the administration of the assessments.

32. The Plaintiff and Class members are entitled to an accounting from Defendant of the assessment funds, and Defendant has a duty to render an accounting to the Plaintiff and Class members to determine damages resulting from any misuse or misallocation of the assessments collected.

SECOND CLAIM FOR RELIEF
Unjust Enrichment

33. The Plaintiff repeats and realleges the above paragraphs as if set forth herein.

34. The Plaintiff, individually and on behalf the members of the Class, asserts a common law claim for unjust enrichment.

35. Defendant collects assessments from owners of real property at the Resort.

36. However, as a general business policy and practice, Defendant does nothing in exchange for those assessments. The assessments are not used to provide any “rights, privileges, and benefits” to the Plaintiff and the Class members.

37. As a result, Defendant has been unjustly enriched to the detriment of the Plaintiff and members of the Class. The unjust enrichment of Defendant continues to this day in that Defendant continues to collect assessments from the Plaintiff and the Class members on a monthly basis, with the current assessment being at the rate of \$59.20 per month paid by the Plaintiff and each Class member. Defendant should be required to disgorge, on a pro rata basis, all monies, profits, and gains which it has obtained from the Plaintiff and members of the Class from the date of the first assessment on each of the Plaintiff and the Class members until the date of payment to the Plaintiff and the members of the Class.

THIRD CLAIM FOR RELIEF
Constructive Fraud

38. The Plaintiff repeats and realleges the above paragraphs as if set forth herein.

39. Defendant represented to the Plaintiff and the members of the Class that following their purchases of the Resort real property improvements such as roads and utilities (specifically water, sewage, electricity, and telephone service) would be made at the Resort to allow the Plaintiff and the Class members to enjoy access to and use of their Resort properties. This representation was demonstrably false because no improvements were ever made at the Resort that would in any manner benefit the lots owned by the Plaintiff and the Class members at the Resort.

40. Defendant either should have known that there were no roads and utilities planned for the lots purchased by the Plaintiff and the Class members or Defendant lacked sufficient knowledge upon which to make these representations.

41. Defendant, by its representations to the Plaintiff and the Class members, intended to induce them to purchase unimproved lots at the Resort which could not be enjoyed or occupied without the completion of the promised improvements.

42. The Plaintiff and the Class members justifiably relied upon Defendant's representations.

43. As a result of their reliance and the subsequent failure by Defendant to make the promised improvements at the Resort, the Plaintiff and the Class members were prevented from enjoying and occupying their lots at the Resort.

44. Since the time of sale of the lots at the Resort until this date, the fraud by Defendant is continuing in that none of the promised improvements have been made. The Plaintiff and the Class members continue to be prevented from enjoying and occupying their lots at the Resort.

FOURTH CLAIM FOR RELIEF
Common Law Fraud

45. Plaintiffs repeat and reallege the above paragraphs as if set forth herein.

46. Defendant represented to the Plaintiff and the members of the Class that following their purchases of the Resort real property improvements such as roads and utilities (specifically water, sewage, electricity, and telephone service) would be made at the Resort to allow the Plaintiff and the Class members to enjoy access to and use of their Resort properties. These representations were material in that the Plaintiff and the Class members would not have purchased real property at the Resort but for those representations.

47. These representations were demonstrably false because no improvements were ever made at the Resort that would in any manner benefit the lots owned by the Plaintiff and the Class members at the Resort.

48. Defendant had knowledge that these representations were false at the time they were made to the Plaintiff and the Class members.

49. Defendant intended to induce the Plaintiff and the Class members to purchase the unimproved lots at the Resort.

50. The Plaintiff and the Class members justifiably relied upon Defendant's representations and were ignorant of any facts or circumstances at the time of their purchases to the effect Defendant's statements were untrue.

51. As a result of their reliance and the subsequent failure by Defendant to make the promised improvements at the Resort, the Plaintiff and the Class members were prevented from enjoying and occupying their lots at the Resort.

52. Since the time of sale of the lots at the Resort until this date, the fraud by Defendant is continuing in that none of the promised improvements have been made. The Plaintiff and the Class members continue to be prevented from enjoying and occupying their lots at the Resort.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, on behalf of himself, the Class members, and others similarly situated, respectfully requests that this Court:

1. Determine that this action may be maintained as a class action under Rule 23 of the Arkansas Rules of Civil Procedure, that Plaintiff is proper class representatives, and that Plaintiff's attorneys are appointed Class Counsel;

2. Enjoin Defendant to prepare, at Defendant's expense, and deliver to the Plaintiff and the Class members a detailed accounting, prepared in accordance with generally accepted accounting principles, of all collections and expenditures of the assessments imposed by Defendant upon or in any manner related to, derived from, or based upon ownership of the lots at the Resort owned by the Plaintiff and the Class members for the time period commencing with the first collection of an assessment and ending upon the calendar month end immediately preceding the date of delivery of the accounting to the Plaintiff and the Class members, together with (a) a certification by the independent certified public accountant that the detailed accounting was prepared in accordance with generally accepted accounting principles and that the information presented is, to the best of the preparer's knowledge, a true, accurate and complete statement of the receipts and expenditures of the assessments, and (b) a certification by the appropriate officer of defendant to the effect that there have been no material changes in the account or accounts in which the assessments are held from the date of the accounting through the date of delivery of the accounting to the Plaintiff and the Class members;

3. Award compensatory damages and restitution in the amount of all fees paid by the Plaintiff and Class members and wrongfully withheld from them by Defendant;

4. Impose a constructive trust upon all assessment funds in any manner related to, derived from, or based upon the Resort real property owned by the Plaintiff or the Class members

currently held by Defendant and to enjoin the trustee of the constructive trust to distribute those funds to the Plaintiff and Class members pro rata with respect to payments made by each of the Plaintiff and the Class members, with the trustee's fees and expenses to be paid separately by Defendant and not by the corpus of the trust;

5. Enjoin the trustee of the constructive trust established by the Court to correct the applicable real property records to reflect clean title in each of the Plaintiff and the Class members without any lien or other impairment of title arising due to club membership or similar assessments, with the trustee's fees and expenses to be paid separately by Defendant and not by the corpus of the trust;

6. Enjoin Defendant from continuing to collect assessments on the real property at the Resort owned by the Plaintiff and the Class members;

7. Enjoin Defendant from continuing its current fraudulent practices with respect to the sale of club memberships and administration of club funds;

8. Hold all of the companies named as Defendant in this Action jointly and severally liable for the damages and restitution ordered to be paid by this Court;

9. Extend any injunction ordered by this Court to all of the companies named as Defendant in this Action;

10. Award actual damages in an amount according to proof;

11. Award pre-judgment interest at the maximum rate permitted by applicable law;

12. Award costs, including reasonable attorneys' fees pursuant to applicable law; and

13. Award such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs and the Class hereby request a trial by jury.

Dated: February ___, 2019

Respectfully submitted,

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BY: /s/ William P. Creasman
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