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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Jr., Circuit Court Judge

Case No.: 2009-CP-26-0043

Timothy A. Zinn, Robert Adams, Laura Arrington,
Stephen C. Black, Bradley Kirk Bray, Mark D'Amico,
Thomas A. DeVitis, Rodney Eddie Haynes, Jimmy
Kelly, Whitney Renee Knox, Lynn C. Lanpher, Holly
Levasseur, John Martin Loughlin, Joe Maranville,
Khalif Middleton, Chelcie Oxentine, Judith A. Parker,
Matthew W. Reed, Cynthia G. Reilly, Gerald Ryba,
Sherry Singleton, Steven G. Thoni, Stratton Vitikos,
Michael H. Willis, and Michael J. Zanardo Respondents/Appellants,

v.

CFI Sales & Marketing, Ltd., d/b/a Westgate Resorts, ...Appellant/Respondent

RECORD ON APPEAL

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1 MR. WILKERSON: Yes, Your Honor.

2 THE COURT: All right, you can call your first
3 witness.

4 THE COURT: Thank you, Your Honor. We would call
5 Connie Sharp.

6 THE COURT: All right.

7 Whereupon, Connie Sharp was called to the stand, duly
8 sworn by the clerk and testified as follows:

9 THE CLERK: State your name for the Court, please,
10 ma'am, and spell your last name.

11 MS. SHARP: Connie, S-H-A-R-P, Sharp.

12 DIRECT EXAMINATION

13 BY MR. WILKERSON:

14 Q Good morning, Connie.

15 A Good morning.

16 Q Let's tell this jury a little bit about you. Where do
17 you live now?

18 A I live in Orlando, Florida.

19 Q Are you married?

20 A Yes.

21 Q Okay, do you have any children?

22 A Yeah, have one son.

23 Q Okay, and how long have you lived in Orlando?

24 A Probably about 30 years.

- 1 Q Thirty years, and where did you live before that?
- 2 A Aiken, South Carolina.
- 3 Q Is that where you grew up?
- 4 A Yes.
- 5 Q Okay, and how did you come to live in Orlando? What
- 6 brought you down there?
- 7 A Marriage.
- 8 Q Okay, a good reason, and by whom are you employed in
- 9 Orlando?
- 10 A Westgate Resort, Central Florida Investments.
- 11 Q All right, what do you do for them?
- 12 A I'm the commission supervisor.
- 13 Q What does that mean? Tell the jury what, what you mean
- 14 by commission supervisor.
- 15 A I calculate the commissions for the salespeople. I
- 16 handle the reserve accounts and I transfer the files over to
- 17 the payroll to be paid.
- 18 Q All right, now, help us to understand, if you could, how
- 19 the paper trail works with regard to a transaction that is for
- 20 which a salesperson is entitled to receive a commission or
- 21 where commissions might be considered. First of all start, I
- 22 guess, with the sale of a, of a timeshare unit; correct?
- 23 A Yes.
- 24 Q And that timeshare sale is handled by the salesperson at

1 the, at the various properties usually?

2 A Yes.

3 Q Okay, and what is generated as a result of that
4 transaction? What sort of paperwork is generated as a result
5 of that transaction?

6 A A record is put into the computer system at the resort
7 and then the record is transferred into my commission system
8 through a download.

9 Q All right, and what do you call your commission system?

10 A SMS.

11 Q What does SMS stand for?

12 A Sales and Marketing System.

13 Q Sales and Marketing System and is that a computer
14 database?

15 A Yes.

16 Q Okay, and how long have you had the SMS program in place?

17 A Since the first of 2008.

18 Q And prior to the first of 2008 what sort of system did
19 you have in place?

20 A Sculpture.

21 Q Sculpture.

22 A Uh-huh, sculpture.

23 Q What is sculpture?

24 A It was another program for calculating commissions.

1 Q And how do they, how do they differ generally those of us
2 who don't understand anything about computer systems?
3 A The SMS system is newer technology. So, it'll do more
4 than the old system did.
5 Q It's more powerful?
6 A Yes.
7 Q Has more capabilities?
8 A Flexibility, uh-huh.
9 Q All right, now, what - tell us a little bit about the
10 sculpture system. Did it do essentially the same thing but
11 not quite as well or what?
12 A Right, it was more of a manual system. I had a lot more
13 manual things to do. In doing the calculations for the
14 commissions were done by the program but I had to correct more
15 because it wasn't as good as the one we have now.
16 Q Okay, now, when you implemented the SMS system did you
17 bring into the SMS system all of the data that you had from
18 the sculpture system?
19 A Yes.
20 Q And what was the impact of that? How did that, how did
21 that impact the records that you had?
22 A The IT department downloaded all the information into the
23 new program.
24 Q All right, and let's say for example that you had some

1 commission, some sales transaction or commission pending that
2 hadn't been paid yet, what, what would - how would the change
3 in system have impacted that?

4 A Everything was downloaded into the system. So, we had
5 all the information that was in the old system in the new
6 system now and if the deal had not been paid then this system
7 would pick it up and pay it.

8 Q All right, now, you've talked about computer systems. Do
9 you also maintain document backup information, hard copies of
10 backup information?

11 A Yes, of some things, uh-huh.

12 Q All right, tell the jury what sort of hard copy documents
13 that you maintain in your line of work in the, in the
14 commissions, the commission management.

15 A The salesperson's files, the payroll detail reports,
16 different things like that.

17 Q What's an MR?

18 A Mortgage receivables report.

19 Q Okay, what is - what about the deal sheet or the
20 worksheet, is that information available to you to look at to
21 see what the terms of the contract were?

22 A Yes.

23 Q Okay, and you said that you keep up with payroll, what
24 was the, what was the payroll, payroll report you said?

1 A Payroll detail report.

2 Q Payroll detail reports, what is that?

3 A It's a report that's given to the salespeople that tells
4 what deals they were paid on, what went into the reserve
5 account, the - what was in their advances, how, what and what
6 they're going to get.

7 Q Okay, is that kind of like a pay stub?

8 A Yes.

9 Q Okay.

10 MR. WILKERSON: Beg the Court's indulgence for one
11 moment, Your Honor.

12 THE COURT: All right.

13 BY MR. WILKERSON:

14 Q I'm going to hand you a document that we've marked
15 Defendant's Exhibit 36 for identification. Can you tell us
16 what that is, please?

17 A It's a copy of a check stub.

18 Q Is that what you were - is that an example of what you
19 were talking about to show an employee what they would - what
20 they were receiving in their pay?

21 A This is one of the examples, but it's not the payroll
22 detail report.

23 Q Okay, that's a check stub.

24 A Yeah, uh-huh.

1 Q Okay, is this a payroll detail report?

2 A Yes.

3 Q Okay.

4 MR. WILKERSON: Okay, I've marked that document as
5 Number 37. Any objection?

6 MR. CANTY: No.

7 MR. WILKERSON: Okay, Number 37, without objection,
8 Your Honor.

9 THE COURT: All right, Defendant's Exhibit Number 37
10 admitted into evidence without objection.

11 (Whereupon, Defendant's Exhibit Number 37 [Payroll Detail
12 Report] admitted into evidence and appropriately marked.)

13 MR. WILKERSON: How about 36, Gene, do you object to
14 that?

15 MR. CONNELL: Is that the one with the blank number on
16 it? We don't object to 36, Your Honor.

17 THE COURT: All right, Defendant's Exhibit Number 36
18 admitted into evidence without objection.

19 (Whereupon, Defendant's Exhibit Number 36 [Check Stub]
20 admitted into evidence and appropriately marked.)

21 BY MR. WILKERSON:

22 Q All right, now, we'll show these shortly but 36 is a
23 payroll paycheck stub; correct?

24 A Yes.

1 Q Now, and that's the type of information that a
2 salesperson would receive every two weeks when they got their
3 pay; right?

4 A Yes.

5 Q Now, were most people paid by hard checks or did they
6 receive bank drafts?

7 A Mostly they were direct deposits.

8 Q Direct, direct deposits, some people got checks?

9 A A few.

10 Q Depending upon the salesperson's preference?

11 A Yes.

12 Q All right, now, what is this Number 37?

13 A This is a payroll detail report.

14 Q And I'm going to put, put 37 up on the screen here. You
15 can help me. Should I turn this sideways? Would that help
16 you? All right, sir, now, just, just so that we can orient
17 ourselves to this, Connie, what is this again?

18 A This is a payroll detail report.

19 Q And it's for employee Holly LeVasseur?

20 A Yes.

21 Q Pay date, I guess that's a Friday?

22 A Yes.

23 Q Always paid on every other Friday; is that how it goes?

24 A Yes.

1 Q All right, now, this indicates an account number. Is
2 this a contract for which this person is going to be paid a
3 commission?

4 A Yes.

5 Q All right, now, what does this report tell us about that
6 commission?

7 A It was written as a pending deal and it tells the
8 purchase price, which is 14-4, and the volume which is 14-4,
9 the commission percentage, the amount paid, how much went to
10 reserves, which was 14-4. So, the commission was added to the
11 reserve account.

12 Q All right, now, this is a - what's pending mean?

13 A It was written as a pending deal. That means that
14 whenever it was initially written the owner only gave a
15 partial down payment.

16 Q All right, and you say that the commission, the entire
17 commission was paid into reserve on this particular case?

18 A Yes.

19 Q And why was that?

20 A That was because the salesperson was no longer with the
21 company.

22 Q All right, and is that the practice?

23 A Yes.

24 Q Okay.

1 A Yes.

2 Q We'll come back to that again in a minute. Now, this
3 document, Number 36, all right, this one looks like this
4 individual, Mr. Black, was receiving his pay by regular check;
5 is that right?

6 A Yes.

7 Q Okay, and this looks like a typical paycheck that we've
8 all received. Tell us what this shows.

9 A It shows that the salesperson's commission was 300 and
10 either 16 or 18, I'm sorry. I can't see far off, 316 and then
11 it shows the deductions for the Social Security and
12 everything, garnishments and everything on the other side.

13 Q Okay, and so, the net pay on this deal was \$127.52; is
14 that right?

15 A That was the total deductions, the year to date.

16 Q Oh, total deductions, I'm sorry.

17 A Uh-huh.

18 Q Net pay was \$188.48.

19 A Yes.

20 Q All right, and so, would a salesperson receive this type
21 of information on their pay every other Friday?

22 A Yes.

23 Q Now, Ms. Sharp, how are commissions determined? I mean,
24 how do you determine what commission is due in general?

1 A In general it depends on the, the - which resort it is
2 and it depends on the - which line it is and what the
3 commission, what the commissions are on the contracts.

4 Q Okay, when you say the contracts you mean the individual
5 contract with the salesperson?

6 A Yes.

7 Q What, what, what the employer has agreed to pay them in
8 commission ---

9 A Yes.

10 Q --- whether it was six percent, 11 percent ---

11 A Yes.

12 Q --- or something in between?

13 A Yes, uh-huh.

14 Q And there's something VPG that goes into that as well?

15 A Yes, the VPGs.

16 Q Explain to the jury how the VPG figures in.

17 A The VPGs is, is calculated by the resort and usually it's
18 - in, in Myrtle Beach it was from six to 11 percent, I think,
19 and it's calculated and each month it's, it's changed
20 according to what the salesperson's VPG is for that month.

21 Q Okay, and that data goes into the determination of how
22 much of a commission that person is entitled to receive?

23 A Yes.

24 Q All right, and what impact does the reserve account have,

1 let's say an employee who is currently employed working there
2 and still selling units and they are entitled to a commission,
3 what impact does the reserve account have on that commission?
4 A Ten percent of every commission that's paid is put into
5 the reserve account until you get to a maximum of \$7,000.
6 Q All right, 7,000 now. It used to be 3500?
7 A Yes.
8 Q Okay, now, so, so, in other words if I were entitled to
9 receive a 10 percent commission let's say on a \$10,000 deal,
10 10 percent commission would be what, \$1,000?
11 A \$1,000, uh-huh.
12 Q And of that 10 percent of that commission would go into
13 the reserve account?
14 A Yes.
15 Q So, that would be then \$100.
16 A Yes.
17 Q So, my commission that I would be paid as a result of
18 that transaction would be ---
19 A 900.
20 Q --- \$900. So, you can't just go linear with 10 percent
21 across the board then. You have to ---
22 A No.
23 Q --- you have to do the, do the analysis. All right, now,
24 in order to receive a or to be eligible for a commission

1 there's been a lot of talk in this case about a full down
2 deal. Tell the jury what is meant by a full down deal and how
3 does that, how does that impact your job?

4 A A full down deal is whenever on the date that the
5 contract was written the owner purchased that all the down
6 payment, closing costs and exchange fees were paid.

7 Q All right, and what is the impact of the rescission
8 period on a contract?

9 A It determines when - it's 10 days usually and then the
10 commission is paid after that. We have to wait for the
11 rescission period to go past before we can pay the deal.

12 Q All right, now, we described a full down deal and that's
13 the, that's the deal that occurs at the closing date that the
14 full down payment has been made.

15 A Yes.

16 Q Is that right?

17 A Yes.

18 Q Okay, now, what is - we've had a lot of discussion about
19 penders. What is a pender and how does that impact what you
20 do in the determination of commissions?

21 A A pending deal is whenever the owner purchases and they
22 only put a partial down payment and it's - the rest of the
23 remaining down payment is scheduled to pay at a later date and
24 then the commissions won't be paid on these deals until the

1 full down payment is in.

2 Q All right, and how is that recordkeeping maintained in
3 your office as to when that full down payment has been made
4 and the commission then is earned?

5 A When the full down payment is made then the computer
6 automatically puts in a due date for the payment of the
7 commission to be calculated and then whenever I generate the
8 payroll it collects all the information and pays the
9 salesperson on the deal.

10 Q All right, and how does the computer know that the full
11 down payment has been made?

12 A Because the payment is put into the MR file.

13 Q Okay, tell us about an MR file.

14 A It's the mortgage receivables file; and so, whenever you
15 pay anything into the company on your deal then it's
16 registered in there, kind of like your car payment whenever
17 you pay it in.

18 Q Okay, and is interaction with all of these different
19 files and different systems part of your job as the
20 commissions manager?

21 A Yes.

22 Q All right, now, it has been suggested that one way to
23 figure out how much commission someone may have earned is to
24 just take the total amount of their sales, apply 10 percent to

1 it or whatever their commission rate might be and that's what
2 they should have been paid in commission; is that a - does
3 that computation have any bearing at all on the determination
4 of how much commission is due?

5 A No, you can't do simple math on it. You have to look at
6 each individual deal and see what commission was paid on that
7 and then subtract the reserve account from it and you just
8 can't do simple math.

9 Q And why not?

10 A Every deal is different. You could be paid a different
11 commission on it because of the circumstances of the deal and
12 they could be pending still. They could have been rescission
13 and rescission and no longer a viable deal so that the simple
14 calculation doesn't work.

15 Q Okay, how does a VOA figure into that or VOA upgrade?

16 A A VOA is only paid at \$40. The salesperson only gets
17 \$40. The TO only gets \$40 on the deal. So, it doesn't even
18 come into the calculation with the 10 percent of your volume.

19 Q All right, and how does the - you mentioned pending. How
20 does the fact that a contract might be pending have any impact
21 on, on, on that mathematical formula that we were just talking
22 about?

23 A Well, the volume that I use is volume for all of their
24 deals. So, they take their deals and then they add them, all

1 the volume up and then they multiply it by 10 percent, but
2 whenever the pending deal is in there you can't take that
3 volume and add it to it. It's going to be paid at a later
4 date.

5 Q And why is that?

6 A Because all the down payment isn't in yet.

7 Q Okay.

8 A And the down payment has to be in before the commission
9 can be paid to the salespeople.

10 Q Okay, and do you typically have conversations with
11 salespeople about that very issue?

12 A Yes.

13 Q Is that a question that's raised to you quite often by
14 salespeople, why they haven't been paid a commission?

15 A Yes.

16 Q Okay, and Westgate Resort here in Myrtle Beach is this
17 the only property that you handle the commissions for for
18 Westgate?

19 A No.

20 Q How many?

21 A I handle it for all of them.

22 Q How many, how many properties are there approximately?

23 A Probably about 25.

24 Q All around the country?

1 A Yes, uh-huh.

2 Q Okay, and so, is that a typical type of question you
3 would get from a sales representative in any location?

4 A Yes.

5 Q Now, what impact does something called a mail out that
6 hasn't come in, what does that mean?

7 A A mail out is when an owner hasn't signed all their
8 paperwork we send it out to them. They've heard ---

9 Q Okay, let's, let's, let's, let's put this into context.

10 A Okay.

11 Q So, somebody goes to a - to the property to buy a unit or
12 buy a week and they don't fill out all the paperwork and
13 sometimes they're allowed to take it home and send it back; is
14 that what happens?

15 A Usually when you go to the resort you go through deeding
16 and they sign all the paperwork there. Whenever it is like an
17 upgrade or the - we have a phone team that calls the people
18 and asks them and then the paperwork is done at the office and
19 mailed to the owner and they sign the paperwork and send it
20 back to us.

21 Q All right, and so, the paperwork has to come in and be
22 processed before you can determine what sort of commission is
23 due?

24 A Yes.

1 Q Okay, now, there's been a lot of discussion about reserve
2 accounts. What is a reserve account? What is, what is the
3 reserve?

4 A The reserve account is 10 percent of each commission is
5 put into the reserve account up to \$7,000 and the reserve
6 account is held to - for the chargebacks of the deals that
7 haven't made their six consecutive timely monthly payments.

8 Q Okay, now, what goes into a - to, to - what, what is
9 transferred to reserve for an employee who is no longer
10 employed by Westgate?

11 A Whenever the person is deactivated in the SMS system the
12 commissions payable is automatically put into the reserve
13 account.

14 Q And that was the one we just saw here just a minute ago.

15 A Yes.

16 Q So, just to put it into and bring it down to the
17 salesperson level if I was a salesperson at Westgate and I
18 left the employ two weeks ago and my commission comes due two
19 weeks later what happens to that commission?

20 A It'll be put into the reserve account.

21 Q And when is it put into the reserve account?

22 A Whenever it's payable.

23 Q Okay, and how is it, how is that transfer made? Is that
24 a bookkeeping entry?

1 A Yes, uh-huh.

2 Q And how is that bookkeeping entry made? Do you actually
3 go into the books and make that entry yourself or ---

4 A No, the computer automatically does it.

5 Q The SMS system does that?

6 A Yes.

7 Q And the SMS system does that when the, when the, when the
8 commission is payable?

9 A Yes.

10 Q And let's talk - we haven't talked about when a
11 commission is payable. How long does it generally take for a
12 commission to become payable after the deal becomes good,
13 after the full down payment has been made and the rescission,
14 the rescission period is past how long generally does that
15 take?

16 A It depends on if the deal is full down or pending,
17 written as full down or pending.

18 Q Okay, let's take them, let's take them one at a time,
19 what about a full down deal, how long does it take for that
20 deal for the commission then to become payable?

21 A If it's a full down deal and if the method of payment is
22 a personal check or Discover it's 28 days from the date it's
23 written. If it is a pending deal, no, I'm sorry. If it's a
24 MasterCard, a traveler's check or cash or anything like that

1 then it's 21 days from the date it's written.

2 Q Why do you all discriminate against Discover cards?

3 A Because it - I don't know. It takes them longer or
4 something to do the thing. It's just like a personal check.

5 Q Okay, and so, anywhere from 28 - 21 to 28 days after the
6 deal?

7 A Yes.

8 Q Okay, now, how about a pending deal? When does it become
9 payable?

10 A A pending deal we have to wait for the down payment to
11 come in and then after that then if it is a personal check or
12 a Discover then it's 21 days from the date of deposit, and if
13 it is Visa, MasterCard, credit card, traveler's checks, cash,
14 anything like that, it is - if it falls on the thing, if the
15 deposit falls on a Wednesday, which is my cutoff date, then it
16 will be paid that Friday. If it's after the Wednesday then
17 it'll be paid on the next Friday or the next payday really.

18 Q All right, now, Ms. Sharp, have you at counsel's request
19 conducted an investigation into the claimed commissions in
20 this case?

21 A Yes.

22 Q And have you personally or at your direction researched
23 each and every transaction that is at issue here?

24 A Yes.

1 Q And those have been identified to you by counsel?

2 A Yes.

3 Q And tell us about what that research entails? What, what
4 did you go and look through and how did you do the research to
5 evaluate those transactions?

6 A I went into SMS and put in the contract numbers and then
7 I checked to see if the deal was paid, if it was still
8 pending, if it was a rescission cancel or a purchaser default
9 cancel or what happened to the deal.

10 Q All right, and how about backup documentation, has that
11 been reviewed as well?

12 A Yes.

13 Q And what sort of backup documentation has been looked at?

14 A I looked at the payroll detail reports to see if they
15 were paid or if they went into reserves, what happened to the
16 deals and to put it on the spreadsheet.

17 Q All right, and you reference the spreadsheet. A
18 spreadsheet has been prepared based upon that information that
19 you, that you have reviewed and gathered?

20 A Yes.

21 Q Okay, and I'm going to show you this box of stuff here.
22 Now, is this the data, the backup data that you have gathered
23 with regard to the deals that are in issue here in the case?

24 A Yes, sir.

1 Q All right, now, these materials, are they maintained in
2 the ordinary course of business by CFI Sales and Marketing,
3 Ltd., and the Westgate enterprise?

4 A Yes.

5 Q And when the materials are prepared are they prepared at
6 or about the time that the event described occurred? I mean,
7 are they contemporaneous records for example?

8 A Yes.

9 Q These are not records that somebody goes back and creates
10 at a later date?

11 A No.

12 Q And are they maintained in a manner that is standard
13 business practice to keep them in an orderly fashion so you
14 can always go back and find them?

15 A Yes.

16 Q And are they referenced in computer databases?

17 A Yes.

18 Q And has some of your research involved reviewing and
19 printing down some of the, some of the computer databases?

20 A Yes.

21 Q All right, now, and are you - do you have access and are
22 you custodian of those records yourself?

23 A Yes.

24 Q All right, now, the information that you have reviewed

1 have you, have you supervised the creation of spreadsheets
2 from that data?

3 A Yes.

4 Q And have you confirmed for yourself that the spreadsheets
5 that you have prepared are accurate based upon the actual data
6 that's maintained in the ordinary course of business?

7 A Yes.

8 Q All right, and do you - does that - do those spreadsheets
9 provide an accurate summary or an accurate chart of the data
10 that you've reviewed that is relevant to these inquiries?

11 A Yes.

12 Q All right.

13 MR. WILKERSON: Your Honor, I just need a second.

14 THE COURT: All right.

15 MR. WILKERSON: I've lost my - I've lost my data. If
16 I may step out into the hall for that.

17 THE COURT: All right.

18 MR. WILKERSON: Could I do that?

19 THE COURT: Briefly.

20 MR. WILKERSON: I'll be right back.

21 THE COURT: Let's go ahead and raise the screen and
22 turn the lights back on. If they need it we'll put them back
23 down.

24 MR. WILKERSON: Thank you for the accommodation, Your

1 Honor.

2 THE COURT: All right.

3 BY MR. WILKERSON:

4 Q Ms. Sharp, I'm going to hand you some spreadsheets there
5 and ask you if those spreadsheets are the ones that you have
6 just described that were prepared based upon your review of
7 those documents.

8 A Yes, sir.

9 Q All right.

10 MR. WILKERSON: Mark this, please.

11 Your Honor, we've marked these spreadsheets as
12 Defendant's Exhibit 38 and we'd offer this spreadsheet
13 pursuant to South Carolina Rules of Evidence 1006 as a summary
14 of voluminous documents and we believe that we've complied
15 with the rule in order to get this summary into evidence on
16 that basis.

17 THE COURT: All right, any objection?

18 MR. CONNELL: Your Honor, I haven't seen it.

19 MR. WILKERSON: And Your Honor, for the record, the
20 documents upon which those summaries are based are in the
21 courtroom for examination as provided under Rule 1006.

22 THE COURT: All right, I understand.

23 All right, Mr. Connell, Mr. Canty, any objection to the
24 exhibit?

1 MR. CANTY: May we approach, Your Honor?

2 (Whereupon, a bench conference was held in the presence
3 but out of the hearing of the jury.)

4 THE COURT: All right, Defendant's Exhibit Number 38
5 is admitted into evidence over Plaintiffs' objection.

6 (Whereupon, Defendant's Exhibit Number 38 [Spreadsheets]
7 admitted into evidence and appropriately marked.)

8 BY MR. WILKERSON:

9 Q Now, Connie, this document, this series of documents,
10 these spreadsheets indicate they were printed this morning at
11 one o'clock in the morning.

12 A Yes.

13 Q Now, has the preparation of these summaries been an
14 ongoing operation throughout this week?

15 A Yes.

16 Q Have you been participating in that preparation?

17 A Yes.

18 Q And the necessity of the ongoing operation is because the
19 actual transactions involved were not available until these
20 witnesses actually testified; is that right?

21 A True.

22 Q And so, once the testimony came in identifying a
23 transaction and data that you had already pulled you went back
24 and put that into the spreadsheet?

1 A Yes.

2 Q Okay, and so, that's why the date and the time is early
3 this morning, that was late night?

4 A Yes.

5 Q Okay, now, these - tell the jury how these, how these
6 spreadsheets are broken down if you would. Do you have a
7 separate spreadsheet for each individual employee involved in
8 the case?

9 A Yes, sir.

10 Q All right, and under the spreadsheet you've got various
11 transactions. Are those the individual transactions that
12 you've been advised by counsel were at issue in this case?

13 A Yes.

14 Q And what data have you put on these spreadsheets for the
15 jury's review?

16 A The salesperson's name, the contract number, the owner's
17 name, the commission amount, if the commission was earned or
18 not and the reason not earned, the commission pay date and the
19 disposition, the commission disposition, whether it was paid
20 to the salesperson or added to the reserves, and then a
21 comment of where you can find the information.

22 Q All right.

23 MR. WILKERSON: Now, Your Honor, I would like to now
24 with Mr. Powers' assistance go through each one of these

1 spreadsheets and present them for the jury's, jury's review.

2 THE COURT: All right.

3 MR. WILKERSON: If we can start with the spreadsheet
4 of Robert Adams.

5 THE COURT: All right, let's lower the screen, please.

6 MR. WILKERSON: Bear with me just a moment, Your
7 Honor.

8 BY MR. WILKERSON;

9 Q All right, Ms. Sharp, let's take a look at this
10 spreadsheet if we can and we may need to get some assistance
11 in making this a little larger to read but if you can start
12 here. I'm not sure we can actually read this. That's the
13 contract, contract number; is that right?

14 A Yes.

15 Q All right, and ---

16 A Oh, yay.

17 Q --- that's good. Bring it up there a little larger.
18 Okay, so, contract number is the first column. The client
19 name, that would be the purchaser; correct?

20 A Yes.

21 Q And for this transaction you computed the commission
22 amount; correct?

23 A Yes.

24 Q And the commission earned. So, let's take this

1 transaction. This is Edith Hagler [spelled phonetically].
2 A Uh-huh.
3 Q Commission amount according to the records that you've
4 reviewed is \$2,000. That commission has been earned. Now,
5 what do you mean by earned?
6 A The commission was a full down deal and past the
7 rescission; and so, it was payable.
8 Q All right, and so, the reason not earned you don't have
9 anything there because it was earned and the commission pay
10 date, when was it paid?
11 A 11-16-07.
12 Q And to whom was it paid?
13 A To salesperson.
14 Q So, it was paid to Mr. Adams?
15 A Yes.
16 Q And this comment over here what does that mean, paid per
17 sculpture, 11-16-2007? What does that mean?
18 A If you go to the sculpture payroll detail reports that we
19 have then it was - you look for 11-16-07, the pay date on it
20 and it would be on that one, that payroll detail report.
21 Q All right, all right, now, if we can there were four
22 transactions here for Mr. Adams, the other three are down
23 below, Mr. Brown, Ms. Graham and Ms. Johnson. You've got the
24 commission amount stated there, whether or not the commissions

1 were earned, that's yes, and the commission paid date you've
2 got January 23, '07, 11-28, excuse me January 23, '09, 11-28-
3 08 and 12-28-08. Now, if we can back out from this, please,
4 Mr. Powers, and let's look at the top of the spreadsheet.
5 This shows a hire date and a termination date here, Ms. Sharp,
6 shows that this individual was hired on 2-19-2007, terminated
7 on 11-21-2008; is that right?

8 A Yes.

9 Q All right, now, if we can go back and look at these, at
10 this, this group here, Mr. Powers. All right, now, these
11 three transactions it looks like this one was paid on January
12 23, 2009. He left in November. Why was it paid that late?

13 A It was probably a pending deal and didn't come good until
14 then and then it was paid.

15 Q Okay, and under commission disposition you've got that it
16 was added to the reserve. What does that mean?

17 A That means that when the commission was paid that it was
18 put into the reserve, the full amount.

19 Q And why wasn't it paid to him?

20 A Because it was he was deactivated in the SMS system. So,
21 it went to the reserve automatically.

22 Q Okay, and commission paid date is that the date that that
23 bookkeeping transaction occurred 11-16-2007?

24 A 1-23.

1 Q I'm sorry. I'm talking about 1-23-2009?

2 A Yes.

3 Q I'm sorry. I pointed to the wrong one.

4 A Uh-huh, yes.

5 Q All right, and the same is true of these other three, the

6 other two transactions below that; is that right?

7 A Yes.

8 Q So, those - that this, this, this spreadsheet reflects

9 the date that the commission was paid, where it went in these

10 two situations, added to the reserves and out here is the

11 backup data that you've got that supports that.

12 A Yes.

13 Q All right, let's go to Ms. Arrington, Laura Arrington,

14 please. Okay, Ms. Sharp, this is a - multi-pages from Ms.

15 Arrington. She identified a number of transactions. We've

16 got here that she was hired on 5-31-06. She terminated on

17 June the 14th, '07. So, she worked there about a year and, a

18 year and half a month, a year and two weeks. Now, she then

19 went over as a, as a TO. What's a TO?

20 A It's like a - it's a manager that comes in and kind of

21 like a car salesperson.

22 Q Kind of the sales manager that comes in.

23 A Whenever you, yes, whenever you go to buy a car you, you

24 - he - this - you visit with the salesperson and they take you

1 around and show you the villas and everything and then
2 whenever you sit down at the table and going to buy then the
3 TO comes in, the manager comes in.

4 Q All right, now, the commission rate is it different for a
5 sales representative and a TO?

6 A Yes.

7 Q And what's the TO's commission rate?

8 A Usually they receive a pull which is usually 2.5 percent
9 to three percent depending on which resort it's at and which
10 line it's on and also sometimes they receive an override.

11 Q All right, now, let's, let's look at the body of the, of
12 the document here. If you can bring up maybe the first, first
13 three there, Mr. Powers, like you did for the last one.

14 Okay, line one is a transaction involving Tiffany Jones
15 and Omar Forbes, and the - can you make it so we can see the
16 headings? All right, bring that top, top one, bring the
17 bottom one down so we can - there we go. The account number
18 and the client name on line one and if we carry it on across
19 here the question then becomes was the commission earned and
20 the answer is no and you say reason not earned your records
21 indicate what?

22 A No full down payment.

23 Q All right, and so, the commission pay date is not paid
24 because it's not owed; right?

1 A Right.

2 Q Now, when you say no full down payment does that mean as
3 of today that down payment has not been made?

4 A Yes.

5 Q Okay, and out here in the comment what happened to that
6 deal?

7 A Commission not owed, deal cancelled, down payment was not
8 completed, proof is the MR payment history.

9 Q And the MR payment history is in the documentation you've
10 got here?

11 A Yes.

12 Q All right, second one here the customer's name is Lynn
13 McCarder [spelled phonetically], again not owed, down payment
14 was not complete; is that, is that a similar transaction?

15 A Yes.

16 Q And the third one here, Darlene Cummings, is that again a
17 similar transaction?

18 A Yes.

19 Q Now, I want to, first of all, do you recognize these
20 documents as documents relating to the Darlene Cummings'
21 transaction?

22 A Yes, sir.

23 Q All right.

24 MR. WILKERSON: Mark this as one exhibit, please, a

1 two-page exhibit. Okay.

2 MR. CANTY: No objection.

3 MR. WILKERSON: Without objection, Your Honor, we
4 would offer Number 39.

5 THE COURT: All right, Defendant's Exhibit Number 39
6 admitted into evidence without objection.

7 (Whereupon, Defendant's Exhibit Number 39 [Proposal -
8 Cummings] admitted into evidence and appropriately marked.)

9 BY MR. WILKERSON:

10 Q Okay, Mr. Powers, can you bring the first page of 39 up,
11 please, sir? I don't mean to stand in front of somebody.

12 Yes, sir.

13 All right, I'm going to hand you the document here.

14 A Okay.

15 Q Connie, and let's, let's, let's walk through this. What
16 is this document?

17 A That's a proposal.

18 Q And what does that mean? Where does that come from?

19 A It's generated at the resort and it's given to the
20 salesperson so they know what deal they've done.

21 Q Okay, and does that data find its way back into the
22 records of Westgate?

23 A Yes, this is where they input it from, on - in the
24 computer.

1 Q Okay.

2 A At the resort.

3 Q And I believe that the - that it's already been testified
4 to that this data is, is, is the basis of the, of the
5 contract, that this data then goes on and the deed, the
6 deeding department creates all the documents that make this a
7 legal transaction; is that right?

8 A Yeah, the contract processing gives it to deeding.

9 Q Okay, well, let's look up here if we can.

10 MR. WILKERSON: And Your Honor, for, for privacy
11 we've redacted personal data from these documents so that that
12 won't be available. If we've redacted something we wrote
13 redacted in the section.

14 THE COURT: All right.

15 BY MR. WILKERSON:

16 Q The date of this proposal was 6-29-07. That's the date
17 that the customer actually came to the property; is that
18 right?

19 A Yes.

20 Q Okay, and if we can look down here this is what they
21 bought. They bought villa number 72B in building 2000 for
22 week 35; right?

23 A Yes.

24 Q Now, if can go on down, this is, this shows the purchase

1 price. It shows the down payment of 10 percent, which was
2 due, annual percentage rate of 17.99, that's on the note when
3 they purchase it; is that right?

4 A Yes.

5 Q And it shows the amount of the down payment and then it
6 shows the other fees that are due and then the total that is
7 due today; right? That's 17-34.

8 A Yes.

9 Q So, in order for this to be a full down deal that
10 purchaser would have had to have made a payment of 17-34; is
11 that right?

12 A Yes.

13 Q What does this document reflect that the customer
14 actually paid that day?

15 A \$200.

16 Q All right, now, the records also show - what are these
17 payments down here? Is that, is that the installment payments
18 for the unit itself or is that the down payment?

19 A No, that's the extension for the down payment. They only
20 paid \$200 the date of the deal. So, the remaining of it would
21 be paid at a later date.

22 Q All right, now, we've already established that this
23 transaction occurred in June of 2007; correct?

24 A Yes.

1 Q Now, down here it says that the first payment date,
2 payment due date is 11-1-07. What does that mean?
3 A Their first monthly payment is due then to start.
4 Q And the first monthly payment is \$288?
5 A Yes.
6 Q Now, that - how is that different than the down payment?
7 A The down - the monthly payments are paying off the loan
8 that they had and the down payment is what is needed in order
9 for the commission to be paid.
10 Q Okay, now, for this transaction it appears that you've
11 got four monthly payments of 3-83 to make up the difference on
12 the down payment and fees the 17-34; is that right?
13 A Yes.
14 Q And it appears that the first payment is not due until
15 after that date. So, it gives them time to pay their down
16 payment first and then their first monthly payment is due in
17 November.
18 A Yes.
19 Q All right, now, the second page of that exhibit, please,
20 Steve. Now, could you make that a little bigger? What is
21 this, Connie?
22 A This is a mortgage receivables report.
23 Q What does that mean?
24 A Excuse me. This is a report that tells all the

1 information that was on the proposal. You can see the
 2 original next is the first monthly payment and the down
 3 payment and all the information that we saw on the previous
 4 one that was put into the computer.

5 Q Okay, okay, PP, that's purchase price?

6 A Yes.

7 Q Down payment, 16-50?

8 A Yes.

9 Q What's MP?

10 A Monthly payment, no.

11 Q Okay, that's a little different.

12 A Yeah, no. I don't know right off the top of my head.

13 Q Okay, could that be the difference in the down payment?

14 Anyway ---

15 A Could be, yeah.

16 Q All right, now, this, this data then goes down and
 17 identifies, what is this information down here at the bottom?

18 A Those are the payments that were made. See it says the D
 19 is for the down payment and then it says the due date and the
 20 paid date, how much they paid and what method of pay it was
 21 and the modification date.

22 Q All right, now, Steve, could you put this up side by side
 23 with the other, page one? All right, and if you could bring
 24 that section up larger, not that one, I'm sorry, this one

1 right here and then this section right here up side by side if
2 you could. All right, now, so, if we took - if we look at
3 the, at the, at the purchase order here it shows that they
4 owed, this customer owed, they paid 200, they owed 3-83 per
5 month for the next four months; right?

6 A Yes.

7 Q And here's what they paid. They paid - there's that
8 first \$200 payment that they made right there?

9 A Yes.

10 Q On 6-29.

11 A Uh-huh.

12 Q Then the next payment was due on 7-29 of 3-38. How much
13 did they pay on 7-29?

14 A \$200.

15 Q Okay, the next payment was due on 8-29 of 3-83. How much
16 did they pay on 8-29?

17 A \$200.

18 Q Well, let's, let's look here for just a second.

19 A No, nothing, no.

20 Q I'm sorry.

21 A Uh-huh.

22 Q The due date was 7-29 and 8-29 but the date paid, the
23 first, that first installment payment of \$200 was made on 7-
24 29, that was the day it was due; right?

- 1 A Yes.
- 2 Q And the next one it was due on the 29th it was paid on the
- 3 2nd day of September; right?
- 4 A Yes.
- 5 Q Now, were any other payments made on that down payment?
- 6 A No, that was it.
- 7 Q All right, was that down payment paid in full?
- 8 A No.
- 9 Q And did this, did this, did this transaction generate a
- 10 commission?
- 11 A No.
- 12 Q All right, can we go back to the spreadsheet; please?
- 13 And what we just looked at was this Darlene Cummings'
- 14 transaction; right?
- 15 A Yes.
- 16 Q And it reflects on your spreadsheet no full down payment,
- 17 commission not owed, down payment was not complete, cancel
- 18 pending default and the mortgage receivable payment history is
- 19 what you relied upon?
- 20 A Yes.
- 21 Q So, that contract is gone, dead, cancelled.
- 22 A Yes.
- 23 Q And it's cancelled for what reason?
- 24 A It was a pending deal that never became full down.

1 Q Okay, is that a typical transaction that you have
2 reviewed that would relate to a non-full down payment
3 transaction?

4 A Yes.

5 Q Okay, now, if we could just show the, show the main page
6 there. Looks like you have a number of no full down payments
7 here, and let's look at number five here, or excuse me, number
8 four, okay, for that transaction that would be Clinton Farley
9 [spelled phonetically] and Rachel Green. It says here that
10 see XL rescission. What does that mean?

11 A That means that they cancelled within the rescission
12 period.

13 Q Okay, is a commission owed on that transaction?

14 A No.

15 Q And the backup data that you have in this box is what?

16 A The MR is the proof.

17 Q Okay, now, if you back that away, please, sir. So, the
18 rest of the transactions on here, I won't go over each one of
19 them, they speak for themselves, but each one of these other
20 transactions on this page is no full down payment; right?

21 A Correct.

22 Q Can we go to the next page, please? Looks like a similar
23 page here. All these transactions no commission due because
24 no full down payment on any of these transactions.

1 A Correct.

2 Q All right, you've also got a cancellation for rescission;
3 is that right?

4 A Yes.

5 Q Okay, let's go to the next one. Again, a series of no
6 full down payments and cancellation for rescission. Is, is,
7 non-payment of the down payment on a pender an unusual event?

8 A No.

9 Q Does that happen all the time?

10 A Yes.

11 Q Okay, let's go to the next page, please, sir. Again, no
12 full down payment for all these transactions. Is that
13 reflected in your records?

14 A Yes.

15 Q The next page, please. Okay, again, no full down payment
16 on these.

17 A Yes.

18 Q All right, now, these, these transactions we've got no
19 commission earned. Let's see here, what about this top one
20 here, number 51, this McBride [spelled phonetically]
21 transaction. It says no commission was earned for Ms.
22 Arrington and why was there no commission earned for her? We
23 can ---

24 A Yes.

1 Q --- highlight this, Steve, this top line for us, please.
2 Okay, it says here that salesman Kirk Bray was paid for that
3 transaction.
4 A Yes.
5 Q Well, what does that mean?
6 A The salesperson on the deal was Kirk Bray. It wasn't Ms.
7 Arrington.
8 Q All right, so, the commission was paid to Mr. Bray, not
9 to Ms. Arrington.
10 A Right.
11 Q That's why she didn't get a commission.
12 A Right.
13 Q Okay, and your records reflect that that, that sale was
14 handled by Mr. Bray.
15 A Yes.
16 Q Okay, back out from that, please, sir. Now, these
17 transactions, these are some of them on her list and it -
18 these are lines, just for example, 53 down to 61 it appears
19 that each one of these under the commission earned section was
20 paid, it shows a paid date and it shows paid to salesperson.
21 What does that mean?
22 A That the salesperson received the commission on the deal.
23 Q So, that means that Ms. Arrington was given, was paid for
24 these?

1 A Yes, sir.

2 Q And you've identified the documents in your records that
3 reflect that payment?

4 A Yes, sir.

5 Q All right, let's go to the next page, please, sir. Did
6 you skip one? I think you did.

7 MR. POWERS: I think I did.

8 Q Go back to seven. All right, sir, and Connie, I want to
9 call your attention to a couple of them on this page if I can.
10 These are payments that are - the commissions, all of them on
11 this page, page seven for Ms. Arrington your records reflect
12 that the commission was earned; right?

13 A Yes.

14 Q And it reflects an amount of the commission that was
15 earned; right?

16 A Yes.

17 Q And it reflects what happened to those commissions?

18 A Yes.

19 Q Correct? Now, the first few up here says paid to
20 salesperson, paid to salesperson, paid to salesperson, paid to
21 salesperson, and then the next one shows that it was added to
22 reserve. That would be number 71. Now, why would that be
23 added to the reserve again?

24 A Because she's no longer with the company.

1 Q Okay, as of the date that it became due?
2 A Yes.
3 Q Okay, reflected here that her termination date was 3-4-08
4 and this became due on 4-18-08. So, instead of paying her you
5 paid it in the reserves according to your policy.
6 A Correct.
7 Q Now, and that payment was made on that day?
8 A Yes.
9 Q Okay, again, we keep coming down. We've got payments to
10 the reserves, payment to the reserves and this one kind of
11 stands out. That one's tomorrow.
12 A Yes.
13 Q It's 2-17-2012.
14 A Yes.
15 Q Help us to understand why that, why that says it was paid
16 to the reserves tomorrow.
17 A Because whenever we were - I was doing the research I
18 found that the, the deal wasn't paid right, mail out, oh, the
19 mail out wasn't in when the, when the deal was - when it was
20 transferred from sculpture to SMS it was a mail-out. So, the
21 due date wasn't set. So, it wasn't paid.
22 Q So, can we say in standard parlance that that one just
23 slipped through the cracks?
24 A Yes.

- 1 Q When you changed your computer system?
- 2 A Yes.
- 3 Q Now, it says added to reserve tomorrow. Where did that
- 4 come from? Why did you do that?
- 5 A Because she's deactivated in the SMS system. It
- 6 automatically puts it in reserves.
- 7 Q And why tomorrow?
- 8 A Because it's processed tomorrow.
- 9 Q Okay, that's, that's pay day, tomorrow pay day.
- 10 A Pay date, pay date, yes, uh-huh.
- 11 Q Okay, so, that one goes into reserves but that one was
- 12 not in reserve until tomorrow. As a matter of a fact it
- 13 doesn't go there till tomorrow.
- 14 A Right.
- 15 Q Okay, right now it's just sitting on the books of
- 16 Westgate as commission.
- 17 A Yes.
- 18 Q How much is that commission? Let's back up again,
- 19 please, sir. Let's look at the amount of that one. That's
- 20 \$540; right, for Laura Hammonds [spelled phonetically]?
- 21 A Yes.
- 22 Q Okay, now, let's go to the next page. This whole page is
- 23 added to the reserves. Most of them are dated back in 2008 or
- 24 2009 when those events occurred; correct?

1 A Yes.

2 Q And then we got one down here at the bottom. This is

3 James Phillips and Mr. and Mrs. Phillips here and there's a

4 commission there for that sale. That was \$2,079.

5 A Yes.

6 Q It's got its commission is earned, and again, it's paid

7 tomorrow.

8 A Yes.

9 Q Is that the same thing?

10 A Yes.

11 Q The same thing as that last one?

12 A Yes.

13 Q This is a transaction that had it been picked up earlier

14 it would have been added to the reserves under your policy but

15 it slipped through the cracks and it wasn't?

16 A Yes.

17 Q And so, when you were going through this process you

18 corrected that in the SMS?

19 A I corrected it, yes.

20 Q And SMS made the automatic transfer?

21 A Yes.

22 Q Okay, and it made the transfer on payday tomorrow?

23 A Yes.

24 Q Okay, all right, Mr. Powers, you put up the next one,

1 please, Stephen Black?

2 Now, is - Ms. Sharp, I don't, I don't intend to go
3 through each and every one of these items but - because these,
4 this document will be available for the jury in its review
5 later, but I do want to kind of hit on these and just to kind
6 of orient the jury as to what we're talking about here, okay?

7 A Okay.

8 Q This indicates that this, that this salesperson worked
9 from February of '08 to September of '08. This is Mr. Stephen
10 Black.

11 A Yes.

12 Q And have you done the same review for him that you have
13 for everyone else?

14 A Yes, sir.

15 Q Now, the first few up here indicate no full down payment.
16 That's lines one through 11; right?

17 A Yes.

18 Q Lines 12 through 14 that's paid.

19 A Yes.

20 Q So, you've got your documents relating to show payroll
21 records showing that he was actually paid those, those
22 commissions.

23 A Yes, sir.

24 Q On those dates that you've got listed there.

1 A Yes, sir.

2 Q And the last four added to the reserves and it shows the
3 date that they were added to the reserves.

4 A Yes, sir.

5 Q And did those - if all of the dates that you've indicated
6 on these spreadsheets where a bookkeeping entry to add a
7 commission to a reserve occurred are those dates the accurate
8 date that that actual bookkeeping entry took place?

9 A Yes.

10 Q I mean, you haven't gone back and backdated any of them;
11 have you?

12 A No.

13 Q Okay, and the ones that didn't occur earlier we've
14 already identified two of them. They show they're coming in
15 tomorrow.

16 A Yes.

17 Q Okay, all right, let's go to Mr. Bray.

18 All right, Mr. Bray has three transactions at issue. He
19 worked from 4 to 10-06 and the transactions at issue are these
20 three. It shows that the - all of these, the commission was
21 earned; is that right?

22 A Yes.

23 Q A commission earned all yes, commissions paid, paid back
24 in 2006, and the records in that box show that he was paid

1 each and every one of those commissions.

2 A Yes, sir.

3 Q Okay, the next one, please, sir. That would be Mr.

4 Haynes. All right, Mr. Haynes, again, it shows his dates of
5 employment. It shows the transactions that are in issue, the
6 amount of the commission, whether or not the commission has
7 been earned, each of those is yes; correct?

8 A Yes.

9 Q And it shows that the first one in the amount of \$1,000
10 it looks like, 1000 I can't quite read that, but it was paid
11 to him in July of 2008 and \$1090 was paid to him in July of
12 '08; correct?

13 A Yes.

14 Q Okay, then the next three, again, those became due after
15 he left; is that right?

16 A Yes.

17 Q Added to the reserves on those dates?

18 A Yes.

19 Q All right, and that's the amount of the commission that
20 was added to the reserve.

21 A Yes.

22 Q Okay, Judy Parker, shows Ms. Parker having worked there
23 from 5 of '05 to February of '07. She identified seven
24 transactions. The first five your records reflect that there

1 was no full down payment made; correct?
2 A Yes.
3 Q Let's bring it up so you can see it better. Okay, the
4 first five show no full down payment.
5 A Yes.
6 Q And that's the data that you've relied upon to - for
7 that, for that proposition?
8 A Yes.
9 Q The latter two show that she actually earned a commission
10 on those two, paid to her by those detail reports that are in
11 that box?
12 A Yes.
13 Q Okay, the next one, please. That would be Ms. Reilly.
14 We can go through these a little faster if you don't mind,
15 June to September employment dates. It appears that the first
16 three were no full down payments; is that right?
17 A Yes.
18 Q There - the next series there were paid to the
19 salesperson; is that right?
20 A Yes.
21 Q And the last ones on that list were added to the reserves
22 and it shows the dates that they were added to the reserves.
23 A Yes.
24 Q All right, Mark D'Amico. All right, let's look at Mr.

1 D'Amico. The first few no full down payment and you've got
2 the MR payment history that supports that like we looked at
3 before?

4 A Yes.

5 Q Now, let's look at this next one, number six, it's
6 payment of \$990 paid to the salesperson.

7 A Yes.

8 Q Just as an example of that ---

9 MR. WILKERSON: Any objection?

10 MR. CANTY: No.

11 MR. WILKERSON: Number 40 without objection, Your
12 Honor.

13 THE COURT: All right, Defendant's Exhibit Number 40
14 admitted into evidence without objection.

15 (Whereupon, Defendant's Exhibit Number 40 [Spreadsheet -
16 D'Amico] admitted into evidence and appropriately marked.)

17 BY MR. WILKERSON:

18 Q Now, reflected on this, on this spreadsheet is Darlene -
19 I'm sorry I can't pronounce her name, K-O-S-M-E-H, as one that
20 has been paid and did you - just kind of a random pull out to
21 show one that had been paid?

22 A Yes.

23 Q Okay, and that's been marked as Defendant's Exhibit
24 Number 40. Do you have that, Steve? It's two pages.

1 MR. POWERS: Correct.

2 Q Okay, what's this that we're looking at here, first page

3 of Exhibit 40, what is that?

4 A That's the payroll detail report.

5 Q And that's internal records of Westgate?

6 A Yes.

7 Q All right, and that reflects this transaction, Darlene

8 Kosmeh?

9 A Yes.

10 Q And it shows a commission, amount paid, how much was put

11 in the reserve; is that right?

12 A Yes.

13 Q Okay, let's go to the second page of the exhibit, please,

14 sir. What is this?

15 A This is the payment detail list that shows all of the

16 payments that were made to him.

17 Q Okay, let's, let's highlight that third one on the list

18 there, Steve. All right, now, does this one - does this

19 reflect that transaction?

20 A Yes.

21 Q It shows the sales commission due of 2,065?

22 A Yes.

23 Q How much sales commission was due on that transaction?

24 A \$2,065.

1 Q I'm sorry, just on that particular transaction.
2 A Oh, on that one?
3 Q Yes.
4 A It was \$990.
5 Q Okay, and this report that this first page of that
6 document reflects a number of transactions that he's being
7 paid for on that payday; is that right?
8 A Yes.
9 Q Okay, and so, it shows that he's being paid a sales
10 commission of \$2,065 and that includes the \$900 commission?
11 A Yes, 990, \$99 went into the reserve account.
12 Q Okay, and that's reflected on these documents that you've
13 identified here as Exhibit Number 40?
14 A Yes.
15 Q All right, is that typical of the documentation that you
16 have supporting a claim that a particular transaction has been
17 paid to the, to the person?
18 A Yes, sir.
19 Q Now, for example with Mr., with Mr. D'Amico how was he
20 paid? Does this document reflect that?
21 A Direct deposit, direct deposit.
22 Q Okay, let's bring that up right there, please, sir.
23 That's it right here. So, we've got direct deposit
24 distribution to his bank account.

1 A Bank account number.

2 Q This is the data that you used?

3 A Yes.

4 Q Okay, thank you.

5 A You're welcome.

6 Q DeVitis, there are three transactions here, one paid to

7 him, according to this data here that you have of \$1,000,

8 other two paid in the reserves on a date after he left employ;

9 is that right?

10 A Yes.

11 Q Okay, LeVasseur, again, we've got similar information

12 here, either no full down payment, so no commission was due,

13 paid to the salesperson or added to the reserve on the

14 particular day that's identified in that column; is that

15 correct?

16 A Yes.

17 Q All right, Loughlin, these are the dates of his

18 employment, again these transactions either no full down

19 payment, paid to the salesperson or added to the reserve on

20 the date indicated; is that right?

21 A Yes.

22 Q All right, the next one, please, would be Ned Oxentine,

23 got a bunch that were paid to him apparently. Bring that back

24 just one page. Okay, paid to him, added to the reserve on

1 these particular days. This note here, the contract was not
2 executed by the client. So, that was - you don't have anybody
3 in the system by that name, is that what your information
4 shows?

5 A Right.

6 Q Okay, and then the next page on that, two more added to
7 the reserves in '09 and that's reflected in your records?

8 A Yes.

9 Q Okay, and last but not least let's look at Timothy Zinn.
10 All right, this shows Mr. Zinn's dates of employment and we've
11 reviewed the contracts that are in issue with regard to Mr.
12 Zinn, and if you can kind of make these so we can see the top,
13 see these up here, please, just that, that center column,
14 those two center columns there. All right, line number one is
15 Teters [spelled phonetically], again, no full down payment is
16 that what your records reflect?

17 A Yes.

18 Q You got a rescission here on number three. That would be
19 Jones.

20 A Yes.

21 Q And you've got data supporting that rescission?

22 A Yes.

23 Q You've got some more no full down payments, another
24 rescission here, that's Southerland; is that right?

1 A Yes.

2 Q And when you say rescission what does that mean?

3 A That the, the customer sent in a letter to cancel the
4 deal within the rescission period.

5 Q Okay, let's go on down a little bit more, please, sir.
6 You got some transactions here that were commissions that
7 were, that were earned; is that right?

8 A Yes.

9 Q And they were paid to the salesperson. Go to line 12,
10 please, Mr. Powers, and highlight that for me, please. Okay,
11 this is Gil and Donna Foster, and it says that no commission
12 is due because it was cancelled, rescission; is that right?

13 A Yes.

14 Q And then over in the comment section, Mr. Powers, what
15 does the comment section show about that? It shows, "Customer
16 request cancelled, rescission," and the proof is the MR
17 payment history; right?

18 A Yes.

19 MR. WILKERSON: All right, now, two page exhibit, 41,
20 Your Honor.

21 THE COURT: Okay, any objections?

22 MR. CANTY: No, Your Honor.

23 THE COURT: All right, Defendant's Exhibit Number 41
24 admitted into evidence without objection.

1 MR. WILKERSON: Thank you, Your Honor.
2 (Whereupon, Defendant's Exhibit Number 41 [Rescission -
3 Foster] admitted into evidence and appropriately marked.)
4 MR. WILKERSON: Mr. Powers, would you bring up the
5 two pages of the Gil transaction, please?
6 MR. POWERS: Gil Foster?
7 MR. WILKERSON: Yes, I'm sorry, Gil Foster.
8 MR. POWERS: Proposal first?
9 MR. WILKERSON: Proposal first, yes.
10 BY MR. WILKERSON:
11 Q Ms. Sharp, this is Exhibit Number 41; is that right?
12 A Yes.
13 Q And it's, it's up here on the screen. This is a proposal
14 to sell a unit to Mr. and Mrs. Foster; is that right?
15 A Yes.
16 Q And the date of the transaction is 8-24-08?
17 A Yes.
18 Q Okay, and it's in building 2000. That's in the big
19 building over there; right?
20 A Yes.
21 Q It's - boy, that's a big unit. That's 45 A, B, C. How
22 much is Mr. Foster paying for that?
23 A 65,000.
24 Q \$65,000, down payment \$6500; is that right?

1 A Yes.

2 Q And was this a full down deal?

3 A I can't read it for the ---

4 Q You can look at this.

5 A Oh, sorry.

6 Q You got a better copy right there maybe you can see.

7 A Yes.

8 Q Okay, now, you've written across there cancelled ouch.

9 Who wrote that?

10 A I don't know.

11 Q Okay, now, and it's signed by Mr. and Mrs. Foster down

12 there and it shows representative Zippy, I guess that's Mr.

13 Zinn; is that right?

14 A I guess so.

15 Q Okay, now, let's, let's go to the second page of that

16 exhibit, please, Mr. Powers. If you'd turn to - you can open

17 that up, the second page, what is that?

18 A This is a cancellation letter.

19 Q Okay, and if you could put these two up side by - well,

20 let's read it here first. It says it's from - it's signed by

21 Mr. and Mrs. Foster dated August 27, 2008. It bears a

22 postmark of August 27, 2008; correct?

23 A Yes.

24 Q It says, "Dear sir, I am writing to cancel our loan," and

1 it identifies the loan number, "effectively immediately.
 2 This loan was made at your Myrtle Beach location. I went
 3 there. They told me that I need to write a letter stating
 4 that I want to cancel. Thank you for your assistance. Please
 5 credit my credit card after your cost is taken out. Sorry for
 6 your inconvenience." So, Mr. Foster got home and decided he
 7 didn't want that \$65,000 unit.
 8 A Yes.
 9 Q Okay, if you'd put those two side by side, please, sir?
 10 Now, the date of the transaction was - can you bring that up
 11 so we can see it, 8-24.
 12 A Yes.
 13 Q 8-24, all right. The date of the letter here is ---
 14 A 8-27.
 15 Q --- 8 - bring the postmark up, too, Mr. Powers, so we can
 16 see that as well, that portion right there. There you go.
 17 Okay, transaction 8-24-08, letter sent on August the 27th, 8-
 18 27-08, is that, is that within the rescission period?
 19 A Yes.
 20 Q Does Westgate have any option at all to cancel that
 21 contract once he rescinds it under the law?
 22 A You have to cancel it.
 23 Q Okay, that's required; right?
 24 A Yes.

1 Q So, that's a \$6500 commission that Mr. Zinn would not
2 have earned; right?

3 A Right.

4 Q Okay, can we go back to the Zinn spreadsheet; please,
5 sir? Okay, and again, the rest of these transactions are
6 similar to the ones that you've got before, you either paid
7 him, you got the record that you paid him?

8 A Yes.

9 Q Or on the next page here either paid him or you added
10 them to reserve after he left the employ; is that right?

11 A Yes, yes.

12 Q Now, Ms. Sharp, there, there's been a lot of testimony
13 about the reserve and chargebacks, and the contract is pretty
14 clear about what chargebacks are, but could you explain to the
15 jury what happens after an employee leaves the employ as it
16 relates to the management of the reserve and the chargebacks?

17 A After the salesperson is no longer with us then any of
18 the commissions paid after he has left goes into the reserve
19 account. Then we do accounting of the reserves and see if all
20 of the deals have made their six consecutive timely monthly
21 payments.

22 Q Okay, well, let's talk about that. We haven't talked
23 about that yet in your testimony. So, after, so, six timely
24 monthly payments does that, does that matter while, while the

1 person is employed with, with, with you?
2 A No.
3 Q You don't care about that?
4 A No.
5 Q So, after someone leaves on commissions that they have
6 already been paid; is that right?
7 A Yes.
8 Q Okay, either paid to them or paid to the reserve?
9 A Yes.
10 Q Then what do you do? Do you evaluate the buyer's payment
11 down the road?
12 A Yes.
13 Q And what do you look for?
14 A I look for the - if the owner has made six consecutive
15 timely monthly payments.
16 Q Okay, and that's provided for in the contract?
17 A Yes.
18 Q Okay.
19 A And timely monthly payments means that they have a 10-day
20 grace period. So, when the payment is due then we add 10 days
21 to that. If it's any payment is made after that then it's
22 considered a late payment.
23 Q Okay, so, so, chargebacks, if, if you - if they don't
24 make those six timely monthly payments that, that deal gets

1 charged back to them?

2 A It's charged back to the reserve account.

3 Q Okay, but they've already been paid for that commission;

4 right?

5 A Yes.

6 Q Either to them or to their reserve?

7 A Reserves, yes.

8 Q Okay, and so, the chargeback then looks down the road at

9 the payment history of the purchaser to see if that deal

10 actually fulfills itself?

11 A Yes.

12 Q And if it doesn't what happens then?

13 A Then the amount of commission that was paid to the sales

14 - that was paid was - is charged back to the reserve account.

15 Q Okay, I mean, do you call the salesperson say, "Send me a

16 check?"

17 A No.

18 Q You take that out of the reserve?

19 A Yes.

20 Q Okay, all right, now ---

21 MR. WILKERSON: Mark this, please. Any objection to

22 that document?

23 MR. CANTY: No.

24 MR. WILKERSON: 42 in evidence without objection,

1 Your Honor.

2 THE COURT: All right, Defendant's Exhibit Number 42
3 admitted into evidence without objection.

4 (Whereupon, Defendant's Exhibit Number 42 [Letter dated
5 4-1-09 from Sharp to D'Amico] admitted into evidence and
6 appropriately marked.)

7 BY MR. WILKERSON:

8 Q Okay, and I'm going to show you Defendant's 40 - I'm
9 going to show you a copy of it, I'm going to put the real one
10 up here on the Elmo if I can. All right, Ms. Sharp, you said
11 that you get - well, first of all, do you get calls from
12 salespeople quite often about their commissions?

13 A Yes.

14 Q And there's been some testimony about you being kind of
15 hard to reach. Tell us about that. Are you hard to reach?

16 A No, sir.

17 Q Where, where - do you have a phone that rings directly to
18 your, your office?

19 A Yes, sir.

20 Q You have voicemail?

21 A Yes, sir.

22 Q Okay, and when someone contacts you, when a salesperson
23 contacts you is it your practice to just ignore them?

24 A No, sir.

1 Q Okay, well, what do you do when somebody calls you and
2 leaves a message on your voicemail?
3 A I call them back.
4 Q Okay, and find out what they want?
5 A Find out what they want, yes.
6 Q Okay, let's say someone wants to know why they didn't get
7 paid a commission on a particular deal. What do you do then?
8 A I research it and find out if they were paid or not.
9 Q Do you ask them to submit that to you in writing so
10 you'll know what it is you're dealing with?
11 A Yes, sir.
12 Q Okay, how about when a former employee calls and asks for
13 you to do research on, on a commission? Do you have those,
14 too?
15 A Yes.
16 Q And when a former employee calls you you're going to be
17 looking really at the reserve account; right?
18 A Yes.
19 Q Okay, now, when you are asked to do research for an
20 employee what do you do? I mean, how do you communicate back
21 with them?
22 A Either by e-mail or by a letter.
23 Q Okay, and this document that has been marked as
24 Defendant's Exhibit Number 42, 42, is this a typical letter

1 that you would write in response to a request?

2 A Yes.

3 Q Okay, this one is dated April, April 1st, 2009.

4 A Yes.

5 Q To Mr. Mark D'Amico, tells him these accounts have been
6 cancelled because - these contracts have been cancelled
7 because they didn't make the six monthly payments, and then
8 these last ones they're still paying but they haven't, they
9 haven't made their full payment; right?

10 A Right.

11 Q Okay, now, and that, this letter was sent to Mr. D'Amico
12 on April the 1st, 2009, according to your records?

13 A Yes.

14 Q And, and do you have other examples of these letters?

15 A Oh, yes.

16 Q Okay, is this ---

17 A This is a template.

18 Q This is a form letter?

19 A Form letter, yes.

20 Q Okay, and you write those a lot?

21 A Yes.

22 Q Okay, but it's not your practice to just ignore people?

23 A No.

24 MR. WILKERSON: Your Honor, could I hand this exhibit

1 to Ms. Perez and make - let her make sure I haven't put this
2 out of order because I've been ---

3 THE COURT: All right, that'll be fine.

4 MR. WILKERSON: --- working with it. I want to make
5 sure it's, it's in proper order before I leave it on the, on
6 the, on the bench there.

7 Your Honor, would now be a good time for a morning break?

8 THE COURT: How much more you got in your direct?

9 MR. WILKERSON: I may be finished. I want to check
10 my notes, but I think I may be finished.

11 THE COURT: Okay.

12 MR. WILKERSON: Just a second to check my notes. I'd
13 appreciate that.

14 THE COURT: That'll be good. That'll be a good time.

15 MR. WILKERSON: Thank you.

16 THE COURT: All right, ladies and gentlemen, we're
17 going to go ahead and take our morning break at this point in
18 time. If you'd please leave your pads in the chairs. Do not
19 discuss the case even among yourselves at this point in time.
20 If you want to return phone calls you can, but don't speak
21 about this case. Don't conduct any independent
22 investigations. Hope everybody has a good break and we'll
23 bring you back in about 10, 15 minutes; all right? Thank you
24 very much. Everyone else please remain seated while the

1 jury's excused.

2 MR. WILKERSON: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right, Ms. Sharp, we're still in the
7 middle of your testimony. So, you cannot discuss your
8 testimony with anyone, either what you have already testified
9 to or what you anticipate testifying to in the future, okay.
10 The Rules of Procedure mandate that you can't speak with
11 anyone, your attorney or anyone regarding your testimony;
12 okay?

13 A Yes, sir.

14 THE COURT: All right, anything from the Plaintiff
15 before we break?

16 MR. CANTY: No, Your Honor.

17 THE COURT: Anything from the Defense?

18 MR. WILKERSON: No, Your Honor.

19 THE COURT: All right, let's take about a 15-minute
20 break.

21 MR. WILKERSON: Thank you, sir.

22 THE COURT: Thank you.

23 OFF THE RECORD

24 (On the record. Whereupon, the following takes place outside

1 the presence of the jury.)

2 THE COURT: Just for planning purposes, you know, and
3 I understand we're still in the middle and things change and I
4 don't mind a little leeway. I'm trying to figure out whether
5 or not we need to order lunch for the jury or whether or not I
6 can turn them loose and we'll still have time to get
7 everything in. Is this - do you have any more witnesses after
8 this one?

9 MR. WILKERSON: Our anticipation is no.

10 THE COURT: Okay.

11 MR. WILKERSON: We'll reserve the right if we need to
12 but I don't ---

13 THE COURT: Yeah, and I understand that.

14 MR. WILKERSON: Yes, sir.

15 THE COURT: I understand that. Do you have any more
16 direct examination?

17 MR. WILKERSON: No, sir.

18 THE COURT: Okay, and I'm, and I understand you got to
19 kind of get into it, but as far as - I guess my question is is
20 do you all anticipate us being through with this witness
21 before lunchtime if we broke between 12:30 and one?

22 MR. CANTY: Possibly.

23 THE COURT: Okay. How long do you anticipate rebuttal
24 witnesses?

1 MR. CANTY: In reply I think we can get some of it in
2 on cross. We may have one or two reply witnesses.

3 THE COURT: Okay, all right.

4 MR. CANTY: Ms. Reilly, in particular. There was
5 testimony that she had been paid for some of the deals and we
6 may put her up to say that's not the case.

7 THE COURT: Okay, all right, well, then let's go ahead
8 and order the jury lunch so we'll get here because I want to
9 make sure we finish up with all the testimony today. Okay?
10 Yeah, yeah, let's go ahead and do that, okay?

11 All right, anything from the Plaintiff before we bring
12 the jury back in?

13 MR. CONNELL: No, Your Honor.

14 THE COURT: Anything from the Defense?

15 MR. WILKERSON: No, Your Honor.

16 THE COURT: All right, let's bring the jury in. Thank
17 you.

18 (Whereupon, the following takes places in the presence of

1 the jury.)

2 THE COURT: All right, ladies and gentlemen, welcome
3 back. We're ready to resume the trial and the examination of
4 Ms. Sharp, the current witness. I remind you if you have any
5 cell phones, pager devices turn them off and make sure you
6 have your own notepads.

7 All right, Mr. Wilkerson, any further direct
8 examination?

9 MR. WILKERSON: We have no further questions of Ms.
10 Sharp, Your Honor. Thank you.

11 THE COURT: All right, thank you.

12 All right, Mr. Canty or Mr. Connell, cross
13 examination?

14 MR. CANTY: May it please the Court, Your Honor?

15 THE COURT: Yes, sir.

16 MR. CANTY: If I may approach the court reporter.
17 If I could get the employment contracts, Exhibit A.

18 CROSS EXAMINATION

19 BY MR. CANTY:

20 Q Good morning, Ms. Sharp.

21 A Good morning.

22 Q My name is David Canty. I'm here today on behalf of the
23 Plaintiffs in this matter and I wonder if I could get you to
24 look at Plaintiff's Exhibit Number Nine, which is entitled

1 Exhibit A, commission schedule, and direct your attention to
2 the second page, the paragraphs that have to do with reserve
3 and chargeback. Would you agree that that's representative
4 of the employment agreements that these salesmen operated
5 under?

6 A Yes, sir.

7 Q And would you agree that the maximum amount of the
8 reserve under those contracts is \$3500?

9 A Yes, sir.

10 Q All right, and would you agree also that as far as
11 funding the reserve that contract provides that no more than
12 10 percent of the commissions would be withheld and placed in
13 the reserve account?

14 A Ten percent, yes, sir.

15 Q All right, are you aware of any written notice given to
16 any of the Plaintiffs that would either increase the \$3500 or
17 increase the 10 percent?

18 A Not from this, no.

19 Q All right, is there any provision in that contract that
20 would allow Westgate to move down payment installments to the
21 end of the note?

22 A No, this is just the Exhibit A.

23 Q That's correct, that's the terms of the commission;
24 correct?

- 1 A Yes, uh-huh.
- 2 Q And it calls for the down payment to be made in full
- 3 before the commission is paid?
- 4 A Yes.
- 5 Q And if Westgate moves down payment installments to the
- 6 end of the 10-year note is there any notice of that in that
- 7 contract?
- 8 A No.
- 9 Q Okay, and if those down payment installments had been
- 10 moved to the end of the 10-year note would the information
- 11 available to you in your system be that the down payment has
- 12 not been made?
- 13 A I'm sorry. Could you repeat that again?
- 14 Q Well, you put up an example that showed that the down
- 15 payment was financed and there were three payments due to
- 16 complete the down payment.
- 17 A Yes.
- 18 Q Do you recall that?
- 19 A Yes.
- 20 Q And if Westgate then renegotiated with the buyer after
- 21 the fact and moved those installments on the down payment
- 22 to the end of the 10-year note would you have that
- 23 information?
- 24 A No.

1 Q It would show on your screen that the down payment had
2 not yet been made; correct?

3 A Correct.

4 Q All right, and is it your understanding that if those
5 down payment installments were moved to the end of the
6 10-year note then that the salesman would not be paid for 10
7 years?

8 A The full down payment has to be made before the
9 salesperson is paid.

10 Q And if the final installment of the down payment is at
11 the end of the 10-year note then that sales commission would
12 be paid after 10 years?

13 A If the final down payment comes in at 10 years then it
14 would be paid, yes.

15 Q Is there any notice of that in that contract?

16 A No, sir.

17 Q Okay, when a salesman is separated from the payroll is he
18 paid his commissions within 30 days?

19 A The commissions are paid depending on when the method of
20 pay is and when they come in, if they're pending when they
21 come in.

22 Q Wasn't it a practice, though, that it would be at least
23 six months before any reconciliation would be made in order to
24 determine whether or not someone who had been separated from

1 the payroll got paid their commission?

2 A The commissions are paid whenever they're supposed to be
3 paid and if the salesperson is gone from the company then the
4 commission is put into the reserve account.

5 Q Can you show the jury where it says that in that
6 contract?

7 A It states that all the deals have to be - make six
8 consecutive timely monthly payments.

9 Q Can you show the jury where it says that after you
10 separate from the payroll 100 percent of your commission, not
11 10 percent goes into the reserve fund?

12 A It doesn't state that in that contract.

13 Q To your knowledge have any of the Plaintiffs ever been
14 given written notice that when they separate from the payroll
15 100 percent of their commissions would go into the reserve
16 rather than the 10 percent that's set forth in the
17 contract?

18 A Not that I know of.

19 Q Okay, during the time that these salesmen were employed
20 there and we're talking about the 2005 to 2008 time period
21 was it the practice that they would have to make a written
22 demand for their pay after they separated from the payroll?

23 A We asked them to send us in a letter so that we could get
24 the information that we needed in order to do the research on

1 the reserve accounts.

2 Q And if that letter was never sent would they default
3 their pay? Would Westgate keep the money?

4 A Excuse me, before 2008 we had to do the reserve accounts
5 manually because we did not have a program to do that; and so,
6 we would ask the salespeople to send us in the information so
7 that we could do the research on the accounts because I had to
8 go in or my team had to go in and look at each individual deal
9 that they had gotten paid on in order to determine if the
10 accounts had made six consecutive timely monthly payments.
11 Then whenever we received the new commission system we had a -
12 we were capable then because of the new technology in order to
13 get a program that would actually do this for us. At first it
14 was for the individual salesperson but then that later on we
15 could do the whole resort.

16 Q That's a slightly different question. If I can restate
17 my question, back in 2008 if a salesman left the payroll, 2005
18 to 2008, if he separated from the payroll for whatever reason
19 and he was owed commissions isn't it a fact that those
20 commissions weren't paid unless the demand was made, the
21 letter with the information so that you could do your
22 research?

23 A I'm kind of - are you talking - the commissions it
24 seems to me like you're talking about the commissions on the

1 deals.

2 Q Sales commissions.

3 A The sales commissions, yes, and are we talking - we're
4 talking about reserve; correct?

5 Q We are talking about sales commissions. I believe you
6 just testified that contract says that the reserve would not
7 exceed \$3500; is that correct?

8 A Right, yes, uh-huh.

9 Q All right, and you just put up evidence on that screen
10 that shows that far more than \$3500 was put into the reserve
11 account.

12 A Yes.

13 Q And there's no provision for that in the contract.

14 A Yes.

15 Q And rather than 10 percent of the commission going into
16 the reserves 100 percent of the commission went into the
17 reserves?

18 A Yes.

19 Q And there's no provision for that in that contract.

20 A Right.

21 Q And I'll try to restate it again. If someone separated
22 from the payroll under the system that you just described you
23 would have to manually research to ascertain whether or not
24 there was a commission due.

1 A Yes.

2 Q And in fact, during 2009 you ascertained at some point
3 that just with regard to the Myrtle Beach resort there was in
4 excess of \$147,000 in commissions that were, in fact, due to
5 more than 120 salesmen; correct?

6 MR. WILKERSON: Objection, Your Honor. Could we
7 approach?

8 THE COURT: Yeah.

9 (Whereupon, a bench conference is held in the presence
10 but out of the hearing of the jury.)

11 THE COURT: I'm going to overrule the objection. I'll
12 allow it.

13 MR. WILKERSON: Thank you, Your Honor.

14 THE COURT: All right, overruled. Go ahead.

15 BY MR. CANTY:

16 Q So, the default position was that Westgate would keep the
17 commissions. They did not automatically research at that time
18 to ascertain whether the commission was due, somebody had to
19 actually make a written demand for it?

20 A Before 2008 when we got the new system.

21 Q All right, and in fact, there were substantial
22 commissions due that had not been paid. Weren't there in
23 excess of 120 checks written one day in excess of
24 \$147,000?

1 MR. WILKERSON: Objection, irrelevant.
2 THE COURT: Overruled, go ahead.
3 Q To Myrtle Beach resort salespeople?
4 A I don't know. I'd have to research and see.
5 Q And prior to that date, I believe it was in April of '09
6 if a salesman for any reason failed to make that demand then
7 Westgate kept his commissions; correct?
8 A We - when they notified us then we would do the research
9 but if they didn't then we would.
10 Q So, if a salesman was fired one day in October and he was
11 hit by a bus crossing the street as he left the resort then no
12 request would ever be made; correct?
13 A Right.
14 Q Okay, and is it your testimony that you have no
15 recollection of that \$147,000 plus being paid one day in April
16 to more than 120 salesmen?
17 MR. WILKERSON: Could we have a continuing objection
18 to this, Your Honor?
19 THE COURT: All right, overruled.
20 MR. WILKERSON: Thank you.
21 A I, I would have, like I said, I'd have to do research. I
22 don't know right at the moment.
23 Q Okay, my question was your testimony is you have no
24 recollection of that.

1 A Right at the moment, no.

2 Q Okay, now, your testimony was that the \$3500 limit was at
3 some point changed to 7,000; is that correct?

4 A Yes.

5 Q And do you know if any of the salesmen whose contracts
6 specified \$3500 did they get written notice in advance that
7 the limit would change?

8 A I could look in this - in the files to see that. I don't
9 know right off the top of my head.

10 Q Well, let me ---

11 A Okay.

12 Q --- let me ask you another question, is it safe to say
13 that there are a large number of salesmen for Westgate?

14 A Yes.

15 Q Thousands and thousands at one point ---

16 A Yes.

17 Q --- around 2008, and in the Myrtle Beach resort the bulk
18 of the sales occurred in the summertime.

19 A True.

20 Q And as typically something like 90 percent of the
21 employees would be laid off in the fall?

22 A I don't know the percentage.

23 Q But a high percentage and then there would be lots of new
24 hires in the spring?

1 A Seasonal, yes.

2 Q Okay, and if a salesman was laid off in the fall and
3 returned in the spring would that \$3500 reserve account still
4 be available for that salesman or was a new account
5 established so that they had to fill up another 3500?

6 A No, the same account.

7 Q So, a salesman did not have two different employee
8 numbers, two different reserve accounts?

9 A Whenever we had the old system sometimes when they'd
10 change from a salesperson to a manager, a TO they would give
11 them another new number in order to track the information
12 and separate it between a salesperson and a, and a TO.
13 Whenever we got the new system everything was combined and we
14 only use one number, but the TOs didn't have a reserve
15 account.

16 Q All right, now, with regard to the down payments, if a
17 full down payment was made at the time of the transaction and
18 the five-day rescission period passed, that commission would
19 have been earned; correct?

20 A Ten days.

21 Q Say it's five days in South Carolina.

22 A Okay, oh, okay.

23 Q Then that commission would have been earned; correct?

24 A Yes, uh-huh.

1 Q And if you described a scenario where up to 28 days would
2 pass depending on the medium of payment before your system
3 would allow that commission to be paid.

4 A Yes.

5 Q And because they're paid biweekly then whether it falls
6 on a Wednesday or after a Wednesday would determine whether or
7 not it was included in that check.

8 A Yes.

9 Q So, as a matter of routine after the commission was
10 earned, due and payable it could be as long as six weeks
11 before it was actually paid.

12 A Could be, yes.

13 Q And if between the time the rescission period ended with
14 a full down deal that employee was laid off then as I
15 understand it 100 percent of that commission would go into the
16 reserve.

17 A If they were deactivated, yes, in the system then it
18 would.

19 Q And if they never made demand for that payment then the
20 default position would be Westgate would keep the money.

21 A It would stay in the reserve account.

22 Q Okay, and let's talk about the reserve account for a
23 moment. Isn't it true that the reserve account is really
24 nothing more than a bookkeeping entry?

- 1 A True.
- 2 Q There is no separate fund, there is no account in a bank
3 where this money is kept?
- 4 A No.
- 5 Q It's just numbers on a piece of paper.
- 6 A Right.
- 7 Q Okay, would the salesmen have access to the records
8 to reflect whether or not the down payment had been
9 made?
- 10 A I don't know.
- 11 Q Well, you put up an example where the down payment was
12 split into three or four payments and I assume that those
13 payments went to Greenspoon and Marder, P.A.?
- 14 A I have no idea where they go.
- 15 Q They went to Westgate in some fashion?
- 16 A Yes, uh-huh.
- 17 Q Correct, and MR I think is what you named, called the
18 department, mortgage receivables where those records that you
19 used came from.
- 20 A Yes.
- 21 Q So, mortgage receivables would have that
22 information?
- 23 A Yes.
- 24 Q Dates of payment, whether or not the payment has been

1 made.

2 A Yes.

3 Q Would the salesmen have access to that information?

4 A I don't know.

5 Q How would the salesmen have access to that information if
6 you, if you know?

7 A I don't know.

8 Q All right, so, if they didn't have access to that
9 information then they would have had no way of knowing whether
10 or not their commission was due; correct?

11 A Correct.

12 Q They would just have to take Westgate's word for it.

13 A Yes.

14 Q All right, now, in the contract it makes reference to the
15 determination of whether or not six timely consecutive monthly
16 payments have been made as being entirely in Westgate's
17 discretion. Are you familiar with that language?

18 A In here?

19 Q In the contract when it refers to the six timely monthly
20 payments that's entirely in their discretion to make that
21 determination.

22 A Yes, yes.

23 Q Was it also entirely in Westgate's discretion to make a
24 determination as to whether or not the down payment

1 installments had been made?
2 A Yes, whenever it made their - the down payment.
3 Q It was ---
4 A We had, yes.
5 Q Westgate's discretion?
6 A You could tell it in the MR file.
7 Q Well, you've already indicated ---
8 A Right.
9 Q --- that there were some errors in the data that you
10 presented, and as a result of all of us being here today
11 you've indicated, yes, there are some commissions due that we
12 haven't paid.
13 A Yes.
14 Q Okay, would the salesmen have access to the records
15 showing that the installments for the down payment had been
16 moved to the end of the 10-year note?
17 A I don't know.
18 Q Do you have any idea how a salesman would or could know
19 that his down payment, his buyer's down payment installments
20 had been moved to the end of the 10-year note?
21 A No.
22 Q Some of the data that you put up there indicated that
23 another contract number had been substituted. Are you
24 familiar with that?

1 A Which one would you - are you referring to?

2 Q Well, in, in the visual presentation that you made there
3 were a couple where you had a new contract number and you
4 indicated that the salesman had not earned the commission
5 because there was a successor contract number.

6 A Which one are you talking about?

7 Q Well, I think there were only two.

8 A Which deal?

9 Q Well, let me ask you this, do you know whether or not
10 Westgate contacts the buyers after they have been sold to try
11 to up sell them to more expensive units?

12 A I know that there's other departments, but I don't know
13 what they do.

14 Q Isn't there an in-house department that contacts buyers
15 to up sell them to a more expensive unit?

16 A I know that the in-house department sells it to the
17 owners when they come to visit.

18 Q And if an in-house department - well, let me give you
19 a scenario. One of the Plaintiffs makes a sale to a
20 buyer.

21 A Okay.

22 Q And they finance their down payment, three installments
23 say and the rescission period passes and before that last
24 installment payment is due Westgate in-house contacts the

1 buyer and up sells them. How would that appear in the records
2 you have access to?

3 A It would show both of the deals. Then they would be tied
4 together showing that this one was processed and all the
5 payments that were made and then the equity it would be moved
6 to the other account.

7 Q And the salesman who sold the buyer initially, if that
8 last installment on the down payment had not yet been made
9 would that show as a no full down?

10 A Yes.

11 Q And would show as cancelled?

12 A It would show that the last down payment amount hadn't
13 been made.

14 Q So, that salesman would not get that commission.

15 A True.

16 Q Okay, and would the same be true - do you know what a
17 down sale is?

18 A You mean a downgrade?

19 Q Downgrade, yes.

20 A Uh-huh.

21 Q And would that also be true of a downgrade if someone had
22 trouble making their payments and Westgate in-house contacted
23 them and said, "Let's make you a different deal that's more
24 affordable," are you aware of that happening?

1 A If the deal is downgraded, yes.

2 Q Yes, and if that down payment installment, the last
3 installment had not yet been made then that salesman who sold
4 the buyer initially would not get paid.

5 A It wouldn't get paid, no.

6 Q Okay, so, even if Westgate actually received more money
7 from the buyer than was needed to trigger the payment of the
8 commission then it would still show as cancelled and the
9 salesman would not get paid.

10 A True.

11 Q Okay, is there any written notice of that anywhere in the
12 contract?

13 A The contract, no, I don't think so. The contract states
14 that the deal has to be, that the full down payment has to be
15 in before the deal is paid.

16 Q Okay.

17 MR. WILKERSON: Relevance, Your Honor, this entire
18 line of questioning.

19 THE COURT: Overruled.

20 MR. WILKERSON: Thank you.

21 Q And you - out of these thousands and thousands of
22 salesmen I believe you indicated you receive a lot of
23 telephone calls?

24 A Yes.

1 Q A lot of questions. Did they fall into a pattern where
2 there's some particular questions that seem to recur over and
3 over again?

4 A They ask me, excuse me, if the deals have been paid. I
5 research those deals that have been paid and contact them back
6 about it. They ask me about the reserve accounts and I
7 research those and tell them about that and those are mostly
8 the questions that I get.

9 Q Did you have any - who is your immediate supervisor? Is
10 it a Mr. Willman?

11 A Cathy Hinky [spelled phonetically] is my immediate
12 supervisor but Mr. Willman is over her.

13 Q And Mr. Willman is, in fact, also in charge of the
14 mortgage receivables department ---

15 A Yes.

16 Q --- is that correct?

17 A Yes.

18 Q And that's the source of the information that you have
19 access to when you're making your determination as to whether
20 or not six consecutive timely monthly payments have been
21 made?

22 A Yes.

23 Q Okay, now, you indicated there was a grace period to the
24 10th of the month; correct?

1 A Ten days past the due date, yes.

2 Q Okay, if it was due on the 1st then on the 11th it would
3 be late?

4 A Yes.

5 Q Okay, now, let's say I have a 10-year note and I have 120
6 payments due. If I make five payments in a row before the 10th
7 those would be timely.

8 A Yes.

9 Q And if the sixth payment comes in on the 11th that's not
10 timely.

11 A Right.

12 Q So, because the payments have to be consecutive the six
13 months would start over again.

14 A Yes.

15 Q So, it is possible that I may not make six monthly
16 payments, consecutive timely monthly payments until year
17 10.

18 MR. WILKERSON: Objection, irrelevant, Your
19 Honor.

20 THE COURT: No, sir, it is. Overruled, go ahead.

21 Q Is that correct?

22 A Yes.

23 Q I make five timely consecutive, I'm a day late, five
24 timely consecutive, I'm a day late, etcetera, through the 10-

1 year cycle then that commission wouldn't be paid until the 10th
2 year.
3 A Yes, when they paid it off.
4 Q Okay, when a salesman made a request for payment of a
5 commission what was your time limit for deciding whether or
6 not to tell payroll to cut the check?
7 A I would do the research and see if the salesperson had
8 been paid the commission and - are we still talking about the
9 reserve account?
10 Q No, here's my question.
11 A Okay, sorry.
12 Q When a salesman requested payment of a commission what
13 was your time limit for deciding whether or not to tell
14 payroll to cut the check?
15 A Whenever I did the research and determined if the
16 salesperson was due the commission or not.
17 Q So, you did not have a time limit per se?
18 A No, not per se.
19 Q Okay, and once you made a determination that that
20 commission should be paid what was the time limit for the
21 check to be cut?
22 A It would be cut on the normal pay period.
23 Q With the exception of those - that \$147,000 that we
24 talked about previously, that was not paid the normal pay

1 period; was it?

2 MR. WILKERSON: Objection, Your Honor. She didn't
3 have any knowledge about that.

4 THE COURT: Sustained.

5 Q Would it be possible to determine how much a salesman was
6 owed in commissions on the date he was laid off?

7 A Yes.

8 Q So, if a salesman is fired on a particular day then you
9 know that day how much they're to be paid?

10 A If they were laid off then the commissions that I could
11 look and see what was due to be paid on the next pay period,
12 but I couldn't tell you about the ones that hadn't been full
13 down yet.

14 Q So, it could be as long as 10 years before you can say
15 definitively this salesman has been paid everything that
16 they're entitled to, it could be as long as 10 years?

17 MR. WILKERSON: Objection, that's, that's misstating
18 prior testimony, Your Honor.

19 THE COURT: Overruled.

20 A I couldn't tell you how long it would be before they
21 would be paid because of the deals that were pending.

22 Q Okay, because of the pending deals then you couldn't say
23 on the date that the employee was laid off how much was going
24 to be due them.

1 A No.

2 Q And you couldn't say within 48 hours thereafter how much
3 was going to be due them.

4 A No.

5 Q And you couldn't say at their next regularly scheduled
6 payday how much ultimately would be due them?

7 A Yes.

8 Q How is that?

9 A At the time that, that I would look at it then I could
10 tell you what would be paid the next due date.

11 Q Okay, and the commissions that would be payable as a
12 result of six consecutive timely monthly payments up to 10
13 years later you would know those as well?

14 MR. WILKERSON: Continuing objection to the six
15 timely monthly payments, Your Honor, irrelevant.

16 THE COURT: Overruled.

17 MR. WILKERSON: Thank you.

18 A No, I wouldn't know.

19 Q Okay, and not within 30 days either; is that correct?
20 Things could change.

21 A Yes.

22 Q Okay, now, if someone financed a down payment and they
23 made all the down payment installments except one and that
24 installment was moved to the end of the 10-year note and they

1 made their monthly mortgage payments to Westgate then Westgate
2 could receive more than 10 percent and under your system
3 wouldn't pay the commission until that final installment was
4 paid; correct?

5 A When all the down payment is made then the commission is
6 paid.

7 Q Okay, so, the 10 percent down, 10 percent of the purchase
8 price would have been received by Westgate but because of the
9 characterization as a note payment or a down payment
10 installment it wouldn't count; is that correct?

11 A Could you please do that again?

12 Q \$10,000 unit ---

13 A Uh-huh.

14 Q --- \$1,000 commission, \$1,000 down payment, they put 400
15 down, agree to pay 200 a month ---

16 A Uh-huh.

17 Q --- towards the down payment, in addition to their note
18 payment. They make three or two of those \$200 payments. So,
19 now, they only have one \$200 down payment left. That gets
20 moved to the end of the note and they're making their regular
21 note payments.

22 A Uh-huh.

23 Q And their note payments exceed the \$600 due on the down
24 payment.

- 1 A Yes.
- 2 Q Then Westgate has received more than 10 percent and still
3 does not pay the commission until that last down payment is
4 made.
- 5 A Right.
- 6 Q Okay, and if a buyer has paid more than 10 percent, let's
7 say they service the debt several years, let's say they pay
8 half the purchase price, because that last down payment
9 installment is at the end of the note when the buyer defaults
10 the salesman doesn't get paid; correct?
- 11 A They don't get paid until all the down payment is in.
- 12 Q Okay, so, even though Westgate has gotten half the
13 money of the purchase price they still don't pay the
14 commission.
- 15 A Not until the full down is paid.
- 16 Q Okay, looking at that contract and Exhibit A can you tell
17 the jury how a salesman could determine how much and when he
18 would be paid?
- 19 A In the Exhibit A they have the amount of commission that
20 would be paid to the salesperson in the training part and also
21 the commission base.
- 22 Q Does it say anywhere in there it might be 10 years before
23 you get your money?
- 24 A No, it says whenever the deal becomes good.

1 Q Okay.

2 A I mean, full down is that.

3 Q Now, under section eight, VIII-D there's a section called
4 payroll. It says, "Commission deemed earned only after a
5 qualified sale." Do you see that?

6 A Uh-huh.

7 Q Can you show the jury in that contract where it defines a
8 qualified sale?

9 A There's no definition of a qualified sale.

10 Q So, absent some definition of a qualified sale then a
11 qualified sale means whatever Westgate wants it to mean;
12 correct?

13 MR. WILKERSON: Objection, Your Honor. It means
14 whatever the law says.

15 THE COURT: Overruled, I'll allow the question.

16 Q Is that correct?

17 A Yes.

18 Q Okay, and Westgate could change what it means; couldn't
19 it?

20 MR. WILKERSON: Same objection, Your Honor.

21 THE COURT: Overruled.

22 A I would assume so.

23 Q And under that contract the change in the definition
24 could be retroactive; correct?

1 MR. WILKERSON: Same, same objection, Your
2 Honor.
3 A I don't know.
4 THE COURT: Overruled.
5 Q And that would affect the amount that a salesman received
6 as compensation; would it not?
7 A Yes.
8 Q Okay, and further down it's - there's a reference to and
9 I'm quoting here, "The employer's standard payroll practices."
10 Do you see that?
11 A Uh-huh, yes.
12 Q Can you show the jury where that is defined in the
13 contract?
14 A That would be back in the commission portion of it.
15 Q Those are the standard payroll practices?
16 A This designates how much the commission would be
17 paid.
18 Q All right, so, standard payroll practices of Westgate is
19 what's set forth in that contract?
20 A How much commission that they'll be paid.
21 Q Okay, now, everything that you know regarding a
22 salesman's contracts and the buyer's performance is based on
23 what someone else tells you.
24 A Yes.

1 Q Correct? And that would be Mr. Willman, John
2 Willman?
3 A Yes.
4 Q His department?
5 A Yes, his department.
6 Q Okay, and he's not here today?
7 A No, sir.
8 Q All right, and everything that Mr. Willman knows is or
9 and some of what you know is dependent upon what data is
10 entered into at the resort; is that correct?
11 A Yes.
12 Q There's someone at the resort who keypunches in the data
13 for each of these transactions.
14 A Each sale, yes.
15 Q And there's no question that sometimes mistakes are made;
16 correct?
17 A Yes, I'm sorry.
18 Q So, the system is not infallible.
19 A There are mistakes, yes.
20 Q Now, if the wrong salesman was keypunched in at the
21 resort on a contract how would you know about it?
22 A The salesman usually would call me.
23 Q And when the salesman called you you would refer to your
24 database; is that correct?

1 A Yes.

2 Q And if the salesman says, "That's my contract, not this
3 other salesman's contract," and your database indicates it's
4 the other salesman's contract, what would your response
5 be?

6 A I'd tell them to go talk to their admin and to research
7 it for them and let me know.

8 Q And as far as you're concerned it's what's on your
9 screen?

10 A On my screen, yes.

11 Q In your database?

12 A Uh-huh.

13 Q Now, did Westgate charge back in full accounts that had
14 not made six monthly payments even if they subsequently made
15 six monthly payments?

16 A Whenever the - the deals have to make six consecutive
17 timely monthly payments before the reserve is charged back for
18 them.

19 Q And the issues that have arisen with regard to the Myrtle
20 Beach resort have they also arisen in other resorts?

21 MR. WILKERSON: Objection, relevance.

22 THE COURT: I sustain that objection.

23 Q All right, tell the jury if you would, please, who
24 exactly is paying the commission? What is the company name on

1 the check, if you know?

2 A CFI Sales and Marketing Ltd.

3 Q And to the best of your knowledge they're - David Siegel
4 owns that company?

5 MR. WILKERSON: Objection, relevance.

6 THE COURT: What is the relevance?

7 MR. CANTY: Well, Your Honor, they have in their
8 pleadings mentioned specifically another company by a
9 different name and they've also alleged that the Ltd. is - has
10 now been substituted as an LLC or vice versa, I disremember
11 which. What I want to establish is exactly who is paying this
12 money.

13 THE COURT: Okay, overruled. I'll allow it. Go
14 ahead.

15 A I'm sorry. Could you repeat the question again?

16 Q There are approximately 152 related corporations; is that
17 correct?

18 A I don't know how many different corporations.

19 Q The company that owns the resort in Myrtle Beach is not
20 the company paying the salesmen; is that correct?

21 A I don't know.

22 Q Do you know how the money gets into the account of I
23 think you said CFI Sales and Marketing, Limited, where that
24 money comes from?

- 1 A No, sir.
- 2 Q Okay, now, in your direct testimony you offered and
- 3 described a payroll detail report. Do you recall that?
- 4 A Yes.
- 5 Q Does that go to the employee?
- 6 A Yes.
- 7 Q They get a copy of the ---
- 8 A Yes.
- 9 Q --- payroll detail report?
- 10 A Yes.
- 11 Q And that's automatic?
- 12 A Yes.
- 13 Q Now?
- 14 A It comes in, it used to come in their checks, but now
- 15 since they're - most people have direct deposit it goes to the
- 16 resort and they give them out.
- 17 Q Now, with regard specifically to Ms. LeVasseur there
- 18 were, I believe, in Defendant's 36 and 37 a number of
- 19 transactions that closed and were good and a hundred percent
- 20 of those commissions were put into the reserve account; is
- 21 that correct?
- 22 A The ones that were paid after they left the company were
- 23 put into the reserve account at a hundred percent, yes.
- 24 Q And none was paid to Ms. LeVasseur?

- 1 A No, it went into the reserve account.
- 2 Q And we've already established that there is no bank
- 3 account with money in it that is the reserve account.
- 4 A It's just an accounting entry.
- 5 Q It's just a number on a piece of paper?
- 6 A Yes.
- 7 Q Okay, now, with regard to the commission rate what was
- 8 the commission rate for the salesmen if you know?
- 9 A It was according to their VPG.
- 10 Q And that was a rolling four-month average based on how
- 11 many guests, how many sales, dollar value of the sales.
- 12 A The VPG was calculated at the resorts.
- 13 Q But ---
- 14 A So, I'm not sure exactly how they did it.
- 15 Q Well, under that contract it's a four-month rolling
- 16 average based on number of guests, number of sales and the
- 17 dollar value?
- 18 A Yes.
- 19 Q And that VPG determines the commission rate on a monthly
- 20 basis.
- 21 A Yes.
- 22 Q Is that correct?
- 23 A Yes.
- 24 Q So, if a particular salesman's commission rate was

1 changed for a week or two that would not be in conformance
2 with that contract; would it?

3 A The commission rate was changed on a monthly basis
4 according to their VPGs.

5 Q Right, so, it would not be possible under that contract
6 for the rate to drop for a week or two and then go back up?

7 A Not according to the contract.

8 Q Okay, now, I wonder if you could tell the jury about the
9 difference between a cancellation and a rescission.

10 A The rescission is when the sales - not the salesperson,
11 sorry, the owner writes in a letter within the specific time
12 and cancels the deal.

13 Q Rescinds the deal?

14 A Rescinds, yes.

15 Q And for every one of those deals that you indicated that
16 there was a rescission when the jury looks in that box they're
17 going to find a letter from a buyer with a timely date that
18 says, "I'm rescinding the contract."

19 A Yes.

20 Q And what you show as cancellations are they different
21 from rescissions?

22 A Purchaser defaults, QCDs, foreclosures, yes.

23 Q So, a cancellation is not the same as a rescission?

24 A They are two different things, yes.

1 Q And in fact rescissions are fairly rare; aren't they?

2 A No.

3 Q How many of those that you surveyed for this case were
4 actually rescissions?

5 A Most of them were.

6 Q Most of them were rescissions?

7 A Uh-huh.

8 Q And a cancellation would include a default.

9 A Yes.

10 Q And if a buyer let the rescission date go by, made a full
11 down payment, the salesman left the company for whatever
12 reason, and I think we've established a hundred percent of
13 that commission would go into the reserves?

14 A Yes.

15 Q And even though the down payment had been made and the
16 rescission period had passed, if subsequently the buyer
17 defaulted on the note then that shows up as a
18 cancellation?

19 A Yes.

20 Q Okay, and if a salesman sold a unit, got the full down
21 payment, left the company, then he could not get his
22 commission for at least six months.

23 A The money would go into the reserve account and all of
24 the deals have to make six consecutive timely monthly

1 payments.

2 Q So, if he sold a deal, the five days has passed and
3 there's a full down payment and he leaves the payroll,
4 separates from the company, he can't get paid for six months?

5 A The contract, the commission goes into the reserve
6 account and then that - all the deals have to make six
7 consecutive timely monthly payments.

8 Q Well, I think we've already established ---

9 A Right.

10 Q --- that the contract does not provide for a hundred
11 percent of the commission to go into the reserve account.

12 A Right.

13 Q That's not there; correct?

14 A Right.

15 Q So, again, if a salesman sells a deal, five days passes,
16 he gets a full down payment and then he leaves the payroll he
17 cannot get paid for at least six months.

18 A The reserve account is a total. So, it ---

19 Q But it's a yes or no question. I don't mean to
20 interrupt, but can you just tell the jury yes or no he could
21 not get paid for six months.

22 A The, the money goes into the reserve account. So, I
23 don't know when all the deals would make their six consecutive
24 timely monthly payments. So, I can't really say.

1 Q Isn't it a fact that when he separated from the payroll
2 immediately after the rescission period on a full down deal
3 he's not going to see that money for at least six months, yes
4 or no.

5 A I don't know.

6 Q You don't know.

7 A No.

8 Q Under what circumstances would he get paid sooner?

9 A The reserve account states that all of the deals have to
10 make six consecutive timely monthly payments. So, unless I
11 did an audit to his account then I wouldn't know.

12 Q Well, let me repeat the question.

13 A Okay.

14 Q Under what circumstances would he get paid in less than
15 six months having separated from the payroll immediately after
16 a full down deal when the rescission period has passed?

17 A If the deal was written and they cashed out and he - all
18 of his other deals had made their six consecutive timely
19 monthly payments then he would be paid his reserve.

20 Q After six months?

21 A No, whenever I looked at the, reconciled the reserve
22 account.

23 Q Did we not understand that when someone separated from
24 the payroll that they had to wait six months to even request

1 that you do that analysis?

2 A When I had the old system, the sculpture system, yes.

3 Q And that would be during the time period that all these

4 Plaintiffs were employed?

5 A Most of them, yes, uh-huh.

6 Q Okay, so, as far as these Plaintiffs ---

7 A Yes.

8 Q --- these periods of time full down, rescission period

9 passes, salesman leaves the payroll, laid off at the end of

10 the season, couldn't get his money for six months.

11 A Correct.

12 Q Okay, now, the reason for the delay, we discussed earlier

13 about the 21 days and the 28 days and the biweekly pay and how

14 a salesman might not get paid for six weeks. If someone pays

15 by personal check do you know what the maximum period is that

16 a bank can hold that check? In other words, what is the

17 maximum that you have to wait, when I say you, Westgate, has

18 to wait before that is credited to Westgate?

19 A I don't know.

20 Q When a salesman made a request for his unpaid commissions

21 and you saw that a deal was reflected as cancelled did you

22 check to see if that unit had been up sold or down sold or you

23 just saw cancelled and that was the end of your inquiry?

24 A No, I look at the whole deal and see what's happening to

1 it.

2 Q And if they've been up sold and there's a different
3 contract number then that would show as cancelled; correct?

4 MR. WILKERSON: Objection, misstates prior testimony.

5 A No.

6 THE COURT: Overruled.

7 Q That's not, not the case?

8 A No, if it's upgraded it doesn't show as a cancel.

9 Q The salesman still doesn't get paid though; correct?

10 A He would get paid on the first deal that he sold, and
11 then when it's upgraded then if it wasn't the same salesperson
12 then he would get, then the other salesperson would get paid
13 on that deal. If it was his deal he would get paid on both of
14 them, only the second deal would be at a lesser amount because
15 he had gotten paid at the first. He would only get paid the
16 difference.

17 Q So, if I'm a salesman and I sell a unit and before the
18 down payment installments are made, in-house corporate
19 contacts my buyer and up sells them your testimony is I would
20 still get paid?

21 A If the - you're saying the first deal has not completed
22 their down payment.

23 Q Okay.

24 A Okay, and then somebody upgrades them.

1 Q Now, the evidence that you put in in your direct
2 testimony made reference to payments being made per sculpture.
3 That's the earlier program?

4 A Yes.

5 Q And that's the one that you said had to be corrected
6 more, that was more error-prone?

7 A No, I said that the reserve account had to be done
8 manually.

9 Q But sculpture made mistakes; isn't that a fact?

10 A Yes, sometimes, yes.

11 Q Now, in the exhibits, the graphic that we saw up on the
12 screen there were many, many, many entries that said that the
13 commission had been paid into the reserve account.

14 A Yes.

15 Q And in fact there was no payment; isn't that correct,
16 just a bookkeeping entry?

17 A Right.

18 Q So, no money went into a bank account?

19 A No.

20 Q It's just that you changed it to pay to reserve account?

21 A Right.

22 Q But the salesman never saw that money?

23 A Right.

24 Q Okay, now, your Exhibit Number 39 that was the one where

- 1 you blew up the portion of the contract that set out the four
2 installment payments for the down payment?
- 3 A Yes.
- 4 Q And then page two was a, what do you call it, a PDR, that
5 showed the payment history on the account?
- 6 A MR.
- 7 Q MR, okay.
- 8 A Uh-huh.
- 9 Q And it showed, the contract showed \$383 monthly payments
10 for four months to make up the down payment.
- 11 A Yes.
- 12 Q Correct?
- 13 A Yes, uh-huh.
- 14 Q And the MR showed \$200 monthly payments.
- 15 A Yes, not monthly payments, down payment.
- 16 Q \$200 monthly installments on the down payment.
- 17 A Okay.
- 18 Q Okay, so, wouldn't that mean that the down payment had,
19 in fact, been restructured again?
- 20 A No, it just meant that the owners sent in \$200.
- 21 Q Well, let me ask you about that. Sent in, I notice that
22 was a Visa debit card.
- 23 A Right.
- 24 Q Wasn't it Westgate's practice to obtain authorization on

1 that debit card to automatically withdraw those funds on the
2 dates agreed upon?

3 A I'm not sure. It's not my department. So, I wouldn't
4 know how to testify about that one.

5 Q Okay, and if that contract said \$383 monthly payments and
6 the MR shows \$200 monthly debits to a Visa account then
7 wouldn't that tend to indicate that there's been further
8 contact with the buyer?

9 MR. WILKERSON: Objection, speculation, no
10 foundation.

11 A I don't know.

12 THE COURT: Overruled.

13 Q Okay, now, I think it's clear from the contract and your
14 testimony that to be a good deal the down payment had to be
15 made in full and the evidence that you've put in, the graphic
16 that you've put in and I believe your testimony as well was
17 that it was the down payment plus the fees.

18 A Yes.

19 Q And when you say the fees you're talking about the regime
20 fees for the condo, maintenance fees, owners' fees, whatever
21 they're called.

22 A No, no, no, no, no, sir. It was the closing costs and
23 the exchange fees.

24 Q All right, and as I understand your testimony, to be a

1 good deal the down payment plus those fees have to be paid.

2 A Yes.

3 Q Can you show the jury in that contract where it says down
4 payment plus fees or does it just say down payment?

5 A Down payment is inclusive of that. That's what the
6 language of it is, the down payment, down payment, closing
7 costs and exchange fees.

8 Q Can you read to the jury where it says in that contract
9 that down payment plus closing costs, plus fees.

10 A No, it just says down payment.

11 Q Okay, do you know whether any of the Plaintiffs have
12 received any written notice that in order to be a good deal it
13 must be not just the down payment but the down payment plus
14 the closing costs plus the fees?

15 A No, sir.

16 Q Okay, now, in the case of one of those purchasers there
17 was something on the MR sheet called an NP in the amount of
18 \$1141.19, and do you recall when Mr. Wilkerson and you were
19 trying to figure out if that was the purchase price less the
20 down payment. Did you - during the break did you figure out
21 what that \$1141.19 was?

22 A No, sir.

23 Q To your knowledge does Westgate ever auto-withdraw from
24 credit card accounts or Visa debit accounts payments on

1. contracts?
- 2 A I don't know.
- 3 Q You have no knowledge of that.
- 4 A It's not my department.
- 5 Q Well, my question is do you have any knowledge?
- 6 A No.
- 7 Q You would not know one way or the other whether that's
- 8 their practice?
- 9 A No.
- 10 Q Okay, and in that graphic and in that evidence that you
- 11 referred to earlier there are several downgrades and one is
- 12 Laura Hammonds. One is Makeisha Neal [spelled phonetically].
- 13 Is it your understanding then that that salesman who made the
- 14 initial sale would not get his commission because it was in
- 15 house later a downgrade?
- 16 A Well, it all depends on when the deal is written and
- 17 what's happening. It does - because the deal is paid within
- 18 the thing and then the downgrade could be later on it; and so,
- 19 the first deal was already paid. So, the downgrade wouldn't
- 20 be paid.
- 21 Q In the evidence that you have put into the record isn't
- 22 it a fact that those that were marked downgrade the salesman
- 23 was given no credit for any commission?
- 24 A Right, not paid, uh-huh.

1 Q Okay, now, on those that you have indicated in your
2 evidence were paid to the salesman does that mean that a check
3 was written to the salesman?

4 A Either it was a check or direct deposit or however their
5 method of payment was.

6 Q And when the jury looks in that box are they going to
7 find a cancelled check that proves that that salesman was paid
8 that money?

9 A If there was a check, if it wasn't - the - it would - if
10 it was direct deposit then it would be the payroll.

11 Q Okay, and would that include the part of the check that
12 would reflect whether or not it was, in fact, negotiated, that
13 is received by the salesman, deposited in the bank?

14 A No.

15 Q So, the checks, if any, that are in that box don't have
16 the stamp from the bank that shows that it's been deposited?

17 A No, it wouldn't because it would be direct deposited.

18 Q Well, you just said there were ---

19 A If it was a check then it would.

20 Q Okay, so, any checks in there are going to show that they
21 were, in fact ---

22 A Right, uh-huh.

23 Q ---- deposited, negotiated?

24 A Yes, uh-huh.

1 Q Okay, and they will be identifiable as checks pertaining
2 to that particular commission?

3 A Yes.

4 Q Okay, and I believe you indicated that in at least two
5 instances in the evidence that you presented that tomorrow
6 funds would be "paid" to the reserve account of Plaintiffs in
7 this case.

8 A Yes.

9 Q And that does not mean that they're going to get the
10 money; does it?

11 A No, it will be added to the reserve.

12 Q There will be a bookkeeping notation.

13 A Right, uh-huh.

14 Q But they won't get the money?

15 A Right.

16 Q Okay, now, if this suit had not been brought can you tell
17 the jury whether or not these salesmen wouldn't have been paid
18 those commissions that you've indicated will be paid
19 tomorrow?

1 A If I had done the research and which I did and found the
2 entries then I paid them but I don't usually go back and look
3 unless the salesperson calls.

4 Q Okay, so, unless they call and ask and request that you
5 research it they don't get the money.

6 A If I find it within my corrections then I look at it and
7 something comes up and I go back and look at it, yes, it will
8 be paid.

9 Q Otherwise no?

10 A Right.

11 Q So, the transaction I think Mr. Wilkerson used the term
12 it slipped through the cracks?

13 A Yes.

14 Q They would still be through the cracks but for this
15 lawsuit?

16 A Yes.

17 Q Okay, can you tell the jury whether or not you ever
18 intend to pay, whether or not Westgate ever intends to pay
19 that money that you're going to move tomorrow to the reserve
20 accounts?

21 MR. WILKERSON: Objection that's an improper question
22 of this witness, Your Honor. She's a witness to the facts.

23 MR. CANTY: Your Honor, she's the one that orders the
24 checks to be cut.

1 THE COURT: Yeah, but she's not the one that
2 determines whether or not to do it. Somebody tells her to cut
3 the check. So, I'll sustain the objection.

4 BY MR. CANTY:

5 Q What will happen to that money for those two that you
6 mentioned that slipped through the cracks?

7 A They'll be put into - it'll be put into the reserve
8 account. There will be an entry made to put it into the
9 reserve account.

10 Q Until when?

11 A Then the - each week I look at the two weeks, each -
12 biweekly I look at their, all of the resort's reserve account
13 and determine if anybody needs to be paid if there's an
14 overage in their reserve account and it's sent out.

15 Q And none of these Plaintiffs have worked for Westgate for
16 years; correct?

17 A Right, uh-huh.

18 Q So, is it your testimony then that it may be another
19 couple of weeks before you even look to see whether or not a
20 check ought to be cut?

21 A Every two weeks because they're paid biweekly. I look at
22 everybody's reserve account, the salespeople that are no
23 longer there and determine if there's a positive amount in
24 their reserve, and if there is then I'll send it out.

- 1 Q Okay, so, the check's not going out tomorrow?
- 2 A No.
- 3 Q Or the next day or next week?
- 4 A Not until biweekly when I look at it again.
- 5 Q So, for every one of those checks that are in that box
- 6 the jury will be able to look at them and ascertain that they
- 7 were, in fact, received and negotiated by the salesman?
- 8 A Yes, yes.
- 9 Q Okay, now, those buyers or those commissions that you
- 10 have marked cancelled for buyer default those would be people
- 11 who have defaulted on their contract and are longer owners; is
- 12 that correct?
- 13 A They're no longer owners, yes.
- 14 Q Okay, so, Caroline Dawes, for example, whom you indicated
- 15 had cancelled for non-payment and Paul Hobbs whom you
- 16 indicated cancelled for non-payment they're no longer
- 17 owners?
- 18 A Correct.
- 19 Q And in the case of Mr. D'Amico the cancelled deals for
- 20 non-payment including specifically Margaret Michelle and Donna
- 21 Belafonte [spelled phonetically] they defaulted, they're
- 22 cancelled, they're not owners.
- 23 A Not owners.
- 24 Q Okay.

1 MR. CANTY: If I may confer with co-counsel.
2 THE COURT: All right.
3 BY MR. CANTY:
4 Q When the money is put, the commission is put in full in
5 the reserve account and when a salesman separates from the
6 payroll Westgate still gets their monthly payments from the
7 buyers; is that correct?
8 A Yes.
9 Q Okay, but the salesman does not get the commission?
10 A Yes.
11 Q And I believe Mr. Connell there has taken your deposition
12 a couple of times, Gene Connell right here?
13 A Oh, yes.
14 Q In Orlando?
15 A Yes, uh-huh.
16 Q And I think you previously indicated back in 2008 that
17 you had given your deposition 10 times?
18 A It's been several times.
19 Q And since 2008 you've given your deposition some more?
20 A I've been, yes, deposed several times.
21 Q And in fact, Westgate is the subject of a number of
22 lawsuits about paying ---
23 MR. WILKERSON: Objection.
24 THE COURT: Sustained.

1 MR. CANTY: Very good. That's all I have, Your Honor.

2 MR. WILKERSON: Your Honor, I had not intended to
3 clutter the record with this box, but based on questions about
4 the jury seeing the box I would offer the box into evidence.

1 THE COURT: Any objection?

2 MR. CANTY: None, Your Honor.

3 THE COURT: All right, so, that would be Defendant's
4 Exhibit Number 43.

5 (Whereupon, Defendant's Exhibit Number 43 [Box of
6 Records] admitted into evidence and appropriately marked.)

7 MR. WILKERSON: The court reporter's eyes are getting
8 big.

9 THE COURT: That's admitted into evidence without
10 objection.

11 MR. WILKERSON: May I sit it down on the floor here?

12 THE COURT: All right.

13 REDIRECT EXAMINATION

14 BY MR. WILKERSON:

15 Q Now, Ms. Sharp, there was - you were asked a number of
16 questions suggesting that it might be 10 years before a
17 salesperson would get his money. Do you remember those
18 questions?

19 A Yes, sir.

20 Q Now, after a salesperson separates from employment and
21 whatever is paid into the reserve is paid into the reserve; is
22 that right?

23 A Yes.

24 Q Okay, and from that point forward any further payment to

1 that salesperson would be based upon a reconciliation of the
2 reserve account?

3 A Yes.

4 Q There's no other payment of commission down the road; is
5 that right?

6 A Right.

7 Q So, if we're talking about however long it takes for the
8 reconciliation for the six timely monthly payments to be made
9 any additional funds that goes to a salesperson would be based
10 entirely upon a reconciliation of the reserve.

11 A Yes.

12 Q All right, the suggestion that "he could not get his
13 money for at least six months after leaving," again, any
14 payment to this person six months or otherwise would be based
15 upon a reconciliation of the reserve account.

16 A Yes.

17 Q All right, you were asked questions about what if the
18 down payment had been moved to the end of the transaction. Do
19 you remember those questions?

20 A Yes, sir.

21 Q Are you, are you aware of any such transactions where
22 that occurs ---

23 A No, sir.

24 Q --- the down payment goes to the end?

- 1 A No, sir.
- 2 Q That's, that's, that's not something you've ever heard
3 about?
- 4 A No, sir.
- 5 Q Okay. Now, the - I believe it was two, maybe one more
6 but I think two transactions where we identified that the
7 transfer or the, the addition to the reserve account would
8 occur tomorrow under the, under the computer's timetable;
9 correct?
- 10 A Yes.
- 11 Q Now, if those, if those transactions had been identified
12 earlier than this week would they have gone into the reserve
13 account earlier or would they have been paid to the, to the
14 salesperson?
- 15 A Would have been in - they were put into the reserve
16 account because she's no long active.
- 17 Q So, it's - it would have gone into the reserve account
18 and then any payment to that person would have been based
19 upon, again, a reconciliation of the reserve account?
- 20 A Yes.
- 21 Q It's just that those two transactions did not have the
22 bookkeeping entry going into the reserve account before this
23 week.
- 24 A True.

1 Q All right, okay, thank you very much, Ms. Sharp.

2 THE COURT: All right, you may step down.

3 A Thank you.

4 THE COURT: All right, ladies and gentlemen it's
5 almost quarter till one. So, we're going to go ahead and
6 break for lunch at this time. We have ordered lunch again for
7 you today. So, we have it coming. It should be here in just
8 the next five or 10 minutes. So, that'll give you a nice
9 little break. Leave your notepads here. Do not discuss the
10 case even among yourselves, don't conduct any independent
11 investigation. We'll take about a 45-minute lunch break and
12 then we'll come back and resume the trial at that time.

13 Thank you very much. Hope you have a good lunch.

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right, anything from the Plaintiff
17 before we break for lunch?

18 MR. CONNELL: No, Your Honor. Has the Defense rested?
19 Are we - where are we?

20 THE COURT: No, we just finished that witness.

21 MR. CONNELL: Okay, all right.

22 THE COURT: Anything from the Defense before we break
23 for lunch?

24 MR. WILKERSON: Nothing, Your Honor.

1 THE COURT: All right, depending on when their lunch
2 gets here, that we're expecting their lunch to be here at a
3 quarter till. So, I'm going to give them 45 minutes. So,
4 let's plan on being back at about 1:30 and I'll try to take

1 the bench as soon after 1:30 as I can. Okay?

2 MR. WILKERSON: Thank you, Your Honor.

3 THE COURT: Now, I wish I could be more specific. If
4 their lunch doesn't get here until one o'clock it'll be a
5 little after 1:30, but the parties and the attorneys let's be
6 ready at 1:30; okay?

7 MR. WILKERSON: Thank you, Your Honor.

8 THE COURT: All right, thank you very much.

9 OFF THE RECORD

10 (On the record. Whereupon, the following takes place outside
11 the presence of the jury.)

12 THE COURT: All right, does the Defense have any other
13 witnesses?

14 MR. WILKERSON: No, Your Honor.

15 THE COURT: All right, any motions at this time?

16 MR. CANTY: Your Honor, on the - as a matter of law
17 the declaratory judgment portion of the complaint we would ask
18 for a ruling on the court as to whether they've complied with
19 the statute with regard to withholding, time and place of
20 payment of wages, payment of wages to discharged employees.

21 THE COURT: What does the statute say?

22 MR. CANTY: With regard to 41-10-30(C), let me find
23 my, mine. I had it a moment ago. Notice of time of payment I
24 think the testimony was undisputed.

1 THE COURT: What are you looking at now?

2 MR. CANTY: This is 41-10- first, 30(A).

3 THE COURT: All right, "Every employer shall notify
4 each employee in writing at the time of hiring of the normal
5 hours and wages agreed upon, the time and place of payment and
6 the deductions which will be made from the wages, including
7 payments to insurance programs. Employer has the option of
8 giving written notification by posting the terms conspicuously
9 at or near the place of work. Any changes in these terms must
10 be made in writing at least seven calendar days before they
11 become effective. This section does not apply to wage
12 increases." I mean, it puts a requirement on the employer
13 but what is the - are you saying it creates a cause of
14 action?

15 MR. CANTY: No, no, it's simply declaratory judgment
16 that this contract, this Defendant has not complied with that
17 provision in the statute.

18 THE COURT: And what is the result of that declaratory
19 judgment, what does that result in?

20 MR. CANTY: It results in a finding by the Court that
21 their practices and their contract do not comply with the
22 statute and that would affect our closing.

23 THE COURT: What entitles the Plaintiffs to relief in
24 this case? What kind of relief are the Plaintiffs seeking

1 through that declaratory judgment action?

2 MR. CANTY: Well, Your Honor, we would be entitled to
3 a directed verdict on liability if we established and we
4 believe the evidence has established.

5 THE COURT: Under what cause of action?

6 MR. CANTY: Under the payment of wages statute.

7 THE COURT: So, if they violate this you're saying
8 they're automatically liable for wages?

9 MR. CANTY: No, what we are saying is that we have
10 sued for a declaratory judgment to have the Court find that
11 this Defendant has not complied with that statutory provision
12 and we think we've shown that by their own admissions.

13 THE COURT: Yeah, but that still doesn't create any
14 relief for the Plaintiffs. Declaratory judgment means that
15 the Plaintiffs are entitled as a matter of law ---

16 MR. CANTY: To a finding by the Court.

17 THE COURT: --- to a finding, in other words if they
18 prove nonpayment of wages then in a declaratory judgment
19 action they might be triple wages or something like that. I'm
20 not even sure if that's applicable, but I mean, I don't
21 understand - I can tell you as a matter of law every employer
22 is required to comply with 41-10-30, but if an employer does
23 not comply with 41-10-30 that doesn't in and of itself means
24 that a Plaintiff in a specific action is entitled to a

1 declaratory judgment action. I mean, I don't understand. If
2 I say that they violated this statute then what relief are you
3 asking for me to grant to these Plaintiffs based upon that
4 declaratory judgment? I mean, usually a declaratory judgment
5 is finding that as a matter of law based upon a deed this
6 Plaintiff is entitled to this piece of property or that this
7 Plaintiff is exempt from this statutory requirement or
8 whatever the case may be. I don't understand what you're
9 asking me for.

10 MR. CONNELL: Here's what we're asking for, Your Honor.
11 I don't know if you've read this but I would ask that you read
12 the Ross versus Ligand Pharmaceutical case.

13 THE COURT: Okay.

14 MR. CONNELL: And it's a case in which almost the same
15 factual scenario occurred that occurred here.

16 THE COURT: Okay.

17 MR. CONNELL: Mr., Mr. Ross was a pharmaceutical
18 representative.

19 THE COURT: Okay.

20 MR. CONNELL: And Mr. Ross as a pharmaceutical
21 representative was entitled to some commissions.

22 THE COURT: All right.

23 MR. CONNELL: And when he left he did not get those
24 commissions and the Court of Appeals indicated in that

1 opinion that that was a violation of the payment of wage
2 statute, that it ---

3 THE COURT: In a - so, they granted a declaratory
4 judgment in favor of the Plaintiff that the Defendant had
5 violated the statute.

6 MR. CONNELL: The Court found, it was tried without a
7 jury.

8 THE COURT: A declaratory judgment action what you're
9 asking for ---

10 MR. CONNELL: Yes, sir.

11 THE COURT: --- based upon a declaratory judgment
12 cause of action.

13 MR. CONNELL: Yes, sir, what we're asking you to do is
14 find that the contract does not comport with South Carolina
15 law, that the chargeback provision is illegal and improper and
16 that the six timely payment violates the time and place as
17 shown in the Ross case, and Your Honor, if you take a few
18 minutes and look at that you will find that almost the same
19 factual scenario that we have here is what was found in Ross.
20 So, what we would ask the Court to do and I think it's pretty
21 clear Ms. Sharp has indicated on the witness stand on several
22 occasions, "We took out more than was allowed. We took out
23 the whole commission, not 10 percent," that's one of the
24 things she said in less than 15 minutes ago.

1 MR. CANTY: Without notice.

2 MR. CONNELL: And there was no notice given, there was
3 no change in the contract. All of that is what Ross talks
4 about. So, what we want the Court to do is to tell the jury,
5 "I have ruled as a matter of law that this contract violates
6 the Payment of Wages Statute in these respects, time and place
7 and that those two conditions are not to be considered by
8 you."

9 THE COURT: So, that voids the contract?

10 MR. CONNELL: No, sir, it only voids the two conditions
11 that we're talking about, those provisions ---

12 THE COURT: No, you're going to have to give me some
13 law on that. I mean, if you've got an illegal contract I've
14 always thought then you can seek damages from the illegal
15 contract or you can void the contract. How can you enforce
16 certain provisions of the contract but declare other
17 provisions unenforceable unless there's a severability clause
18 or something in there.

19 MR. CONNELL: You can separate from the contract those
20 two.

21 THE COURT: That's what this case says?

22 MR. CONNELL: Yes, sir, it doesn't say that but you need
23 to go ---

24 THE COURT: Well, find me the case that says I can

1 separate the contracts like that because I don't think I
2 can unless there is a severability clause within a
3 contract.

4 MR. CONNELL: I mean, what, what we're seeking is just
5 to take those provisions out that violate the Payment of Wages
6 Statute.

7 THE COURT: Yeah, and I don't think I can do that. I
8 think I can void the contract or I think we can say we've got
9 an illegal contract and you're entitled to the damages as a
10 result of that illegal contract, but I don't know that I can
11 void this provision and enforce this provision.

12 MR. CONNELL: I mean, here's the problem, Your Honor,
13 Ms. Sharp ---

14 THE COURT: I understand your problem.

15 MR. CONNELL: I mean.

16 THE COURT: But you're asking me as a matter of law to
17 void parts of what you call is an illegal contract without
18 voiding the entire contract and that's what I'm asking for is
19 is there case law out there that says when you have an illegal
20 contract that does not comply with statutory law the Court has
21 the legal authority to sever the illegal provisions and
22 enforce the provisions that are not illegal?

23 MR. CONNELL: And Your Honor, it goes even further than
24 that. Based on the testimony you heard, the Defendant's

1 testimony about chargebacks and about the six timely payments
2 clearly is in violation of the statute. That testimony ought
3 to be stricken and the jury ought not to be able to consider
4 that because the contract and those provisions are illegal
5 under South Carolina law. So, what we're asking you to do is
6 find that as a matter of law and give it to the jury on the,
7 on the, on the issue of what they're entitled to, i.e., how
8 much money they'd be entitled to. Whatever they come up with
9 would be their, would be in their province but it's clear that
10 when you look at 42-30 in this case that the commission scheme
11 where we're going to pay you sometime way in the future, maybe
12 up to 10 years is not appropriate under South Carolina Law and
13 the commission structure where they say they violated their
14 own contract and took 10 percent, didn't take 10 percent, they
15 put the whole commission in there, I mean, those two, those
16 two provisions of the contract ---

17 THE COURT: Well, let's, let's say for the sake of
18 argument that the contract basically stated you do not get a
19 commission, let's say it specified everything, that they could
20 put \$7,000 in a reserve account, that the commission they had
21 this six consecutive payments provision, that they had all of
22 this and they put in there you may not get your commission for
23 another six months and it was all specified in the contract,
24 you're saying that would still be violative of this statute?

1 MR. CONNELL: Your Honor, look, if you'd take five
2 minutes and read this case ---
3 THE COURT: Okay.
4 MR. CONNELL: --- you will see ---
5 THE COURT: Well, I'm going to read the case.
6 MR. CONNELL: --- you will see that this scheme ---
7 THE COURT: Right.
8 MR. CONNELL: --- that is offered, been offered here
9 about, "We'll pay you sometime in the future, I don't know
10 when it's going to be or how it's going to be," that clearly
11 violates the Payment of Wages Statute, and, and the Court goes
12 into great detail about that, including they talk about how it
13 was done, they give three reasons why you can't do it.
14 THE COURT: Okay, well, I'm going to read the case.
15 MR. CONNELL: All right.
16 THE COURT: I'm going to read the case. Any argument
17 you want to make?
18 MR. EPSTEIN: Yes, Your Honor, I would also direct your
19 attention to the case of Rice versus Multimedia.
20 THE COURT: Have you got me a copy?
21 MR. EPSTEIN: Excuse me?
22 THE COURT: You got a copy? Got it, got it right
23 here, okay.
24 MR. EPSTEIN: You have it there. It's cited. It is a

1 Supreme Court case as opposed to a Court of Appeals case.
2 It's cited at 456 S.E.2d 381, and in this case there was a
3 deferred compensation, strike that, there was a provision that
4 was common in the industry that a commission for in this case
5 the sale of advertising would only be earned after termination
6 of employment if it ran during the time that the employee, the
7 month that the employee quit or left. So, there was, again,
8 deferred compensation based upon the occurrence of some
9 condition subsequent that is like the provision here. So,
10 this case actually sustains that. However ----

11 THE COURT: So, you're saying the Multimedia case
12 because it's a Supreme Court case means that this Ligand
13 Pharmaceuticals is bad law, that this is not ---

14 MR. EPSTEIN: Not bad law, the - that that one would
15 preempt it if they were the same, but they're not. The case
16 that we've cited, Rice versus Multimedia, deals with a
17 deferred, a deferment of compensation based upon the
18 occurrence of a condition subsequent, just like what we have
19 here. The other case deals with a completely different
20 scenario where by design the employer could control, not
21 because of some event that is objectively ascertainable like
22 we have here, but because of the employer's own arbitrary
23 action in that case, and what they have not told you about
24 Ligand Pharmaceuticals is in that case the employer penned,

1 penned the payment of the subsequent, the commission post-
2 employment to a decision on the employer's part, completely
3 arbitrary decision on when they're going to write checks.

4 THE COURT: Okay.

5 MR. EPSTEIN: Not on the event, on the occurrence of
6 some other events that are outside of their control, but
7 something that was within their control, and of course, they
8 timed the writing of the checks in such a way that they
9 wouldn't owe the commission. We don't have that here. These
10 are objectively ascertainable events, but more importantly,
11 and this is really the overarching issue, what we have now
12 spent about half of this trial doing is trying the Parker
13 case.

14 THE COURT: Well, but let me hear from you about the
15 fact that you have an employer that just unilaterally changed
16 the employment contract without notifying the employees.

17 MR. EPSTEIN: Well, it may or may not have done that,
18 but that was the issue that was alleged and argued and
19 litigated.

20 THE COURT: Well, see, I don't know. It's not
21 contained in the order. So, I don't know if it was argued in
22 the Parker case.

23 MR. EPSTEIN: Well, Your Honor ---

24 THE COURT: I don't - all I can, all I can do in the

1 Parker case is go by the order.

2 MR. EPSTEIN: Right.

3 THE COURT: And that order does not mention one thing
4 about the employer unilaterally changing what we're going to
5 put in the reserve account or any - or the cutting the
6 commissions to a flat rate when the contract said something
7 different, none of that is contained in that Parker order.

8 MR. EPSTEIN: Well, let's look at the evidence in this
9 case. All the evidence in this case about unpaid commissions
10 falls in one of two categories, commissions that they claim
11 were not paid when the evidence shows they were paid. All
12 right? If the ---

13 THE COURT: No, no, the evidence - they've got plenty
14 of evidence that shows it wasn't paid.

15 MR. EPSTEIN: No, no, no, no, no.

16 THE COURT: They've got their testimony saying, "We
17 never got it."

18 MR. EPSTEIN: Well, we have - yes, well, well, let me,
19 let me finish the thought and I think you'll understand what
20 I'm saying is that, that it was unpaid commissions, our
21 response is they were paid. The other part of it is we agree
22 they weren't paid to the salespeople. They went into the
23 reserve. So, that's the two categories, commissions that we
24 agree were due, they say they didn't get them, we showed they

1 did get them, and if that evidence, whatever the jury is going
2 to do with that, that goes to the jury. We agree. That goes
3 to the jury. So, whatever the jury does with that they do
4 with that, but we also have evidence as to a whole array of
5 particular contracts where the commissions became due, in
6 other words the two conditions precedent were satisfied, and
7 then the money went into the reserve. Remember under this
8 provision that they're attacking the only commissions that
9 went into the reserve are those commissions that actually came
10 due. So, if a commission never came due then it didn't go
11 into the reserve; and so, we showed, again, through Ms.
12 Sharp's testimony, that a number of deals either didn't make
13 the full down payment or were rescinded pursuant to the
14 statutory rescission. One thing that is important to know and
15 that every one of those, those transactions that was analyzed
16 in those spreadsheets not a single one of them reflected this
17 so-called deferred down payment scheme that they're alleging.
18 There's no evidence that it actually occurred. They've said
19 it, they've said it and they've said it and they've never
20 shown a single transaction where it actually happened, and all
21 of our transactions show it didn't happen, but more
22 importantly, Your Honor, as we started out this trial with the
23 motion for summary judgment, now, we acknowledge that we were
24 going to have to show that this position of the commissions

1 that were, that became due subsequent to the termination of
2 employment and what happened to them, and we have done that,
3 and we have shown that those monies went into the reserve.
4 This is the same evidence that if the Parker case had gone to
5 trial would have been tried there. There is nothing new here.
6 These are the very issues, remember the Parker case dealt ---

7 THE COURT: I understand all that, but the Parker case
8 was settled between the parties. It was a settlement of a
9 disputed claim.

10 MR. EPSTEIN: Right.

11 THE COURT: Okay, so, any of the issues that would
12 have been argued in that case are governed by that order from
13 Judge Baxley. None of the issues were litigated, nobody went
14 to trial, nobody presented any evidence, nothing as I
15 understand was adjudicated to the - outside the parameters of
16 an order that - where the parties reached an agreement as to a
17 disputed claim.

18 MR. EPSTEIN: Your Honor, respectfully, I think your
19 legal analysis is not right.

20 THE COURT: Okay, well, that's where we disagree then.

21 MR. EPSTEIN: You're drawing, no, you're drawing the
22 distinction between issue or issue adjudication versus claim
23 adjudication.

24 THE COURT: Well, and I understand and you ---

1 MR. EPSTEIN: And ---

2 THE COURT: And I've already ruled that you're going
3 to get an instruction that says they cannot include anything
4 that was in the reserve account or designated as a reserve
5 account expenditure by the employer as of January 29th, 2010.

6 MR. EPSTEIN: Now, look at what they're trying to do
7 now. They're trying to do a complete end around.

8 THE COURT: No, what they're trying to do is just get
9 me to say that your client altered the terms of the written
10 contract without giving written notice to the employees as
11 mandated by 41-10-30.

12 MR. EPSTEIN: To what effect? The only provisions
13 they're attacking are the two provisions that relate only,
14 only to the reserve. So, that is an end around. They're not
15 going to argue, if you were to say, "Yes, I agree with you,
16 this is what the employer did," and I will suggest to you,
17 Your Honor, that if you look at the complaint again in the
18 Parker case, count two of that complaint ---

19 THE COURT: I'm not going back and reading the
20 complaint in the Parker case. I'm looking at the order that
21 settled a disputed claim.

22 MR. EPSTEIN: Well, but you have to look at it because
23 it is claims, any claim that was made in that case or any
24 claim that might have been made in that case are completely

1 precluded by that.

2 THE COURT: But as I ---

3 MR. EPSTEIN: It doesn't matter. It does not matter
4 whether any particular issue involved in those claims was
5 specifically adjudicated or not ---

6 THE COURT: But now you stated it earlier, you stated
7 that the complaint in the Parker case was basically identical
8 to the complaint in this case.

9 MR. EPSTEIN: Right, and so, then everything that was
10 ---

11 THE COURT: Okay, so, why isn't this whole case res
12 judicata?

13 MR. EPSTEIN: It's not because, yes, the complaints are
14 identical, but they have been able to elicit facts that do not
15 relate to the reserve. That's fine. That's why we excluded
16 the Parker case using the specific language, the unpaid wage
17 claims not including the reserve. So, any unpaid wage claim
18 that does not implicate the reserve in any way is still a live
19 claim. That's what was left open, but anything that relates
20 to the reserve is foreclosed.

21 THE COURT: Well, what about those funds that are
22 going into the reserve as of tomorrow for Laura Arrington?

23 MR. EPSTEIN: Well, if the Court wishes to rule on those
24 that's after ---

1 THE COURT: And grant their ---

2 MR. EPSTEIN: --- January 29th, 2010, and I've got to
3 admit that they're probably fair, they're fair game.

4 THE COURT: And so, they are entitled to a declaratory
5 judgment that that is a violation of 41-10-30.

6 MR. EPSTEIN: And, and there's actually and this is the,
7 this is a point that there's actually relief that the Court
8 can grant. It's not an, it's not a declaration in a vacuum,
9 so, as to two transactions amounting to a few hundred dollars?

10 MR. WILKERSON: A little over \$2,000, about \$3,000.

11 MR. EPSTEIN: A little bit over \$2,000 we acknowledge
12 that because of just a bookkeeping error that was not
13 accounted for properly within the timeframe encompassed by the
14 Parker case. So, that - we brought it out, we brought it out
15 for that reason because we knew that we shouldn't hide it.

16 So, we're not hiding it, but so, as to two transactions ---

17 THE COURT: Well, we didn't ---

18 MR. EPSTEIN: --- the evidence is clear it didn't happen
19 prior to January 29th, 2010, but as to the other transactions
20 it is clear, at least at this point it is un-rebutted and un-
21 refuted that all of those transactions occurred prior to
22 January 29th of 2010 and that unless there is in the
23 Plaintiff's rebuttal case some evidence that somehow the
24 statistical information based upon that all ---

1 THE COURT: Yeah, and that's - see, that's part of the
2 problem I'm having to deal with is the dadgum voluminous
3 exhibits that the jury's going to go through. So, if I, you
4 know, deny the relief and it turns out that there's 25 or 30
5 other omissions just like there was for Ms. Arrington ---

6 MR. EPSTEIN: Well, Your Honor, I mean, you know, I
7 think you can assume and I think you believe that we have in
8 good faith based upon the contracts that the Plaintiffs
9 testified about analyzed every one of those contracts.

10 THE COURT: Well, I'm also convinced that you all took
11 out more and put in the reserve fund than you contracted for.

12 MR. EPSTEIN: But we did but that was the other case.

13 THE COURT: Okay.

14 MR. EPSTEIN: That was exactly the issue in the other
15 case.

16 THE COURT: I'm also convinced that there was a change
17 in the amount of commissions paid contrary to the written
18 contract. Some of them had a floating scale and then you had
19 somebody come in one day and say, "We're going straight to a
20 10 percent commission," didn't give seven days notice, didn't
21 put it in writing, didn't give it to the employees.

22 MR. EPSTEIN: Correct, we don't - I don't and we argued
23 you this yesterday in the DV motion the problem with that
24 claim is again it's now a declaration in a vacuum because not

1 a single one of these witnesses has testified as to what the
2 economic consequences of that might have been.

3 THE COURT: Okay.

4 MR. EPSTEIN: Nobody has gone back and reanalyzed or
5 recomputed their commissions.

6 THE COURT: I understand your argument.

7 MR. EPSTEIN: So, again, there's no, there's no evidence
8 ---

9 THE COURT: I understand your argument. I understand,
10 okay, well, let me take some time and read these cases. All
11 right. Anything else? Rather than me come back, any other
12 motions?

13 MR. CANTY: I don't have anything.

14 MR. CONNELL: No, sir.

15 MR. WILKERSON: Are we at the directed verdict stage,
16 we're still waiting to see if they're going to do a rebuttal?

17 THE COURT: We're still motions at the close of the
18 defense.

19 MR. WILKERSON: Okay.

20 THE COURT: All right.

21 MR. EPSTEIN: We will have - we'll renew - I think
22 we'll renew our motions at the close of their rebuttal case
23 and, you know, consider, I mean, obviously we can do it but
24 we're going to have to make the motion as the Court is aware

1 and ---

2 THE COURT: Well where we are right now is the Defense
3 has rested. The Plaintiff is making motions at the close of
4 the Defense.

5 MR. EPSTEIN: Right.

6 THE COURT: All right, any other motions?

7 MR. WILKERSON: Thank you.

8 MR. CONNELL: No, sir.

9 THE COURT: All right, do you anticipate any reply?

10 MR. CONNELL: No, sir.

11 THE COURT: Okay, so, do you want to go ahead and
12 renew your motions?

13 MR. EPSTEIN: We'll renew the motion. Your Honor, we
14 have un-rebutted testimony from Connie Sharp. We have un-
15 refuted documentary evidence through the summaries and the
16 supporting documentation which presumptively is accurate at
17 this point because nobody has put on evidence undermining or
18 questioning the accuracy of those spreadsheets. We have
19 accounted for but two transactions every single transaction,
20 every single contract.

21 THE COURT: But the fact that you've got those two
22 transactions without the Court having looked through every
23 single exhibit why does that not mean the jury has the
24 authority to go through every exhibit to see if there's any

1 more than just those two?

2 MR. EPSTEIN: Well, put it this way, Your Honor, I think
3 the proof is in what you just said. We revealed that.

4 THE COURT: Well, still you revealed it but we haven't
5 looked at it. The jury hasn't looked at it. You've just
6 said, "Here's two, now you can believe us that these other
7 1500 sheets there's nothing but those two in these other 1500
8 sheets," and I don't think that that was her testimony. I
9 think that basically the testimony was you went through some
10 of them and she admitted to those two ---

11 MR. EPSTEIN: Well ---

12 THE COURT: --- but I don't recall her testimony
13 saying that there was no more, maybe there was.

14 MR. EPSTEIN: Well, I will represent to Your Honor
15 those are the only two and that's why we brought them out.

16 THE COURT: Okay.

17 MR. CONNELL: Well, in fact, in fact, Your Honor, she
18 said mistakes were made.

19 MR. EPSTEIN: Yes, right, two.

20 THE COURT: Yeah.

21 MR. CONNELL: And so, just as you indicated.

22 MR. EPSTEIN: And because we admitted to those. Those
23 two out of the transactions that are subject matter of this
24 lawsuit we brought those out. I mean, I'll tell, I'll tell

1 you that is exactly what we did. We brought them out because
2 they were errors on our part and we brought them out and had
3 her specifically testify. You're right. We didn't sit here,
4 or which would have turned this into a two-week trial, going
5 through every one of those line items. We brought out
6 representative transactions and we underscored, because it's
7 the right thing to do, the two transactions that our own
8 research have shown were - fell into the crack. If it fell
9 into the crack and we got to pay for that, fine. We
10 understand that, but the other transactions there is no
11 evidence here. It's really up to the Plaintiff to bring in
12 evidence undercutting the validity of the testimony you've
13 heard, the reliability. It's not really up to the jury to go
14 figure it out. It's up to the Plaintiff to do that and we've
15 underscored to the Court, emphasized to the Court they didn't
16 carry their prima facie burden of proof because they never
17 showed that the two conditions precedent had been met, you
18 know, the down payment, and, and the non-rescission. We were
19 able to show in fact that one deal clearly was rescinded by
20 the customer.

21 THE COURT: So, you're saying it is a legal practice
22 by the employer to move the - an installment for a down
23 payment to the end of a 10-year contract and thus the employee
24 not receive the commission until that final payment which

1 constitutes an - the down payment?

2 MR. EPSTEIN: That, whether that is a legal or illegal
3 practice is irrelevant to this case because there's no
4 evidence that it occurred.

5 THE COURT: You've got the Plaintiffs' testimony that
6 it occurred.

7 MR. EPSTEIN: They haven't pointed to a single
8 transaction in which that occurred. We analyzed every
9 transaction. Connie Sharp testified that none - she had never
10 saw that happen in any of these transactions. That's what she
11 said. She said, "I've never seen that."

12 THE COURT: No, no, no, no, no. She just said if that
13 was done she would not know about it, it would just show up to
14 her that the down payment had not been made.

15 MR. EPSTEIN: And isn't it on the obligation of the
16 Plaintiff in this case on any one of these transactions to
17 show that that occurred? What is the transaction in which
18 that occurred? Where is the evidence from ---

19 THE COURT: Okay, I understand your ---

20 MR. EPSTEIN: --- something other than antidotal
21 evidence?

22 THE COURT: All right, I understand your argument.
23 All right, anything else? All right, give me a while, read
24 through this.

1 MR. WILKERSON: Your Honor, we do - there is a - that
2 counterclaim that was asserted and we are - we're withdrawing
3 that.

4 THE COURT: Okay, withdrawing the counterclaim?

5 MR. WILKERSON: Yes, sir, we're withdrawing that.

6 MR. CONNELL: All right.

7 THE COURT: Okay, so, the only thing we've got now on
8 the motions is the Plaintiffs' cause of action against the
9 Defendant for violation of the wage, South Carolina Wage
10 Statute, breach of contract.

11 MR. CONNELL: Breach of contract accompanied by a
12 fraudulent act.

13 MR. EPSTEIN: Breach of contract with fraudulent act.

14 THE COURT: What is the fraudulent?

15 MR. CONNELL: Well, here's the fraudulent act, Your
16 Honor, the contract clearly says that you can only put a
17 certain amount in and they put a hundred percent in.

18 THE COURT: Yeah, but why isn't that just a breach of
19 contract? Where's the fraudulent?

20 MR. CONNELL: The - it's clearly in violation of the
21 contract and ---

22 THE COURT: Yes, and that's a breach of contract.

23 Breach of contract means that you have, that they induced your
24 clients into a contract by virtue of their fraud. What is

1 their fraudulent act that is outside the scope of the
2 contract? What fraud did they commit?

3 MR. CONNELL: Yes, sir, how about the chargeback
4 provision and how about the six timely payments because if you
5 look at the, at the Ross case again, if you look at the end
6 there's another section in South Carolina that says, "No
7 provision of this chapter may be contravened or set aside by a
8 private agreement," and what this contract purports to do is
9 to say this is a private agreement among these parties and
10 this is the way we're going to pay your monies and it may not
11 come due for 10 years. Ms. Sharp said several times, "I don't
12 know when this money will ever be paid." Meanwhile, the same
13 people are in the units paying Westgate their \$289 a month fee
14 that they financed but the, but the salesperson gets no, no
15 commission for that deal. I mean, how does that ---

16 THE COURT: But I mean, what - your cause of action
17 for breach of contract accompanied with a fraudulent act means
18 you have a breach of your contract which I, as I understand
19 what you're arguing now is the breach of contract. What was
20 their knowing misrepresentation that they intended the
21 Plaintiffs to rely upon to induce the breach?

22 MR. CONNELL: Ms. Sharp's own testimony on the stand
23 earlier where she said, "If something happens and they call me
24 I'm going to pay them. Otherwise I'm not ever going to pay

1 them. If you get hit by a bus, too bad, we get to keep the
2 money," and that was the whole scheme. That's the whole
3 scheme all these people talked about.

4 THE COURT: Okay, let me hear from you on that.

5 MR. EPSTEIN: Your Honor, I don't see how you can have a
6 fraudulent act when there is no fraud. These things that
7 they're complaining about are necessarily disclosed in the
8 contract. Otherwise if they weren't disclosed they wouldn't
9 be attacking them under the Payment of Wages Act because then
10 they wouldn't have a contract to attack. So, once -- we have
11 told them, the employer told these people that there would be
12 chargebacks after they left their employ. They told these
13 people that the chargebacks would be processed based upon
14 whether the contracts made six timely monthly payments
15 following the termination of employment. If there's nothing
16 misleading, if there's nothing concealed, if there's nothing
17 withheld there can be no fraud. Now, if you determine that
18 these provisions were not strictly complied with by CFI Sales
19 and Marketing, Ltd., that's a breach of contract, just as you
20 have said, but it is not a breach of contract coupled with a
21 fraudulent act because all we have done is do, is perform a
22 contractual provision in perhaps an imperfect way but not in a
23 way that is not contemplated by it because the six, the
24 employer has determined that six consecutive and timely

1 monthly payments have been made on each sale made by the
2 employee and for which employee has been paid a commission.
3 This is the disposition of the reserve. That necessarily
4 requires the employer, CFI Sales and Marketing Limited, to
5 determine whether there have been payments made. That's
6 exactly what they're complaining about. So, it's exactly a
7 breach of contract case, nothing more.

8 THE COURT: All right, all right, let's take a little
9 while and let me take a look at these cases. I'll be back in
10 just a second. All right.

11 OFF THE RECORD

12 (On the record. Whereupon, the following takes place outside
13 the presence of the jury.)

14 THE COURT: All right, what I want to do is I'm going
15 to go ahead and bring the jury in and cut them loose for the
16 remainder of the day because I know all the testimony has been
17 taken and everything and so what we're going to do is we're
18 just dealing with matters of law. I'm going to have them come
19 back tomorrow morning and then we'll take it up some then but
20 I do have some other legal matters to go over with.

21 MR. EPSTEIN: I need to just supplement the record with
22 one thing in making a ruling.

23 THE COURT: Not right now. We'll do it in just a
24 minute; okay?

1 MR. EPSTEIN: Okay.

2 THE COURT: All right, let's go ahead and bring the
3 jury in.

4 (Whereupon, the following takes place in the presence of
5 the jury.)

6 THE COURT: All right, ladies and gentlemen, welcome
7 back. The Defense has now closed their case. They don't have
8 any other witnesses to call and the Plaintiffs do not have
9 anyone to call in reply. So, all of the testimony and
10 evidence to be presented in this case has now been presented
11 to you. The only thing that remains in this case is for the
12 attorneys to make their closing arguments, for me to charge
13 you with the law to be applied in this case and for you to
14 deliberate or do your deliberations in this case. However, it
15 will take some time for us to get some charges together. I
16 need to pull the law together before I can charge you, and so,
17 what I'm telling you is it's a good time for us to go ahead
18 and break for the remainder of the day. I'm going to let you
19 go home. Please do not discuss the case even among
20 yourselves. Don't conduct any research or any investigation
21 in the case, please leave all of your notes here. We'll come
22 back tomorrow morning, and as a practical matter, if we went
23 forward with the closing arguments and the jury charge today
24 you're probably looking at four o'clock before you would even

1 begin your deliberations and given the amount of evidence and
2 everything that might be a little late in the day to do that.
3 So, I'm going to send you home for the remainder of the day.
4 Please be back in the jury room at nine o'clock tomorrow
5 morning and we'll get started soon after nine o'clock as we
6 can. I hope everybody has a good evening and we'll see you
7 back tomorrow morning at nine o'clock. Thank you very much.

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right.

11 MR. EPSTEIN: Okay, if I may, two things, Your Honor,
12 briefly, to supplement the record, if I may, in Exhibit Number
13 38, Plaintiff's Exhibit Number 38, the Arrington schedule, the
14 Plaintiff for whom we had identified the two transactions that
15 went into the reserve subsequent to January 29, 2010, there
16 is, in fact, on the same page as one a third transaction that
17 went into the reserve on December 23, 2010. So, one Plaintiff
18 has three rather than two transactions, but there are no
19 others.

20 THE COURT: All right.

21 MR. EPSTEIN: And secondly, we ask the Court to take
22 judicial notice of and make a part of the record in this case,
23 if not to the jury, but a part of the record in this case the
24 pleadings and filings in the Parker case, in particular, which

1 we made a part of the record here, the complaint which is
2 already a part of the record here because of the motion for
3 summary judgment, but in addition to that, which are not part
4 of the record in this case, is they did not accompany the
5 motions, the answer filed on behalf of CFI Sales and
6 Marketing, Limited, motion to dismiss that was filed in behalf
7 of CFI Sales and Marketing Limited and the Plaintiff's
8 response to it and the reply to the extent there was one, and
9 the motions for summary judgment that were filed in that case.

10 THE COURT: Well, sir, judicial notice means that the
11 Court recognizes a known fact that is not susceptible to proof
12 as in the Court can take judicial notice that today is
13 Thursday, okay. I will take judicial notice that there was a
14 prior lawsuit that we've been calling the Parker lawsuit that
15 has been filed. Whatever that complaint, whatever those
16 answers, whatever is involved in that case, it's in that case.
17 It's in the Clerk of Court's file. Whatever, that case is
18 governed by Judge Baxley's order that settled the case between
19 the parties and I'll take judicial notice of that, okay, but
20 ---

21 MR. EPSTEIN: And - but, but I want to make sure of two
22 things, number one, that everything that could potentially
23 bear upon what the application of res judicata is in this case
24 as a result of that case is part of the record in this case.

1 So, if we're all, you know, agreeable that without having to
2 do a massive filing in this case just for the purposes of
3 establishing not only what claims were made or might have been
4 made, which is the standard under the Judy versus Judy case,
5 but also what was actually litigated and adjudicated in that
6 case. That's the purpose of this request to make sure ---

7 THE COURT: Well, I didn't think anything was
8 litigated in that case.

9 MR. EPSTEIN: Oh, it was heavily litigated. There was
10 motions ---

11 THE COURT: Oh, you all went to trial?

12 MR. EPSTEIN: There wasn't a trial.

13 THE COURT: Okay.

14 MR. EPSTEIN: But it was litigated, oh, yes. I mean,
15 there were summary judgment motions, and in fact, as I think
16 Judge Baxley's order pointed out the Court did, in fact, grant
17 summary judgment. That obviously was pursuant to motion on
18 the issue of whether commissions were wages. That was the end
19 result. The motions were denied otherwise. The case was
20 actively litigated up to the point of trial including ---

21 THE COURT: Well, the fact of the matter is is that is
22 a public record. That is a file. It exists. Whether or not
23 I take judicial notice - I'm not going to combine these two
24 cases.

1 MR. EPSTEIN: Not as ---

2 THE COURT: It is what it is.

3 MR. EPSTEIN: But for appellate purposes I want to make
4 sure that there's not going to be any issue later on of being
5 able to refer to these pleadings because they are public
6 records. They are self-authenticating. There's no question
7 of their authenticity and in appropriate circumstances
8 admissibility.

9 THE COURT: I don't understand what you're asking me
10 to do.

11 MR. EPSTEIN: Well, I'm asking you to, to simply make a
12 ruling or a finding or a statement that anything that bears
13 upon, that is a pleading, a filing in that case that bears
14 upon the legal determination of the scope of res judicata is
15 part of the record of this case for purposes of either side
16 being able to contest how you're ultimately going to apply res
17 judicata.

18 THE COURT: Having not gone through that file and
19 knowing what's in that file I'm not going to do that.

20 MR. EPSTEIN: Okay, well, note that we may end up filing
21 a motion if need be to supplement the record in this case with
22 those because if obviously ---

23 THE COURT: You've had the opportunity to present your
24 defense. If you want to bring any of that in you could have.

1 MR. EPSTEIN: It's not ---

2 THE COURT: The record's closed, okay?

3 MR. EPSTEIN: Well, well, with respect to the summary
4 judgment motion, though you granted summary judgment. Now we
5 seem to be waffling on exactly what is foreclosed by that.

6 THE COURT: I know, Mr. Epstein, and I know you could
7 probably go on another hour arguing this point, but I've made
8 my decision; okay?

9 MR. EPSTEIN: Well, but you haven't informed us what the
10 decision is.

11 THE COURT: I'm denying your request to take judicial
12 notice.

13 MR. EPSTEIN: No, no, no, I appreciate that.

14 THE COURT: Okay.

15 MR. EPSTEIN: But again, you know, the point of clarity
16 we're trying to figure out you granted a motion and now we
17 don't know how you're going to instruct the jury with respect
18 to what they can and cannot consider with respect to the
19 reserves. So, I guess we'll find that out as we proceed in
20 the charge conference.

21 THE COURT: That's right.

22 MR. EPSTEIN: Okay, thank you.

23 THE COURT: All right, I'm going to still take these
24 motions under advisement, and I can tell you right now the

1 dilemma I am having is to what extent res judicata does apply
2 in this case. So, I am going to - I mean, to me it is clear
3 the employer violated the Payment of Wages Statute, the South
4 Carolina Payment of Wages Statute. I don't think there's any
5 doubt about it. The Legrand [sic] case, is it Ligand,
6 Legrand, whatever it is.

7 MR. CONNELL: Ross versus Ligand.

8 THE COURT: Ligand, Ligand, that case clearly shows
9 that it was a violation of the South Carolina Payment of Wages
10 case but I'm inclined to believe that that issue was dealt
11 with in the Parker case because the biggest violation is their
12 changing the terms of the employment contract by paying a
13 hundred percent of a commission into the reserve account upon
14 termination of employment rather than just 10 percent. The
15 way that contract, employment contract is drawn up, even upon
16 the termination of an employee 10 percent went into the
17 reserve account and that was it and they started putting a
18 hundred percent in it. Having said that, I'm inclined to
19 believe that all of that is res judicata because of the Parker
20 case because the Parker case settled the Plaintiffs'
21 entitlement to the funds in the reserve account. So, that's
22 the dilemma I'm in and that's what I've got to go back and do
23 some more research on. So, I'm not - if we didn't have the
24 Parker case out there I would be granting your motion, Mr.

1 Connell. With that Parker case out there I'm not so sure that
2 the Defense isn't right, that that's a res judicata issue,
3 that your argument, that all of these funds, you know, yeah,
4 there is a violation of the employment contract, they did not
5 put it in writing, they didn't - they unilaterally just
6 started sticking a hundred percent of the commissions into
7 that reserve account, but you've got a Parker case that the
8 Plaintiffs settled where the Defendant gave the Plaintiffs
9 judgment \$650,000 to cover their entitlement to funds in that
10 reserve account. So, I'm inclined to believe that it might be
11 res judicata. I don't know. All right?

12 So, tomorrow morning, this is what we're going to do,
13 we're going to come back. I know that there's, that there is
14 going to be some issues that go to the jury for Ms.
15 Arrington's claim if for nobody else and I don't know. So,
16 I'm going to be doing my jury charges tonight. I'll let you
17 know of my decision tomorrow morning. The way this thing has
18 gone I'm going to have to limit closing arguments to 30
19 minutes, okay? We'll - I'll take the bench at 9:15, give you
20 my decision, bring the jury in, do the closing arguments.
21 I'll charge them. Then we'll send them out to deliberate,
22 okay? All right, sir.

23 MR. WILKERSON: May we submit some proposed charges
24 to your law clerk, Your Honor?

1 THE COURT: You better get them to me quick.

2 MR. WILKERSON: We have them ready.

3 THE COURT: Okay, go ahead and give them to him now.

4 All right?

5 Anything from the Plaintiff before we break for the
6 evening?

7 MR. CONNELL: No, Your Honor.

8 THE COURT: Anything from the Defense?

9 MR. WILKERSON: Nothing, Your Honor.

10 THE COURT: All right, we'll stand in recess till 9:15
11 tomorrow morning.

12 OFF THE RECORD

13 (On the record, February 17, 2012. Whereupon, the following
14 takes place outside the presence of the jury.)

15 THE COURT: All right, ladies and gentlemen, I've
16 given you a copy of my proposed order [sic] and the proposed
17 verdicts in this case. I'll give you a little - a few more
18 minutes to look over it if you need to but I wanted to go
19 ahead and come out and advise you of my ruling on some of
20 these matters. As to your motion for a directed verdict as to
21 violation of South Carolina Wage Practices Act, every case
22 I've read said that that act and a violation of that act is a
23 matter of law. It's not a factual matter that goes before the
24 jury. All of the evidence has been presented in this case.

1 So, I'm just going to make a decision on that. I don't know
2 that I'll do it right now, but I'm denying your motion for a
3 directed verdict because it's nothing that goes to the jury.
4 It is a legal matter that's not subject to factual
5 determination by the jury so they don't need to be advised on
6 that issue. I'm granting the Defendant's motion for a
7 directed verdict as to the breach of contract with fraudulent
8 intent. I think there is evidence of a breach of contract,
9 but breach of contract with fraudulent intent requires a
10 knowing misrepresentation relied upon by the Plaintiffs, known
11 to be false by the Defendant, that the Plaintiffs relied on to
12 their detriment, and so, I don't think there's any evidence in
13 the record to indicate any fraud by the Plaintiffs [sic] in
14 this case. I think they - the issue of breach of contract
15 does go to the jury, breach of contract with fraudulent
16 intent, no, I'm going to grant their motion for a directed
17 verdict. Having said that, I have formulated my jury
18 instructions to comply with those rulings. So, that's why you
19 don't see any charges on breach of contract with fraudulent
20 intent and I've omitted you all's request for charges in that
21 regard. Do you all need any further time to look over these
22 instructions? I know you want a handle of them before you
23 make your closing arguments. Do you all need any more ---
24 MR. CONNELL: Can I ask one question, Your Honor?

1 THE COURT: Yeah.

2 MR. CONNELL: Are we going to be able to argue that
3 there's a violation of the Payment of Wages Act?

4 THE COURT: No, no, because that, that, that's
5 irrelevant as to whether or not there's a breach of contract.
6 If you violate the act it doesn't necessarily mean there's a
7 breach of contract. Likewise, if you breach a contract it
8 doesn't necessarily mean you've violated the statute.
9 Violation of the statute is a legal matter. Now, I can tell
10 you right now they come back with a verdict for unpaid wages
11 for breach of contract you're going to get triple for
12 violating the act, but that's a legal matter. That's not
13 before the jury; okay? So, those are two separate issues,
14 violation of the act is a legal matter to be decided by the
15 Court, breach of contract is a factual issue to be determined
16 by the jury.

17 MR. CONNELL: So, Your Honor is not going to - Your
18 Honor is going, is going to decline to make a ruling on the
19 declaratory judgment part of the case at this juncture before
20 we go to the jury; is that what ---

21 THE COURT: Well, the fact of the matter is I don't
22 think they've complied with the act.

23 MR. CONNELL: All right.

24 THE COURT: Now, having said that, you, you can have

1 an employer that doesn't comply with the act but there's no
2 damages sustained by the Plaintiffs. So, what I'm going to do
3 in this case I think there is a violation of the act. Now,
4 whether or not that results in a verdict or a judgment in
5 favor of your clients I don't know at this time until we get
6 the jury verdict. I can tell you what's going to happen is if
7 the jury comes back with a verdict in favor of one or more of
8 the Plaintiffs, whatever the amount of that judgment is it's
9 going to be tripled for violating the act; okay?

10 MR. CONNELL: All right.

11 THE COURT: But I'm not going to instruct the jury
12 that there's a violation of the act because that has nothing
13 to do whether or not there's a breach of contract. Just like
14 if I found they had not violated the act they could still be
15 guilty of breach of contract; okay?

16 MR. CONNELL: I was under the impression that, that the
17 Payment of Wages Act was a separate cause of action you could
18 bring.

19 THE COURT: But it's - but every case I saw said
20 violation of the Payment of Wages Act and violation of that
21 act is a legal matter that is determined by the Court. It's
22 not determined by the jury. So, I as the judge determine
23 whether or not they have violated that act and whether or not
24 the Plaintiffs are entitled to triple the amount of unpaid

1 wages.

2 MR. CONNELL: I was thinking that the law was is that
3 when the statutes of the state are part of the contract, I
4 mean they couldn't have a contract and ---

5 THE COURT: I'm not going to leave it up to the jury
6 to decide whether or not there's been a violation of the act.
7 That's the Court to decide and I will decide that. Now,
8 having decided that, it's got nothing - no bearing whatsoever
9 on whether or not the Defendants have breached their contract
10 with the Plaintiffs. As I said, you could have an employer
11 that does not comply with the South Carolina Wages Act but
12 never breaches an employment contract. You could have a
13 Plaintiff that complies with the South Carolina Payment of
14 Wages Act but breaches the contract all the time. They're two
15 separate issues. So, whether - so, there's no reason - I know
16 what you're trying to do. You're trying to get me to tell the
17 jury that the Plaintiffs have not complied with the South
18 Carolina Payment of Wages Act and hope that that will convince
19 them to find that there's been a breach of contract and I
20 think that's error of law to do that and I'm not going to do
21 that.

22 MR. CONNELL: All right, all right, Your Honor, we would
23 just argue that that and you understand what our argument is
24 that you should ---

1 THE COURT: Yeah, I note your exception to my charges
2 and to my ruling. You want me to charge them that the
3 Plaintiffs have violated the South Carolina Payment of Wages
4 Act.

5 MR. CONNELL: And if you don't, if you don't charge them
6 that they violate it I want you to charge that is the law of
7 the State of South Carolina, that's the appropriate law that
8 everybody has to be paid ---

9 THE COURT: So ---

10 MR. CONNELL: --- time certain and place certain and
11 that that - if you're going to refuse to - and I understand
12 what your ruling is about that.

13 THE COURT: Yeah.

14 MR. CONNELL: I just think the jury needs to know that
15 there are certain statutes you have to follow and the Payment
16 of Wages Statute provides A, B, C and D, and you can consider
17 that in your, in your deliberations because let's assume we
18 had not brought a breach of contract claim, we just brought a
19 claim under the Payment of Wages Act.

20 THE COURT: Then you wouldn't even be in front of a
21 jury.

22 MR. CONNELL: Well, but in the Rice case that was a jury
23 trial.

24 THE COURT: I'm almost certain that that said the

1 payment of wages and violation of the South Carolina Payment
2 of Wages Act was a legal issue. I'll have to look back at
3 that.

4 MR. CANTY: Your Honor, if I, if I may be heard we
5 cited in our memorandum Ayers versus Crowley [spelled
6 phonetically] that case says that when the parties enter into
7 a contract all laws of the state that may relate to the
8 subject of the contract are part of the contract.

9 THE COURT: Right, I understand that, but I've made my
10 ruling, all right.

11 MR. CONNELL: Thank you, Your Honor.

12 THE COURT: All right, anything else?

13 MR. CONNELL: So, so, Your Honor, we can't mention
14 Payment of Wages just so we don't get in trouble with you ---

15 THE COURT: Yeah.

16 MR. CONNELL: --- before we get out the box.

17 THE COURT: Yeah, don't bring up the Payment of Wages
18 Act to the jury.

19 MR. CANTY: And Your Honor, I understood the Court's
20 ruling with regard to Mr. Middleton that you struck his
21 testimony in its entirety.

22 THE COURT: Right.

23 MR. CANTY: And with regard to the other Plaintiffs
24 who were dismissed they testified to factual matters aside

1 from the amount of their damages and I understand they've been
2 struck as Plaintiffs but may I refer to their factual
3 testimony in closing?

4 THE COURT: No, I mean, I don't understand. What is
5 the relevancy?

6 MR. CANTY: Well, Your Honor ---

7 THE COURT: What you're trying to do is say since the
8 Defendant breached a contract with them he also breached a
9 contract with other Defendants?

10 MR. CANTY: Well, Your Honor, for example there's been
11 debate, I think I heard Mr. Epstein say that there was no
12 evidence that down payment installments had been moved to the
13 end of the contract and among others Ms. Singleton testified
14 to that and that's not her claim for damages. I understand
15 you've dismissed her claim.

16 THE COURT: I see what you're saying. Let me hear
17 from the Defense on that.

18 MR. WILKERSON: Your Honor, I, I, I think he's right.
19 I think, in fact, just because, just because a claim has been
20 dismissed does not vitiate the fact that that person has
21 testified. So, I think he's right on that.

22 THE COURT: Okay, all right, then I'll allow you to.

23 MR. CANTY: Thank you, Your Honor.

24 THE COURT: All right, all right.

1 MR. CONNELL: One other thing, Your Honor, at the end,
2 at the close of the testimony I think Mr. Epstein said that
3 they had discovered yet a third, a third problem and that was
4 Ms. LeVasseur, I believe; is that right?

5 MR. WILKERSON: No, it's all three on Arrington, it's
6 all three on the list. We just - he just represented there
7 were two and the list reflects three. We didn't discover
8 anymore but the list shows three.

9 MR. CONNELL: Okay, I thought he said LeVasseur but
10 you're saying it's Arrington?

11 MR. WILKERSON: It's Arrington, yeah, and I'll show
12 you all - I'll show you the three on there.

13 MR. CONNELL: Okay.

14 MR. WILKERSON: There are three on Arrington, Your
15 Honor, that we ---

16 THE COURT: And that's why I've put in my
17 instructions, I don't know if you all noticed that, they're
18 going to, they're going to come back with a verdict for Ms.
19 Arrington.

20 MR. WILKERSON: And we were going to ask them to do
21 that, Your Honor..

22 THE COURT: Yes, and that's ---

23 MR. WILKERSON: It's my turn?

24 THE COURT: Anything else?

1 MR. CONNELL: No, sir.

2 THE COURT: All right, yes, sir.

3 MR. WILKERSON: Yes, sir, Your Honor, with respect to
4 your charge I noticed that you declined to include in there
5 any reference to the law concerning failure of a condition
6 precedent. Our, our case in defense has been based
7 substantially upon that legal concept, and we would ask that
8 that be explained to the jury. We submitted request to charge
9 number two that addressed that question, and I don't think
10 that's addressed in your charge.

11 THE COURT: Yeah, and I'm not going to do that because
12 if I get into that then I'm also going to have to get into the
13 state law that they can't back these commissions out for 10
14 years. I think that's clearly a violation of the statute.
15 So, I'm not even going to get into that.

16 MR. WILKERSON: You will allow us to argue failure of
17 condition contained in the contract, of course, because
18 that's, that's factually correct. I mean, that's factually
19 based on the, based on the evidence and that's ---

20 THE COURT: Well, but then, yeah, but then they're
21 going to be able to argue that it's illegal under the statute
22 for you to delay payments more than 30 days after you sever
23 employment and if you've got a - something that you can
24 postpone for 10 years because you've backed a down payment to

1 the end of the contract and they've got to make six monthly
2 payments and they make five and then they're late on one and
3 then they make five and they're late on one and these people
4 don't get their commission for 10 years ---

5 MR. WILKERSON: With all respect, Your Honor, on that
6 issue the, the concept has been testified to without any
7 question. These people have testified over objection that
8 from time to time some contracts would be changed to allow or
9 to include, to allow a down payment to be paid at the end of
10 the contract as opposed to the first.

11 THE COURT: Okay.

12 MR. WILKERSON: We objected to that, the Court
13 allowed that testimony, it's in. However, on the other, on
14 the other hand not a single contract has been identified that
15 they're basing their claim upon in which that was alleged, in
16 which that allegedly occurred; and so, therefore, that concept
17 is not supported by the evidence in this case as it relates to
18 any of the claims that are being made.

19 THE COURT: Okay, I understand your point. I'm going
20 to let you argue it and I'm going to also charge them on
21 violation of the South Carolina Wage Payment Act, that it has
22 to be paid within 30 days. So, I'll allow you to do that and
23 I'll give you your charge.

24 MR. CONNELL: Thank you, Your Honor.

1 THE COURT: Okay.

2 MR. CONNELL: Thank you. Yes, sir.

3 THE COURT: Anything else?

4 MR. CONNELL: No, sir.

5 THE COURT: All right, let me go work on these charges
6 a little bit to add in that part and then add in your part
7 about the condition precedent; okay?

8 MR. CONNELL: Thank you, Your Honor.

9 THE COURT: All right, thank you very much.

10 OFF THE RECORD

11 (On the record. Whereupon, the following takes place
12 outside the presence of the jury.)

13 THE COURT: All right, ladies and gentlemen, I've
14 amended my charges. On - after page seven the last paragraph
15 says, "A party breaches a contract when that party does not
16 perform as agreed under the contract by failing to carry out a
17 term, promise or condition of the contract." After that I've
18 inserted the following language, excuse me, "When a party's
19 obligation under a contract is conditioned upon the other
20 party's prior performance of an obligation under the contract
21 it requires that an event occur first and the party claiming
22 breach of the contract must prove that the prior obligation
23 has been fulfilled or that the required event has occurred."
24 Then, excuse me, moving over page 11 and the top of 12, the

1 last sentence on 11, the top of 12 it says, "In other words
2 the law becomes a part of the contract, whether the contract
3 states so or not. This is because everyone is presumed to
4 know the law." Then I've inserted this, "Under South Carolina
5 law every employer shall notify each employee in writing at
6 the time of hiring of the normal hours and wages agreed upon,
7 the time and place of payment and the deductions which will be
8 made from the wages. Any change in these terms must be made
9 in writing at least seven days prior to, at least seven days
10 before they become effective. However, this requirement does
11 not apply to wage increases. South Carolina law also provides
12 that when an employer separates an employee from the payroll
13 for any reason the employer shall pay all wages due to the
14 employee within 48 hours of the time of separation or the next
15 regular payday, which may not exceed 30 days." So, I've added
16 those in there. All right?

17 All right, anything further from the Plaintiff before we
18 bring in the jury?

19 MR. CONNELL: No, sir.

20 THE COURT: All right, anything from the Defense?

21 MR. WILKERSON: No, Your Honor. Thank you.

22 THE COURT: All right, we're going to limit closing
23 arguments to 30 minutes.

24 MR. CONNELL: That's what you told us.

1 THE COURT: Yeah, because I want to make sure the jury
2 gets this before noon, before lunch because with the amount of
3 evidence they might be out a long, long time on this one.
4 Okay? I don't know that, but ---

5 MR. CANTY: And Your Honor, will that be 30 minutes
6 for me to open fully and then 30 minutes for Mr. Connell or is
7 that combined, we divide up the 30 minutes?

8 THE COURT: No, total. Each, that's it.
9 All right, yes, sir.

10 MR. WILKERSON: One more housekeeping matter, Your
11 Honor, we, we - counsel have discussed it, we would appreciate
12 the Court allowing 10 days for all post-trial matters,
13 including all legal issues.

14 THE COURT: Whatever the rules provide, yeah. I'll
15 allow whatever the rules provide you can do that, okay?

16 MR. WILKERSON: Yes, sir, and you know, we're going
17 to have issues, perhaps, relating to attorney's fees, trebling
18 damages, all, NOV issues. We'd just like to have 10 days if
19 the Court would allow.

20 THE COURT: Yeah, whatever, whatever the rules provide
21 you'll have that time limit.

22 MR. WILKERSON: Thank you, Your Honor.

23 THE COURT: All right, all right, let's bring in the
24 jury.

1 (Whereupon, the following takes place in the presence of
2 the jury.)

3 THE COURT: All right, ladies and gentlemen, welcome
4 back. Hope everyone had a good evening. We're now ready to
5 resume the trial of the case. I apologize for keeping you
6 back in the jury room for so long but we did have some legal
7 matters that we needed to tend to before we proceeded in the
8 trial. I remind you that if you have any cell phones, pager
9 devices or other communication devices if you would turn them
10 off at this time. Also, if you have your notepads make sure
11 you have your notepad if you are taking notes.

12 Now, we have reached the part of the trial where all of
13 the evidence and testimony has been presented to you and now
14 is the time for the attorneys to make their closing arguments.
15 Like their opening statements these closing arguments are not
16 evidence in this case. It is simply the attorney's contention
17 as to what they think the evidence in this case has shown or
18 what they feel the issues are. If at any time an attorney
19 makes reference to a fact that is different from the facts as
20 you find them to be or references the law that is different
21 from the law as I will charge you after their arguments then
22 you're to disregard their statements because this is simply
23 their opinion or their contention as to what the facts are and
24 what the law is. You're to base your findings of fact on the

1 testimony and evidence that has been presented up to this
2 point and then the law as I will charge you at the close of
3 their arguments as the law that you will follow.

4 All right, Mr. Canty or Mr. Connell, who wants to ---

5 MR. CANTY: May it please the Court, Your Honor?

6 THE COURT: Yes, sir.

7 MR. CANTY: Ladies and gentlemen of the jury, on
8 behalf of the Plaintiffs we want to thank you for your
9 valuable time. You have taken a week out of your lives to
10 come and sit in this jury box every day and we are all
11 profoundly grateful for your service. It's been said that
12 jury service is the highest form of public service that you
13 can render without wearing a uniform, and that is indeed true
14 and we are grateful for your time.

15 On Monday when we started the trial of this case you
16 heard opening statements and I made notes of what Mr.
17 Wilkerson said to you, and Mr. Wilkerson said two things to
18 you. Number one, he said he would prove to you that the
19 Defendant in this case had, and these were his words, properly
20 managed these contracts, and the second thing that Mr.
21 Wilkerson said to you is that he would prove to you that this
22 Defendant paid every dime the Plaintiffs were owed. Now, I'm
23 required to summarize the evidence and you've all heard the
24 evidence and you've been allowed to take notes and if I'm

1 redundant there's a reason for it. I'm required to open
2 fully.

3 You heard from Mr. Oxentine and his testimony was that
4 they were supposed to be paid within 21 to 28 days. He
5 testified there were over 100 salesmen in the summer and 15 to
6 20 in the winter. He was told that he would be paid his
7 \$1,653.80 - 89 cents and that not more than \$3500 would be
8 placed in the reserve account, that there were no reserves, no
9 chargebacks at the time he was hired. He was presented the
10 contract and the operations manager said, "If you don't sign
11 it you don't get paid." He said it was hard to get in touch
12 with Connie Sharp. He said he had been trying to get his
13 money for three years and in fact his testimony was that at
14 times he'd been unemployed, he'd been living in a motel and
15 for a short period he was homeless. With regard to the six
16 timely payments he said if that was the custom they never let
17 us know.

18 Ms. Singleton testified that Richard Siegel retroactively
19 reduced the commission rate. She also testified that the
20 folks in deeding would take the down payment and put it at the
21 end of the note. She also testified that Deborah Turner,
22 general manager, told her about up-selling and down-selling,
23 that is the process where after a salesman makes a deal
24 they're contacted, the buyer's contacted later and they're up-

1 sold or down-sold.

2 Mr. Thoni testified that there was no advance notice of
3 any changes in compensation. Mr. Adams testified, and this is
4 important, that the reserve account was not involved, that
5 when he was charged back he wasn't charged back against his
6 reserve account. He was charged back against his paycheck.
7 He testified he was not paid within 30 days, that customers
8 were up-sold and down-sold without notice. He testified the
9 Defendant has not complied with the contract. He testified
10 that one contract he was paid for and then he was charged back
11 nine months later against his paycheck.

12 Ms. Lanpher testified that in order to receive
13 commissions for the penders that you had to go to OPC, that's
14 the office-site personal contact, that is the people who hand
15 out the cards saying if you go take the tour then you'll get
16 the gift. She said the Defendant did not comply with the
17 contract. She also said that the direct deposit made payments
18 did not identify which customers she was being paid on.

19 Mr. Loughlin testified that he was given a stack of
20 papers and that he had to sign them because the tours were
21 waiting. He testified down payments were moved to the end of
22 the 10-year note. He testified he called Connie Sharp at
23 least five times and never got a call back. When he was
24 separated from the payroll Doug Boykin told him that he would

1 be paid within 90 days and that Frederick Von Sant told him,
2 another manager, that if he left the company he possibly
3 wouldn't get paid and he was owed, he testified, \$14,460, and
4 if he stayed on as an OPC he would continue to get his
5 commissions, that he could never get a straight answer, never
6 an immediate response from the Defendant, and no explanation
7 of the delay or the non-payment, that he was not given an
8 opportunity to read the contract, as he put it, in the heat of
9 the moment.

10 You heard from Mr. Haynes who was owed \$3,470, not much
11 time to read the contract, no written notice in advance of
12 changes in the contract. He had three full down payment
13 deals. He asked if he would receive them on his next
14 paycheck. Doug Boykin said he had an e-mail from Richard
15 Siegel and he'd have to wait six months, no written notice of
16 changes in the employment contract. He said he called Connie
17 Sharp four times. Ms. Arrington claims \$35,960.25. She
18 testified and she was at one point a manager, that a manager
19 could change the terms of the down payment and that that
20 happened. She contacted Connie Sharp. She said she wrote her
21 four times, she faxed her four times, she called her numerous
22 times, never got a response and besides her commission she
23 never got her bonuses. There was no written notice in advance
24 of any changes in the employment contract, the Defendant did

1 not comply with the contract and that Richard Siegel would
2 point to Doug Boykin. Doug Boykin would point to Connie Sharp
3 and that Richard Siegel would change the terms of the
4 contract.

5 Ms. Reilly testified she was due \$25,530. She asked for
6 copies of the documents that she had signed, couldn't get
7 them. Sales were over \$2 million 4th of July week, no written
8 notice of changes in the terms of employment, that they were
9 not talking about reserves. Connie Sharp required a letter in
10 order to get commissions earned. She testified she was told
11 by management at the Defendant, "Be wise not to be a part of
12 the lawsuit, come back in February and we'll pay you." That
13 was Victor Curry and Frederick Von Sant. Her claim does not
14 include her VOAs. Those are those \$40 vacation sales
15 commissions, and she testified that if you looked at your
16 VOAs, that is the documents that were in the box on the wall,
17 Richard Siegel would fire you.

18 Now, Mr. Bray he was the special forces veteran. He said
19 he was owed \$5,247. This was his first job out of the army,
20 was given a stack of paperwork with the diploma, said there
21 were no - told there were no chargebacks, 11 percent
22 commissions. Six months later he asked for his sales records
23 from Doug Boykin. He got none. He went to Connie Sharp and
24 she said, "Send written confirmation that you want your

1 money." He received a check saying his commission went from
2 11 percent to six percent for a week or two, and the VPG,
3 volume per guest as we indicated, it's a rolling four-month
4 average, it's determined monthly, and under that contract
5 there's no way it could change for a week or two. He said he
6 was given 30 seconds to sign 120 pages. He was told when he
7 put the contract copies on the scanner to put the contract
8 number at the top of the page so that when it was scanned it
9 wouldn't show. He testified there was one full down deal that
10 is McBride that was written up as another contract in another
11 salesman's name.

12 Ms. Parker said she was due \$3,874. She wasn't given
13 time to read the contract. She requested a copy and she
14 wasn't given a copy. Her commission rate was up to 11
15 percent. She testified there were frequent discrepancies in
16 the contracts. When she contacted her buyers some of them
17 were already contacted and upgraded. She said she tried many
18 times to contact Connie Sharp. She wrote her a letter and she
19 never got a response. Defendants have not complied with the
20 contract and she was not paid within 30 days.

21 Now, Ms. Black, \$20,490, the ad said no chargebacks, 10
22 percent commission, laid off at the end of September. She was
23 not paid for 20 contracts. When she was laid off Victor Curry
24 and Jesus said that she would get paid the following Friday

1 and she never saw her money. She described her calls to the
2 Westgate office in Myrtle Beach, in Florida as constant. She
3 talked to Connie once who said she would get paid after six
4 months. She didn't get paid within 30 days from her
5 separation from the payroll and that in-house people did the
6 up sales.

7 Ms. LeVasseur is owed \$6,628. She was given minutes to
8 look at the agreement. Her understanding was 10 percent
9 commission plus minimum wage. She did not get a copy until
10 months later. Doug Boykin told her, "Call Florida, write a
11 letter and within six months you would get all the money that
12 you were owed." She says she called several times, never a
13 return call.

14 Mr. Willis [sic] testified there were no chargebacks. He
15 was entitled to a 12 percent commission and a five percent
16 bonus until Richard Siegel put his foot up on the chair and
17 said, "It's 10 percent starting now," no written notice of a
18 change in the commission. He quoted Joe Doherty, a manager,
19 as saying if you can't put the full down they would put it at
20 the back of the contract. He called Connie Sharp and what did
21 she say? "You can send a letter in." He wrote the letter.
22 There was no response. He called numerous times the first
23 year and figured ultimately he wasn't going to get paid and he
24 was never able to get Connie on the phone again.

1 Mr. Zinn due \$22,054, 10 percent commission, no
2 chargebacks. Managers would change the down payment to
3 installments, that he was showed a check that appeared on his
4 W-2, which he says he never received. He was moved to OPC in
5 the fall, told he'd have to wait 90 days for his money. He
6 couldn't get a hold of Connie Sharp. When he did Connie said,
7 "Send a certified letter saying that you want your money." He
8 quotes the marketing manager as saying, "They don't ever plan
9 to pay you a dime." \$40 million in sales that summer by all
10 the salesmen, no written notice to changes to the contract,
11 when he asked for his money they sent him a bill for \$9,000.
12 He testified one contract, Foster, that they switched the
13 salesman's name on the contract.

14 Mr. D'Amico owed \$8,760. A huge part of the reason he
15 went to Westgate was no chargebacks, 10 percent commission.
16 He sold a full down deal the day before he was let go. He was
17 not given a copy of his employment contract. He called and
18 wrote to Florida 10 or 12 times. Finally he talked to Connie.
19 She said, "If you have any money coming you'll get it in the
20 mail." He never got a written response.

21 Mr. DeVitis owed \$3400, 10 percent commission. He was
22 told, "Call Connie and she'll get it squared up." Connie
23 said, "You'll have to wait for six timely monthly payments."
24 He was not paid within 30 days from separation of the payroll.

1 He was never told that any commissions were transferred into
2 the reserve account, and the contract says the six timely
3 payments only applies to the reserve account, and then we had
4 Connie Sharp testify, and she described the sculpture system.
5 This was a system that was in place at the time that these
6 Plaintiffs were working and they've since replaced the
7 sculpture system with the SMS system and the reason was the
8 sculpture system had problems, didn't work too good, it made
9 mistakes. They had to make corrections. She testified that
10 it was in her words the practice of the company to put
11 everything in reserves if no longer employed, and she admitted
12 that the contract did not provide for that. Ten percent of
13 the commission went into the reserve up to \$3500 and Connie
14 admitted put a lot more than \$3500 into the reserve, and you
15 heard Mr. Wilkerson in his opening statement say, "There are
16 only two conditions to get paid, five day rescission period
17 has passed for the buyer and the down payment is made," and
18 what Connie said was, "Well, there was this other condition.
19 If you got laid off, separated from the payroll then a whole
20 separate set of rules apply that don't appear in the
21 contract." She said, Mr. Wilkerson said all you needed was
22 the down payment and the rescission period and you'd earned
23 your commission. Ms. Sharp said that wasn't exactly what she
24 did in her office. It was the down payment plus the fees,

1 plus the closing costs, and perhaps the best quote from Ms.
2 Sharp was with regard to the commissions, "You can't do simple
3 math on it," submit to you that that's an understatement, you
4 cannot do simple math on it the way that they managed the
5 contracts, and she testified and this is important, that if
6 you didn't request your money you never got paid. That was
7 their standard operating procedure. You didn't make a request
8 you didn't get paid. If you got hit by a bus when you were
9 leaving the property after you were laid off, Westgate kept
10 the money.

11 She also said that even in the case of undisputed
12 commissions that because they hold checks and Visa cards and
13 that sort of thing 21 to 28 days and there's a two-week pay
14 period even undisputed commissions you could be forced to wait
15 six weeks, which is obviously more than 30 days. She also
16 testified that nothing was paid for six months after you were
17 separated from the payroll, and perhaps the most important
18 thing that she said, and this may relate to Mr. Wilkerson's
19 comment about them being paid everything that they were owed,
20 she said that these commissions were paid and what she
21 clarified was that when she says they were paid that, in fact,
22 they were paid to the reserve account, not to the salesman,
23 and she made it very clear that there's no separate bank
24 account with money in it that is the reserve account. It's

1 just a bookkeeping notation. It's just a check on a piece of
2 paper. It's just numbers on a piece of paper. So, in the
3 Defendant's world when they say they paid something it doesn't
4 mean the same thing that it means to you people on the jury.
5 When they say they paid something it means there was a
6 bookkeeping notation, nobody got any money, no money went into
7 any bank account, they just made a note and in their world
8 that was paid.

9 She also testified that if a down payment was or any
10 portion of it was moved to the back of the note that her
11 information, her screening, her database showed no down
12 payment was made. The testimony was some down payments were
13 moved to the back of the note, portions of some down payments
14 were moved to the back of the note, then in the Defendants'
15 world that down payment was never made, even though with the
16 monthly payments on the note they had gotten far more than
17 their 10 percent down payment. In their reality, in their
18 world that down payment wasn't made, even though they had the
19 money. If any part of the down payment was moved to the back
20 of the note it would show as no down payment.

21 She also testified and the Judge will give you specific
22 instructions on this later, that in some of these cases when
23 these people brought this suit over three years ago and after
24 three plus years finally got it into this courtroom in front

1 of you, the members of the jury, they looked and low and
2 behold some had Mr. Wilkerson's term, slipped through the
3 cracks, and in fact, they owed that money. So, perhaps he was
4 mistaken when he said up front they'd been paid every dime.
5 Now he admits that's not quite true, but consider that in
6 connection with what the Defendants' definition of paid is.
7 It's going to be paid into the reserve, and in the Defendants'
8 world that's a bookkeeping notation. There's no money going
9 into an account. They're just going to show it as paid, their
10 definition of paid, which is not your definition of paid, and
11 when were they going to be paid? Tomorrow, well, which is
12 today. So, more than three years after suit has been filed
13 they're going to pay them into the reserve account.

14 Laura Hammonds was one buyer and what Ms. Sharp said was,
15 and I'm quoting here, "The deal wasn't paid right." James
16 Phillips was a buyer. She said that was earned and it would
17 be paid tomorrow, and there's also yet a third transaction.
18 Now, she testified that she was not hard to reach. She also
19 testified that there were thousands and thousands of salesmen
20 at 25 resorts and she said their practice was if you don't ask
21 you don't get. If they're holding their wages, you got to ask
22 for them. How do you ask for them? You call her office.
23 "Oh, I return all my calls and I have voicemail. I respond
24 promptly." The testimony is to the contrary from other

1 witnesses. I would submit to you when you've got a practice
2 where you got 25 locations, thousands and thousands of
3 salesmen and at least in Myrtle Beach the bulk of the sales
4 occurred in the summer, over a hundred employees in the
5 summer, down to 15 in the winter. All those people got laid
6 off. All those people are looking for their commissions.
7 They're told, the ones who ask, contact Connie Sharp, and what
8 did they all say? Really hard to get a hold of Connie Sharp,
9 but she testified she was not hard to reach.

10 The default position of the Defendant is that they get to
11 keep the wages. If you don't jump through the hoops, dot the
12 I's, cross the T's you don't get your money. Even if you get

1 your money it's going to be a while, and in the case of Ms.
2 Arrington it's been over three years since she filed suit.
3 Now they say they're going to pay it but not to her. They're
4 just going to make a bookkeeping notation that they call paid.
5 I would submit to you that what this Defendant is doing is it
6 is challenging these employees to do what they can to try to
7 collect their money. Yes, you worked. Yes, you earned these
8 wages. We've got the money. Let's see what you can do to
9 collect it," and ladies and gentlemen, that's why you and I,
10 the Judge, the lawyers, the court reporter, clerk, bailiff,
11 deputy, that's why we've been in this courtroom all week and
12 now after more than three years these Plaintiffs are asking
13 you to do what the Defendant should have done years ago, pay
14 them the wages that they earned. Thank you again for your
15 time.

16 THE COURT: Mr. Wilkerson.

17 MR. WILKERSON: Thank you, Your Honor, just give me a
18 moment if I may grab an exhibit.

19 Good morning, ladies and gentlemen, and again I, I would
20 also want to thank you on behalf of my client and my
21 colleagues for your careful attention to this trial. You've
22 paid very close attention. I've noticed that. Every one of
23 you have listened to the witnesses and I know it's been quite
24 frustrating from time to time having to deal with lawyers

1 fussing at each other and asking you to leave the room and let
2 us talk about matters of law, and I apologize for that, but
3 that's the way things, that's the way our system works,
4 that's what we're required to do and I hope you won't hold
5 that against our clients, either my client or theirs, in the
6 way this process, process took place.

7 All of us can think of things that we would rather not
8 know the details of. One that always comes to mind is the
9 making of sausage. We may enjoy eating sausage, but we really
10 don't want to know where it comes from, don't want to know
11 what goes in it and we don't want to know how they make it.
12 The making of legislation, the making of laws many people say
13 that that's one of the things that you really don't want to
14 know about. You don't want to know about the backroom deals,
15 the smoke filled rooms, the compromise that takes place that
16 results in the passage of a law by the legislature.

17 One on my list is I don't want to know what goes on in
18 the jury room. Not only am I not entitled to know but I
19 really don't want to know what, what the jury's thought about
20 the brilliant arguments that I thought I made during the
21 trial. I'd rather not know that, and as a result of this
22 trial and the handling of this case I have added one more to
23 my list and that is I don't want to know about the details of
24 the marketing and sales of timeshares. That's one of the

1 things that I'd rather not know about. It's not a pleasant
2 business. It's a cutthroat business. The tactics that are
3 used by the, by the owners of the condominiums, by the
4 salespeople are things that don't appeal to me. They're not
5 attractive to me. I don't like that. It's not the way I like
6 to do business. That's not the way I like to have business
7 done with me. I would suggest that you may not like that
8 either.

9 Now, the fact that we may not like a particular industry
10 or we may not like the way a business is operated or we may
11 not like what goes on behind the scenes in a particular
12 process does not mean that we don't still have to enforce
13 contracts and enforce the law. I would suggest to you that
14 even though the tactics being used by my client may not be
15 something that are appealing to everyone, they're not the evil
16 empire that the Plaintiff wanted you, wanted you to believe.
17 The, the enterprise of Westgate, the enterprise of the sales
18 of condominiums, of timeshare units in this, in this
19 environment is made up of good, hard-working people, people
20 like Sherry Singleton, people like Kahlif Middleton, people
21 like Steve Thoni, people like Connie Sharp.

22 Now, I know that Mr. Connell and Mr. Canty, they're
23 excellent lawyers. They do everything that they can to try to
24 gain, try to, try to present their case in a manner that they

1 think will be helpful to their case and, you know, things that
2 were said by some of their - some of the Plaintiffs are a bit
3 uncalled for. Some were - some of them described themselves
4 as indentured servants. Some of them described them - one of
5 them used a descriptive term that we were just required to
6 bend over and take it, a phrase that Mr. Connell used
7 throughout the trial, part of the scheme. Scheme obviously is
8 trying to say that there's some scheme to do some underhanded
9 deal here. These no chargeback ads, didn't have time to read
10 the contract, things like that really don't have anything to
11 do with this case. What they have to do with is an attempt to
12 try to make this, make this process sound worse than it really
13 is. We know it's not real pretty as it is, but now, they,
14 they, they also, the Plaintiffs also across the board have
15 tried to pick and choose what parts of the contract they like
16 and what parts of the contract they don't. Now, we're all
17 bound by our contracts and by our agreements and by the terms
18 of those agreements and we are, we are standing, standing
19 behind and being, and, and, and asking you to enforce the
20 terms of the written contract between these parties. Now, the
21 Plaintiffs want to rely upon the contracts themselves to set
22 forth their entitlement to receive commissions. Otherwise the
23 law only requires them to receive minimum wage. So, they're
24 asking that the - that you enforce the contract that says

1 they're entitled to certain commissions but then they want to
2 say, "Well, I didn't really read the contract; and so, I'm not
3 responsible for these terms of what happens after I leave
4 employment." What happens after they leave employment is that
5 the commissions are handled in a completely different way.
6 They say, "I don't want to have to deal with chargebacks. I
7 don't think I ought to because some ad said I wouldn't have
8 any chargebacks," and they don't have any chargebacks. If
9 they earn a commission while they're still working there they
10 get to keep the commission whether that deal goes bad or not.
11 Whether that deal goes bad or not they get to keep that
12 commission, even if that person decides not to ever pay again
13 for that, for that timeshare, the salesperson gets to keep the
14 commission, the 10 percent or whatever it was they've already
15 received, but the contract specifically provides that if you
16 leave, if you're no longer employed, if you, if you terminate
17 your position in the company then the rules change, the rules
18 change. We start looking at the contract. We start looking
19 at whether or not the contract is, in fact, paid out over
20 time. We start looking out whether or not these, these, these
21 buyers actually paid for the contract and they set forth
22 terms. They say that you have to have six timely consecutive
23 monthly payments in order for, in order for that deal to
24 become good. Otherwise you charge that commission back. Now,

1 this is the commission's already been paid. The commission
2 paid to a salesperson, 10 percent of a \$10,000 deal would be
3 \$900 after you take out the portion that was paid into the
4 reserve, \$900 of a commission that's paid to that person,
5 they've got it in their hand, they have it in their hand,
6 they've left the employ, they've left the employ and then we
7 look to see whether or not there's going to be a chargeback
8 against the reserve. Nobody ever calls the salesperson back
9 after he's left or she has left and says, "You owe use money
10 back because the deal didn't come through," but that's the
11 implication that they've tried to present to you that that's
12 what happens on these chargebacks that they have, they say,
13 "You've got to pay us the money back." That's not what the
14 contract says. The contract says that the chargeback goes
15 back against the reserve and that is a very, very, very
16 important part of this case, and it will become very apparent
17 to you when the Judge tells you what the law is in the case.
18 The Judge is going to tell you and we all have to abide by
19 what the Judge says is the law. We can't, we can't challenge
20 that. He's the judge of the law. You're the judge of the
21 fact and we're just the lawyers, but I want to tell you one of
22 the things that he's going to say to you about that. He's
23 going to tell you about a prior lawsuit that these parties
24 were involved in where these parties raised issues concerning

1 the reserve accounts and that that lawsuit went to judgment.
2 That lawsuit is ended and over. All issues relating to
3 reserves were resolved in that case and reserve includes, as
4 you know, as you heard factually here in the case, reserve
5 includes anything to do with chargebacks because chargebacks
6 go against the reserve; and so, what we have had going on in
7 this courtroom this week, I would submit to you, is a retrial
8 of that case that has already gone to judgment, and the Judge
9 is going to tell you that the Plaintiffs in this case are not
10 entitled to judgment against the Defendant for commissions if
11 any that were placed in the reserve account on or before
12 January 29, 2010, placed in the reserve account on or before
13 January 29, 2010.

14 Now, all these conversations, all this testimony about
15 calling Connie Sharp about your reserves, about, "They, they,
16 they didn't pay me my reserves, they charged me back after I
17 left, they, they didn't deal with me fairly after I left,"
18 ladies and gentlemen, that is just in the same category as my
19 friend saying that's part of the scheme. That testimony as
20 the Judge is going to tell you has nothing to do with this
21 lawsuit and it cannot be considered by you in making a
22 determination as to what, if anything, you're going to award
23 in the case, anything that went into the reserve on or before
24 January 29, 2010.

1 Now, in order to assist in that process we have through
2 great effort reviewed this box of documents under Ms. Sharp's
3 direction and prepared for you this summary that summarizes
4 the information in that box and you saw it on, you saw it on
5 the, on the screen and you'll have it back in your, back in
6 your jury room, and under each one of these Plaintiffs there
7 are several categories of commissions, several categories of
8 deals, and if, in fact, the commission has been added to the
9 reserve, and if, in fact, that commission has been added to
10 the reserve before January 29th of 2010 under the Judge's
11 charge if you find that that is - if that's what happened then
12 you are to disregard any of those commissions that were paid
13 in or that were added to the reserve before January 29th, 2010,
14 and we've got those listed here for you. If it says added to
15 reserve it will show you the date that it was added to the
16 reserve, and I would submit to you that if you want to
17 determine when it was added to the reserve and what was added
18 to the reserve the only evidence that you have, the only
19 evidence in the case is this backed up by this, backed up by
20 this box; and so, I would submit to you that the proper way to
21 do that is to go down this list and say, "Well, let's take all
22 these that are - that were added to the reserves," oh, by the
23 way, my friend Mr. Canty says, says that Westgate has said
24 that they were paid to the reserves, paid to the reserves as

1 opposed to paid to the salesperson. Well, that's a semantics
2 issue, but that's not what this says. This says added to the
3 reserve. Now, we're not, we're not, we're not making, we're
4 not playing any games with you that we, in fact, paid the
5 reserves as opposed to paid the employee. The contract said -
6 and also, this is also very important, made a big deal out of
7 the fact that transferring funds into the reserve after
8 employment ended was contrary to the terms of the contract.
9 The contract did not provide, did not provide for the payment
10 of commissions earned into the reserve after an employee left
11 in its entirety, which Ms. Sharp said was the policy of
12 Westgate and that was wrong. It was wrong for Westgate to pay
13 those monies into the reserve account upon their, upon their
14 departure from employ. It was wrong, but ladies and
15 gentlemen, that happened and that is barred by the result in
16 that Parker versus CFI case that the Judge is going to tell
17 you about. That issue has already been resolved and has gone
18 to judgment. So, it's kind of like double jeopardy, I mean
19 we've been fussed at one time about it and that issue goes to
20 judgment and now we're getting fussed at about it again, and
21 doesn't make it any less wrong, but it just means that we've
22 already, that we've already had to, had to deal with that
23 issue and it's gone to judgment, doesn't make it any less
24 wrong, and I, you know, I'm sorry that that happened, but

1 that's not an issue that you can resolve in this case. That's
2 already been resolved in another case. So as I say, about 90
3 percent of what we heard from the witness stand here is a
4 retrial of Parker and the Judge is going to explain to you
5 what you can and can't consider and what the impact of Parker
6 was.

7 Now, the other issue in the case, the real issue in the
8 case is whether or not there's been a breach of contract,
9 whether or not commissions that were due, that were owed, were
10 not paid - that were not added to the reserve account, were
11 not added to the reserves prior to January the 21st, 2010,
12 whether or not those were, whether or not there were any, any
13 commissions that were due and I want to talk about that date
14 and Mr. Canty chastised me when he stood up here and he said,
15 "Well, you heard what Mr. Wilkerson said, he said they were -
16 he was going to tell you that they had paid every, every dime
17 that they were entitled to," or something like that, he wrote
18 down my quote, and I truly believe that I was, but as I, as I
19 hope was apparent to you, ladies and gentlemen, during the
20 trial this is a moving target. These Plaintiffs testified,
21 "Well, I think, I mean, I made this many sales and I, and I
22 think I should have gotten paid this much commission. I
23 didn't get it; therefore, I think I'm entitled to," whatever
24 the number they wrote down on this page here and they didn't

1 come up with any particular contract they said they hadn't
2 been paid on, they didn't present any commissions that they
3 said they should have been paid six versus 10 or 10 versus
4 eight or whatever it was, they just said, "I think I'm
5 entitled to this money;" and so, this was a, this was a
6 process as we were going through here asking these witnesses
7 if you'll recall, Ms. Maysonet and I pretty much had to pull
8 it out of them and said, "Okay, give us the names of the
9 contracts that you're complaining about. Let us see those,
10 what those contracts are," and what we did was we took those
11 names back to the hotel room. At night, at one o'clock in the
12 morning we were running, we were running spreadsheets here to
13 figure out where these things, where these things fall, and lo
14 and behold as much as I would hate, as much I hate that it
15 happened we found three. I pointed out two and there was
16 actually one more on Ms. Arrington. Now, they total \$2,769,
17 three transactions, three, three entries under her name that
18 says added to reserves and the date of addition to the reserve
19 was after January 21st, 2010; and so, under anybody's view of
20 the facts and anybody's view of the law we owe that money and
21 you're going to have to return a verdict for Ms. Arrington for
22 2,700 and whatever that number was. You can add it up. It's
23 a, it's a commission for 150, for 540 and for 2,079, adds up
24 to \$2,769 if I did my math right, and I guess that goes into

1 the category of no good deed goes unpunished. I guess I could
2 have just left it off the spreadsheet and, and come in here
3 and presented it but I would have known better. I would have
4 known that I had done it and I'm an officer of the court. I'm
5 required to present facts that I know to be, that I don't know
6 to be untrue but I can't do that, we had to present it to
7 you. We did it. We did it in good faith and I hope you won't
8 hold that against me for being wrong about that when I made
9 the statement earlier.

10 Now, remember that I asked you at the beginning of the
11 trial to hold the Plaintiffs to some reasonable level or
12 requirement, reasonable requirement of proof. If they're
13 going to come in here and claim they're entitled to certain
14 monies they need to have some proof of it, and I could stand
15 here and tell you, ladies and gentlemen, that I'm seven feet
16 tall and you might look at me and you say, "Well, you know, I
17 can't really tell this distance how tall he is but doesn't
18 really look seven feet. What's the evidence that John is
19 seven feet tall?" Well, at some point somebody is going to
20 pull out the tape measure. Somebody is going to pull out the
21 tape measure and stand me up against the wall and put it up
22 and they're going to say, "John, you're about a foot short.
23 You're about a foot shorter than you claim you are. You're
24 barely six feet. You got your high heel shoes on," and so,

1 that's the type of evidence that you, ladies and gentlemen,
2 are required to ask these people to present to you. You can't
3 decide a case based on somebody saying, "Well, I think I - I
4 think I was owed some more money," and you know, one of the
5 dynamics I want to mention to you that I think is going on in
6 this trial is, is a dynamic that we've all seen in our own
7 places of employment and that is when somebody else leaves
8 employment or you have left a job you pretty much have a bad
9 taste in your mouth and you're going to be talking badly about
10 your employer. You're going to be thinking badly about your
11 employer, your former employer, and you know, that's natural
12 human nature. On the other side of the coin where, where
13 someone leaves, I know in our office and you may have the same
14 rule in your, in your place of employment that is after
15 somebody leaves we say, "Well, you can only blame John for
16 everything that goes wrong in the office for the next 30 days
17 and then after that it's not his fault anymore." I mean, you
18 know, it's natural human tendency is going to be to, going to
19 be to not have good feelings about a former employer and to
20 blame the former employee for those types of things. That's a
21 dynamic we're all comfortable with and are familiar with and
22 have seen that before, but burden of proof, I mean, I hate to
23 stand up here and say, you know, somebody comes in and says
24 you're owed money and respond by saying, "Well, prove it."

1 Prove it." It would be more effective if you said, "No,
2 you're not owed money and this is why," and we did that, talk
3 about that in just a minute, but, but it is reasonable to
4 require someone to present proof and the Judge is going to
5 tell you that the Plaintiffs in this case have the burden of
6 proof. They have the burden of establishing evidence that
7 proves to you to a preponderance of the evidence that they're
8 entitled to the money that they claim they're entitled to.
9 It's kind of like running a hurdle, running a high hurdle
10 race, run down the, run down the track and you've got to get
11 over certain hurdles. If you don't get over the hurdle, if
12 you trip going over the hurdle, if you don't clear the hurdle
13 you don't finish the race and you don't win, and that's
14 exactly what's going on here. They've got to, they've got to
15 clear the hurdles. They've got to run the race. They've got
16 to meet their burden of proof.

17 Now, what must they prove? They must prove that there
18 was a contract, that it was breached, and that all conditions
19 precedent have occurred, all conditions precedent, all
20 conditions that were necessary for this contract to come into
21 play, to require there to be payment have been met, and how
22 many times did you hear about the requirement of full down
23 payment and no rescission? Those are the two primary
24 requirements that must be met in a contract, in this contract

1 in order for them to be entitled to any, any commission. I
2 was - it's not subject to debate.

3 The Plaintiffs have not presented a single contract to
4 you or a single shred of evidence that any single contract for
5 sale had a full down payment made and no rescission. I mean,
6 they've talked about, "Well, you know, a lot of times, a lot
7 of times the full down payment was pushed to the end." Well,
8 show me a contract where that full down payment was pushed to
9 the end and we'll talk about it, not a single one. They say,
10 "Well, a lot of times they up-sold and down-sold." Show me a
11 single contract where there was an up-sell or a down-sell that
12 resulted in a reduction in their commission and we'll talk
13 about it." They say, "Well, you know, Richard Siegel," who
14 has been painted as a bad guy and I've never met Richard
15 Siegel. He might be a great guy. He might be a bad guy. I
16 don't know, but anyway they say he comes in, props up his feet
17 and he says, "Well, from now on 10 percent is going to be your
18 commission. You don't get 11 percent anymore." Okay, show me
19 a contract where you were entitled to 11 and you only got 10.
20 Show me one. Show me one. Show this jury one contract where
21 that happened and we'll talk about it. That, ladies and
22 gentlemen, is proof. That's getting over the hurdle. That's
23 presenting some evidence to you, and not only did we stand
24 here and say prove it. I don't ask - I don't like doing that.

1 Not only did we stand here and say prove it we went, we went
2 back through all the records, analyzed them, summarized them,
3 organized them, brought them in here for you to look at,
4 backup documentation, and we put them on a spreadsheet here
5 for you to see and the categories here that you see in this
6 spreadsheet are either that it was paid, I mean, our evidence
7 showed that one of the - some of the transactions they claim
8 they're entitled to they were paid. If they were paid less
9 than they were entitled to, they got six percent and they
10 claim they should have gotten 10, these are good lawyers.
11 They would have come in here and said, "Look, ladies and
12 gentlemen, this thing, they got paid six. They were entitled
13 to 10 on this deal." Did they present a single one? No, not
14 a single one. If there had been one there, fine, but let's
15 not just sit here and listen, "Well, sometimes they just paid
16 us less than we were entitled to. Sometimes they paid us
17 later than we were entitled to get paid." Show me a single
18 transaction, one, where that happened and we'll talk about it.

19 Others, no full down payment made. Did they present a
20 single piece of evidence to counteract any of these
21 spreadsheets where we said there was no down payment made?
22 Well, they're saying, well, sometimes they put the down
23 payments at the end of the contract and Ms. Sharp said she
24 never had heard of that happening, but sometimes they put the,

1 put the down payments at the end of the contract and, "that
2 would have made us never get paid at all." Show me a contract
3 where that happened and we'll deal with it. Show me the
4 contract, we'll deal with it, we'll address it, we'll talk
5 about it, we'll hold it up. We'll put it on the board, we'll
6 look at it, see what it says. Did they do that? No.

7 A perfect example, a perfect example of the problem,
8 ladies and gentlemen, with this form of proof is Defendants'
9 Exhibit Number 41 and this just kind of fell into, fell into,
10 fell into our laps, quite honestly, because and, you know,
11 none of the Plaintiffs identified any specific contract and
12 what happened in any specific contracts until Mr. Zinn
13 testified. He gets up there and he pulls out this one, Gil
14 and Donna Foster, and he says, "Well, Gil and Donne Foster" -
15 what was it he said about them? Just a minute. I can't
16 remember what he was using it to prove. He was talking about
17 that contract and said that they - that he was supposed to get
18 paid on that contract. For some reason that, that, that he
19 had been treated poorly. I can't remember what - I wish I
20 could remember but I can't remember right now. I remembered
21 it five minutes ago but I'm having a senior moment. Anyway he
22 picked out that contract and then I said and on my list it
23 said, it said that that had been rescinded; and so, I said,
24 "Well, Mr. Zinn, isn't it true that that contract?" "No, no,

1 I've looked every single day on the list of rescissions and it
2 never appeared on a rescission. That contract was not
3 rescinded." Well, look, I guess they claim I wrote this letter
4 or something, but I mean, this, this letter was written by the
5 Fosters three days after the date of the contract rescinding
6 the contract. It's a \$6500 contract and were we not - did we
7 - had we not presented this evidence, you know, Mr. Zinn says
8 he's entitled to \$6500 on that contract and he's not. The
9 condition was not met. Clearly he's not entitled to it. This
10 is an example of what happens and the problems associated with
11 the method by which the Plaintiffs chose to prove their case.
12 The generalities that the Plaintiffs chose to do, the sullyng
13 of the reputation of my client in an effort to make their case
14 look better. This is an example of why those things don't
15 work, why in this court, in this room and in the jury room the
16 tape measure comes out and let's measure and let's see if
17 Wilkerson is actually seven feet tall. Let's see if these
18 people have proven to us a single transaction where they're
19 entitled to be paid and I submit to you that they have not.

20 The Judge is going to charge you the law of the state
21 also with regard to the Payment of Wages Act and he's going to
22 read to you certain portions of the Payment of Wages Act that
23 includes the following: "When an employer separates an
24 employee from the payroll for any reason," each one of these

1 people have been separated from the payroll, quote, "the
2 employer shall pay all wages due to the employee within 48
3 hours of the time of separation or the next regular payday
4 which may not exceed 30 days." If a single one of these
5 transactions other than the three by Ms. Arrington which it is
6 what it is, other than those three, if a single transaction
7 here was not paid, was not due, was actually due, then you
8 might find that that applies. You might find that a contract
9 has been breached, but I ask you to hold yourselves to the, to
10 the, to the, to the requirement or hold yourselves to a, to a
11 rule that says, "They have to prove it to me. They got to
12 show me what it is that we're entitled, that they're entitled
13 to get paid." Westgate came in and proved that they are not,
14 proved that either they were paid, the conditions were not met
15 or that the money was transferred into reserve, bookkeeping
16 entry, it was transferred into reserve and that that is not
17 before you.

18 My time is up. Let me take a quick look at my notes and
19 I want to make sure that I've said everything that I wanted to
20 say.

21 In summary, the burden of proof requires the Plaintiff to
22 present evidence in support of their claim. I would submit to
23 you that you examine the evidence that was presented by the
24 Plaintiff, what evidence did they show that they had a

1 contract that they were entitled to be paid on, what evidence
2 did they present that there was - that the conditions had been
3 met in the contract and what evidence did they, did they
4 present as to the amount that was due to be paid or that was
5 not paid on a particular contract that they're complaining
6 about and I would submit to you that you would find that
7 there's no evidence of that, none, none, none. If there was
8 my friends would be holding it up saying, "Here's the
9 evidence. Here's the evidence of these contracts being
10 breached." The conduct of the business, the way, the way it
11 happened, the way the reserve account was handled is not
12 evidence. It's nothing - it has nothing to do with this case.
13 You can't consider it. So, you may not like that, but you've
14 got to have some proof to support a verdict. Ask yourself,
15 "Did they present any proof?" Number two, I would submit that
16 you'd stop there, say, "Well, they haven't proved anything.
17 So, they're not entitled to anything," except Ms. Arrington is
18 entitled to 2700 and whatever the number was, but if you think
19 that they've presented some evidence, Mr. Connell can point to
20 some particular, particular contracts that they're complaining
21 about, some evidence that they have that says this money was
22 due other than, "I think I was due this because I didn't get
23 what I thought I was entitled to," they can present some of
24 that. Then go to the next question and that is, "Has the

1 Defendant established to your satisfaction that they were, in
2 fact, not due, not payable and the contract was not breached?
3 Have they established that?" I would submit to you, ladies
4 and gentlemen, that you'll have before you Exhibit Number 38.
5 Look at it carefully. I think this is the go-to when you look
6 at what this case is about and each and every transaction that
7 has been testified to in this courtroom is addressed in here
8 and you'll see that all but three, all but three are properly
9 accounted for.

10 Ladies and gentlemen, I thank you very much for your
11 attention. Thank you very much for your time. I thank you
12 very much for your service on the jury this week. We're all
13 very tired. I know you are just as tired as we are because
14 we've all been working very hard. I appreciate your time and
15 I also appreciate your fair and impartial analysis of this
16 case. Remember the, remember the, remember the pledge that
17 you took and the oath that you took on Monday, that you will
18 well and truly try and a true verdict render based upon the
19 law and the evidence, evidence, so help you God, and I'm
20 confident that you will. Thank you very much.

1 THE COURT: Any reply?

2 MR. CONNELL: Just a few minutes, Your Honor.

3 THE COURT: You've got nine minutes of reply.

4 MR. CONNELL: All right, I'll sit down or you can tap on
5 the desk, whatever you want to do.

6 THE COURT: That's fine.

7 MR. CONNELL: Ladies and gentlemen, that's about the
8 most spirited defense of any person who's taken money I've
9 ever heard in the 29 years I've been a lawyer. This was the
10 perfect scheme. Can't you see it? These executives down in
11 Orlando they're going to hire some salespeople and they're
12 going to hire them for the summer and then at the end of the
13 summer they're going to play the gotcha game and not pay them.
14 I don't know what Mr. Wilkerson's definition of being paid is
15 but my definition is put that money in my hand when I do the
16 work. That's what we all expect and that's what we all want
17 and that's what we all believe. Don't you remember yesterday
18 Ms. Sharp saying that they violated their own contract. They
19 put a hundred percent, 100 percent of what was earned that
20 they didn't have a right to do.

21 Let me tell you a little something about myself so it
22 kind of gives you an idea about how I think about things.
23 Usually when I come to the courthouse every week, I have to
24 come over here almost every week, I go to see my aunt. She's

1 in a nursing home. She's an invalid and I go visit her for a
2 few minutes and of course since she can't get out she's always
3 asking me what's going on, you know, what's going on in the
4 world. So, this past Wednesday when I went by I said, "Look,
5 here's what's going on. I got this case." Said, "I'm trying
6 this case about these people who worked, brought these
7 customers in, made a company \$40 million. They won't pay them
8 their commission." Now, my aunt's really old and she's not
9 real educated and she did - mostly lived on a farm her whole
10 life, but she's got a lot of common sense about things and
11 about life, and she looked at me when we were - when I was
12 talking about it on Wednesday night and she said, "You know
13 what, not only is that not right," but she said, you know,
14 "Figures don't lie. Liars figure," and I thought about that
15 on the way home and on the way back today and I thought, you
16 know, that's exactly what we have here. They want you to
17 believe an exhibit they performed or built over the last
18 couple of days in this courtroom and they don't want you to
19 remember that Ms. Sharp said they violated the contract. They
20 kept 100 percent of these monies, 100 percent of these monies
21 during that time. They kept it all. There is no doubt that
22 that type of conduct has to be punished. South Carolina has a
23 Payment of Wages Statute. I'm sure you all - if anybody works
24 at Wal-Mart or K-Mart, any of these other stores, you go in

1 there and there's a little, in the break room there's a little
2 form that sits up on the, on the break room wall there and it
3 says, "You are entitled as a matter of law to find out the
4 time and place of your payment of your wages. It's the law in
5 South Carolina." You are entitled to that and the reason why
6 is because we want to protect the working people of this
7 state. We want to make sure, we want to make sure that those
8 people who work for a living get their pay, not the fat cats
9 down at Westgate Resorts in Orlando, Florida. When you hear
10 the jury's - when you hear the judge's charge you will hear
11 this, South Carolina has a Payment of Wages Statute. The law
12 requires that pay - you pay all wages within 48 hours or the
13 next payday. Any changes must be made, you must be given
14 written notice. There is not any evidence whatsoever of any
15 written notice of anything in this case given to these people
16 about what they were going to do, and why is that? Because
17 this was the perfect scheme, the perfect fraud if you will.
18 They knew - Westgate knew at the beginning of this, they knew
19 exactly what was going to happen. They were going to keep ---

20 MR. WILKERSON: Your Honor, I hate to interrupt but
21 he just told this jury it was a fraud and that's - fraud's not
22 in this case.

23 THE COURT: All right, and that's a legal conclusion.
24 They're to disregard his statements if it's contrary to the

1 charges. Go ahead.

2 MR. CONNELL: These people were going to be let go.
3 Everybody knew it. They were going to be let go in a few
4 months and those payments were never going to be made, no one
5 was ever going to get their money. They were going to take
6 that \$40 million on back to Westgate's offices in Florida.

7 It kind of reminds me, you know, a few years ago we had a
8 big argument about Social Security. I know you all remember
9 that and the politicians always said, "Well, it's in a lock
10 box. It's in a lock box, not in your name but it's in a lock
11 box. We got it for you." That's what they're telling you
12 here, "We've got it in a lock box somewhere but you can't get
13 it. You can't spend it. You can't take it to the grocery
14 store, you can't pay your rent. You can't pay your car
15 payment. You're going to be homeless." That's exactly what
16 happened in this case.

17 Now, on my way over here this morning I was driving down
18 Old 544 going over the bridge and I see these signs all the
19 time, and it makes me - made me think about this case. I
20 don't know if you all have seen this before or not, the Rotary
21 Club has these little signs about what they follow in life and
22 there's four little signs on 544 as you're coming up over the
23 bridge and it's their pledge and it's called the four-way test
24 and the first question it asks is this the truth. In this

1 case it's the truth that these people were not paid their
2 wages and there's no excuse. You drive a little bit further
3 along and they say, "Is it fair to all," just a little sign.
4 Isn't it fair that the working people of this state, the

1 people who made this money, these Plaintiffs get that money,
2 and the third thing that applies to this case, is it
3 beneficial to all concerned? It is beneficial that you all
4 find for all concerned, society, that these people are
5 entitled to the wages they earned, every last dollar. We
6 would ask you to come back with a verdict. The term verdict
7 means speak the truth, and give a verdict for these people who
8 never got their wages, their unpaid wages they've been waiting
9 for for over three years. Thank you.

10 THE COURT: All right, ladies and gentlemen, all of
11 the evidence has been presented in this case. The attorneys
12 have made their closing arguments and now is the time for me
13 to charge you with the law to be applied in this case.

14 I remind you that during this trial you and I have
15 certain duties to perform. As the trial judge my
16 responsibility is to preside over the trial of this case. I
17 also have the duty to rule on the admissibility of evidence
18 offered during this trial. You are to consider only the
19 evidence before you. If any testimony was ordered stricken
20 from the record during this trial you must disregard that
21 testimony. You are to consider only the testimony which has
22 been presented from the witness stand, any exhibits which have
23 been made a part of the record in this case and any
24 stipulations of counsel.

1 In this case the parties have stipulated that Plaintiffs'
2 Exhibit Number Eight is a prototype contract existing between
3 the Defendant and each of the Plaintiffs. Therefore, you are
4 to take this stipulation as a proven fact in this case.

5 I have the additional duty to charge you the law
6 applicable to this case. Your duty as jurors is to accept and
7 apply the law as I now state it to you. If you think you have
8 any idea as to what the law is or what the law ought to be and
9 your idea is different from what I tell you the law is you
10 must disregard your idea of what the law is or ought to be
11 because you are sworn to accept the law and apply the law
12 exactly as I state it to you. In every case tried in this
13 court before a jury the jury is the sole and exclusive judge
14 of the facts. A trial judge cannot comment on or make any
15 statement about the facts in a case. Since you are the sole
16 judges of the facts do not think by anything I have said
17 during the trial that I have an opinion about the facts in
18 this case. The law does not allow me to have an opinion about
19 the facts of this case.

20 The burden of proof in this case is by a preponderance of
21 the evidence and the Plaintiffs bear the burden of proving
22 their case by a preponderance of the evidence. A
23 preponderance of the evidence simply means the greater weight
24 of the evidence. It is evidence which as a whole shows that

1 the facts sought to be proved is more likely true than not
2 true. In other words, if you find that the facts sought to be
3 proved by the Plaintiffs are more likely true than not true
4 then you should return a verdict in favor of the Plaintiffs.
5 On the other hand if you find that the facts sought to be
6 proved by the Plaintiffs are more likely not true than true or
7 that the facts supporting the defense are more likely true
8 than not true or are equally as true as the facts supporting
9 the Plaintiffs' case then the Plaintiffs have failed to prove
10 their case by a preponderance of the evidence and you must
11 return a verdict in favor of the Defendant. The preponderance
12 of the evidence is not determined by the number of witnesses
13 testifying on behalf of a party. Instead it must be
14 determined by the greater weight of all of the evidence.

15 Necessarily you must determine the credibility of
16 witnesses who have testified in this case. Credibility simply
17 means believability. Your duty as jurors is to evaluate the
18 evidence and determine which evidence convinces you it is
19 true. In determining the believability of witnesses who have
20 testified in this case you may believe one witness over
21 several witnesses or several witnesses over one witness. You
22 may believe a part of the testimony of a witness and reject
23 the remaining part of the testimony of the same witness. You
24 may believe the testimony of a witness in its entirety or

1 reject the testimony of a witness in its entirety. You may
2 consider whether the witness has an interest in the result of
3 the trial, whether the witness is prejudiced towards either
4 the Plaintiff or the Defendant, the opportunity for the
5 witness to have seen the matters and things about which the
6 witness may testify and the way the witness acts on the
7 witness stand.

8 The Defendant in this case is a corporation. In our
9 courts no distinction is made between corporations and
10 individuals. A corporation is a person in the eyes of the
11 law. A corporation is entitled to the same fair and impartial
12 consideration and to justice by the same legal standards as an
13 individual. In this case the Plaintiffs claim that the
14 Defendant breached a contract that existed between the
15 parties. In order to recover for a breach of contract the
16 Plaintiff must prove the claim by a preponderance or greater
17 weight of the evidence.

18 The first thing that the Plaintiffs, Plaintiffs must
19 prove by a preponderance or greater weight of the evidence is
20 that the parties entered into a binding contract. A contract
21 is an agreement entered into by two or more parties in which
22 each party agrees to perform or not to perform certain acts.
23 A contract may be shown by words, written or oral, or by
24 conduct. However, a contract is more than the mere exchange

1 of promises. For the agreement to be considered a contract
2 the parties must have intended to enter into a contract and
3 must have reached a mutual understanding of the terms of that
4 contract. The parties must intend to be mutually bound by the
5 agreement.

6 Next the Plaintiffs must show by a preponderance or
7 greater weight of the evidence that the Defendant
8 unjustifiably breached the contract. The word breach means
9 the failure without legal excuse to perform any promise that
10 forms the whole or part of the contract. This includes the
11 refusal of a party to recognize the existence of the contract
12 or the doing of something inconsistent with the existence of
13 the contract. A party breaches a contract when that party
14 does not perform as agreed under the contract by failing to
15 carry out a term, promise or condition of the contract.

16 When a party's obligation under a contract is conditioned
17 upon the other party's prior performance or an obligation, of
18 an obligation under the contract or requires that an event
19 occur first then the party claiming breach of contract must
20 prove that the prior obligation has been fulfilled or that the
21 required event has occurred.

22 Finally the Plaintiffs must prove by a preponderance or
23 greater weight of the evidence that the Plaintiffs suffered
24 damages which were proximately caused by the Defendant's

1 breach of the contract. The Plaintiffs must prove damages by
2 the preponderance or greater weight of the evidence. This
3 does not mean that the Plaintiff must prove damages to a
4 mathematical certainty or produce evidence of the exact amount
5 of damages suffered. However, the amount of damages cannot be
6 left to guesswork or speculation. Instead the evidence
7 presented by the Plaintiffs must be enough to allow you to
8 determine the amount of damages with reasonable certainty and
9 accuracy.

10 Damages for breach of contract are those that may fairly
11 and reasonably be considered to arise naturally from the
12 breach of contract itself or those that may be reasonably
13 supposed to have been in the minds of the parties at the time
14 the contract was made. A Plaintiff may not recover damages
15 for breach of contract unless the Plaintiff shows that he or
16 she has performed his or her part of the contract or at least
17 was able, ready and willing to perform at the appropriate
18 time. Damages for breach of contract include actual damages
19 sustained by Plaintiff due to a Defendant's breach. Actual
20 damages are damages to compensate the Plaintiff and put the
21 Plaintiff as closely as possible in the same position he or
22 she was in before the breach of contract. In other words,
23 actual damages are the actual losses and expenses which the
24 Plaintiff has suffered because the Defendant breached the

1 contract. Generally actual damages are the out of pocket
2 costs actually paid by the Plaintiff as a result of the breach
3 of contract and the gain above the cost that would have been
4 realized if the contract had been performed. The - in
5 interpreting contracts you must determine the intention of the
6 parties and put those intentions into effect. In doing this
7 you must consider only the outward expressions of the parties.
8 You cannot consider any undisclosed or secret intentions of
9 the parties. When the contract is in writing you must
10 determine the intention of the parties primarily from the
11 contents of the written document itself. The intention of the
12 parties must be determined from the entire agreement and not
13 from any particular clause or provision. When the written
14 contract is clear, its meaning must be determined by the
15 contents of the document alone. If the circumstances warrant
16 terms which do not contradict the written language of the
17 contract may be implied in order to carry out the intentions
18 of the parties.

19 A party to a contract has a duty to read it and learn its
20 contents before signing it. A party cannot complain of
21 misrepresentation in the contents of a contract if the truth
22 could have been discovered by reading the contract unless the
23 party is ignorant and unwary. Education, business experience
24 and intelligence are all considered in determining whether a

1 party may be considered ignorant and unwary so as to excuse a
2 failure to read the contract. Every contract is subject to
3 all of the state law which can be applied to the contract. In
4 other words the law becomes a part of the contract whether the
5 contract states so or not. This is because everyone is
6 presumed to know the law. Under South Carolina law every
7 employer shall notify each employee in writing at the time of
8 hiring of the normal hours and wages agreed upon, the time and
9 place of payment and the deductions which will be made from
10 the wages. Any changes in the terms must be made in writing
11 at least seven days before they become effective. However,
12 this requirement does not apply to wage increases. South
13 Carolina law also provides that when an employer separates an
14 employee from the payroll for any reason the employer shall
15 pay all wages due to the employee within 48 hours of the time
16 of separation or the next regular payday which may not exceed
17 30 days.

18 Every contract, contract contains an unspoken but legally
19 enforceable promise of good faith and fair dealing. In this
20 case all of the Plaintiffs allege that they are due unpaid
21 commissions from the Defendant for breach of contract.
22 However, each Plaintiff has a separate employment contract
23 with the Defendant and alleges that the Defendant breached
24 that specific contract by not paying commissions due to that

1 individual Plaintiff. Therefore, you must determine each of
2 the Plaintiff's claims independent of the other Plaintiffs'
3 claims. If you find that the Defendant breached a contract
4 with a Plaintiff then that Plaintiff is entitled to the
5 commission that is due under that contract.

6 Under a legal doctrine known as res judicata a party is
7 barred from recovery in a lawsuit if that party's entitlement
8 to recovery has already been decided in a previous lawsuit
9 involving the same parties, same subject matter and
10 adjudication of the same issues. In other words a party
11 cannot bring another lawsuit against the same Defendant for
12 the same relief based upon the same causes of action already
13 decided in a previous lawsuit.

14 Some of the testimony in this case has referred to a
15 reserve account maintained by the Defendant. Testimony in
16 this case has also referred to another lawsuit known as the
17 Parker case. The Parker case was a class action lawsuit by a
18 number of the people, by a number of people including the
19 Plaintiffs in this case against the Defendant in this case for
20 funds in the reserve account maintained by the Defendant that
21 the Plaintiffs in that case, class action allege were due and
22 owing to them. By court order dated January 29th, 2010, the
23 Parker case was settled by all of the parties in that lawsuit,
24 including the parties in this lawsuit. Therefore, under the

1 doctrine of res judicata the Plaintiffs in this case are not
2 entitled to judgment against the Defendant for commissions if
3 any that were placed in the reserve account on or before
4 January 29th, 2010. Except for the Plaintiff Laura Arrington,
5 there are two possible verdicts which you may find for each
6 Plaintiff in this case. No significance should be given to
7 the order in which these possible verdicts are given to you.
8 I simply must state one first and one second. As to each
9 Plaintiff except for Laura Arrington your possible verdicts
10 are we, the jury, find in favor of the Plaintiff and award the
11 Plaintiff judgment against the Defendant for and then you
12 determine the amount of the judgment or we the jury find in
13 favor of the Defendant.

14 As to the Plaintiff Laura Arrington your only possible
15 verdict is we, the jury, find in favor of the Plaintiff Laura
16 Arrington and award the Plaintiff judgment against the
17 Defendant for and you determine the amount of that judgment.
18 All 12 of you must unanimously agree on each verdict. Your
19 verdict cannot be based on sympathy, passion, prejudice
20 emotion or any other consideration not in evidence in this
21 case. Ms. Monahan, as foreperson when the jury agrees on a
22 verdict you'll check the appropriate box on the verdict form,
23 whether it be the first one and fill in the amount or the
24 second one where you find for the Defendant. Then you sign

1 your name. There is a verdict form for each Plaintiff's claim
2 in this case. Once you have reached a verdict as to each
3 Plaintiff and completed each verdict form knock on the jury
4 room door and inform the bailiff that you have reached a
5 verdict. At that time we'll receive you back into the
6 courtroom.

7 Now, you have been allowed to take notes during the trial
8 of this case. Please remember that some people are better
9 note-takers than others. Juror notes should not be given any
10 greater weight than the recollection of other jurors. The
11 recollections of individual jurors who may not have taken
12 notes should be considered as reliable as notes taken by any
13 other juror.

14 Now, in a minute I'm going to excuse you back to the jury
15 room but please do not begin your deliberations until you're
16 told to do so. I need to check with the attorneys to see if
17 they have any challenges to my instructions or any additional
18 charges that they think you're entitled to. If there are
19 challenges or additions that I think are appropriate I'll
20 bring you back into the courtroom and give those to you. If
21 there are none then we'll send all of the exhibits back to the
22 jury room with directions from the bailiff that you can begin
23 your deliberations and at that time you can begin your
24 deliberations. Now, we've ordered lunch for you. It's not

1 here yet. It should be here within the next 30 minutes or so.
2 When lunch gets here you're at liberty to do one of two
3 things. You can either continue your deliberations while you
4 eat lunch if you choose to or if you wish to stop your
5 deliberations, eat lunch and then resume your deliberations
6 you can do that. However, the entire jury must do one or the
7 other. You can't have some jurors deliberate while other
8 jurors do not. So, as a group you must decide whether you
9 want to continue your deliberations as a full jury while you
10 eat lunch or whether or not you want to stop your
11 deliberations, everyone stopping, eat lunch and then resume.

12 All right, at this time I'm going to excuse you back to
13 the jury room. You can go ahead and take your pads with you
14 at this point in time but please do not begin your
15 deliberations until you're told to do so. Thank you very
16 much. If everyone else please remain seated while the jury is
17 excused.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right, any exceptions or additions to
21 the charges by the Plaintiff?

22 MR. CONNELL: Your Honor, we had mentioned in our
23 pretrial brief that the definition of due in Black's Law
24 Dictionary should have been charged to the jury as to what the

1 term due means and how it's defined. I would ask the Court to
2 do that.

3 THE COURT: Okay, no, I think that's just going to
4 complicate it more. I'm going to leave it as it is.

5 MR. CONNELL: Thank you, Your Honor.

6 THE COURT: All right, anything from the Defense?

7 MR. WILKERSON: Nothing further, Your Honor.

8 THE COURT: All right, let's go ahead, make sure we've
9 got all of the exhibits, get those back to the jury.

10 The exhibits, as to the Plaintiffs that I have directed a
11 verdict against, those exhibits, as those individual contracts
12 what, I should have taken a look at that ahead of time. Let

1 me see which exhibits we've got.

2 (Exhibits reviewed and approved by counsel for Plaintiffs
3 and Defendants.)

4 THE COURT: They can go ahead and begin their
5 deliberations. Yeah, we need to bring - tell them whatever
6 comes out of that box has to go back in that box, okay, all
7 right. Need Ms. Carter and Mr. Custer.

8 (Alternates discharged by Court.)

9 THE COURT: All right, we'll stand in recess unless
10 and until we hear something.

11 (Deliberations begin at 11:35 a.m. Deliberations
12 continue through lunch.)

13 OFF THE RECORD

14 (On the record. Question from jury at 1:03 p.m.)

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right, we've gotten back two questions
18 from the jury. What I was going to do is just write responses
19 on these sheets but I wanted to speak with you all first
20 before I did so. I don't know which order this is but first
21 of all it says, "As we understood our instructions we are to
22 ignore any payment of commission to the reserve account prior
23 to and including 1-29-2010. Does this include the amount over
24 10 percent that should have been paid to the employee per the

1 contract? Please clarify. Thank you, Debbie Monahan,
2 foreperson." The next question was, "We need clarification on
3 the charge made to us concerning breach of contract, including
4 the reserve section. Can we find in favor of the Plaintiff
5 because of breach of contract and award zero dollars in
6 damages?" All right, on their first question I was just going
7 to write yes, any commission paid into the reserve account,
8 including amounts over 10 percent made on or before January
9 the 29th, 2010, are not to be included in any judgment in this
10 case or not to be - how do I - let me think.

11 MR. WILKERSON: You can use it consistent with the
12 language you did in your charge, Your Honor.

13 THE COURT: That might be the thing to do, yeah, let
14 me find it.

15 MR. WILKERSON: Not entitled to judgment against the
16 Defendant for any commissions or maybe just a yes would be ---

17 THE COURT: Well, let me see how ---

18 MR. WILKERSON: It's on page 14, Your Honor.

19 THE COURT: Yeah, okay, I think I'm going to do like
20 you say all of this.

21 MR. CONNELL: Can I be heard on that?

22 THE COURT: Yeah.

23 MR. CONNELL: Your Honor, I would suggest that you just
24 say it's up to you, it's up to you based on what testimony and

1 evidence you heard because there was conflicting testimony
2 about when it went in and how it went in and I think if you
3 answer it yes like that then you're going to have a situation
4 where they could discount the Plaintiff's testimony about what
5 they think is owed.

6 THE COURT: No, if they, if they think it went in
7 after January 29th, 2010, then they can award it. If they
8 think it went in on or before January 29th, 2010, they can't.
9 So, it's not saying do you - which testimony do you believe.
10 It's when do you think it went into the reserve account. If
11 you think it went into the reserve account on or before
12 January 29th you can't consider it. So, I think I'm just going
13 to say Plaintiffs are not entitled to judgment against the
14 Defendant for commissions if any that were placed in the
15 reserve account on or before January 29th, 2010, even if it
16 exceeded the 10 percent as stated in the contract.

17 MR. CONNELL: I still think you go back to - I mean,
18 what we've ---

19 THE COURT: No, I've made my ruling. I mean, we've
20 been, we've been ---

21 MR. CONNELL: All right, sir.

22 THE COURT: --- carrying on arguments after I've made
23 my decisions long enough on this.

24 MR. CONNELL: All right, sir.

1 THE COURT: So, I'm going to go head and rule that
2 way.

3 MR. CONNELL: All right.

4 THE COURT: On the other one, need clarification, can
5 you bring back a judgment for zero dollars or is it just a
6 judgment for the Defendant? I hadn't even really ---

7 MR. CONNELL: You can do that.

8 THE COURT: Okay.

9 MR. CONNELL: You can bring back a judgment for ---

10 THE COURT: We find in favor of the Plaintiff and
11 award the Plaintiff judgment against the Defendant for zero
12 dollars?

13 MR. CONNELL: You can do that.

14 MR. WILKERSON: Is not damages an element of the
15 cause of action?

16 THE COURT: Well, see, that's what I was thinking. I
17 agree with Mr. Connell. I swear I think I have seen somewhere
18 where you can bring back zero damages but by the same token
19 the law says that damages is an element of breach of contract.

20 MR. WILKERSON: We had this come up 20 years ago,
21 Your Honor, Judge Ralph Anderson was on the bench in Dillon.
22 The jury came back with a verdict, we find for the Plaintiff
23 zero dollars. Judge Anderson sent them back and said he
24 cannot accept the verdict and what was ironic at that point is

1 they took another four hours after that point to come back for
2 the Defendant.

3 THE COURT: I got you.

4 MR. CONNELL: I think there's ---

5 THE COURT: --- because it seems like there's ---

6 MR. CONNELL: --- there's a case in this - in the -
7 Judge Anderson's book about zero damages.

8 THE COURT: All right, well, let me - while I'm
9 filling in the answer on this other one let me - you all see
10 if you can find me that case so I can take a look at it.

11 MR. CONNELL: All right, sir. Your Honor, you want to
12 hear what the law is on that?

13 THE COURT: Just one second.

14 MR. WILKERSON: Can I see it?

15 MR. CONNELL: Sure.

16 THE COURT: All right, what I put on this first one I
17 put Plaintiffs are not entitled to judgment for commissions if
18 any that were placed in the reserve account on or prior to
19 January 29th, 2010, even if the amount placed in the reserve
20 account exceeded the 10 percent specified in the contract.

21 All right, Mr. Connell, let me hear from you on the
22 other.

23 MR. CONNELL: All right, I'll just read this for Your
24 Honor. "When the jury assess liability to Defendant but

1 awards zero damages the verdict is facially inconsistent and
2 contrary to South Carolina law, Stevens versus Allen, 342 S.C.
3 47. The proper and most consistent approach of treating such
4 verdicts is to require upon request the trial court to
5 resubmit the matter to the jury. If the jury cannot reach a
6 consistent verdict the trial court may then order a new trial
7 or a new trial absolute."

8 THE COURT: Okay.

9 MR. CONNELL: So, I would just say you'd just - I'd say
10 you can't answer that question at this point until they
11 actually do that.

12 THE COURT: No, I'm going to say you cannot award zero
13 in damages. You either find for the Plaintiff and award
14 damages or you find for the Defendant. That says specifically
15 you cannot find for the Plaintiff and award zero damages.

16 MR. CONNELL: But you don't know that until after they
17 ---

18 THE COURT: They're asking me can you find for the
19 Plaintiff because of breach of contract and award zero dollars
20 in damages, and you can't. So, I think I'm going to put no
21 you can only find for the Plaintiff and award damages - well,
22 let me see, all right, the specific question, "Can we find in
23 favor of the Plaintiff because of breach of contract and award
24 zero dollars in damages," that case says, no, you can't.

1 MR. CONNELL: You could award nominal damages though;
2 could you not?

3 THE COURT: In a breach of contract I don't think so.

4 MR. CONNELL: Well, what happens if just for purposes
5 of discussion, what happens if they put back - put a dollar on
6 each person's verdict, what would happen then?

7 THE COURT: Well, I'm sure you're going to bring a
8 motion for additur and new trial additur and they're going to
9 bring a motion - I don't know.

10 MR. WILKERSON: That ---

11 THE COURT: I'll have to do deal with that then.

12 MR. WILKERSON: That would be, that would be, that
13 would be an inconsistent verdict, Your Honor, because damages
14 are an element of the cause of action.

15 THE COURT: On this one I'm just going to put, "Can we
16 find in favor of the Plaintiff because of breach of contract
17 and award zero dollars in damages," I'm just going to put no
18 and sign my name, okay. I'm just - yeah, let's see what
19 happens on that one. All right, the first one that dealt with
20 commission that's going to be Court's Exhibit Six.

21 (Whereupon, Court Exhibit's Six [Question from Jury]
22 appropriately marked.)

23 THE COURT: The second one is Court's Exhibit Seven.

24 (Whereupon, Court Exhibit's Seven [Question from Jury]

1 appropriately marked.)

2 THE COURT: Hand that back to them and we'll stand in
3 recess until we hear something.

4 OFF THE RECORD

5 (On the record. Whereupon, the following takes place outside
6 the presence of the jury.)

7 THE COURT: They're wanting to take a break and so I
8 just needed to give them instructions - well, we'll wait for
9 Mr. Connell to get here if he's coming back. Is he coming
10 back? Oh, there he is.

11 MR. CANTY: Just made it outside the door.

12 THE COURT: As soon as she carried that back the jury
13 wanted to know if they could take a break. I don't know
14 whether to bring them back in here and instruct them or just
15 let the bailiff tell them that I'll allow them to take a break
16 now but everybody has to stop deliberation. You can't
17 deliberate while some people are taking a break.

18 MR. CONNELL: Yes, sir, that's fine.

19 MR. WILKERSON: That's satisfactory with us, Your
20 Honor.

21 THE COURT: All right, all right, so, just instruct
22 them yes you can take a break but everyone has to stop
23 deliberating. You can't have some continuing to deliberate
24 while others take a break; okay?

1 THE CLERK: Yes, Judge.

2 THE COURT: All right.

3 OFF THE RECORD

4 (On the record, question from jury at 1:50 p.m. Whereupon,
5 the following takes place outside the presence of the jury.)

6 THE COURT: All right, all right, they've come back
7 with another question. Says, "Can we award damages to the
8 Plaintiffs other than the amounts they requested. In other
9 words, is it only about money they claim is owed to them
10 (unpaid commissions), Debbie Monahan, foreperson, February
11 17th, 2012." All I know to do is to bring them back in and
12 recharge them on the definition of damages, that being damages
13 for breach of contract are those that may fairly and
14 reasonably be considered to arise naturally from the breach of
15 contract itself or those that may be reasonably supposed to
16 have been in the minds of the parties at the time the contract
17 was made. Damages for breach of contract include actual
18 damages sustained by a Plaintiff due to a Defendant's breach.
19 Actual damages are damages to compensate the Plaintiff and put
20 the Plaintiff as closely as possible in the same position he
21 or she was in before the breach of contract. In other words,
22 actual damages are the actual losses and expenses which the
23 Plaintiff has suffered because of the Defendant, because the
24 Defendant breached the contract. Generally actual damages are

1 the out-of-pocket costs actually paid by the Plaintiff as a
2 result of the breach of contract and the gain above the cost
3 that would have been realized if the contract had been
4 performed.

5 MR. WILKERSON: If Your Honor, please, we would
6 respectfully request that the entire charge on damages be
7 given, that is start at the top of page eight and go through
8 that first paragraph on page ten. You started at the actual
9 damages. I think you've got a preliminary portion for
10 damages.

11 THE COURT: In other words you want me to say that the
12 Plaintiff has to prove it again and all of that?

13 MR. WILKERSON: Yes, sir, and that also plays into
14 exactly what the - how the damages are established.

15 THE COURT: Well, okay, so, the Plaintiff - I can go
16 back in that the Plaintiff doesn't have to prove to a
17 mathematical certainty ---

18 MR. WILKERSON: Yes, sir.

19 THE COURT: --- and all of that? What is ---

20 MR. WILKERSON: Yes, sir, I think starting at the top
21 of page eight would be, would be more appropriate.

22 THE COURT: All right.

23 MR. CONNELL: Your Honor, may I be heard?

24 THE COURT: Yeah.

1 MR. CONNELL: Your Honor, what - I'm not sure it makes
2 any difference. I mean, they could put any number they want
3 to on the contract damages. Do you have to recharge them at
4 all? Can't you send them a note back saying, "It's up to you
5 to decide in your discretion based on what the charge is as to
6 what amount would be available," or ---

7 THE COURT: Well, yeah, but I'm not so sure how, how
8 to write that and I'm looking for the easiest thing and I
9 think the easiest thing would be just bring them back and
10 charge them again rather than trying to write all of that
11 down. The other one though was a kind of a yes or no. I
12 could kind of write it down easily. This one, yeah, this and
13 the charges basically say that it's whatever in their good
14 sound judgment they find to be natural, consequential damages
15 as a result. So, I think I'm going to do that. I'm going to
16 go ahead and bring them in and just give them these damages
17 again.

18 MR. CONNELL: So, you're going to start at page eight,
19 Your Honor?

20 THE COURT: I'm going to start at page eight and go to
21 the top of page ten.

22 MR. CONNELL: Okay.

23 MR. WILKERSON: Could I read the question, Your Honor?

24 THE COURT: Yeah, if you all want to see.

1 MR. WILKERSON: I've got another issue concerning the
2 question itself.

3 THE COURT: If you all want to see what it says.

4 MR. WILKERSON: I read this question also to bleed
5 over into a question as to whether or not they can just
6 determine damages whether or not they have been either
7 requested or claimed. I read that to mean what have they
8 proven in damages, can they just come up with a number of
9 damages that they can give them rather than go by the proof in
10 the case the way I read this, and I think, I think, I think
11 they need to be told that they can only award damages that the
12 evidence has supported, so, if that's included in that.

13 THE COURT: Well, but based upon what you're saying, I
14 mean, if you got a Plaintiff that testifies to it then that's
15 proof that they could rely on.

16 MR. CONNELL: Yes, sir.

17 THE COURT: I understand what you're wanting me to do.
18 You're wanting me to limit it to the paper and I don't think I
19 can do that. I think if a Plaintiff takes the stand and says
20 X amount.

21 MR. CONNELL: Not a mathematical certainty.

22 THE COURT: Yeah, I think they can do that.

23 MR. WILKERSON: And I agree with the not a
24 mathematical certainty portion but I believe that this - I

1 read this to say that they - to ask if they can say if they
2 can determine that there has been a breach of the contract and
3 then just pull a number out of the air and award damages is
4 the way I read this rather than being basing it upon any proof
5 in the case. It says, "Can we award damage to the Plaintiff
6 other than the amounts they requested?"

7 MR. CONNELL: The answer is yes.

8 MR. WILKERSON: I mean, the amounts they requested is
9 what they've proved.

10 THE COURT: Well, then yeah, other, other than the
11 amount they requested I guess I can just put yes.

12 MR. CONNELL: Write a yes and send it back.

13 THE COURT: Just write yes and send it back if that's
14 the way it's interpreted.

15 MR. WILKERSON: And in other words is it only about
16 money they claim is owed to them, unpaid commissions.

17 MR. CONNELL: Yes.

18 MR. WILKERSON: And I do think that they're taking it
19 down a path that suggests that they're going off the
20 reservation in terms of their analysis but I think that the
21 only appropriate way to fix that is to recharge them on
22 damages. So, I'm not challenging your decision to do that. I
23 just think that - I don't know how to fix that.

24 THE COURT: Yeah.

1 MR. CONNELL: And what - I'm not challenging your
2 decision either. I'm just saying that the answer to both
3 questions are yes.

4 THE COURT: Yeah, I'm just going to bring them back in
5 and tell them that their judgment is limited to the damages
6 proximately caused by a breach of the contract if any. Now,
7 and then I'll read the charge on damages again. All right,
8 let's bring the jury in.

9 All right, we're going to mark this as Court's Exhibit
10 Eight and then let me see it back, please.

11 (Whereupon, Court Exhibit's Eight [Question from Jury]
12 appropriately marked.)

13 (Whereupon, the following takes place in the presence of
14 the jury.)

15 THE COURT: All right, ladies and gentlemen, I
16 received your question that said, "Can we award damages to the
17 Plaintiffs other than the amounts they requested? In other
18 words is it only about money they claim is owed to them unpaid
19 commissions?" All right, what you can award as damages is
20 what I charged you in - with the law as to what damages are.
21 You can award damages as those damages are legally explained
22 to you in a charge on the law and I will do that again.

23 The Plaintiff must prove by a preponderance or greater
24 weight of the evidence that the Plaintiff suffered damages

1 which were proximately caused by the Defendant's breach of
2 contract. The Plaintiff must prove damages by the
3 preponderance or greater weight of the evidence. This does
4 not mean that the Plaintiff must prove damages to a
5 mathematical certainty or produce evidence of the exact amount
6 of damages suffered. However, the amount of damages cannot be
7 left to guesswork or speculation. Instead the evidence
8 presented by the Plaintiffs must be enough to allow you to
9 determine the amount of damages with reasonable certainty and
10 accuracy.

11 Damages for breach of contract are those that may fairly
12 and reasonably be considered to arise naturally from the
13 breach of contract itself or those that may be reasonably
14 supposed to have been in the minds of the parties at the time
15 the contract was made. A Plaintiff may not recover damages
16 for breach of contract unless the Plaintiff shows that he or
17 she has performed his or her part of the contract or at least
18 was able, ready and willing to perform at the appropriate
19 time. Damages for breach of contract include actual damages
20 sustained by a Plaintiff due to a Defendant's breach. Actual
21 damages are damages to compensate the Plaintiff and put the
22 Plaintiff as closely as possible in the same position he or
23 she was in before the breach of contract. In other words,
24 actual damages are the actual losses and expenses which the

1 Plaintiff has suffered because the Defendant breached the
2 contract. Generally actual damages are the out-of-pocket
3 costs actually paid by the Plaintiff as a result of the breach
4 of contract and the gain above the cost that would have been
5 realized if the contract had been performed.

6 All right, that is the definition of damages and what you
7 can award in this case. All right, I'm going to send you back
8 to the jury room and let you continue your deliberations.
9 Thank you very much.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right, we'll stand in recess.

13 OFF THE RECORD

14 (On the record. Verdict reached at 2:42 p.m. Whereupon, the
15 following takes place outside the presence of the jury.)

1 THE COURT: All right, I understand the jury has
2 reached a verdict. Anything from the Plaintiff before we
3 bring the jury in?

4 MR. CONNELL: No, sir.

5 THE COURT: Anything from the Defense?

6 MR. WILKERSON: No, Your Honor.

7 THE COURT: All right, let's bring the jury in.

8 (Whereupon, the following takes place in the presence of
9 the jury.)

10 THE COURT: All right, ladies and gentlemen, welcome
11 back. Ms. Monahan, has the jury reached a verdict on all
12 Plaintiffs?

13 FOREPERSON: Yes, sir, we have.

14 THE COURT: All right, and have you completed the
15 verdict form?

16 FOREPERSON: Yes, sir.

17 THE COURT: All right, if you'd please hand the
18 verdict form to the clerk.

19 (Complies with request.)

20 THE COURT: Thank you, ma'am.

21 THE CLERK: Yes, sir.

22 THE COURT: All right, this is the case the State of
23 South Carolina, County of Horry, in the Court of Common Pleas,
24 Fifteenth Judicial Circuit, case number 2009-CP-26-43, the

1 case of Timothy A. Zinn and others or et al. versus CFI Sales
2 and Marketing, Limited, d/b/a Westgate Resorts. Regarding the
3 claim of Robert Adams the verdict is we, the jury, find in
4 favor of the Defendant as to the claim for damages by the
5 Plaintiff Robert Adams. Verdict as to Laura Arrington, we,
6 the jury find in favor of the Plaintiff Laura Arrington and
7 award the said Plaintiff judgment against the Defendant in the
8 amount of \$2,769. Verdict regarding Stephen C. Black, we, the
9 jury find in favor of the Defendant as to claim for damages by
10 Plaintiff Stephen C. Black. Verdict regarding Bradley Kirk
11 Bray, we, the jury find in favor of the Defendant as to claim
12 for damages by the Plaintiff Bradley Kirk Bray. Verdict
13 regarding Mark D'Amico, we, the jury, find in favor of the
14 Defendant as to claim for damages by the Plaintiff Mark
15 D'Amico. Verdict regarding Thomas A. DeVitis, we, the jury,
16 find in favor of the Defendant as to claim for damages by the
17 Plaintiff Thomas A. DeVitis. Verdict regarding Rodney Eddie
18 Haynes, we, the jury find in favor of the Defendant as to
19 claim for damages by the Plaintiff Robert Eddie Haynes.
20 Verdict regarding Holly LeVasseur, we, the jury find in favor
21 of the Defendant as to claim for damages by the Plaintiff
22 Holly LeVasseur. Verdict regarding John Martin Loughlin, we,
23 the jury find in favor of the Defendant as to claim for
24 damages by the Plaintiff John Martin Loughlin. Verdict

1 regarding Chelcie Oxentine, we, the jury find in favor of the
2 Defendant as to claim for damages by the Plaintiff Chelcie
3 Oxentine. Verdict regarding Judith A. Parker, we, the jury
4 find in favor of the Defendant as to claim for damages by the
5 Plaintiff Judith A. Parker. Verdict regarding Cynthia G.
6 Reilly, we, the jury find in favor of the Defendant as to
7 claim for damages by the Plaintiff Cynthia G. Reilly. Verdict
8 regarding Timothy A. Zinn, we, the jury find in favor of the
9 Defendant as to claim for damages by the Plaintiff Timothy A.
10 Zinn.

11 All right, ladies and gentlemen of the jury, if I have
12 recited these verdicts correctly would you please signify
13 these as your verdicts by raising your right hand?

14 (All jurors raise right hand.)

15 THE COURT: All right, let the record reflect that all
16 jurors have raised their right hand.

17 Any polling of the jury by the Plaintiff?

18 MR. CONNELL: No, Your Honor.

19 THE COURT: Any by the Defense?

20 MR. WILKERSON: No, Your Honor.

21 (Jury dismissed by Court.)

22 THE COURT: All right, I know you have some time
23 limits specified by the Rules of Civil Procedure but are there
24 any post-trial motions at this time that the Plaintiff wishes

1 to make?

2 MR. CONNELL: Your Honor, I think that we have to ask
3 you for the ten days, it's within your ---

4 THE COURT: Oh, do you? I thought it was mandated by
5 law. Whatever time limits are allowed by the Rules of Civil
6 Procedure I'll grant you those time limits on that.

7 MR. CONNELL: That'd be ten days from today's date.

8 THE COURT: All right, that sounds good.

9 MR. WILKERSON: And Your Honor, just to clarify Rule
10 50, that really addresses Rule 50 motions, but there may be
11 other issues concerning trebling, attorney's fees and that
12 sort of thing. I'm not sure those would be covered by Rule
13 50. Would the Court in its discretion allow us ten days to
14 file those - to address those issues as well?

15 THE COURT: Yeah, I'm going to allow parties ten days
16 to file any post-trial motions you wish to file.

17 MR. WILKERSON: Thank you, Your Honor.

18 THE COURT: All right?

19 MR. CONNELL: Thank you, Your Honor.

20 THE COURT: Sounds good. Thank you very much.

21 (Adjourned.)

22

23

24

Verdict

889

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of Timothy A. Zinn, et al. versus CFI Sales and Marketing, Limited, d/b/a Westgate Resorts, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on February 13 through February 17, 2012.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Grace L. Hurley, CVR-CM-M
Official Reporter

December 14, 2012.



State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson
Resident Circuit Judge

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June 5, 2012

Via Email and U. S. Mail Delivery

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RE: *Zinn, et al. v. CFI Sales & Marketing, Ltd. d/b/a Westgate Resorts*
Case Number: 2009-CP-26-43

Gentlemen:

I ask that Mr. Connell and/or Mr. Canty prepare an order that:

- denies the plaintiffs' Motion for a New Trial;
- grants the plaintiffs' Motion for Declaratory Judgment that the defendant violated the *South Carolina Payment of Wages Act*;
- grants the plaintiff's Motion for Treble Damages; and
- partially grants the plaintiffs' Motion for Attorney Fees.

Gene M. Connell, Jr., Esquire
David J. Canty, Esquire
John S. Wilkerson, III, Esquire

June 6, 2012
Page Two

Based upon the jury verdict, judgment is granted in favor of the plaintiff, Laura Arrington, against the defendants for \$2,769.00. That judgment is tripled to \$8,307.00. The jury's verdict was in favor of the defendant as to all other plaintiffs' claims for unpaid wages.

The defendant violated the *South Carolina Payment of Wages Act* by modifying the employment contract without written notice to the employees and by failing to pay Ms. Arrington her wages within the time specified by law.

The plaintiff Laura Arrington is also granted judgment against the defendants for attorney fees in the amount of \$2,171.04. This award is this plaintiff's pro rata share of attorney Gene Connell's fees totaling \$35,700.00 and attorney David Canty's fees totaling \$18,576.00. This award is made pursuant to S.C. Code Annotated §41-10-80. Since the other plaintiffs did not prevail on their action for unpaid wages, their claims for attorney fees are denied. Likewise, the plaintiffs' request for attorney fees pursuant to the *South Carolina Declaratory Judgment Act* is denied.

The order should also state that these post-trial motions are decided without oral arguments as permitted by Rule 59(f), SCRPC.

With kindest regards, I remain

Very truly yours,

Benjamin H. Culbertson

BHC/bhc
pc: Horry County Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2009-CP-26-0043

Timothy A. Zinn, Robert Adams, Laura)
Arrington, Stephen C. Black, Bradley)
Kirk Bray, Mark D'Amico, Thomas A.)
DeVitis, Rodney Eddie Haynes, Jimmy)
Kelly, Whitney Renee Knox, Lynn C.)
Lanpher, Holly Levasseur, John Martin)
Loughlin, Joe Maranville, Khalif)
Middleton, Chelcie Oxentine, Judith A.)
Parker, Matthew W. Reed, Cynthia G.)
Reilly, Gerald Ryba, Sherry Singleton,)
Steven G. Thoni, Stratton Vitikos,)
Michael H. Wills, Michael J. Zanardo,)

Plaintiffs,)

vs.)

CFI Sales & Marketing, Ltd,)
d/b/a Westgate Resorts,)

Defendants.)

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SC Court of Appeals

ORDER

BACKGROUND FACTS

This matter is before the Court based on Plaintiffs' Motion for New Trial, for Declaratory Judgment as to Contract Being in Violation of the Payment of Wages Act , for Treble Damages and for Attorneys' fees. Briefly, this case was tried before me the week of February 13, 2012. The jury returned a verdict for Plaintiff Laura Arrington only in the amount of \$2,974.00. Plaintiffs seek a new trial as to all Plaintiffs. Plaintiffs' further seek in the alternative treble damages as to the claim of Laura Arrington, attorneys' fees under the payment of wages statute and attorneys' fees under the South Carolina Declaratory Judgment Act for prevailing on that cause of action regarding the employment contract with all Plaintiffs. For purposes of simplicity and because the Plaintiffs' motion is complex, the Court divides the motion into subparts.

I. PLAINTIFFS' MOTION FOR A NEW TRIAL AND JUDGMENT NOTWITHSTANDING THE VERDICT IS DENIED.

Plaintiffs moved for a new trial pursuant to SCRPC 50(b) which provides in pertinent part:

A party who has moved for a directed verdict may move to have the verdict and any judgment entered therein set aside and to have judgment entered in accordance with his motion for a directed verdict...

The courts of this state have held "the test which guides this court and the exercise of its power and duty to set aside a verdict on the ground of inadequacy is whether the verdict is so shocking and outrageous as to manifestly show that the jury was actuated by considerations not founded on the evidence and/or instructions of the court." *Ravan v. Greenville Co.*, 315 S.C. 447, 434 S.E.2d 296 (Ct.App. 1993).

In this case, at the close of the evidence the Plaintiffs moved the court for a directed verdict on S.C. Code Ann. § 41-10-10 entitled the "Payment of Wages Act" as to all Plaintiffs. Plaintiffs also requested that the court find as a matter of law that wages due the Plaintiffs were not paid according to the Act and that Defendant violated numerous sections of the Act including S.C. Code Ann. § 41-10-10, et seq. The court believes and still finds that this was an issue for the Court and should not be submitted to the jury. Plaintiffs have argued to the court that the payment of wages statute was an action at law and that a jury trial was mandatory. This court declined to adopt that position at trial and continues to do so. Thus, I deny Plaintiffs' motion for a new trial on that ground.

The court also fails to grant a new trial as to Plaintiffs Lanpher, Wills, Middleton, Thoni and Loughlin. The court finds that there was no evidence that these Plaintiffs had a case and thus refused to allow them to submit their claims to the jury.

Further, the court declines a new trial based on Plaintiffs' grounds that the court erred in determining that wages in excess of \$3,500.00 were in the reserve account as no contractual

provision allowed for such characterization. The court continues to believe that this case is tied to the previous class action which was settled and refuses to change its ruling on this point.

The Plaintiffs also argue that the court erred in directing a verdict as to the cause of action for breach of contract accompanied by a fraudulent act finding no evidence of fraud. The court finds in this case that there was no evidence of fraud and does not believe that the charge back provision of the contract, the reserve provision of the contract or designating unpaid wages as reserve funds constituted fraud. Further, the court finds that down payment required of each customer along with the upselling and down selling of timeshares to customers is not evidence of fraud. While there was evidence that no separate reserve account was kept by the Defendants by Connie Sharpe, this does not rise to the level of fraud. Further, while employee Michael Wills and Defendant's employee Connie Sharpe testified that Defendants would sometimes contact buyers in house after the sale to upsell to a more expensive timeshare unit, this is not evidence of fraud. Accordingly the court declines to grant Plaintiffs a new trial.

II. DEFENDANT'S CONTRACT WITH THE PLAINTIFFS DOES VIOLATE THE PAYMENT OF WAGES ACT.

At the close of the trial, I advised the parties that I would review whether or not the Defendant violated the South Carolina Payment of Wages Act, § 41-10-40(a). This Act provides "Every employer in the State shall pay all wages due in lawful United States money or by negotiable warrant or check bearing even date with the payday." Defendant's contract with the Plaintiffs, including schedule A on page 2, paragraphs VI and VII, purports to establish a scheme whereby Plaintiffs' wages will not be paid on their regular payday but rather will be withheld in part until following separation from the payroll. The Plaintiffs contract with Defendants states:

"...the funds remaining in the reserve account will be reimbursed to the employee only after the [Defendant] has determined that six (6) timely and consecutive

monthly payments have been made on each sale made by employee for which employee has been paid a commission.”

Further, Defendants violated § 41-10-50 which provides that “When an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days.” A review of the contract in this case clearly shows that this section of the Payment of Wages Act was violated by the Defendants.

Further, S.C. Code § 41-10-40(C) was violated by Defendants. This section provides” “An employer shall not withhold or divert any portion of an employee’s wages unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of the deductions as required by subsection (A) of Section 41-10-30.”

Here, the contract of Defendants violates all of the above code sections. First, Plaintiffs wages were reduced without notice. Second, wages were withheld after separation from the payroll. Third, the chargeback scheme is unenforceable and is contrary to the South Carolina Payment of Wages Statute in that an employee could sell a timeshare product and actually not be paid for ten years after the sale. See *Ross v. Ligand Pharmaceuticals, Inc.*, 371 S.C. 464, 639 S.E.2d 460 (2006) (employment agreement violated § 40-10-30 because employees given no time certain when payment would occur).

For the reasons set forth above, Defendant’s employment contracts with Plaintiffs violates the Payment of Wages Act as a matter of law and this court so declares that the contract is void as against public policy.

III. PLAINTIFFS ARE NOT ENTITLED TO ATTORNEYS' FEES FOR THE DECLARATORY JUDGMENT CAUSE OF ACTION.

While this court has declared the Defendant's employment contract with the Plaintiffs violative of the Payment of Wages Act as a matter of law, this court declines to award attorney's pursuant to S.C. Code § 15-53-100.

The courts of this state have not explicitly ruled on attorneys' fees under this statute; however, at least one court has allowed for attorney's fees under S.C. Code § 15-53-100. In *S. C. Electric and Gas v. Hartough*, 375 S.C. 541, 654 S.E.2d 87 (S.C. App. 2007) the court mentioned S.C. Code § 15-53-100 as a basis for awarding fees. Here, the court finds that awarding of fees is discretionary and even though the contract between the parties did violate the payment of wages statute, only one plaintiff prevailed. Accordingly, the court declines as a matter of law to award attorneys' fees on the declaratory judgment cause of action.

IV. PLAINTIFF ARRINGTON'S AWARD SHOULD BE TREBLED AND SHE SHOULD IS ENTITLED TO ATTORNEYS' FEES.

The court finds as a matter of law that Arrington's verdict of \$2,769.00 should be trebled. The payment of wages statute allows for treble damages and Arrington proved to a jury the contract between the parties was a violation of the payment of wages statute.

Accordingly, Plaintiff trebles Laura Arrington's award of \$2,769.00 such that judgment against the Defendant is \$8,307.00. The Defendant violated the S.C. Payment of Wages Act by modifying the employment contract with Arrington without written notice and by failing to pay her wages within the time specified by law. Accordingly, trebling is appropriate as to her claim only.

As to attorneys' fees, counsel for Plaintiffs submitted attorneys' fees of \$35,700.00 for Attorney Connell and \$18,576.00 for Attorney Canty. The court finds only one Plaintiff prevailed

and accordingly the court cannot grant attorneys' fees as requested and only grants a prorata share of attorney Connell's and attorney Canty's fees in the total sum of \$2,171.04.

Finally, it should be noted that the court heard these pretrial motions without oral argument as permitted by Rule 59(f) SCRPC. Accordingly

IT IS SO ORDERED.

Benjamin H. Culbertson
Resident Circuit Judge
Fifteenth Judicial Circuit

_____, 2012

_____. South Carolina

4/28/2010

Judith Parker, et al
vs
CFI Sales Marketing, Ltd.
List Used in Notice of Hearing

Adjusted for Spreadsheet Used for Highest Reserve

*NP = Employee Name and ID was not present for this source; yellow highlighted = identical names and term dates but different EMP IDs

EMP ID	LAST NAME	FIRST NAME	NAME LAST	ADDRESS	UNIT	CITY	STATE	ZIP CODE	HIGHEST RESERVE	RESERVE	RESERVE	RESERVE	RESERVE
19642	ADAMS	DAVID		1075 PINNACLE LN		MYRTLE BEACH	SC	29577	2,322.50	2,322.50	2,322.50	34.95	0.00
19642	ADAMS	DAVID		1075 PINNACLE LN		MYRTLE BEACH	SC	29577	2,322.50	2,322.50	2,322.50	1,969.57	2,654.97
29421	ADAMS	MATTHEW		1100 POSSUM TROT RD	APT 206D	NORTH MYRTLE B	SC	29582	56.51	56.51	56.51	56.51	76.17
29421	ADAMS	ROBERT		726 PEPPERHILL CIR		MYRTLE BEACH	SC	29588	5,027.75	5,027.75	5,027.75	2,129.66	2,870.77
29421	ADAMS	MATTHEW		1100 POSSUM TROT RD	APT 206D	NORTH MYRTLE B	SC	29582	544.22	544.22	544.22	544.22	733.60
32325	ALDRICH	RICHARD	RICK	966 WILLOWBEND DR		MYRTLE BEACH	SC	29579	8,400.10	3,500.00	4,900.10	3,558.13	2,797.89
25627	ALEGRE	ANADELFA	ANNA	1767 Beach Drive		Sunset Beach	NC	28468	160.00	160.00	0.00	67.77	0.00
30814	ALLEN	MARVENE		2005 GREENS BLVD	APT B204	MYRTLE BEACH	SC	29577	650.00		650.00	275.33	371.14
24794	ARMSTRONG	AMANDA		2896 VEREEN RD		ASH	NC	28420	1,859.90	1,859.90	0.00	787.82	0.00
25234	ARRINGTON	LAURA		1356 GLENN'S BAY RD	UNIT 202 D	SURFSIDE BEACH	SC	29575	5,692.18		5,692.18	2,411.10	3,250.15
24253	AYRES	KIMBERLY		455 SUNN SHAUNNA DR	APT 8	MYRTLE BEACH	SC	29588	80.00	80.00	0.00	33.89	0.00
38100	BALDERA	JOHNNY		538 HERITAGE POINT D		MYRTLE BEACH	SC	29588	3,820.00	840.00	2,980.00	1,618.08	1,701.54
19146	BALLENGER	JOAN	JOANNIE	PO BOX 7476		MYRTLE BEACH	SC	29572	682.50		682.50	289.09	389.70
23042	BARBIERI	JEFF		PO BOX 2651		MURRELLS INLET	SC	29576	542.50		542.50	229.79	309.76
19457	BASS	GENE	LANCE	428 BLACKBERRY LN		MYRTLE BEACH	SC	29579	1,453.20	409.20	1,044.00	615.55	596.11
30808	BATCHELDER	JANET		3909 CARNEGIE AVE		MYRTLE BEACH	SC	29588	40.00		40.00	16.94	22.84
24243	BATTISTELLI	MICHELLE		807 CALTON DR		CONWAY	SC	29526	4,010.00	500.00	3,510.00	1,698.56	2,004.16
23507	BECKER	SHAWN		830 44TH AVE N	APT K 3	MYRTLE BEACH	SC	29577	80.00	80.00	0.00	33.89	0.00
25137	BELARBI	MOHAMED		670 W Flintlake Ct.	Apt. D	Myrtle Beach	SC	29579	5,779.30		5,779.30	2,448.00	3,299.90
21658	BERNHEISEL	GLEN		3457 ARROWHEAD BLVD		MYRTLE BEACH	SC	29579	4,280.00	4,280.00	0.00	1,812.93	0.00
21658	BERNHEISEL	GLEN		3457 ARROWHEAD BLVD		MYRTLE BEACH	SC	29579	780.00	780.00	780.00	330.39	445.37
25239	BETTS	GEORGE		PO BOX 15377		SURFSIDE BEACH	SC	29587	80.00	80.00	0.00	33.89	0.00
35775	BLACK	STEPHEN		7039 BLADE BEAK LN		MYRTLE BEACH	SC	29588	6,321.00	316.00	6,005.00	2,677.46	3,428.77
23041	BLOSSER	MICHAEL	MIKE	1103 PLANTATION DR		MYRTLE BEACH	SC	29575	14,775.00		14,775.00	6,258.41	8,436.32
38091	BLYE	TERRELL	TERRELL	859 JOHN DOCTOR RD		CONWAY	SC	29526	1,920.00	0.00	1,920.00	813.28	1,096.29
25635	BONE	TRISHA	TRISHA	2312 NEWHART RD		CHARLOTTE	NC	28214	808.20	8.20	800.00	342.34	456.79
	BRAY*	BRADLEY K	BRADLEY	1356 GLENN'S BAY RD	UNIT 202-D	SURFSIDE BEACH	SC	29575	2,782.00	0.00	2,782.00	1,178.4	1,588.48
24255	BRITTNER	VIOLA	VI	5576 Beaver Creek Trail		Clover,	SC	29710	2,771.00	800.00	1,971.00	1,173.74	1,125.41
25246	BROADT	DANNY	DAN	1933 HWY 544 PMB146		CONWAY	SC	29526	1,853.00	474.00	1,379.00	784.90	787.39
32319	BROCKMANN	STEPHANIE		1496 MEDINAH LN		MURRELLS INLET	SC	29576	150.00		150.00	63.54	85.65

4/28/2010

Judith Parker, et al
vs
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*NP = Employee Name and ID was not present for this source; yellow highlighted = identical names and term dates but different EMP IDs

EMP ID	LAST NAME	FIRST NAME	MIDDLE NAME	ADDRESS	CITY	STATE	ZIP CODE	Highest Reserve	Reserve	Highest Reserve	Reserve	Highest Reserve	Reserve
ID	NAME	NAME	NAME	ADDRESS	CITY	STATE	ZIP CODE	Balance	Balance	Balance	Balance	Balance	Balance
31259	BROTHERS	DANIEL		5798 LONGWOOD DRIVE	APT. 103	MURRELLS INLET	SC	29576	1,240.00	1,240.00	0.00	525.24	0.00
19735	BROWN	REGINALD	REGGIE	609 1ST AVE		MYRTLE BEACH	SC	29577	24.00	24.00	0.00	10.17	0.00
32306	BROWN	CHEQUANA		3017 WARF DR		CONWAY	SC	29526	2,520.00	2,520.00	0.00	1,067.42	0.00
38334	BROWN	ADAM		54 Washington Dr.		Piedmont	SC	29673	300.00	0.00	300.00	127.07	171.30
28799	BURDISS	ERIC		1617 Randor Court		Myrtle Beach	SC	29577	16,649.26	2,303.91	14,345.35	7,052.32	8,190.99
25615	BURNEY	TONYA		293 LAKEVIEW DR		WHITEVILLE	NC	28472	0.00	0.00	0.00	0.00	0.00
9396	BURNS	CHARMAINE		4400 INDIAN CAMP CRE		COSBY	TN	37722	7,532.00		7,532.00	3,190.41	4,300.67
28789	BUTLER	DAVID		105 INDIAN WELLS CT		MURRELLS INLET	SC	29576	906.90		906.90	384.15	517.83
28790	BYNUM	JASON		388 WATERFALL CIR		LITTLE RIVER	SC	29566	435.00	40.00	395.00	184.26	225.54
19458	BYRD	MICHAEL		9057 GATEWICK CRT		MYRTLE BEACH	SC	29579	413.60	413.60	0.00	175.19	0.00
24795	CALDWELL	JASON		811 ROGERS DR		MYRTLE BEACH	SC	29577	0.00		0.00	0.00	0.00
18196	CALLICUTT	SABIAN	SABE	512-A 37TH AVE. N.		MYRTLE BEACH	SC	29577	1,277.60	0.00	1,277.60	541.17	729.49
30648	CALVIERA	VICKI		7061 Turtle Cove Dr.		MYRTLE BEACH	SC	29579	0.00	0.00	0.00	0.00	0.00
30422	CALVIERA	VICKI		7061 Turtle Cove Dr.		MYRTLE BEACH	SC	29579	12,608.00		12,608.00	5,340.51	7,198.99
30360	CAMLIN	CHRIS		370 E. Harmon Ave.	#K102	LAS VEGAS	NV	89169	1,320.00		1,320.00	559.13	753.70
37334	CAMPBELL	EDWARD LAMAR		1202 Pecan Grove Blvd.		CONWAY	SC	29527	9,179.00	1,809.00	7,370.00	3,888.05	4,208.17
38878	CAMPBELL	RICHARD	RICK	283 SHOREWARD DR		MYRTLE BEACH	SC	29579	3,477.10	0.00	3,477.10	1,472.83	1,985.37
31993	CANTELMO	ALBERT		513 38TH AVE N		MYRTLE BEACH	SC	29577	24,880.00		24,880.00	10,538.70	14,206.13
29984	CAPRICI	CONTESSA		9679 EADDY LN		MURRELLS INLET	SC	29576	484.20		484.20	205.10	276.47
25614	CARDENNIS	NEISHA		16 STONEY BROOK		CONWAY	SC	29524	688.20	688.20	0.00	291.51	0.00
38337	CARON	MICHAEL		612 13TH AVE S		MYRTLE BEACH	SC	29577	605.00	605.00	0.00	256.27	0.00
22603	CARTEE	DEBORAH		6921 PORCHER AVE	APT O	MYRTLE BEACH	SC	29572	240.00	240.00	0.00	101.66	0.00
19451	CARTREITE	PHYLLISS	DIANNE	838 KING JAMES CT		GARDEN CITY	SC	29576	128.40	128.40	0.00	54.39	0.00
37692	CHAN	LEON		2368 COVINGTON DR		MYRTLE BEACH	SC	29579	9,936.00	5,536.00	4,400.00	4,208.70	2,512.34
38111	CHRISTY	CYNTHIA		305A 76TH AVE N		MYRTLE BEACH	SC	29577	4,826.00	3,831.00	995.00	2,044.20	568.13
19849	CINALLI	MICHAEL		15516 Greendale Rd.		Maple Heights	OH	44137	80.00	80.00	0.00	33.89	0.00
26269	CLARK	TAMMY		1703 MADISON SR	APT B	NORTH MYRTLE E	SC	29582	80.00	80.00	0.00	33.89	0.00
25631	COBBETT	JOSEPH	JOE	9645 N KINGS HWY	SUITE 318	MYRTLE BEACH	SC	29572	40.00	40.00	0.00	16.94	0.00
25620	COHEN	HARRIS		316 TRACE RUN		MYRTLE BEACH	SC	29588	40.00	40.00	0.00	16.94	0.00
17654	COLEMAN	KEIRNON		6220 FRONTAGE RD	APT B	MYRTLE BEACH	SC	29574	0.00	0.00	0.00	0.00	0.00

4/28/2010

Judith Parker, et al

Adjusted for Spreadsheet Used for Highest Reserve

vs
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*NP = Employee Name and ID was not present for this source; yellow highlighted = identical names and term dates but different EMP IDs

EMP ID	LAST NAME	FIRST NAME	MAVILA	ADDRESS	UNIT	CITY	STATE	ZIP	Highest Reserve Balance	Reserve Payouts	Highest Reserve Balance	Reserve Payouts	Disbursement	Disbursement
19445	CONROY	THOMAS	TOM	902 67TH AVE N	APT E-6	MYRTLE BEACH	SC	29572	431.40		431.40		182.73	246.32
32006	COOKE	ANTHONY		9654 N KINGS HWY	UNIT A	MYRTLE BEACH	SC	29572	2,230.00		2,230.00		944.59	1,273.30
20250	COPLEY	RICHARD		604 TARRANT ST		TONGS	SC	29568	1,554.00	300.00	1,254.00		658.25	716.02
25626	CORCIONE	CHRISTOPHER		425 BLACKBERRY LN		MIRTL BEACH	SC	28579	0.00	0.00	0.00		0.00	0.00
22954	CORELL	JASON		225 VERMILLION DR		LITTLE RIVER	SC	29566	3,474.50		3,474.50		1,471.73	1,983.89
25243	COTTINGHAM	ELIZABETH		49 MOUNTAIN AVE		CALDWELL	NJ	7006	80.00	80.00	0.00		33.89	0.00
33003	COUCH	THEODORE	TED	4409 North Ocean Blvd.	#203	NORTH MYRTLE B	SC	29582	5,880.00		5,880.00		2,490.66	3,357.40
33318	COUCH	DARLENE		610 S PALMETTO WAY		SURFSIDE BEACH	SC	29575	40.00	40.00	0.00		16.94	0.00
19846	COURTOIS	THOMAS	TOM	4200 Coquina Harbor Dr.	Unit H-2	Little River	SC	29566	1,139.60	785.60	354.00		482.71	202.13
38083	COUSINS JR	CLIFTON		1123 FOXTAIL DR		LONGS	SC	29568	0.00	0.00	0.00		0.00	0.00
18185	COX	RUSSELL		2486 BAMBOO CT		MYRTLE BEACH	SC	29579	1,120.00		1,120.00		474.41	639.50
25248	COX	VONDA		PO BOX 2893		MYRTLE BEACH	SC	29578	664.80		664.80		281.60	379.59
26270	CRANDALL	TIMOTHY		4023 GROUSEWOOD DR		MYRTLE BEACH	SC	29588	50.00	50.00	0.00		21.18	0.00
20251	CRAWLEY	LEANNE		125 MOULTRIE CT		MURRELLS INLET	SC	29576	2,997.20		2,997.20		1,269.56	1,711.36
24257	CRICHTON	ANNA		6012 MILLERS MILL RD		PHILPOT	KY	42366	2,132.10		2,132.10		903.12	1,217.40
38089	DANILEWICZ	DOUGLAS		5000 WINDSOR GREEN WAY	APT 201	MYRTLE BEACH	SC	29579	209.00	0.00	209.00		88.53	119.34
28784	DAILEY	KEITH		94 FREEDOM WAY		MYRTLE BEACH	SC	29577	2,395.00		2,395.00		1,014.48	1,367.51
19850	DALTON	JERRY		3505 ROGERS RD		LORIS	SC	29569	238.20		238.20		100.90	136.01
37339	DAMICO	MARK		2061 AYERSHIRE LN		MYRTLE BEACH	SC	29575	7,914.05	5,114.05	2,800.00		3,352.24	1,598.76
20257	DANKO	BRENDA		929 MARSHFIELD CIR	APT 106	MYRTLE BEACH	SC	29579	4,570.00		4,570.00		1,935.77	2,609.41
35776	DARE	NOVY		P.O. Box 9203		N MYRTLE BEACH	SC	29582	11,006.00	2,754.00	8,252.00		4,661.94	4,711.77
38098	DARROW	RYAN		3946 MAYFIELD DR		CONWAY	SC	29524	10,498.00	4,000.00	6,498.00		4,446.76	3,710.27
19737	DAVIDSON	BLANCHE		1105 RAGIN ST		MYRTLE BEACH	SC	29577	480.00		480.00		203.32	274.07
23521	DAVIS JR	BEJAMIN		2319A PRIME CIR		KISSIMMEE	FL	34746	2,760.60		2,760.60		1,169.34	1,576.26
25240	DAVIS	NICOLE		3774 VINE STREET		MYRTLE BEACH	SC	29577	0.00		0.00		0.00	0.00
28792	DAVIS	SHANNON		208 C C GORDAN LN		HEMINGWAY	SC	29554	6945.20	4,217.20	2,728.00		2,941.86	1,557.65
23043	DECARO	CHRISTOPHE	CHRIS	167 BELLEGROVE DR		MYRTLE BEACH	SC	29579	5,250.00	1,766.00	3,484.00		2,223.80	1,989.31
23045	DEEB	JESSICA		4851 LUSTER LEAF CIR	APT 103	MYRTLE BEACH	SC	29577	3,500.00		3,500.00		1,482.53	1,998.45
25619	DENNING	CHARLES BRIAN		1390 NC Hwy 55		Dunn	NC	28334	0.00	0.00	0.00		0.00	0.00
29412	DENTLEY	Randall		376 SEA TUTTLE DR		MYRTLE BEACH	SC	29577	0.00	0.00	0.00		0.00	0.00

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EMP ID	LAST NAME	FIRST NAME	EMP ID	ADDRESS LINE 1	UNIT 2	CITY	STATE	ZIP CODE	ANNUAL RESERVE BALANCE	ANNUAL PAYABLE	HIGHEST PAST RESERVE BALANCE	ANNUAL RESERVE BALANCE	ANNUAL RESERVE BALANCE
38088	DEPALMA	KEITH		6095 CATALINA DR	UNIT 1816	N MYRTLE BEACH	SC	29582	1,995.00	1,245.00	750.00	845.04	428.24
37343	DEVITIS	THOMAS		9649 INDIGO CREEK BLVD		MURRELLS INLET	SC	29576	11,120.10	6,180.10	4,940.00	4,710.27	2,820.67
37331	DIAZ	FRANCISCO		362 SE 10TH ST		MADRAS	OR	97741	3,080.00	1,860.00	1,220.00	1,304.63	696.60
30812	DICKERSON	JAY		9221 BLUE WING DR		MURRELLS INLET	SC	29576	7,914.00	5,564.00	2,350.00	3,352.22	1,341.82
19845	DIGILDO	CLELIA	MAUREEN	1103 PLANTATION DRIV		SURFSIDE BEACH	SC	29575	1,628.40		1,628.40	689.76	929.79
23504	DIGNEO	ROBERT		196 BANCLAY DR		MYRTLE BEACH	SC	29579	80.00	80.00	0.00	33.89	0.00
36844	DOCKINS JR	DANIEL		3767 CAPE LANDING CIR	APT G	MYRTLE BEACH	SC	29588	0.00	0.00	0.00	0.00	0.00
19143	DODRIDGE	SHANACY		902 67TH AVE N	APT E6	MYRTLE BEACH	SC	29572	1,147.30	343.30	804.00	485.97	459.07
28778	DONALSON	RANDY		713 ROSE DR		MYRTLE BEACH	SC	29588	3,993.90		3,993.90	1,691.74	2,280.46
28798	EMERSON	VINCENT	VINCE	1617 RANDOR CT		MYRTLE BEACH	SC	29579	579.70		579.70	245.55	331.00
18184	FAILE	HAZEL	LEE	300-3001 N KINGS HWY		MYRTLE BEACH	SC	29577	5,250.16	0.00	5,250.16	2,223.87	2,997.77
32307	FARLOW	STEEN		10495 N KINGS HWY		MYRTLE BEACH	SC	29572	1,500.00		1,500.00	635.37	856.48
37342	FEATHER	KEVIN		170P OCEAN BLVD	APT 603	N MYRTLE BEACH	SC	29582	5,049.00	4,449.00	600.00	2,138.66	342.59
24260	FEICHTEL	CHAD		836 HARBORSIDE LANE		COLUMBIA	SC	29229	1,145.00		1,145.00	485.00	653.78
18411	FERGUSON	BRENDA		288 BELMEADE CT.		DANVILLE	VA	24540	800.00		800.00	338.87	456.79
37336	FIORA	SOLINA		6925 NW 14th Court		Margate	FL	33063	7584.70	244.70	7,340.00	3,212.74	4,191.04
23526	FIGORELLI	RONALD		1121 STONEY FALLS BLVD		MYRTLE BEACH	SC	29579	0.00	0.00	0.00	0.00	0.00
29399	FLEMING	KRISTIN		619 35th Ave. N.	Apt. D	Myrtle Beach	SC	29577	40.00	40.00	0.00	16.94	0.00
25242	FLETCHER	KATHLEEN		1636 CAMFIELD LN		MT PLEASANT	SC	29466	995.40	395.40	600.00	421.63	342.59
38330	FLETCHER	RENEE		6095 Catalina Dr.	Unit 2015	North Myrtle Beach	SC	29582	5,512.00	5,512.00	0.00	2,334.78	0.00
19455	FLOWERS	LINDA		159 LEEWARD RD		COLUMBIA	SC	29212	540.00		540.00	228.73	308.33
21468	FLOYD III	ROBERT		116 N OAK ST		MYRTLE BEACH	SC	29575	1,160.23		1,160.23	491.45	662.47
23514	FOLEY	BRIDGET		224 PLANTATION RD	APT A	MYRTLE BEACH	SC	29588	0.00		0.00	0.00	0.00
36327	FORD	JENNIFER		8455 Spencers Trace Dr.		Jacksonville	FL	32244	5,607.60		5,607.60	2,375.27	3,201.86
23505	FORGY	STEVEN		6200 DEW DROP CT		MYRTLE BEACH	SC	29579	178.00		178.00	75.40	101.64
20262	FORNAL	JEFFREY	JEFF	3955 GLADIOLA CT	APT 201	MYRTLE BEACH	SC	29588	590.00		590.00	249.91	336.88
29408	FORNAL	BRENTEN		750 MOUNT GILEAD PLACE DR		MURRELLS INLET	SC	29576	0.00	0.00	0.00	0.00	0.00
19772	FULLEX	CHRISTINA		1013 GARVIN CT		MYRLTE BEACH	SC	29588	1,731.60	1,431.60	300.00	733.47	171.30
30351	GAGNON	CHANTAL		1100 DAVID ST	APT 1313	NORTH MYRTLE F	SC	29582	2,557.90		2,557.90	1,083.48	1,460.52
	Gauvin	Mike	MICHAEL	406 H 16th Ave. S		Myrtle Beach	SC	29577	3,500.00	0.00	3,500.00	1,482.53	1,998.45

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EMP ID	LAST NAME	FIRST NAME	NAME (if different)	ADDRESS-EMP	TERM	CITY	STATE	ZIP CODE	Highest Reserve Balance Available	Reserve Payable	Highest Reserve Payable	Pre-Retirement Reserve	Pre-Retirement Reserve Payments
19847	GEORGE	WANDA		416 HILL ST		GEORGETOWN	SC	29440	7,546.00	3,530.00	4,016.00	3,196.34	2,293.08
25237	GEORGE	KENNETH		1950 BENT GRASS DR	APT F	SURFSIDE BEACH	SC	29575	70.00	70.00	0.00	29.65	0.00
19446	GERALD	CHRISTOPHE	CHRIS	1456 BALDWIN CT		LITTLE RIVER	SC	29566	394.00	394.00	0.00	166.89	0.00
25623	GIANUCA	DORIS		19101 Mystic Pointe Dr., Bldg. 2	Apt. 2705	Aventura	FL	33180	80.00		80.00	33.89	45.68
38110	GIDYCZ	MITCHELL		305A 76 ST		MYRTLE BEACH	SC	29577	4,447.21		4,447.21	1,883.75	2,539.29
31676	GOODMAN	ASHLEY		P.O. Box 2545		MYRTLE BEACH	SC	29578	0.00	0.00	0.00	0.00	0.00
23271	GOODWYN	CARSON		4887 LUSTERLEAF CR		MYRTLE BEACH	SC	29577	3,570.00	400.00	3,170.00	1,512.19	1,810.03
25251	GORE	CHRISTOPHE	CHRISTO	601 HILLSIDE DR N	APT 4021	N MYRTLE BEACH	SC	29582	594.00	594.00	0.00	251.61	0.00
25252	GORE	CHRISTOPHE	CHRISTO	601 HILLSIDE DR N	APT 4021	N MYRTLE BEACH	SC	29582	594.00	594.00	0.00	0	0.00
37330	GRAJALES	DONNA		1203 LEXI LN		MYRTLE BEACH	SC	29577	5,727.10	1,050.00	4,677.10	2,425.89	2,670.56
31997	GREGORY	ALEXIS		606 Anderson Circle	Apt. 101	Deerfield Beach	FL	33441	0.00	0.00	0.00	0.00	0.00
19749	GROOMES	GRACIE		4196 HIGHBRASS COVEY		MYRTLE BEACH	FL	29588	104.00	64.00	40.00	44.05	22.84
29418	HALLY	MARK		104 MOLINIA DR		MURRELLS INLET	SC	29576	0.00		0.00	0.00	0.00
24249	HARDEE	SAMUEL	SAM	311 B WILLOW DR S		SURFSIDE BEACH	SC	29575	240.00	240.00	0.00	101.66	0.00
36317	HARDY	AMBERLEE		4839 HARVEST DR		MYRTLE BEACH	SC	29579	5,740.50		5,740.50	2,431.57	3,277.74
24241	HARRELL	JEROME	BLAINE	221 ASHELY RIVER RD		SURFSIDE BEACH	SC	29588	420.00		420.00	177.90	239.81
19738	HARRIS	DEBORAH		171 WESTHAVEN	APT 8A	MYRTLE BEACH	SC	29579	4,575.00		4,575.00	1,937.88	2,612.26
23511	HARTWELL	JAMES		816 PATHFINDER WAY		MURRELLS INLET	SC	29576	4,405.00		4,405.00	1,865.88	2,515.19
19141	HASWELL	RODNEY		221 Boundaryline Dr. NW		Calabash	NC	28467	6,046.50	1,655.50	4,391.00	2,561.18	2,507.20
23520	HAWKINBER	AMANDA		1926 Kate Lane		Myrtle Beach	SC	29575	0.00		0.00	0.00	0.00
24251	HAWKINS	LEONARD		6100 FRONTAGE RD	APT 304	MYRTLE BEACH	SC	29577	645.40		645.40	273.38	368.51
37337	HAYNES	RODNEY	EDDIE	510 5th Ave. N		SURFSIDE BEACH	SC	29575	6,559.00	4,379.00	2,180.00	2,778.27	1,244.75
37745	HAYNES	TIMOTHY	TJ	150 CART CROSSING DR	APT 104	CONWAY	SC	29526	15,114.00	4,024.00	11,090.00	6,402.01	6,332.23
	HELMS	ASHLEY		633 COLEMAN BLVD		LORIS	SC	29569		0.00	0.00	0.00	0.00
36815	HELTSLEY	PENNIE		155 KNOWLEDGE AVE	UNIT A	BRANSON	MO	65616	130.00	130.00	0.00	55.07	0.00
38072	HENDRICK	THERESA	RAI	397 WACCAMAW PINES DR		MYRTLE BEACH	SC	29579	1,090.00	0.00	1,090.00	461.70	622.37
60145	HENDRICK	THERESA	RAI	397 WACCAMAW PINES DR		MYRTLE BEACH	SC	29579		0.00	0.00	0.00	0.00
37344	HENNES	RICHARD		401 CONNELLY SPRINGS RD S		LENOIR	NC	28645	0.00	0.00	0.00	0.00	0.00
29978	HENNIGH	GREGORY		647 CANTERBURY DR	APT 64B	MYRTLE BEACH	SC	29579	0.00	0.00	0.00	0.00	0.00
37326	HENOCQ	ALEXANDRE	ALEX	164 WESTHAVEN DR	APT 13 H	MYRTLE BEACH	SC	29579	2,588.00		2,588.00	1,096.23	1,477.71

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25236	HEYL	ASHLEY		100 PRESTON HILLS DRIVE		COLUMBIA	SC	29210	369.00	369.00	0.00	156.30	0.00	
25236	HIRSCHEY	NEIL		201 BITTERSWEET LANE		MYRTLE BEACH	SC	29579	5,323.50	2,000.00	589.50	2,343.89	3,159.55	
25236	HIRSCHEY	NEIL		201 BITTERSWEET LANE		MYRTLE BEACH	SC	29579	5,500.00	2,000.00	1,482.53	1,998.45	1,998.45	
25622	HOFFMAN	JOHN		176 WEEPING WILLOW DR		MYRTLE BEACH	SC	29579	0.00	0.00	0.00	0.00	0.00	
24790	HOUGHTALIN	ANDREW	ANDY	4826 INNISBROOK CT	APT 910	MYRTLE BEACH	SC	29579	94.00	94.00	0.00	39.82	0.00	
25624	HOUGHTALIN	KATHERINE	KATHY	3698 CLAYPOND VLG LN	APT 1	MYRTLE BEACH	SC	29579	2,324.10	855.10	1,469.00	984.45	838.78	
23270	HUBER	LANCE		773 MAIN ST	APT 171	MYRTLE BEACH	SC	29582	2,960.00	2,710.00	250.00	1,253.80	142.75	
29413	HUGGINS	MARQUIS		423 DANDELION LN		MYRTLE BEACH	SC	29577	6,755.00	3,255.00	3,500.00	2,861.29	1,998.45	
25618	HUNNICUTT	MARGARET		321 WACCAMAW VLG		MYRTLE BEACH	SC	29579	160.00	160.00	0.00	67.77	0.00	
18187	HUNT	JOHN		169 HISTORIC DR		MOUNT PLEASANT	SC	29464	3,500.00	182.50	3,317.50	1,482.53	1,894.25	
37693	HYATT II	RANDY		2305 COOPER CT		MARION	SC	29571	918.00	918.00	0.00	388.85	0.00	
29423	JACKSON	NICKY		400 AMANDA WAY		CONWAY	SC	29526	878.50	878.50	0.00	372.12	0.00	
36843	JACKSON	DONNA		110 BREAKERS DR.	UNIT 507	MYTLE BEACH	SC	29579	2,970.20		2,970.20	1,258.12	1,695.94	
29985	JENKINS	STEPHAINE		313 BROOKMONT DR		MYRTLE BEACH	SC	29588	40.00		40.00	16.94	22.84	
31786	JENKINS	CYNTHIA		879 SULTANA DR		LITTLE RIVER	SC	29566	0.00	0.00	0.00	0.00	0.00	
19147	JOHNSON	PAULETTE		5907 S KING HWY	APT 154	MYRTLE BEACH	SC	29575	470.40	128.40	342.00	199.25	195.28	
29993	JONES	CHRISTOPHER		143 A Chenoa Dr.		MURRELLS INLET	SC	29576	11,515.00	4,169.94	7,345.06	4,877.54	4,193.93	
	JONES	RICHARD		509 67 AVE. N.	APT K	MYRTLE BEACH	SC	29572		0.00	0.00	0.00	0.00	
24791	JORDAN	CAROLINE	CARRIE	1701 RADIO LN		CONWAY	SC	29527	5,496.80	841.80	4,655.00	2,328.34	2,657.94	
41725	JORDAN	CAROLINE	CAROLIN	1701 RADIO LN		CONWAY	SC	29527		0.00	0.00	0.00	0.00	
19148	KADYK	MARC		604 19TH AVE NORTH	APT #9	MYRTLE BEACH	SC	29577	2302.65	2,169.90	132.75	975.36	75.80	
28776	KEFFER	ELIZABETH		P.O. Box 14611		Surfside Beach	SC	29587	493.40	493.40	0.00	209.00	0.00	
22602	KELLER	RICHARD	SCOTT	PO BOX 1064		MYRTLE BEACH	SC	29578	5,606.55		5,606.55	2,374.83	3,201.26	
25625	KELM	JENNIFER		1413 HWY 175	APT 185	SURFSIDE BEACH	SC	29575	80.00	80.00	0.00	33.89	0.00	
25636	KEOMANIDE	KIMBERLY	KIM	3792 HUTCHCOCK WAY	APT 232	MYRTLE BEACH	SC	29577	80.00		80.00	33.89	45.68	
29420	KING	MICHAEL		4420 EASTPORT BLVD	APT M14	LITTLE RIVER	SC	29566	2,570.00		2,570.00	1,088.60	1,467.43	
31784	KISER	JAIME		625 Oakhurst Dr.		Myrtle Beach	SC	29579	2,864.00	1,374.00	1,490.00	1,213.14	850.77	
30816	KITTRELL	CHERIE		2673 MIGLIARA LANE		OCOE	FL	34761	654.00		654.00	277.02	373.42	
32009	KNOX	WHITNEY		1420 SHAVIS COURT CA		MYRTLE BEACH	SC	29577	543.10		543.10	230.05	310.10	
38332	KRASNAY	MICHAEL		6850 BLUE HERON DR	APT 309	MYRTLE BEACH	SC	29588	0.00	0.00	0.00	0.00	0.00	

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31263	KREYER	SEATON		3324 County Rd. 16		CANANDAIGUA	NY	14424	1,064.20		1,064.20	450.78	607.64
37328	LAMBERT	NILS		9622 KINGS GRANT DR		MURRELLS INLET	SC	29576	0.00	0.00	0.00	0.00	0.00
36846	LANPHER	LYNN		8538 HOPINS CIR	APT G	MYRTLE BEACH	SC	29575	5,855.00	3,745.00	2,110.00	2,480.07	1,204.78
29415	LAVACCA	CYNTHIA		455 SUNNIGHANNA DR	UNIT 300	MYRTLE BEACH	SC	29588	1,134.00		1,134.00	480.34	647.50
25231	LAWRENCE	ERICA		2646 CRYSTAL CREEK DR		ROCK HILL	SC	29730	294.00		294.00	124.53	167.87
29402	LAWRENCE	JEFFREY		3681 RENEE DR	APT 121	MYRTLE BEACH	SC	29579	914.00	554.00	360.00	387.15	205.55
29982	LEE	BENJAMIN		1081 PARK DR		MYRTLE BEACH	SC	29577	0.00	0.00	0.00	0.00	0.00
31290	LEE	ZACK		317 CEDAR ST	APT A	MYRTLE BEACH	SC	29577	40.00	40.00	0.00	16.94	0.00
36842	LEE	GORDON		General Delivery		Myrtle Beach	SC	29577	4,730.00	4,730.00	0.00	2,003.54	0.00
37728	LEVASSEUR	HOLLY		126 FENWAY PARK LN		LORIS	SC	29569	4,614.00	4,014.00	600.00	1,954.4	342.59
31262	LEWIS	CASEY		1509 CANAL TER		CONWAY	SC	29526	179.59	179.59	0.00	76.07	0.00
38102	LISAK	JEAN		407 76TH AVE N	UNIT H	MYRTLE BEACH	SC	29572	0.00	0.00	0.00	0.00	0.00
18415	LISBON	GARY		3955 GLADIOLA CT	APT 201	MYRTLE BEACH	SC	29588	6,166.00		6,166.00	2,611.8	3,520.70
20256	LIVINGSTON	ERNEST		PO BOX 385		GEORGETOWN	SC	29440	440.00	80.00	360.00	186.38	205.55
37333	LOUGHLIN	JOHN		3829 Myrtle Pointe Dr.		MYRTLE BEACH	SC	29577	4,902.00	4,177.00	725.00	2,076.40	413.96
25630	MACAULAY	CASEY		9092 GATEWICK CT		MYRTLE BEACH	SC	29579	80.00	80.00	0.00	33.89	0.00
29422	MACK	TAMMY Lynch Schmidt		2053 Elkhorn Rd.		Tioga	PA	16946	1,785.00	417.00	1,368.00	756.09	781.11
38090	MAJOR	TIMOTHY		6 LONE OAK LN		MYRTLE BEACH	SC	29575	5,678.20	3,786.20	1,892.00	2,405.18	1,080.31
30815	MARANVILLE	JOSEPH	JOE	2419 METTS DR		NORTH MYRTLE B	SC	29582	11,555.60		11,555.60	4,894.74	6,598.08
25629	MARKHAM	JEFFREY		8394 WOODLAND DR	SUITE 318	MYRTLE BEACH	SC	29588	0.00	0.00	0.00	0.00	0.00
19145	MATSUMOTO	SEANA		4417 BARCELONA LN		LITTLE RIVER	SC	29566	248.40		248.40	105.22	141.83
23522	MAYAN	AVI	BEN	2198 HAYSTACK WAY		MYRTLE BEACH	SC	29579	326.54		326.54	138.32	186.45
18189	MCCABE	RICHARD	RICK	PO BOX 451		NORTH MYRTLE B	SC	29597	3,209.45		3,209.45	1,359.46	1,832.55
20332	MCGUIRE	CHERYL		3955 GLADIOLA CT	APT 201	MYRTLE BEACH	SC	29588	0.00	0.00	0.00	0.00	0.00
18421	MCINTYRE	JERRY		2100 Sea Mountain Highway	Harbour Res	N. MYRTLE BEACH	SC	29582	1,648.00		1,648.00	698.06	940.98
12986	MCKEE	DALE		606 WATERWAY VILLAGE B	APT 28C	MYRTLE BEACH	SC	29579	2,680.00	1,750.00	930.00	1,135.20	531.02
29417	MCQUEEN	CHRISTOPHER	CHRIS	470 HIGHWAY 385		BENNETTSVILLE	SC	29512	6,517.23		6,517.23	2,760.58	3,721.25
31264	MERCER	MARK		PO BOX 2756		MYRTLE BEACH	SC	29578	40.00	40.00	0.00	16.94	0.00
30355	MIDDLETON	AMY		P.O. Box 411		Burgess	VA	22432	2,263.80	653.80	1,610.00	958.90	919.29
37691	MIDDLETON	KHALIF		P.O. Box 411		Burgess	VA	22432	8,915.00	2,539.00	6,376.00	3,776.23	3,640.61

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EMP ID	LAST NAME	FIRST NAME	NAME DIFFER	ADDRESS	UNIT	CITY	STATE	ZIP CODE	Highest Reserve Balance	Reserve Payoff	Current Reserve Payoff	Current Reserve Balance	Current Reserve Payments
19450	MIRACLE	CHRISTOPHE	CHRIS	2802 SIX SHOT		MYRTLE BEACH	SC	29588	16,236.00	1,740.00	14,496.00	6,877.27	8,277.01
32317	MIRELES	EDWARD		426 BRIDLE FORD DR		MYRTLE BEACH	SC	29588	426.00		426.00	180.45	243.24
29994	MOORE	CINDY		4376 MCCORSLEY AVE		LITTLE RIVER	SC	29566	40.00	40.00	0.00	16.94	0.00
29987	MORGAN	WILLIAM		22 SAND DOLLAR CT		CAROLINA SHORE	NC	28467	113.46		113.46	48.06	64.78
38333	MOSCOSO	ROBERT		3915 Briar Vista Dr.		MYRTLE BEACH	SC	29579	2,702.00	2,302.00	400.00	1,144.52	228.39
36323	MUEHLHANS	HOLGER		5704 CLUB COURSE DR		N MYRTLE BEACH	SC	29582	390.00	390.00	0.00	165.20	0.00
30359	MUIRHEAD	THOMAS	TOM	1356 GLENN'S BAY RD	APT 201B	SURFSIDE BEACH	SC	29575	40.00	40.00	0.00	16.94	0.00
23269	MURPHY	EDWARD	ED	1811 FAIRWAY RIDGE DR	APT 1A4	SURFSIDE BEACH	SC	29505	3,245.90		3,245.90	1,374.90	1,853.36
25249	MURPHY	NANETTE		7304 WOLFHOUD CT		WILMINGTON	NC	28411	8,318.88		8,318.88	3,523.72	4,749.96
36291	MURRAY	JOSHUA	JOSH	4593 Coachman Circle		Las Vegas	NV	89119	6,744.40	3,454.40	3,290.00	2,856.80	1,878.54
36814	MUSTER	ADAM		2010 YAUPON DR	APT 105	MYRTLE BEACH	SC	29577	0.00	0.00	0.00	0.00	0.00
36320	NAVARRETE	CARLOS		164 WESHAVEN DR	APT 15H	MYRTLE BEACH	SC	29579	1,563.20		1,563.20	662.14	892.57
37690	NICHOLS	MARK		239 Ashcraft Circle	Apt. 108	Pawleys Island	SC	29585	0.00	0.00	0.00	0.00	0.00
18416	NIRENBERG	DAVID		4200 EDGE FIELD RD		LITTLE RIVER	SC	29566	5,450.50	4,010.50	1,440.00	2,308.73	822.22
19149	NOACK	SANDRA	SANDY	417 16TH AVE N		SURFSIDE BEACH	SC	29575	1,077.40		1,077.40	456.37	615.18
38329	NOWACKI	Jacqueline	JACQUEL	110 Garden Village Dr.	Apt. 4	Cheektowage	NY	14227	4425.00	2,960.00	1,465.00	1,874.35	836.49
31790	OLASO	JESUS	JESS	520 Whale Ave.		MYRTLE BEACH	SC	29588	13,397.08	4,465.80	8,931.28	5,674.75	5,099.63
23506	OLIVIERI SR	GERARDO		404 G 16TH AVE		MYRTLE BEACH	SC	29577	708.00		708.00	299.90	404.26
25241	ORNER	NANCY		7001 MIDDLEBROOK LN		MYRTLE BEACH	SC	29579	1,223.70	773.70	450.00	518.34	256.94
37698	O'ROURKE	ROBERT		P.O. Box 70304		MYRTLE BEACH	SC	29572	3,191.00	66.00	3,125.00	1,351.65	1,784.33
20258	OSBORNE	KEVIN		8148 WOOD LAND DR		MYRTLE BEACH	SC	29588	360.00		360.00	152.49	205.55
23515	OSIS	JULIANA		308 Vesta Dr.		MYRTLE BEACH	SC	29579	654.00		654.00	277.02	373.42
23516	OSIS	JOANNE		321 WILLIAMS STREET		MYRTLE BEACH	SC	29577	2,782.00	1,842.00	940.00	1,178.40	536.73
	OSIS	ULVID		49 MOUNTAIN AVE		CALDWELL	NJ	7006	0.00	0.00	0.00	0.00	0.00
24250	OWENS	TIMOTHY	TIM	315 3RD AVE S	APT B	SURFSIDE BEACH	SC	29575	174.00	174.00	0.00	73.70	0.00
18191	OXENTINE	CHELCE	NED	720 2ND AVE N		Surfside Beach	SC	29575	6,794.25	0.00	6,794.25	2,877.92	3,879.42
	OXENTINE	CHELCE	CHELCE	720 2ND AVE N		Surfside Beach	SC	29575		0.00	0.00	0.00	0.00
25245	PAPSON	JOHN		PO BOX 7665		MYRTLE BEACH	SC	29572	395.40		395.40	167.48	225.77
18423	PARKER	JUDITH	JUDY	705 64TH AVE N	APT 3	MYRTLE BEACH	SC	29572	1,356.00		1,356.00	574.38	774.26
25628	PARKS	KIMBERLY		401 ALDER ST	Apt. A	MYRTLE BEACH	SC	29577	0.00	0.00	0.00	0.00	0.00

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EMP ID	LASTNAME, F.M.I.	FIRSTNAME, I.M.I.	NAME, I.F. I.M.I.	ADDRESS, I.M.I.	PHONE, I.	CITY, I.	STATE, I.	ZIP CODE, I.	REGULAR RESERVE, I.	RESERVE, I.	LOANED RESERVE, I.	INSTITUTION, I.	RESERVE, I.
32331	PARRISH	EARL		2500 YAUPON DR		MYRTLE BEACH	SC	29577	50.00	50.00	0.00	21.18	0.00
25247	PASZKIEWICZ	BRIAN		1400 BROWN PELICAN		MYRTLE BEACH	SC	29572	5,267.69		5,267.69	2,231.29	3,007.78
31261	PATTON JR II	SAMAD		5834 LONGWOOD DR	APT 303	MURRELLS INLET	SC	29576	40.00	40.00	0.00	16.94	0.00
29411	PAYNE	MICHAEL		41706 MICA AVE		LITTLE RIVER	SC	29566	3,310.00		3,310.00	1,402.05	1,889.96
19848	PENNY	PAMELA		1580 Harbor Dr.	Apt. 219	Slidell	LA	70458	15,246.98	2,835.96	12411.02	6,458.34	7,086.52
18571	PETERS	WILLIAM		15125 MILAGROSA DR		FT MEYERS	FL	33908	0.00	0.10	0	0.00	0.00
13103	PETERSON	JEFFERY		4226 LILLIAN HALL LN		ORLANDO	FL	32812	6,526.71	0.00	6,526.71	2,764.59	3,726.66
38109	PEYTON	MATTHEW		6068 Pantherwood Dr.		MYRTLE BEACH	SC	29579	13,100.50		13,100.50	5,549.13	7,480.20
32361	PHILLIPS, Dec	CHRIS		1849 MYRTLE LANE		YADKINVILLE	NC	27055	5,293.95		5,293.95	2,242.42	3,022.77
29989	PIERRO	GREGORY		411 Mahogeny Drive	UNIT 202	MURRELLS INLET	SC	29576	2,041.38	0.00	2,041.38	864.69	1,165.60
26264	PINEDA	KENNY		321 20 TH AVE		NORTH MYRTLE B	SC	29582	854.00	854.00	0.00	361.74	0.00
18195	PIRET	JAMES		111 John Cooper Ct.		MYRTLE BEACH	SC	29579	4,031.00	92.00	3,939.00	1,707.46	2,249.11
32017	POWELL	CATHERINE		2411 GREENLEAF DR		CONWAY	SC	29526	290.00	290.00	1.00	122.84	0.00
29945	PUGH	KITRE		409 Cambridge Cir.	Unit C-6	Garden City	SC	29576	7,773.00		7,773.00	3,292.50	4,438.27
18190	QUINN	THOMAS	TOM	P.O. Box 14730		SURFSIDE BEACH	SC	29587	794.00		794.00	336.32	453.36
24256	QUINN	GEORGE		3100 LAHINCH DR		MYRTLE BEACH	SC	29579	2,591.80		2,591.80	1,097.84	1,479.88
23528	QUINONES	RAFAEL		3595 CROSSCREEK DR		LITTLE RIVER	SC	29566	40.00	40.00	0.00	16.94	0.00
20252	RAFFERTY	PAUL		105 SILVER HILL LANE		PAWLEYS ISLAND	SC	29585	1,040.00		1,040.00	440.52	593.83
31785	RAIL	ANDREW	CLAY	9784 Conifer Lane		MURRELLS INLET	SC	29576	5,365.00	540.00	4,825.00	2,272.51	2,755.01
30356	RAY	LESLIE		7802 PORCHER DRIVE	APT. A	MYRTLE BEACH	SC	29572	0.00	0.00	0.00	0.00	0.00
38087	REED	MATTHEW		3001 N KINGS HWY	APT 107	MYRTLE BEACH	SC	29577	2,932.00	2,272.00	660.00	1,241.94	376.85
38106	REILLY	CYNTHIA	C.G.	455 SUNNEHANNA DR	UNIT 556	MYRTLE BEACH	SC	29588	14,357.00	13,252.00	1,105.00	6,081.36	630.94
23234	REXROAD	BRIAN		4504 PINE LAKE DR		MYRTLE BEACH	SC	29577	9,500.12		9,500.12	4,024.07	5,424.43
29980	REYES	VALERIE		1400 BROWN PELICAN DR.		MYRTLE BEACH	SC	29577	0.00	0.00	0.00	0.00	0.00
23508	RICHARD	KEVIN		955 LITTLE CREEK RD		MYRTLE BEACH	SC	29572	0.00	0.00	0.00	0.00	0.00
31996	RIFKIN	DANIEL		22 Hillcrest Manor		Rolling Hills	CA	90274	2,737.60	660.00	2,077.60	1,159.6	1,186.28
32316	RIFKIN	JESSICA		1519 SPENCER MOUNTAIN RD		GASTONIA	NC	28054	0.00	0.00	0.00	0.00	0.00
38336	RILEY	SEAN		242 FANNIE B RD		CONWAY	SC	29526	0.00	0.00	0.00	0.00	0.00
19771	ROBERTS	VICTORIA	VICKIE	5481 BUCKHILL DRIVE		MYRTLE BEACH	SC	29588	360.00		360.00	152.49	205.55
31309	ROBERTS JR	JOSEPH		3277 PLATTMOOR DR		MYRTLE BEACH	SC	29588	0.00		0.00	0.00	0.00

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EMP ID	LAST NAME	FIRST NAME	NAME	ADDRESS	CITY	STATE	ZIP CODE	Highest Reserve	Reserve	Reserve	Reserve	Reserve
EMP ID	LAST NAME	FIRST NAME	NAME	ADDRESS	CITY	STATE	ZIP CODE	Highest Reserve	Reserve	Reserve	Reserve	Reserve
31789	ROBERTS	MELODY		4701 McDaniel Circle	Little Rock	AR	72206	33.00		33.00	13.98	18.84
29404	ROBINSON	TIMOTHY		3700 GOLF COLONY LN	APT 11B	LITTLE RIVER	SC	29566	0.00	0.00	0.00	0.00
29992	RODRIGUEZ	CAMILO		94 FREEDOM WAY		MYRTLE BEACH	SC	29577	1,862.10	1,862.10	788.75	1,063.23
23517	ROGERS	KATMA		105 CHANTICLEER VILLAGE	APT. B	MYRTLE BEACH	SC	29579	40.00	40.00	0.00	0.00
29991	ROSE	CATHY		1701 OCEAN BLVD		MYRTLE BEACH	SC	29578	0.00	0.00	0.00	0.00
29403	ROWE	KENNETH		2002 CHADBURY LN		MYRTLE BEACH	SC	29588	4,467.20	4,467.20	1,892.22	2,550.71
33996	ROZEN	DANIEL		3681 Renee Dr.		MYRTLE BEACH	SC	29579	0.00	0.00	0.00	0.00
19443	RUSSELL	JAMES		945 MARSHFIELD CR		MYRTLE BEACH	SC	29579	545.90	0.00	545.90	231.23
24264	RUTH	ROBIN		1306 RIVER OAK DR	APT 3 B	MYRTLE BEACH	SC	29579	0.00	0.00	0.00	0.00
38328	RYBA	GERALD		7053 BLADE BEAK LN		MYRTLE BEACH	SC	29588	2,179.00	1,829.00	350.00	922.98
29405	SALAMANCA	JAMIE		284 CAROLINA FARMS BLVD		MYRTLE BEACH	SC	29579	4,726.00	4,726.00	2,001.85	2,698.48
24261	SALEEBY	HELEN		4910 WINDSOR GREEN WAY	APT 102	MYRTLE BEACH	SC	29579	8,678.00	2,564.00	6,114.00	3,675.84
19764	SCHMIDT	WENDY		1540 BILLINGS ST	LOT A19	AURORA	CO	80011	155.40	155.40	0.00	65.82
25633	SEABOCH	SALLIE		1214 C PINE GROVE		MYRTLE BEACH	SC	29577	960.00	960.00	406.64	548.15
23501	SEBREE	DEJAYNA		510 FORD STREET		CLARKSVILLE	TN	37040	894.00	894.00	378.68	510.46
24259	SECCARECCI	LISA		49 Milton St.		North Andover	MA	1845	4,700.00	4,700.00	1,990.83	2,683.63
24252	SHAW	LOUISE		4929 WOODVIEW LANE		MYRTLE BEACH	SC	29575	40.00	40.00	0.00	16.94
36813	SHAWVER	STEVEN		P.O. Box 70335		Myrtle Beach	SC	29572	9,837.00	8,107.00	1,730.00	4,166.77
23512	SHEPARD	TINA		706 47TH AVEN		MYRTLE BEACH	SC	29577	1,570.00	1,570.00	665.02	896.45
30811	SHONK	AMANDA		166 PALLADIUM DR		SURFSIDE BEACH	SC	29575	0.00	0.00	0.00	0.00
23527	SHOPTAW	SAMUEL		200 PORTSMITH DR	Unit 1	MYRTLE BEACH	SC	29588	500.00	500.00	211.79	285.49
19456	SILVERSTEIN	ANGELA		619 CHAMBLIN RD		GROVETOWN	GA	30813	0.00	0.00	0.00	0.00
22600	SIMPSON III	JOHN		1928 PACES LANDING A		ROCK HILL	SC	29732	1,114.20	1,114.20	471.95	636.19
31777	SIMS	SCOTT		921 MARSH FIELD CIR	APT 307	MYRTLE BEACH	SC	29579	5,425.00	2,575.00	2,850.00	2,297.93
18409	SINGLETON	SHERRY		5840 Longwood Dr.		Murrells Inlet	SC	29576	9,320.00	7,912.00	1,408.00	3,947.78
25188	SINGLETON	SHERRY		5840 Longwood Dr.		Murrells Inlet	SC	29576	3,500.00	0.00	3,500.00	1,482.53
25686	SINGLETON	ROBBIE		1404 27TH AVE S		NORTH MYRTLE B	SC	29582	0.00	0.00	0.00	0.00
28610	SINGLETON	TWANESHIA		7828 HIGHMARKET ST		GEORGETOWN	SC	29440	511.00	511.00	216.45	291.77
23523	SKINNER	JOSEPH	JOE	1400 CENITH	APT 9	N MYRTLE BEACH	SC	29582	0.00	0.00	0.00	0.00
20259	SMITH	DOUGLAS	DOUG	307 N GREEN ST		PARKTON	NC	28371	1,685.40	1,331.40	354.00	713.90

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EMPLOYEE ID	EMPLOYEE NAME	EMPLOYEE NAME	EMPLOYEE NAME	EMPLOYEE NAME	EMPLOYEE NAME	EMPLOYEE NAME	EMPLOYEE NAME	EMPLOYEE NAME	Highest Reserve Balance Available	Highest Reserve Payments	Highest Reserve Payments	Pro Rata Reserve	Pro Rata Reserve
EMPLOYEE ID	EMPLOYEE NAME	EMPLOYEE NAME	EMPLOYEE NAME	EMPLOYEE NAME	EMPLOYEE NAME	EMPLOYEE NAME	EMPLOYEE NAME	EMPLOYEE NAME	Highest Reserve Balance Available	Highest Reserve Payments	Highest Reserve Payments	Pro Rata Reserve	Pro Rata Reserve
24798	SMITH	CHARLES		2941 MIDIRON CT		MYRTLE BEACH	SC	29577	120.00	120.00	0.00	50.83	0.00
33997	SMITH	FRANK		856 Silvercrest Dr.		Myrtle Beach	SC	29579	1,530.00	1,530.00	0.00	648.08	0.00
31265	SOLANO	WALTER		7228 WESTBROOK AVE SW		OCEAN ISLE BEAC	NC	28469	8,132.13	4,513.00	3,619.13	3,444.62	2,066.47
38082	SPENCER	LANCE		9606 DRAYTON CT		MURRELLS INLET	SC	29576	300.00	0.00	300.00	127.07	171.30
29414	STAPLES	CARLTON		7388 SPRINGSIDE DR		MYRTLE BEACH	SC	29588	0.00	0.00	0.00	0.00	0.00
23503	STARK	ROXANNE		9033 TEAL DR		MURRELLS INLET	SC	29576	2,450.85		2,450.85	1,038.13	1,399.40
18417	STEGALL	JOSEPH	JOEY	701 PIPERS LA		SURFSIDE BEACH	SC	29575	1,672.00		1,672.00	708.23	954.69
19448	STIMELING	KATHERINE	KATIE	945 MARSHFIELD CIR	APT 205	MYRTLE BEACH	SC	29579	1,139.00		1,139.00	482.46	650.35
19452	STOKES II	CARL		200 VICTOR ST		MARION	SC	29571	48.00	48.00	0.00	20.33	0.00
25621	STONE	ALLAN		239 BEACHWOOD DR		CALABASH	NC	28467	80.00	80.00	0.00	33.89	0.00
24792	STUMP	JULIE		2001 KOEWEE CT		LITTLE RIVER	SC	29566	80.00	80.00	0.00	33.89	0.00
24793	SULLIVAN JR	CHARLES	FRANKIE	568 A MARYLOU AVE.		MURRELLS INLET	SC	29576	1,185.40	1,135.40	50.00	502.11	28.55
32328	SULLIVAN	CARA		1975 PEE DEB HIGHWAY		CONWAY	SC	29527	9,715.00		9,715.00	4,115.09	5,547.13
36850	SUMMERS	JOSEPH		0948 M 101 NNPTC Circle		Goosecreek	SC	29445	684.00	309.00	375.00	289.73	214.12
19442	SYMONDS	DEAN		421 CAVERLY LN		MURRELLS INLET	SC	29576	480.00		480.00	203.32	274.07
19119	SYRETT	WENDY		364 ASHLEY CIR		CONWAY	SC	29526	9,302.95		9,302.95	3,940.56	5,311.85
20261	TABET	RACHEL		1103 PLANTATION DR		SURFSIDE BEACH	SC	29575	360.00		360.00	152.49	205.55
19459	TAYFEL	HOLLY		2802 SIX SHOT		MYRLTE BEACH	SC	29588	3,169.00	688.00	2,481.00	1,342.33	1,416.62
25617	TAYLOR	FRANK		120 BARNACLE LANE	UNIT 5	LITTLE RIVER	SC	29566	0.00		0.00	0.00	0.00
29409	TAYLOR	ALBERT		2518 WILD ROSE DR		MYRTLE BEACH	SC	29579	1,124.30		1,124.30	476.23	641.96
29416	TEW	LORNA		4741 PAIT DR SW		OCEAN ISLE BEAC	NC	28469	0.00	0.00	0.00	0.00	0.00
37733	THONI	STEVEN	STEVE	295 WATEREE RIVER RD.		MYRTLE BEACH	SC	29588	5,173.00	4,663.00	510.00	2,191.19	291.20
19736	THRASHER JR	THOMAS	TOM	8 DANIELS ISLAND CT		BLUFFTON	SC	29910	0.00		0.00	0.00	0.00
25632	TICKLE	TINA		1027 E OLD MARION HWY		FLORENCE	SC	29506	2,404.00	1,570.00	834.00	1,018.29	476.20
12732	TOWNSEND	DONALD		169 CLOVERLEAF DR		LONGS	SC	29568	4,535.41		4,535.41	1,921.11	2,589.65
36322	TREMBLE	TANYA		45 Plantation Rd.		MYRTLE BEACH	SC	29588	7,188.30	500.00	6,688.30	3,044.83	3,818.92
29424	TRIMBACH JR	PATRICK		201 CARRIAGE LAKE DR		LITTER RIVER	SC	29566	0.00		0.00	0.00	0.00
24802	TUITE	FRANCIS	FRAN	PO BOX 3206		MYRTLE BEACH	SC	29578	1,748.00	1,748.00	0.00	740.42	0.00
18412	TURCOTTE II	EDWARD	BILLY	249 VIRGINIA AVE.		WILMINGTON	NC	28401	500.00		500.00	211.79	285.49
29983	TURNER	REBECCA		1659 EDGEWOOD DR		LITTER RIVER	SC	29566	1,257.46	129.46	1,128.00	532.64	644.07

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EMP ID	LAST NAME	FIRST NAME	NAME DIFFERENT	ADDRESS LINE 1	UNIT 2	CITY	STATE	ZIP CODE	Highest Reserve Reserveless Payments	Reserve Payments	Highest Reserve Reserveless Payments	Reserveless Payments	Reserveless Payments
19142	TUTTEROW	LLOYD		4929 POND SHOALS CT	APT K4	MYRTLE BEACH	SC	29579	0.00	0.00	0.00	0.00	0.00
19769	TUTTLE	CYNTHIA	CINDY	144 SOUTHBOROUGH LN		MYRTLE BEACH	SC	29588	40.00	40.00	0.00	16.94	0.00
23044	TUTTLE	RANDALL		144 SOUTHBOROUGH LN		MYRTLE BEACH	SC	29588	4,211.58		4,211.58	1,783.95	2,404.75
24800	TUTTLE	RYAN		1719 A DICK POND RD		SURFSIDE BEACH	SC	29575	1,222.63		1,222.63	517.88	698.10
19921	TUTTLE	RANDALL		144 SOUTHBOROUGH LN		MYRTLE BEACH	SC	29588		0.00	0.00	0.00	0.00
30357	VAN VLAKE	RICHARD	ERIC	127 Garden City Connector	Unit 214	Murrells Inlet	SC	29576	2,826.40	1,666.40	1,160.00	1,197.21	662.34
	VANZANT	FREDERICK		4417 Barcelona Lane		Little River	SC	29566	3,300.00	0.00	3,300.00	1,397.82	1,884.25
30810	VENETTE	DONNA		128 MADRID DR		MURRELLS INLET	SC	29576	40.00	40.00	0.00	16.94	0.00
23533	VISCONTI	CYNTHIA		7026 MIDDLEBROOK LN		MYRTLE BEACH	SC	29579	3,242.00		3,242.00	1,373.25	1,851.14
25250	VISCONTI	TIMOTHY		4160 VILLAGE DRIVE		FAYETTEVILLE	NC	28304	6,905.40		6,905.40	2,925.00	3,942.89
37731	VITIKOS	STRATTON		111 FENWAY PARK LN		LORIS	SC	29569	3,670.00	2,010.00	1,660.00	1,554.54	947.84
18192	WAGNER	GREGORY	GREG	260 CAROLINO FARMS BLVD		MYRTLE BEACH	SC	29579	4,708.43		4,708.43	1,994.40	2,688.45
19773	WALKER	JOSEPH		223 LEGACY WAY		CONWAY	SC	29526	0.00	0.00	0.00	0.00	0.00
25244	WALKER	CHARLES		7270 GUINEVERE CIR		MYRTLE BEACH	SC	29588	1,294.00	580.00	714.00	548.11	407.68
20008	WALL-CLARK	NANCY		1016 CASTLE ROCK CT		MURRELLS INLET	SC	29576	745.60	745.60	0.00	315.82	0.00
29410	WALLER	DEBRA	DEBRA	4706 COBBLESTONE DRIVE	APT. H3	MYRTLE BEACH	SC	29577	0.00		0.00	0.00	0.00
19453	WALSH	JANE		1605 CRYSTAL LAKE DR		MYRTLE BEACH	SC	29575	40.00	40.00	0.00	16.94	0.00
29406	WALSH	TIMOTHY	T.J.	440 GRAVELLEY SHORE		MYRTLE BEACH	SC	29588	4,035.00		4,035.00	1,709.15	2,303.93
36287	WARD	ROBIN		5314 PEACHTREE RD		MYRTLE BEACH	SC	29588	4,197.50		4,197.50	1,777.98	2,396.71
39618	WARD	MICHAEL		1025 CARIKUBA RD	APT Z2	CONWAY	SC	29526	0.00	0.00	0.00	0.00	0.00
22601	WEBER	DENNIS		1655 PENNYSTONE TRL		SURFSIDE BEACH	SC	29575	80.00	80.00	0.00	33.89	0.00
38331	WIESMORE	BRET	BRETT	224 North Linden St.		Williamsville	NY	14221	4,433.00	2,323.00	2,110.00	1,877.74	1,204.78
29407	WILLS	MICHAEL		303 E Tatum Ave.		McColl	SC	29570	12,210.60		12,210.60	5,172.18	6,972.08
19144	WILSON III	JAMES	JIM	4532 GIRVAN DR	APT C	MYRTLE BEACH	SC	29578	8,420.15		8,420.15	3,566.62	4,807.79
24797	WNUK	CHESTER		1242 TRENT DR		MURRELLS INLET	SC	29576	0.00	0.00	0.00	0.00	0.00
24242	WOLFE	ROBERT	BOB	1425 ASHTON GLENN DR		MYRTLE BEACH	SC	29575	13,231.00		13,231.00	5,604.40	7,554.71
30361	WOODLEY	DAVID		P O BOX 8713		MYRTLE BEACH	SC	29578	5,708.90	4,548.90	1,160.00	2,418.18	662.34
38335	YAGER	RENEE		201 IVEYSTONE DRIVE	APT. F	MYRTLE BEACH	SC	29588	1,789.00		1,789.00	757.79	1,021.49
20260	YOUNGBLOO	ROBERT	BO	529 WOODLAND DR		MURRELLS INLET	SC	29576	750.00		750.00	320.23	431.67
36810	YOUNGBLOO	ROBERT		529 WOODLAND DR		MURRELLS INLET	SC	29576		0.00	0.00	0.00	0.00

4/28/2010

Judith Parker, et al
vs
CFI Sales Marketing, Ltd.
List Used in Notice of Hearing

Adjusted for Spreadsheet Used for Highest Reserve

*NP = Employee Name and ID was not present for this source; yellow highlighted = identical names and term dates but different EMP IDs

EMP ID	LAST NAME	FIRST NAME	MIDDLE NAME	ADDRESS LINE 1	ADDRESS LINE 2	CITY	STATE	ZIP CODE	High Reserve Reserve Balance	High Reserve Reserve Balance	High Reserve Reserve Balance	High Reserve Reserve Balance	High Reserve Reserve Balance
26020	YUSKO	KENNETH		8855 RADCLIFF DR	APT 15B	CALABASH	NC	28467	0.00	0.00	0.00	0.00	0.00
37340	ZANARDO	MICHAEL	MIKE	258 ASHEPOO CREEK DR		MYRTLE BEACH	SC	29579	4,467.00	3,477.00	990.00	1,892.14	565.28
37332	ZINN	TIMOTHY		315 Lake Royale		Louisburg	NC	27549	9,504.00	3,654.00	5,850.00	4,025.72	3,340.27
25232	ZMICH	MARILYN		3498 JUNIPER BAY RD		CONWAY	SC	29527	1,981.50	1,531.50	450.00	839.33	256.94

D.O.B

PROPOSAL

Cust I.D. #

5381954

Purchaser (s)

Date 11-17-2008

Owner Since

Acct.

280122438

First GEORGE

M.I. A.

Last CAQUETTE

S.S.#

First JANET

M.I. E.

Last CAQUETTE

S.S.#

First

M.I.

Last

S.S.#

First

M.I.

Last

S.S.#

Address 18 BOUNTY ROAD, P.O. BOX 533

City OXFORD

County WINDSOR State/Country

USA

Zip 4401540

E-Mail Address

MEMCAND PEPC & ASS. CO. INC.

Home Ph#

508-479-9948

Bus. Ph#

Marital Status

M

TIMESHARE INTEREST

Resort WGB

UNIT # 44A

WEEK # 39

Odd ☐ Even ☒ Whole ☐

Purchase Type 1BR Gola

UNIT #

WEEK #

Float ☒ Season

Red select

Occupancy date

2010

C/I Day

Size

Upgrade Amount

5,200⁰⁰

Media

PURCHASE TERMS (U.S. FUNDS)

1. Purchase Price of Unit Week

\$ 10,200⁰⁰

Inventory Premium ? Y/N

*DP% 50%

Annual % Rate 0%

of years Financed

24 month

2. Down Payment

\$ 5,100⁰⁰

3. Closing Cost (3% Plus \$51.00 Recordation Fees)

\$ 357⁰⁰

4. Interval International Dues

\$ 0

5. Total Downpayment Due

\$ 5,400⁰⁰

6. Quit Claim Deed \$

153⁰⁰

7. Amount received from:

Cash ☐ Check #

C.C.

\$ 1535⁰⁰

8. *Equity

2800720128

\$ 3872⁰⁰

*From Acct#

Unit/Wk

Amount

*From Acct#

Unit/Wk

Amount

9. Total received this date

\$

10. Date balance due

Balance due of downpayment

\$

10. Date balance due

Balance due of downpayment

\$

11. Amount financed

\$ 5,100⁰⁰

12.

Language Preference

☐ Eng ☐ Sp ☐ Port

13.

Auto Debit

☒ Credit Card ☐ Check
☐ Monthly ☐ Main/Tax

14.

Post Dated

☐ Credit Card ☐ Check

15. Monthly Payments

\$ 2135⁰⁰

1 st Payment Due Date

12-17-08

16. Maintenance fees

\$ 489⁰⁰

Real Estate Taxes

\$ 48⁰⁰

PLEASE MAKE ALL CHECKS PAYABLE TO:

GREENSPOON & MARDER P.A. - ESCROW A/C - CFI WESTGATE

17. Purchaser Approval

Purchaser Approval

18. Purchaser Approval

Purchaser Approval

19. Manager's Approval

MARIO GOI

Representative

Red J

#18191

20. Deeder #

21.

Special Instructions:

1617-066 05/01

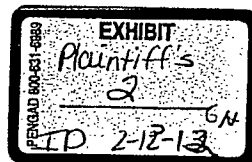
EMPLOYMENT AGREEMENT

MYRTLE BEACH

THIS AGREEMENT is made and entered into this 14th day of OCTOBER, 2005, by and between WESTGATE MYRTLE BEACH, LLC, a Florida limited liability company (hereinafter "Employer") and JUDITH A. PARKER (hereinafter "Employee").

RECITALS:

- A. Employer is engaged in the development and sale of interval ownership, in real estate brokerage, leasing, rental, and sales services, real estate management services in the field of interval ownership, other interests in resort properties, and in leisure, business, and vacation entertainment and travel services and desires to achieve the highest levels of efficiency and service to its owners and customers; and
- B. Employer has and will continue to expend substantial resources in connection with the above-mentioned endeavors; and
- C. Employer desires to engage Employee to perform certain sales, marketing, or other services from time to time (hereinafter referred to as the "Services"); and
- D. In the course of performances of the Services, as well as Employee's dealings with Employer, Employee will become privy to certain information concerning Employer, as well as Westgate Resorts, Ltd., Westgate GV at the Woods, LLC, Westgate GV at Emerald Point, LLC, Westgate GV at Rock Lane, LLC, Westgate GV at Painted Mountain, LLC, Westgate GV at Tunica, LLC, Westgate GV Management, Westgate Vacation Villas, Ltd., Westgate Towers, Ltd., Westgate Daytona, Ltd., Westgate Flamingo Bay LLC, Westgate Miami Beach, Ltd., Westgate Lakes, Ltd., properties and entities controlled by Central Florida Investments, Inc., and resorts or properties acquired in the future and any of their respective related and/or affiliated entities (hereinafter collectively referred to as the "Employer Entities"), including, but not limited to, methods and procedures of operation, actual or prospective customer lists, internal documents and memorandum, as well as various other information, methods, and techniques, which have or may be disclosed or become known by Employee in connection with the performance of the Services on behalf of Employer and Employer Entities,



whether learned prior or subsequent to the execution of this Agreement. For the purposes hereof, all such information shall be collectively referred to as the "Confidential Information"; and

E. Employee desires to obtain employment as an employee of Employer, and to receive training, knowledge, and a source of income.

NOW, THEREFORE, in consideration of the engagement of Employee by Employer, as well as such other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Recitals. The foregoing recitals are true and incorporated herein.
2. Scope of Services. Employer hereby engages Employee to act in the position of _____ and to render the Services consistent with such position as may be determined by Employer from time to time in Employer's sole and absolute discretion. Employer shall have the power to determine the means and manner by which those Services shall be performed, and the standards of performance to be maintained by Employee. Employee agrees to perform the Services, subject to the direction of Employer, and its agents, and agrees to subject himself/herself at all times during the period of service to the direction and control of Employer and its agents in respect to the Services to be performed. Notwithstanding anything contained in this Agreement, Employee acknowledges and agrees that Employer shall have the sole and absolute discretion to alter, change, and amend Employee's job description, position, and title as well as any responsibilities and/or duties which Employee may have in connection therewith.

As part of the consideration of this Agreement, Employee agrees to comply with, and abide by, such rules and directives of Employer as may be established from time to time, and recognizes the right of Employer, in its sole discretion, to change, modify, or adopt new policies and practices affecting the employment relationship, not inconsistent with this Agreement, which will be effective retroactively, as deemed appropriate by Employer.

3. Term. The term of this Agreement shall begin as of the date this Agreement is executed and shall continue until termination as provided for in this Agreement.

4. Compensation. During the term of this Agreement, Employer shall compensate Employee in the manner specified in Exhibit "A" attached hereto and incorporated herein, which compensation shall be subject to periodic review, adjustment, and modification as determined by Employer, in its sole discretion. Employee acknowledges that Employer may, from time to time, advance compensation to Employee for which Employee shall be liable to reimburse Employer subject to the provisions of Exhibit "A" attached hereto and incorporated herein. In the event Employee's employment is terminated for any reason, Employee expressly agrees that he/she shall repay any and all monies owed to Employer.

5. Additional Benefits. Employer has voluntarily adopted policies and programs offering additional benefits to employees of the Employer Entities. Such benefits, which may be modified or discontinued at Employer's sole discretion (provided such benefits are modified or discontinued as to all employees of Employer), may include, but are not limited to, disability insurance, health insurance, and participation in Employer's 401(k) plan (collectively, the "Benefits"), all or some of which require contributions to be made by Employee in connection with such benefit(s) and are not solely funded by Employer or the Employer Entities. Employee expressly acknowledges and agrees that the Benefits will be provided to Employee through one or more of the Employer Entities as Employer may determine in its discretion.

6. Manner of Performance of Services. Employee agrees that Employee will at all times faithfully, industriously, and to the best of Employee's ability, experience, and talent, perform all of the Services that may be required of and from Employee pursuant to the terms of this Agreement and to the satisfaction of Employer. Such Services shall be rendered at such place or places as Employer shall in good faith require or as the interests, needs, business, and opportunities of Employer shall require or make advisable. Employee agrees that Employee's performance shall be subject to periodic review by Employer. Employee acknowledges and agrees that Employee shall not during the term of this Agreement, including all option(s) terms hereof, execute any contracts or agreements or otherwise take any action to bind Employer to any obligation whatsoever.

7. Devotion by Employee of Full Time to Business/Exclusivity. Employee shall devote all of Employee's time, attention, knowledge, and skill solely and exclusively to the business and interest of Employer. In this regard, Employee expressly agrees that, during and prior to the end of the stated term of

this Agreement, that Employee shall not, unless this Agreement is voluntarily terminated by Employer, directly or indirectly, seek or accept employment with any third parties, including, but not limited to, any person, firm, or entity engaged in the timeshare business or the management and operation of resort properties; or be interested, directly or indirectly, in any form, fashion, or manner, as partner, officer, director, stockholder, advisor, employee, or in any other form or capacity, in any other business similar to Employer's business or any allied trade.

Nothing contained herein shall prevent or limit the right of Employee to invest in the capital stock or other securities of any corporation whose stock or securities are publicly owned or are regularly traded on any public exchange, nor shall anything contained herein be deemed to prevent Employee from investing or limit Employee's rights to invest Employee's funds in real estate or other holdings, provided that such investments are not in any way competitive to the interests of Employer and provided further that such investments do not limit Employee's full time and attention to Employee's duties herein or otherwise interfere with Employee's performance of the Services pursuant to this Agreement.

8. Termination.

(a) This Agreement may be immediately terminated by Employer at any time during the term hereof without further liability or recourse, for any reason whatsoever, with or without cause.

(b) If Employer discharges Employee for any reason prior to the expiration of this Agreement, Employer shall only be liable to pay Employee's Compensation to the date of discharge, less the amount of any advances theretofore made by Employer and not theretofore paid, and Employer may collect any balance owed to it by Employee.

9. Confidentiality. Employee and Employer agree that from and after the date of the execution of this Agreement, including all times subsequent to termination of this Agreement, regardless of the reason for termination or whether made by either party, Employee and Employer shall not divulge, make known, publish, or distribute by any means, or any manner whatsoever, either individually, or on behalf of any other person, firm, partnership, joint venture, association, group, corporation, or other entity, whether formal or informal, any of the Confidential Information. For the purposes hereof, Employee and Employer acknowledge and agree that the Confidential Information constitutes "Trade Secrets" as that term is defined pursuant to Florida

Statutes ' 688.002. In addition to the foregoing, Employee expressly acknowledges and agrees that Employee shall not remove any Confidential Information or other work-related documentation from the workplace without the express written consent of Employer.

10. Non-Competition. (a) Employee shall not during the term of Employee's employment with Employer and for a period of two (2) years following the termination of Employee's employment, regardless of the cause of termination, (i) solicit for employment any employees, agents, or independent contractors of the Employer Entities; (ii) solicit either alone or in conjunction with others, any OPC locations maintained by the Employer Entities; (iii) solicit existing customers or owners of the Employer Entities; (iv) use in any fashion, customer or owners lists now or hereafter generated or maintained by the Employer Entities; (v) solicit or in any manner interfere with existing brokerage or business relationships now or hereafter maintained by the Employer Entities with third parties; and (b) should Employee voluntarily terminate Employee's employment with Employer for any reason or should Employer terminate Employee's employment with Employer for "good cause" as that term is defined below, Employee shall not engage himself for a period of one (1) year from the date of such voluntary termination by Employee or termination of Employee by Employer for "good cause", directly or indirectly, either on his own account, or as a partner or joint venturer, or as an employee, consultant, representative, principal, agent, or salesperson for any other person, firm, or corporation, or otherwise, to compete with Employer or any Employer Entities in the timeshare industry in any geographic location in which Employer or the Employer Entities maintains, operates, manages, markets, or sells any of its time share resorts. As used herein, the term "good cause" shall be deemed to be the commission by Employee of any single instance of a serious offense, which includes, but is not limited to:

- (i) insubordination;
- (ii) discrimination or harassment against a guest or customer of Employer or the Employer Entities or against any employee or agent of Employer or the Employer Entities;
- (iii) conviction of, or plea of guilty to a felony or any other crime involving fraud or dishonesty;
- (iv) misconduct involving discourtesy, insolence, threats, intimidation or lack of courtesy of any kind toward resort guests, customers, Employer employees, or of independent contractors;
- (v) theft;
- (vi) falsification of records;
- (vii) deliberate acts or acts of gross negligence;
- (viii) the commission of a fraudulent act;
- (ix) incompetence or negligence in the performance of Employee's Services under this

- Agreement;
- (x) intentional violation of any rule or regulation that may be established from time to time for the conduct of Employer's business;
- (xi) any failure of Employee to perform any agreement, duty, or obligation of Employee required from time to time pursuant to this Agreement, including the Services under this Agreement; and
- (xii) the intentional failure of Employee to perform at a satisfactory performance level or with an attitude acceptable to Employer.

11. Remedies for Breach. The parties hereto acknowledge and agree that a breach or threatened breach by either of any of the terms, conditions, and provisions of this Agreement will result in irreparable harm for which neither will have no adequate remedy at law and for which damages may be difficult to determine. Accordingly, in the event of any breach or threatened breach by either party of the terms, conditions, and provisions of this Agreement, the aggrieved party shall be entitled to immediate temporary and permanent injunctive relief in order to restrain the violation of the terms of this Agreement and shall also be entitled to recover the sum of \$500.00 per day, commencing with the date of breach and continuing for each day thereafter, until the breach is remedied, such sum representing liquidated damages, which damages are stipulated by the parties to constitute a reasonable estimate of the damages which will be incurred as the result of a breach hereunder, and which shall not constitute a penalty. It is specifically understood and agreed that a denial by a court of competent jurisdiction of either party's application for injunctive relief as a result of a finding by the court that either party has not been irreparably harmed (in accordance with the provision of ' 542.33, Fla. Stat.) shall not impair or restrict either party's right to pursue a claim for damages resulting from such breach.

12. Assignment. This Agreement shall be assignable by Employer to any entities affiliated with, owned, or controlled by Employer. Employee may not assign, transfer, or share by representative with any other person, firm, or corporation, this Agreement or any portion thereof. Any attempt by Employee to assign this Agreement shall render such assignment totally null and void.

13. Binding Effect. This Agreement shall be binding on and shall inure to the benefit of any successor or successors of Employer and the personal representatives of Employee.

14. Entire Agreement. This Agreement revokes and supersedes all prior agreements, written and oral, and represents the entire agreement between the parties and shall not be subject to modification of

amendment by any oral representation, or by any written statement by either party, except for a dated, written amendment to this Agreement signed by Employee and the President of Employer.

15. Florida Law to Govern. The construction and interpretation of this Agreement shall be governed by the laws of the State of Florida. Venue for any proceedings arising out of this agreement shall be in Orange County, Florida.

16. Attorney's Fees. In the event of any litigation to enforce the terms, conditions, or provisions of this Agreement, the prevailing party shall be entitled to the recovery of all court costs, and a reasonable attorney's fee incurred in connection with the enforcement of this Agreement, including but not limited to all court costs, and attorney's fees incurred in any appellate proceedings.

17. Section Headings. The several section headings of this Agreement are inserted for convenience only and shall be ignored in interpreting the provisions of this Agreement.

18. Severability. Should any court of competent jurisdiction deem any provision or clause of this Agreement to be illegal, invalid, or unconscionable and unenforceable, such provision or clause shall be fully severable from this Agreement and, in its place, there shall be added to this Agreement a similar provision as near in intent as possible but which is not illegal or unconscionable, and this Agreement shall be construed and interpreted as if such illegal, invalid, or unconscionable and unenforceable provision or clause had never comprised a part of this Agreement.

19. Waiver of Breach. The waiver by Employer or Employee of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach.

20. Jury Trial Waiver. EACH PARTY HERETO KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS, CROSS-CLAIMS, COUNTER-CLAIMS, OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR BETWEEN THE PARTIES TO THIS AGREEMENT, THEIR AFFILIATES, SUBSIDIARIES, SUCCESSORS, OR ASSIGNS AND IRRESPECTIVE OF WHETHER SUCH LITIGATION ARISES OUT OF THIS AGREEMENT, BY STATUTE, OR AS A MATTER OF TORT LAW AND THE PARTIES HERETO

EXPRESSLY CONSENT TO A NON-JURY TRIAL IN THE EVENT OF ANY OF THE FOREGOING.

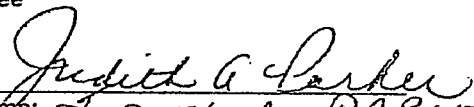
IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the date and year first above written.

"Employer"

WESTGATE MYRTLE BEACH, LLC, a Florida
limited liability company, through its Manager,
CENTRAL FLORIDA INVESTMENTS, INC., a
Florida corporation

By: _____
David A. Siegel
President

"Employee"


Print Name: JUDITH A. PARKER

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Judith Parker

COMMISSION SCHEDULE
COMMISSIONED SALES AGENTS
(Myrtle Beach)

I. TRAINING AND BASE COMPENSATION

A. Upon satisfactory completion of the Sales Training Program (typically three weeks) trainees will be compensated at a flat rate of \$60.00 per day for time spent in training. At this time, trainees will also become eligible for consideration for full time Sales positions. No compensation will be paid to persons not having satisfactorily completed the training program.

B. If hired, the employee shall receive a base compensation in an amount equal to \$250.00 per week minimum (based on a forty hour work week.)

II. COMMISSION BASED ON UNIT/WEEK SOLD

A. Following training, in addition to the Base Compensation described in I(B) above, Employee shall receive a commission in connection with its rendition of services for each sale of a one bedroom unit, two bedroom unit, three bedroom unit, four bedroom unit, or half week accompanied by a ten percent (10%) minimum down payment. The amount of commissions due to Employee hereunder will range from 6% to 11% based upon Employee's VPG average which shall be computed as set forth in Paragraph III below. Said commission schedule, as well as the manner in which commissions are determined, are subject to periodic review and adjustment by Employer, in its sole and absolute discretion.

III. DETERMINATION OF COMMISSION

Commissions due to Employee hereunder shall be computed in the following manner:

A. Upon hiring, Employee shall receive a starting commission, in addition to the Base Compensation, based upon a Volume Per Guest (VPG) average. As used herein, Employee's VPG average shall be computed by dividing, on a monthly basis, the total net sales volume achieved by Employee by the number of tours given (i.e. 100,000 total net sales volume divided by 100 tours equals 1,000 VPG). The VPG average shall be computed monthly based on Employee's total net sales volume for the previous (4) four month divided by the number of tours during such period. The commission due to Employee for a given sale shall be based on Employee's VPG average during the month in which the sale was made.

IV. LEASE PROGRAM

A. Employee shall receive a \$40.00 commission for each full down, full week Vacation Occupancy Agreement (hereinafter "VOA") procured.

B. Employee shall receive 6% commissions on any VOA procured by Employee which is converted to a sale prior to the week being used by the customer less any monies paid to any leasing agents in connection with such sale.

C. Any VOA's procured by Employee shall be used in computing Employee's volume in connection with the computation of Employee's VPG; however, said VOA shall not be used in connection with the computation Employee's Net Closing Percentage.

V. MODIFICATION OF TERMS OF EMPLOYMENT

The terms of this Exhibit "A" shall be effective with respect to any sales, and commissions paid on such sales, prior to the date hereof and during the term of this Agreement. Notwithstanding the foregoing, Employee expressly acknowledges and agrees that the terms and conditions of this Exhibit "A", including but not limited to the Base Compensation and commissions set forth herein, shall be subject to periodic review, adjustment and modification as determined by Employer in its sole discretion and any changes, modifications or adjustments to same shall be effective upon notice to Employee without further modification to this Agreement.

VI. CHARGE BACK ON CANCELED DEALS

A. During the term that Employee is engaged by Employer, no sales originated by Employee for which Employee has been paid a commission will be subject to charge back except as otherwise set forth herein.

B. In the event Employee is no longer engaged by Employer, irrespective of the reason for the termination of engagement, Employee shall be charged back for all sales upon which commissions have been paid in the event the purchaser(s) has/have not made six (6) timely and consecutive monthly payments as well as the ten percent (10%) minimum down payment.

VII. RESERVE

As security for Employee's liability for charge backs, a reserve account will be established in the amount of \$3,500. Ten percent (10%) of commission due on each sale will be retained by Employer to establish and maintain the reserve fund. At such time as Employee is no longer engaged by the Employer for any reason whatsoever, the funds remaining in the reserve account will be reimbursed to the Employee only after the Employer has determined that six (6) consecutive and timely monthly payments have been made on each sale made by Employee for which Employee has been paid a commission.

VIII. MISCELLANEOUS.

A. Line Rules. Employee Reps must follow all line rules, codes of conduct and other policies and/or procedures established by Employer from time to time.

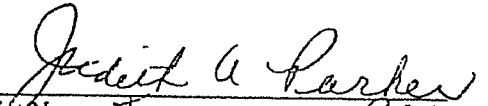
B. At-Will Status. Employees are "at-will" employees and are not guaranteed employment for any specific period of time. Either you, or the Employer, may discontinue the employment relationship at any time, with or without cause; however, such termination shall not release you from the continuing obligations set forth in the Employment Agreement to which this Exhibit "A" is attached.

C. Performance Standards. Employee must meet or exceed the minimum performance standards for their position as established by the Employer. Failure to maintain these standards may result in termination, forfeiture or return of commissions, forfeiture of Sales Volume, chargebacks for damages, costs or expenses incurred by the Employer, and/or other remedial measures.

D. Payroll. No commission or bonus described herein shall be earned at the time of sale but shall be deemed earned only after there exists a Qualified Sale and all applicable rescission periods have expired. Commissions may be advanced on a weekly basis in accordance with the Employer's standard payroll practices.

E. Indemnity. By affixing your signature to the Letter or this Exhibit you hereby agree to indemnify, defend and hold the Employer harmless for all damages, costs and expenses (including attorney's fees) it incurs in connection with your breach of Employer policies, procedures, line-rules, those documents or any misrepresentation made by you.

F. Terms. Capitalized terms used herein shall have the meaning ascribed by the Employer unless context otherwise dictates.


Print Name: JUDITH A. PARKER

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EMPLOYMENT AGREEMENT

MYRTLE BEACH

THIS AGREEMENT is made and entered into this 24 day of Oct, 2005, by and between WESTGATE MYRTLE BEACH, LLC, a Florida limited liability company (hereinafter "Employer") and C. Ned Okenian (hereinafter "Employee").

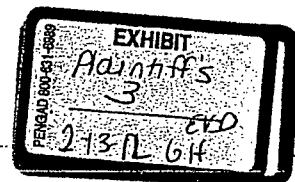
RECITALS:

A. Employer is engaged in the development and sale of interval ownership, in real estate brokerage, leasing, rental, and sales services, real estate management services in the field of interval ownership, other interests in resort properties, and in leisure, business, and vacation entertainment and travel services and desires to achieve the highest levels of efficiency and service to its owners and customers; and

B. Employer has and will continue to expend substantial resources in connection with the above-mentioned endeavors; and

C. Employer desires to engage Employee to perform certain sales, marketing, or other services from time to time (hereinafter referred to as the "Services"); and

D. In the course of performances of the Services, as well as Employee's dealings with Employer, Employee will become privy to certain information concerning Employer, as well as Westgate Resorts, Ltd., Westgate GV at the Woods, LLC, Westgate GV at Emerald Point, LLC, Westgate GV at Rock Lane, LLC, Westgate GV at Painted Mountain, LLC, Westgate GV at Tunica, LLC, Westgate GV Management, Westgate Vacation Villas, Ltd., Westgate Towers, Ltd., Westgate Daytona, Ltd., Westgate Flamingo Bay LLC, Westgate Miami Beach, Ltd., Westgate Lakes, Ltd., properties and entities controlled by Central Florida Investments, Inc., and resorts or properties acquired in the future and any of their respective related and/or affiliated entities (hereinafter collectively referred to as the "Employer Entities"), including, but not limited to, methods and procedures of operation, actual or prospective customer lists, internal documents and memorandum, as well as various other information, methods, and techniques, which have or may be disclosed or become known by Employee in connection with the performance of the Services on behalf of Employer and Employer Entities,



whether learned prior or subsequent to the execution of this Agreement. For the purposes hereof, all such information shall be collectively referred to as the "Confidential Information"; and

E. Employee desires to obtain employment as an employee of Employer, and to receive training, knowledge, and a source of income.

NOW, THEREFORE, in consideration of the engagement of Employee by Employer, as well as such other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Recitals. The foregoing recitals are true and incorporated herein.
2. Scope of Services. Employer hereby engages Employee to act in the position of _____ and to render the Services consistent with such position as may be determined by Employer from time to time in Employer's sole and absolute discretion. Employer shall have the power to determine the means and manner by which those Services shall be performed, and the standards of performance to be maintained by Employee. Employee agrees to perform the Services, subject to the direction of Employer, and its agents, and agrees to subject himself/herself at all times during the period of service to the direction and control of Employer and its agents in respect to the Services to be performed. Notwithstanding anything contained in this Agreement, Employee acknowledges and agrees that Employer shall have the sole and absolute discretion to alter, change, and amend Employee's job description, position, and title as well as any responsibilities and/or duties which Employee may have in connection therewith.

As part of the consideration of this Agreement, Employee agrees to comply with, and abide by, such rules and directives of Employer as may be established from time to time, and recognizes the right of Employer, in its sole discretion, to change, modify, or adopt new policies and practices affecting the employment relationship, not inconsistent with this Agreement, which will be effective retroactively, as deemed appropriate by Employer.

3. Term. The term of this Agreement shall begin as of the date this Agreement is executed and shall continue until termination as provided for in this Agreement.

4. Compensation. During the term of this Agreement, Employer shall compensate Employee in the manner specified in Exhibit "A" attached hereto and incorporated herein, which compensation shall be subject to periodic review, adjustment, and modification as determined by Employer, in its sole discretion. Employee acknowledges that Employer may, from time to time, advance compensation to Employee for which Employee shall be liable to reimburse Employer subject to the provisions of Exhibit "A" attached hereto and incorporated herein. In the event Employee's employment is terminated for any reason, Employee expressly agrees that he/she shall repay any and all monies owed to Employer.

5. Additional Benefits. Employer has voluntarily adopted policies and programs offering additional benefits to employees of the Employer Entities. Such benefits, which may be modified or discontinued at Employer's sole discretion (provided such benefits are modified or discontinued as to all employees of Employer), may include, but are not limited to, disability insurance, health insurance, and participation in Employer's 401(k) plan (collectively, the "Benefits"), all or some of which require contributions to be made by Employee in connection with such benefit(s) and are not solely funded by Employer or the Employer Entities. Employee expressly acknowledges and agrees that the Benefits will be provided to Employee through one or more of the Employer Entities as Employer may determine in its discretion.

6. Manner of Performance of Services. Employee agrees that Employee will at all times faithfully, industriously, and to the best of Employee's ability, experience, and talent, perform all of the Services that may be required of and from Employee pursuant to the terms of this Agreement and to the satisfaction of Employer. Such Services shall be rendered at such place or places as Employer shall in good faith require or as the interests, needs, business, and opportunities of Employer shall require or make advisable. Employee agrees that Employee's performance shall be subject to periodic review by Employer. Employee acknowledges and agrees that Employee shall not during the term of this Agreement, including all option(s) terms hereof, execute any contracts or agreements or otherwise take any action to bind Employer to any obligation whatsoever.

7. Devotion by Employee of Full Time to Business/Exclusivity. Employee shall devote all of Employee's time, attention, knowledge, and skill solely and exclusively to the business and interest of Employer. In this regard, Employee expressly agrees that, during and prior to the end of the stated term of

this Agreement, that Employee shall not, unless this Agreement is voluntarily terminated by Employer, directly or indirectly, seek or accept employment with any third parties, including, but not limited to, any person, firm, or entity engaged in the timeshare business or the management and operation of resort properties; or be interested, directly or indirectly, in any form, fashion, or manner, as partner, officer, director, stockholder, advisor, employee, or in any other form or capacity, in any other business similar to Employer's business or any allied trade.

Nothing contained herein shall prevent or limit the right of Employee to invest in the capital stock or other securities of any corporation whose stock or securities are publicly owned or are regularly traded on any public exchange, nor shall anything contained herein be deemed to prevent Employee from investing or limit Employee's rights to invest Employee's funds in real estate or other holdings, provided that such investments are not in any way competitive to the interests of Employer and provided further that such investments do not limit Employee's full time and attention to Employee's duties herein or otherwise interfere with Employee's performance of the Services pursuant to this Agreement.

8. Termination.

(a) This Agreement may be immediately terminated by Employer at any time during the term hereof without further liability or recourse, for any reason whatsoever, with or without cause.

(b) If Employer discharges Employee for any reason prior to the expiration of this Agreement, Employer shall only be liable to pay Employee's Compensation to the date of discharge, less the amount of any advances theretofore made by Employer and not theretofore paid, and Employer may collect any balance owed to it by Employee.

9. Confidentiality. Employee and Employer agree that from and after the date of the execution of this Agreement, including all times subsequent to termination of this Agreement, regardless of the reason for termination or whether made by either party, Employee and Employer shall not divulge, make known, publish, or distribute by any means, or any manner whatsoever, either individually, or on behalf of any other person, firm, partnership, joint venture, association, group, corporation, or other entity, whether formal or informal, any of the Confidential Information. For the purposes hereof, Employee and Employer acknowledge and agree that the Confidential Information constitutes "Trade Secrets" as that term is defined pursuant to Florida

Statutes ' 688.002. In addition to the foregoing, Employee expressly acknowledges and agrees that Employee shall not remove any Confidential Information or other work-related documentation from the workplace without the express written consent of Employer. .

10.

Non-Competition.

(a) Employee shall not during the term of Employee's employment with Employer and for a period of two (2) years following the termination of Employee's employment, regardless of the cause of termination, (i) solicit for employment any employees, agents, or independent contractors of the Employer Entities; (ii) solicit either alone or in conjunction with others, any OPC locations maintained by the Employer Entities; (iii) solicit existing customers or owners of the Employer Entities; (iv) use in any fashion, customer or owners lists now or hereafter generated or maintained by the Employer Entities; (v) solicit or in any manner interfere with existing brokerage or business relationships now or hereafter maintained by the Employer Entities with third parties; and (b) ~~should Employee voluntarily terminate Employee's employment with Employer for any reason or should Employer terminate Employee's employment with Employer for "good cause" as that term is defined below, Employee shall not engage himself for a period of one (1) year from the date of such voluntary termination by Employee or termination of Employee by Employer for "good cause", directly or indirectly, either on his own account, or as a partner or joint venturer, or as an employee, consultant, representative, principal, agent, or salesperson for any other person, firm, or corporation, or otherwise, to compete with Employer or any Employer Entities in the timeshare industry in any geographic location in which Employer or the Employer Entities maintains, operates, manages, markets, or sells any of its time share resorts. As used herein, the term "good cause" shall be deemed to be the commission by Employee of any single instance of a serious offense, which includes, but is not limited to:~~

- (i) insubordination;
- (ii) discrimination or harassment against a guest or customer of Employer or the Employer Entities or against any employee or agent of Employer or the Employer Entities;
- (iii) conviction of, or plea of guilty to a felony or any other crime involving fraud or dishonesty;
- (iv) misconduct involving discourtesy, insolence, threats, intimidation or lack of courtesy of any kind toward resort guests, customers, Employer employees, or of independent contractors;
- (v) theft;
- (vi) falsification of records;
- (vii) deliberate acts or acts of gross negligence;
- (viii) the commission of a fraudulent act;
- (ix) incompetence or negligence in the performance of Employee's Services under this

- (x) Agreement;
- (xi) intentional violation of any rule or regulation that may be established from time to time for the conduct of Employer's business;
- (xii) any failure of Employee to perform any agreement, duty, or obligation of Employee required from time to time pursuant to this Agreement, including the Services under this Agreement; and
- (xiii) the intentional failure of Employee to perform at a satisfactory performance level or with an attitude acceptable to Employer.

11. Remedies for Breach. The parties hereto acknowledge and agree that a breach or threatened breach by either of any of the terms, conditions, and provisions of this Agreement will result in irreparable harm for which neither will have no adequate remedy at law and for which damages may be difficult to determine. Accordingly, in the event of any breach or threatened breach by either party of the terms, conditions, and provisions of this Agreement, the aggrieved party shall be entitled to immediate temporary and permanent injunctive relief in order to restrain the violation of the terms of this Agreement and shall also be entitled to recover the sum of \$500.00 per day, commencing with the date of breach and continuing for each day thereafter, until the breach is remedied, such sum representing liquidated damages, which damages are stipulated by the parties to constitute a reasonable estimate of the damages which will be incurred as the result of a breach hereunder, and which shall not constitute a penalty. It is specifically understood and agreed that a denial by a court of competent jurisdiction of either party's application for injunctive relief as a result of a finding by the court that either party has not been irreparably harmed (in accordance with the provision of § 542.33, Fla. Stat.) shall not impair or restrict either party's right to pursue a claim for damages resulting from such breach.

12. Assignment. This Agreement shall be assignable by Employer to any entities affiliated with, owned, or controlled by Employer. Employee may not assign, transfer, or share by representative with any other person, firm, or corporation, this Agreement or any portion thereof. Any attempt by Employee to assign this Agreement shall render such assignment totally null and void.

13. Binding Effect. This Agreement shall be binding on and shall inure to the benefit of any successor or successors of Employer and the personal representatives of Employee.

14. Entire Agreement. This Agreement revokes and supersedes all prior agreements, written and oral, and represents the entire agreement between the parties and shall not be subject to modification of

amendment by any oral representation, or by any written statement by either party, except for a dated, written amendment to this Agreement signed by Employee and the President of Employer.

15. Florida Law to Govern. The construction and interpretation of this Agreement shall be governed by the laws of the State of Florida. Venue for any proceedings arising out of this agreement shall be in Orange County, Florida.

16. Attorney's Fees. In the event of any litigation to enforce the terms, conditions, or provisions of this Agreement, the prevailing party shall be entitled to the recovery of all court costs, and a reasonable attorney's fee incurred in connection with the enforcement of this Agreement, including but not limited to all court costs, and attorney's fees incurred in any appellate proceedings.

17. Section Headings. The several section headings of this Agreement are inserted for convenience only and shall be ignored in interpreting the provisions of this Agreement.

18. Severability. Should any court of competent jurisdiction deem any provision or clause of this Agreement to be illegal, invalid, or unconscionable and unenforceable, such provision or clause shall be fully severable from this Agreement and, in its place, there shall be added to this Agreement a similar provision as near in intent as possible but which is not illegal or unconscionable, and this Agreement shall be construed and interpreted as if such illegal, invalid, or unconscionable and unenforceable provision or clause had never comprised a part of this Agreement.

19. Waiver of Breach. The waiver by Employer or Employee of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach.

20. Jury Trial Waiver. EACH PARTY HERETO KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS; CROSS-CLAIMS, COUNTER-CLAIMS, OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR BETWEEN THE PARTIES TO THIS AGREEMENT, THEIR AFFILIATES, SUBSIDIARIES, SUCCESSORS, OR ASSIGNS AND IRRESPECTIVE OF WHETHER SUCH LITIGATION ARISES OUT OF THIS AGREEMENT, BY STATUTE, OR AS A MATTER OF TORT LAW AND THE PARTIES HERETO

EXPRESSLY CONSENT TO A NON-JURY TRIAL IN THE EVENT OF ANY OF THE FOREGOING.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the date and year first above written.

"Employer"

WESTGATE MYRTLE BEACH, LLC, a Florida
limited liability company, through its Manager,
CENTRAL FLORIDA INVESTMENTS, INC., a
Florida corporation

By: _____

David A. Siegel
President

"Employee"

C. Ned Overtone

Print Name: C. Ned Overtone

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2506 N Ocean
Blvd, MB
Night Auditor

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RESORT
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Servers
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Security

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Applicants for the
following positions:

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an eye for detail.

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experience re-
quired.

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COMMERCIAL
LAUNDRY**
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Applicants to fill the
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- Reservationists
- Bell Staff
- Housekeepers
- Inspectors
- Housepersons
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- Waterpark Staff
- Waitstaff
- Public Area Cleaners
- Machine Operators
- Linen Attendants
- Bus Staff/Dishwashers
- Banquet Set-up/Servers
- Line Cooks
- Cashier/Store Clerk

We offer
competitive
wages & benefits
with a great
working
environment

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growing again and we
are currently seeking
quality individuals to
join our team in Myrtle
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openings with general
responsibilities listed.

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and using various
office equip-
ment. Individual
must possess a
minimum of 3
years' experi-
ence with all
bookkeeping du-
ties. Individuals
must also be able
to handle stressful
situations, have
good organ-
izational skills, be
a customer ser-
vice oriented and
be a team player.

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& salary reqm'ts
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C/O Jennifer Lee,
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Richmond, VA
23285. Resumes
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starters, with
positive
personalities, who
want to earn top
dollars to join their
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Staff. We are
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individuals with a
proven track
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Automotive Sales.
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avail. in the local
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Complete benefits
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wk. co. expense
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promotions and
income potential
of up to 45K first

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Representatives
Needed Immediately.
Gold Crown Resort
looking for
positive, outgoing,
money-motivated. Indi-
viduals ready to
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citing New Ca-
reer. We offer a
great work en-
vironment, salary
plus commissions
plus bonus. Ex-
perience helpful
but not necessary
- excellent train-
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the Company. No
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Call today to
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TIMESHARE AGENTS



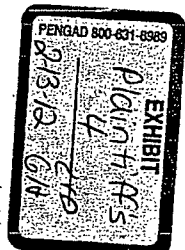
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career minded-
sales executives
to join the world's
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washers. Apply
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LOVE

WESTGATE

And Here's Why You Will, Too!

Great Sales
Opportunity!

*... unlimited
future earnings*



EXHIBIT
Plaintiff's
5
G/L 2-13-13

"MAN OF THE YEAR", DAVID SIEGEL... KING OF THE JUNGLE!



A Note about... *Your Future*

Take a minute.... Risk Free

Westgate Resorts is offering the greatest sales opportunity of your lifetime!

- Have you ever thought about making a career move?
- Maybe trying something you have never done before?
- Is opportunity for advancement important to you?
- Would you like to make more money?
- Would you like to improve your lifestyle?
- Wouldn't it be great to be home by 3 p.m.?

Allow us to show you how to make your dreams come true. We believe the next few minutes of your time could be the best time you may ever invest in your future. Over the years, lives of many people have been changed for the better — people from all walks of life, from professionals with college degrees to others who just arrived in this country with nothing to their name. Through our paid training and support, we helped them establish themselves with a starting salary, then we helped them develop the skills necessary for advancement. Many have achieved 6-figure incomes within a short period of time. Regardless of your experience, we invite you to consider what could be a life changing opportunity.

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Westgate Resorts - FACTS

- Ranked as one of the top 10 employers in Florida.
- Largest privately held timeshare company in the world.
- 17 resorts nationwide and growing quickly.
- 11 resorts in Florida.
- 9 new resorts opened in last 2 years.
- On a per resort basis, our sales volume is more than twice that of our closest competitor.
- Central Florida Investments C.F.I., our parent company, is a 33-year-old company with 20 years experience in the timeshare industry.

Let me put myself into your shoes. If I were contemplating a new career, I may have a few questions.

- Do I need a real estate license?
- How much money can I make the first year.. if I have a license?
- Can I start earning income right away... even without a license?
- How much money will I make to start?
- Is there an initial investment needed to get started?
- What are the work hours?
- Is there a training program? How long?
- Do I get paid during training?
- Do I have the opportunity to advance?
- How/soon can I start?

If you are interested in the answers to these questions and would like to know more... Read on.

How Much Money Can I Make?



Throughout the years, Westgate has earned a reputation for having the best compensation packages for our sales representatives and sales managers. Our rapid growth has created a need for ambitious people who are looking for an exciting and rewarding work environment. We offer working hours that provide you an opportunity to do the things you enjoy doing most, like spending quality time with your family or relaxing by the swimming pool.

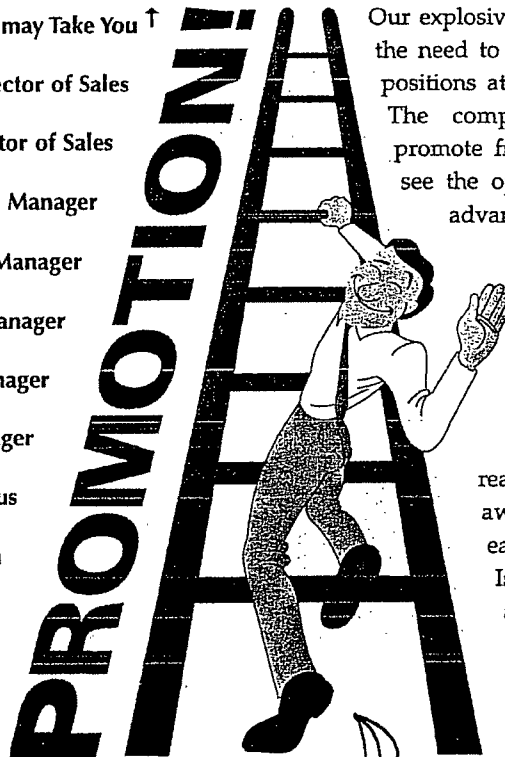
We provide you with the potential for a six-figure income within your first year, and the fastest advancement opportunities in the industry — not only in Orlando, FL but also in other locations, like Miami, FL; Las Vegas, NV; Gatlinburg, TN; Williamsburg, VA; Houston, TX; and Park City, UT.

So whether you are pursuing your first position in sales or you are a proven professional, Westgate Resorts has an opportunity for you. The only investment you need is a good attitude and a desire to fulfill your financial goals. A real estate license is not required to get started.

Opportunity for Advancement

Wherever Your Talents and Abilities may Take You ↑

Director of Sales
Assistant Director of Sales
General Sales Manager
Division Manager
Sales Manager
Training Manager
Training Sales Manager
Elite Team - CEO Status
Elite Team
Vac Pac Team
Sales Representative
Entry Level Trainee



Our explosive growth has created the need to fill all of these sales positions at each of our resorts. The company policy is to promote from within. You can see the opportunity for rapid advancement available for anyone who has the proper attitude, strong desire, and the will to apply themselves.

The opportunity is real. The opportunity is awesome. It could easily change your life. Is it easy? No. It takes a commitment and a lot of effort. Is it worth it? Yes! Are you up for it? **You decide.**



Westgate Leadership Supporting Your Career



David A. Siegel
Developer and Founder

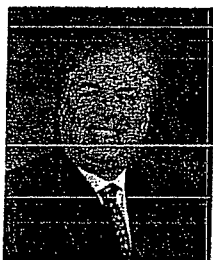
David Siegel founded Central Florida Investments in the early 1970's as a real estate development firm working in the Orlando area. In 1983, he was introduced to the timeshare concept, and built 16 villas that eventually became Westgate Vacation Villas. Mr. Siegel has since perfected and refined the concept, making timeshare one of the fastest growing segments of the tourism industry, and establishing Westgate Resorts as an industry leader. Today, Westgate Resorts, part of the CFI family of businesses, is vacation home to more than 200,000 timeshare owners, with Florida resorts in Orlando, Daytona Beach, Miami Beach, and South Beach, as well as Gatlinburg, Tennessee; Park City, Utah; Las Vegas, Nevada; and Colonial Williamsburg, Virginia. More important, timeshare ownership is now the most economical way for families to enjoy a lifetime of luxury vacations.



James L. Gissy
Executive Vice President
Sales and Marketing

James L. Gissy, at age 22, was honored as the #1 Salesman in the United States by American Income Life Insurance Company. His successful career led him to Westgate 19 years ago where he joined Westgate Vacation Villas as a timeshare salesman. Proving his successful record-breaking sales and leadership skills, Mr. Gissy was promoted several times into management positions before climbing the ladder into the role of Executive Vice President of Sales and Marketing.

Mr. Gissy is responsible for the profitability, development, and management of all operations supporting the company's timeshare marketing and sales divisions. Strategic planning, cost/profit analysis, development of procedures and performance standards, corporate identity, marketing positioning and penetration, pricing, training and staff development are all within his administration. Jim Gissy has been honored as the Top Sales Executive of Multiple Resorts Worldwide by American Resort Development Association.



Barry W. Siegel
Executive Vice President Sales

As Executive Vice President of Sales, Barry W. Siegel is responsible for overseeing the company's multiple resort sales, strategy development, implementation, analysis, corporate identity, pricing and yield management.

Mr. Siegel brings over 24 years of real estate experience to CFI. Since joining CFI in 1979, he has held a number of positions including Sales Manager, General Sales Manager, Director of Sales, Vice President of Sales, before securing his current position. He has also been instrumental in leading the resort sales operations from \$8 million in sales to over \$400 million. In April 1996, Mr. Siegel received an award from the American Resort Development Association for his outstanding sales and performance. In addition, he is a long-standing member of the David A. Siegel Society, The Westgate Resorts Foundation's most elite membership.

Companies Owned By CFI

- Westgate Lakes Resort & Spa
- Westgate Vacation Villas
- Westgate Town Center
- Westgate Towers
- Westgate Park City Resort & Spa
- Westgate Smoky Mountains
- Westgate Flamingo Bay
- Westgate Miami Beach
- Westgate Daytona Beach
- Westgate Palace
- Westgate South Beach
- Westgate River Ranch
- Westgate Blue Tree Resort At Lake Buena Vista
- Westgate Historic Williamsburg
- Grenelefe Golf and Tennis Resort
- The Seasons Resort
- Club Orlando
- Ramada Plaza Hotel & Inn Gateway
- Apartment Complexes
- Shopping Centers
- Retail Businesses
- Florida Vacation Store
- Paintball World
- CFI Travel Agency
- Life Insurance Company
- Citrus Groves
- Cattle Ranches
- Westgate Resorts Foundation

Supporting Our Salespeople More Than Enough Prospects



David Crabtree
Chief Operating Officer
Sales and Marketing

As Chief Operating Officer of Sales and Marketing, David is responsible for overseeing the company's Sales and Marketing operations, including strategic and financial planning, marketing relationships, implementation of new marketing programs, timeshare pricing, yield management, inventory management and customer service. David has more than 14 years of diverse experience in the hospitality industry, including sales and marketing, operations and finance. In addition, David has extensive experience securing public and private financing. Prior to joining the company in 1998, David served as Executive Vice President of the Debbie Reynolds Hotel and Casino in Las Vegas. David completed his bachelor's

degree in Hotel and Restaurant Management from the University of Wisconsin - Stout, and graduated with a Master of Business Administration from the University of Nevada - Las Vegas, with emphasis in finance and accounting. David is a member of the Heart of Florida United Way Alexis de Tocqueville Society. He is also on the Board of Directors for the Westgate Resorts Foundation.



Judy Levy
Senior Vice President
Specialty Sales and Marketing,
Owner Referral and Telemarketing

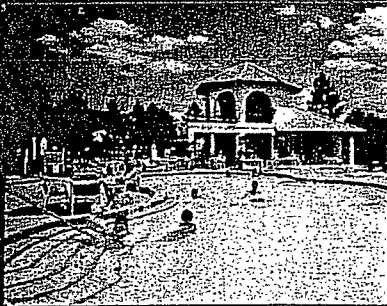
Judy Levy began her career on the Westgate Vacation Villas sales line in October of 1992 and skyrocketed to success with back-to-back years of timeshare sales records that still stand to this day. The key to Judy's success was her ability to generate her own personal owner referral tours. In just one year, she wrote over \$2 million of timeshare business with her personal owner referral base alone! By 1995 Judy was promoted to Vice President of both the Owner Referral and Telemarketing Sales and Marketing Divisions. She is now in a position where, what she once did for herself... she can now do for you.

Westgate Resorts is legendary for the success of its sales and marketing organization.

Westgate clearly dominates every market it enters. We have a proven track record of targeting potential buyers and helping them become timeshare owners. Our closing percentages significantly exceed the industry averages. Our marketing department provides a steady source of potential buyers without you having to expend any effort prospecting. You DO NOT need to use your car, make telephone prospecting calls, door knock neighbors, or create a mail-out program. We bring the people to you, making your job easier.

They say a picture is worth a thousand words. Below are actual pictures of prospects waiting in line to begin their sales tours. Westgate generates more prospects to the sales sites on a per site basis than any other company in the world. Many companies farm-out, or hire a marketing company. We are not reliant on other companies. Westgate owns the marketing company that generates the sales opportunities for you. This means you will have a better opportunity to make more money at Westgate.

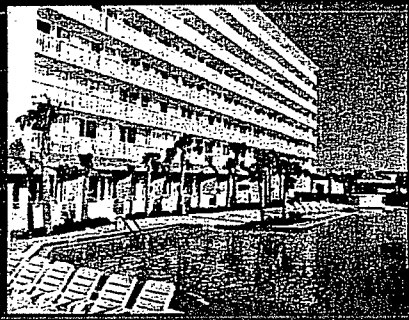




Westgate Vacation Villas
Kissimmee, Florida
1983



Westgate Miami Beach
Miami Beach, Florida
1994



Westgate Daytona Beach
Daytona Beach, Florida
1994



Westgate Town Center
Kissimmee, Florida
2000



Westgate Palace
Orlando, Florida
2002



Westgate Flamingo Bay
Las Vegas, Nevada
2000



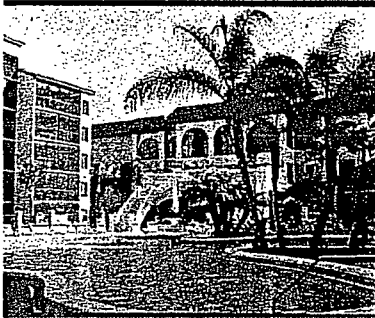
**Westgate Blue Tree Resort
at Lake Buena Vista**
Lake Buena Vista, Florida
2001



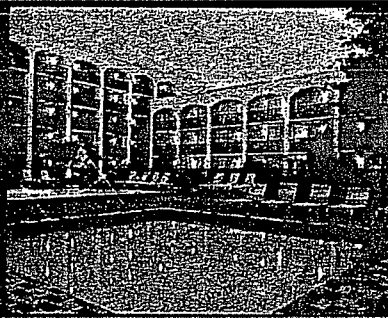
Westgate Park City Resort & Spa
Park City, Utah
2001



Westgate South Beach
Miami Beach, Florida
2002



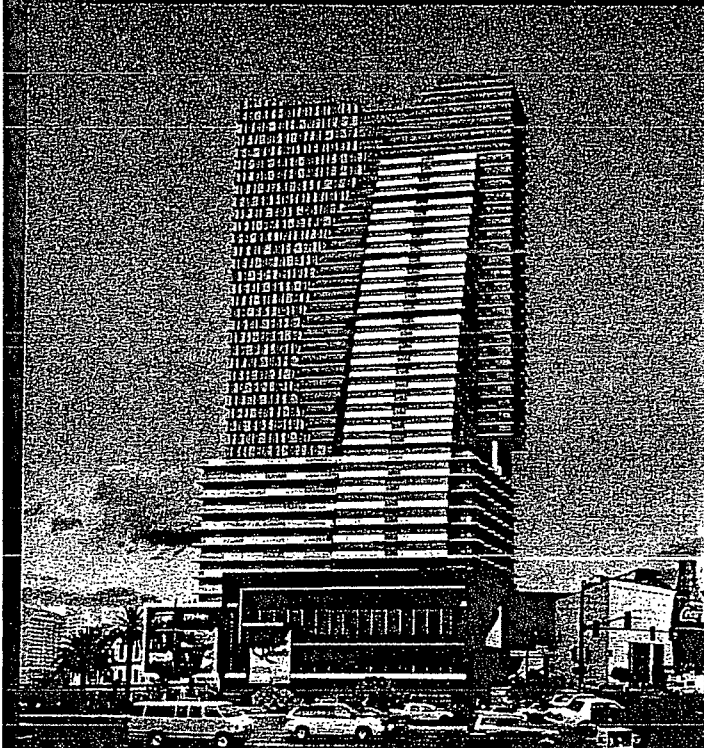
Westgate Lakes Resort & Spa
Orlando, Florida
1996



Westgate Towers
Kissimmee, Florida
1996



Westgate Smoky Mountains Resort
Gallatinburg, Tennessee
1999

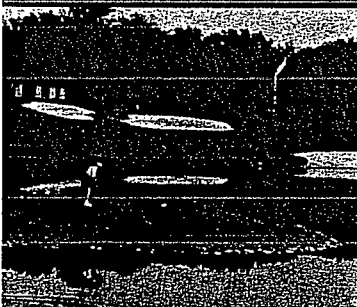


Westgate Las Vegas
Las Vegas, Nevada
Currently under development



We fulfill our guests'
dreams by providing
a quality vacation
experience that
exceeds all
expectations.

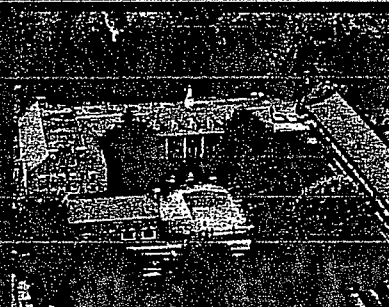
David A. Siegel



Grenelefe Golf and Tennis Resort
Haines City, Florida
2002



Westgate River Ranch
River Ranch, Florida
2002



Westgate Historic Williamsburg
Williamsburg, Virginia
2003



Westgate Resorts Works for Me



Linda Hill Born in Nashville, Tennessee, Linda holds BA and MA degrees from the University of Tennessee. She began her professional career as a schoolteacher. She later became involved in general real estate and had a successful 30-year career. During her tenure in Real Estate she heard about the great working hours and how lucrative the timeshare industry is.

In 1986, Linda entered the timeshare business in Gatlinburg, TN. After becoming the #1 salesperson at 5 separate resorts she was excited to learn that Westgate was coming to town.

Since joining us in 1999 Linda has been awarded the "Outstanding Salesperson" of the year for 1999, 2000, and 2001. Linda has sold over *\$2 million per year in Westgate timeshare properties and has been the "Top Salesperson" for all Westgate properties. In 2002 she was promoted to sales manager. Her favorite quote is very simple. "Don't worry, be happy." With her level of success... you would be happy too!



Mark Grecni After serving four years in the US Army, Mark opened his own window-tinting business in Texas in 1979. Working long hard hours, sometimes 16 hours a day, seven days a week, his business grew to become the largest window tinting business in Texas. Realizing he was missing out on much of his family life, Mark wanted a change. He moved to Orlando to be near his mother, father, sister and brother. He knew several people who had been successful in the timeshare business. After considerable research, Mark discovered that not only is Orlando home to a huge portion of the timeshare industry, but the most successful timeshare company was headquartered there. In May of 1996

he started his career with Westgate Resorts. Mark was in the top ten 6 months in a row, and was awarded the "Rookie of the Year" for Westgate Vacation Villas in 1996. Within his first ten months he was promoted several times, then into management. In 2002, Mark was awarded the "Manager of the Year" for Westgate Vacation Villas and set a new company record with over *\$10 million in sales. Mark has made a significant six-figure income since 1997.



Patricia Gonzalez Patricia came from Peru to the United States in 1984. Speaking no English, her only opportunities were basic labor, so she started working in the hotel industry as a housekeeper. She spent her nights working part time as a dishwasher in a restaurant. She later started her own business as a housekeeper for people's homes. One day her daughter came home from school explaining that the other kids made fun of her because her mother cleaned houses for a living. Patricia decided that never again would her children have to suffer embarrassment because of her job or income. The next day Patricia answered a Westgate ad. Initially she wasn't going to be hired, but she made the confident statement, "I'll work the first 30 days for free and

prove to you that I won't let you down." We didn't hire her for free but did give her a job as a salesperson. Patricia borrowed clothes to wear to work but after a slow start, Patricia sold \$300,000 in business in her second month and became the number one salesperson for the month.

After becoming successful, Patricia never looked back. Patricia was later promoted into management where she continues to win awards as the "Sales Manager of the Year" for Westgate Lakes and has enjoyed an income in the high six figures. Her advice is "This is the right company, the right time and the right place. This company will change your life."

*Sales based on an average price of \$10,000.

Westgate Resorts Can Work for You Too!



Rosana Monteiro Former law student from Brazil she always felt that opportunities in life were better in the United States but was reluctant to move because she didn't speak English. In 1996, she took a leap of faith in the American Dream, moved to Orlando became a fulltime student learning English and worked her way up to a manager for the GNC vitamin store.

A year later while working for Disney, she kept hearing about the incredible opportunities in the timeshare industry. In 2000, she decided to change her career and work for Westgate. She had a rocky start with no sales in her first couple months but was determined to be successful. In 2001 and 2002, Rosana was the number one sales person for Westgate Lakes Resort & Spa, selling over *\$1 million each year.

In 2003, she was promoted to a sales manager. Since becoming a timeshare professional with Westgate she says she loves what she does and doesn't want to do anything else in life. Her motto is "never, never give up."



Vijay Latchman Vijay comes from Guyana in South America immigrating to the United States in 1983. Holding a Ph.D. in business and a Masters degree in health, Vijay worked long, hard hours in the health field for his first fifteen years in America. In 1998, Vijay heard about the flexible hours and income potential in the timeshare business. After considerable research and several offers from other timeshare companies, Vijay assessed the opportunities and potential for growth in the timeshare industry. He chose to begin his timeshare career at Westgate. Having no sales background, Vijay knew he would live by one of his favorite sayings "when you're given an opportunity, grab it because only you can make it really happen."

Vijay really did make it happen. He's been successful ever since, and even made Westgate Vacation Villas "Rookie of the Year" in 1998. Since then, Vijay has been promoted to our elite team and CEO team. He has turned down several opportunities to move into management because he loves what he does. Vijay enjoys a six-figure income every year and currently sells more than a million dollars per year in timeshare sales.



Kim van Nymegen Born and raised in Orlando, Florida, Kim was a psychology major with a minor in music.

Kim worked for years as a musician in various bands and for Disney. Real Estate was booming in Orlando so Kim decided to get his real estate license. Being an Orlando native, he had several friends in the timeshare industry. One of his old high school friends worked in timeshare from 7 a.m. to noon and made \$80,000 a year. So Kim decided to get into timeshare, and Westgate was where everyone told him to work.

In August 1993, Kim started at Westgate and held the belief that he didn't want to be just a top producer, but the top producer. He did just that. Since 1994 he's been selling at the top of the line. Kim has sold well over *\$1 million in sales in 1997, 1998, 1999, 2000, and 2001.

Kim is still selling everyday and has no signs of stopping. He plans to stay at Westgate because as he puts it, "The product keeps getting better and better and what Westgate offers today is better than what we promised 10 years ago."

He says, "The only limits with a career at Westgate are the limits you place on yourself."



Paid **Training Programs**

Westgate offers the most comprehensive training program in the industry. Our training teaches a hands-on, systematic approach that reaches the sales prospect emotionally and psychologically. Our curriculum is a step-by-step process that can take the seasoned professional, or a brand new trainee with no experience, to a level of success that only elite producers enjoy.

When we say we have the most comprehensive training in the industry... We mean it. The areas covered include several detailed courses under the broad headings of sales, product knowledge, psychology, sales management, communication, leadership, software applications, and personal development.

Training Programs Include:

- **Initial Training**

- Product Knowledge
- Sales Psychology

- **Follow-up Classes**

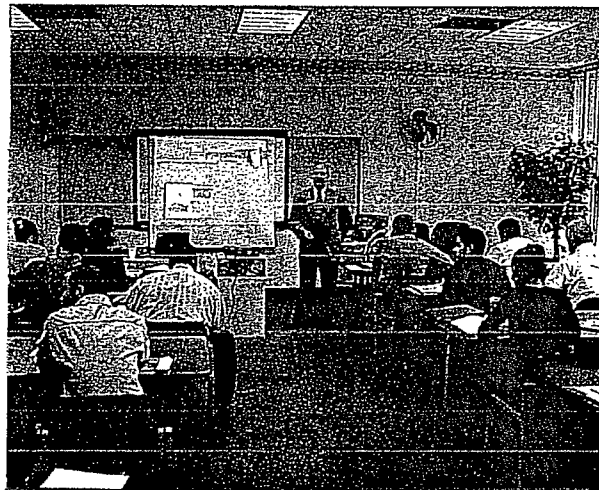
- Review Classes
- Handling Objections
- Understanding the Psychology of the Sale
- Discovery Workshop
- Advanced Training
- Back-end Classes
- Closing Strategies
- Redevelopment Classes

- **Support Programs Available**

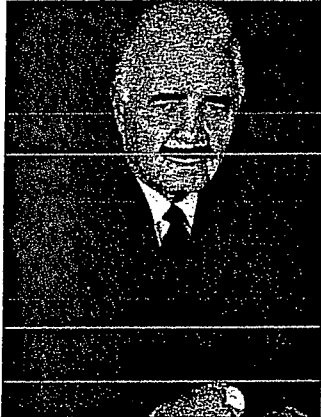
- The Ride Program – Trainers actually monitor live sales presentation.

- One-on-one – Personal Coaching with a trainer.

Westgate invests more money in each trainee than any other company in the industry. We are looking for a long-term relationship that will pay big dividends. Our intentions are to provide you with the best opportunity for growth and advancement. Our sales records prove our effectiveness.



A Letter from *Pat Leiby*



Pat Leiby
Vice President of
Sales Training and Development

- 30 years in Resort Sales
- 22 years Sales Training
- Advisory Board – Fisher Institute of Sales, a Division of Akron University
- Author of *Sell It Today Sell It Now* with Tom Hopkins

I invite you to... Join one of the most dynamic and successful companies in the world.

We are opening resorts in the most highly demanded vacation spots on earth. Within the last two years, Westgate Resorts has expanded from eight resorts to seventeen. This has created a demand for sales people from inexperienced to top-flight producers and opportunities for those looking for rapid advancement into management.

In addition to building luxuriously appointed condos in unsurpassed locations, another key to our success is our world-famous training program. Westgate is recognized throughout the industry as the leader in timeshare training. Resorts around the world have attempted to imitate our training and sales philosophies. Companies, influential people and sales trainers like Tom Hopkins, with whom I co-authored the book *Sell It Today Sell It Now*, have implemented our highly successful ideas into their sales presentations. In fact, our Westgate trainees have sold over \$3 billion of timeshare property over the last several years. On a per resort basis, we sell more than double the sales volume of our closest competitor. This means your opportunity to make the most money is with Westgate Resorts.

Looking forward to seeing you in class,

Pat Leiby

Why join Westgate?

Great Training
Great Product

Great Location
Great Work Hours

Great Compensation Plan
Great Opportunity

Do you want to be a winner? Make a smart move.

Become an integral part of a winning team.

Call me for a confidential interview

407-351-2460 ext. 2136

The Westgate Advantage



CFI ranks as one of the top 10 employers in Central Florida and has become the largest privately held timeshare company in the world. All of this means one thing. Westgate has more sales tools and support to make your new sales career easier and more productive.

In addition to the physical resort property where you will be working, there are several different departments and support mechanisms working for you:

- Our own marketing division sends you prospects.
- Our comprehensive training program supports you from start up to success.
- The hospitality group makes your prospects feel welcome.
- The managers bring years of training and experience to help you create every sale.
- Our finance department automatically approves every customer.
- The contract department completes all the paperwork.
- The deeding department closes your transactions and ensures new owner satisfaction.
- The referral department works for you to generate qualified referrals as new prospects.
- The customer service department is there to handle after sales questions or concerns.

The Timeshare Difference

- No Driving Around
- No Start-up Expenses
- No Prospecting
- Starting Salary
- Paid Training
- Guaranteed Financing on all sales
- No Commission Charge-backs
- Same Day Closing / Next Day Pay
- A Million in Sales = \$130,000 Commission
- \$500,000 in Sales = \$65,000 Commission
- Rapid Advancement
- Great Work Hours
- Fun Work Environment

TAKE ACTION NOW

Take advantage of the rapid growth. Nine new resorts in the last two years and we are planning more growth in the next two years than we experienced in the last two.

The time to act is **NOW**
For a confidential interview, Call
(407) 351-2460, ext. 2136

D.O.B. _____
Cust I.D. # 5395247

PROPOSAL

Purchaser(s)

Date 11-03-2008

Acct. _____

First Stephanie M.I. M Last Wells S.S.# [REDACTED]
First _____ M.I. _____ Last _____ S.S.# _____
First _____ M.I. _____ Last _____ S.S.# _____
First _____ M.I. _____ Last _____ S.S.# _____
Address 4415 COLUMBIA RD Ste 5-253
City MARTINEZ County COLUMBIA State/Country GA ZIP 30907
E-mail address _____
Home Ph# 706 364 1372 Bus. Ph# 706 863 3000 Marital Status SINGLE

TIMESHARE INTEREST

Resort 7 gentle Beach
UNIT # 20014CAC WEEK # 12 Odd ☐ Even ☒ Whole ☐ Purchase Type Upgrade
UNIT # _____ WEEK # _____ Float ☐ Season High Occupancy date 2010
C/I Day _____ Size 3813B Upgrade Amount 8400 Media online upgrade

PURCHASE TERMS (U.S. FUNDS)

1. Purchase Price of Unit Week _____ \$ 22300
*DP% 0 Annual % Rate 01 # of years financed 24 months
2. Down Payment _____ \$ 17300
3. Closing Cost (3% plus \$51.00 Recordation Fees) _____ \$ 720.00
4. Interval International Dues _____ \$ 84
5. Total Down Payment Due _____ \$ 17384
6. Quit Claim Deed \$ _____
7. Amount Received from:

EXHIBIT
Plaintiff's
6
FD-1679-2-13-12

 _____ \$ 2984
Cash _____ Check# _____ CC _____
8. Equity _____ \$ 14400
*From Acct# 290407528 Unit/Wk _____ Amount 14400
*From Acct# _____ Unit/Wk _____ Amount _____
9. Total Received this date _____ \$ 2984
10. Date balance due _____ Balance due of down payment _____ \$ _____
10. Date balance due _____ Balance due of down payment _____ \$ _____
11. Amount Financed _____ Comp. D. Beach \$ 5500
12. Language Preference ☒ Eng ☐ Sp ☐ Port
13. Auto Debit ☐ Credit Card ☒ Check ☐ Monthly ☐ Maint/Tax
14. Post Dated ☐ Credit Card ☐ Check
15. Monthly Payments \$ 224 1st Payment Due Date 12/31/2008
16. Maintenance Fees \$ 684 Real Estate Taxes \$ 111

PLEASE MAKE ALL CHECKS PAYABLE TO:

GREENSPOON & MARDER, P.A. - ESCROW A/C - CFI WESTGATE

17. Purchaser Approval Stephanie Wells Purchaser Approval _____
18. Purchaser Approval _____ Purchaser Approval _____
19. Manager's Approval Birita 25137 Representative Ned O #18191
20. Deeder # _____ 21. Special Instructions: _____

22. Mortgage Protection: Single ☐ Joint ☐ LUI ☐ Med/Age/Csh/Term/DCL

D.O.B 08-16-1953

PROPOSAL

Cust I.D. # 2725342

Purchaser (s)

Date Nov. 10, 2008

Owner Since _____

Acct. _____

First Shelia M.I. _____ Last Byars S.S.# _____First Debra M.I. J. Last Nixon S.S.# _____

First _____ M.I. _____ Last _____ S.S.# _____

First _____ M.I. _____ Last _____ S.S.# _____

Address 12781 Duke RoadCity Wilmer County Mobile State/Country Ala Zip 36587E-Mail Address SheliaAngelTwo@aol.comHome Ph# 251-509-8595 (Nixon) Bus. Ph# _____ Marital Status Single
281-515-3625 (Byars)

TIMESHARE INTEREST

Resort TENN #1200UNIT # 302E6#2053 WEEK # 43 Odd ☒ Even ☐ Whole ☐ Purchase Type UpgradeUNIT # _____ WEEK # _____ Float ☐ Season Red AU Occupancy date 2009C/I Day _____ Size 1 BPPFP Upgrade Amount 5005 Media 10 A V PG.

PURCHASE TERMS (U.S. FUNDS)

1. Purchase Price of Unit Week _____ \$ 5800.
Inventory Premium ? Y/N _____ *DP% 10 Annual % Rate 19.98 # of years Financed 10 Yrs
2. Down Payment _____ \$ 800.
3. Closing Cost (3% Plus \$51.00 Recordation Fees) _____ \$ 380.00
4. Interval International Dues _____ \$ 84.
5. Total Downpayment Due _____ \$ 884.
6. Quit Claim Deed \$ _____
7. Amount received from: 78.
Cash _____ Check # _____ C.C. _____ \$ _____
\$ 806
8. *Equity
*From Acct# 9008292 Unit/Wk _____ Amount 795
*From Acct# _____ Unit/Wk _____ Amount _____
9. Total received this date _____ \$ 78 ch
10. Date balance due _____ Balance due of downpayment _____ \$ _____
10. Date balance due _____ Balance due of downpayment _____ \$ _____
11. Amount financed congrat book _____ \$ 5000
12. Language Preference ☒ Eng ☐ Sp ☐ Port
13. Auto Debit ☐ Credit Card ☒ Check
☐ Monthly ☐ Maint/Tax
14. Post Dated ☐ Credit Card ☐ Check
15. Monthly Payments \$ 100. 1st Payment Due Date 12/10/2008
16. Maintenance fees \$ 389.00 Real Estate Taxes \$ 1100

PLEASE MAKE ALL CHECKS PAYABLE TO:

GREENSPOON & MARDER, P.A. - ESCROW A/C - CFI WESTGATE

17. Purchaser Approval Shelia Byars Purchaser Approval _____
18. Purchaser Approval Debra Nixon Purchaser Approval _____
19. Manager's Approval Bisha 25137 Representative Ned O # 1219
20. Deeder # _____
21. Special Instructions: _____



1617-066 05/01

EMPLOYMENT AGREEMENT

MYRTLE BEACH

THIS AGREEMENT is made and entered into this 24 day of March, 2006, by and between WESTGATE MYRTLE BEACH, LLC, a Florida limited liability company (hereinafter "Employer") and

Sherry Singletary (hereinafter "Employee").

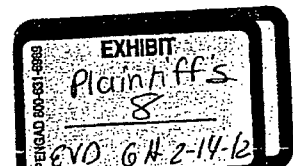
RECITALS:

A. Employer is engaged in the development and sale of interval ownership, in real estate brokerage, leasing, rental, and sales services, real estate management services in the field of interval ownership, other interests in resort properties, and in leisure, business, and vacation entertainment and travel services and desires to achieve the highest levels of efficiency and service to its owners and customers; and

B. Employer has and will continue to expend substantial resources in connection with the above-mentioned endeavors; and

C. Employer desires to engage Employee to perform certain sales, marketing, or other services from time to time (hereinafter referred to as the "Services"); and

D. In the course of performances of the Services, as well as Employee's dealings with Employer, Employee will become privy to certain information concerning Employer, as well as Westgate Resorts, Ltd., Westgate GV at the Woods, LLC, Westgate GV at Emerald Point, LLC, Westgate GV at Rock Lane, LLC, Westgate GV at Painted Mountain, LLC, Westgate GV at Tunica, LLC, Westgate GV Management, Westgate Vacation Villas, Ltd., Westgate Towers, Ltd., Westgate Daytona, Ltd., Westgate Flamingo Bay LLC, Westgate Miami Beach, Ltd., Westgate Lakes, Ltd., properties and entities controlled by Central Florida Investments, Inc., and resorts or properties acquired in the future and any of their respective related and/or affiliated entities (hereinafter collectively referred to as the "Employer Entities"), including, but not limited to, methods and procedures of operation, actual or prospective customer lists, internal documents and memorandum, as well as various other information, methods, and techniques, which have or may be disclosed or become known by Employee in connection with the performance of the Services on behalf of Employer and Employer Entities.



whether learned prior or subsequent to the execution of this Agreement. For the purposes hereof, all such information shall be collectively referred to as the "Confidential Information"; and

E. Employee desires to obtain employment as an employee of Employer, and to receive training, knowledge, and a source of income.

NOW, THEREFORE, in consideration of the engagement of Employee by Employer, as well as such other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Recitals. The foregoing recitals are true and incorporated herein.
2. Scope of Services. Employer hereby engages Employee to act in the position of _____ and to render the Services consistent with such position as may be determined by Employer from time to time in Employer's sole and absolute discretion. Employer shall have the power to determine the means and manner by which those Services shall be performed, and the standards of performance to be maintained by Employee. Employee agrees to perform the Services, subject to the direction of Employer, and its agents, and agrees to subject himself/herself at all times during the period of service to the direction and control of Employer and its agents in respect to the Services to be performed. Notwithstanding anything contained in this Agreement, Employee acknowledges and agrees that Employer shall have the sole and absolute discretion to alter, change, and amend Employee's job description, position, and title as well as any responsibilities and/or duties which Employee may have in connection therewith.

As part of the consideration of this Agreement, Employee agrees to comply with, and abide by, such rules and directives of Employer as may be established from time to time, and recognizes the right of Employer, in its sole discretion, to change, modify, or adopt new policies and practices affecting the employment relationship, not inconsistent with this Agreement, which will be effective retroactively, as deemed appropriate by Employer.

3. Term. The term of this Agreement shall begin as of the date this Agreement is executed and shall continue until termination as provided for in this Agreement.

4. Compensation. During the term of this Agreement, Employer shall compensate Employee in the manner specified in Exhibit "A" attached hereto and incorporated herein, which compensation shall be subject to periodic review, adjustment, and modification as determined by Employer, in its sole discretion. Employee acknowledges that Employer may, from time to time, advance compensation to Employee for which Employee shall be liable to reimburse Employer subject to the provisions of Exhibit "A" attached hereto and incorporated herein. In the event Employee's employment is terminated for any reason, Employee expressly agrees that he/she shall repay any and all monies owed to Employer.

5. Additional Benefits. Employer has voluntarily adopted policies and programs offering additional benefits to employees of the Employer Entities. Such benefits, which may be modified or discontinued at Employer's sole discretion (provided such benefits are modified or discontinued as to all employees of Employer), may include, but are not limited to, disability insurance, health insurance, and participation in Employer's 401(k) plan (collectively, the "Benefits"), all or some of which require contributions to be made by Employee in connection with such benefit(s) and are not solely funded by Employer or the Employer Entities. Employee expressly acknowledges and agrees that the Benefits will be provided to Employee through one or more of the Employer Entities as Employer may determine in its discretion.

6. Manner of Performance of Services. Employee agrees that Employee will at all times faithfully, industriously, and to the best of Employee's ability, experience, and talent, perform all of the Services that may be required of and from Employee pursuant to the terms of this Agreement and to the satisfaction of Employer. Such Services shall be rendered at such place or places as Employer shall in good faith require or as the interests, needs, business, and opportunities of Employer shall require or make advisable. Employee agrees that Employee's performance shall be subject to periodic review by Employer. Employee acknowledges and agrees that Employee shall not during the term of this Agreement, including all option(s) terms hereof, execute any contracts or agreements or otherwise take any action to bind Employer to any obligation whatsoever.

7. Devotion by Employee of Full Time to Business/Exclusivity. Employee shall devote all of Employee's time, attention, knowledge, and skill solely and exclusively to the business and interest of Employer. In this regard, Employee expressly agrees that, during and prior to the end of the stated term of

this Agreement, that Employee shall not, unless this Agreement is voluntarily terminated by Employer, directly or indirectly, seek or accept employment with any third parties, including, but not limited to, any person, firm, or entity engaged in the timeshare business or the management and operation of resort properties; or be interested, directly or indirectly, in any form, fashion, or manner, as partner, officer, director, stockholder, advisor, employee, or in any other form or capacity, in any other business similar to Employer's business or any allied trade.

Nothing contained herein shall prevent or limit the right of Employee to invest in the capital stock or other securities of any corporation whose stock or securities are publicly owned or are regularly traded on any public exchange, nor shall anything contained herein be deemed to prevent Employee from investing or limit Employee's rights to invest Employee's funds in real estate or other holdings, provided that such investments are not in any way competitive to the interests of Employer and provided further that such investments do not limit Employee's full time and attention to Employee's duties herein or otherwise interfere with Employee's performance of the Services pursuant to this Agreement.

8. Termination.

(a) This Agreement may be immediately terminated by Employer at any time during the term hereof without further liability or recourse, for any reason whatsoever, with or without cause.

(b) If Employer discharges Employee for any reason prior to the expiration of this Agreement, Employer shall only be liable to pay Employee's Compensation to the date of discharge, less the amount of any advances theretofore made by Employer and not theretofore paid, and Employer may collect any balance owed to it by Employee.

9. Confidentiality. Employee and Employer agree that from and after the date of the execution of this Agreement, including all times subsequent to termination of this Agreement, regardless of the reason for termination or whether made by either party, Employee and Employer shall not divulge, make known, publish, or distribute by any means, or any manner whatsoever, either individually, or on behalf of any other person, firm, partnership, joint venture, association, group, corporation, or other entity, whether formal or informal, any of the Confidential Information. For the purposes hereof, Employee and Employer acknowledge and agree that the Confidential Information constitutes "Trade Secrets" as that term is defined pursuant to Florida

Statutes '688.002. In addition to the foregoing, Employee expressly acknowledges and agrees that Employee shall not remove any Confidential Information or other work-related documentation from the workplace without the express written consent of Employer.

10. Non-Competition. (a) Employee shall not during the term of Employee's employment with Employer and for a period of two (2) years following the termination of Employee's employment, regardless of the cause of termination, (i) solicit for employment any employees, agents, or independent contractors of the Employer Entities; (ii) solicit either alone or in conjunction with others, any OPC locations maintained by the Employer Entities; (iii) solicit existing customers or owners of the Employer Entities; (iv) use in any fashion, customer or owners lists now or hereafter generated or maintained by the Employer Entities; (v) solicit or in any manner interfere with existing brokerage or business relationships now or hereafter maintained by the Employer Entities with third parties; and (b) should Employee voluntarily terminate Employee's employment with Employer for any reason or should Employer terminate Employee's employment with Employer for "good cause" as that term is defined below, Employee shall not engage himself for a period of one (1) year from the date of such voluntary termination by Employee or termination of Employee by Employer for "good cause", directly or indirectly, either on his own account, or as a partner or joint venturer, or as an employee, consultant, representative, principal, agent, or salesperson for any other person, firm, or corporation, or otherwise, to compete with Employer or any Employer Entities in the timeshare industry in any geographic location in which Employer or the Employer Entities maintains, operates, manages, markets, or sells any of its time share resorts. As used herein, the term "good cause" shall be deemed to be the commission by Employee of any single instance of a serious offense, which includes, but is not limited to:

- (i) insubordination;
- (ii) discrimination or harassment against a guest or customer of Employer or the Employer Entities or against any employee or agent of Employer or the Employer Entities;
- (iii) conviction of, or plea of guilty to a felony or any other crime involving fraud or dishonesty;
- (iv) misconduct involving discourtesy, insolence, threats, intimidation or lack of courtesy of any kind toward resort guests, customers, Employer employees, or of independent contractors;
- (v) theft;
- (vi) falsification of records;
- (vii) deliberate acts or acts of gross negligence;
- (viii) the commission of a fraudulent act;
- (ix) incompetence or negligence in the performance of Employee's Services under this

- Agreement;
- (x) intentional violation of any rule or regulation that may be established from time to time for the conduct of Employer's business;
- (xi) any failure of Employee to perform any agreement, duty, or obligation of Employee required from time to time pursuant to this Agreement, including the Services under this Agreement; and
- (xii) the intentional failure of Employee to perform at a satisfactory performance level or with an attitude acceptable to Employer.

11. Remedies for Breach. The parties hereto acknowledge and agree that a breach or threatened breach by either of any of the terms, conditions, and provisions of this Agreement will result in irreparable harm for which neither will have no adequate remedy at law and for which damages may be difficult to determine. Accordingly, in the event of any breach or threatened breach by either party of the terms, conditions, and provisions of this Agreement, the aggrieved party shall be entitled to immediate temporary and permanent injunctive relief in order to restrain the violation of the terms of this Agreement and shall also be entitled to recover the sum of \$500.00 per day, commencing with the date of breach and continuing for each day thereafter, until the breach is remedied, such sum representing liquidated damages, which damages are stipulated by the parties to constitute a reasonable estimate of the damages which will be incurred as the result of a breach hereunder, and which shall not constitute a penalty. It is specifically understood and agreed that a denial by a court of competent jurisdiction of either party's application for injunctive relief as a result of a finding by the court that either party has not been irreparably harmed (in accordance with the provision of § 542.33, Fla. Stat.) shall not impair or restrict either party's right to pursue a claim for damages resulting from such breach.

12. Assignment. This Agreement shall be assignable by Employer to any entities affiliated with, owned, or controlled by Employer. Employee may not assign, transfer, or share by representative with any other person, firm, or corporation, this Agreement or any portion thereof. Any attempt by Employee to assign this Agreement shall render such assignment totally null and void.

13. Binding Effect. This Agreement shall be binding on and shall inure to the benefit of any successor or successors of Employer and the personal representatives of Employee.

14. Entire Agreement. This Agreement revokes and supersedes all prior agreements, written and oral, and represents the entire agreement between the parties and shall not be subject to modification of

amendment by any oral representation, or by any written statement by either party, except for a dated, written amendment to this Agreement signed by Employee and the President of Employer.

15. Florida Law to Govern. The construction and interpretation of this Agreement shall be governed by the laws of the State of Florida. Venue for any proceedings arising out of this agreement shall be in Orange County, Florida.

16. Attorney's Fees. In the event of any litigation to enforce the terms, conditions, or provisions of this Agreement, the prevailing party shall be entitled to the recovery of all court costs, and a reasonable attorney's fee incurred in connection with the enforcement of this Agreement, including but not limited to all court costs, and attorney's fees incurred in any appellate proceedings.

17. Section Headings. The several section headings of this Agreement are inserted for convenience only and shall be ignored in interpreting the provisions of this Agreement.

18. Severability. Should any court of competent jurisdiction deem any provision or clause of this Agreement to be illegal, invalid, or unconscionable and unenforceable, such provision or clause shall be fully severable from this Agreement and, in its place, there shall be added to this Agreement a similar provision as near in intent as possible but which is not illegal or unconscionable, and this Agreement shall be construed and interpreted as if such illegal, invalid, or unconscionable and unenforceable provision or clause had never comprised a part of this Agreement.

19. Waiver of Breach. The waiver by Employer or Employee of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach.

20. Jury Trial Waiver. EACH PARTY HERETO KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS, CROSS-CLAIMS, COUNTER-CLAIMS, OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR BETWEEN THE PARTIES TO THIS AGREEMENT, THEIR AFFILIATES, SUBSIDIARIES, SUCCESSORS, OR ASSIGNS AND IRRESPECTIVE OF WHETHER SUCH LITIGATION ARISES OUT OF THIS AGREEMENT, BY STATUTE, OR AS A MATTER OF TORT LAW AND THE PARTIES HERETO

EXPRESSLY CONSENT TO A NON-JURY TRIAL IN THE EVENT OF ANY OF THE FOREGOING.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the date and year first above written.

"Employer"

WESTGATE MYRTLE BEACH, LLC, a Florida
limited liability company, through its Manager,
CENTRAL FLORIDA INVESTMENTS, INC., a
Florida corporation

By: _____
David A. Siegel
President

"Employee"

Print Name: Sherry Singletary

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EXHIBIT "A"

COMMISSION SCHEDULE
COMMISSIONED SALES AGENTS
(Myrtle Beach)

I. TRAINING AND BASE COMPENSATION

A. Upon satisfactory completion of the Sales Training Program (typically three weeks) trainees will be compensated at a flat rate of \$60.00 per day for time spent in training. At this time, trainees will also become eligible for consideration for full time Sales positions. No compensation will be paid to persons not having satisfactorily completed the training program.

B. If hired, the employee shall receive a base compensation in an amount equal to \$250.00 per week minimum (based on a forty hour work week.)

II. COMMISSION BASED ON UNIT/WEEK SOLD

A. Following training, in addition to the Base Compensation described in I(B) above, Employee shall receive a commission in connection with its rendition of services for each sale of a one bedroom unit, two bedroom unit, three bedroom unit, four bedroom unit, or half week accompanied by a ten percent (10%) minimum down payment. The amount of commissions due to Employee hereunder will range from 6% to 11% based upon Employee's VPG average which shall be computed as set forth in Paragraph III below. Said commission schedule, as well as the manner in which commissions are determined, are subject to periodic review and adjustment by Employer, in its sole and absolute discretion.

III. DETERMINATION OF COMMISSION

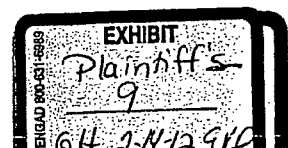
Commissions due to Employee hereunder shall be computed in the following manner:

A. Upon hiring, Employee shall receive a starting commission, in addition to the Base Compensation, based upon a Volume Per Guest (VPG) average. As used herein, Employee's VPG average shall be computed by dividing, on a monthly basis, the total net sales volume achieved by Employee by the number of tours given (i.e. 100,000 total net sales volume divided by 100 tours equals 1,000 VPG). The VPG average shall be computed monthly based on Employee's total net sales volume for the previous (4) four month divided by the number of tours during such period. The commission due to Employee for a given sale shall be based on Employee's VPG average during the month in which the sale was made.

IV. LEASE PROGRAM

A. Employee shall receive a \$40.00 commission for each full down, full week Vacation Occupancy Agreement (hereinafter "VOA") procured.

B. Employee shall receive 6% commissions on any VOA procured by Employee which is converted to a sale prior to the week being used by the customer less any monies paid to any leasing agents in connection with such sale.



C. Any VOA's procured by Employee shall be used in computing Employee's volume in connection with the computation of Employee's VPG; however, said VOA shall not be used in connection with the computation Employee's Net Closing Percentage.

V. MODIFICATION OF TERMS OF EMPLOYMENT

The terms of this Exhibit "A" shall be effective with respect to any sales, and commissions paid on such sales, prior to the date hereof and during the term of this Agreement. Notwithstanding the foregoing, Employee expressly acknowledges and agrees that the terms and conditions of this Exhibit "A", including but not limited to the Base Compensation and commissions set forth herein, shall be subject to periodic review, adjustment and modification as determined by Employer in its sole discretion and any changes, modifications or adjustments to same shall be effective upon notice to Employee without further modification to this Agreement.

VI. CHARGE BACK ON CANCELED DEALS

A. During the term that Employee is engaged by Employer, no sales originated by Employee for which Employee has been paid a commission will be subject to charge back except as otherwise set forth herein.

B. In the event Employee is no longer engaged by Employer, irrespective of the reason for the termination of engagement, Employee shall be charged back for all sales upon which commissions have been paid in the event the purchaser(s) has/have not made six (6) timely and consecutive monthly payments as well as the ten percent (10%) minimum down payment.

VII. RESERVE

As security for Employee's liability for charge backs, a reserve account will be established in the amount of \$3,500. Ten percent (10%) of commission due on each sale will be retained by Employer to establish and maintain the reserve fund. At such time as Employee is no longer engaged by the Employer for any reason whatsoever, the funds remaining in the reserve account will be reimbursed to the Employee only after the Employer has determined that six (6) consecutive and timely monthly payments have been made on each sale made by Employee for which Employee has been paid a commission.

VIII. MISCELLANEOUS.

A. Line Rules. Employee Reps must follow all line rules, codes of conduct and other policies and/or procedures established by Employer from time to time.

B. At-Will Status. Employees are "at-will" employees and are not guaranteed employment for any specific period of time. Either you, or the Employer, may discontinue the employment relationship at any time, with or without cause; however, such termination shall not release you from the continuing obligations set forth in the Employment Agreement to which this Exhibit "A" is attached.

C. Performance Standards. Employee must meet or exceed the minimum performance standards for their position as established by the Employer. Failure to maintain these standards may result in termination, forfeiture or return of commissions, forfeiture of Sales Volume, chargebacks for damages, costs or expenses incurred by the Employer, and/or other remedial measures.

D. Payroll. No commission or bonus described herein shall be earned at the time of sale but shall be deemed earned only after there exists a Qualified Sale and all applicable rescission periods have expired. Commissions may be advanced on a weekly basis in accordance with the Employer's standard payroll practices.

E. Indemnity. By affixing your signature to the Letter or this Exhibit you hereby agree to indemnify, defend and hold the Employer harmless for all damages, costs and expenses (including attorney's fees) it incurs in connection with your breach of Employer policies, procedures, line-rules, those documents or any misrepresentation made by you.

F. Terms. Capitalized terms used herein shall have the meaning ascribed by the Employer unless context otherwise dictates.

Print Name: Sherida Singletta

G:\ROB\CFI\GEN2\US&MAGT\New-Exist Sales\Myrtle Beach\ExA Myrtle Beach 5-23-05 FINAL.doc

INDIVIDUAL SALES PERSON

Page: 1

Date: 09/28/2009

Date Range: 04/28/2002 - 09/28/2009

Resort: ALL

Sales Dept: ALL

Tour Line: ALL

Team: ALL

Marketing Division: ALL

Role: Representative

Employee: 37733

Report Data: All Written Deals

Include VOAs: YES

ALL Volumes: YES

Resc Cancels Only: YES

37733 - Thoni, Steve

Payroll: Salary Plus Commission

Primary Resort: 28

Contract #	Date	Cust Id	Name	Purchase \$	Type	Gross Vol	Resc Vol	Net Vol	Cancel	Sale	Full Down	Status	Resort
9079053	06/16/2008	3741279	Jones, Charlotte	\$595.00	N	\$595.00	\$0.00	\$595.00	N	V	N	G	Myrtle Beach
9079260	06/17/2008	3743884	Pierce, David	\$395.00	N	\$395.00	\$0.00	\$395.00	N	V	N	G	Myrtle Beach
9080152	08/23/2008	3754473	Onley, John	\$995.00	N	\$995.00	\$0.00	\$995.00	N	V	N	G	Myrtle Beach
9081128	06/29/2008	3766642	Butler, Jessica	\$1,295.00	N	\$1,295.00	\$0.00	\$1,295.00	N	V	N	G	Myrtle Beach
9081418	07/01/2008	3771079	Barker, Melissa	\$795.00	N	\$795.00	\$0.00	\$795.00	N	V	N	G	Myrtle Beach
9082397	07/06/2008	3779818	Richardson, Tracy	\$995.00	N	\$995.00	\$0.00	\$995.00	N	V	N	G	Myrtle Beach
9083927	07/14/2008	3796931	Gilchrist, Richard	\$995.00	N	\$995.00	\$0.00	\$995.00	N	V	N	P	Myrtle Beach
9087037	08/01/2008	3831944	Williams, Eric	\$1,295.00	N	\$1,295.00	\$0.00	\$1,295.00	N	V	N	G	Myrtle Beach
9087271	08/02/2008	3833665	Hamilton, George	\$495.00	N	\$495.00	\$0.00	\$495.00	N	V	Y	G	Myrtle Beach
9089847	08/16/2008	3860036	Harbeck, Paul	\$795.00	N	\$795.00	\$0.00	\$795.00	N	V	Y	G	Myrtle Beach
9091510	08/31/2008	3879352	Craig, Larry	\$495.00	N	\$495.00	\$0.00	\$495.00	N	V	Y	G	Myrtle Beach
2800907328	06/09/2008	3729203	Kerns, Michael	\$6,000.00	N	\$6,000.00	\$0.00	\$6,000.00	N	Y	N	G	Myrtle Beach
2800924128	06/18/2008	3745522	Henson, Arlineus	\$9,900.00	N	\$9,900.00	\$0.00	\$9,900.00	N	Y	N	G	Myrtle Beach
2800931928	06/22/2008	3752777	Smith, Tracie	\$21,000.00	N	\$21,000.00	\$0.00	\$21,000.00	Y	Y	N	P	Myrtle Beach
2800939128	06/26/2008	3761070	Lasco, Greg	\$16,900.00	N	\$16,900.00	\$0.00	\$16,900.00	N	Y	Y	G	Myrtle Beach
2800943228	06/28/2008	3765062	Lee, Thomas	\$6,000.00	N	\$6,000.00	\$0.00	\$6,000.00	Y	Y	N	P	Myrtle Beach
2800949128	06/30/2008	3768194	Pearson, Kimberly	\$16,900.00	N	\$16,900.00	\$0.00	\$16,900.00	N	Y	Y	G	Myrtle Beach
2800952428	07/01/2008	3771408	Pappu, Venkata	\$16,000.00	N	\$16,000.00	\$0.00	\$16,000.00	N	Y	Y	G	Myrtle Beach
2800954728	07/02/2008	3773728	White, Regina	\$7,000.00	N	\$7,000.00	\$0.00	\$7,000.00	N	Y	Y	G	Myrtle Beach
2800956128	07/03/2008	3775337	Klais, Kevin	\$11,000.00	N	\$11,000.00	\$0.00	\$11,000.00	N	Y	Y	G	Myrtle Beach
2800965928	07/06/2008	3780466	Dunham, Lawrence	\$9,900.00	N	\$9,900.00	\$0.00	\$9,900.00	Y	Y	N	P	Myrtle Beach
2800973228	07/08/2008	3784217	Neighbours, Kenny	\$7,000.00	N	\$7,000.00	\$0.00	\$7,000.00	Y	Y	N	P	Myrtle Beach
2801006828	07/21/2008	3810574	Clem, Joel	\$14,900.00	N	\$14,900.00	\$0.00	\$14,900.00	N	Y	N	G	Myrtle Beach
2801064428	08/16/2008	3857189	Williamson, Jonathan	\$10,200.00	N	\$10,200.00	\$0.00	\$10,200.00	N	Y	N	G	Myrtle Beach
2801073028	08/19/2008	3861070	Hubbell, Joshua	\$10,200.00	N	\$10,200.00	\$0.00	\$10,200.00	N	Y	N	G	Myrtle Beach
2801081728	08/24/2008	3868166	Locklear, Mark	\$10,200.00	N	\$10,200.00	\$0.00	\$10,200.00	Y	Y	Y	G	Myrtle Beach

Tours	Sales	Rescissions	Net Sales	Purchase Volume	Gross Volume	Resc Volume	Net Volume	Closing%	VPG	Cancel%	Net Closing%	Net VPG
77	15	0	15	\$182,245.00	\$182,245.00	\$0.00	\$182,245.00	19%	\$2,366.82	0%	19%	\$2,366.82

INDIVIDUAL SALES PERSON

COURT'S

EXHIBIT NO. 3
IDENTIFICATION/EVIDENCE

DKT.#

DATE:

Printed By: MAYSONEM

INDIVIDUAL SALES PERSON

Page: 2
Date: 09/28/2009

Summary

Hours	Sales	Rescissions	Net Sales	Purchase Volume	Gross Volume	Resc Volume	Net Volume	Closing%	VPG	Cancel %	Net Closing%	Net VPG
77	15	0	15	\$182,245.00	\$182,245.00	\$0.00	\$182,245.00	19%	\$2,366.82	0%	19%	\$2,366.82

1169

INDIVIDUAL SALES PERSON

Printed By: MAYSONEM

Date 6-9-08

DAYLINE PROPOSAL

Office Use ONLY '08 JUN 9 2:36PM

Site Origin 28

CUST ID #

ACCOUNT # 07800907328

Language Preference: ENGLISH ☒ SPANISH ☐

MARITAL STATUS: M VESTING CODE: _____

PURCHASER(S)

First Michael M.I. R Last Kerns S.S.# [REDACTED] D.O.B. [REDACTED]

First Roxann M.I. - Last Kerns S.S.# [REDACTED] D.O.B. [REDACTED]

First _____ M.I. _____ Last _____ S.S.# _____ D.O.B. _____

First _____ M.I. _____ Last _____ S.S.# _____ D.O.B. _____

Address P.O. Box 451

City Wapetown State IN Zip/Postal Code 47790 Country USA

E-Mail _____ E-Mail _____

Home PH# N/A Work PH# () _____

Cell PH#1 () 765-376-7844 Cell PH#2 () 765-376-6930

Resort WGMB

Ownership Type Value Bldg 2000 Villa 93B Week 6

First Available Occupancy 2011 Whole ☐ Even ☐ Odd ☒

Villa Size 1350 Check In Day _____ Tour _____ Media _____

PURCHASE TERMS (U.S. FUNDS)

1. PURCHASE PRICE OF VILLA \$ 6,000 EOX

DP% 10 ANNUAL % RATE 18.99 # OF YEARS FINANCED 10 years P.P.

2. DOWN PAYMENT \$ 600

3. CLOSING COST (3% PLUS \$51.00 PROCESSING/RECORDING FEES) \$ 288 PD

4. INTERVAL INTERNATIONAL DUES (ANNUAL) \$ 184

TOTAL 2+3+4 \$ 684

EQUITY APPLIED TO DP # _____ \$ _____

AMOUNT RECEIVED THIS DATE \$ _____

BALANCE OF PURCHASE PRICE \$ 5400

MONTHLY PAYMENT \$ 108

(INCLUDING MORTGAGE PROTECTION)

1st PAYMENT DUE DATE 10, 9, 08

AUTO DEBIT: MTG: CC ☒ or Voided CK ☐

M/T: CC ☐ or Voided CK ☐

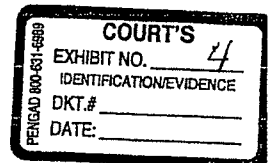
MORTGAGE PROTECTION:

Single ☒ Joint ☐ IUI ☐

MED / AGE / CSH / DCL

MAINTENANCE FEE \$ 429 EOX

REAL ESTATE TAXES \$ 42 2011



PLEASE MAKE ALL CHECKS PAYABLE TO GREENSPOON & MARDER, P.A. - ESCROW A/C - CFI WESTGATE

PURCHASER APPROVAL [Signature] PURCHASER APPROVAL _____

PURCHASER APPROVAL [Signature] PURCHASER APPROVAL _____

MANAGER # Brian 23234 REPRESENTATIVE # Steve Thoni CLOSING OFFICER # _____

OPTION LETTERS (see attached) ☒ PAGER / CELL # _____

13GR EY #200 Red-ACC \$17,400

WSVV-47650

6-9-10 13R

Date 06/28/08
Site Origin 28

DAYLINE PROPOSAL

Office Use Only 08 JUN 28 1:22PM

CUST ID #

ACCOUNT # 2802 943498

Language Preference: ENGLISH ☒ SPANISH ☐

PURCHASER(S)

First Thomas M.I. E Last Lee

First Joni M.I. M Last Lee

First _____ M.I. _____ Last _____

First _____ M.I. _____ Last _____

Address 1907 Russell Court

City Dillon

State SC

Zip/Postal Code 29536 County Dillon

E-Mail

E-Mail

Home P/H #

Cell P/H #1 (813) 632-2565

Work P/H # (813) 676-2400

Cell P/H #2 (910) 263-0295

Resort

Ownership Type

First Available Occupancy

Villa Size

Value
2010
16dr 8t

Units	<u>2000</u>	Villa	<u>32 B</u>	Work	<u>2</u>
Whole	☐	Level	☒	Unit	<u>1</u>
Lot		Media			

PURCHASE TERMS (U.S. FUNDS)

1. PURCHASE PRICE OF VILLA 60000
DP% 10 ANNUAL % RATE 18.99 # OF YEARS FINANCED 10
2. DOWN PAYMENT 6000
3. CLOSING COST (3% PLUS \$51.00 PROCESSING/RECORDING FEES) PO
4. INTERVAL INTERNATIONAL DUES (ANNUAL) 84
TOTAL 2+3+4 684
EQUITY APPLIED TO DP # _____
AMOUNT RECEIVED THIS DATE 50/50
BALANCE OF PURCHASE PRICE 5400

MONTHLY PAYMENT 1060

(INCLUDING MORTGAGE PROTECTION)

1ST PAYMENT DUE DATE 07, 28, 08

AUTO DEBIT

MTG CC ☒ or Voided CK ☐

MT CC ☒ or Voided CK ☐

MORTGAGE PROTECTION

Single ☒ Joint ☐ Jlt ☐

MED/AGE/ACB/DCI

MAINTENANCE FEE

REAL ESTATE TAXES

429-2010
42

50 TODAY
50 7-5
146 7-30
146 8-30
146 9-30
146 10-20

PLEASE MAKE ALL CHECKS PAYABLE TO GREENSPON & MARDER, PA 13000 WARD LEE WESTGATE

PURCHASER APPROVAL

PURCHASER APPROVAL

PURCHASER APPROVAL

PURCHASER APPROVAL

Tom E Lee
Joni M Lee

PURCHASER APPROVAL

PURCHASER APPROVAL

PURCHASER APPROVAL

PURCHASER APPROVAL

REPRESENTATIVE STEVE TROMP
37733

STEVE T. 37733

Date 7-7-08

DAYLINE PROPOSAL

Site Origin 28

NEW OWNERS

Office Use ONLY

CUST ID #

'08 JUL 6 7:37PM

ACCOUNT # 2800965925

Language Preference:

ENGLISH ☒

SPANISH ☐

PURCHASER(S)

MARITAL STATUS: M

VESTING CODE: 3-01

First Lawrence M.I. J Last Dunham SS # [REDACTED]

DOB [REDACTED]

First Felicia M.I. L Last Dunham SS # [REDACTED]

DOB [REDACTED]

First M.I. Last SS #

DOB

First M.I. Last SS #

DOB

Address 226 Curnewood

City Columbia

State SC

Zip/Postal Code 29229

Country USA

E-Mail candy9822@yahoo.com

E-Mail lawrencedunham@hotmail.com

Home PH# (803) 865-7855

Work PH# ()

Cell PH#1 (803) 338-1829 Lawrence

Cell PH#2 (803) 338-1827 Felicia

Resort MB

Ownership Type Select

Bldg 2000

Villa 144A

Work 9

First Available Occupancy 2011

Whole ☐

Even ☐

Odd ☒

Villa Size 1 Grand

Check In Day

Tour

Media

PURCHASE TERMS (U.S. FUNDS)

1. PURCHASE PRICE OF VILLA 9900

DP% 10 ANNUAL % RATE 18

OF YEARS FINANCED 10

2. DOWN PAYMENT 1000

3. CLOSING COST (3% PLUS \$51.00 PROCESSING/RECORDING FEES) 84

4. INTERVAL INTERNATIONAL DUES (ANNUAL) 1084

TOTAL 2+3+4 1084

EQUITY APPLIED TO DP #

AMOUNT RECEIVED THIS DATE 8,900

BALANCE OF PURCHASE PRICE 16700

MONTHLY PAYMENT \$ 16700
(INCLUDING MORTGAGE PROTECTION)

1st PAYMENT DUE DATE 11.1.08

AUTO DEBIT:

MTG. CC ☒ or Voided CK ☐
M/T CC ☒ or Voided CK ☐

MORTGAGE PROTECTION:

Single ☐ Joint ☐ JUI ☐

MED / AGE / CSH / DCL 469

MAINTENANCE FEE 48

REAL ESTATE TAXES 2011

PLEASE MAKE ALL CHECKS PAYABLE TO GREENSPOON & MARDER, P.A. - ESCROW A/C - CFI WESTGATE

PURCHASER APPROVAL [Signature]

PURCHASER APPROVAL

PURCHASER APPROVAL [Signature]

PURCHASER APPROVAL

MANAGER # 36321

REPRESENTATIVE # STEVE THONI 37733

CLOSING OFFICER #

OPTION LETTERS (see attached) ☒

PAGER / CELL #

WGV-47650

Date 7-8-08
 Site Origin 2B
 CUST ID # _____
 ACCOUNT # 2500973228
 Language Preference ☒ ENGLISH ☐ SPANISH
 PURCHASER'S NAME KENNY MI NEIGHBOURS SS # _____
JERRI MI E LAST NEIGHBOURS SS # _____
 ADDRESS 3507 FORREST AVE
EFLAND State NC Zip/Postal Code 27243 Country US
 E-Mail Jerrifaye@aol.com E-Mail _____
 Home P# 919 241-3400 Work P# 800 227-7327
 Cell P# 919 201-1983 Cell P#2 _____
 City Myrtle Beach
 Duration Time Select Red Play
 First Purchase Occurred 2011
 Ex. S# 180 500 Check in Day _____ Tour _____ Media _____

PURCHASE TERMS (U.S. FUNDS)

1 PURCHASE PRICE OF VILLA \$ 7000
 DP% 10 ANNUAL % RATE 8.99 # OF YEARS FINANCED 10 YRS
 2 DOWN PAYMENT \$ 700
 3 CLOSING COST (3% PLUS \$51.00 PROCESSING/RECORDING FEES) \$ 84
 4 INTERVAL INTERNATIONAL DUES (ANNUAL) \$ 784
 TOTAL 2-3-4 \$ 1500
 EQUITY APPLIED TO DP \$ _____
 AMOUNT RECEIVED THIS DATE \$ _____
 BALANCE OF PURCHASE PRICE \$ 6300

MONTHLY PAYMENT \$ 128.
 (INCLUDING MORTGAGE PROTECTION)
 1st PAYMENT DUE DATE 8, 8, 08
 AUTO DEBIT: MTG CC ☒ or Voided CK ☐
 M/T CC ☒ or Voided CK ☐

MORTGAGE PROTECTION:

Single ☒ Joint ☐ IUI ☒
 MED / AGE / CSH / DCL
 MAINTENANCE FEE \$ 429
 REAL ESTATE TAXES \$ 42

PLEASE MAKE ALL CHECKS PAYABLE TO GREENSPOON & MARDER, P.A. - ESCROW A/C - CFI WESTGATE

PURCHASER APPROVAL [Signature] PURCHASER APPROVAL _____
 PURCHASER APPROVAL [Signature] PURCHASER APPROVAL _____
 MANAGER [Signature] REPRESENTATIVE STEVE THOMAS 37733 CLOSING OFFICER # _____
 OPTION LETTERS (see attached) ☒ PAGER - CELL # _____

*May Change to a different card!

Date 7/21/08

Site Origin 28

DAYLINE PROPOSAL

NEW OWNERS

Office Use ONLY

CUST ID #

ACCOUNT # 2601006828

'08 JUL 21

2:22p

Language Preference: ENGLISH ☒ SPANISH ☐

PURCHASER(S)

MARITAL STATUS: M

VESTING CODE: 3-1

First Joel M.I. A Last Clem

S.S.#

D.O.B.

First Donna M.I. A Last Clem

S.S.#

D.O.B.

First _____ M.I. _____ Last _____

S.S.#

D.O.B.

First _____ M.I. _____ Last _____

S.S.#

D.O.B.

Address 3036 Sugar Camp RD

City Covington

State LA

Zip/Postal Code 70117

Country US

E-Mail clem.donna@yahoo.com

E-Mail #

Home PH# (859) 307-8565

Work PH# ()

Cell PH#1 (859) 307-8567

Cell PH#2 ()

Resort Myrtle Beach

Ownership Type

All Redflex

Bldg 2000

Villa 71A

Week 30

Whole ☐

Even ☒

Odd ☐

First Available Occupancy

2010

Villa Size

1 BDR

Check In Day

Tour

Media

All Red

PURCHASE TERMS (U.S. FUNDS)

1. PURCHASE PRICE OF VILLA

DP% 10 ANNUAL % RATE 18.75

OF YEARS FINANCED 10yr

2. DOWN PAYMENT

3. CLOSING COST (3% PLUS \$51.00 PROCESSING/RECORDING FEES)

4. INTERVAL INTERNATIONAL DUES (ANNUAL)

TOTAL 2+3+4

EQUITY APPLIED TO DP #

AMOUNT RECEIVED THIS DATE

BALANCE OF PURCHASE PRICE

MONTHLY PAYMENT \$

(INCLUDING MORTGAGE PROTECTION)

1st PAYMENT DUE DATE

AUTO DEBIT:

MTG: CC ☒ or Voided CK ☐

MT: CC ☒ or Voided CK ☐

MORTGAGE PROTECTION:

Single ☒ Joint ☐ IUI ☐

MED / AGE / CSH / DCL

MAINTENANCE FEE

REAL ESTATE TAXES

PLEASE MAKE ALL CHECKS PAYABLE TO GREENSPOON & MARDER, P.A. - ESCROW A/C - CFI WESTGATE

PURCHASER APPROVAL

Donna Clem

PURCHASER APPROVAL

PURCHASER APPROVAL

Joel A Clem

PURCHASER APPROVAL

MANAGER

23235

REPRESENTATIVE #

STEVE T. 37733

CLOSING OFFICER #

OPTION LETTERS (see attached)

☒ PAGER / CELL #

WGVV-47650

Date 8/16/08

DAYLINE PROPOSAL

Site Origin 28

Office Use ONLY

'08 AUG 16

1:00

CUST ID #

ACCOUNT #

Language Preference: ENGLISH ☒ SPANISH ☐

MARITAL STATUS: M

VESTING CODE: _____

PURCHASER(S)

First Jonathan M.I. D Last Williamson S.S.# [REDACTED] D.O.B. [REDACTED]

First _____ M.I. _____ Last _____ S.S.# _____ D.O.B. _____

First _____ M.I. _____ Last _____ S.S.# _____ D.O.B. _____

First _____ M.I. _____ Last _____ S.S.# _____ D.O.B. _____

Address 923 Windcastle Ln. #105

City Winston Salem State NC Zip/Postal Code 27105 Country USA

E-Mail jdsmith@yahoo.com E-Mail _____

Home PH# (336) 744-1276 Work PH# (336) 774-3603

Cell PH#1 (336) 577-0310 Cell PH#2 () _____

Resort WGSMB

Ownership Type Red-Select

First Available Occupancy 2010

Villa Size 1BGR Check in Day _____ Tour _____ Media _____

PURCHASE TERMS (U.S. FUNDS)

1. PURCHASE PRICE OF VILLA \$ 10,200

DP% 10 ANNUAL % RATE 8.99 # OF YEARS FINANCED 10yrs N.P.D.

2. DOWN PAYMENT \$ 1100

3. CLOSING COST (3% PLUS \$51.00 PROCESSING/RECORDING FEES) \$ 303 PD

4. INTERVAL INTERNATIONAL DUES (ANNUAL) \$ 89

TOTAL 2+3+4 \$ 1184

EQUITY APPLIED TO DP # _____ \$ _____

AMOUNT RECEIVED THIS DATE \$ 204

BALANCE OF PURCHASE PRICE \$ 9100

MONTHLY PAYMENT \$ 183

(INCLUDING MORTGAGE PROTECTION)

1st PAYMENT DUE DATE 12.1.08

AUTO DEBIT:

MTG: CC ☒ or Voided CK ☐

M/T: CC ☒ or Voided CK ☐

MORTGAGE PROTECTION:

Single ☒ Joint ☐ IUI ☐

MED / AGE / CSH / DCL

MAINTENANCE FEE \$ 469

REAL ESTATE TAXES \$ 48

PLEASE MAKE ALL CHECKS PAYABLE TO GREENSPOON & MARDER, P.A. - ESCROW A/C - CFI WESTGATE

PURCHASER APPROVAL [Signature] PURCHASER APPROVAL _____

PURCHASER APPROVAL [Signature] PURCHASER APPROVAL _____

MANAGER # BRIAN 23234 REPRESENTATIVE # STEVE 37733 CLOSING OFFICER # _____

OPTION LETTERS (see attached) ☐ PAGER / CELL # _____

\$6700 1BGR of Red-select #2000
12.1.08

1175

WGW-47650

NEW OWNERS

DAYLINE PROPOSAL

Date 6-22-08

Site Origin 28

Office Use ONLY

CUST ID #

ACCOUNT #

Language Preference:

ENGLISH ☒

SPANISH ☐

PURCHASER(S)

First Tracie M.I. L Last Smith S.S.#

First Craig M.I. L Last Lynch S.S.#

First M.I. Last S.S.#

First M.I. Last S.S.#

First M.I. Last S.S.#

First M.I. Last S.S.#

First M.I. Last S.S.#

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First M.I. Last S.S.#

First M.I. Last S.S.#

First M.I. Last S.S.#

First M.I. Last S.S.#

MARITAL STATUS:

VESTING CODE:

Address 1935 Oak Hollow Road

City Gastonia

State

NC

Zip/Postal Code

28054

Country

US

E-Mail

E-Mail

Home PH# (704) 860-0942

Work PH# (704) 383-3177 (Trade)

Cell PH#1 (704) 923-9773

Cell PH#2 ()

Resort Mt. Airy

Ownership Type Full

First Available Occupancy 2010

Villa Size 2/1 Standard

Bldg

2000

Villa

55C

Week

23

Whole

☐

Even

☐

Odd

☒

Tour

Media

PURCHASE TERMS (U.S. FUNDS)

1. PURCHASE PRICE OF VILLA \$ 21,000

DP% 10 ANNUAL % RATE 18.9 # OF YEARS FINANCED 10

2. DOWN PAYMENT \$ 2100

3. CLOSING COST (3% PLUS \$51.00 PROCESSING/RECORDING FEES) \$ 870

4. INTERVAL INTERNATIONAL DUES (ANNUAL) \$ 89

TOTAL 2+3+4 \$ 2189

EQUITY APPLIED TO DP # \$

AMOUNT RECEIVED THIS DATE \$

BALANCE OF PURCHASE PRICE \$ 18,900

MONTHLY PAYMENT

(INCLUDING MORTGAGE PROTECTION)

1st PAYMENT DUE DATE

7-28-08

AUTO DEBIT:

MTG: CC ☒ or Voided CK ☐

M/T: CC ☐ or Voided CK ☐

MORTGAGE PROTECTION:

Single ☒ Joint ☐ JUI ☐

MED / AGE / CSH / DCL

MAINTENANCE FEE \$

579

REAL ESTATE TAXES \$

88

PLEASE MAKE ALL CHECKS PAYABLE TO GREENSPOON & MARDER, P.A. - ESCROW A/C - CFI WESTGATE

PURCHASER APPROVAL

PURCHASER APPROVAL

PURCHASER APPROVAL

PURCHASER APPROVAL

MANAGER #

12355

REPRESENTATIVE #

Steve Flinn

CLOSING OFFICER #

OPTION LETTERS (see attached)

☐

PAGER / CELL #

37733

WGVV-47650

Until 12/13/08 the option for other villa 1290
20 days notice

Date 6/18/08

DAYLINE PROPOSAL

Office Use ONLY

304

Site Origin 20

CUST ID #

ACCOUNT #

Language Preference:

ENGLISH ☒

SPANISH ☐

PURCHASER(S)

First Artineus

M.I.

Last

Henson

First Welma

M.I.

Last

Henson

First

M.I.

Last

First

M.I.

Last

Address 374 Day Hollow RD

City Elkfork

State Ky

Zip/Postal Code

41421

Country

USA

E-Mail

E-Mail

Home PH# (606) 522-416108

Work PH# (606) 743-3846

Welma wave

Cell PH#1 (606) 356-7097

Cell PH#2 ()

Resort Myrtle Beach

Ownership Type

ALL Red

First Available Occupancy

2011

Villa Size 1bedstd

Check In Day

Tour

Modin

PURCHASE TERMS (U.S. FUNDS)

1. PURCHASE PRICE OF VILLA

9,900

DP% 10 ANNUAL % RATE 18.75

OF YEARS FINANCED 10 years

2. DOWN PAYMENT

1000

3. CLOSING COST (3% PLUS \$51.00 PROCESSING/RECORDING FEES)

0

4. INTERVAL INTERNATIONAL DUES (ANNUAL)

84

TOTAL 2+3+4

1084

EQUITY APPLIED TO DP #

4,100

AMOUNT RECEIVED THIS DATE

200

BALANCE OF PURCHASE PRICE

8900

MONTHLY PAYMENT \$

1166

(INCLUDING MORTGAGE PROTECTION)

1st PAYMENT DUE DATE

10, 15, 08

AUTO DEBIT:

MTG. CC ☒ or Voided CK ☐

M/T. CC ☒ or Voided CK ☐

MORTGAGE PROTECTION:

Single ☐

Joint ☐

III ☐

MED / AGE / CSH / DCL

MAINTENANCE FEE

429

REAL ESTATE TAXES

42

221 7/1/08

221 8/1/08

221 9/1/08

221 10/1/08

2011

PLEASE MAKE ALL CHECKS PAYABLE TO GREENSPOON & MARDER, P.A. - ESCROW A/C - CFI WESTGATE

PURCHASER APPROVAL

Artineus Henson

PURCHASER APPROVAL

PURCHASER APPROVAL

Welma T Henson

PURCHASER APPROVAL

MANAGER #

13032 Ardie

REPRESENTATIVE #

37733 Steve

CLOSING OFFICER #

OPTION LETTERS (see attached)

☐

PAGER / CELL #

WGVV-47650

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	2009-CP-26-43
Timothy A. Zinn, et al.,)	
Plaintiffs,)	Transcript of Record
vs.)	Testimony of
CFI Sales and Marketing,)	Lynn Lanpher
Ltd., et al.,)	February 14, 2012
Defendants.)	

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S :

Gene M. Connell, Jr., Esquire
David Canty, Esquire
Attorneys for Plaintiffs

John S. Wilkerson, III, Esquire
Richard W. Epstein, Esquire
Myrna Maysonet, Esquire
Attorneys for Defendants

Grace L. Hurley, CVR-CM
Circuit Court Reporter

1 Whereupon, Lynn Lanpher was called to the stand, duly
2 sworn by the clerk and testified as follows:

3 THE CLERK: State your name for the Court, please,
4 ma'am, and spell your last name.

5 MS. LANPHER: Lynn Lanpher, L-A-N-P-H-E-R.

6 DIRECT EXAMINATION

7 BY MR. CONNELL:

8 Q Okay, Lynn, tell me if you would, please, what you do for
9 a living now.

10 A I am a benefits enroller, which is insurance.

11 Q Okay, tell me if you would, please, where you live.

12 A I live in Surfside Beach, South Carolina.

13 Q Okay, how long have you been living in Surfside?

14 A 24 years.

15 Q Okay, and tell me if you would, please, where you came
16 here from.

17 A Green Bay, Wisconsin.

18 Q Okay, and when did you move here from Green Bay,
19 Wisconsin?

20 A The year before Hugo.

21 Q Okay, and what kind of work did you do prior to working
22 at Westgate?

23 A I'm esthetician. I do skin care.

24 Q And when did you first come to work at Westgate?

25 A In April of 2008.

- 1 Q Okay.
- 2 A Bike week.
- 3 Q All right, and how long did you work at Westgate?
- 4 A Three months.
- 5 Q And what was your contract - what was your arrangement
- 6 for how you were going to be paid?
- 7 A Ten percent on your sales and minimum wage hourly.
- 8 Q Okay, and what department did you work at?
- 9 A I worked the front line.
- 10 Q Okay.
- 11 A Sales.
- 12 Q And how long did you work the front line?
- 13 A For those three months and after that I also went to OPC.
- 14 They had told me also I was slowing down and the lines would
- 15 be cut. So, they said in order for me to receive my penders I
- 16 would go to the front, OPC.
- 17 Q Okay, and have you - did you sign an - did you sign a
- 18 contract with them?
- 19 A Yes.
- 20 Q And were you given notice in advance that there would be
- 21 changes in the employment contract?
- 22 A No.
- 23 Q Okay, and were you told that all wages would be paid
- 24 within 30 days of separation of the company in leaving, being
- 25 terminated or quitting?

- 1 A As long as the down payments had been due, yes, yes.
- 2 Q Okay, did you, did you get paid all wages that were due
- 3 within 30 days of separation from the company?
- 4 A No, no.
- 5 Q Okay, and does the contract provide that the Defendant is
- 6 to pay all wages within 30 days?
- 7 A I am not sure on that.
- 8 Q Okay.
- 9 A Our contract was quite thick and we were not given time
- 10 to go over that.
- 11 Q Okay, is - do you think the Defendant complied with the
- 12 contract?
- 13 A No.
- 14 Q All right, tell me why.
- 15 A I have not received commissions due and when I did
- 16 receive commissions while I was still at work, Doug Boykin
- 17 would hand out our pay stubs. I was - I received mine by
- 18 direct deposit. After it did get busy, we were working during
- 19 bike week and then black bike week after that. There were no
- 20 names listed. We didn't get those. He said he'd get them to
- 21 us eventually. We never did get them. So, I don't actually
- 22 know other than three sheets of paper who I was actually paid
- 23 on and who I was not.
- 24 Q Okay.
- 25 A I have a few names. You have those in your file.

1 Q All right, how are you able to determine how much you're
2 owed?

3 A I went by the number of sales that I did do.

4 Q Okay.

5 A I knew that I was to receive ten percent on the sales. I
6 knew that I was supposed to receive \$40 on the VOAs, which is
7 a vacation package that we sold if they did not buy timeshare
8 itself and I totaled those up. I took my W-2 forms from 2008
9 and 2009 and put the two together and saw what I did not get.
10 That was the only way that I could do it.

11 Q Okay, let me - let's take you back now. You took your W-
12 2s and your what now?

13 A My W-2s that and also the final pay stub. It is listed.
14 You'll see that commission is stated there, but it does not
15 have names of who you were paid on.

16 Q Okay, and so, what number did you come up with?

17 A \$13,695.

18 Q All right, come down here, put that on this board,
19 please, ma'am. Come down here and write that on this board if
20 you would.

21 A (Complies with request.)

22 MR. CONNELL: Okay, Your Honor, the witness has written
23 down \$13,695.

24 THE COURT: All right.

25 BY MR. CONNELL:

1 Q All right, if you would kind of take me through how this
2 number comes to be 13,695.

3 A I sold \$224,030 of sales. The commission on that when
4 you add those up would be \$21,610. In 2008, I was paid
5 commission of \$5,130 and in 2009 I was sent one check for
6 \$2500. That was in February and I left July 2008.

7 Q Okay, and so, take me down to how you got the rest of the
8 13,600 - is that how you did it?

9 A Right, I ---

10 Q Okay.

11 A --- from the \$21,610 commission due from those sales, I
12 took away the \$5,000 and also the 21 - 2500. Also, with my
13 final check, there was a letter from Connie Sharp that stated
14 that it was actually reserve, but if you look at the final pay
15 stub it said it was commission. So, I just subtracted it as
16 commission, but it - that's how they confused us.

17 Q Okay, when you say that's how they confused us, what do
18 you mean by that?

19 A Well, they ---

20 MR. WILKERSON: Objection, Your Honor. She's testifying
21 about a document that's not in evidence. Can, can we require
22 that they show us that document?

23 THE COURT: All right, motion's overruled. Let's go
24 ahead.

25 Q Okay, all right.

1 THE COURT: I mean, show it to them. Yeah, show it to
2 them. I thought he was moving it into evidence. He'll be
3 able to look at what he - she's testifying to.
4 MR. CONNELL: Okay.
5 MR. WILKERSON: Thank you.
6 MR. CONNELL: Yes, sir.
7 BY MR. CONNELL:
8 Q Okay, you said, "That's how they confused us." What did
9 you mean by that?
10 A Well, when we did receive - I received my checks direct
11 deposit and you would go to Doug and would like to know who
12 you actually got paid for so that you could keep a record. He
13 would say he'd get it to us but he didn't. He was too busy.
14 Q Okay, so, you were, you were trying to keep records of
15 who you've been paid for, who you hadn't.
16 A Right.
17 Q Is that right?
18 A Right, uh-huh.
19 Q And tell me who Doug Boykin is.
20 A His name is at the top of our pay. He, he was in
21 accounting, that's all I know.
22 Q His name was on - at the top of the paycheck?
23 A I believe so. I know his - I'm not actually sure.
24 Q Okay, he was an officer ---
25 A Right.

1 Q --- or manager of the company?

2 A He is who we went to talk to about our paychecks.

3 Q All right.

4 A Other than one time when I went to Colleen to talk to
5 her.

6 Q All right, and you say Colleen, is that the lady seated
7 over here?

8 A Yes, uh-huh.

9 Q What did you go to talk to her about?

10 A I received direct deposit and according to their records
11 a check had been deposited and my bank said that it had come,
12 but it had been sent back because there was a number of
13 mismatch ---

14 MR. WILKERSON: If Your Honor please objection, hearsay.

15 MR. CONNELL: Your Honor, it goes to - he's - she's
16 talking to the HR manager of the company about what's wrong
17 with her paycheck.

18 THE COURT: Yeah, but it's being offered for the truth
19 of the matter, I'll ---

20 A Right.

21 THE COURT: --- sustain the objection.

22 MR. CONNELL: Okay.

23 BY MR. CONNELL:

24 Q So, don't tell me about - if you would, don't tell me
25 about the part on the document you're talking about. Tell me

1 about your conversation with Colleen.

2 A Colleen in turn - it was a while before she got a hold of
3 Connie Sharp, I believe, and they sent back a memo saying that
4 that check had been included in my next check which was quite
5 confusing, that's actually Doug Boykin's work right there, but
6 anyway, I had to take their word.

7 Q Okay, all right, but it's your testimony that you're owed
8 how much?

9 A \$13,685.

10 Q All right, and was that paid to you when you left?

11 A \$95 - no, it was not.

12 Q Okay, did you have - have you had any other attempts to
13 try to contact ---

14 A I ---

15 Q --- Connie Sharp or anyone else in regard to the payment?

16 A I called her many times and most of the time you could
17 not get her on the phone. I would talk to other people. They
18 would say she'd call back. I talked to Connie Sharp a couple
19 of times and that is when I did receive the final check from
20 them which was \$2500 in February of 2009.

21 Q How many times do you think you called her?

22 A Probably 10 to 15 times.

23 Q Okay, were you able to read the - I didn't - don't know
24 if I asked you this, were you able to read the contract before
25 you signed it?

1 A No, no.

2 Q Tell me about that.

3 A Like I said, it was biker weekend and Colleen actually
4 came in, Frederick, our trainer, we were during a class. She
5 came in, handed out the contracts and she waited for them to
6 be passed down to the end of the aisle and we just had to sign
7 our names and were to receive a copy later.

8 Q All right, thank you ma'am. Answer any questions they
9 might have for you.

10 THE COURT: Cross-examination?

11 MS. MAYSONET: Yes, sir.

12 MR. CONNELL: Don't object to those.

13 MS. MAYSONET: Sir, I'm going to move to be admitted.

14 THE COURT: All right, those would be Defense Exhibits
15 11 and 12?

16 MS. MAYSONET: Yes, sir.

17 THE COURT: All right, Defendant's Exhibits 11 and 12
18 admitted into evidence without objection.

19 (Whereupon, Defendant's Exhibits 11 and 12 admitted into
20 evidence and appropriately marked.)

21 MS. MAYSONET: May I approach the witness, sir?

22 THE COURT: Yes, ma'am.

23 CROSS EXAMINATION

24 BY MS. MAYSONET:

25 Q Ma'am, I'm going to hand you what we have marked as

1 Defendant's Exhibit 11. I want you to take a look at it and
2 tell me whether that's your signature on this document named
3 Terms of Employment Notice.

4 A It is, but there's something marked out here in white. I
5 don't know.

6 Q I asked for your signature. Is that your signature?

7 A Yes, uh-huh.

8 Q May I see that back? I'm going to ask you to look at
9 this commission schedule and tell me whether that is your
10 signature affixed there on the third page.

11 A Yes, it is.

12 Q Thank you. Now, ma'am, the way the commission you
13 understood it and testified that was done was you earn a
14 commission on a deal that received a full down payment, which
15 was ten percent. Is that correct?

16 A Yes.

17 Q So, to earn a commission, you have to at least have the
18 ten percent down; is that correct?

19 A Yes.

20 Q Okay, and the other way - the other thing that had to
21 happen before a commission could get paid is that person
22 cannot cancel the contract within seven days, or, or the
23 rescission period. Is that correct?

24 A Yes.

25 Q Okay.

1 A Correct.

2 Q Now, you said that you're owed \$13,695.

3 A Yes.

4 Q Okay, and I'm a little confused about how you arrived at
5 this. You said that you looked at a W-2 form that - did I
6 hear you correctly?

7 A Yes.

8 Q The W-2 form is a form produced by CFI, right?

9 A Yes.

10 Q That contains all the wages.

11 A Right.

12 Q Okay, now, you said that you came up with a number and I
13 wrote it down, \$224,330; did I ---

14 A Yes.

15 Q Okay, how did you come up with that number?

16 A I have all my sales here.

17 Q Okay.

18 A And Gene has a copy of all my sales.

19 Q And those are documents that are - that belong to
20 Westgate, right, the sales, documents produced in the
21 business, in the course of business for Westgate, right?

22 A Yes, they're given to the salesperson after they're -
23 they go through deeding.

24 Q Okay, now, you said, if I understood you correctly, that
25 you added, that the total came to 224,330; is that correct?

1 A Yes.

2 Q Okay, and you, essentially you took ten percent of that;
3 right?

4 A No.

5 Q I'm sorry.

6 A No, no, no. I did put aside the VOAs, which were \$40 and
7 the other sales.

8 Q And let's talk about that a little bit because the jury
9 never worked in timeshare.

10 A Okay.

11 Q Okay. There - you sold timeshare; right?

12 A Yes.

13 Q You were selling the actual interest in the real estate,
14 the week; right?

15 A Yes, uh-huh.

16 Q Okay, and that usually is - ranges between, you know, one
17 bedroom to three bedroom, the bigger the bedroom, the better
18 the week, the higher the price; right?

19 A Correct.

20 Q Now, VOA is something different. You didn't sell VOAs;
21 right?

22 A No.

23 Q Okay, because the way it worked is the person wasn't
24 willing to purchase a timeshare they would be turned over to
25 somebody else who wasn't a sales rep; right?

1 A Right.

2 Q And they then - they would try to entice the person to -

3 a vacation ---

4 A Right.

5 Q --- essentially, right?

6 A Right.

7 Q And that's what a VOA is, vacation ownership - I forgot

8 what the A stands, but that's what it is; right?

9 A Uh-huh.

10 Q Okay.

11 A Correct.

12 Q So, that - you weren't in charge of selling that product;

13 right?

14 A No, but you did receive \$40 if it was sold because it

15 goes off of the things that you had talked to that.

16 Q So, when you turn over the person ---

17 A Right.

18 Q --- to the VOA agent and the agent actually sold a

19 vacation, which is something different than you were doing ---

20 A Right.

21 Q --- you received a \$40 commission; right?

22 A Right.

23 Q And that was it and there's no down payment, there's

24 nothing associated with that; right?

25 A Yes, there are down payments with that, yes.

1 Q I know, but you received the \$40 if they got a vacation?
2 A Right.
3 Q Okay.
4 A Uh-huh, uh-huh.
5 Q So, you're telling me that you - and that's what a VOA
6 is, which is different than what you were selling; right?
7 A Right.
8 Q Okay, and did you discount the VOAs that you received
9 from this total?
10 A The volume, the volume is totaled in our sales.
11 Q Okay, I understand that, but ---
12 A Okay, that's why I went there.
13 Q Now, what else did you look at to come up with the
14 \$13,695?
15 A Do you want to come over here for just a minute? I have
16 all my sales here and I went by the purchase price, 26-9. I
17 was to receive \$2,609 from that.
18 Q Okay, what - will you agree with me that you received
19 some wages and commissions. So, not every deal that you sold
20 was not paid; right?
21 A Right.
22 Q Okay.
23 A Correct.
24 Q And you agree with me that in order for you to be paid on
25 every deal there still has to be a down payment; right?

1 A Correct.

2 Q A full down payment and a cancellation; is that correct?

3 A Correct.

4 Q All right, I have no further questions. I thank you for
5 your time.

6 THE COURT: Redirect?

7 MR. CONNELL: Come down, ma'am.

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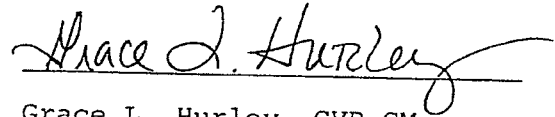
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25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the testimony of Lynn Lanpher held in the case of Timothy A. Zinn, et al. versus CFI Sales and Marketing Ltd, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on February 14, 2012.

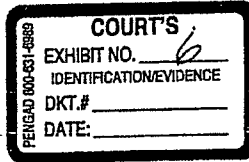
I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM

Official Reporter

February 16, 2012.



As we understood our instructions,
we are to ignore any payment
of commissions to the reserve
account prior to and including
1/29/10. Does this also include
the amount over 10% that should
have been paid to the employee
per the contract?

Please clarify - Thank you.

Debbie Monahan
Foreperson 2/17/12

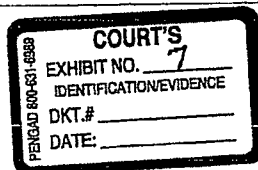
- Plaintiffs are not entitled to
judgment for commissions, if
any, that were placed in
the reserve account ~~on~~ or
prior to 1/29/2010, even if
the amount placed in the
reserve account exceeded the
10% specified in the contract.
Margaret Culbertson

We need clarification on the
charge made to us concerning
breach of contract, including
the reserve sections. Can we find
in favor of the plaintiff because of
breach of contract and award
\$0 in damages?

Deanne Monahan
Foreperson 2/17/12

No.

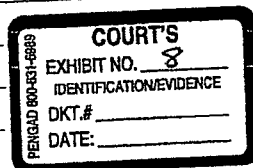
Margaret Culbertson



Can we award damages
to the plaintiffs other than
the amounts they requested?

In other words, is it only about
money they claim is owed to them?
(unpaid commissions)

Dennis McMahon
Ferguson
2/17/12



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Jr., Circuit Court Judge

Case No.: 2009-CP-26-0043

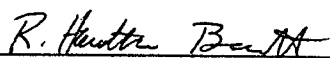
Timothy A. Zinn, Robert Adams, Laura Arrington,
Stephen C. Black, Bradley Kirk Bray, Mark D'Amico,
Thomas A. DeVitis, Rodney Eddie Haynes, Jimmy
Kelly, Whitney Renee Knox, Lynn C. Lanpher, Holly
Levasseur, John Martin Loughlin, Joe Maranville,
Khalif Middleton, Chelcie Oxentine, Judith A. Parker,
Matthew W. Reed, Cynthia G. Reilly, Gerald Ryba,
Sherry Singleton, Steven G. Thoni, Stratton Vitikos,
Michael H. Willis, and Michael J. Zanardo Respondents/Appellants,

v.

CFI Sales & Marketing, Ltd., d/b/a Westgate Resorts, ...Appellant/Respondent

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

Respectfully submitted,



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Turner Padgett Graham & Laney P.A.
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Attorneys for the Appellant/Respondent