

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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

VOLUME II OF III

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Index to Record on Appeal

VOLUME I OF III

Orders, Judgments and Decrees:

Form 4 Judgment in a Civil Case (Jury Verdict) dated June 5, 2012	001
Order of Hon. Benjamin H. Culbertson filed August 7, 2012	017
Order Denying Rule 59(e) motion filed September 27, 2012	024
Court of Appeals Order granting Motion to be Relieved as to Cynthia Reilly filed June 13, 2013	026

Pleadings:

Summons and Complaint filed January 5, 2009.....	028
Answer filed May 5, 2009.....	037
Supplemental Answer dated December 22, 2011	048
Defendant's Motion for Summary Judgment with attachments filed December 30, 2011	053
Plaintiffs' Motion and Memorandum in Support for New Trial, for Declaratory Judgment as to contract being in violation of the Payment of Wages Act, for treble damages and attorneys' fees dated February 27, 2012	107
Defendants' Rule 59(e) Motion dated August 20, 2012.....	132
Motion to be Relieved as to Cynthia Reilly dated March 4, 2013	137

Trial Transcript:

Motions	144
Opening Instructions by Court.....	201
Opening Statement by Mr. Canty	208
Opening Statement by Mr. Wilkerson.....	210

Motions	220
Testimony of Chelcie Oxentine	
Direct Examination	228
Cross Examination	271
Redirect Examination	287
Recross Examination	291
Testimony of Sherry Singleton	
Direct Examination	299
Cross Examination	333
Redirect Examination	338
Testimony of Steven G. Thoni	
Direct Examination	341
Cross Examination	350
Redirect Examination	357
Motions	359
Testimony of Robert Adams	
Direct Examination	373
Cross Examination	385
Testimony of Khalif Middleton	
Direct Examination	390
Cross Examination	402
Testimony of Lynn C. Lanpher	
Direct Examination	406
Cross Examination	416
Testimony of John Loughlin	
Direct Examination	423
Cross Examination	440
Redirect Examination	450
Motions	452

VOLUME II OF III

Testimony of Rodney Haynes	
Direct Examination	463
Cross Examination	474

Testimony of Laura Arrington	
Direct Examination	480
Cross Examination	505
Redirect Examination	518
Testimony of Cynthia G. Reilly	
Direct Examination	523
Cross Examination	539
Redirect Examination	553
Testimony of Bradley Kirk Bray	
Direct Examination	555
Cross Examination	574
Redirect Examination	585
Testimony of Judith Parker	
Direct Examination	593
Cross Examination	614
Redirect Examination	615
Testimony of Stephen Black	
Direct Examination	617
Cross Examination	632
Redirect Examination	635
Testimony of Holly LeVasseur	
Direct Examination	638
Cross Examination	649
Redirect Examination	656
Testimony of Michael Wills	
Direct Examination	661
Cross Examination	685
Redirect Examination	689
Testimony of Timothy Allen Zinn	
Direct Examination	689
Cross Examination	722
Redirect Examination	758
Testimony of Mark D'Amico	
Direct Examination	760
Cross Examination	774
Redirect Examination	781
Testimony of Thomas DeVitis	

Direct Examination	783
Cross Examination	794
Redirect Examination	800
Motions	803

VOLUME III OF III

Testimony of Connie Sharp	
Direct Examination	852
Cross Examination	921
Redirect Examination	971
Motions	976
Closing Arguments by Mr. Canty.....	1026
Closing Argument by Mr. Wilkerson	1039
Closing Argument by Mr. Connell.....	1060
Jury Charges.....	1065
Question from Jury.....	1078
Verdict.....	1094

Exhibits/Other documents:

Letter from Judge requesting proposed order dated June 5, 2012	1101
Proposed Order from attorneys for plaintiffs	1103
Exhibit 4 attached to Judge J. Michael Baxley's Order authorizing disbursement of class settlement proceeds dated June 14, 2010.....	1109
Plaintiffs' Exhibit 1	1122
Plaintiffs' Exhibit 2	1123
Plaintiffs' Exhibit 3	1134
Plaintiffs' Exhibit 4	1142

Plaintiffs' Exhibit 5	1143
Plaintiffs' Exhibit 6	1155
Plaintiffs' Exhibit 7	1156
Plaintiffs' Exhibit 8	1157
Plaintiffs' Exhibit 9	1165
Court Exhibit 3	1168
Court Exhibit 4	1170
Court Exhibit 5	1178
Court Exhibit 6	1195
Court Exhibit 7	1196
Court Exhibit 8	1197

1 THE COURT: All right, let's bring the jury in.

2 (Whereupon, the following takes place in the presence of
3 the jury.)

4 THE COURT: Ladies and gentlemen, welcome back. I
5 hope everyone had a good lunch. We're ready to resume the
6 trial of this case. I remind you if you have any cell phones
7 or pager devices if you would turn those off at this time.
8 Also, please make sure that you have your own pad if you are
9 taking notes.

10 All right, Mr. Connell, you can call your next witness.

11 MR. CONNELL: All right, Mr. Haynes.

12 Whereupon, Rodney Haynes was called to the stand, duly
13 sworn by the clerk and testified as follows:

14 THE CLERK: State your name for the Court, please,
15 sir.

16 MR. HAYNES: Rodney Haynes.

17 THE COURT: All right, sir.

18 DIRECT EXAMINATION

19 BY MR. CONNELL:

20 Q Mr. Haynes, if you would, tell us, please, where you
21 live?

22 A I live in Surfside.

23 Q Okay, and when did you move to the Myrtle Beach area?

24 A In '99.

1 Q All right, and what kind of work have you done since
2 1999?

3 A I worked in a finance company, World Financing, and I've
4 waited tables at Frank's Restaurant in Pawleys Island.

5 Q All right, have you ever worked in the timeshare
6 industry?

7 A No.

8 Q Okay.

9 A Not prior, prior to Westgate, no.

10 Q Okay, this is the only timeshare job you've ever had at
11 Westgate?

12 A Yes.

13 Q Okay, you never were employed at - some people have been
14 employed Bluegreen or Sheraton. You had never worked at those
15 places?

16 A I worked at Bluegreen after Westgate, a couple of years
17 after Westgate.

18 Q Okay, and how long did you work at Westgate?

19 A I was in training in May and then got on the floor the
20 last week of May and left July 20th.

21 Q Okay, and tell me if you would when you first became -
22 how you came to become employed at Westgate?

23 A There was a friend of mine that worked at Westgate prior
24 and he told me to go there.

1 Q Okay, and when you started ---
 2 A Because I was ---
 3 Q I'm sorry, going ahead.
 4 A No, that's it, go.
 5 Q When you started there tell me if you would, please,
 6 sir, what type of training you had.
 7 A It was a three-week course, classroom study and after
 8 the third week you take a test and then you get on the floor.
 9 Q All right, and was a contract signed by you?
 10 A Yes, sir. Yes, sir.
 11 Q And the contract that was signed by you I think is,
 12 let's see here, Plaintiff's Exhibit Number Eight is that what
 13 you signed?
 14 A Yes.
 15 Q All right, and did it include Number Nine, the exhibit,
 16 commission exhibit?
 17 A Yes.
 18 Q Okay, you say yes with some hesitation, why?
 19 A Well, I - yeah, I don't remember exactly everything from
 20 four years ago.
 21 Q Okay, all right, tell me the circumstances surrounding
 22 how and when you decided to sign the contract?
 23 A We were in class and it was probably the third, third
 24 week towards the end when we signed the contracts.

1 Q Okay.

2 A And it was just all placed out in front of us, when I
3 signed it, we all signed it and then turned it in. That was
4 it.

5 Q Okay, how much time did you have to review it?

6 A There wasn't much time at all. It was a rather, you
7 know, sign it and then move on.

8 MR. WILKERSON: Objection, relevance.

9 MR. CONNELL: Your Honor, it would - goes to the
10 circumstances surrounding his employment.

11 THE COURT: I'm going to allow it. Go ahead.

12 BY MR. CONNELL:

13 Q Okay.

14 A I was in the same class as John. So, it was under the
15 same circumstances.

16 Q John who?

17 A Loughlin.

18 Q Okay, you and he were in the same group of employees
19 that were trained?

20 A Correct.

21 Q And you and he started together?

22 A Correct.

23 Q All right, and I take it you and he became friends?

24 A Yeah, we're friends, yeah.

1 Q Acquaintances?

2 A Yeah.

3 Q Whatever?

4 A Uh-huh.

5 Q Okay, now, what percentage were you to get on your

6 contract?

7 A Ten percent.

8 Q All right, and what did you understand that 10 percent

9 to be for? How much were - how were you to be paid?

10 A Ten percent of the total sale of the volume of what you

11 sold in the timeshare.

12 Q All right, when you say the total sales of volume that

13 ---

14 A So, if you sold it for \$10,000 you'd get \$1000.

15 Q Okay, and have you been able to calculate what the total

16 volume was that you sold?

17 A Yes.

18 Q Okay, and what did you come up with?

19 MR. WILKERSON: Objection, lack of foundation.

20 THE COURT: Overruled. Go ahead.

21 A I sold 103,000.

22 Q \$103,000?

23 A Yeah.

24 Q Okay, and have you been able to determine how much you

1 weren't paid?

2 A I came up with the calculation of 34-70, 3,470.

3 Q Okay, come down and put.

4 MR. WILKERSON: Same objection, Your Honor.

5 THE COURT: All right, overruled.

6 Q Come down and put that on this board, please, sir. Put

7 your name, please, sir.

8 A (Complies with request.)

9 Q Okay, all right, thank you, sir. All right, now, how

10 did you make the - how did you come to the calculation of

11 \$3,470?

12 A Those were the contracts that were I guess pender. Most

13 of my contracts were full down payment, and from my knowledge

14 I got paid on most of the full down payments ---

15 Q Okay.

16 A --- on the reserve and what have you and those were the

17 ones that did not get paid.

18 Q All right, now, were you given written notice in advance

19 of the changes in the employment terms?

20 MR. WILKERSON: Objection.

21 A No.

22 THE COURT: Wait a minute. What was the question?

23 MR. CONNELL: Were you given written notice in advance

24 in any changes in the employment terms?

1 THE COURT: Okay, overruled. I'll allow that.

2 MR. WILKERSON: I thought he said the changes in the
3 employment terms. I don't know of any changes they're talking
4 about.

5 A No.

6 THE COURT: All right, I'll allow the question. Ask
7 your question again.

8 MR. CONNELL: Okay.

9 BY MR. CONNELL:

10 Q Okay, did the Defendants give you any written notice in
11 advance of any changes to the employment relationship?

12 A No.

13 Q All right, did the Defendants pay you your wages within
14 30 days after you left?

15 A No.

16 Q Okay, did you make any attempt to contact anyone at
17 Westgate and ask about your payments?

18 A Yes, I contacted Connie Sharp. Actually, I - it was - I
19 left July 20th and I had a full down payment due July 3rd and
20 another one and I just made a deal the day before I was let
21 go. So, there was three full down payment payments but I was
22 counting on the one from July 3rd which was a pay period
23 coming up and then when they let me go I asked Doug Boykin if
24 it was going to be on my next paycheck because that would have

1 been within two weeks because it was a full down payment and
2 he didn't know and then it was the next day or two I asked him
3 again and he said he got a e-mail from Richard saying that I
4 wouldn't get it until six months even though it was within, it
5 was within the two-week time period. I should've gotten paid
6 when I was getting my next paycheck because it didn't come in
7 and it wasn't until February I got a check which it was from
8 the reserve, I guess.

9 Q Did the Defendants comply with the contract?

10 A I don't believe so.

11 Q Okay, did they give you written notice that they might
12 withhold part of your pay?

13 A No.

14 Q Were you ever involved in any deals that were either up-
15 sold or down-sold?

16 A No, not that I know of.

17 Q Okay, were you ever involved with any other employees at
18 Westgate concerning obtaining your pay other than Doug Boykin
19 and Connie Sharp?

20 A I believe I went to the HR department a few times.

21 Q Okay, and who was that?

22 A I think it's Colleen.

23 Q This lady over here?

24 A Yes.

1 Q You went and did you make a complaint to the HR
2 department?
3 A I was just asking questions about when I would get paid
4 on my full down payments that were supposed to be due.
5 Q Okay, and you - when, about when was that that you went
6 and asked the question?
7 A It was shortly after I was let go. So, it was the next
8 day, the next week.
9 Q Okay, and who was in the meeting with you besides you
10 and Colleen?
11 A It was just, just me and Colleen.
12 Q And what did she say to you?
13 A To contact Connie Sharp.
14 Q Okay, was any other conversation about - addressed about
15 who you should, who you should talk to besides Connie Sharp?
16 A The first time I think - I believe I spoke, spoke to her
17 she might've told me to go to, go to Doug and then I spoke to
18 Doug and then went back to Colleen and then she said Connie
19 and then ---
20 Q About how many times did you call Connie Sharp?
21 A It was like four, four times.
22 Q And Connie Sharp is in, is in Florida; right?
23 A Orlando, I believe.
24 Q And why were you calling her?

1 A Because I was questioning about the money that was owed
2 to me on the full down payments that I had two weeks prior to
3 I was let go.

4 Q Okay, and when you say you were questioning how were
5 you, how was it that you went to Connie Sharp to begin with?
6 Did someone from the Westgate Myrtle Beach direct you to her
7 or what?

8 A I believe Colleen did.

9 Q Okay, and had you ever met Connie - have you ever met
10 Connie Sharp?

11 A No.

12 Q Have you ever had any other conversations with her other
13 than the one you've just told us about today?

14 A No.

15 Q How about Mr. Boykin, have you ever had any other
16 conversations other than the one you just told us about today?

17 A No.

18 Q Have you - is Mr. Boykin still employed there?

19 A I have no idea.

20 Q All right, have you seen Mr. Boykin outside of work?

21 A No.

22 Q Have you seen any of the - have you seen any other
23 managerial person outside of work to discuss with them?

24 A No.

1 Q Okay, and the \$3470 represents what you're owed as of
2 today?
3 A Correct.
4 Q Okay.
5 MR. CONNELL: Let me ask co-counsel. I'll be right
6 back, Your Honor.
7 THE COURT: Hold for one second.
8 THE COURT: All right, cross-examination.
9 MR. WILKERSON: Consent, counsel?
10 MR. CONNELL: No objection.

1 THE COURT: All right, those, all right, Defendant's
2 Exhibit Numbers 15 and 16 are admitted into evidence without
3 objection.

4 (Whereupon, Defendant's Exhibit Number 15 [Terms of
5 Employment Notice - Haynes] and Defendant's Exhibit Number 16
6 [Commission Schedule - Haynes] admitted into evidence and
7 appropriately marked.)

8 CROSS EXAMINATION

9 BY MR. WILKERSON:

10 Q Mr. Haynes, 15 and 16, do those documents bear your
11 signature?

12 A Yes.

13 Q All right, sir, now, tell us again how you computed what
14 you claim you were owed?

15 A It's based on the contracts that didn't have a full down
16 payment.

17 Q Did not have a full down payment?

18 A Correct, at the time.

19 Q At the time you left?

20 A At the time the contract was signed they didn't put a
21 full down payment down.

22 Q So, you just figured that you ought to be paid a
23 commission on all of your penders?

24 A On the, yes, on the people that are making payments.

1 Q All right, sir, now, who are these customers?
2 A On the sheet it was Rhonda Radford.
3 Q Radford?
4 A Radford, Kurt Zeller.
5 Q Hold on, hold on. Can you spell?
6 A Radford, R-A-D-F-O-R-D.
7 Q R-A-D-F-O-R-D, and what's the contract number?
8 A It's in the file. I don't have it in front of me. I
9 don't know if the contract number is actually in there, but
10 the ---
11 Q Who is the other person?
12 A Kurt Zeller.
13 Q Zeller, is that Z-E-L-L-E-R?
14 A Correct.
15 Q What's the contract number?
16 A I don't have it in front of me.
17 Q All right, what's, what's the other one?
18 A Patricia Haney.
19 Q Hayne?
20 A Haney.
21 Q H-A ---
22 A H-A-N-E-Y.
23 Q All right, and the contract number, you don't know that
24 one either?

1 A I don't know that one.

2 Q Okay what, what, what's the other one?

3 A There was a Doug Smith that put a full down payment.

4 Q I thought you said you were not paid on the partial down
5 payments?

6 A They don't - that was a - I calculated those three,
7 three down payments that would probably be in the reserve and
8 that one didn't seem to add up because it was - I got my
9 reserve check and that one didn't seem like it was included.

10 Q You just don't think this Doug Smith was included in
11 what you got paid for?

12 A Correct, correct.

13 Q And that's just based on you think you should have
14 gotten paid more?

15 A No, what I'm basing it on is that on my reserve account
16 that they sent me added up to three sales that I did around
17 that area became close. Doug Smith wasn't included. So, I'm
18 not asking for more. I'm just asking for the - what is owed.

19 Q All right, now, Radford, Zeller and Haney, you would not
20 be paid - you would not, you would not be due a commission if
21 any unless and until the full down payment had been made;
22 right?

23 A Correct, but on the records I was looking in the folder
24 it showed that Radford made up to \$1200 in payments and her

1 contract was one - was a 10-9. So, her full down payment
2 would have been 1,090.

3 MR. WILKERSON: If Your Honor, please, that response
4 was non-responsive to my question. I would move that it be
5 struck.

6 THE COURT: No, I'm going to allow it. Go ahead.

7 BY MR. WILKERSON:

8 Q So, to restate the question these payments of down
9 payments would've been made if at all after you left the
10 employ?

11 A Correct.

12 Q All right, sir, and you're not claiming that any of them
13 were up-sold or down-sold or anything of that nature?

14 A No.

15 Q And the payment of the full down payment you say that
16 you believe Radford paid their full down payment?

17 A I believe so.

18 Q Okay, and you determined that by looking at some
19 paperwork somewhere?

20 A That was sent by Westgate.

21 Q But the question is you looked at some paperwork
22 somewhere; correct?

23 A Yes, yes, correct.

24 Q That was prepared by someone else other than you?

1 A Prepared by Westgate, yeah.

2 Q All right, sir.

3 MR. WILKERSON: Your Honor, we would move to strike
4 that testimony because it's based upon, clearly based upon
5 hearsay review of documents.

6 THE COURT: All right, let me hear from.

7 MR. CONNELL: Your Honor, he, he asked the question and
8 that it is ---

9 THE COURT: Yeah, but where did the - were these
10 produced during discovery or something or ---

11 MR. CONNELL: Yes, sir, those are documents with his
12 employee number on it, with his name.

13 THE COURT: Okay, overruled. I'll allow it.
14 Anything else?

15 MR. WILKERSON: Nothing further, Your Honor.

16 THE COURT: All right, redirect?

17 MR. CONNELL: Nothing, come down, please, sir.

18 THE COURT: All right, sir, call your next witness.

19 MR. CONNELL: All right, Ms. Arrington, come on up
20 here.

21 MR. WILKERSON: Name, please?

22 MR. CONNELL: Laura Arrington.

23 MR. WILKERSON: Thank you.

24 Whereupon, Laura Arrington was called to the stand, duly

1 sworn by the clerk and testified as follows:

2 THE CLERK: State your name for the court, please,
3 ma'am.

4 MS. ARRINGTON: Laura Arrington.

5 DIRECT EXAMINATION

1 BY MR. CONNELL:
2 Q Okay, Laura, tell' us if you would, please, where you
3 live and what you do for a living now.
4 A I live in Myrtle Beach. I currently work as an office
5 manager.
6 Q Okay, and where do you work?
7 A I work for Rogers Chiropractic.
8 Q How long have you been there?
9 A Three years now.
10 Q Okay, tell us when you came to Myrtle Beach and how long
11 you've been here.
12 A I moved to Myrtle Beach April 1st, 2006.
13 Q Okay, and what job did you take when you first came here
14 in April of 2006?
15 A My first job was with Westgate.
16 Q All right, and prior to living in Myrtle Beach in 2006
17 where did you come from?
18 A North Carolina, Greensboro.
19 Q All right, had you ever had any experience with
20 timesharing before you ---
21 A Never, huh-uh.
22 Q Okay, all right, and how did you get the job at
23 Westgate?
24 A My now husband actually worked with me as well. He had

1 found an ad in the paper, and we were, of course, looking
2 through the paper for jobs here.

3 Q All right, and your husband is seated out here. This is
4 Mr. Bray, I believe; is that right?

5 A Yes, sir.

6 Q Okay, and so, tell me - take me through. You went to
7 the Westgate offices or Westgate Hotel; is that right?

8 A Uh-huh, my husband had worked there for approximately a
9 month and we seen how he was doing. He, he started out very
10 well and I knew what kind of money he was going to make. So,
11 he invited me along. The first time we had ever worked
12 together and I went through a three-week training course just
13 as everyone else has stated and once the training course was
14 done what they do is they put you out on the floor. So, you
15 actually get to be face-to-face with salespeople to start your
16 job.

17 Q Okay, did you sign a contract of employment like
18 Plaintiff's Exhibit Number Eight? Take a look at that and the
19 commission structure?

20 A Yes.

21 Q Okay, and did your husband sign the same contract?

22 A Yes.

23 Q All right, and what, what percentage were you to get on
24 your sales?

1 A Okay, when I started in 2006 the commission structure
2 started at five percent and after a trial period of some odd
3 months it began to increase with what your sales were. My
4 sales started out at five percent and then increased to 11
5 percent as an actual sales representative.

6 Q Okay, and so, when you left what was your sales
7 structure then?

8 A When I left I was actually a manager. The sales
9 structure at that point in time had changed. I was what you
10 call a TO or the turn over. Once salespeople get on the
11 floor, have the family in front of them and they want to close
12 a deal they call me in and that's what I did. I actually
13 closed out the deal. I did the financial portion of it. As a
14 manager I was paid three percent. As a sales representative I
15 was paid, like I said, in the beginning five percent up to 11
16 percent.

17 Q Okay, we got to - we're going to have to talk about how
18 the, how the sale - let's start from the beginning. I'm the
19 person that I'm going to buy the timeshare and you're the
20 salesperson. Take me through what steps that person does in
21 order to get to the point where this sale is consummated.

22 Q Okay, what you do is you take them through your
23 presentation. They listen to you for an hour and a half or
24 longer. Once the presentation is over you bring them back

1 into the sales room where you initially start. At that point
2 in time they sit down. They go over paperwork that shows you
3 exactly the pricing of each type of unit. You can get several
4 types. You can get a one bedroom, two bedroom, every other
5 year, every year. There's several different price factors
6 with it.

7 Q Okay.

8 A Once that's done - can I, can I show this?

9 Q Yep.

10 A To start out with the paper that I have there is what
11 you get when you first meet the family.

12 Q Okay.

13 A And at the very end of it you flip that.

14 Q All right.

15 A That's the actual contract. That's what you sit down
16 and once they agree to the terms, to the terms of, once they
17 agree to the terms of the contract they would sign the second
18 form that's on there, thank you.

19 Q All right, so, the salesperson gets kind of an informal
20 proposal?

21 A Uh-huh.

22 Q And the salesperson then does what with that?

23 A What they do is they actually get a manager to come over
24 to their table. Once they're interested you either wave your

1 hand, raise, make eye contact in one way or another for a
2 manager to come over to you to close out the deal of what they
3 would like to purchase.

4 Q Okay, what effect does the manager have in what the
5 customer is going to buy at that point?

6 A Okay, well, I guess it's all based on money, whatever
7 they would be willing to pay, and once the contract is
8 solidified you always give over a credit card and driver's
9 license, the paperwork begins.

10 Q Okay, what happens if the person can't come up with a
11 full down payment?

12 A You have what you call a pender. A pender is you
13 initially have a certain amount set down. Let's say - let's
14 use the example of \$1,000. You start out with \$1,000.
15 They're wanting to buy a \$10,000 condo. \$1000 is what they
16 would need for a 10 percent down payment. If they do not have
17 that \$1,000 to begin with you would take whatever ample amount
18 they have, 200, 300, 400 at that time and then you break down
19 the rest into three timely monthly payments as well to get the
20 full 10 percent down.

21 Q Okay, how does that work with the fees that Westgate is
22 going to get on that timeshare on a monthly basis?

23 A I'm not sure if I understand your question.

24 Q Okay, I'm understanding that, that I don't have the full

1 down payment ---

2 A Uh-huh.

3 Q --- let's say I only have \$500 of \$1000?

4 A Uh-huh.

5 Q You - Westgate is going to sell it to me anyway?

6 A Yeah, they would sell it to you anyways. What they

7 would do is they would take that remainder \$500 and they would

8 divide it into three different months and as each month goes

9 along you pay your down payment and your monthly payments as

10 if you were to buy a car and you can't make your full down

11 payment on your car you pay your monthly payment on your car

12 and part of that down payment until it's met.

13 Q Okay, and there are other fees that the customer has to

14 pay besides the down payment; correct, the monthly payment for

15 instance?

16 A Yes.

17 Q All right, and is the additional down payment that's

18 owed is that put at the end of the deal, in the middle or each

19 month or how is it - how does it - how is it done?

20 A Typically what managers try to do is they try to get it

21 in within the first three months, four months was the maximum.

22 Thereafter, some people would end load. It all kind of

23 depended on what you were working with.

24 Q Okay.

1 A But typically it was a three-month period.

2 Q All right, and the amount that was paid as the down
3 payment did it matter what time of the month that the person -
4 if a person came in at the beginning of the month and didn't
5 have the full down payment or came in at the end of the month
6 was there a difference in whether or not the deal would be
7 struck?

8 A Again, those terms would be stated in the contract. A
9 lot of times people would have it on the 1st and the 15th or
10 even and odds paying the first monthly payment on the 1st and
11 then part of that down payment on the 15th. So, it would come
12 every two weeks of a monthly payment, part of the down
13 payment, monthly payment, part of the down payment until it
14 was all met.

15 Q All right, could the manager change the salesperson's
16 down payment?

17 A The terms of the down payment, yes.

18 Q All right.

19 A As long as it was signed by our director of sales.

20 Q All right, and was that done?

21 A Yeah, several occasions.

22 Q Okay, and you actually became a training official at
23 Westgate; is that right?

24 A I didn't do training. I was actually a sales manager.

1 I was a finance manager.
2 Q Okay, so, as a finance manager we've heard the term
3 deeding room.
4 A Uh-huh.
5 Q Is that - would that be you?
6 A That's not me.
7 Q That's not you.
8 A That's not me.
9 Q Okay, what were you doing as the finance manager?
10 A As the finance manager as I mentioned before you had the
11 family there. They want to purchase. A sales representative
12 cannot close the deal for themselves. They have to have a
13 manager to sign off on it. So, what they would do ---
14 Q Why, why is that? Why, why can't a, why can't I just
15 close the deal without having a manager?
16 A Well, for one, we have insurance licensing that we have
17 to abide by by the state. That's something that all managers
18 had to have in writing. There's just certain factors with it.
19 Q Okay, let me ask you this, does it matter if I'm the
20 salesperson and I - did all the sales take place in a large
21 ballroom?
22 A Yes.
23 Q All right, and if I'm the salesperson and there are
24 eight or 10 managers in the room does it matter which one I

1 went to as to what kind of deal would be struck?

2 A No, whatever manager was available. You have to keep in
3 mind a lot of times there would be up to 120 families in these
4 room sometimes with eight managers. They were very, very
5 busy. I would be on four tables at a time sometimes.

6 Q All right, and was the goal to try to sell every one of
7 the timeshare weeks? Was that the goal?

8 A Well, the more the merrier I suppose.

9 Q Okay, and was the goal to try to work with the person
10 who was buying as far as what they were going to buy and what
11 they could pay?

12 A Yeah, absolutely. Not everybody has the same budget to
13 work with.

14 Q Okay, all right, and as the finance manager what would
15 you do?

16 A I would come in and if you look on the second page there
17 ---

18 Q Yes, ma'am?

19 A --- these are what our contracts look like and you would
20 fill out the people's names. You'd have their numbers, their
21 address, all their information. You would break down monthly
22 payments. You would also break down - this one here actually
23 has an example of it. This is a pender. These are three
24 payments of a down payment that they would meet before. They

1 would actually have the full down payment made. It breaks
2 down terms, conditions at the bottom. You could do notes for
3 up to 120 days same as cash, specific things, any type of
4 options that they would have to come back and maybe buy every
5 other week, if that's what they started out with, to come back
6 within the next few years to buy each week meaning every
7 single year the family would have timeshare with Westgate.

8 Q Okay, now, how are the funds applied after the deal was
9 made? Were they applied to the down payment or were they
10 applied to the payment that Westgate was getting on a monthly
11 basis?

12 A Can you say that differently?

13 Q My understanding that - it's my understanding that you
14 got a - let's say the down payment was \$500.

15 A Uh-huh.

16 Q And they owed an additional 500.

17 A Uh-huh.

18 Q And the agreement was going to be reached between the
19 customer and the agent, how would they - how would that \$500
20 that needed to be paid for the down payment, would it be put
21 at the beginning of the agreement, the monthly payments or
22 would it be put at the end or how would that work?

23 A Typically in the beginning they tried to get their money
24 as soon as they could.

1 Q Okay, and so, was that customer being applied towards
2 Westgate's monthly payment or is it being paid, paid towards
3 the down payment at the beginning?

4 A In the beginning as I had mentioned what they have to do
5 is if you get a pender which is trying to make that initial
6 down payment within a so many months time that would also be
7 made in addition with the regular monthly payment. Monthly
8 payments started 30 days after that contract had been signed.

9 Q All right, but what if someone didn't make the down
10 payment, made the other payment, what would happen?

11 A I don't want to get complicated but there's, there's
12 instances where people had actually made their first monthly
13 payments and then had back ended the down payment.

14 Q Okay, I don't know what that terms means, back ended?

15 A After, after so many months they had time to make that
16 monthly payment.

17 Q All right.

18 A Excuse me, the down payment.

19 Q If I sent a payment in and I didn't - I only sent one of
20 the two payments in, how would it be applied?

21 MR. WILKERSON: Objection, she - there's no
22 foundation that she has personal knowledge of the concept,
23 Your Honor.

24 MR. CONNELL: Finance manager, Your Honor. She was in

1 charge of ---

2 THE COURT: Yeah, she was a finance manager. I'll
3 allow it. Go ahead.

4 A Okay, can you ask the question again?

5 Q Okay.

6 THE COURT: Well, wait a minute, wait a minute,
7 let's, let's get into her duties as a finance manager first
8 ---

9 MR. CONNELL: Okay.

10 THE COURT: --- before I do that.

11 MR. CONNELL: All right.

12 BY MR. CONNELL:

13 Q As the finance manager what was your job in regard to
14 arranging the payments with customers?

15 A As I had mentioned before, we, we would break it down.
16 If they had \$200 on them and they were on vacation, they had
17 spent most of their money already, they needed \$1000, we would
18 work with them through the basis of up to the maximum of four
19 months to get that down payment and again starting the monthly
20 payment within 30 days.

21 Q Okay, so, let's take this example. You're, you're - you
22 got a - they had the \$200. They bought a \$10,000 unit.

23 A Uh-huh, that would leave them \$600 or you said \$200?

24 Q Well, I think you had mentioned something about they had

1 \$200 left over on vacation. You get that \$200; right?

2 A We need 800 more.

3 Q Okay, and how would you - how would that be paid?

4 A We would break it down up to four months. So, it would
5 be \$200 extra each month on top of that monthly payment as
6 well.

7 Q Okay, now, what happens - again, what would the monthly
8 payment be just to be financed over the course of the loan; is
9 that right?

10 A The monthly payments are figured in at 17.99 percent for
11 10 years with a 10 percent down payment.

12 Q Okay.

13 A 17.99 percent interest.

14 Q All right, so, if an individual made the monthly payment
15 but not the down payment what would happen then?

16 MR. WILKERSON: Objection, foundation. This is after
17 it leaves her hands, Your Honor.

18 THE COURT: Yeah.

19 MR. WILKERSON: This is after, after she's done with
20 the deal.

21 THE COURT: Unless she knows personally, unless she
22 was in charge of applying those payments she can't testify to
23 that.

24 Q Do you know as to what would happen then personally,

1 from your personal knowledge?

2 A I believe that the contract would go into default.

3 Q Okay, all right, now, let's talk about Connie Sharp.

4 Have you had any involvement with Connie Sharp?

5 A Yes, many times.

6 Q All right, and who - tell these folks, because her name
7 has been talked about a lot, who she is and what her job is
8 and where she is located?

9 A Okay, Connie Sharp actually oversees - her department,
10 I'm not sure what the name of it is, but she's the one who's
11 responsible for reserve accounts and whenever you depart from
12 the company getting your money whatever is owed to you. I
13 have several pages here I had actually faxed her on 10-6 of
14 29, at 8:45 a.m. called her, sent her an e-mail. This is
15 after I had left. I had also had monies owed to me as well,
16 too. She had said that in writing you have to have what is
17 owed to you. It has to be faxed as well.

18 MR. WILKERSON: Objection, Your Honor. I'm getting
19 lost in this. Is this something that ---

20 A I'll explain it.

21 MR. WILKERSON: --- is this something that this ---

22 Q Wait a minute, you got, you got to let, you got to let
23 the Court tell us what to do.

24 THE COURT: Yeah, I mean, I'm going to allow her to

1 testify but I'm not - I don't understand what she's saying
2 either.

3 MR. CONNELL: Okay.

4 BY MR. CONNELL:

5 Q Let's take, we got to take, we got to take it slow, Laura.

6 A Okay.

7 Q All right, Ms. Sharp was down in Orlando?

8 A Yes.

9 Q And if there was a question about what you were owed you
10 had to call her?

11 A Yes.

12 Q And you had several - you had many conversations with her;
13 is that ---

14 A Yes.

15 Q --- kind of what I've heard.

16 A Yes.

17 Q About your own personal situation?

18 A Mine and my husband's.

19 Q All right, and in this case we're not talking about
20 reserve. We're talking about unpaid commissions?

21 A Yes.

22 Q And you would call her and talk to her when you were on
23 the job or this is after you left?

24 A This is after I left.

1 Q Okay.

2 A Actually, there was, there were several times actually

3 while I was there that I had money I knew I wasn't being paid

4 that I should have been paid and I contacted first point of

5 contact at Westgate at our home resort here in Myrtle Beach.

6 His name is Doug Boykin. He takes care of the smaller issues

7 that actually happen within our home resort. Connie oversees

8 corporate. She's, she's a little higher up.

9 Q Okay, so, so, you went to Doug Boykin first ---

10 A Uh-huh.

11 Q --- and what was his job?

12 A Doug did everything from get us name tags to set up

13 meetings.

14 Q Is he a manager?

15 A I don't think he was ever titled management I don't

16 believe.

17 Q You understood you had to answer to him; is that right?

18 A Yes.

19 Q Okay, so, you went to him and you asked him about the

20 commission that you were owed.

21 A (Indicates affirmatively.)

22 Q Is that - you've got to say yes or no for this lady.

23 A Yes.

24 Q Okay, and after you went to him and you couldn't get a

1 response you went to Connie Sharp?

2 A Uh-huh.

3 Q You got to say yes or no.

4 A Yes.

5 Q All right, and did you ever go to anyone else at the

6 Myrtle Beach Westgate and ask about ---

7 A Yes, yes, I did. I went to as a point of - the time I

8 was there my director of sales, Deborah Turner. I had went to

9 her, asked her what was going on. We had looked up several

10 things on the computer. I had talked to my general manager

11 who was the gentleman above me, Mario Urilla [spelled

12 phonetically]. I had asked him several times about it and

13 which they had referred me to Doug. Doug told me to go to

14 Connie.

15 Q Okay, and so, you had been - you actually went to four

16 different people about your commissions?

17 A Yes.

18 Q Doug Boykin, Connie Sharp, you named a new person?

19 A General manager, Mario Urilla and my director of sales,

20 Deborah Turner.

21 Q All right, and who is Mario Urilla?

22 A Mario Urilla is our general manager. He oversees all

23 the management.

24 Q All right, and Deborah Turner was his boss?

1 A Yes.

2 Q And when you went to those individuals and asked about
3 your commissions, let's, let's talk about Deborah Turner
4 first.

5 A Uh-huh.

6 Q What did she tell you?

7 A We had looked at things together on the computer.
8 Really she couldn't tell me too much without talking to either
9 Doug or Connie. I mean, she stayed very busy but when she had
10 a minute we would look through things and try to review
11 contracts.

12 Q Okay, and what did Mr. Urilla tell you? You got to, you
13 got to say yes or now whatever he said.

14 A He couldn't really tell me anything.

15 Q Okay, did he give you any answer at all?

16 A Not really besides to go to Doug.

17 Q And so, you're down to - you've been to Boykin, you've
18 been to Urilla, you've been to Turner and now you're down to
19 going to Connie Sharp?

20 A Connie, uh-huh.

21 Q And did you ever meet her in person?

22 A I never met her in person.

23 Q All right, and that required you to call her on the
24 phone?

1 A Yes.

2 Q Okay, about how many times did you call her on the phone

3 to talk to her about your commission, your unpaid commissions?

4 A I had written her ---

5 Q Just approximately, you don't have to go ---

6 A Okay.

7 Q --- go through all.

8 A I had written her four times. I had faxed her four

9 times. I had called her I don't know how any times. It's, it

10 was numerous times.

11 Q All right, would she ever call you back?

12 A I got a few phone calls back. The phone calls had

13 stated that you need to have this information in writing. I

14 have my original letters. I also have copies of where I had

15 written and faxed her the information that was necessary.

16 Q Okay, did you ever get any response in writing from her?

17 A No.

18 Q Okay, now, let's talk about what you're owed and how you

19 calculated it. Come down here and write down the amount

20 you're owed, if you would, please.

21 A (Complies with request.)

22 Q Okay, and I understand you have looked at your

23 husband's, too; is that right?

24 A Yes.

1 Q And do you know how much he was owed?

2 A It's around 5000.

3 MR. WILKERSON: Objection, Your Honor.

4 THE COURT: Sustained.

5 Q Okay, we'll get him up here. All right, thank you. Go
6 back.

7 MR. WILKERSON: What did she write, counsel?

8 MR. CONNELL: \$35,960.25.

9 MS. MAYSONET: 35,000 what, I'm sorry?

10 THE COURT: What was it?

11 MR. CONNELL: 35,000-9-60-25.

12 MS. MAYSONET: Uh-huh.

13 BY MR. CONNELL:

14 Q Okay, now, tell me how you came up with that number and
15 let's take it slow so we can let these folks absorb what you
16 tell me.

17 A Okay, out of all the contracts that I had written as a
18 sales manager I got three percent, okay. Of these three
19 percent every one of my contracts I have here in front of me
20 they were not paid. I had all my check stubs. I kept all my
21 check stubs. These were owed to me, due to me. This is just
22 everything that I had, I had done that I was never paid on,
23 and I mean, I, like I said, I had done hundreds and hundreds
24 and hundreds and hundreds of contracts and I kept every one of

1 | them. So, the stack I have here in front of me are the ones
2 | that I had not been paid on.

3 | Q Okay, and so, every - this is when you were the finance
4 | manager; is that what you're saying?

5 | A When I was a finance manager, yes.

6 | Q Okay, and the finance manager got this three percent?

7 | A Uh-huh, three percent.

8 | Q And why was the finance manager getting something
9 | different than a regular salesperson?

10 | A Because you sat on more tables each day. A sales rep
11 | might get two families. You might have two chances to sell a
12 | timeshare within a day. A sales manager would be able to sit
13 | on 10 to 15 tables. So, you would have 10 to 15 shots to
14 | close a deal and what that said since you got more opportunity
15 | your commission was less.

16 | Q Okay, now, the contract I showed you with the 10 percent
17 | I think it was ---

18 | A Uh-huh.

19 | Q --- is there anything in there about what the finance
20 | manager gets?

21 | A I've never signed any contract work as a finance
22 | manager. As a matter of a fact we were supposed to get
23 | bonuses of what Westgate had collectively done for the day,
24 | each manager got a split plus your commission and when Richard

1 Siegel came into town, he's part of the Siegel family that
2 owns Westgate, those things changed, and like I said there was
3 never a contract signed for that.

4 Q All right, and when did Richard Siegel become the,
5 become the director, I guess? He took Ms. Turner's place I
6 think it was?

7 A Yeah, it was 2007.. I'm not sure of the month.

8 Q Okay, and the three percent that you're talking about
9 for the finance manager was three percent of, of what?

10 A Of what the total sale was. In case, \$10,000 it would
11 be three percent of that, \$300, \$300.

12 Q Okay, and that's how you - and how long were you the
13 finance manager?

14 A I had did this for about a year and a half.

15 Q Okay, and how many do you think you did on a daily
16 basis?

17 A Sales, deals?

18 Q Yes, ma'am?

19 A It'd range from anywhere from nine to I think the max I
20 had done in one day was eight deals.

21 Q Okay, and were you working how many days a week?

22 A Six in the summer.

23 Q Okay, how many hours a day were you working?

24 A Seven a.m. until typically four to five p.m.

1 Q All right, and the calculation that you have come up
2 with is based upon your review of your records?

3 A Yes, what, what I came up with is actually a mixture in
4 between being paid 10 percent as a sales representative for my
5 commissions, but like I said between the five and the 10
6 percent and also three percent as a sales manager.

7 Q All right.

8 A So, it's everything between being a sales manager and
9 also being a sales representative.

10 Q Were those commissions or wages, were they paid to you
11 within 30 days of your leaving the company?

12 A No.

13 Q All right, were you given any written notice in advance
14 of any changes of the employment terms as far as the
15 commissions go?

16 A No.

17 Q All right, did the Defendant comply with the contract?
18 Did they comply with their contract in paying you the, paying
19 you the money?

20 A Absolutely not.

21 Q Did you have any conversations with Richard Siegel about
22 these claims?

23 A I may have mentioned to him that things were due to me
24 but it never went into depth. Richard never sat down with me

1 to figure any of this out. Again they'd point to Doug, Doug
2 would point to Connie.

3 Q They would all point to each other, is that?

4 A Richard would tell me to go to Doug, Doug would tell me
5 to go to Connie.

6 Q All right, and you never got an answer from Connie?

7 A No.

8 Q Okay, and the way the finance manager was paid were all
9 - were there other finance managers, managers there besides
10 you?

11 A Yes, on high season, summertime we had nine, slow season
12 typically three to four would work a day.

13 Q Okay, and were all the finance managers paid the three
14 percent?

15 A Yes.

16 Q Was that the standard pay at Westgate?

17 A Yes.

18 Q Okay, can you describe for us a little bit more about
19 the middle of the summer and the sales and how frantic the
20 pace is so we can understand, get a picture of what is going
21 on at Westgate during say June, July. I take it those are
22 the high months?

23 A It was crazy, imagine 400 people trying to talk all at
24 the same time sitting about a foot and a half away from each

1 other. People would try to talk over each other. The rooms
2 would be extremely, extremely hot. We used to keep the AC up
3 very cold. It's, like I said, there would be around 125
4 people and there would be eight managers. I would be on
5 several tables at a time. There were days I didn't even have
6 a bathroom break, days that really there was no lunch break.
7 So, summertime is extremely, extremely hectic.

8 Q All right.

9 A It's whenever tourism hits the most.

10 Q Is summertime when most of these timeshares sales were
11 made?

12 A Yes, absolutely. Some people actually take a few months
13 off in the, in the wintertime because there's no tours that
14 come through at all.

15 Q All right.

16 MR. CONNELL: Let me talk to my co-counsel a minute,
17 Your Honor.

18 BY MR. CONNELL:

19 Q Were you ever given any explanation from Westgate as to
20 why you were not paid the money we've talked about here by Ms.
21 Sharp, Mr. Boykin or any of the others?

22 A She never concluded a final answer for me.

23 Q Okay, okay, thank you, ma'am.

24 THE COURT: Cross examination.

1 MR. CONNELL: No objection. I think that one's already
2 in; isn't it? Okay, no objection.

3 THE COURT: So, that would be Defendant's Exhibit 17
4 and 18.

5 MS. MAYSONET: Yes, sir.

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

8 (Whereupon, Defendant's Exhibit Number 17 [Terms of
9 Employment Notice - Arrington] and Defendant's Exhibit Number
10 18 [Commission Schedule - Arrington] admitted into evidence
11 and appropriately marked.)

12 MS. MAYSONET: May I approach, sir?

13 THE COURT: Yes, ma'am.

14 CROSS EXAMINATION

15 BY MS. MAYSONET:

16 Q Good afternoon, Ms. Arrington. I'm going to, I'm going
17 to hand you what's been marked as Defendant's Exhibit 17. Can
18 you, can you confirm that is your signature in that document?

19 A Yes.

20 Q Okay, and what's the title of that document?

21 A I can read employment notice.

22 Q Is it terms of employment notice?

23 A Yeah, terms of employment notice.

24 Q Thank you. Let me show you what's been marked as

1 Defendant's Exhibit 18, Exhibit A, commission schedule. Can
2 you tell me whether that's your signature there on the last
3 page?

4 A Yes.

5 Q And that is a commission schedule that was, that you
6 sign when you started working for Westgate; right?

7 A That was I believe signed during the training phase.

8 Q And this would be the commission schedule that you were
9 talking about when you were a salesperson?

10 A Yes, it started at six percent. I just read it. So, it
11 said six percent.

12 Q And the contract, the language it says what it says;
13 right?

14 A Uh-huh.

15 Q Now, let's talk about a little bit about it seems to me
16 that you had two positions. You worked for Westgate for
17 approximately two years; right?

18 A About two years. Part of that was sales manager, part
19 of that was sales representative.

20 Q Okay, and you mentioned financing manager. You said
21 that a couple of times. When I think about a financing
22 manager I think about, you know, somebody that you go and ask
23 for money and they either give you the loan or don't give you
24 the loan, but that's not who you were; right?

1 A We give everyone the loan. That's why it's 17.99
2 percent APR.

3 Q Okay, your, your, your title, your job duties didn't
4 include the actual giving the loan to the customer; right? It
5 was your selling to the customer; right?

6 A It was closing the sale.

7 Q Okay.

8 A We, we called each other financial managers. That's the
9 term that sales representatives would use. "Let me get my
10 financial manager over here so that we can check you out,
11 close this deal."

12 Q Another term that was used was take over manager; right?

13 A Yes, it's called a TO.

14 Q A TO manager?

15 A Uh-huh.

16 Q And you were known as TO managers; right?

17 A Uh-huh.

18 Q Okay, and if I understand it correctly the sales rep
19 will spend the time with them, you know, building a rapport
20 with the person and then, you know, they talk about what they
21 want, they talk about, you know, the purchase, you know, what
22 they want to sell, etcetera, etcetera. When get to the point
23 when they're closing the deal they would call you in, the take
24 over manager; right?

- 1 A Yes.
- 2 Q And then you would come in and talk to them, clarify any
3 questions that they had and then put everything, the agreement
4 on the proposal; right?
- 5 A Yes, everything would be in writing from me.
- 6 Q Okay, and that proposal is really a memorialization of
7 the purchase agreement meaning how much am I going to pay;
8 right?
- 9 A Yes.
- 10 Q Other key terms like down payment; right?
- 11 A Yes.
- 12 Q Okay, the week that you purchased and that was signed by
13 the salesperson, you as a take over manager and the customer;
14 right?
- 15 A Yes, all three signatures had to be on it for it to be
16 valid.
- 17 Q Okay, and you were - that was part of the sales
18 department duties, right, just to get that proposal?
- 19 A Yes.
- 20 Q Okay, then that proposal went someplace else; right?
- 21 A Yes, it went to deeding.
- 22 Q Okay, and deeding is another department; right?
- 23 A Yes.
- 24 Q Okay, and deeding has a completely different job than

1 you do; right?

2 A Yes.

3 Q Yes, essentially they produce all the documents that are

4 required by state law and federal law to make a purchase of a

5 timeshare because this is real estate; right?

6 A Yes.

7 Q It's like selling - buying a house, you need the HUD,

8 you know, the housing disclosures, the contract and all those

9 things; right?

10 A Yes.

11 Q Okay, the deeding people would do that; right?

12 A Yes.

13 Q They would print all those documents and then they would

14 discuss that with the customer; right?

15 A Yes.

16 Q Okay, you weren't part of that?

17 A Deeding was a different department.

18 Q Thank you. Now, you mentioned that you were owed

19 \$35,960.25?

20 A Yes, ma'am.

21 Q Okay, now, you would agree with me that whether you were

22 a TO manager or a sales representative you can only collect

23 monies on deals that received a full down payment; is that

24 correct?

1 A That's incorrect.

2 Q Okay, how is that incorrect?

3 A Because once - the last few months that I was there

4 Richard Siegel had changed up terms as well, too. He would

5 give you a, I think he used a half check term, that once you

6 made a deal within the first five days you actually got paid

7 that deal. This is something that changed in the stipulation.

8 Again, this wasn't in writing. It was just something that

9 everybody knew had happened. Also, once the down payment is

10 made that's whenever you get paid.

11 Q Okay, let me, let me get this straight, you signed a

12 contract that you said we finished talking about; right?

13 A Yes.

14 Q And the contract says you will receive commissions on

15 full down payments which is a 10 percent; is that right?

16 A You will receive commissions once a full down payment

17 has been made whether it is in increments or whether it's all

18 at one time.

19 Q And thank you for the clarification and that was my

20 point that whether it's made in increments or at one time you

21 still need that full down payment to receive a commission;

22 right?

23 A Well, should we get into the five day rescission?

24 Q Well, that's kind of separate but you still have to

1 receive the full down payment; right? You're required, the
2 customer is required to put the full down payment for you to
3 be able to at least earn a commission. I'm not talking about
4 cancellation, I'm not talking about rescission. Please listen
5 to my question. It's rather simple.

6 A I'm listening.

7 Q Okay, I thought I asked it but I will re-ask it again.
8 In order for you to earn a commission the customer at least
9 had to pay the full down payment whether it was made at one
10 time or in increments; is that correct?

11 A Your Honor, I really don't know how to answer this
12 question. As I said that the terms had changed. The boss man
13 that had taken over actually gave us advance checks, half
14 checks.

15 MS. MAYSONET: Your Honor, I'm going to move to strike.

16 THE COURT: Yeah, I'll strike it. Either you earned
17 the commission when they paid it in full or you earned a
18 commission before they paid it in full, so.

19 A We earned it before they paid it in full if that's what
20 you want to hear. The reason why I say that again is because
21 Richard Siegel had changed up the terms. He actually gave you
22 checks within five days as the last few months that I was
23 there. I know that that had changed.

24 Q Okay, well, let's just break it down. Before the last

1 few months that you were there you would earn the commission
2 when you received a full down payment. Could we agree on
3 that?

4 A Yes.

5 Q Okay, and let's talk about the last few months. You're
6 talking about half checks?

7 A Uh-huh.

8 Q Okay, are you very familiar with the half checks, how
9 the half check works?

10 A For the first three, three months it was in use, yes.
11 Let's say if someone made \$1000 off of a \$10,000 sale you'd
12 get \$500. Whenever your check came around the next pay
13 period, you would get the other 500. They would give you 500
14 in advance and you would get the other 500.

15 Q Okay, and I'm glad that you used that word because it's
16 really an advance on a future commission; right?

17 A Yeah.

18 Q Okay, so, essentially what a half check is if you sold
19 something today and the person gave a full down payment you
20 had the option to receive that day or the next day a check in
21 the amount of to \$500 that would go towards that commission if
22 that commission fulfilled all the requirements, which is the
23 down payment and the cancellation?

24 A Yes.

1 Q And then when the time came, 28 to 28, 21 to 28 days
2 later after the full down payment was made and there was no
3 cancellation you would receive the difference between the
4 commission less the \$500 that you would receive?

5 A Yes.

6 Q Okay, so, again, whether it was half check or the full
7 down payment you still have to meet those requirements of the
8 full down payment and have no cancellations before you could
9 receive the actual commission; right?

10 A Yes.

11 Q Thank you. Now, you came up with 35-9-60-25. Can you
12 tell me which commissions comprised that total that deal with
13 down payments. I'm sorry, this question was messed up. I
14 apologize. It's late. Let me just rephrase that question.
15 Can you tell me which commissions, which contracts comprise
16 that \$35,960?

17 A Got a whole stack of them here.

18 Q All right, which ones are you saying that were not paid?

19 A I have 57 of them that were unpaid as a manager.

20 Q All right, and let - I want you to identify those and I
21 ask the jury to bear with me but you're asking for money based
22 on those contracts. We need to know which contracts they are
23 so we can ascertain whether they were paid or not. So, if you
24 can tell me the name and the contract number, and if you'll

1 bear with me let me go and get my pad.

2 A Do you want me to just give you a handful of them?

3 Q Anything that you're saying was not paid I want to know.

4 A Okay.

5 Q And these were supposed to be paid at three percent;

6 right, when you were a manager?

7 A These are three percent, yes.

8 Q Yes, ma'am, go ahead.

9 A I'll give you one, Dennis and Janet Riordan. That's R-

10 I-O-R-D-A-N.

11 Q And if you'd give me the contract number?

12 A I'm sorry, guys. My account numbers on most of these

13 aren't visible on the bottom here. Some of these don't have

14 contract numbers because the house kept the originals. I made

15 copies.

16 Q If you'd read the names for me then and when you ---

17 A I just did, Riordan, R-I-O-R-D-A-N.

18 Q Okay, what's the next one?

19 A Okay, I've got Omar Forbes. I have Taylor.

20 Q Taylor what?

21 A It's Horace Taylor.

22 Q Oh, I'm sorry, okay.

23 A Lisa Hamilton, Lynn McCarter.

24 Q Glenn or Lynn?

1 A Lynn, L-Y-N-N.

2 Q Okay.

3 A Darlene Cummings.

4 Q Yes, ma'am.

5 A Dennis and Janet Riordan.

6 Q That's, you already read that to me. That was the first

7 one.

8 A Yep, Clinton Farley and Rachel Green.

9 Q Farley, are those two separate transactions or one?

10 A Those are together. They were unmarried.

11 Q Okay, okay, then ---

12 A Would you like me to keep going?

13 Q Everything that you're ---

14 A I can give you a copy of this rather.

15 Q If ---

16 A That's if my attorney will let me.

17 Q Did you turn ---

18 MR. CONNELL: You can have anything you want. You can

19 give them anything they want, you have.

20 Q Yeah, let me ask you a question. We requested you to

21 identify all documents, all contracts that were owed to you.

22 Did you turn over that list?

23 A What do you mean?

24 Q We, the Defendants through your lawyer asked for you to

1 identify each and every single contract that you said was
2 owed.

3 A Uh-huh, uh-huh.

4 Q My question to you is do you know that list that you're
5 reading from was turned over to us?

6 A Do I know if it was?

7 Q Yes.

8 A No, I don't.

9 Q Okay, do you have an extra copy of that list? I can
10 certainly make one of your original. It is your testimony
11 that each and every of those transactions in that list both
12 made the full payment and was not canceled, therefore they're
13 owed; right?

14 A What do you mean made the full payments?

15 Q Full down payment.

16 A From what I understand, yes. I had tried to contact
17 several of those owners. I mean, it's been almost seven
18 years. Some of those people don't even have the same number
19 anymore.

20 Q Ms. Arrington, with your permission I'm going to go ahead
21 and have this marked. There's no objections and then we'll
22 make, we'll make a copy of this and return this back to you.

23 A As I said if it's all right with him.

24 MR. CONNELL: Yeah, that's fine.

1 THE COURT: It's coming in? Defendant's Exhibit 19,
2 any objection?

3 MR. CONNELL: No, sir.

4 THE COURT: All right, Defendant's Exhibit Number 19
5 admitted into evidence without objection.

6 (Whereupon, Defendant's Exhibit Number 19 [Arrington List
7 of Contracts] admitted into evidence and appropriately
8 marked.)

9 BY MS. MAYSONET:

10 Q Is that the complete, entire list of all the monies that
11 are owed to you?

12 A Can I see that one more time? All right, yes.

1 Q Thank you. I have no further questions.

2 THE COURT: All right, redirect?

3 MR. CONNELL: I've just got one or two.

4 THE COURT: Excuse me.

5 REDIRECT EXAMINATION

6 BY MR. CONNELL:

7 Q Okay, Laura - they gave - they put in Defendant's Exhibit

8 Number Seven which says employment notice. Can you tell me

9 when you were to be paid based on that notice they just put

10 in?

11 A We were paid at the work site?

12 Q Yes.

13 A After two p.m. the date of payment is Friday.

14 Q Okay, and does it say weekly or biweekly there?

15 A It says week, oh, excuse me, it says biweekly.

16 Q All right, thank you.

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

18 All right, I think it's a good time for us to take about

19 a five or ten minute break, give you an opportunity to stretch

20 your legs, use the restroom, get something to drink. Please

21 leave your pads here. Do not discuss the case even among

22 yourselves at this time. Don't conduct any independent

23 investigations. We'll bring you back in about ten, 15

24 minutes. Everyone else please remain seated while the jury's

1 excused.

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right, anything from the Plaintiff
4 before we break?

5 MR. CONNELL: No, sir.

6 THE COURT: Anything from the Defense?

7 MR. WILKERSON: No, Your Honor.

8 MS. MAYSONET: No.

9 THE COURT: All right, let's take about a ten-minute
10 recess. If any of them want to step outside then go ahead and
11 do it.

12 OFF THE RECORD

13 (On the record.)

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 bring the jury back in?

18 MR. CONNELL: No, sir.

19 THE COURT: Anything from the Defense?

20 MR. WILKERSON: If you would allow me to grab my co-
21 counsel, Your Honor. She's on her way in.

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

23 MR. WILKERSON: Thank you.

24 MR. CANTY: Your Honor, there is one matter. I have a

1 message from Deputy Solicitor DeBusk. He wants me to be in
2 General Sessions at two p.m. tomorrow for an arraignment and
3 I've explained that I am in a jury trial and Your Honor is
4 Chief Administrative Judge for General Sessions. So, I don't
5 know if we can ---

6 THE COURT: I think the rules are pretty clear. Once
7 you're in the middle of a trial you can't be pulled out of a
8 trial and compelled to appear in another court.

9 MR. CANTY: I'll communicate that to Deputy Solicitor
10 DeBusk.

11 THE COURT: Uh-huh, all right, anything from Defense
12 before we bring the jury in?

13 MR. WILKERSON: No, thank you, Your Honor.

14 THE COURT: All right, let's bring the jury in.

15 (Whereupon, the following takes place in the presence of
16 the jury.)

17 THE COURT: All right, ladies and gentlemen, welcome
18 back. I remind you if you have any cell phones or pagers or
19 anything of that nature if you'd please turn them off now.
20 Make sure you have your own pads. We're ready to resume the
21 trial of the case. Mr. Connell, you can call your next
22 witness.

23 MR. CONNELL: All right, Ms. Reilly, come up here if you
24 would.

1 Whereupon, Cynthia G. Reilly was called to the stand,
2 duly sworn by the clerk and testified as follows:

1 THE CLERK: State your name for the Court, please,
2 ma'am.

3 MS. RILEY: Cynthia G. Riley. Wow, that was kind of
4 loud. Sorry.

5 DIRECT EXAMINATION

6 BY MR. CONNELL:

7 Q Okay, Ms. Reilly, if you would tell us where you live.

8 A I live in Myrtle Beach, South Carolina.

9 Q Okay, and where do you live now? What's your address?

10 A It's 455 Sunnehanna Road, Number 556, Myrtle Beach, South
11 Carolina, 29588.

12 Q All right, how long have you lived in Myrtle Beach?

13 A For about six years now. Thank you.

14 Q Where did you come from?

15 A Fort Mill, South Carolina.

16 Q Okay, and how long did you work at Westgate?

17 A It was a very short run. It was from June, I started my
18 training, and I got let go about September 29th right before
19 October.

20 Q Okay, and had you ever worked at a timeshare resort prior
21 to that?

22 A Briefly under completely difference circumstances,
23 Wyndham, I was paid salary there. I took the salary option
24 instead of commission.

1 Q Okay, and when you worked at Wyndham was that in the
2 Myrtle Beach area or was that somewhere else?

3 A Myrtle Beach.

4 Q Okay, and about how many months was it that you worked at
5 the Wyndham?

6 A Not very long, maybe a month and a half, somewhere around
7 in there.

8 Q Okay, when did you first decide to go to work at Westgate
9 and how did that come about?

10 A I was out at a pool one day. I had seen advertisements
11 for Westgate and I was out at a pool and one of my co-workers,
12 Stephen Black, heard me talking about working at Wyndham and
13 approached me and asked me if I knew about the no chargeback.
14 One of the things I was talking about at the pool was other
15 employees from Wyndham would be expecting a certain amount of
16 a check and they would get their check and the money wouldn't
17 be there. So, I was talking about worried about going on
18 commission for that reason and he approached me and said,
19 "Have you ever thought about going here," and I did the
20 research and found the ad that said no chargebacks and it got
21 set up with an interview to go to work there.

22 Q Okay, now, who did you interview with and when did you
23 first start work?

24 A I interviewed with Frederick Von Sant and it was a, I

1 believe, three week training period. So, it was at the
2 beginning of June, the exact date I'm not sure.

3 Q Okay, what year was it?

4 A 2008.

5 Q All right, and did you go through the training program?

6 A Yes, sir.

7 Q All right, and did you pass the - isn't there a test at
8 the end?

9 A Yes, I passed all of them.

10 Q Okay, and when did you officially start and what, what
11 was your job?

12 A The day I hit the floor was July 5th and I was a frontline
13 salesperson.

14 Q Okay, and without belaboring that a frontline salesperson
15 does what?

16 A Basically you go for your morning meeting with Richard
17 Siegel or Jesus and then you're let loose. You wait for - to
18 be called for a tour, which was virtually right away, pretty
19 much for the most part.

20 Q Okay, you threw a different name out this time. You said
21 something I haven't heard before Jesus. Who is Jesus?

22 A Jesus I'm not really sure what his title was. He was
23 right under Richard Siegel.

24 Q Was he a manager?

1 A He was, he was from Orlando. He was a I would say
2 corporate or he was a very high up person.

3 Q Okay, now, did you - let me show you Plaintiff's Exhibit
4 Number Eight and Number Nine and ask you if you signed a
5 similar contract?

6 A Yes, I do believe so.

7 Q Okay, and the attachment to it, was that signed by you
8 also or was that, did you get that item?

9 A I believe so, but I really honestly wouldn't know.
10 Actually on the other side she was with human resources.

11 Q And you're pointing to someone over at the Defense
12 counsel.

13 A Colleen, I believe is her name ---

14 Q Uh-huh.

15 A --- from human resources here at the Myrtle Beach office,
16 a very similar circumstances to what the other people have
17 testified to as far as how the paperwork was given. I asked
18 her personally and she had another lady with her who I'm not
19 sure who it is to please give me any copies of anything I put
20 my signature to. I was given back all copies except for the
21 documentation that they keep showing people as far as what we
22 signed.

23 Q All right, and how long did you have to sign or when were
24 you given a contract?

1 A I was given it at the end just like everybody else, the
2 end of training, told it was very busy, you know, wanted to
3 get us out on the floor so we could start selling. I did,
4 however, unlike some other people when I got to the part of
5 the, of the paperwork that, that talked about taking a certain
6 percentage for reserve or something, with the no chargebacks
7 there should have been no reserve account and I did inquire
8 with Frederick Von Sant as to why this was in the paperwork.
9 He told me that because of our interview basically not to
10 worry about it.

11 MR. WILKERSON: Objection, Your Honor, again
12 chargeback and she's tied it to reserve, objection,
13 irrelevant.

14 MR. CONNELL: Your Honor, he's a ---

15 A Well ---

16 Q Wait a minute. You can't say a thing until the Judge
17 makes a ruling.

18 THE COURT: All right, all right, I'm going to
19 overrule it. I'll allow it. Go ahead.

20 Q All right, go ahead.

21 A Yeah.

22 Q Who was Frederick Von Sant? What was his?

23 A Frederick Von Sant was the trainer. He was the one who
24 trained us for the three weeks and if we ever had any kind of

1 problems like selling, like we were kind of on a little bit of
2 a rut he would take us in and do like periodic little training
3 courses to help us, you know, to do better with people.

4 Q All right, did you all have sales goals there as to what
5 you were going to - how many you were going to do?

6 A They, they expected two out of 10 sales.

7 Q All right, when you say they?

8 A Victor.

9 Q Frederick?

10 A Victor Curry, director of sales, Richard Siegel, Jesus
11 all expected two out of 10 which averaged about what, 17, 18
12 percent of ---

13 Q Okay, of the people who came through the door.

14 A Of the people who came through the door, yes.

15 Q All right, now, you - I think you - did you know how
16 much - how many sales were going through? Were you given
17 numbers on a weekly or daily basis as to how much had been
18 sold for that year?

19 A No.

20 Q Okay, how about for a total, did they tell you, "We've
21 sold this week X number of dollars?"

22 A They, they would come, yeah, they would put up
23 billboards in the sales room. Like for the 4th of July I think
24 we made over \$10 million in that one week. They would put

1 billboards on the sales floor, you know, showing that they had
2 achieved this - we had beat a record or things to that nature.

3 Q Okay, now, when you signed the contract you never got a
4 copy; is that what I heard you say?

5 A I got copies of certain paperwork but the one that
6 regarded the reserves, the six-month waiting period or
7 whatever, I did not receive copies of those.

8 Q Okay, were you ever given written notice in advance of
9 any changes to the employment terms?

10 A No, for the stint that I was there about two and a half
11 months it was 10 percent going in, you got minimum wage as
12 well. There were SPIFFS, half checks, bonuses that were also
13 allotted and those didn't change while I was there.

14 Q After you left were you paid within 30 days of leaving?

15 A Absolutely not.

16 Q Okay, do you think that the Defendants have breached the
17 agreement you had with them?

18 A Yes.

19 Q All right, was there ever any oral changes to the
20 agreement by managers as to how you would be paid?

21 A No.

22 Q Not during the period you were there?

23 A No.

24 Q All right, what do you say and I want you to come down

1 here and write it on this board, what do you say you are owed
2 and then we're going to talk about how you came up with that
3 number. Okay? First come down here and do that.

4 A Okay, okay.

5 Q Write your name if you would, please, and your ---

6 A Cynthia.

7 Q Just write Reilly down there.

8 MR. WILKERSON: Are you running out of board, Gene?

9 MR. CONNELL: What's that?

10 MR. WILKERSON: You running out of board?

11 MR. CONNELL: We got a backboard, too, for Your Honor.

12 BY MR. CONNELL:

13 Q Okay, all right, Cynthia Reilly, Ms. Court Reporter,
14 she's written down \$25,530? Okay, now, Cynthia, if you would,
15 tell me how you arrived at that number.

16 A How I arrived at that number the day that I was laid off
17 the same gentleman who saw me at the pool that day was laid
18 off.

19 Q Okay, you can't tell me what he said. He's going to be
20 here tomorrow.

21 A Stephen Black, no.

22 Q Okay.

23 A I, I went over to his house and wrote on a sheet of
24 paper what deals I had done based off of the paperwork that I

1 had. I was missing one of my deals of the paperwork which
2 Westgate has information of ---

3 Q Okay.

4 A --- but I wrote all my deals down. I have, I think, all
5 but one of my contracts that you all have seen this numerous
6 times I'm sure but it would have like where you sat down with
7 them and had breakfast or lunch and some questions that were
8 asked after that and then ---

9 Q Is that kind of, let me top you right there, is that
10 kind of like, you know, I went to a car dealer one time and he
11 sat down and bought me a Coke and started talking to me about
12 personal matters, you know, how many children I had, where did
13 I live, is that what you were trying to do?

14 A Yes.

15 Q Get kind of a rapport with the customer?

16 A There were two things that were to be achieved out of
17 that. One was you want to overcome objections. One objection
18 that was very big in timeshare was that the people were
19 hungry. So, Westgate provided breakfast and lunch so that
20 that was one objection that was just wiped off the table.

21 Q Okay, all right, let's go back to the, the amounts that
22 you say is owed, \$25,530. Okay, and so, you looked at all
23 your deals.

24 A Well, I have almost all my deals. I am missing quite a

1 few VOAs ---

2 Q Okay.

3 A --- that were not provided to me.

4 Q All right.

5 A But what I went based off of was the contracts that I

6 have before they would go into deeding and I added them all up

7 and then I subtracted from the ones that I knew had been paid

8 on and based off of one of the only paycheck stubs I ever got

9 and what was in reserves because what was in reserves would

10 have been, this is one percent.

11 Q Okay, okay, we're not talking about reserves.

12 A Okay, yeah, no.

13 Q We're only talking about unpaid commissions.

14 A Okay, okay.

15 Q All right, and so, that's how you came up with the

16 25,000 some odd dollars.

17 A Yes.

18 Q All right, now, tell me if you would what conversations

19 you have had with managers of Westgate regarding trying to get

20 your money.

21 A Several.

22 Q Okay, let's talk about - let's take them - let's talk

23 about - let's break them down first. You had any

24 conversations with Connie Sharp?

- 1 A Several.
- 2 Q All right, and how - would you call her on the phone?
- 3 A Yes.
- 4 Q All right, and were you ever given anything as a result
5 of making a request of her?
- 6 A No, I sent her, we all did - well, a lot of us did sent
7 her a letter that she required to have. It stated that you
8 wanted to receive your money that you had earned. So, that
9 was the first step before we could even have conversations
10 with her was to get her this information.
- 11 Q All right.
- 12 A After that it was phone calls as everyone else stated as
13 well, very difficult to get in touch with her, to get her to
14 talk on the phone. I did reach her a couple of times asking
15 her that I needed a copy of every deal that I had done, the
16 amounts, which one had been paid and which ones they were
17 claiming were not good.
- 18 Q Okay, now, did you ever have any conversations with any
19 managers of Westgate afterwards, after the lawsuit had been
20 brought?
- 21 A Yes, I did - well, it was actually before the lawsuit
22 had been brought.
- 23 Q Okay.
- 24 A There were, we were gathering, starting to group

1 together. We had ---

2 Q When you say starting a group together what, people who
3 had not been paid?

4 A People who had not been paid who had been laid off,
5 generally were the people that they owed the most money to,
6 okay. We started to gather and talk about some steps that we
7 wanted to take as ---

8 MR. WILKERSON: Objection, irrelevant, Your Honor.

9 MR. CONNELL: Your Honor it's - we're getting ready to
10 explain some conversations that she had with agents, manager
11 ---

12 THE COURT: I sustain the objection. He can get to
13 those but I sustain the objection.

14 BY MR. CONNELL:

15 Q All right, let's, let's talk about the conversations you
16 had with managers of Westgate, please, ma'am.

17 A Okay, I went to Victor Curry who at the time was
18 director of sales and Frederick Von Sant was also in the
19 office at the same time.

20 Q Okay, when did you go to Victor Curry and Frederick Von
21 Sant?

22 A After I had been approached about the lawsuit it
23 probably would have been sometime in October that I went
24 there.

1 Q What year?

2 A '08.

3 Q Okay.

4 A They had gotten word that I had ---

5 Q When you say they you got to be specific.

6 A I'm sorry, Victor Curry and Frederick Von Sant had

7 gotten word that I was considering being a part of the

8 lawsuit. They tried to reassure me telling ---

9 Q Okay, wait a minute. Let's, let's take it back.

10 A Oh, I'm sorry.

11 Q Let's go back. Where did you all, where did you all

12 meet, where did you all talk?

13 A In the, in the office on the sales floor.

14 Q Okay, so, you went to the Westgate Resort?

15 A Uh-huh, yes.

16 Q And did you go by yourself?

17 A Yes.

18 Q And you met with Frederick Von Sant?

19 A Yes.

20 Q And you met with Victor Curry?

21 A Yes.

22 Q And what was Victor Curry's job?

23 A Director of sales.

24 Q All right, and what was Mr. Von Sant's job at that time?

1 A Still training.

2 Q Okay.

3 A They, I think they were maybe transitioning him into a
4 TO position at the time.

5 Q What's a TO position?

6 A That's the takeover manager.

7 Q Okay, what - and since we're not timeshare experts
8 what's a takeover manager?

9 A Basically when you would do a sale and you got to the
10 end and, you know, people were either going to buy or they
11 weren't going to buy. You just kind of raised your hand and
12 waited for somebody, one of the managers to come over to sit
13 on your table and kind of feel for what the budget was for the
14 people and kind of lay them out a few offers to choose from
15 and then in the end close the sale.

16 Q Okay, so, in October 2008 you went to Westgate Resort
17 and you met with these two gentlemen. What did they tell you?

18 A Basically that it would be wise for me to reconsider
19 being on the lawsuit, that ---

20 MR. WILKERSON: Objection, Your Honor. Could we
21 approach the bench?

22 THE COURT: All right.

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

1 MR. WILKERSON: Thank you, Your Honor.
2 THE COURT: Yes, sir.
3 Q Okay, we need to, we need to talk specifics here, not
4 what - you can't characterize it. What did they tell you and
5 what did you say at that time?
6 A At first they weren't even going to talk to me. Then
7 they told me to come in. They ---
8 Q When you say they you got to, you got to say.
9 A --- Victor Curry, Victor Curry.
10 Q Okay.
11 A Advised me that it would be to my best interest to not
12 become a part of the lawsuit, that Victor Curry and Frederick
13 Von Sant both wanted me back come February and that they would
14 be willing to pay me my money then. My response was, "If you
15 haven't paid me my money already why would I ever come to work
16 for you again?"
17 Q All right.
18 MR. WILKERSON: Objection, Your Honor. I renew my
19 objection under Rule 408 as stated at the bench.
20 THE COURT: Overruled.
21 Q All right, about how long did the meeting last?
22 A Probably about 30 minutes, maybe a little longer.
23 Q All right, what else was said in the meeting that you
24 remember?

1 A Just kind of enticements about coming back there for
2 February, you know.

3 Q And I'm taking it in October 2008 you were not working
4 there; is that right?

5 A Well, I had, I had stayed number one on the sales list
6 for a little while that I was there which I didn't expect to
7 happen. So, they basically, praised, basically, what a good
8 job I did, got along with everybody and just tried to, you
9 know, make it look enticing for me to not take this course of
10 action.

11 Q Okay, all right. Okay, the contract that you signed ---

12 A Yes.

13 Q --- for the commissions, was there anything in the
14 contract about you having to write a letter to get your money?

15 A No.

1 Q Okay, all right, thank you ma'am. Appreciate it.

2 THE COURT: All right, cross examination.

3 MR. CONNELL: No objection.

4 MS. MAYSONET: Sir, may I move to admit these two
5 exhibits that are without objection.

6 THE COURT: All right, that would be Defense Exhibits
7 20 and 21. All right, Defendant's Exhibit Number 20,
8 Defendant's Exhibit Number 21 admitted into evidence without
9 objection.

10 (Whereupon, Defendant's Exhibit Number 20 [Terms of
11 Employment Notice - Reilly] and Defendant's Exhibit Number 21
12 [Commission Schedule - Reilly] admitted into evidence and
13 appropriately marked.)

14 MS. MAYSONET: May I approach, sir?

15 THE COURT: Yes, ma'am.

16 CROSS EXAMINATION

17 BY MS. MAYSONET:

18 Q Ms. Reilly, I'm going to hand you what's been marked as
19 Defendant's Exhibit 20. It's entitled Terms of Employment
20 Notice. Can you tell me if that's your signature at the
21 bottom there?

22 A It is my signature, not really sure what the paperwork
23 is but ---

24 Q Okay, I'm going to hand you what's been marked as

1 Defendant's Exhibit 21. It's entitled Exhibit A, Commission
2 Schedule, Commission Sales Agents. Can you tell me if that's
3 your signature there on the third page?

4 A Yes, I believe this is the copy I never received back.
5 There you go. Thank you for letting me see that again.

6 Q Ma'am, the question is very simple.

7 A Yes, that's my signature.

8 THE COURT: Yeah, let's don't be argumentative. Just
9 answer the question, okay.

10 A Uh-huh.

11 THE COURT: All right, I'll direct the jury to
12 disregard the last comments by the witness as argumentative.

13 Q Ma'am, if I heard you correctly you started working
14 sometime or selling sometime in July 5th, 2008?

15 A July 5th, 2008, I hit the floor.

16 Q And you only worked until September, the end of
17 September of that year?

18 A Yes.

19 Q So, you only worked for a little bit over two months,
20 maybe two months and a week; right?

21 A Correct.

22 Q Okay, and did you resign or were you let go for sales?

23 A I'm sorry. I don't understand the question.

24 Q Yeah, why did you end up - did you quit or were you ---

1 A No, I did not quit. The bailout did not go through and
2 I think at that time David Siegel panicked and let go a lot of
3 people.

4 Q Okay, so, you were, you were let go; is that
5 essentially?

6 A I was laid off.

7 Q Laid off, okay. Now, you've - I show you the commission
8 Exhibit A that you signed. You would agree with me that a
9 condition for you to earn commission, okay, was that a person
10 must make the full 10 percent down payment; right?

11 A Can you ask that again?

12 Q Yes, you were paid both, I, from what I understand from
13 your testimony, you received commissions; right?

14 A Yes.

15 Q Okay, and those commissions were on transactions that
16 you made, sales; right?

17 A Correct.

18 Q Okay, and you, in order for you to earn a commission the
19 customer had to make a full down payment, which was 10
20 percent; is that correct?

21 A I learned that through my coworkers through the duration
22 of working there. Yes, I didn't know what a pender was.

23 Q I understand but that's not the question I'm asking.

24 Okay.

1 A Well, that's what my answer.

2 Q It'll probably go smoother if you answer the questions I
3 am asking you. I'm not trying to be disrespectful. Again,
4 for you to earn a commission the customer had to make a full
5 down payment; was that correct?

6 A Yes.

7 Q Okay, another thing that had to happen before you could
8 earn a commission on those proposals that you talked about was
9 that the customer cannot cancel that contract within the
10 rescission period.

11 A That's correct. In all these contracts I have nobody -
12 there was I had one rescind out of every deal that I did for
13 \$5600.

14 Q All right, ma'am, again the question is yes; right?

15 A Yes.

16 Q Thank you, okay, now, can you tell me how you arrived at
17 the \$25,530 that you are telling the jury that you are owed?

18 A Well, again, I don't have all of my VOAs. I wasn't
19 allowed to get those and I've received no documentation from
20 Westgate. So, the best that I could do was go through my
21 documentation that I kept, add it together and take out what
22 was paid.

23 Q All right, so, let's break this down. So, what you're
24 saying to me is that you look at the documentation that you

1 had, came up with that number, okay; is that correct?
2 A Yes.
3 Q Okay, now, let's break this down. You talked about
4 VOAs; right, V-O-As?
5 A Yes.
6 Q Okay, a VOA payment to you would be \$40; right?
7 A Correct.
8 Q So, when you said, "I am owed a VOA," you're saying,
9 "I'm owed \$40"; right?
10 A For each VOA that I sold.
11 Q I understand but the payment owed is it's \$40, it's not
12 10 percent commission; right?
13 A Yes.
14 Q Okay, all right, can you - you told me that you don't
15 have copies of the VOAs. Do you have copies of the
16 commissions?
17 A I have copies of some VOAs, not all VOAs. It was taboo.
18 If you went over there to pull your VOAs from a box and
19 Richard Siegel or Jesus saw you you could just well go ahead
20 and walk to the door because it was frowned upon.
21 Q Well, let me ask you something, Richard Siegel lives in
22 Orlando, Florida; right?
23 A Well, he was at the resort nearly every day that I was
24 there.

1 Q For those 2.7 - two months and seven days ---
2 A Yes, him ---
3 Q --- he was every there.
4 A --- him or Jesus they rotated. One would go back, spend
5 time with family every other week. The other one would come
6 back every other week.
7 Q Okay, let's move on. So, can you tell me which VOAs are
8 owed to you from the ones that you have a copy of?
9 A As I stated to Mr. Connell I spoke with Connie Sharp and
10 had asked her for detailed records of everything that had
11 passed through my hands and was never given one single bit of
12 documentation.
13 Q Ms. Reilly, I also believe you testified that you have
14 some records of the VOAs that you have.
15 A I do have some.
16 Q So, the question was simple. Can you tell me which VOAs
17 are you owed from the records that you have?
18 A That I'm owed? I don't have, I don't have the paperwork
19 for the ones that are, that are owed. I mean, these are going
20 to be owed. Some of these are going to be owed and then there
21 are some that I don't have any knowledge of that are going to
22 be owed.
23 Q Ma'am, there was a contract involving a VOA; right?
24 A Okay, there was a - okay, when you're a salesperson and

1 you don't sell, you spend a lot of time with these people,
2 okay, and at the end of it you still want to like the customer
3 service that John was talking about, you want to give the
4 people an opportunity because sometimes they might not have
5 enough money. So, even though you pretty much did the sales
6 presentation you would have to turn them over to an exit
7 person, okay, and that exit person finalized the vacation
8 packages, okay. However, because we spent the majority of the
9 time with them we got paid \$40 on every VOA that, that left
10 the building, but they would put the sheets with VOA and if
11 you were caught over there on the wall going through the VOAs
12 to try to get your deals out of there and Richard Siegel or
13 Jesus saw you you could be fired for that.

14 Q All right, ma'am, what are you - you're saying to me is
15 that Westgate owes you monies on VOAs but you don't - cannot
16 identify which VOAs they are.

17 A I have received no documentation from Westgate to be
18 able to answer your question.

19 Q So, how do you know how much money you are owed on VOAs?

20 A Well, I know when I'm owed off of my paperwork. That's
21 what I know, okay. Other than that there is more out there
22 but I just don't have access to it.

23 Q So, you're telling this jury that they're supposed to go
24 on what you said you're owed but you can't identify which VOAs

1 are owed.

2 A Westgate has been asked on numerous occasions to provide
3 and ---

4 Q Ma'am, I asked you a yes or no question. Please don't
5 want to be argumentative.

6 A Well, I wouldn't know that answer.

7 REPORTER: I can't hear both of them at the same
8 time.

9 THE COURT: Yeah, only one speak at a time.

10 A I'm sorry. Well, I can't answer your question ---

11 Q Okay.

12 A --- because I was never provided the documentation.

13 Q So, you cannot tell me out of those \$25,530 which of
14 those deals involve VOA.

15 A That doesn't include the missing VOAs.

16 Q Okay, well, tell me what are the commissions that are
17 included in this \$25,530.

18 A It's all right here. It's all right here. It's all on
19 record.

20 Q Ma'am, I'm not asking you about the number. What I'm
21 asking you are tell me the specific transactions which you
22 claim were not paid that adding it up comes up with 25,530. I
23 need ---

24 A They're all in here. There's too many. They're all in

1 here.

2 Q Well, this is your day in court.. You're asking them to
3 pay you. You need to tell me and you're saying that we have
4 to pay this. You need to tell me which customers.

5 A I mean, it would be easier for me to tell you who I was
6 paid on because the list is shorter for who I was paid on than
7 who I wasn't paid on.

8 Q Ma'am, it doesn't work that way. If you were paid on
9 ---

10 A Well, I mean ---

11 THE COURT: Ma'am, let her finish asking her
12 question. Don't interrupt her. Let her ask her question.
13 Then you answer her question, okay? All right, go ahead.

14 Q You would agree with me that we're not here about the
15 monies that were paid to you. That's already resolved. You
16 were paid; right?

17 A Was I paid? I wouldn't be here if I had been paid,
18 ma'am.

19 Q That's not ---

20 THE COURT: Ma'am, listen to her question. You're
21 not listening to her question. Listen to her question.

22 A I'm sorry. I'm just understanding.

23 THE COURT: Answer her question. No, I understand
24 you don't want to give the answer to the question. Listen to

1 her question because you're not answering her question; okay?

2 A Uh-huh.

3 THE COURT: All right, ask it again.

4 Q Ms. Reilly, would you - you would agree with me that the

5 deals that you already paid are not subject to this lawsuit;

6 right?

7 A No, they're not.

8 Q So, the deals that you're telling this jury today saying

9 that you're owed \$25,530 are deals that you contend are not

10 paid; right?

11 A Exactly.

12 Q Okay, I want to know the name of each and every deal

13 that is not paid that comes up with a total aggregate of

14 \$25,530.

15 A Well, here's the list.

16 Q Well, then if - are you contending that every name on

17 that list was not paid?

18 A If there's an X beside it, no. This one ---

19 Q Okay, well, I'm not going to read your notes. You tell

20 me, you tell me now which deals were not paid.

21 A James Marr.

22 Q Let me ask you a question. Do you have a contract

23 number next to that?

24 A No, I do not. I mean I do on my paperwork. Whether or

1 not it will be visible .I don't know but ---
2 Q All right, let's start with the last name, please.
3 A James Marr and Cynthia Marr [spelled phonetically].
4 Q That's one contract; right?
5 A Yes.
6 Q Okay, what, what other contract you said you did not get
7 paid on?
8 A Myrna Gregory, Mike Holod, Ora Gill [spelled
9 phonetically].
10 Q I'm sorry, what was the last name, the, the last one?
11 A Holod, H-O-L-O-D.
12 Q Uh-huh.
13 A Don and Marisa Eaddy, [spelled phonetically], I think
14 that says Karen Smith [spelled phonetically].
15 Q Yes, ma'am.
16 A James Winston, Jr. [spelled phonetically].
17 Q James Winston, Jr., yes.
18 A Terry Staphaand [spelled phonetically].
19 Q I'm sorry, I did not hear you.
20 A I think it's Terry Staphaand.
21 Q Terry and could you spell it for me, please?
22 A S-T, I think it's A-P-H-A-A-N-D or E-N-D.
23 Q Okay, all right, can you tell me the next contract you
24 contend you weren't - did not receive?

1 A Tammy Ulaki [spelled phonetically].
2 Q Jamie, I'm sorry, what?
3 A Tammy Ulaki, U-L-A-K-I.
4 Q Okay, what's the next contract?
5 A Bryan McKenzie [spelled phonetically].
6 Q Yes, ma'am.
7 A Lindsey and April Robinson [spelled phonetically].
8 Q Okay.
9 A Carl McNair, Mary Lee McNair [spelled phonetically].
10 Q Those would be like a couple? That's a single contract;
11 right?
12 A Yes.
13 Q Okay, who else?
14 A John Patterson [spelled phonetically].
15 Q Who else?
16 A Jimmy Spivey and Sully Bell McClain, Suzy Bell McClain
17 [spelled phonetically], I'm sorry.
18 Q And again, that's a single contract with two people that
19 are not married; right?
20 A Yes.
21 Q Okay, anybody else?
22 A Uh-huh. I might have to look this one up on here
23 because I can't read my own writing. What name did I stop
24 with with you?

1 Q Jimmy Spivey and Suzanne ---
2 MR. WILKERSON: Spivey and ---
3 Q Spivey, yes.
4 A Okay, wait one second and I'll find it. I think this
5 says - well, I need to have it right. I'm sorry. Okay, Mari
6 Cruz, M-A-R-I-C-R-U-Z, Springer [spelled phonetically].
7 Q I'm sorry, is it Mari Cruz Springer or ---
8 A It's just Mari Springer. I guess that must have been
9 her middle name..
10 Q Okay.
11 A Max McIntosh [spelled phonetically].
12 Q Yes, ma'am.
13 A Kate and Walter Murray [spelled phonetically].
14 Q Kate and Walton Mary, okay.
15 A And Wanda Sims [spelled phonetically].
16 A Wanda Sims.
17 A Uh-huh.
18 Q So, if I understand you correctly the aggregate of all
19 of these numbers, the names that you gave me would constitute
20 the \$25,530 that you told me; right?
21 A To the best of my recollection, yes.
22 Q And you would agree with me if any of these people
23 failed to make the down payment you would not be entitled to
24 commission; right?

1 A I was really told that it was about the rescinding
2 period, that other than that as long as they didn't rescind
3 within the five days you would get paid on it.

4 Q Ma'am, you just testified under oath.

5 A Uh-huh.

6 Q And I'm just repeating what you said. In order for you
7 to get paid on any of these commissions you have to show that
8 there was a full down payment of 10 percent; isn't that true?

9 A Can I plead the fifth on that one?

10 THE COURT: No, ma'am, you need to answer the
11 question.

12 A Yes.

13 Q Thank you, and the other as you correctly pointed out,

1 the other trigger is that there's no cancellation; is that
2 correct?

3 A Uh-huh.

4 Q Yes?

5 A Yes, I'm sorry.

6 Q You have to say yes.

7 A Yes, I'm sorry.

8 Q So, you would agree with me if any of this commissions
9 shows that it was canceled within the rescission period you
10 would not be entitled to that?

11 A Yeah, rescission period, yes, I would agree with that.

12 Q Thank you.

13 MS. MAYSONET: If you'd give me one second.

14 THE COURT: All right.

15 MS. MAYSONET: No further questions, sir.

16 THE COURT: All right, redirect.

17 REDIRECT EXAMINATION

18 BY MR. CONNELL:

19 Q Were you ever given any notice that they had moved the
20 down payment to the end of the ten year period?

21 A Never and that's when ---

22 MS. MAYSONET: Objection.

23 THE COURT: Hold it, hold it, that wasn't addressed in
24 cross examination.

1 MR. CONNELL: But the period was addressed, Your Honor.

1 THE COURT: No, I sustain the objection.

2 Q All right, let me ask this question. The terms of

3 employment, Defendant's Number 20, payday was every, how so

4 often?

5 A It's biweekly.

6 Q All right, and after you left did you get your -

7 biweekly paycheck when you left employment for these unpaid

8 commissions?

9 A No.

10 Q Thank you.

11 MR. CONNELL: Okay, come down.

12 A Oh, okay.

13 THE COURT: All right, call your next witness.

14 MR. CONNELL: Okay, how about Mr. Bray.

15 Whereupon, Bradley Kirk Bray was called to the stand,

16 duly sworn by the clerk and testified as follows:

17 THE CLERK: Have a seat, please, sir. State your name

18 for the Court, please, sir.

19 MR. BRAY: Bradley Kirk Bray.

20 DIRECT EXAMINATION

21 BY MR. CONNELL:

22 Q Okay, Mr. Bray, where do you live, please, sir?

23 A I live in Myrtle Beach, Burgess Community.

24 Q All right, and how long have you lived in the Burgess

1 Community?

2 A Two days.

3 Q Okay, you just moved.

4 A Moving now, actually.

5 Q Okay, you're moving apartments I take it.

6 A Bought a new house.

7 Q All right, where did you, where did you - when - how did

8 you get to the Myrtle Beach area?

9 A Back in I believe '05 is when we moved down here, maybe

10 late in '05 or early '06.

11 Q All right.

12 A And I was in the military prior to that.

13 Q What branch of service were you in?

14 A United States Army, Seventh Group Special Forces.

15 Q All right, how long did you - were you in the Army?

16 A About two and a half years.

17 Q Okay, and where are you originally from?

18 A Asheboro, North Carolina.

19 Q All right, and what brought you to Myrtle Beach?

20 A Actually the opportunity. I'd known a couple of people

21 that worked in this industry and just mainly the jobs down

22 during the summer, you know, season here.

23 Q Okay, so, when you got out of the Army you came down to

24 Myrtle Beach?

1 A I did.

2 Q And what was the first job you got when you got out of
3 the Army?

4 A Westgate Resorts, actually.

5 Q All right, had you ever done - been involved in
6 timeshare before?

7 A Not in timeshare. I had about five years of sales
8 experience prior.

9 Q What, in what area?

10 A Insurance, securities.

11 Q Okay.

12 A Various things.

13 Q All right, and tell me how you came to be employed at
14 Westgate.

15 A I actually read an ad in the paper. Like I said, I had
16 been in sales before and the aggravating part with a couple of
17 places I had been was actual chargebacks. They're maybe not
18 called chargebacks then but it was just, you know,
19 cancellations and I read the ad in the Sun Times that said
20 that, you know, "Tired of chargebacks. Come see us at
21 Westgate. We won't have any chargebacks", so.

22 MR. WILKERSON: Objection, again, to chargebacks,
23 Your Honor. This is, this is clearly irrelevant testimony.
24 It's in every one of them.

1 THE COURT: Overruled, go ahead.

2 Q Okay, so, when you got - went into Westgate who'd you,

3 who'd you - who hired you? Do you remember?

4 A I interviewed with Frederick Von Sant and I believe and

5 then with Deborah Turner, director of sales.

6 Q Okay, and when were you hired?

7 A March, April 2006.

8 Q Okay, and how long did you work there?

9 A I worked there until, I believe, late October 2006.

10 Q So, you worked there from March 2006 to October of 2006?

11 A Right.

12 Q Did you go through the training course?

13 A I did.

14 Q How long was that?

15 A Three weeks.

16 Q Okay, were you given a contract to sign ---

17 A I ---

18 Q --- Plaintiff's Exhibits Eight and Nine?

19 A The only, the only signing I had I'm one of the earliest

20 classes I guess in the suit. In my class I think they changed

21 it up afterwards because one of the persons in our class had a

22 problem with it maybe from a legal issue. My graduation day

23 we had no - we had signed no paperwork until graduation day.

24 They had our diplomas set up at the places that we were

1 sitting. When you came in there we had nothing else to do
2 that day but graduate and we came in, the diplomas were
3 sitting there and a stack of paperwork, and they told
4 everybody to sit down and go through the paperwork, sign every
5 form and at the end in about five, I believe it was about 10
6 to 15 minutes we were going to go over to the resort. So, we
7 needed to hurry up so that we could go over there and meet our
8 new team, and then if ---
9 Q Okay, so ---
10 A --- you didn't sign the paperwork you wouldn't be hired.
11 Q All right, and that was right before you graduated?
12 A Yes, the day of graduation, actually.
13 Q The day of graduation.
14 A Uh-huh.
15 Q Okay, now, what agreement did you reach with Westgate as
16 to how you would be paid?
17 A My understanding was that there was no chargeback. That
18 was one thing I had originally asked because of how I had been
19 bit in the past with it. There was no chargebacks, nothing to
20 worry about with that. I was told I'd be paid hourly.
21 Q Okay, who told you that?
22 A Frederick Von Sant.
23 Q All right.
24 A I would be paid hourly and then 11 percent commission on

1 every sale after the rescission period of five days.

2 Q Okay, now, and 11 percent is more than ---

3 A It was ---

4 Q --- what we've heard.

5 A Right, they stopped hiring at 11 percent after either my
6 class or the class afterwards.

7 Q Were they continually having classes of salesmen or
8 salesmen, salespeople?

9 A Yes, during, during the spring and early summer, and
10 then the fall they lay off about 105 people in two days.

11 Q Okay, what, what's the purpose of having so many
12 salespeople in the spring? Is it the business?

13 A It is the summer season, I mean, they, as many people as
14 they can cram into the ballroom. Actually when I was there it
15 was a construction site. So, we actually did not have a
16 resort to sell. The pool was all boxed in. You stood back
17 and told them to imagine what, you know, in a year and a half
18 these walls would be down. There would be a brand-new pool in
19 there and then you went into the back and it was all bulldozed
20 and imagine that this was going to be there. So, I, really,
21 we didn't have a ballroom at that time. The ballroom came
22 about a month and a half later I believe.

23 Q Okay, now, the commission that you were to earn, 11
24 percent commission ---

- 1 A Uh-huh.
- 2 Q --- was that on every deal?
- 3 A Yes.
- 4 Q All right, and I think you've - we've already talked
- 5 briefly - we've talked a lot about how the sales were made.
- 6 A Right.
- 7 Q Were you just a salesperson or were you ever a manager?
- 8 A I was not a manager. I was a member of the vac-pack
- 9 team, which is kind of at the time what they call kind of like
- 10 an elite team.
- 11 Q Okay, what, tell me what that means. You're using
- 12 acronyms like ---
- 13 A The month of July I was the number two top producing I
- 14 guess salesperson there and then the end of the month I was
- 15 asked to join this group called the vac-pack team.
- 16 Q Okay.
- 17 A It, it honestly kind of ended up being more of a pick
- 18 and choose, it was like a team that they almost brought you -
- 19 it seemed to be almost hand-selected deals. It was like, you
- 20 know, you went, they knew that you were good with the people,
- 21 these guys were good, I guess they matched up with what they
- 22 wanted as owners and they put you together and we made the
- 23 deal happen, so.
- 24 Q So, you, you got, for want of a better word, you got a

1 better class of customers by being on that team?

2 A Right, and we can kind of go through them a little
3 faster and like if we had, on the regular sales line you were
4 frowned upon if you didn't spend an hour and a half, two
5 hours, three hours with someone. On this team if you what
6 they call burnt a tour in 20, 30 minutes because maybe they
7 lied on their part of the paperwork they had to fill out, if
8 you just didn't see that they were there you could what they
9 call burn a tour, go ahead and throw them, get the next one.
10 So, they knew that - they just wanted to feed you tours. They
11 knew that you were selling, you were producing good. They
12 wanted to keep you with good.

13 Q The idea being to get as many tours as necessary to make
14 money.

15 A Right. I guess how they seen it is the regular
16 frontline if they got a good family with a bad salesperson
17 then they just wasted a sale that they could have had with a
18 good salesperson with that good family. So, they kind of had
19 little teams of their own selected people that went through
20 them.

21 Q All right, do you remember seeing the banners as to how
22 much was made at Westgate?

23 A Right, yeah.

24 Q And ---

1 A World record-breaking and ---
2 Q Okay, tell me what, what numbers you remember being ---
3 MR. WILKERSON: Objection, irrelevant.
4 MR. CONNELL: Your Honor, it goes to the commissions and
5 what they made.
6 THE COURT: Not on what he sold.
7 MR. CONNELL: Well, that's part of what they made
8 though.
9 A It was daily production.
10 THE COURT: Not on - no, no, no, no, no.
11 MR. CONNELL: Wait a minute, wait a minute, you can't,
12 you can't say anything.
13 THE COURT: Well, then, lay your foundation first.
14 MR. CONNELL: Okay.
15 BY MR. CONNELL:
16 Q Let's talk about, about the sales records. I'm talking
17 about how Westgate sold on a daily basis, how you were advised
18 as to what, what was made by the sales team and how that came
19 about, please, sir.
20 A You ---
21 MR. WILKERSON: Objection, irrelevant.
22 THE COURT: Overruled, go ahead.
23 Q Okay.
24 A I'm thinking like you mean when it was broke down on the

1 wall.

2 Q Yes, sir.

3 A They'd give us - the breakdown on the wall pretty much
4 gave you your rankings. Like I - like say the month of July I
5 was telling about before I got on that team there would be a
6 long sheet on the wall and I don't remember if every
7 salesperson was on it, but you - if we only had the top ten
8 every morning they let - told you who was in the top 10, you
9 seen who was in the top 10. So, if I'm saying I was number
10 two then there would be one through 10 and then the rest below
11 it. They'd all be highlighted and my numbers, my volume
12 would've been the second one on the list.

13 Q Okay, so, you were the second highest person in sales at
14 one point; is that right?

15 A Right.

16 Q All right, now, have you been able to calculate how much
17 you believe that you were owed on unpaid commissions?

18 A I have.

19 Q All right, I'd like you to come down here and put that
20 on this board, please.

21 A (Complies with request.)

22 Q All right, what number have you, have you written down?

23 A 5,247.

24 Q \$5,247.

1 A Yes.

2 Q Thank you, okay. Now, tell me how came up with that
3 number.

4 A And that's honestly the number of what I have the
5 documentation for. I have a - probably a few out there I
6 don't have documentation for.

7 Q Okay, well, let me ask you this, you're not asking for
8 the ones you don't have any documentation for; are you?

9 A No,, not at all.

10 Q So, if you couldn't find something, some documentation
11 then you didn't claim it.

12 A No, I tried, I tried to go to Westgate to get the
13 information just was ---

14 Q All right, let's talk about that. When did you go to
15 Westgate and ask them to see your sales records? Was that
16 after you had been ---

17 A Yes.

18 Q --- after you left?

19 A Probably six months later. I believe my wife was still
20 working there.

21 Q Okay.

22 A I think I went to Doug Boykin. I believe Deborah Turner
23 was no longer director of sales maybe at the time.

24 Q Okay, did you, did you voice your concerns with Doug

1 Boykin about trying to get the paperwork so you could ---
2 A Yes.
3 Q All right, and did you get any paperwork?
4 A No.
5 Q All right, did you go and did you contact Connie Sharp?
6 A I did.
7 Q All right.
8 A I actually went through a process of - I did - I called
9 originally. I was very nice to her. You know, she asked the
10 same thing, send me your written confirmation that I want my
11 money, sent a written confirmation.
12 Q All right, let me ask you this, was written confirmation
13 a term of the contract?
14 A I had never heard of it before.
15 Q Okay.
16 A It was what she claimed ---
17 Q Did you ever have to do that before when you were
18 working there to send written confirmation to get paid?
19 A No.
20 Q All right, okay, so, you, you ---
21 A And ---
22 Q --- contacted or you sent a written confirmation.
23 A Right, I also e-mailed her. I had called her. I got to
24 the point where I was probably calling her two, three times a

1 week for maybe a month, month and a half.

2 Q Okay.

3 A Because I was just getting her secretary, then a
4 voicemail and then in the final week I was having, I don't
5 know what was going on but Connie Sharp was actually answering
6 the phone and I was asking - she'd answer and then not say, I
7 guess didn't give her name but I had asked for Connie Sharp.
8 She was like, "I'm speaking," and I'm like, "Okay, well, I'm
9 calling you about my, you know, my reserves and commissions
10 owed," and at that point she told me that that was no longer
11 her position, that she was now, I don't know, administrative
12 assistant or secretary or the person doing that. "So, I -
13 that I need to speak to her." So, she transferred me to her,
14 got another voicemail, left voicemail after voicemail.

15 Q Okay, who was that that she told you that - do you
16 remember the name of that person?

17 A I do not remember not off the top of my head.

18 Q Okay.

19 A I'm thinking a Sandra or Sandy, but ---

20 Q So, when did you, when did you quit calling?

21 A I believe when I was - I was issued what I call like a
22 funny check. It was maybe 70 some dollars or a hundred
23 dollars and it said it was for commission of one sale and when
24 I pulled the record on that contract, say, say it was a

1 hundred dollar check. When I pulled the - pulled that sale it
2 was like a 20 some thousand dollar sale to where in any type
3 of calculations at 11 percent, it don't matter if it was five
4 or six percent any of our sales never amounted to \$100 in
5 commission. There was just - there was no sales we - a VOA
6 was 40. That's the lowest you made. There was no sales
7 commission of \$100.

8 Q Now, and what you're saying is there was no way based on
9 what was being sold that you could get a hundred dollar check?

10 A Right, exactly.

11 Q All right.

12 A I couldn't even - I don't remember the percent now. I
13 remember I did get the percentage of whatever that check was
14 but it was so long ago that ---

15 Q Okay, so, what finally happened? Did you make any calls
16 about that?

17 A Just sporadically. After that I knew I wasn't getting
18 anywhere. So, I believe that's actually when we started
19 contacting attorneys.

20 Q Okay, now, you in coming up with the number that you are
21 owed you looked at records that you had?

22 A Yes.

23 Q All right, and you based your dollar amount on the
24 records that you have, that you have?

1 A Yes.

2 Q All right, and it seems to be an odd number 52,400 - 52-

3 47.

4 A Yes.

5 Q Did you get it - you got it down to the single dollar

6 mark.

7 A Yes.

8 Q Is that right?

9 A Well, they were all single, like 22,900 sale, a 9900 and

10 14-9. So, there was really nothing else added on to it.

11 Q Okay, now, were you ever notified in advance of any

12 changes to the employment terms of the contract?

13 A No, meaning?

14 Q Meaning that were you ever told, were you ever, were you

15 ever told in advance that they were going to change the terms

16 of the agreement with you?

17 A No, I do know at one point I remember receiving a check

18 that my commission had went from 11 percent to maybe six

19 percent or seven percent and that's when I went to the office

20 at the time, I believe talked to Doug. It was right after

21 being put on that vac-pack team and I asked about that and

22 when I went to Doug, and the director of sales at the time,

23 which it was Deborah Turner at the time, they pretty much told

24 me it was kind of like a slapping on the back to where my

1 numbers were down for the past two weeks and I had been at the
2 point I was selling like five, six, seven out of every ten
3 deals and then my numbers went flop for about two weeks, and
4 after that two weeks period my check came with a lower
5 percentage on it. I had never signed anything, anything like
6 that and ---

7 Q So that was punishment.

8 A --- it lasted for a week or two and then it went back to
9 11 percent.

10 Q That was punishment?

11 A I don't know.

12 Q Are you saying that was punishment?

13 A That pretty much, yeah, it was like, you know, "We want
14 you to get your numbers up. You know, until you get your
15 numbers up the commission rate is going to stay that and ---

16 Q All right, was that given to you in writing?

17 A No.

18 Q All right, now, were you one of those folks that went to
19 work and then in the wintertime was offered to stay on?

20 A My numbers were at that point but for some reason I
21 don't know my wife became part of management and it became to
22 where it was actually kind of just weird like when it came to
23 management, other management. Anytime something would happen,
24 I actually quit using her on my tables as a closing manager

1 because then everybody was claiming, you know, we were working
2 this little deal together, why I was bringing her in on my
3 tables. So, I actually went with other managers just to keep
4 them from saying things and it got to where, you know, they
5 pretty much let me go. I remember Frederick actually let me
6 go. They let me go. I had left work actually, left work.
7 She forgot something back inside and came outside and found I
8 had been fired that day; and so, I was one of the more seeny
9 [spelled phonetically] type people I guess. I then walked - I
10 asked him - well, I was getting ready to walk back out and he
11 was like, "Well, don't worry about coming in tomorrow," and
12 ---

13 Q Who, who was that now?

14 A Frederick Von Sant.

15 Q Okay.

16 A And because something had happened. I don't remember,
17 that day that me and him didn't go along that day or something
18 and so he called me back into his office. When I went back in
19 the office he showed me and that was paperwork that I actually
20 would not sign. He showed me my being released, whatever, you
21 know, laid off until spring, whatever, you have you and, I
22 mean, he showed me these paperwork, and he - and on the list
23 showing that my numbers weren't high enough; and so, at the
24 same time it was kind of ironic in my briefcase I had the

1 numbers for the month, the numbers for the past month and the
2 past month I was number two, actually, no, the month after
3 July I think I was number four or five and I showed that that
4 was the month prior, showed him that, showed him the numbers
5 for the month and told, I believe he had said something about
6 a two for ten two days prior to that.

7 Q What now - you're getting into these timeshare things.

8 A Sorry, sorry, it, it ---

9 Q We don't know what a two for 10 is.

10 A It's kind of like this ---

11 Q Maybe hamburgers or something.

12 A It's almost like this threat they use your last, it
13 could be your last week or it might not be your last week.

14 Q All right.

15 A You'd be put on a two for 10.

16 Q All right, what ---

17 A We're going to give you 10 tours. If you don't sell two
18 of those 10 tours you're fired.

19 Q Okay.

20 A So, I was put on a two for 10 two days earlier and
21 that's where that - it's coming back to me. That's when I
22 actually had the problem with Frederick because my numbers
23 didn't stipulate putting me on a two for 10. It was more just
24 the - my wife, you know, us working together I guess.

1 Q All right, stated differently you were given two for 10
2 meaning you had to, you had to take 10 customers on a ---

3 A Right, ten tours, and I, I had to sell two of those or I
4 was going to lose my job.

5 Q All right, I say - I'm saying you have to take 10
6 customers and show them a unit.

7 A Yes.

8 Q And you have to sell two.

9 A Give them full, full presentation, yes.

10 Q All right, and out of those 10 you had to sell two.

11 A Yes.

12 Q And was that similar to the reduction in commission rate
13 that you had from 11 to six you talked about?

14 MR. WILKERSON: Object, Your Honor.

15 Q All right.

16 THE COURT: What's the grounds?

17 MR. WILKERSON: Well, he hadn't testified about a
18 reduction from 11 to six, but that is exactly what his

1 contract says, Your Honor.

2 THE COURT: Okay, overruled.

3 MR. CONNELL: He can ---

4 THE COURT: I'll allow it. Go ahead.

5 BY MR. CONNELL:

6 Q All right, is that similar you were at 11 percent?

7 A Pretty much, it was, it was always something, something,
8 whether they either went by that or they went by percentage.

9 Q All right. Let me talk to my boss here and I'll be
10 right back. Let me see what he says. Okay, answer any
11 questions they have, please, sir.

12 THE COURT: Cross examination.

13 MR. CONNELL: We don't object to those. Thank you,
14 ma'am.

15 MS. MAYSONET: Sir, if there's no objection I'm going to
16 move to have these two exhibits admitted, be the following,
17 next two Defendant's Exhibits.

18 THE COURT: All right, that'd be Defendant's Exhibits
19 22 and 23 admitted into evidence without objection.

20 (Whereupon, Defendant's Exhibit Number 22 [Terms of
21 Employment Notice - Bray] and Defendant's Exhibit Number 23
22 [Commission Sales Schedule - Bray] admitted into evidence ad
23 appropriately marked.)

24 CROSS EXAMINATION

1 BY MS. MAYSONET:
2 Q Good afternoon, Mr. Bray.
3 A Good afternoon.
4 Q If I understand correctly you worked for a period of six
5 months; right, in 2006?
6 A I would say about seven months, maybe, seven or eight
7 months.
8 Q Six to seven months; right?
9 A Right.
10 Q Okay, now, let me show you what's been marked as
11 Defendant's Exhibit 22 and I want you to tell me if that is
12 your signature at the bottom of that.
13 A Okay, yes, it is.
14 Q Okay, can I have that document back?
15 A Uh-huh.
16 Q I'm going to attempt to do this here. I've never done
17 it. So, bear with me.
18 A Okay.
19 Q Mr. Bray, you told me that that is your signature at the
20 bottom of that document. That is your signature at the bottom
21 of that document; right?
22 A Yes.
23 Q Okay, and the words there, the T is cut off but it says
24 terms of employment notice; right?

- 1 A Yes.
- 2 Q Okay, and the date on that is April 19th, 2006; right?
- 3 A Uh-huh.
- 4 Q That's your date of hire; right?
- 5 A Or the date of the paperwork maybe.
- 6 Q Okay, well, let's, let's just say it's the date of the
7 paperwork.
- 8 A Right.
- 9 Q Okay.
- 10 A I think it's graduation maybe.
- 11 Q So, you agree with me ---
- 12 A Sorry.
- 13 Q Okay, I'm sorry. You would agree with me - well, the
14 reason being is you had to pass the training and stuff like
15 that.
- 16 A Yes, yes.
- 17 Q So, you wouldn't be hired until you pass the training;
18 right?
- 19 A Well, we were paid for training, so.
- 20 Q Okay, so, you still have to pass the training in order
21 to be ---
- 22 A To be sales, yes.
- 23 Q --- officially hired; right?
- 24 A Yes.

1 Q So, this is 4-19-06; right?

2 A Uh-huh.

3 Q Now, it says here the rate of pay was \$50 per day and a
4 commission of six percent; is that correct?

5 A Yes, it does say that.

6 Q Okay, now, I'm going to hand you what's been marked as
7 Defendant Exhibit 23 and it's entitled Exhibit A, commission
8 schedule. Could you go to the third page and kindly tell me
9 that's your signature?

10 A In the paper before that it says \$50 per day; right?

11 Q Yes.

12 A Okay, well, this one says 60. Yes, this is my
13 signature.

14 Q Okay, could I have that back?

15 A Yes.

16 Q Okay, sir, this is the last, third page we were talking
17 about; right?

18 A Uh-huh.

19 Q And that right there is your signature; right?

20 A Yes.

21 Q Okay.

22 MS. MAYSONET: Your Honor, I ask that ---

23 BY MS. MAYSONET:

24 Q Let's concentrate, let's - going to talk about this

1 section, II, entitled commission based on the unit weeks sold.
2 Do you see that?
3 A Yes.
4 Q Okay, okay, and let's start with this sentence here that
5 says here, "The amount of commissions due to employee
6 hereunder will range from six percent to 11 percent based on
7 employee's VPG average, which shall be computed except for the
8 paragraph three below." Did I read that correctly?
9 A Yeah, as far as I can see.
10 Q Would you like a copy of it?
11 A It'd actually be better. It's weird. Hang on.
12 Q II.
13 A II, yes.
14 Q Does that - did I read that correctly?
15 A Yes.
16 Q And that's what that contract says; right?
17 A Uh-huh.
18 Q Can I have that ---
19 REPORTER: Is that a yes?
20 A Yes, I'm sorry.
21 Q You can keep that. Now, now, if we go to paragraph
22 number three it's titled the determination of commission;
23 right, is that correct?
24 A Yes.

- 1 Q And then it says here, "The VPG which is defined as the
2 volume per guest average"; do you see that? It says, "The VPG
3 average shall be computed monthly based on the employee's
4 total net sales for the previous four months divided by the
5 number of tours during such period." Did I read that
6 correctly?
- 7 A Yes.
- 8 Q Okay, and then, "The commission due to the employee for
9 a given sale shall be based on the employee's VPG average
10 during the month in which the sale was made"; right?
- 11 A Right.
- 12 Q Okay, and we can agree that's what it says; right?
- 13 A Yes, that is what it says.
- 14 Q So, you would agree with me that that language says that
15 your VPG, the commission rate paid on a specific commission is
16 directly related to the VPG that you had for that month, the
17 average; is that correct?
- 18 A Yes, is what the paperwork says, not what I was told but
19 ---
- 20 Q I understand but this is the paperwork you signed;
21 right?
- 22 A It's not knowingly.
- 23 Q All right, that is your signature there; right?
- 24 A It is my signature, yes.

1 Q And no alien possessed you when you were signing that;
2 right?

3 A No, it was just a 30-second stack of probably 120
4 different papers that we had to sign or we would not get our
5 diploma, we would not be hired.

6 Q Okay, you understand that what you're suing under is
7 that very same contract; right?

8 A Yes.

9 Q Okay.

10 A But I mean I also understand I could have someone sign
11 all kinds of things. If they don't understand what it says
12 then that's kind of forcing legalities on someone is how I
13 view that, so.

14 Q All right, but if the, the contract, you would agree
15 with me, if the contract is valid for what you're arguing it
16 has to be valid for what we're arguing, too; right?

17 A Yes.

18 Q Okay, thank you. Okay, now, you would agree with me
19 that the contract also says that in order for you to earn a
20 commission there has to be essentially two requirements, a
21 full down payment of 10 percent; is that correct?

22 A Yeah, that's what I learned later, yes, not what I was
23 hired upon but I was hired saying the five-day. That's how
24 they got me there. I was ---

1 Q All right.

2 A That after five-day rescission I would be paid my money
3 and that was my first issue with the company when I was hired
4 as I was kind of lied to in the coming there.

5 Q Sir.

6 MS. MAYSONET: Can I ask him just to answer the
7 question.

8 THE COURT: Just ask your question. He can explain
9 his answer.

10 BY MS. MAYSONET:

11 Q Right, let's look at this contract that you signed here,
12 okay? Let's go back to the language there. All right,
13 Section 2, A, "Following training in addition to base
14 compensation described above employee shall receive a
15 commission in connection with its rendition of services for
16 each sale of one-bedroom, two-bedroom, three-bedroom, four-
17 bedroom unit or half week accompanied by a 10 percent minimum
18 down payment." Did I read that correctly?

19 A Yes, you did.

20 Q And that means you got to have a down payment of 10
21 percent; right?

22 A Yes.

23 Q Okay, let's go back to the next page, VIII, paragraph D
24 entitled payroll. Do you see that?

- 1 A Yes.
- 2 Q And I'm going to read it. "No commission or bonuses
3 described herein shall be earned at the time of sale but shall
4 be deemed earned only after there exists a qualified sale and
5 all applicable rescission periods have expired." Did I read
6 that correctly?
- 7 A Yes, you did.
- 8 Q All right, so, let's go back. So, it says that you have
9 to have a down payment of 10 percent. Would you agree with me
10 on that?
- 11 A Yes, I would.
- 12 Q Okay, and it also says that the applicable rescission
13 period has to expired; right?
- 14 A Right, of five days.
- 15 Q Now, my understanding is that you testified that you are
16 owed \$5,247; right?
- 17 A Yes, uh-huh.
- 18 Q And you said that you looked at the records; right?
- 19 A Yes.
- 20 Q To come up with that number; right?
- 21 A Right, or the records that I have here, yes.
- 22 Q Okay, can you tell me the customers that you allege you
23 have not received on?
- 24 A Yes, I will.

1 Q Yes, can you tell me, sir?

2 A Yes.

3 Q Go ahead.

4 A Rita Aquilar, it looks like A-Q-U-I-L-A-R.

5 Q Do you have a contract number by any chance?

6 A I can explain the contract numbers. The contract

7 numbers mainly from being a wife [sic] of former manager they

8 were told to write the contract numbers on the very top of the

9 real contract and then scan it to where the contract number

10 doesn't show up on the salesman's copy. So, no, there's no

11 contract numbers on any of a salesman's copy. They're made to

12 be copied and intentionally falsely, so. So, I've got plenty

13 of account numbers. I have the customer Social Security

14 number.

15 Q Okay, I don't - we don't need to do that. Just tell me

16 then the next contract.

17 A Okay.

18 Q How many contracts are we talking about, three?

19 A Three, uh-huh.

20 Q Okay, can you tell me the next one?

21 A McBride, Dennis and Brenda, M-C-B-R-I-D-E.

22 Q Okay, and the last one.

23 A Gallong [spelled phonetically], Joseph and Cynthia.

24 Q All right, and you - it is your testimony that each and

1 every one of those deals made the full down payment and the
2 cancellation?

3 A Yes.

4 Q And when I said cancellation the cancellation period
5 expired; right?

6 A Yes, the only odd one is the Gallong as when talked to
7 several, it's been written up also as another contract now
8 under a different salesperson's name, and I have other - all
9 pender, I have other penders that I don't know if they've made
10 their down payments. So, I didn't even add them in.

1 Q Sir, so, you already testified to those three and those
2 are the ones that you're claiming here.

3 A Yes.

4 Q That's how you came up with the 50 ---

5 A Yes.

6 Q --- \$200; right?

7 A Yes.

8 Q Sir, I don't have any - anything further.

9 THE COURT: All right, redirect?

10 MR. CONNELL: A couple of things, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. CONNELL:

13 Q Okay, Mr. Bray, I thought I heard you say earlier that
14 you were penalized from 11 to six percent?

15 A Right.

16 Q All right, read this section right here about how your
17 VPG is figured.

18 A "Based on employee's volume divided by 100 hours equals
19 1000", oh, okay.

20 Q How about the four, doesn't it say for - based on the
21 previous four months divided by the number of tours during
22 each, during such period?

23 A Four months, it does, actually, yes.

24 Q All right, sir, were you given that when you were

1 penalized from 11 to six percent, were you given four months
2 like that contract says?

3 A No, and upon seeing this for the first time I actually
4 realize some things that's not in there, also, like it's -
5 that's, if that's supposed to represent payroll then everyday
6 we got what was called a SPIFF ---

7 Q Yes, sir.

8 A --- at a point way back in the day which, you know, was
9 put in payroll and taxed as payroll, but it says nothing about
10 the SPIFFs. It was kind of out under the table cash money
11 that they gave you.

12 Q All right, well, your, your commission was reduced from
13 11 to six percent and it was directly in violation of section
14 three; isn't that right? -

15 A Yes.

16 Q All right, now, look at, look at section D, payroll.
17 Okay, do you see that?

18 A Yes.

19 Q "No commission or bonus described herein shall be earned
20 at the time of sale but shall be deemed earned only after
21 existed qualified sale." You see that?

22 A Yes.

23 Q All right, and let me ask you about this document they
24 just put up.

- 1 A And that was speaking of bonuses?
- 2 Q Yes, sir. Now, that's a document you signed, terms of
3 employment, the day you were hired; isn't that right?
- 4 A Yeah.
- 5 Q All right, sir, look on that and tell me when you were
6 supposed to be paid. What does that say?
- 7 A "Worksite."
- 8 Q It states weekly or biweekly or what?
- 9 A "Worksite after two p.m. on Friday".
- 10 Q All right, did you get paid worksite after two p.m.
11 Friday for the monies you're claiming now?
- 12 A No.
- 13 Q All right, is that different than the document they just
14 showed you?
- 15 A I was actually thinking we were paid on Thursdays, maybe
16 not, but ---
- 17 Q Yes, sir, is that different from the payroll document
18 that was just put up here a few minutes ago?
- 19 A Yes, and those SPIFFs or bonuses I was speaking of it,
20 it stated as after the - a qualifying sale, after that, that
21 which would mean to me after down payment is made, after the
22 rescission period is made; and so, in other words to me that
23 the SPIFFs that came the day after the sale, came the morning
24 of after the sale because then they didn't know you had a sale

1 until the next day.

2 Q Don't the two documents seem inconsistent?

3 A Yeah, well, that's what I'm pointing out is we got a
4 bonus every day that you sold or you might get it or you spun
5 the wheel or ---

6 A Okay, yes, thank you.

7 THE COURT: All right, sir, you may step down. All
8 right, let me see the attorneys.

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

11 THE COURT: All right, ladies and gentlemen, I met
12 with the attorneys for some scheduling purposes and they agree
13 it's a good time for us to go ahead and break for the day.
14 So, I'm going to excuse you for the remainder of the day.
15 Please do not discuss the case even among yourselves at this
16 point in time. Don't conduct any independent investigations
17 into the case. Make sure you leave your notebooks here in the
18 jury box. We'll pick them up and then redistribute them to
19 you tomorrow when we meet back. We'll follow the same
20 schedule we did today. Please be back in the jury room at
21 9:15 tomorrow morning. We'll try to start the trial,
22 reconvene right at about 9:30 but that'll give you an
23 opportunity for some coffee. If you want to come before 9:15,
24 spend a little bit longer drinking coffee or whatever you can

1 do that, but the requirement is that you be here at 9:15 to
2 get your coffee and everything before we start the trial at
3 9:30. Hope you have a good evening and we'll see you tomorrow
4 morning. Thank you very much. Everyone else please remain

1 seated while the jury is excused.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right, anything from the Plaintiff
5 before we break for the evening?

6 MR. CONNELL: No, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. WILKERSON: No, Your Honor, thank you.

9 THE COURT: All right, we'll probably operate under
10 the same schedule tomorrow. I'll try to take the bench right
11 at 9:30; okay?

12 MR. CONNELL: Thank you, Your Honor.

13 MR. WILKERSON: Thank you.

14 OFF THE RECORD

15 (On the record, Wednesday, February 15, 2012. The following
16 takes place outside the presence of the jury.)

17 THE COURT: All right, anything from the Plaintiff
18 before we bring the jury in?

19 MR. CONNELL: No, sir.

20 THE COURT: Anything from the Defense before we bring
21 the jury in?

22 MR. WILKERSON: No, Your Honor.

23 THE COURT: All right, let's go ahead and bring them
24 in.

1 MR. CONNELL: Your Honor, let me tell you, I will - I'm
2 sorry, let me tell you a couple of things.

3 THE COURT: Hold for a second, all right.

4 MR. CONNELL: We're going to dismiss, just so the
5 Defendants will know, we're going to dismiss the claims of
6 Michael H. Willis [sic] and Michael J. Zanardo, we made
7 contact with them or have had no contact with them and they're
8 not going to testify. We can't get them to come. So, they're
9 out of the case.

10 THE COURT: All right, now, I don't see the - oh.

11 MR. CONNELL: They're at the bottom.

12 THE COURT: Zanardo?

13 MR. CONNELL: Zanardo and Will.

14 THE COURT: Willis.

15 MR. CONNELL: I'm sorry. I said Willis, Wills.

16 THE COURT: All right.

17 MR. CONNELL: So, we're going to dismiss those two. We
18 have four this morning and two others we'll have here by about
19 12:30 and I think that'll be the end of our ---

20 THE COURT: All right, let's go ahead and bring the
21 jury in.

22 MR. CONNELL: Okay, I'm sorry, we're going to - we're
23 going to leave, Mr. Wills is here, so, we'll ---

24 THE COURT: So, you're not going to voluntarily

1 dismiss Mr. Wills.

2 MR. CONNELL: Mr. Zanardo is not coming. I do know
3 that.

4 THE COURT: All right.

5 MR. CANTY: Too late.

6 MR. CONNELL: Too late.

7 (Whereupon, the following takes place in the presence of
8 the jury.)

9 THE COURT: All right, ladies and gentlemen, welcome
10 back. I hope everyone had a good evening. We're now ready to
11 resume the trial of the case. Before we get started I want to
12 remind you as well as anyone else that's in the courtroom if
13 you have any cell phones, pager devices or other communication
14 devices if you would please turn them off at this time. Also,
15 I need to make sure that the jury, each juror has their own
16 notepad if you are taking notes and that you don't have
17 someone else's.

18 All right, Mr. Connell, you can call your next witness.

19 MR. CONNELL: All right, Ms. Parker, come forward,
20 please, ma'am.

21 Whereupon, Judith A. Parker was called to the stand, duly
22 sworn by the clerk and testified as follows:

23 THE CLERK: State your name for the Court, please,
24 ma'am.

1 MS. PARKER: Judith A. Parker, but I go by Judy.

2 DIRECT EXAMINATION

3 BY MR. CONNELL:

1 Q All right, Ms. Parker, tell me if you would, please,
2 ma'am, where you live and what you do for a living currently.
3 A Currently I'm unemployed and I live in Myrtle Beach.
4 Q Okay, how long have you lived in the Myrtle Beach area?
5 A I've been back seven and a half years.
6 Q All right, and you said been back. Where did you go?
7 A Well, I had lived here 30 years ago in the early
8 eighties and moved to Atlanta and then this was home. So, I
9 came back.
10 Q Okay, and what type of work have you done in the past?
11 A Done timeshare. I was also a real estate broker when I
12 moved here the first time, so.
13 Q Okay, and when you say real estate broker you're talking
14 about?
15 A General real estate.
16 Q All right.
17 A Residential real estate.
18 Q How long had you been a general real estate broker?
19 A About three years.
20 Q And as a general real estate broker can you explain to
21 me what kind of training you need to become a broker?
22 A Well, back then, this was a number of years ago, back
23 then you went to a school and you got your license for a
24 salesman. After one year you could go back and take another

1 class and another test and be licensed as a broker, which I
2 did.

3 Q Okay, have you ever been employed at the Westgate
4 Resorts?

5 A Yes.

6 Q And what years were you employed at Westgate Resort?

7 A I was hired there in May of 2005. I was in the second
8 training class.

9 Q Okay.

10 A And I worked there until February 20th of 2007.

11 Q When you say you were in the second training class what
12 do you mean by that?

13 A Well, in order to be - to go to work there you go into a
14 training class that runs, I think it runs two weeks. So, I
15 was the second wave of hirees, if you will. The first class
16 was maybe 10 or 15 people that were hired and then the next, I
17 was in the next one.

18 Q All right, and in the training class can you tell me
19 what you were taught about how to, how to sell timeshare?

20 A Well, they, they insisted that we memorize a pitch. We
21 had to do it verbatim which is not easy to, you know, say
22 somebody else's words particularly when you do understand the
23 concept and you have a way to explain it but that's just a
24 little annoyance.

1 Q Okay.

2 A But you have to memorize everything that they want you
3 to say and you have a book that has their information in it
4 that extols the virtues of the owner of Westgate, David
5 Siegel, the company, the units, the value of owning a
6 timeshare.

7 Q All right, you mentioned the name David Siegel.

8 A Yes.

9 Q What, how was he related to Westgate?

10 A He's the owner of Westgate.

11 MR. WILKERSON: Objection, Your Honor, this is
12 irrelevant.

13 THE COURT: Okay, what's the relevancy?

14 MR. CONNELL: Background information.

15 A It's all part of the ---

16 Q Wait.

17 THE COURT: All right, sustained, go ahead. Move on.

18 MR. CONNELL: Thank you, thank you, Your Honor.

19 BY MR. CONNELL:

20 Q Okay, now, were you licensed as a timeshare agent?

21 A No, we did not need to be licensed when I was in
22 timeshare.

23 Q Okay, and when did you graduate from the Westgate
24 training program?

1 A Well, it was a - as I recall it was a two-week training.
2 So, I think we were still, as I recall, the day they opened
3 the doors for tours I was still in class but it would've been
4 just a few days later that we were on the sales floor. So, it
5 was about the middle of May.

6 Q Okay, and when did you start actually selling timeshare?

7 A I had worked at Wyndham for a few months prior to going
8 to Westgate.

9 Q Okay, and tell me about your work at Wyndham. Were you
10 a timeshare salesperson?

11 A Yes, I was timeshare sales.

12 Q And ---

13 A And I had been there I think it was three months.

14 Q Okay, and how is it that you came to be employed, how
15 did you decide to go to Westgate and become employed there?

16 A I really didn't like Wyndham to be very honest with you.
17 I didn't like the setup there as far as how we were supposed
18 to sell; and so, I kept checking the want ads thinking that
19 there'd be another timeshare job because I really did enjoy
20 selling timeshare, and sure enough, I saw an ad for Westgate
21 and so I answered the ad and went down there and they hired me
22 on the spot.

23 Q Was that an ad in the newspaper?

24 A Yes, it was.

1 Q Is that then Plaintiff's Exhibit Number Four?

2 A Yes, it is.

3 Q All right, and what drew you to go into - from the ad
4 drew you going to Westgate?

5 A Well, the salary plus commission and no ---

6 THE COURT: Hold for second, hold for a second.
7 We've got an objection. You need to speak up. Yes, sir.

8 MR. WILKERSON: Yes, Your Honor, we continue to
9 object to the relevance of this chargeback issue as it relates
10 to this case.

11 THE COURT: All right.

12 MR. WILKERSON: Going into the same thing that we've gone
13 into with other people. I'd just like to have a continuing
14 objection on that if it's not, if they're going to be going
15 into it on each witness.

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

17 MR. CONNELL: Thank you, Your Honor.

18 BY MR. CONNELL:

19 Q What, what drew you?

20 A Well, pretty much everything but very, very honestly I
21 think most of it, well, the two primary things for me were no
22 chargebacks which to me means that once you make a sale you've
23 got the money and that money belongs to you and the company
24 can't come along and take it back at a later point and then

1 the no car tours because I drive a very old car and I wouldn't
2 want to take somebody in my car if I could avoid it.

3 Q All right, when you say no car, I'm not sure I
4 understand how - what car tours had to do with anything.

5 A Oh, well, some, some resorts, including Wyndham for
6 instance you make the presentation in one building and then
7 you put the customers in your car and drive them over to the
8 resort to walk them through it.

9 Q All right, now, were you given a contract to sign?

10 A I was.

11 Q Okay, let me show you this that's has been marked as
12 Plaintiff's Number Eight and Nine and take a look at that and
13 tell me if that was the contract you were given to sign. I
14 know it doesn't have your name on it.

15 A No, I - you know, I, I can't honestly say. I know that
16 we were given contracts but specifically what these said I
17 can't be sure.

18 Q Okay, and tell me why you can't be sure about that.

19 A We weren't allowed to read them. We weren't given the
20 time to read them.

21 Q Okay.

22 A And we were not given copies.

23 Q All right.

24 A So.

1 Q And when you say you weren't given the time to read them
2 tell me the circumstances surrounding when you signed the
3 contract.

4 A As I say, I started there in May and I believe it was
5 late summer or early fall on a Saturday gearing up for a
6 really big busy day that the general manager, Mario, came to
7 us. We were all kind of sitting around waiting for it - to be
8 called for a tour and Mario came with a stack of papers and
9 said, "You have to sign here, sign here, sign here," and I
10 said, I and others said, "Well, we need to read these." He
11 said, "You don't have time. If you want a tour sign it." So,
12 at that time I had no reason to believe that the company was
13 anything other than ethical. So, I did sign it.

14 Q Okay, and how were you to be paid?

15 A We were an hourly rate I believe was \$10 an hour plus a
16 sliding scale commission based on our VPG.

17 Q Okay, and what was your, what was your sliding rate
18 commission?

19 A I was hired at a seven percent commission and then
20 because my volume per guest, the VPG increased I got up to an
21 11 percent commission.

22 Q All right, can you explain to the jurors what VPG means?

23 A Yes, every time that you have a tour, that you have
24 potential customers that's a mark, I guess you'd say, and

1 every ten of those marks of those tours you are required in
2 order to keep your job to sell at least one of them. It's
3 better if you can sell more obviously but you must in order to
4 keep your job have a VPG of a thousand to 1200. That means
5 every person that buys from you has to buy a certain amount.
6 So, if you've got 10 customers and one tour buys a \$5000 week
7 you're in deep trouble. You've got your one for the closing
8 but you don't have a good VPG. It's only going to be 500.
9 You need to have a minimum a thousand dollars per guest in
10 order to continue to work.

11 Q All right, and how was your VPG to be determined? Was
12 it weekly, monthly, quarterly?

13 A It was on a monthly basis.

14 Q Okay, and would you have meetings with the Westgate
15 management about your sales on a daily or weekly basis?

16 A Yes, we had a daily sales meeting, yes.

17 Q All right, you were one of the - in this case you're one
18 of the persons who had been there the oldest; is that right?

19 A Correct, yes.

20 Q And I think you said you would have been in the what
21 first or second class?

22 A Second class.

23 Q All right, and was that when the Westgate Resort had
24 just been built?

1 A Well, it was an old hotel. So, it wasn't a matter of
2 building it. It was, it was there. It existed but they had
3 just taken it over, yes.

4 Q And it was going to be renovated or what was going to
5 happen?

6 A That's correct, it was going to be renovated. It was,
7 it was the old Holiday Inn.

8 Q Okay, on Third Avenue South in Myrtle Beach?

9 A Correct, on Ocean Boulevard.

10 Q Okay, now, had you ever had any issues with getting the
11 commissions you felt were earned at Westgate?

12 A Yes, as a matter of a fact. Certainly, once I left
13 there trying to get a commission was a challenge.

14 Q Okay.

15 A Yeah, I really never did get most of the commissions due
16 to me after I left.

17 Q All right, what amount of unearned commissions do you
18 contend that you are owed as of today? I'm not talking about
19 reserves. I'm talking about unearned - or earned commissions
20 that were not paid I should say.

21 A \$3,874.

22 Q Okay, come down here, please, ma'am, and write that on
23 this thing if you could. If you would put your - if you would
24 put your name at the bottom here.

1 A Okay.

2 MR. CONNELL: Okay, and Your Honor, the witness has

3 written \$3,874.

4 BY MR. CONNELL:

5 Q Is that right, Judy?

6 A That's correct.

7 Q Okay, all right, now, tell me how you came up with that

8 figure.

9 A Well, I went through my contracts, which I kept copies

10 of all my contracts.

11 Q Okay.

12 A That's the first thing you learn to do in timeshare.

13 Q Okay, why do you do that?

14 A Because there are frequent discrepancies in the

15 timeshare industry as far as what you've earned and what

16 you're paid.

17 Q And what do you mean there are frequent discrepancies?

18 A Well, I had been told by various people when I started

19 in the industry to keep good records.

20 MR. WILKERSON: Objection.

21 MR. CONNELL: Yeah, I'm sorry.

22 A To keep good records.

23 Q Wait a minute.

24 THE COURT: No, she's not offering it for the truth

1 of the matter. I'll allow that, go ahead.

2 Q All right, go ahead.

3 A Right, I just had been told to keep good records because
4 you never know.

5 Q Okay.

6 A And I'm kind - I'm a Virgo. I keep good records anyway.
7 It's my nature.

8 Q Okay, all right, so, you came up with the number by
9 looking at the records.

10 A That's correct.

11 Q Okay, and how did you, in looking at the records how did
12 you itemize that number, how did you come up with the exact
13 amount 3,000?

14 A Okay, well, when I had received a check a commission for
15 a particular contract I marked that off on that contract. So,
16 the contracts that had not been marked and I do have them
17 itemized here as far as which individuals purchased, the date
18 they purchased and the commission amount that was unpaid to
19 me.

20 Q Okay, now, have you ever had any conversations with
21 Deborah Turner regarding commissions?

22 A Yes, actually, I have.

23 Q Okay, let me ask you who Deborah Turner is.

24 A Deborah was our directors of sales when I was there.

1 Q Okay, and what conversations if any have you had with
2 her about upgrades by the corporate office in Orlando?

3 A Well ---

4 Q And tell me what upgrades are and then tell me what she
5 told you.

6 A Right, the theory in timeshare is that an owner of a
7 timeshare week is more likely to buy another week; and so,
8 they're a better tour if you will than - a better prospect for
9 buying something than somebody just fresh off the street. So,
10 they're worked to death pretty frankly; and so, the first - I
11 believe it was the first winter we had phone nights and we
12 were supposed to go into the property, back down to the
13 property and telephone our owners to try to upgrade them.
14 Well, when I did I found out from the owners that they'd
15 already been contacted and already had upgraded. So, I went
16 to Deborah about this and she said, "Oh, yes, the company has
17 an office or a group in Orlando that actually calls the owners
18 and upgrades them. You didn't get to them fast enough," and I
19 said, "Well, seemed like six months was fast enough," but
20 apparently not because they'd already been upgraded.

21 Q All right, and what does that do to your commission if
22 they've been upgraded by the ---

23 A Well, I don't get an additional commission.

24 Q Okay, why not?

1 A Because I'm not the one that sold them the upgrade.
2 Q All right, were you advised of that in the beginning?
3 MR. WILKERSON: Objection to relevance, Your Honor.
4 THE COURT: What is the relevance?
5 MR. CONNELL: Your Honor, it goes to the commissions
6 owed in this scheme.
7 THE COURT: So, she's claiming commissions for those
8 upgrades?
9 MR. CONNELL: She's claiming that that's one of the
10 schemes that caused it.
11 THE COURT: Is she claiming lost wages for the
12 upgrades?
13 A No.
14 MR. CONNELL: No.
15 THE COURT: Okay, sustained. It's irrelevant.
16 MR. CONNELL: All right.
17 MR. WILKERSON: Thank you.
18 BY MR. CONNELL:
19 Q All right, now, let's go back to how you determined that
20 you were owed the \$3,874 if we can.
21 A Do you want me to read the names, contract dates?
22 Q Yes, ma'am.
23 A Johnson, the contract date was 9-11-05, unpaid
24 commission was \$295.

1 Q Okay.

2 A Lewis, the contract date was 10-28-06, commission \$550;
3 Pate, contract date 10-28-06, commission \$1,980; Bates
4 [spelled phonetically], contract date 1-6-07, commission \$869;
5 Simmons, contract date 1-13-07, commission \$770.

6 Q Okay.

7 A Lester and Reider [spelled phonetically] were both a
8 smaller commission. They were a different type of product and
9 each of those commissions was \$40. Now, let me mention that
10 after I left Westgate I received a commission check for \$630.
11 I have no idea what that covered. There was no notation on
12 the check. I, I, I don't know what it was for. I don't know
13 what contract it covered. I received that on the 9th of March
14 of '07 and then another \$40 was sent to me on April 6th of
15 '07.

16 Q Okay, have you backed those out of the 3,800?

17 A I have.

18 Q Okay, all right. What - have you had any contact with
19 Connie Sharp?

20 A Well, no, I have tried many times ---

21 Q Okay.

22 A --- to contact Connie Sharp.

23 Q Tell me about your attempts to try to contact Connie
24 Sharp.

1 A Well, following the guidelines provided by Westgate to
2 recover certain funds I wrote a letter, sent it off, never
3 heard anything.

4 Q Okay.

5 A Called down to Orlando to speak to Connie Sharp, never
6 was able to speak to her, she never returned the phone call.
7 Finally after a few months as I recall I spoke to some
8 assistant of hers, Tiffany or I don't remember who it was now.
9 It's been a number of years back but I've never spoken with
10 Connie Sharp.

11 Q Okay, were you ever given a response to the letter that
12 you wrote Connie?

13 A I'm sorry?

14 Q Did you ever get a response to the letter that you
15 wrote?

16 A No.

17 Q All right, have you been given - were you given any
18 advance notice in any changes in the employment contract?

19 A Not at all.

20 MR. WILKERSON: Objection, Your Honor, no, no changes
21 in the contract. So, he asked this to every witness but he's
22 not talking about any changes to the contract. He's talking
23 about did they get advance notice of changes and the answer is
24 no implying that there has been a change but there's not.

1 THE COURT: So, what's your objection?
2 MR. WILKERSON: I object to relevance and misleading.
3 THE COURT: Okay, overruled. Go ahead.
4 Q All right, do you think the Defendants have complied
5 with the contract?
6 A I'm sorry. I woke up this morning with my ears stopped
7 up. So, I do apologize.
8 Q Do you think, okay, do you think the Defendants have
9 complied with their contract?
10 A No, they haven't paid us.
11 Q Okay, were you paid all your wages within 30 days of
12 leaving the company?
13 A Absolutely not. If I could just say we were told in
14 training over and over by Tracy Stelly [spelled phonetically]
15 that our job is done and the commission is earned once the
16 paperwork is signed and that turned out not to be even
17 remotely true.
18 Q Okay.
19 MR. WILKERSON: Objection, attempting to alter a
20 written contract by parol evidence.
21 THE COURT: Overruled, go ahead.
22 Q All right, can we - can I ask who Tracy Stelly is?
23 A Tracy is the corporate training manager at Westgate
24 Myrtle Beach.

1 Q All right, and how long was she the corporate training
2 manager?

3 A Well, she was there when I started. She was my trainer,
4 and as far as I know she's still there. I don't - I'm not
5 sure if she is or not.

6 Q Okay, and can you tell us what prompted you to leave
7 Westgate?

8 A Well, there were a number of factors. One is that the
9 building itself is ---

10 MR. WILKERSON: Objection, relevance.

11 MR. CONNELL: Your Honor.

12 THE COURT: What was the question again?

13 MR. CONNELL: Can you tell us why you left Westgate?

14 THE COURT: What is the relevancy?

15 MR. CONNELL: Your Honor, the relevance is going to go
16 to the fact that she couldn't get her commissions after she
17 left. If she'd stay she could have maybe gotten commissions.

18 THE COURT: Okay, I'll allow it. Overruled.

19 BY MR. CONNELL:

20 Q Okay, tell me why you left.

21 A The reason I put in my letter of resignation was due to
22 mold. The building is old and in fact it is full of black
23 mold which I can't breathe, well, nobody can. It's not
24 healthy for anyone but I have a particular sensitivity. So,

1 that was my stated reason, and in fact, that was a large part
2 of it but that was not the only reason why I left. I began to
3 realize that I was essentially an indentured servant, that as
4 long as I continued to work there I would be paid commissions.
5 If I left, you know, I wouldn't get them. So, I planned when
6 I would leave.

7 Q Okay, tell me what do you mean by you planned when you
8 would leave.

9 A Well, most everyone else that worked at Westgate - let
10 me, let me rephrase it. When I worked there I was the only
11 person who had been there a significant amount of time that
12 ever quit. Everyone else had been laid off or fired. Now,
13 there may have been one or two people that came in, worked a
14 day and voluntarily left but for a long-term employee I was
15 the first one to have just quit and I had commissions owing me
16 that were fairly substantial. I believe it was like \$4800 due
17 to me in January of '07.

18 Q Right.

19 A And so, I wanted to be very sure that I had those
20 commissions in hand before I quit because I knew that I would
21 be highly unlikely to see a penny once I left.

22 Q How did you know that?

23 A Just general knowledge through working there from
24 hearing people talk.

1 Q Okay, so, you wanted to make sure that you got.

2 A The bulk of my commissions, that's correct.

3 Q All right, okay.

4 MR. CONNELL: Let me talk to my co-counsel. I think
5 I'm done.

6 BY MR. CONNELL:

7 Q You had indicated in your testimony that you were
8 following guidelines when you wrote a letter to Connie. What
9 guidelines were you referring to?

10 A That was in regard to the reserve account.

11 Q I see, okay. And was there anything in the contract
12 that you were aware of that required you to write a letter?

13 A Well, I don't know if it was in the contract because
14 until we filed suit I had never seen the contract. I was
15 never given a contract, a copy of the contract, but we were
16 given a sheet of paper that said this is the procedure you
17 use, that you have to write to request, after you've been
18 separated from the company for six months then you're entitled
19 to write a letter to Connie Sharp requesting that your reserve
20 account be released to you.

21 MR. WILKERSON: Objection with regard to reserves,
22 Your Honor, irrelevant.

23 THE COURT: Yeah, but they're spilling over into
24 that. You're going to get a jury charge on that and

1 instruction on that. So, I'm going to overrule the objection.

2 MR. WILKERSON: All right, thank you, Your Honor.

3 MR. CONNELL: Answer any questions they have. Thank
4 you, ma'am.

5 The same thing. No objection.

6 MS. MAYSONET: Good morning, sir, we admit these into
7 evidence without objection, two documents.

8 THE COURT: So, that'd be Defendant's Exhibits 24 and
9 25?

10 MS. MAYSONET: I think so.

11 THE COURT: Okay, Defendant's Exhibit 24 and
12 Defendant's Exhibit 25 admitted into evidence without
13 objection.

14 (Whereupon, Defendant's Exhibit Number 24 [Terms of Employment
15 Notice - Parker] and Defendant's Exhibit Number 25 [Commission
16 Sales Schedule - Parker] admitted into evidence and
17 appropriately marked.)

18 CROSS EXAMINATION

19 BY MS. MAYSONET:

1 Q Good morning, Ms. Parker.

2 A Good morning.

3 MS. MAYSONET: Sir, may I approach the witness?

4 THE COURT: Yes, ma'am.

5 BY MS. MAYSONET:

6 Q Ms. Parker, I'm going to hand you what's been marked as
7 Defendant's Exhibit 24. I would like for you to tell me if
8 that is your signature at the bottom of that document entitled
9 terms of employment.

10 A It is my signature.

11 Q Thank you. Now, I'm going to hand you what has been
12 marked as Defendant's Exhibit 25 entitled Exhibit A,
13 commission schedule commission sales agents for Myrtle Beach
14 and I want to know if that's your signature there on the last
15 page.

16 A Okay, unfortunately there's no date on here. I believe
17 that is my signature and I believe that's what we were given
18 in training class to sign. We were promised a copy but never
19 received it.

20 Q I appreciate but that is your signature?

21 A That would be my signature.

22 Q Thank you. Now, ma'am, I thank you for identifying. I
23 believe you talked about seven different transactions; is that
24 correct?

1 A I never counted them up but that's correct.

2 Q Okay, and that totals \$3,874, that's ---

3 A That's correct.

4 Q Okay, now, you would agree with me that one of the

5 conditions for the payment of the commissions would be that

6 there is a full - that the customer has to make a full down

7 payment; is that correct?

8 A Yes, we never got paid on anything unless there's a full

9 down payment.

10 Q Thank you, and if a customer didn't make that full down

11 payment you would have, like you said, not earned that

12 commissions; right?

13 A Correct.

14 Q Okay, and the same thing with rescission meaning that if

15 the customer cancels within the rescission period, whatever

16 that might be, five to seven days then you wouldn't have

17 earned commissions on that; right?

18 A Correct.

19 Q Okay. Thank you for your time.

20 A Okay.

21 MS. MAYSONET: No, no further questions.

22 THE COURT: All right, redirect?

23 MR. CONNELL: To one issue, Your Honor.

24 REDIRECT EXAMINATION

1 BY MR. CONNELL:

2 Q Okay, in terms of employment or notice of employment

1 how does it show you are to be paid, weekly,
2 biweekly?

3 A It shows \$50 per day. Yeah, this had to be very early
4 on because that changed quite soon. It says be paid biweekly.

5 Q Okay, and what day of the week?

6 A After two p.m. on Friday.

7 Q All right, and when you left did you get your
8 commissions by Friday at two p.m.?

9 A I did not.

10 Q Okay, thank you.

11 THE COURT: All right, you may step down. You can
12 call your next witness.

13 MR. CONNELL: Mr. Black, come up, please, sir.

14 Whereupon, Stephen Black was called to the stand, duly
15 sworn by the clerk and testified as follows:

16 THE CLERK: State your name for the Court, please,
17 sir.

18 MR. BLACK: My name is Stephen Black.

19 DIRECT EXAMINATION

20 BY MR. CONNELL:

21 Q Tell us, please, sir, where you live.

22 A I live the south end of Myrtle Beach.

23 Q Okay, and what do you do now for a living?

24 A I work for Myrtle Beach Hyundai.

1 A All right, and how long have you lived in the Myrtle
2 Beach area?
3 A Six years.
4 Q And tell me when you first came to Myrtle Beach and why.
5 A I came here because my dad passed and my mother needed
6 help.
7 Q All right, she lives here in the area?
8 A Yes.
9 Q All right, and have you ever been a timeshare salesman
10 before?
11 A Just Westgate.
12 Q Okay, had you had any previous experience with
13 timeshare?
14 A No.
15 Q And when did you start as a Westgate timeshare
16 salesperson?
17 A February of '08, the first class of the season.
18 Q All right, okay, you said first class of the season.
19 Tell me what that means.
20 A Basically, I was the only new person in the class.
21 Everybody else was experienced.
22 Q All right, experienced at other resorts or ---
23 A No, some of them had already worked at Westgate, left
24 and came back.

1 Q I see, okay, and what caused you to go and seek
2 employment at Westgate?

3 A Ad in the paper, had a relative that worked there.

4 Q All right, let me ask you. This has been offered into
5 evidence as Number Four. Is that the ad that you saw in the
6 paper?

7 A Yes.

8 Q Okay, tell me what it is about the ad that drew you to
9 Westgate.

10 A The benefits was one of the things, no car tours because
11 I had heard about that, did a little research before I went
12 there and of course the no chargebacks.

13 Q Okay, all right, now, tell me about your training as a
14 timeshare salesperson. How long did it last?

15 A About two, two and half weeks.

16 Q All right, and tell me what the training consisted of
17 just generally.

18 A Verbatim word for word, you would be given stuff to
19 study at night and then get tested on the next day, just
20 learning their pitch.

21 Q Okay, when you say learning their pitch what do you mean
22 by that?

23 A When you have a tour, you have basically a 90-minute
24 tour. You have, from beginning to end, you have basically a

1 whole speech you go through ---
2 Q Okay.
3 A --- that you have to say word for word.
4 Q All right.
5 A That's basically what you learn in the class.
6 Q When you say word for word are you talking about just
7 parroting back what you were told to say; is that what you
8 mean?
9 A Yes.
10 Q All right, let me ask you, did you sign a contract?
11 A Yeah, at the end of the class, yes.
12 Q All right, and tell me how, let me let you look at the
13 contract and ask you if this is the contract or I know that's
14 not your signature on it but is that similar to the contract
15 you signed or is that the contract you signed?
16 A I think it was a little different. This one's from
17 2006.
18 Q Okay, what do you think the differences were between
19 yours and ---
20 A Our contract, I think, was, it was 10 percent.
21 Q Okay.
22 A Across-the-board.
23 Q All right, and explain what you mean by - when you say
24 10 percent across-the-board.

- 1 A Ten percent commission off of a sale.
- 2 Q All right, and the 10 percent commission off the sale
- 3 was based on what?
- 4 A The amount you got for whatever timeshare you sold. If
- 5 it were a \$10,000 deal then you got \$1000.
- 6 Q Okay, and the term VPG has been used a lot. Tell me -
- 7 tell these folks what that means.
- 8 A I didn't understand all about how that worked but it had
- 9 to do with how many guests you had, how many units you sold
- 10 and that would give you basically what your per guest would be
- 11 averaged dollar wise. Then you'd keep it, I think with us it
- 12 was above 1500.
- 13 Q Okay, and so, what would happen if you didn't, if you
- 14 went below the VPG?
- 15 A You'd be gone. You'd be fired.
- 16 Q All right, and so, you had to sell so many timeshares
- 17 based on so many tours or something? Tell me, kind of tell me
- 18 how that, how ---
- 19 A It was kind of - when you first started and you were new
- 20 at it they expected basically your first month to be able to
- 21 sell one out of every 10 I think it was.
- 22 Q Okay, and then did it gradually require you to sell
- 23 more?
- 24 A Oh, they were always on you to sell more.

1 Q Okay, how long did you stay there?
2 A I was there from February of '08 till I got laid off the
3 end of September, September 28th or 9th.
4 Q September 20 - I'm sorry, what'd you say?
5 A It was either the 28th or the 29th.
6 Q Okay, and did you work through the winter?
7 A No, I was unemployed.
8 Q Okay, well, from February '08 till September 28th - oh,
9 you said '09; right?
10 A What's that?
11 Q Didn't you say 2009 you worked there?
12 A 2008.
13 Q 2008, okay, so, you worked there for part of the, part
14 of the winter, the February-March period?
15 A Yeah, I started February, was there through till the
16 fall.
17 Q Okay, and were you paid during the period that you
18 worked there?
19 A Yeah, I got a paycheck every two weeks.
20 Q Okay, and tell me what you think you are owed in unpaid
21 commissions.
22 A I have ---
23 Q And I'll ask you to come down here and put that on this
24 board.

1 A \$20,490 in unpaid contracts I have here.

2 Q Okay, \$20,490?

3 A Yes.

4 Q Okay, come down here if you would, please, sir, and I'll

5 have to get the back side here. Write on this board your name

6 and the amount, please, sir.

7 A (Complies with request.)

8 Q Okay, thank you, sir.

9 A Uh-huh.

10 Q All right, Steve, tell me how you arrived at that

11 number.

12 A I wrote down every one of my contracts on a separate

13 sheet of paper, the date that the contract was made in

14 deeding, the amount it was for and the approximate due date

15 depending on whether it was a pender or it was a full down.

16 Q Okay, let's take it step by step. You said something

17 about deeding. What did you mean by that?

18 A Once it goes through deeding and it's a sale.

19 Q Okay, tell these folks, I'm sure they're tired hearing

20 it but tell these folks how you sell the unit, how it goes to

21 deeding and where it goes and that kind of thing.

22 A We basically do the 90 minute tour, go through, then you

23 end up on the backend where you actually get into the business

24 part of it, the numbers of it and when they agree to purchase

1 one they go from there to deeding to actually do the financial
2 paperwork.

3 Q All right, and when the financial paperwork is signed
4 the owner gets a deed; is that what happens?

5 A I'm not in there. I don't really know that but when
6 they, when they sign that's when the salesperson gets a copy
7 of the - they're a new owner and ---

8 Q Okay, and tell me if you would, give me, just spell out
9 the list of the ones that you were not paid for. Just give me
10 the names of those people, please.

11 A I have 20 of them

12 Q Okay, all right.

13 A Pittman, Black.

14 Q Pittman what?

15 A Pittman, you just want the last name?

16 Q Yes, sir, that'd be fine.

17 A The next one is Black.

18 Q Okay.

19 A Beande, B-E-A-N-D-E, Saxon, Carson, Chandler, Quaine,
20 it's Q-U-A-I-N-E.

21 Q Okay.

22 A Millspar, Pounds.

23 Q Towns?

24 A Pounds, P-O-U-N-D-S, Estringer [spelled phonetically],

1 Mills, Adkins, Smith, Kasama [spelled phonetically], Malloy,
2 Welch, this one was kind of hard to read, Magar [spelled
3 phonetically], Hagar [spelled phonetically], it's spelled H-M-
4 A-N, so I don't know how you pronounce that.

5 Q Okay.

6 A That's who I have.

7 Q Okay, have you had any discussions with any Westgate
8 employees, I mean Westgate supervising employees I should say
9 about these unpaid commissions?

10 A When I got laid off I talked with Victor Curry and Jesus
11 in the office and they told me I was going to get the
12 commissions that were due to me the following Friday for that
13 pay period, which I did not see.

14 Q Okay.

15 A Constant calls to the office trying to see what to do to
16 get paid.

17 Q Okay, when you say constant calls who were you calling?

18 A I would call Doug Boykin, call the 800 number down to
19 Florida.

20 Q And who was Doug Boykin?

21 A He was kind of an overall guy, he had to do with
22 payroll, that kind of stuff at Westgate.

23 Q All right, and how about Victor Cantrell?

24 A He was a TO at the time then.

1 Q All right, you got to - you're using - I don't know what
2 a TO is unless I'm in the Marines.

3 A A manager, a manager. He's the person who would
4 finalize the deal at the end.

5 Q Okay, was that someone you answered to?

6 A Yes.

7 Q And what discussions did you have with him, with Victor
8 Cantrell about your unpaid commissions?

9 A Basically he said basically you should have kept good
10 records.

11 Q He said you should have kept what, good?

12 A Kept good records.

13 Q All right, and what does, did you ever have any
14 discussions with Connie Sharp?

15 A That's the person down in Florida, yes.

16 Q Okay, did you call her?

17 A I called her more than one time, normally wasn't able to
18 talk to her. One time that I did talk to her she told me
19 basically the same thing, after you've been gone for six
20 months you have to write a letter to get your reserve back.

21 Q Okay.

22 A Which I did.

23 Q All right, did you ever get a response to the letter?

24 A Never.

1 Q All right, and did you have any other discussions with
2 Mr. Boykin about the commissions?

3 A No, I did not after that.

4 Q All right, what if any discussion, what if anything were
5 you told by any of the managers about the rescission rate at
6 Westgate?

7 A When I was there for ---

8 MR. WILKERSON: Objection, relevance.

9 THE COURT: What's the relevancy?

10 MR. CONNELL: Your Honor, it's going to go, the
11 rescission rate is going to go to how - why the contracts were
12 paid. If they had a low rescission rate then the contract
13 should have been paid.

14 THE COURT: What now?

15 MR. CONNELL: If they had - we think the testimony
16 would be that the rescission rate by buyers is - was very low.
17 As a result all the contracts went through and that's what
18 they're ---

19 THE COURT: No, no. That's too speculative. I
20 sustain the objection.

21 MR. CONNELL: Okay, thank you, Your Honor.

22 BY MR. CONNELL:

23 Q All right, were you given notice in advance of any
24 changes in the employment contract?

1 A No.

2 Q All right, were you paid your wages within 30 days of
3 leaving the company?

4 A No.

5 Q Do you think the Defendant complied with the contract?

6 A No, I do not.

7 Q Were you - there was some - at one point there was some
8 picketing I think of the Westgate Resort. Were you involved
9 in that?

10 MR. WILKERSON: Objection, relevance.

11 THE COURT: Sustained.

12 MR. CONNELL: All right, thank you, Your Honor.

13 MR. WILKERSON: Move to strike the question, Your
14 Honor.

15 THE COURT: I sustained your objection.

16 MR. WILKERSON: Thank you.

17 THE COURT: That's sufficient.

18 MR. CONNELL: Thank you, Your Honor.

19 BY MR. CONNELL:

20 Q Do you, do you understand what the term up-sold means in
21 the world of timeshare?

22 A Basically as I understand it that's if someone already
23 owns and they decide to upgrade from a studio to a one bedroom
24 or one bedroom to two bedroom.

1 Q All right, and are up sales done in the home office in
2 Orlando or are they done at the Myrtle Beach office or both?

3 A That I don't know.

4 MR. WILKERSON: Objection, Your Honor, I believe you
5 sustained this objection in the last witness, would object
6 again.

7 THE COURT: I don't remember. What was the grounds
8 for the objection?

9 MR. WILKERSON: Irrelevant and it's speculative, Your
10 Honor.

11 THE COURT: Whether or not the upgrades were done in
12 Myrtle Beach or in Orlando?

13 MR. WILKERSON: No, you questioned the witness last
14 time as to whether or not they were claiming that they should
15 have been paid commissions on some of these upgrades was the
16 issue and that's ---

17 THE COURT: But this was a different question. This
18 question was whether or not upgrades were done in Myrtle Beach
19 or in Orlando.

20 MR. WILKERSON: I'll wait for another question, Your
21 Honor.

22 THE COURT: All right, all right.

23 Q What ---

24 A I think the in house mainly did the upgrades and that

1 was done separate from frontline sales..

2 Q All right, and you were doing frontline sales; is that
3 right?

4 A Yes, correct.

5 Q And the in house people were those who were going to
6 stay into the winter; is that true?

7 A That they were what?

8 Q They were going to stay during the winter, stay as an
9 ---

10 A No, I mean in house people by that was - they were
11 salesmen but that was their job, people who came there they
12 were the ones who dealt with previous owners.

13 Q Okay, all right, let's see, have you received any
14 payment for the commissions you're talking about here?

15 A No.

16 Q Were you ever able to read the contract?

17 A No, the way it worked was in training because it was
18 over Valentine's Day that I was there. It was basically they
19 were flooded with tours. Frederick came in with the
20 paperwork, sign it. There's a tour waiting. Basically you
21 had to sign it or you couldn't work.

22 Q All right, and were you ever - when were you told you
23 had to give written notice to Ms. Sharp about the unpaid
24 commissions?

1 A When I called.

2 MR. WILKERSON: Objection, mischaracterizes prior
3 testimony, objection.

4 THE COURT: Overruled.

5 Q You said you had the right to get your reserves I
6 believe. What about your unpaid commissions?

7 A Alls I knew was it was on the - to get your reserves.

8 Q Okay, okay, thank you, sir.

9 MR. CONNELL: No objection.

10 MS. MAYSONET: Sir, I move to admit the next two
11 Defendant's Exhibits as they are without objection.

12 THE COURT: All right, Defendant's Exhibits 26 and 27
13 admitted into evidence without objection.

14 (Whereupon, Defendant's Exhibit Numbers 26 [Terms of

1 Employment Notice - Black] and Defendant's Exhibit Number 27
2 [Commission Sales Schedule - Black] admitted into evidence and
3 appropriately marked.)

4 MR. WILKERSON: May I approach the witness, Your Honor?

5 THE COURT: Yes, ma'am.

6 CROSS EXAMINATION

7 BY MS. MAYSONET:

8 Q Good morning, Mr. Black.

9 A Good morning.

10 Q I'm going to hand you what's been marked as Defendant's
11 Exhibit 26. It's titled terms of employment notice. Can you
12 kindly tell me if that's your signature, please?

13 A Yes, that's my signature.

14 Q I'm going to now hand you what's been marked as
15 Defendant's Exhibit 27 entitled Exhibit A, commission
16 schedule, commission sales agent. I would like you to look at
17 the last page and tell me if that's your signature as well,
18 please.

19 A Yes, that's my signature.

20 Q And sir, my understanding is that you are contending
21 that you are owed some monies here, \$20,490; is that what I -
22 you just said?

23 A That is correct.

24 Q Okay, and that's actually based on commissions pursuant

1 to the agreement that we just talked about; right?

2 A Pursuant, what do you?

3 Q I'm sorry, that you are saying that you are - you had a
4 contract with Westgate where they would pay you commissions -
5 strike that. You had an agreement, you're contending that you
6 had an agreement with Westgate; right, and they had to pay you
7 commissions; right?

8 A Correct.

9 Q Okay, now, one of the requirements for a commission to
10 be earned was that a full down payment had to be made; right?

11 A Yes.

12 Q Okay, so, the customer failed to make the down payment
13 you didn't earn that commission; right?

14 A Well, I didn't get that information whether they made a
15 down payment, didn't. We didn't have that information.

16 Q And I appreciate that but the question is a little
17 different. The question is let's say that the customer didn't
18 make the down payment, you would not have earned that
19 commission because that was a requirement of the contract that
20 a full down payment be made before you could get paid a
21 commission; is that correct?

22 A Correct.

23 Q Okay, and the same thing about rescission, if the
24 customer rescinded the contract, meaning, you know, calling,

1 writing and said, "I don't want to do it anymore," within the
2 period that they had you weren't entitled to that commission
3 either; right?

4 A Well, there was supposed to be no rescissions. That's
5 what the advertisement said.

6 Q Okay, maybe you are misunderstanding me. The customer,
7 when the customer purchase agreement, purchased a timeshare
8 didn't they have a chance to change their mind?

9 A I think, yeah, three to five day or something like that,
10 yes.

11 Q Okay, wasn't that called a rescission period?

12 A I guess you could call it that, yes.

13 Q Okay, and that's what I'm ---

14 A If they didn't want the ---

15 Q Okay.

16 A Yes.

17 Q And that's what I'm talking about.

18 A Okay, I'm sorry.

19 Q Okay, so, now we understand each other.

20 A Yes.

21 Q So, if the customer decided, changed their mind within
22 that period you wouldn't have been entitled to a commission on
23 that.

24 A Correct.

1 Q Okay, thank you. I have no further questions.

2 REDIRECT EXAMINATION

3 BY MR. CONNELL:

1 Q If you would read the terms of employment notice as to
2 when you were to receive your paycheck, please, sir.

3 A Fridays.

4 Q Okay, weekly or biweekly?

5 A I don't see where it says weekly or biweekly unless I'm
6 missing it.

7 Q Okay, what does that say?

8 A Oh, okay, yeah, it's biweekly.

9 Q All right, did you receive your commissions at the end
10 when you left?

11 A No.

12 Q The end of two weeks?

13 MR. CONNELL: That's all I have, Your Honor.

14 THE COURT: All right, you may step down. Call your
15 next witness.

16 MR. CONNELL: Holly.

17 MR. WILKERSON: Last name?

18 MR. CONNELL: Holly LeVasseur.

19 MR. WILKERSON: Thank you.

20 MR. CONNELL: You can come right up there.

21 WHEREUPON, Holly LeVasseur was called to the stand, duly
22 sworn by the clerk and testified as follows:

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

1

MS. LEVASSEUR: My name is Holly LeVasseur, L-E-V-A-

1 S-S-E-U-R.

2 DIRECT EXAMINATION

3 BY MR. CONNELL:

4 Q All right, Holly, if you would tell me, please, where
5 you live.

6 A I live in Loris, South Carolina.

7 Q All right, how long have you lived in Loris?

8 A Almost six years now.

9 Q All right, you have a kind of a northeast accent; is
10 that right?

11 A From Massachusetts.

12 Q Okay, when did you come down here from Massachusetts?

13 A I came down here in 2007 from Massachusetts.

14 Q All right, and you moved to Loris and what kind of work
15 did you start out doing when you came down here?

16 A I started trying to sell timeshares. I was a real
17 estate agent for 30 years.

18 Q All right, all right, and you say you're a real estate
19 agent for 30 years, was that up in Massachusetts?

20 A Massachusetts and here in South Carolina and North
21 Carolina.

22 Q Okay, and what prompted you to decide to sell timeshare?

23 A Well, the real estate market was at such a downhill even
24 in the Carolinas I decided I've been in sales for umpteen

1 years and used to working on commissions. I could do this,
2 besides the fact I owned a timeshare.

3 Q Okay, where did you own a timeshare?

4 A Westgate.

5 Q All right, Westgate Myrtle Beach or Westgate somewhere
6 else?

7 A Orlando.

8 Q All right, and how did you choose Westgate to work?

9 A I was - I started out at Wyndham. I worked there for
10 like three months.

11 Q Okay.

12 A Wyndham gave you a paycheck plus supposedly a commission
13 but they did a draw against your paycheck. My girlfriend who
14 worked with me at Wyndham went over to Westgate, called me and
15 said, "You got to come here because they give you a flat 7-25
16 an hour. They don't take the money back, plus your
17 commission."

18 Q All right.

19 A Which sounded good to me.

20 Q All right, so, you didn't look at any newspaper
21 articles?

22 A No.

23 Q All right, so, when did you go and apply at Westgate?

24 A In May of 2008.

1 Q All right, and when you applied in May of 2008 were you
2 accepted as an employee?

3 A I was.

4 Q And tell me how you learned to sell timeshare.

5 A We had a two-week training course which was grueling
6 trying to remember verbatim, word for word everything they
7 made us remember.

8 Q All right.

9 A And we had to take tests every morning which was tough
10 at my age.

11 Q All right, you're not used to taking tests anymore; is
12 that right?

13 A No, no.

14 Q So, you had to study at night I take it?

15 A Oh, big-time.

16 Q All right, and about how long did the training last?

17 A Two weeks.

18 Q Okay, and what happened at the end of the two-week
19 training?

20 A Basically we were supposed to take our last test. We
21 took our last test but they came up and said that there was a
22 big amount of people, they needed us now, which was great
23 because we didn't have to get nervous to go for our first and
24 they told us we had to sign some paperwork and we could go

1 down and do our first tour.

2 Q All right, and the paperwork that they told you you had
3 to sign, Plaintiffs' Eight and Nine are those similar to what
4 you had to sign? Take a look at those, please. I know that's
5 not the one you signed.

6 A Yeah, yeah, that's not the one I signed but I did sign
7 an agreement to work there.

8 Q Okay, and what did you - how long did you have to look
9 at the agreement?

10 A Minutes.

11 Q Okay, and what was your commission to be? How much were
12 you to get?

13 A Ten percent commission plus minimum-wage salary for the
14 hours I worked.

15 Q And you were told to be there on a certain time; is that
16 right?

17 A Yes, we had to be there every morning.

18 Q All right.

19 A For a meeting.

20 Q And were you given shifts as to when you had to work?

21 A We were just given days, you show up this day.

22 A Okay, but did you go to a morning meeting every morning?

23 A Every morning.

24 Q All right, and tell me what was discussed at the morning

1 meetings.

2 A Oh, how everybody did. They would honor the ones that
3 did a sale the day before. They would tell us where we stood
4 as far as what we, we should be doing better. It was always
5 a, you know ---

6 Q Trying to get you to sell more?

7 A --- be very negative to us when we weren't doing good.

8 Q Okay, and how long would the meetings normally last?

9 A They could last half hour to an hour. It depended upon
10 and then we'd have to go out because our tours were waiting
11 for us.

12 Q Okay, and talk to me about what VPG means so we can
13 understand what that means.

14 A That basically is volume per guest.

15 Q Okay, and how does that affect you as the person trying
16 to sell?

17 A You had to sell, for every guest, you had to sell so
18 many guests for every time you took out people. If you took
19 out 10 different guests you had to sell at least one and
20 depending upon the volume as to what they bought, they could
21 buy a \$10,000 package. They could buy a \$40,000 package. Of
22 course the higher the better, the better your volume.

23 Q Okay, and how many would you have to sell a week to stay
24 employed there?

1 A At least one...

2 Q Okay, and when did you finally leave?

3 A I left in August of 2008. I was let go. My VPG went
4 down.

5 Q Okay, and what, what, for what reason were you let go?
6 Were you told?

7 A Basically my volume was not there. I was not doing good
8 enough for their standards.

9 Q Okay, and prior to being let go were you able to sell
10 any timeshare?

11 A Oh, yeah, yeah.

12 Q All right, have you come up with an amount of unpaid
13 commissions that you believe you are owed?

14 A I have.

15 Q All right, and what dollar amount is that, please,
16 ma'am?

17 A I came up with \$6,628.

18 Q Okay, and that was commission during the period that you
19 worked?

20 A Correct.

21 Q And what period would that have been?

22 A That would have been through May of 2008 right till end
23 of August.

24 Q Okay, all right, if you would, please, come down here

1 and put that on this board.

2 A (Complies with request.)

3 Q Okay, great. Thank you, Holly. Okay, Holly, tell me
4 how you came up, you came up with a rather specific number of
5 \$6,628. Tell me how you came up with that number.

6 A Basically I came up with the fact that I sold 132,500 in
7 sales. If you take 132-5 times 10 percent commission it
8 should be 13,200.

9 Q Okay.

10 A I actually got a total of year to date was \$5,161 paid
11 on commissions.

12 Q Okay.

13 A That was when I left. Then on 3-6-09 I did get another
14 check, a check for \$1441.

15 Q Okay.

16 A And then on 4-17 I got a check for \$300.

17 Q Okay.

18 A So, I minused that out of the actual commissions and
19 figured out I was still owed 6,628.

20 Q Okay, now, did you make any inquiries as to the - with
21 anybody about the amount that you were owed?

22 A I did. I did.

23 Q Okay, who did you - tell me who you talked to first.

24 A I had to - I talked to Doug Boykin. I talked to - I

1 don't even remember who was the manager at the time at the
2 resort.
3 Q Okay.
4 A Which told me to call Florida.
5 Q Okay.
6 A I had to call Connie. I talked to Connie and she said
7 to write a letter, that within six months I would get all the
8 monies that was owed me.
9 Q Okay.
10 A I wrote a letter and sent it certified.
11 Q Okay, and did you get a response to the letter?
12 A No, I didn't.
13 Q Okay, did you call Connie back again?
14 A I called a few times.
15 Q Okay, and did you ever talk to her?
16 A Not after that first time.
17 Q All right, did you ever - did she ever leave you a
18 voicemail or attempt to make any phone calls to you?
19 A No.
20 Q How long do you think you talked to her the first time?
21 A I probably talked to her for about five minutes if that.
22 Q Okay, had you ever talked to her before?
23 A No, before that, no.
24 Q All right, had you ever talked to her since?

1 A No.

2 Q Okay, do you think the Defendants have complied with the
3 contract?

4 A No.

5 Q Okay, did you get your, did you get your payment within
6 30 days of separation or leaving the company?

7 A Definitely not.

8 Q Okay, your conversation with Doug Boykin was it more
9 than one time or just one time?

10 A Yeah, when I first started because I could never figure
11 out, and I apologize, I could never figure out how their
12 commissions worked or how you got your paychecks and the VOAs
13 and the - never could figure it out.

14 Q Okay, so, you were continually asking about how the pay
15 structure was.

16 A Right.

17 Q And were you asking Mr. Boykin?

18 A Yes.

19 Q All right, and what was he telling you?

20 A Well, he would just say that, you know, basically you
21 get paid once they get their deposit, full deposit. Some
22 people didn't get - pay the full deposit. Yeah, once the full
23 deposit was paid then you would get your commission check at
24 that time.

1 Q All right, and did you get any other explanations from
2 any other employees besides Mr. Boykin? I think you said you
3 talked to a general manager.

4 A Yeah, I would, yeah, I went in the office and talked to
5 them about it and they basically said the same thing, if they
6 were pended out you didn't get paid for that commission until
7 that pender was paid, that deposit.

8 Q Okay, do you know whether or not the contract required
9 you to send a written notice requesting monies back from Ms.
10 Sharp?

11 A I don't remember anything being in the contract about
12 it. I just remember when I had called and I talked to a few
13 of the people that had been let go from Westgate. They all
14 said the same thing, send a letter in.

15 Q Okay, did you keep copies of your records?

16 A I did.

17 Q All right, and do you base your request for a commission
18 on those records?

19 A I did.

20 Q What explanation did you get, if any, for the checks
21 that you got on March the 6th and the other check?

22 A Basically it says it's a reserve, it was for certain
23 ones that didn't come through yet and says on it reserve,
24 which I don't understand. At the time I just needed the money

1 and I was happy to get it.

2 Q Okay, all right, that's all we have.

3 THE COURT: All right, cross-examination.

4 MS. MAYSONET: Yes, sir.

5 MR. CONNELL: No objection.

6 MS. MAYSONET: Sir, we move to admit the next two

7 exhibits without objection.

8 THE COURT: All right, that would be Defendant's

9 Exhibit Number 28 and Defendant's Exhibit 29 admitted into

10 evidence without objection.

1 (Whereupon, Defendant's Exhibit Numbers 28 [Terms of
2 Employment Notice - LeVasseur] and Defendant's Exhibit Number
3 29 [Commission Sales Schedule - LeVasseur] admitted into
4 evidence and appropriately marked.)

5 MS. MAYSONET: May I approach, sir?

6 THE COURT: Yes, ma'am.

7 CROSS EXAMINATION

8 BY MS. MAYSONET:

9 Q I'm going to hand you what's been marked as Defendant's
10 Exhibit 28. Can you tell me whether that's your signature on
11 that document entitled terms of employment notice?

12 A Yeah, definitely.

13 Q Good morning, thank you.

14 A Thank you, you, too.

15 Q I'm going to hand you what's been marked as Defendant's
16 Exhibit 29 entitled Exhibit A, commission schedule and can you
17 kindly tell me if that's your signature on Exhibit Three - on
18 that Exhibit on page three.

19 A Yep, this is mine.

20 Q Okay, and that is the agreement that you signed?

21 A That was the contract I'd signed, yep.

22 Q All right, I heard you talk about VOAs.

23 A Yeah.

24 Q Did I hear that correctly?

1 A You did.

2 Q And that, if I understand it correctly, is really not -

3 it's paid different than a transaction that you sold to a

4 customer who bought a timeshare; right?

5 A It's paid different.

6 Q Yeah, it's not the same.

7 A Well, you don't get a 10 percent commission. You get a

8 straight \$40 per VOA.

9 Q Okay, so, you got \$40; right?

10 A Yeah.

11 Q When you, and if I understand correctly, you said that

12 you calculated the amount owed, okay.

13 A Uh-huh, which unfortunately had VOAs in it.

14 Q I'm sorry?

15 A Those did have some VOAs in it.

16 Q Okay, so, that amount that you gave me might not be

17 right; right, because if it has VOAs on it you're presuming

18 that you would be entitled to a 10 percent when that is

19 incorrect; right?

20 A No, that would have been the total of 13,250 commissions

21 \$280 in VOAs. So, the total owed would have been 13,530. I

22 was paid 5,160 one year to date of commissions, owed 8,369. I

23 did receive on 3-6 14-41 and on 4-17 300. I minused out that

24 17-41, giving me a total of 6-6-2-8.

1 Q Okay, so, what you're telling me is that 6-6-2-8 doesn't
2 include VOAs?

3 A It does include those \$280 worth of VOAs.

4 Q Okay, so, obviously you were looking at specific
5 transactions when you came up with this.

6 A Right, the whole thing, yeah.

7 Q Okay, so, you did not identify those transactions. Can
8 you kindly tell me each specific transaction that you believe
9 that you're owed?

10 A I can only tell you and even in my letter as far as I
11 can tell I never could understand how they did their checks
12 and how I was paid for what commissions. All I can do is give
13 you the amount of sales I did, what the total amount was, what
14 I felt the commission should be at 10 percent. If I sold a
15 \$5,000 package I should have had a \$500 commission. I sold a
16 4400 - \$44,900 package. That should have been a \$4,409
17 commission. So, all I did basically, again, I didn't
18 understand how they worked it. I just kind of put them all
19 together. This is what I - and this is what I got.

20 Q I understand, ma'am, but you were telling me that you
21 were looking at VOA deals and you were looking at regular
22 deals. You were looking at a piece of paper that contained
23 information that gave you the price, those ---

24 A Yeah, I was looking at all of these.

- 1 Q Okay, and that actually ---
- 2 A These are all my deals, yeah.
- 3 Q Let me just kind of finish. So, you have, you're
- 4 showing me a piece of paper that actually has a name of a
- 5 customer; right?
- 6 A Right.
- 7 Q And that's what I need.
- 8 A Okay.
- 9 Q I need all the names of all the customers that you
- 10 believe you did not receive a commission that was earned by
- 11 you.
- 12 A I did not receive the commission that was earned, again,
- 13 I do not have a copy of what I did not receive the commission
- 14 for broken down. All I have is a copy of my sales like Kelly
- 15 Perry was a sale of \$5000.
- 16 Q Okay, and that's what I need; a name.
- 17 A Okay, okay, but whether I got paid for that one
- 18 individual one I don't know because I don't know how they
- 19 structured.
- 20 Q I understand, ma'am.
- 21 A Okay.
- 22 Q But you are telling the jury today to award you 6,628.
- 23 A Yeah.
- 24 Q Is that correct?

- 1 A Correct.
- 2 Q And you're also saying that Westgate owes you 6,628.
- 3 A Correct.
- 4 Q Okay, and I am asking you what do you base that on, what
- 5 specific contracts because you're paid on specific contracts.
- 6 A Okay, if you want I'll give the number, the name of the
- 7 contracts, yeah.
- 8 Q Thank you.
- 9 A Okay, Kelly Perry, 5,000.
- 10 Q Thank you.
- 11 A Wendy Hezlitt [spelled phonetically], 10,900.
- 12 Q You're - go ahead.
- 13 A Althea.
- 14 Q You're speaking too fast. I'm sorry.
- 15 A Oh, I'm sorry.
- 16 Q Can you - can we start from ---
- 17 A My northern accent, I'm sorry.
- 18 Q It's okay.
- 19 A Okay.
- 20 Q I have a Puerto Rican accent, so.
- 21 A Wendy Hezlitt [spelled phonetically], 10,900.
- 22 Q Okay.
- 23 A Althea Reed, 6,000.
- 24 Q Okay.

1 A Brenda Martinez 16,900; Cynthia Brink, 44,900.
2 Q Okay.
3 A Sean Linglefit [spelled phonetically] 6,000; John and
4 Amy Beaver 6,000; Chris and Tonya Pendleton 7200.
5 Q Tonya Pendleton?
6 A Pendleton.
7 Q Okay, how much is that?
8 A 7,200.
9 Q Okay.
10 A Deborah Lewis 10,200 and Wanda Davis 14,400.
11 Q And those numbers that you gave me is not the commission
12 owed but the purchase price; right?
13 A Right.
14 Q Okay, other than those transactions that you just told
15 me is there anything else other than that?
16 A Just those VOAs that I ---
17 Q Okay, well, let's talk ---
18 A --- mistakenly put in there as the total.
19 Q All right, do you have the name of the VOAs?
20 A I do.
21 Q Okay, if you can kindly tell me those.
22 A And again, I probably won't have all the VOAs because
23 towards the end they didn't give us the - a lot of the
24 paperwork for the VOAs, LaToya Baker.

- 1 Q Baker, okay.
- 2 A Jess Galspites [spelled phonetically].
- 3 Q Spites, okay.
- 4 A Marsha Judge, Maria Martinez [spelled phonetically].
- 5 Q Okay.
- 6 A Letisha Fisher [spelled phonetically], Valerie Marcillo

1 [spelled phonetically], and those are the ones I have copies
2 of.

3 Q Thank you so much. Now, you would agree with me that if
4 the customer failed to make the down payment you would not
5 have earned that commission; right?

6 A The complete down payment, yeah.

7 Q Okay, and if a customer changed their mind within the
8 seven or five day period ---

9 A Rescind period, yes.

10 Q --- yes, resend period ---

11 A Yeah.

12 Q --- that you wouldn't have earned that commission there
13 ---

14 A Correct.

15 Q --- on that either. If you'll allow me a second. I
16 thank you for your time. No further questions.

17 A Okay.

18 MR. CONNELL: Thank you, ma'am.

19 REDIRECT EXAMINATION

20 BY MR. CONNELL:

21 Q When did you get a copy of Exhibit A, Holly?

22 A I got a copy of that months, months after working there.

23 Q All right, and Defendant's Exhibit 28, terms of
24 employment, were you to be paid weekly, biweekly?

1 A Biweekly.

2 Q All right, and what time on Friday were you to be paid
3 by?

4 A By two o'clock in the afternoon.

5 Q All right, were you paid by that?

6 A No.

7 MR. CONNELL: That's all I have, Your Honor.

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

9 Let's take a break. All right, ladies and gentlemen,
10 we're going to take our morning break. Please do not discuss
11 the case even among yourselves at this point in time, don't
12 conduct any independent investigations. Please leave your
13 notepads there in the jury box. We'll redistribute them to
14 you when you come back. Be given the opportunity to stretch
15 your legs, get something to drink. If you need to return
16 phone calls you can return phone calls but please do not
17 discuss this case with anyone. Hope you have a good break and
18 we'll take about a 10 or 15-minute break. Thank you very
19 much.

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right, yes, sir.

23 (Officer and Court confer.)

24 THE COURT: Okay, all right.

1 MS. MAYSONET: Now, what did he say?

2 THE COURT: They're just saying they're having a hard
3 time understanding your questioning, you need to speak up.

4 MS. MAYSONET: Okay.

5 THE COURT: Okay, all right, I think it's probably
6 talking more into the microphone.

7 MS. MAYSONET: No problem.

8 THE COURT: All right, anything from the Plaintiff
9 before we break?

10 MR. CONNELL: No, sir.

11 THE COURT: Anything from the Defense?

12 MR. WILKERSON: No, Your Honor.

13 THE COURT: All right, let's take about a 15 minute
14 break.

15 OFF THE RECORD

16 (On the record. Whereupon, the following takes place outside
17 the presence of the jury.)

18 THE COURT: All right, anything from the Plaintiff
19 before we bring the jury back in?

20 MR. CANTY: No, Your Honor.

21 THE COURT: Anything from the Defense?

22 MR. WILKERSON: Nothing, Your Honor.

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

1 MR. CONNELL: Your Honor, what time are you going to
2 break for lunch?

3 THE COURT: I don't know, just depends on how the
4 witnesses go.

5 MR. CONNELL: All right.

6 THE COURT: Usually I start looking between 12 and 1
7 and whenever it's a good time.

8 MR. CONNELL: I'm trying to gauge how I can get the
9 rest of my folks here so I don't get you aggravated at me.

10 THE COURT: Okay, no, no. I mean I was of the
11 understanding you were going to finish before lunch today
12 anyway.

13 MR. CONNELL: Well, I got, I got these two and I got
14 two others that are coming, but I mean they've been going
15 quick. So, I can ---

16 THE COURT: Okay, you need to go ahead and get them
17 here because ---

18 MR. CONNELL: Okay.

19 THE COURT: --- I was thinking, I had told the
20 Defense yesterday they'd probably be starting their defense
21 this afternoon based upon what you told me yesterday.

22 MR. CONNELL: Yes, sir.

23 THE COURT: All right, so, let's go ahead and get
24 them here.

1 MR. CONNELL: All right, we're calling them now.

2 THE COURT: Okay.

3 (Whereupon, the following takes place in the presence of
4 the jury.)

1 THE COURT: All right, ladies and gentlemen, welcome
2 back. I hope everyone had a good break. Make sure you have
3 your own pads and don't have anyone else's pads. Also, I
4 remind you if you have any cell phones or other communication
5 devices please turn those off at this time.

6 All right, Mr. Connell, you can call your next witness.

7 MR. CONNELL: All right, Mr. Wills, come up here if you
8 would, please, sir.

9 Whereupon, Michael Wills was called to the stand, duly
10 sworn by the clerk and testified as follows:

11 THE CLERK: State your name for the Court, please,
12 sir.

13 MR. WILLS: Michael Wills.

14 DIRECT EXAMINATION

15 BY MR. CONNELL:

16 Q All right, Mr. Wills, if you would, please, sir, tell us
17 where you live.

18 A I live in North Myrtle Beach.

19 Q All right, and how long have you lived in North Myrtle
20 Beach?

21 A About five years.

22 Q All right, and tell me, please, sir, what you do for a
23 living now.

24 A I'm an in-house marketer for Wyndham.

1 Q All right, and what does an in-house marketer for
2 Wyndham do?

3 A It - when people check into the resorts we line them up
4 to go have a tour, presentation, whatever it may be or if they
5 have - if they need information from - we, we, we help them
6 get the information from the resort.

7 Q All right, an in-house marketer is that any different
8 than a timeshare salesperson?

9 A It's - yes, sir.

10 Q All right.

11 A We're - we, we don't make any sales. We initiate the
12 contract between the people and the salespeople, the
13 salesmen.

14 Q How long have you been in the timeshare industry?

15 A About five years.

16 Q All right, and when did you start?

17 A In '06.

18 Q And where did you first start working in the timeshare
19 industry?

20 A At Westgate.

21 Q All right, and how did you come to be an employee at
22 Westgate Resort?

23 A There was an ad in the paper for sales. I had done some
24 other sales but not timeshare and it looked good. So, I went

1 in for an interview.

2 Q All right, let me show you, this has been marked as
3 Plaintiff's Exhibit Number Four and ask if that's the ad or a
4 similar ad that you looked at and saw.

5 A Yes, sir, that's it.

6 Q Okay, okay, and what is it about that ad that drew you
7 to go to Westgate?

8 A Well, first of all they had a sign on bonus. They had
9 monthly bonuses up to 17 percent. That was based on your
10 sales record. You got your sales commission plus you got
11 additional bonuses to go along with it. There was no car
12 tour. There was benefits, and when I sat and talked to
13 Frederick there were no chargebacks. He said so this was -
14 it was, it was supposed to have been the best place to work
15 in the industry and I believe it probably was for a
16 while.

17 Q Okay, when you said you talked to Frederick you have to
18 be specific about ---

19 A Frederick Von Sant, the guy who hired me.

20 Q And what was his job at Westgate?

21 A He was a trainer. He was a - Tracy Stelly was the chief
22 trainer and Frederick was his - her assistant.

23 Q And you had an interview with Mr. Von Sant?

24 A Right, he's the one that hired me.

1 Q And about when did you get employed there?

2 A February of '06.

3 Q Okay, and did you go through some training?

4 A Yes, sir.

5 Q Okay, tell me what kind of training you went
6 through.

7 A Two weeks, verbatim, they give you a little
8 booklet.

9 Q Yes, sir.

10 A You go over a certain number of pages each day. You
11 come back the next day and have a written test to write it out
12 verbatim exactly the way, I mean when I say exactly I mean and
13 was and, it wasn't the. It was exact.

14 Q All right, and back to Mr. Von Sant for a minute, you
15 said something about back charges.

16 A They said that normally in the industry, and I knew
17 people that worked in the industry, normally there is - they -
18 you can be charged back for a sale if the sale was - didn't -
19 went sour, you know, six, eight, nine months down the road
20 and you were still working there they would charge it against
21 your commission. This one was, was supposedly no
22 back charges.

23 Q Okay, all right, and the training took about two
24 weeks.

1 A Yes, sir.

2 Q And you graduated when?

3 A Started on the floor about March of '06.

4 Q All right, and from March of '06 until when did you
5 leave?

6 A September '08.

7 Q Were you continuously employed at Westgate from March of
8 '06 to September of '08?

9 A Yes, except for during the winter of the first year.

10 Q Yes, sir.

11 A When sales were slow I went on - they sent me to what
12 they call one of their outside booking booths.

13 Q All right.

14 A Just to kind of get me through the winter but, yes, I
15 was continuously on their payroll.

16 Q All right, were you a successful salesman at
17 Westgate?

18 A Yes, sir, I was very successful.

19 Q All right, did you win any awards at Westgate as a
20 salesperson?

21 A Numerous, I was salesman of the month for several times.
22 In '08 according to their records there was 1800 salesmen
23 with, with Westgate and I was number 38 I think in the whole
24 company. I sold \$890,000 worth in 2008 before they let me

1 go.
2 Q All right, when you say you sold \$890,000 worth what do
3 you mean by that?
4 A The sales contracts that I had that went through
5 Westgate that were completed were 890,000.
6 Q All right, how many times were you salesman of the
7 month?
8 A To tell you the truth I don't know. I mean it wasn't -
9 I'm, I'm not ---
10 Q More, more than once?
11 A Pardon me?
12 Q More than once?
13 A Yes, sir, more than once.
14 Q More than twice?
15 A Yes, sir, more than twice.
16 Q Okay, did you ever, were you ever a trainer at
17 Westgate?
18 A No, sir.
19 Q All right, what other awards did you win at Westgate or
20 were you recognized for?
21 A We were just, we would have our meetings every day and
22 they would, you know, clap if you done good or give you a slap
23 on the wrist if you'd done bad, that kind of thing.
24 Q All right.

1 A It was a ---

2 Q Was your ever - was your picture ever taken with the
3 founder of Westgate?

4 A Oh, yes, sir, I have pictures with David Siegel and
5 Richard Siegel, yes, sir, I have pictures with them.

6 Q Was that part of the recognition?

7 A That was promotional. They would come through and if
8 you were salesman of the month or whatever they would stop and
9 take pictures with you and then put it in their little, little
10 booklets for the month for all the employees.

11 Q All right, what kind of - what percentage commission
12 were you getting?

13 A When I first went to work the commission rate that I,
14 that I and signed my contract in Frederick's office, Frederick
15 Von Sant told me what it was.

16 Q Yes, sir.

17 A It was six percent commission, sliding scale. It would
18 go up according to my volume of sales which was what the VPG
19 is. It's, it's just a - it's an average. If you shake
20 someone's hand they want you to make the company a certain
21 amount of money. So, that's, that's, that's all it means,
22 okay.

23 Q Okay.

24 A And I - mine was based on six percent starting salary

1 plus minimum wage which I agreed to at the time and I did
2 well. I mean, and you had to push yourself pretty hard but
3 ---

4 Q Okay.

5 A The - you worked your way up in sales from - I worked my
6 way from six percent to 12 percent commission and then we had
7 a bonus and they, they - the contract it went up to 17 percent
8 total.

9 Q Yes, sir.

10 A You were supposed to be able to get the additional five
11 percent on a bonus if your sales rate was at a certain
12 percentage.

13 Q Okay, all right, let me show you this contract. I know
14 this is not the one you signed. Ask you if you recognize it
15 as being similar to the one that you signed. This is
16 Plaintiff's Eight and Nine, and again I know that's not the
17 one that you signed with the numbers.

18 A I'm sure it's similar. I'd have to look at it. The
19 one - I read the one that, that I signed in Frederick's
20 office.

21 Q Okay.

22 A And that's the reason I know the percentages. After
23 that I never actually signed another contract. The, the, the
24 rate changed one day when ---

1 Q Okay.

2 A --- Richard came into - Richard did the morning meetings
3 when he took over the resort, Richard Siegel.

4 Q Okay, what year was this?

5 A This was in late '06 I think or I'm not sure.

6 Q Did - let me ask this question, was the resort run for a
7 while by a lady named Deborah Turner?

8 A Yes, sir; yes, sir.

9 Q And was she terminated or fired?

10 A I don't know exactly how that happened. I know she, she
11 left. I think she resigned but I'm ---

12 Q Okay, okay.

13 A --- I don't know whether they - I don't how that
14 happened exactly.

15 Q And, and Mr. ---

16 A Richard Siegel took over running the resort himself.
17 He's the owner's son.

18 Q All right, and he came from Orlando?

19 A Yes, sir.

20 Q All right, and was a new - what did he tell you about
21 the contract?

22 A He came into the morning meeting after he had been there
23 a very short time and I was, I was pretty proud of myself. I
24 was working my way up at that point to - I had gotten to the

1 point where I was being paid 12 percent commission. I had
2 worked my way from six to 12, which a big, big difference in
3 money and I also had five percent - I was at the top of the
4 scale. I was supposed to get five percent bonus. He walked
5 in one morning and put his foot up in the chair and said,
6 "Folks, your pay scale has changed. Some of you are going to
7 get a raise. Some of you are going to get a cut in pay.
8 We're going to go to a flat 10 percent rate for everyone."

9 Q All right, were you given that in writing, written
10 notice of that?

11 A No, he made a statement and that was, that was it.

12 Q All right, sir, and were you already in the - and I
13 think of bonus points I think of playing pinball. Were you
14 already in the bonus points at that point?

15 A Yes, sir, I was.

16 Q All right, and how much, excuse me, how much was owed in
17 your bonus at that time?

18 A They owed me the bonus that month for a little over
19 \$8000.

20 Q All right, was that money ever paid to you?

21 A No. The bonuses were not paid. The additional amount
22 of sales commission were not paid. Everybody went to a flat
23 10 percent instantly and that was it.

24 Q Okay, so, your, your commission was cut?

- 1 A Yes, sir.
- 2 Q Were you ever given any documentation showing that your
3 commission was cut from 12 to 10?
- 4 A No.
- 5 Q All right, was your VPG good at that time?
- 6 A About \$3800 every time I shook hands with somebody.
- 7 Q Okay, and you got to tell these folks because even
8 though they've been here for three days they still don't know
9 what that means.
- 10 A What that means, what that means is that we, we were
11 assigned people to talk to every day and they would - they
12 controlled who we talked to. When the people came in they
13 said this, this person is for you and you would sit down and
14 talk to them and spend several hours with them. Sometimes you
15 - the way their system worked we had breakfast with them. We
16 broke bread with them, all that kind of thing. It was a, it
17 was a structured deal but the long and short of it is the - we
18 were there to make sales. If you made the sale your total
19 volume of sales was divided by the number of people that you
20 talked to and that's all it means. It's a, it's a, it's an
21 average. If you saw 10 people and you sold \$20,000 that's
22 \$2000. I mean it's not hard to do. It's just, it's just a
23 simple percentage.
- 24 Q But if your VPG goes down you get terminated; is that

1 right?

2 A If your VPG is low, yes, sir, you get terminated. I
3 have, as a matter of a fact I did myself. When I first got
4 there the norm was sell one out of every 10. I put myself on
5 two for 10 because I wanted to sell at least two out of 10 or
6 quit or get out or be fired or whatever and I actually had
7 them draw a little paper up, and of course I did better than
8 that and that was when I first started and ---

9 Q Okay.

10 A --- but you had to keep your percentage up to a certain
11 performance level or you were in jeopardy of losing your job.

12 Q Do you know from working at Westgate and from your
13 experiences what the total sales were in the years that you
14 were there?

15 A Oh, if I'm not mistaken and I don't - I can't pull this
16 but we had ---

17 Q Approximately.

18 A --- this - it was approximately \$8 million I think in
19 2008.

20 Q That was the total sales made by all the salespeople at
21 the Westgate Myrtle Beach?

22 A Yes, sir, I believe that's right.

23 Q All right.

24 A I hope I'm not too high on that. I know - I do remember

1 that we would have meetings and he would say, "We've done
2 this, we've done this, we've done this," and let me back up
3 and say 6 million. I don't know. It was a lot. We were, we
4 were ---

5 Q All right.

6 A --- Myrtle Beach was one of his best resorts.

7 Q Okay, and how do you know that?

8 A They gave us a sheet comparing them all.

9 Q All right.

10 A We had, he had 18 different properties I believe at that
11 time.

12 Q All right, and they were ranked based on what - who made
13 the most money?

14 A Volume of sales, yes, sir.

15 Q All right, and where did Myrtle Beach rank in that, in
16 that list?

17 A Orlando was first, of course, and Myrtle Beach, I think,
18 was third. I'm not - I think that's where we were.

19 Q Okay, now, explain to me how the down payment would work
20 when a customer wanted to come in and you were going to work,
21 work an agreement or deal with them. Explain to me that
22 transaction and how that works with the manager who helped
23 solidify the deal.

24 A The down payment was 10 percent. Of course if they had

L

1 10 percent then they took every major credit card you could
2 think of and they would get 10 percent and then down payment
3 was finalized.

4 Q Okay.

5 A If they did not have the 10 percent a lot of times the
6 managers would ask them basically what they did have. In
7 other words to give you an example make it easy, let's just
8 say it was a \$10,000 sale.

9 Q All right.

10 A So, it'd be \$1000 down, okay. If you did not have that
11 amount of money at that particular time the manager would ask
12 what they could afford, and let's say for instance it was \$250
13 you could afford. They would take that and get you to agree
14 to the contract so that you had the contract done, you're
15 going to the sales and then in a lot of cases they would
16 actually suggest to them if they could make the payments along
17 with their monthly payment they would say you pay \$250 a month
18 for the next three months plus your normal payment. If not

19 ---

20 MR. WILKERSON: If Your Honor, please, this is
21 characterization of statements. We need to have an
22 attribution to exactly who said this to whom if we're going to
23 talk about an out-of-court statement, Your Honor.

24 THE COURT: Yeah, let's make so more - better

1 foundation.

2 MR. CONNELL: Okay.

3 BY MR. CONNELL:

4 Q All right, now, let me ask you a specific example, about
5 a specific example. A man named Joe Doherty.

6 A Yes, sir.

7 Q What was his job at Westgate?

8 A He was a manager. A manager is the person that comes
9 over to the table to finalize the deal.

10 Q All right, and did you or have had you had a situation
11 with Mr. Doherty and how a person could not afford the down
12 payment?

13 A Yes, sir.

14 Q All right, explain to the jury what - how that worked.

1 A Okay.

2 MR. WILKERSON: If Your Honor, please, if he's going
3 to talk about a specific conversation it needs to relate to a
4 specific transaction that he's complaining about here, not a
5 generalization because this is hearsay testimony, and we've
6 got to be very specific about it. Our objection is that it's
7 hearsay and there's no proper foundation and this is
8 irrelevant.

9 MR. CONNELL: Your Honor ---

10 THE COURT: All right, overruled. I'll allow it. Go
11 ahead.

12 MR. CONNELL: All right, thank you, Your Honor.

13 BY MR. CONNELL:

14 Q Okay.

15 A The - Mr. Doherty and this was done by other managers
16 and I'm not trying to cloud the waters, there's actually one
17 of them sitting in the courtroom, the gentleman back there,
18 Neil, was also a manager, but if you did not have the total
19 amount of the down payment they would still do the contract
20 and if you could not add that to your monthly payment they
21 would put that at the back of the contract.

22 Q Okay, what do you mean by put it at the back of the
23 contract?

24 A After you made all your payments they would add that to

1 the final payment.

2 Q All right, well, how long would the contracts normally
3 run?

4 A Years.

5 Q All right, so, what about the salesperson's commission
6 for that?

7 A You didn't get paid for it until the commission, the
8 down payment had been finalized.

9 Q All right, was there a specific complaint that you made
10 about this practice to Mr. Doherty?

11 A Absolutely, yes, sir.

12 Q Okay, what, what did you say to him?

13 A I actually told him on more than one occasion that if he
14 ever suggested that again I would never use him as a closing
15 person on one of my tables because we had the choice as sales
16 reps to choose who we brought over to our tables. We got paid
17 on commission and so did they. They got a part of the sales
18 as their commission. That's how they got paid. The
19 difference was if you were still with the company when the
20 final payment was made you would get your commission.

21 Q All right, you're going to have to tell me what you mean
22 by that.

23 A If you had several of these contracts on the books or
24 had them working they were still good contracts for the

1 company but until the final payment had been made on the down
2 payment the sales rep never got paid.

3 Q All right.

4 A Because that's in the contract.

5 Q So, the company would get the monthly payments?

6 A Yes, sir.

7 Q But the down payment would not be until the end of the
8 financial arrangement?

9 A Until, till the end of the contract.

10 Q All right.

11 A And I had that happen to me in several occasions and
12 realized I wasn't getting paid and that's how I came to have
13 the conversation with Mr. Doherty.

14 Q All right, now, tell me if you would have you had any
15 conversations with Connie Sharp about your individual
16 commissions that you believe are owed?

17 A Yes, sir.

18 Q All right.

19 A Ms. Sharp is very hard to get in touch with but I did
20 actually call one day and she picked up the phone and
21 identified herself. So, she couldn't, couldn't say she wasn't
22 there and this was after I had been gone for six months. I
23 asked about my reserve account, which I know this is not
24 about, but she told me that I could send the letter in.

1 Q Okay.

2 A And at that time she told me I had \$20,000 in pending
3 commissions that they were waiting on six consecutive monthly
4 payments to be able to release to me.

5 Q Those were not in the reserve account?

6 A No, sir.

7 MR. WILKERSON: Objection, Your Honor, they were.

8 MR. CONNELL: Your Honor, that's his ---

9 THE COURT: You can cross-examine him on that or you
10 can put up on your defense to show that they were but I'm not
11 going to be able to sit here when one's saying it is and one
12 saying it's not. I can't rule as a matter of law that you're
13 right and they're wrong; okay?

14 MR. WILKERSON: Thank you, Your Honor. You're,
15 you're exactly right, and I, I, I ---

16 THE COURT: All right, overruled.

17 MR. WILKERSON: --- I would - yes, sir.

18 THE COURT: Let's go ahead.

19 Q Okay, go ahead.

20 A Well, again, I was informed to call back in another six
21 months.

22 Q All right, did you ever write her a letter?

23 A Yes, sir.

24 Q All right, and what response did you get to the letter?

1 A Didn't, didn't get a response.

2 Q All right, how many times did you try to call Ms. Sharp?

3 A Numerous times the first year and then I basically got
4 lazy and just figured they weren't going to pay me anyway.

5 Q Okay, and who else did you bring your complaints about
6 your commissions, unpaid commissions to?

7 A Really no one else. I mean, once I was not with the
8 company I didn't, didn't associate with the company much. I
9 called them a couple of times and called Orlando but that was
10 basically it. I just figured I wasn't going to get it.

11 Q Okay, and you - when you say you called Orlando were you
12 calling Connie Sharp?

13 A Yes, sir.

14 Q All right, now, let's talk about the specific amount
15 that you are owed. I think you've said something about \$8,000
16 in bonus?

17 A Yes, sir, that was the bonus. I didn't include that in
18 any figures I ever gave you or anyone else. That's, here
19 again, I just figured that was gone.

20 Q All right, what figure did you come up with that you're
21 owed?

22 MR. WILKERSON: If Your Honor, please, based on that
23 testimony could we strike his claim that he was - his earlier
24 testimony that he was unpaid bonus of \$8000?

1 THE COURT: No, sir, let's move on.

2 MR. WILKERSON: Thank you.

3 Q All right, come down here and tell me how much you're
4 owed and write it on this board if you would, please, sir.
5 Got you a little pen here. Put your name and the amount,
6 please, sir. Put your last name, please, sir.

7 A The amount that I turned in to you on this suit?

8 Q Yes, sir.

9 A That was \$26,000.

10 Q Okay, all right, go back and sit down if you would.
11 Thanks.

12 A (Complies with request.)

13 Q Okay, now, tell me how you determined that you were owed
14 \$26,000?

15 A I, I tried to make it simple but the last year that I
16 was there I sold \$890,000 worth of sales and that's using
17 Westgate's records, not mine.

18 Q Okay.

19 A And my W-2 for that year was 61,400 and some dollars,
20 something like that. I can't remember exactly.

21 Q \$61,947?

22 A Yes, sir, that's ---

23 Q All right.

24 A That sounds accurate.

1 Q All right.

2 A That includes the commission plus we were paid wages,
3 minimum wage.

4 Q Okay.

5 A That's, I'm being very conservative. So, if you just do
6 simple math ---

7 Q Okay.

8 A I should've made \$89,000 on sales commission alone.

9 Q Okay.

10 A Not counting any hourly wage or anything else or any
11 bonus, I didn't count any of that other stuff. I'm just,
12 quite honestly, I'm a little bit lazy. I didn't want to go
13 through it all. I've got all the contracts and I do have a
14 list of all that stuff but I never really wanted to do it all
15 to be honest with you. I didn't think I'd get paid anyway.

16 Q Okay, so, you took the \$89,000 and subtracted it from
17 this 61,947?

18 A Yes, sir.

19 Q And what did you come up with?

20 A I gave you a figure of 26, which is obviously wrong, but
21 that's, that's the - it, it's - if you subtract 22 from 89
22 that's 27. So, I just ---

23 Q I see.

24 A --- I was off a little bit.

1 Q Okay, and that doesn't include everything you are owed
2 but that's only what you're claiming because that's what you
3 turned in?

4 A Yes, sir.

5 Q All right, now, what other discussions did you have or
6 have you had with Connie Sharp about the unpaid commissions,
7 not the reserve account, about the unpaid commissions? Did
8 you have more than one discussion with her?

9 A No, sir, I was never able to get her on the phone again
10 after that.

11 Q All right, and what discussions, if any, have you had
12 with any director such as Deborah Turner, Mr. Von Sant, any of
13 those people?

14 A Both of them have left the company. I haven't, haven't
15 - I actually talked to Deborah quite often because we work
16 together now but it's in a different company, so.

17 Q Okay.

18 A But it's never ---

19 Q Never in regard to this?

20 A No.

21 Q Were you given written notice in your change of
22 commission structure?

23 A No.

24 Q Okay, were you, were you paid within 30 days of

1 separation from the company?

2 A No.

3 Q Okay.

4 A Not anything I'm owed, no.

5 Q Well, tell me about your separation and why you and how
6 you left. What happened?

7 A It's - the business is what have you done for me today
8 not what have you done for me lately.

1 Q All right.

2 A And they were having some financial troubles, I think.
3 They were beginning to cut a lot of people.

4 Q Okay, how did you know that?

5 A Well, they let a few managers go and they brought in
6 some people from Orlando.

7 MR. WILKERSON: Objection, objection.

8 A And they made some changes.

9 THE COURT: Hold for a second.

10 MR. CONNELL: Wait a minute, wait a minute.

11 MR. WILKERSON: Relevance, foundation, lack of
12 knowledge.

13 THE COURT: What's the relevance?

14 MR. CONNELL: Just explaining the end of his employment
15 there and why he left and ---

16 THE COURT: Okay, sustained.

17 MR. CONNELL: All right, okay, that's all I have, Your
18 Honor.

19 THE COURT: All right, cross examination.

20 MR. CONNELL: I'll take this down for you.

21 CROSS EXAMINATION

22 BY MR. WILKERSON:

23 Q Mr. Wills, you worked for this company from 2006 through
24 2008; is that correct?

1 A Yes, sir.

2 Q What, what month? Can you give me a little more
3 specific there?

4 A February of 2006 till September of 2008.

5 Q All right, and you would agree with me, would you not,
6 that the terms of your contract throughout the time that you
7 were there was that condition for being entitled to any
8 commission on a sale first of all was that it be a full-down
9 deal; right?

10 A Yes, sir.

11 Q All right, sir, and that meaning that the full 10
12 percent commission must be paid?

13 A Yes, sir.

14 Q All right, sir, you'll also agree with me that a
15 condition for being entitled to any commission on a deal was
16 that the customer not cancel the contract or rescind the
17 contract as they're allowed to do under state law?

18 A Yes, sir.

19 Q All right, sir, now, you've explained how you made your
20 calculations. Can you identify any contracts on which you
21 claim that you were not paid?

22 A No, sir, I didn't bring that information with me.

23 Q All right, sir.

24 A I used the information that Westgate sent the attorney,

1 our attorney.

2 Q But you do have contracts somewhere that you didn't
3 bring with you that ---

4 A Yes, sir.

5 Q --- identify that you claim you were not paid on?

6 A I kept all of them, every single one of them.

7 Q All right, sir, and you just don't have those. You're
8 not prepared to present them?

9 A I didn't realize that we were going to need to. The -
10 when we first started this Mr. Connell requested information
11 from Westgate and so all of our sales and they got the figures
12 of sales from Westgate along with our ---

13 MR. WILKERSON: If Your Honor, please, could I ---

14 THE COURT: You asked the question. He can go forward
15 and explain his answer, all right.

16 A The - they sent copies to Mr. Connell of all of our
17 sales, our rescission rates, everything, all that information
18 was sent to him. He had boxes and boxes of them but I also
19 made a copy of it. It's about that thick.

20 Q Okay, now, likewise, you've testified about some
21 occasions when one of the managers would allow a customer, as
22 you said, to put the down payment at the end of the contract;
23 is that what you said?

24 A Yes, sir.

1 Q Now, identify for me any specific contract where that
2 event, where that type of transaction occurred?

3 A I'm not able to do that right now.

1 Q Okay.

2 MR. WILKERSON: Nothing further, Your Honor. Thank
3 you.

4 THE COURT: All right, redirect.

5 REDIRECT EXAMINATION

6 BY MR. CONNELL:

7 Q In regard to what he asked you about the contract would
8 the company normally get the down payment?

9 MR. WILKERSON: That's not new matter, Your Honor.

10 THE COURT: Sustained.

11 Q All right, was that routine what you have discussed
12 previously?

13 THE COURT: Sustained.

14 MR. CONNELL: Thank you, Your Honor. Come down, please,
15 sir.

16 THE COURT: All right, call your next witness.

17 MR. CONNELL: All right, Mr. Zinn.

18 WHEREUPON, Timothy Allen Zinn was called to the stand,
19 duly sworn by the clerk and testified as follows:

20 THE CLERK: State your name for the Court, please,
21 sir, and spell your last name.

22 MR. ZINN: Timothy Allen Zinn, Z-I-N-N.

23 DIRECT EXAMINATION

24 BY MR. CONNELL:

1 Q Okay, Mr. Zinn, tell me if you would, please, where you

1 live and what you do for a living. . . .
2 A I live in a little, little resort called Lake Royale.
3 Q Okay, where's that located?
4 A Louisburg, North Carolina.
5 Q All right.
6 A And I'm presently opening a real estate development
7 company. I'm an accountant by trade.
8 Q Okay, and where are you from originally?
9 A Originally Pennsylvania.
10 Q Okay, and what brought you to Myrtle Beach?
11 A The end of '99 I got done raising my daughter and my kids
12 were basically on their own at that point and bought a motor
13 home, decided to travel America.
14 Q Okay, and so, how did you come to Myrtle Beach, happen to
15 drive to Myrtle Beach? Is that what happened?
16 A I had met a young lady actually in the fall of '99. By
17 the time I got here it was 2000, I had gotten pneumonia and by
18 the time I got here I never did see her again, but I ended up
19 sticking around.
20 Q Okay, and ---
21 A And I loved it.
22 Q --- when did you start working in the timeshare industry?
23 A Okay, well, I'm an accountant by trade but not by heart.
24 I've been in sales, predominantly automobile sales for, well,

1 heck, we opened our first lot in '79. So, off and on through
2 the years and I worked off and on with Myrtle Beach Hyundai
3 and Mr. Hyatt, but I'd do a lot of stuff like somebody would
4 call me out of Charleston, want to redo their used car
5 department. It was floundering or Morehead City would call,
6 they needed somebody to train their salespeople. So, I'd do
7 stuff like that.

8 Q Okay, tell me when you started, when you decided to try
9 the timeshare.

10 A Well, it got to be that every time I saw my
11 granddaughters come to visit it cost me a thousand bucks to
12 put them up in a condo. So, in the beginning of '08 I was
13 opening up my own car lot here at the beach and called another
14 resort to see about buying one. Just so happened the state
15 come in April 7th of 2008, shut my car lot down. I wasn't
16 properly permitted, had to move my inventory at, you know,
17 liability of \$100 per car per day. I didn't have everything
18 set. I was running out of money; and so, I just closed her
19 down, and so, the resort that I had called about buying they
20 convinced me to come out and start selling them.

21 Q All right, you've, so, you went to the Westgate Resort?

22 A That wasn't Westgate, went to another resort.

23 Q Okay.

24 A But my neighbor was working at Westgate and we got to

1 talking and he said, "Oh, you need to come over here, you
2 know, it's a better place, it's on the ocean," and it wasn't
3 out in Surfside. It was two blocks from my house.

4 Q All right.

5 A So, I got the guy's name was Frederick Von Sant,
6 interviewed me, he hired me.

7 Q All right, and Frederick Von Sant, what was his job at
8 Westgate?

9 A Well, he hired me and he was the training department.
10 He, he was it.

11 Q Okay, when you said he was the training department was he
12 the individual who trained you?

13 A He trained us. It was a three-week, very intensive
14 training, the best I've ever had in any sales operation ever
15 and I'm a sales trainer. It smoked whatever I did. I mean,
16 it was very - every T crossed, every I dotted, you know, it
17 was - I had a hard time making it through. In fact, he pulled
18 me to the side one day and he said, "Zip," that's my nickname,
19 he said, "Zip," he said, "Look," he said, "You do good at this
20 but you have to pass the course." So, I basically had to
21 carry the book home and write it a couple of times and that's
22 the only way I could pass the course.

23 Q All right, and at the end of three weeks when did you
24 first start selling, approximately what date?

1 A It was right around Memorial Day in 2008, and I started
2 May 5th of that year. I was in class 28. I had a great group
3 of folks, and they come in one day and said, "We're pounded
4 with folks, here's" - they had given us the contracts and
5 stuff, showed us a little movie on Mr. Siegel's foundation,
6 that once we started to get paid we could contribute to that,
7 which I did on a biweekly basis.

8 Q All right, and let me show you the contract and ask, ask
9 if Plaintiff's - thank you, ma'am - Plaintiff's Eight and
10 Number Nine and ask you if you signed a similar contract.

11 A This is '06. The contracts have changed since then.
12 Basically it's the same stuff, I mean, you agree to, you know,
13 company rules and regulations. We were told all along through
14 training, you know, 10 percent commission, the best in the
15 industry, double what everybody else will do, no chargebacks,
16 the best place in the world to work, and you know, at first
17 I'll tell you it - very attractive.

18 Q Okay, were you given an opportunity to read the contract?

19 A Never read it.

20 Q All right, and why not?

21 A Well, I figured they had just spent three weeks paying me
22 to train, heck, they're going to take care of me.

23 Q Okay, all right, so, you went to work on May 5th, 2008.

24 A I went through the training.

1 Q All right, when did you go to work actually on the floor?

2 A Hit the floor right around Memorial Day weekend, that's
3 the first big blast for the season and they were swamped with
4 folks and I actually rode with, they call it riding for your
5 trial tour, which is your first family, I rode with Michael
6 Wills. He was the top man for the year. I'm thinking June
7 he'd already sold over a half a million or that, in that May,
8 and they said, "Well, you ride with Michael and he'll show you
9 what to do."

10 Q All right.

11 A "Just keep quite." So, I watched him do his
12 presentation. I got the benefit of the top salesperson in the
13 whole building and I was excited.

14 Q All right, explain to the jury if you will the sales
15 process, how you started in the beginning with the sales
16 process ---

17 A Okay.

18 Q --- until the time that you make the sale and what goes
19 on in between.

20 A Okay, the sales process would start, I usually got there
21 about 7:30, eight o'clock, like I say I could walk there, I'm
22 two blocks away, had a meeting. Sometimes they'd kiss a
23 puppy, sometimes they'd kick the puppy. It all depends which
24 puppy you happen to be.

1 Q All right, they don't understand what that means.

2 A Well, you were scolded or you were, you were, you were,
3 good job, that a boy, that a boy. You know, he sold this
4 stuff. He's a hero today, you're a zero today, do better or
5 you're fired. So, you go out and always hoping for motivation
6 in the morning, but my motivation was breakfast and as soon as
7 I got out of there they served breakfast to all the families.
8 We had what they call the bullpen and you had a beeper. They
9 had a little pager on your side and then in the, in the -
10 where all the folks would come in, all your families, we'd
11 average 200 families a day, a lot of folks. So, eight o'clock
12 in the morning everybody's in there. Boom, it's a madhouse, a
13 hundred salespeople, a couple of hundred people with their
14 kids and everybody's hungry. So, the salespeople that weren't
15 called given the green sheet right away, this is your sheet.
16 This has your family's name on it, where they're from, and
17 then you have a couple of questions you ask and this is at the
18 warm up period when you have breakfast. You don't talk about
19 timeshare. You talk about the families and get to know them
20 and get the kids' names and what they like to do and it's just
21 a, you know, welcome to the beach and what do you all want to
22 do when you get here and it's just, it's a fun thing.

23 Q Okay.

24 A That's where you start.

1 Q All right, and what happens next?

2 A Then your buzzer goes off and within a couple of minutes
3 the girl comes back, gives you the green sheet, everybody's
4 name on it, you typically walk out in the vestibule and it be
5 hundreds of folks out there and be like, "Robert Green and
6 family, table for four," and they'd get up with their two kids
7 and we go have breakfast.

8 Q All right.

9 A Ask them the qualifying questions, how many times, how
10 many weeks a year you get vacation and where do you like to go
11 and what do you like to do, that kind of stuff.

12 Q All right.

13 A And then, you know, you tell them, "Hey, look, this isn't
14 for everybody. You may not even be interested in this," but
15 you know, we have to do the 90 minute thing so you can get
16 your free tickets to Dolly World or wherever they're going,
17 and the Dixie Stampede, Medieval Times, so let's start the
18 presentation. You can either ride them over to the resort and
19 this was in a training center a block from the resort. So,
20 you could either ride them over in the bus or walk and I
21 always walked because this was during the construction phase
22 of Westgate and you got to walk past they're building a new
23 tower, past Family Kingdom, and I always felt if somebody was
24 out walking they're actually feeling the ground and smelling

1 the air, and you know, keep in mind no one ever comes to
2 Myrtle Land ---

3 MR. WILKERSON: Objection.

4 Q --- they come to Myrtle Beach.

5 THE COURT: Excuse me.

6 MR. WILKERSON: Objection, Your Honor, we've heard
7 this rendition probably a dozen times in this trial. It's
8 very repetitive, and also, we question the relevance of this
9 to the question of what's owed for a particular transaction.

10 THE COURT: Okay, I'm going to allow it. Go ahead,
11 overruled.

12 MR. WILKERSON: Thank you, Your Honor.

13 MR. CONNELL: Thank you.

14 BY MR. CONNELL:

15 Q Okay, let's, let's move along to ----

16 A Okay.

17 Q --- the next phase of the sale of the timeshare to the
18 Green family. What do you do next?

19 A Okay, you welcome them to the resort. You had a very
20 comprehensive program. You had your front end. You sat them
21 down in a particularly designated spot. Typically the sales
22 room where all the sales were made, that was your front end,
23 and you asked them a couple of questions and did this. Then
24 you did your pencil pitch. Pencil pitch actually consisted of

1 you drawing their dream resort if they were just to come to
2 Myrtle Beach and buy their own, and you drew it and then in a
3 segmented way you would show them that, A, why would you build
4 your own and spend millions of dollars when you can come right
5 here to this resort, enjoy the same things for a lot less
6 money that the average person could actually afford. I mean,
7 the average person could not really afford a \$5 million resort
8 home. I couldn't.

9 Q Okay.

10 A And a hundred percent of my families couldn't. Then you
11 would do the tour. You'd walk them through the resort and
12 show them the lazy river and the pools and everybody having
13 fun, the kids jumping up and down, the wall of shame with
14 David Siegel and all his friends and George Bush, him hugging
15 everybody and Dolly Parton and all that and you'd walk down
16 through there and you'd show them the actual condo. You'd get
17 to the condo, they had brownies cooking and you'd show them
18 out on the beach and, you know, you'd look down at that way
19 and hundreds and thousands of people crowded on the beach and
20 then you'd look down that way and there'd be hundreds and
21 thousands of people crowded on the beach and then you'd look
22 right in front of Westgate. There wouldn't be that many folks
23 on the beach. It was my way of showing those are renters, but
24 these are owners.

1 Q All right, now, tell me, take me to the situation where
2 these folks decide ---

3 A Now, now we go back down to the salesroom ---

4 Q Okay.

5 A --- the same way we started, the front end, we've done
6 the whole tour, we've done the pencil pitch, we've done the
7 backend. A TO means a turnover. So, you're sitting there and
8 this is what they call the dance. This is a very important
9 part of the whole process. You've just spent at least two
10 hours with your family. You know them pretty well. The
11 managers would be lined up against the far wall. You were
12 typically instructed to sit your families with their backs to
13 the managers so that you could see the manager and see what
14 was available and also, A, say my family is from Tennessee.
15 Well, I have big Bryan, he's from Tennessee and played
16 football for the Browns, a big guy, husky. You tried to fit -
17 could it be little Tracy with the blonde hair and the pretty
18 little thing or Kevin Whipple, the granny looking type guy,
19 the professor with the little glasses, would it be Mario if
20 you had Spanish folks. You tried to fit - this is called
21 doing the dance, you tried to fit your families with the
22 proper manager to get the sale. Once I denoted the manager to
23 come over, they'd nod, and as soon as the manager come in and
24 they introduced themselves you would slide over. Now I'm

1 turning over my people, my family and my table to this manager
2 and I move back, shut up. The worst thing you can do in a TO
3 say anything. Then the manager comes in with their spiel,
4 okay. In the beginning and this is hugely important as this
5 whole thing transpires because in the beginning I'm green, I
6 don't know what I'm doing. I'm just happy to get somebody to
7 the table and they're interested in buying. The managers say,
8 "Hey, look, you know, which one do you want?" They'd be like,
9 "Well, we - this \$10,000 one fit us great." "All you need is
10 a thousand down, but listen, I know you're on vacation. You
11 don't walk around on vacation with an extra thousand bucks in
12 your pocket. So, here's what I'm going to do for you as your
13 manager today. I can take \$200 down. The other 800 I can work
14 out from you in a series of three to four payments. How would
15 that be?" "Yeah, that's pretty agreeable, better than coming
16 out with a thousand bucks." "We will actually work with you
17 in your down payment for the next four months and at the end
18 of that term start making your monthly payment. How does that
19 sound?" "Well, that sounds great." So, that's what they'd
20 do. Now, keep in mind, I'm working, basically, my first full
21 month for June. The season lasts June, July, August. Come
22 Labor Day you're done. So, if these down payments are put off
23 four months, they're never made when I'm there. The down
24 payments, 88 percent of my business was pendered out, pending

- 1 down payments. I had no chance to get paid on them.
- 2 Q All right, was Westgate going to get paid the regime fee
- 3 or whatever they were getting plus the down payment?
- 4 A Oh, absolutely.
- 5 Q All right, describe how that would work.
- 6 A They could set up a payment plan which would - they told
- 7 me and this was the only difference in, in them.
- 8 Q When you say they you're going to have to speak to who it
- 9 was.
- 10 A Okay, the managers told me that.
- 11 Q By name, tell me.
- 12 A Okay, Kevin Whipple told me that if my payments started
- 13 after the down payments were made I'd be - only get paid five
- 14 percent, but if the monthly payments started ---
- 15 Q Well, wait a minute, let me stop you about that. Was
- 16 that part of the contract you signed?
- 17 A No.
- 18 Q All right.
- 19 A This was all of a sudden new.
- 20 Q Okay, were you given any written notice of that?
- 21 A No.
- 22 Q Was that after you had made sales?
- 23 A Yes.
- 24 Q Okay.

1 A So, I tried to figure out what's going on. You know, I
2 don't know anything about timeshare.

3 Q All right.

4 A But he says, "Look, now, if your payment, if your monthly
5 payment starts before that last piece of down payment is in
6 you get paid your ten percent." He says, "So, make sure
7 whatever manager you work with sets it up that way."

8 Q Okay, now, we need to, we need to give us an for example
9 about that. If your monthly payment, what, give me a - give
10 me some numbers as to how that worked.

11 A Okay, say you bought a \$10,000 hunk. You put \$200 down.
12 You finance the \$800 in your down payment. That's 200 bucks a
13 month. Okay, you pay 200 a month and keep in mind until your
14 down payment is fully in house, fully made, you cannot use the
15 resort or take getaways or do anything with the resort.
16 That's what they tell them. So, your incentive as an owner is
17 to pay your down payment as soon as you can so you can use the
18 resort.

19 Q All right.

20 A Because until you do you can't and that's another closing
21 tool we used to use, "Well, you know, pay your down payment
22 you can come immediately, do a getaway, you'll be here next
23 weekend." Getaways are unlimited, but as long as your monthly
24 payment started, before that last down payment money was made

1 you got paid your 10 percent.

2 Q All right, and typically the monthly payment is what?

3 A On a note like that 180 bucks a month, \$200 a month,
4 something like that on a \$10,000 deal, less a thousand, you're
5 financing nine grand for eight, for ten years, good gracious,
6 even at 18 percent, I mean, it's still an affordable payment.

7 Q And that was without the down payment being made?

8 A That was with the - after your down payment of a thousand
9 dollars was in you'd be financing nine grand for ten years at
10 18 percent interest, it's still going to run around 180 a
11 month, something like that.

12 Q All right.

13 A To the best of my recollection. It's been a couple of
14 years.

15 Q Okay, now, talk to me, if you would, about how much you
16 were owed in commissions.

17 A It's because of the lack of paperwork and we were told
18 from the inception upon hire, "This is a paperless company.
19 We don't give you any kind of paperwork. You have to go over
20 to this computer and access your files when you're able to do
21 that," etcetera, etcetera, which I never did because I'm not
22 that computer savvy. I go to Doug Boykin. Doug Boykin, by
23 the way, was the operations manager. Anything you needed from
24 toilet paper to your beeper getting fixed to the garbage being

1 out of whack to one of your customers having a problem with
2 the food to a payroll issue, Doug did everything. He was the
3 operations manager to clarify his position. So, anything ever
4 happened I just went to Doug.

5 Q All right.

6 A He was very - he, he was always busy, busy, busy. So,
7 you had to go to Doug.

8 Q Have you come up with a number, a dollar amount in which
9 you believe Westgate owes you?

10 A I've come up with a dollar. It's laying there on my
11 tablet. Using their records and to the best of my records
12 originally I told you one number, but I'm going to reduce that
13 as a conservative measure ---

14 Q Okay.

15 A --- because I'm not sure there's a deal in there that I
16 know kicked that they paid me on supposedly which I don't
17 remember, can't find any documentation to it because like I
18 say they're a paperless company, we never got the paper.

19 Q All right.

20 A But I can give you the - my reduced, conservative amount.

21 Q So, you've reduced the number ---

22 A Right.

23 Q --- from what we put in the interrogatories because of,
24 one, you can't ---

1 A Because of a deal I can't find plus they said they sent
2 me a check spring of '09. Well, I never got it. Until I got
3 a W-2 I didn't even know that money existed and then I got a
4 W-2 and said, "Well, I didn't make that much money.
5 Something's wrong." So, I called the company, they said,
6 well, told me to check and come back. I'd also called
7 Pennsylvania. They'd actually taken out child support on it
8 and they had actually paid the taxes on it. So, they ended up
9 sending my money back either in December of that year or
10 January of the following year. So, it took eight more months
11 to get my money and I'm not sure where that falls in there
12 because of the lack of documentation.

13 Q All right, come down here, write your name and the amount
14 that you are owed..

15 A It's over here somewhere. (Complies with request.)

16 Q All right, tell the court reporter what you've - what the
17 amount is you've put on the board.

18 A Twenty-two thousand zero fifty four and no cents.

19 Q Okay, and now, tell me how you arrived at that number.

20 A Well, I sold in it was basically a three-month period
21 355,900 and some change, a pretty good summer.

22 Q Okay.

23 A And Labor Day comes, they cut the first wave of people a
24 day or two after Labor Day, you know, everybody knew their

1 time was coming because the season was over, what are you
2 going to do with 120 salespeople? They're probably going to
3 let close to a hundred go. My time came up. They would come
4 get you, carry you in the office, you'd be in there with
5 Frederick Von Sant and Doug Boykin, and they'd say, "Well, you
6 know why you're here," and of course you're here to get cut
7 loose, and I said, "Well, what about all these pending deals
8 that I have, this 88 percent of my business I've done all
9 summer, what happens with them?" "Well, we think you'd be
10 good in marketing. So, we're going to transfer you to
11 marketing. That way you continue to get all your deals that
12 have the pending down payments, the penders." I said, "You
13 can do that," and Frederick said, "I can arrange that." I
14 said, "Okay, I'm in." So, they said I was transferred to
15 marketing. Come to find out I was actually terminated.

16 Q Okay, how did you find that out?

17 A Because when I went to marketing they said, "We don't
18 know anything about you. Says on here on the file you've been
19 terminated." Then I had to go to human resources. Find out,
20 well, they don't know what's going on. Well, then you go to
21 Doug Boykin. He's not sure what's going on. Then I went to
22 Victor Curry, the director of sales. He's not sure what's
23 going on. So, they finally get it worked out where, yes, I've
24 been not transferred to marketing but terminated from sales

1 from the frontline sales and then rehired into marketing.

2 Q What's the significance of that?

3 A I didn't know until my paycheck didn't come.

4 Q Okay.

5 A And then I inquired about my paycheck. They said, well,
6 I had a big old deal sitting out there, \$7,000 paycheck
7 coming. They said, "Well, the problem is, Zip, when you got
8 canned from the frontline and your employment lapsed and then
9 you got rehired into marketing, now you have to wait 90 days
10 to get any kind of, of your commissions." I said, "Where did
11 that come from?" They're like, "Well, we don't know," and
12 then the shell game starts and then you go to Victor. Well,
13 he don't know. You go to see Richard. Well, he doesn't know.
14 "Go see Doug." Well, he doesn't know. "Well, call Connie
15 Sharp." Can't get a hold of her. So, where's the guy with
16 the answer? I went to Jesus or Julio, whatever he was. Well,
17 he doesn't know. He's supposed to be the company bad ass and
18 he doesn't know anything. I said, "Well, look, if you don't
19 know anything who knows something around here?" The only
20 thing I know is I got a \$7,000 paycheck coming I ain't got and
21 I'm not happy. Where is it? I want it.

22 Q Okay.

23 A That led to obviously not happy. So, I go to marketing.
24 I'm at the giant crab. I'm downtown and, you know, after

1 about two weeks I hadn't gotten a single person in there. So,
2 my manager comes up to me, Shane Washco [spelled phonetically]
3 and he goes, "Hey, Zip, what are you doing? You haven't
4 gotten anybody in?" I said, "Shane," I said, "Look I have a
5 little problem with this here. How enthusiastic am I supposed
6 to be to hand out free tickets to get folks in the resort that
7 hadn't even paid me my money?" I was more or less just
8 walking the dog until I, I could get some of my commission.
9 He says, "Well," he goes, "How much do they owe you?" I said,
10 I told him. He goes, "Wow, gee, that's a lot of money." I
11 said, "Yeah, no kidding that's a lot of money and I haven't
12 gotten yet any answers." Every time I ask Victor Curry he
13 ducks me, you know, it's duck, duck, duck. These guys should
14 have a first name named Duck because everybody's ducking me.
15 So, he says, "Well, look, let me check into it for you. I can
16 get you an answer by in the morning." I said, "Okay." So, at
17 that point in time I'm figuring out I'm not the only one
18 that's, that's in some bad water here. So, I start checking
19 around with some folks. All the OPCs, everybody's screaming
20 the same thing.

21 MR. WILKERSON: Objection, now we're way into
22 hearsay, Your Honor.

23 THE COURT: Sustained.

24 MR. CONNELL: All right.

1 BY MR. CONNELL:

2 Q You know, you can't say what other people said.

3 A Oh, well, I asked them.

4 Q Okay, well what did you say to Mr. Washco?

5 A Mr. Wascho checks into this stuff and he says, "I really
6 don't know anything yet. It's going to be - I think somebody
7 was out of town. It's going to be a couple of days. They put
8 me off." Anyway in the meantime I'm starting to dig around,
9 get info from a lot of different people.

10 Q You finally brought a lawsuit; right?

11 A Well, I'm finally figuring that I need to do something
12 collectively because we're all in the same boat.

13 Q Okay.

14 A Okay.

15 Q And this case is called the Zinn case; right?

16 A This case is called the Zinn case for a very good reason.

17 Q Because you started it?

18 A Absolutely.

19 Q All right.

20 A I had been called by a manager and offered once they
21 found out I was starting to round up a bunch of people, we had
22 a meeting at Hardee's.

23 MR. WILKERSON: Objection, Your Honor, it's just too
24 nebulous, got to have a specific statement by a specific

1 individual.

2 Q All right, tell me what, tell me what Mr. Washco said to
3 you after you were trying to get a group together to bring a
4 lawsuit.

5 A Okay, found out I had organized some people.

6 Q All right, tell me what he said.

7 A Called me up, "Hey, Zip, what's it going to take for you
8 to go away?"

9 MR. WILKERSON: Objection, relevance, and 408, Your
10 Honor.

11 THE COURT: Okay, how is that not 408?

12 MR. CONNELL: Your Honor, it's, it's going to go to an
13 offer that was made to him.

14 THE COURT: Yeah, that's a settlement offer, that's
15 not admissible as proof of liability.

16 MR. CONNELL: It, it's ---

17 THE COURT: I sustain the objection.

18 MR. CONNELL: All right.

19 BY MR. CONNELL:

20 Q Okay, let's talk - let's go back to the specific number
21 on the board that you're owed.

22 A Yes.

23 Q And tell me how you figured that number if you would.

24 A Well, the 355,900 and some I was paid roughly around

1 \$13,000.

2 Q Okay.

3 A And there's still a balance of at least \$22,000.

4 Q Okay.

5 A And that's how I derived out of all my, my deals over

6 there.

7 Q You looked at all the deals?

8 A Looked at all the deals as close as I can get. I'm going

9 to be pretty close.

10 Q Okay.

11 A Like I say, it's sort of hard to figure because their,

12 their accounting it's just so, it's just a cluster.

13 Q Okay, so, the \$22,054 was arrived at looking at your

14 previous sales?

15 A Previous sales.

16 Q All right, now, let's discuss, if we can, your attempts

17 to contact Connie Sharp about payment and any other Westgate

18 manager about your monies. Did you ever call Connie Sharp?

19 A I did. I can't remember if I got through to her or not.

20 I don't think so but I was told I had to send a letter down

21 there.

22 Q Okay.

23 A Went to the HR, got the address where I had to send it,

24 sent a certified letter.

1 Q Did the contract provide for you to send a certified
2 letter to them? Was there anything in the contract about that
3 that you know of?

4 A No, because I hadn't read the contract ---

5 Q Okay.

6 A --- until I sent them the certified letter. They sent me
7 a copy of the contract back, Exhibit A, with a bill that I
8 owed them like 9,000 bucks. I said, "You got to be kidding
9 me. I have never seen anything this ludicrous in my life."

10 Q Okay, and what if any ---

11 A That's when I read the contract.

12 Q All right, what if any conversations did you have with
13 Connie Sharp about payment of the monies that you believe are
14 owed to you? You ever talk to her?

15 A You know I think I called down there once. It was so
16 hard to get through or twice or three times that if I did talk
17 to her it was no satisfaction. You know, I just can't really
18 remember.

19 Q Okay, all right, how about Victor Curry, was he ---

20 A Not to be vague.

21 Q All right, sir, how about Victor Curry was he someone you
22 talked to?

23 A Oh, yeah, I've chased him around. I only live two blocks
24 from the resort. So, I was a constant visitor ---

1 Q Okay.

2 A --- about where's my money.

3 Q Okay, what did he tell you?

4 A He ducked me very time, told me he had to check on this

5 and check on that, you know, the old chin music.

6 Q Okay.

7 A Here's a shell, here the shells start moving around, you

8 know, "Well, check with so and so and so and so. They ought

9 to know down there." You know ---

10 Q All right, how about Richard ---

11 A --- the manager told me right up front, "Zip, they don't

12 ever plan on paying you a dime."

13 Q Who told you that?

14 A Shane Wascho, my marketing manager.

15 Q Okay.

16 A "Take their offer and go."

17 Q Okay, how about Richard Siegel, you ever have any

18 discussions with him?

19 A I asked him. He said he didn't handle that, "Get with

20 Victor Curry," he was director of sales.

21 Q All right.

22 A But the last time I went to the resort to get my money

23 the only person left was Richard and he saw me coming down the

24 hallway and dove into the closing offices. You could hear him

1 in there locking the doors. He knew I wasn't happy.

2 Q Okay, any of the deals that you are talking about for

3 what you're owed for were any of those involved with any of

4 the upgrading by in-line sales personnel?

5 A Had to be.

6 Q Why do you say that?

7 A Well, because I'd call my customers like I've done in the

8 car business for years, make sure they're happy with their

9 purchase and they got home okay and all that stuff. Everybody

10 is happy. Everybody loves what they're doing. I only had one

11 deal kick the whole time and I knew really right up front

12 those folks couldn't afford it, but ---

13 Q Okay, you said you had - you used a new term.

14 A A kick, well, it's rescind, didn't make it through the

15 five days and I already knew the folks just couldn't afford

16 it.

17 Q You had one in the entire time you were there?

18 A One the entire time. We had the lowest rescission rate

19 in the entire industry, below five percent.

20 Q Okay.

21 A Sold \$40 million just in the summer of '08, almost a \$10

22 million week in July 4th week.

23 Q How do you know that they sold \$40 million worth?

24 A It was splattered on the board every time we went in

1 there. They kept a running total.

2 Q Okay, when you say splattered on the board you have to be
3 more specific.

4 A Oh, I'm sorry, in the sales, in the salesroom you'd have
5 running totals. I mean, this is a numbers game every day.
6 Your volume per guest could go up, you know, if you sell a
7 couple of \$5,000 properties your volume per guest isn't that
8 high. Now you sell a couple of those \$65,000 jobs like I did
9 and all of a sudden you're on top of the world, your volume
10 per guest is 3, \$4,000. So, you're a hero and you can be that
11 one day and you could be a zero the next if all of a sudden
12 you go for the week in a slump. That's the way sales are, no
13 guarantee, you can go from hero to zero real fast.

14 Q All right, were you ever given written notice in advance
15 of any changes in the employment agreement?

16 A No, sir.

17 Q All right, and were you paid with all your wages due
18 within 30 days of your separation from them?

19 A No, sir.

20 Q And do you think the Defendants complied with the
21 agreement that you reached with them?

22 A No, sir.

23 Q And did you ever receive any, anything in writing in
24 regard to your letter to Ms. Sharp about what you were owed?

1 A They just sent the contract back, Exhibit A, and a bill
2 for nine grand.

3 Q Okay, and the number that you have written on this board
4 is unpaid commissions?

5 A Unpaid commissions, yeš, sir.

6 MR. CONNELL: All right, let me talk to my co-counsel.
7 We might be finished here.

8 BY MR. CONNELL:

9 Q Okay, do you - are - you have any knowledge about
10 switching salesmen's names on contracts?

11 A Yes.

12 Q Okay, tell me about that and did that happen to you?

13 MR. WILKERSON: Your Honor, please, if he wants to
14 talk about a specific contract that has something to do with
15 his claim that might be relevant. Otherwise it's pure
16 speculation, no foundation.

17 THE COURT: Well, he just said did it happen to you
18 and I think he was getting into that. So, let's see how far
19 he goes. Overruled.

20 A Right, one of my deals, Gil and Donna Foster [spelled
21 phonetically].

22 Q Okay, tell me about what happened.

23 A Well, the first time I called them, you know, they make
24 it back to Detroit and everything is fine and they're loving

1 the product. They bought a 65,000 ---

2 Q Okay, you can't, you can't tell me what they said, okay?
3 Just so you know, but what, what happened and how did you
4 learn that the salesman's name had been switched on that
5 contract?

6 A I can't tell you what they said.

7 Q You cannot say what they say. Did you have any contact
8 with Westgate about switching the salesman on that contract?

9 A I asked about it, couldn't get an answer.

10 Q Okay, you couldn't get an answer from employees at
11 Westgate?

12 A Right, I couldn't get any answers. They ducked me on
13 everything because I asked them about that deal.

14 Q All right, why do you think the salesman was switched?

15 A Because they owed me \$6500 on that one particular deal.

16 Q All right.

17 A That's a lot of money.

18 Q And was that a salesman that was in house at the Westgate
19 offices in Orlando?

20 A No.

21 Q Was that a salesman that was in house in Myrtle Beach?

22 A It was a manager.

23 Q Okay, and who was the manager?

24 A The manager was, I'm trying to remember last name. I'm

1 trying to make sure I get the right manager that told me this.
 2 Q So, you've named Victor Curry, Richard Siegel, Connie
 3 Sharp.
 4 A Yeah, but it wasn't any of them.
 5 Q Deborah Turner has been named.
 6 A Right. I'm 99 percent sure it was Kevin Whipple.
 7 Q Okay, and what did he tell you?
 8 A He said, "Look," he said, "In case you don't know but you
 9 do now that we have other marketing departments in this
 10 company."
 11 Q Okay.
 12 A Okay, "You aren't, you aren't going to be the only one to
 13 contact your owners."
 14 Q Okay.
 15 A So, you - I want to contact to see when they're coming
 16 back and all that kind of stuff and they said, "Oh, we get
 17 together and drink beer, do whatever," you know, and I mean,
 18 you get to know these people pretty well and they're pretty
 19 cool. He said, "But you're not going to be the only one
 20 contacting them. You know, we're going to contact them in
 21 house here and they're going to contact them in house
 22 corporate."
 23 Q All right.
 24 A I said, "Well, how can that be? They're my customers."

1 They're like, "Well, they're considered the resort's
2 customers."
3 Q Okay.
4 A "And you might not even know of any upgrades or
5 downgrades at all, you know."
6 Q All right.
7 A "You might be taken completely out of the picture."
8 Q If you sell at this grade and that person upgrades with
9 another person do you get paid?
10 A No.
11 Q Why not?
12 A Apparently that's their sale and they've just tramped
13 right on your toes and now you have a new sales rep and if you
14 haven't gotten paid in your deals you're never gonna'.
15 Q Were you aware that they had contacted this person and
16 asked about that?
17 A Not until they told me they got a new payment book in the
18 mail.
19 Q Okay, and you didn't get paid on that deal?
20 A No, sir.
21 Q Were you ever advised in writing in your contract or
22 anywhere else that that would happen, what we just talked
23 about?
24 A Oh, no.

1 Q Thank you, sir. Answer any questions they have.

2 MR. WILKERSON: Objection, Gene?

3 MR. CONNELL: No, no objection. I'll take these down
4 for you.

5 MR. WILKERSON: Next two exhibits without objection,

1 Your Honor.

2 THE COURT: All right, that would be 30 and 31? All
3 right, Defense Exhibit Number 30 and 31 admitted into evidence
4 without objection.

5 (Whereupon, Defendant's Exhibits Number 30 [Terms of
6 Employment Notice - Zinn] and Defendant's Exhibit Number 31
7 [Commission Sales Schedule- Zinn] admitted into evidence an
8 appropriately marked.)

9 CROSS EXAMINATION

10 BY MR. WILKERSON:

11 Q Number 30, Mr. Zinn, is that your signature on that
12 document?

13 A That's me.

14 Q Yes, sir, Number 31, Mr. Zinn, is that your signature on
15 the third page of that document?

16 A That's me.

17 Q All right, sir. All right, Mr. Zinn, you've testified
18 about a lot of details of transactions involved in the sale of
19 timeshare units to customers, but at the end of the day and
20 the reason you're here today is you're claiming that there was
21 a contract between you and CFI Sales and Marketing; correct?

22 A Apparently that was the parent company for Westgate
23 Resort is what they told us.

24 Q You have sued CSI [sic] Sales and Marketing Ltd.; is that

1 correct?

2 A Well, no, that's up to the attorneys. I know one thing,
3 I sold at Westgate and Westgate's the folks that I figure owe
4 me the money. Now, you know, I'm not sure what name they want
5 to call it or who owns what or which money is under which
6 shell at this point but I know somebody has got my money.

7 Q Yes, sir, would you, would you please answer the
8 question. You sued CSI [sic] Sales and Marketing, Ltd;
9 correct?

10 A CFI.

11 Q CFI, I'm sorry. I got that confused with the TV show,
12 CFI Sales and Marketing, Ltd; correct?

13 A You know, I, I reckon so, whatever's on the paperwork. I
14 mean, I'm not an attorney but whoever has anything to do with
15 Westgate where I sold the product it's still sitting there.

16 Q Just to refresh your recollection, if I can, with a copy
17 of the complaint that was filed by your, your lawyers.

18 A Okay.

19 Q And it, it's you and a bunch of other people that have
20 sued CFI Sales and Marketing, Ltd., and then it goes on to say
21 doing business as ---

22 A Okay.

23 Q --- Westgate Resort.

24 A Okay.

1 Q That's who you've sued; correct?

2 A Absolutely, well, you know, try to get our money, collect
3 our money.

4 Q Okay, and you're claiming that you're - that there's a
5 contract between you and CFI Sales and Marketing, Ltd., that
6 entitles you to receive some commission; correct?

7 A Or Westgate Resorts doing business as, yes, sir,
8 absolutely.

9 Q All right, sir, and you would agree with me that if you
10 want to figure out what's owed if anything by anybody under a
11 contract you need to look at the contract and see what it
12 says; correct?

13 A Sure.

14 Q Okay, now, you would also agree with me that the
15 contracts that you signed provided that a condition for you to
16 be paid any commission, for you to be entitled to any
17 commission would be that, first of all, that the customer pay
18 a full down payment; correct?

19 A Of ten percent of the amount of purchase, yes, sir.

20 Q Ten percent, all right, sir. So, so, stated differently
21 if a customer did not pay the full down payment of ten percent
22 you would not be entitled under your contract for any
23 commission; correct?

24 A Correct.

1 Q All right, sir, you would also agree with me that if the
2 customer or any of your customers that you sold a unit to
3 chose to exercise their right of rescission then that, that
4 was as though the deal never occurred and you would not be
5 entitled to a commission then; correct?

6 A Yes, sir.

7 Q All right, sir, now, you have - you would agree with me
8 that, that in order to really figure out exactly whether or
9 not any money is owed to you it would be - that the really
10 only way to do that would be to look at the individual
11 transactions and see what's happened with those transactions
12 to see if they comply with the terms of the contract; correct?

13 A That's right, sir.

14 Q And you've not made any effort to do that here.

15 A Sure I have. I have everything listed right there in my
16 folder.

17 Q Okay, so, you've identified the specific transactions
18 that you believe give rise to your claim for commissions.

19 A Yes, sir.

20 Q And you've made a computation based on those contracts as
21 to what you're entitled to?

22 A Yes, sir.

23 Q Okay, please, sir, identify the customers that you
24 believe or the contracts that you believe support your claim

1 that you're entitled to a commission.
2 A Okay.
3 Q Any commission.
4 A They're in my folder there on the desk. Okay, to get
5 them?
6 Q You're welcome to go get them, yes, sir.
7 MR. CONNELL: I'll get it for him.
8 A All right, thanks. Okay, thank you, sir.
9 Q First of all how many of them are there? Well, you don't
10 need to count. We'll count as we go along.
11 A Okay. You ready?
12 Q Yes, sir.
13 A You want their names and ---
14 Q You can just give me the last name. We'll work from
15 there. If we need to go back and get anymore information we
16 will.
17 A Okay, now, this is using Westgate's paperwork.
18 Q Okay, let's, let's talk - let's stop for just a second.
19 This is Westgate's paperwork?
20 A Uh-huh.
21 Q Let me see what you're looking at.
22 A It's a recap sheet, I guess a summary sheet.
23 MR. WILKERSON: Can I mark this, please?
24 Any objection to this going into evidence, counsel?

1 MR. CONNELL: I don't object to that.

2 MR. WILKERSON: Okay.

3 THE COURT: That'd be Defendant's Exhibit 32 is
4 admitted into evidence without objection.

5 (Whereupon, Defendant's Exhibit Number 32 [Recap Sheet]
6 admitted into evidence and appropriately marked.)

7 BY MR. WILKERSON:

8 Q All right, sir, now, this document, 32, is the Westgate
9 records that you believe, that you're relying upon in your
10 determination as to what contracts you're owed?

11 A It's going to be pretty close, yes, sir. I actually have
12 all my copies of my original purchase orders here with all my
13 customers' information on there.

14 Q All right, sir, now, this is entitled report data, all
15 written deals for the date range 4-28-2002 to 9-28-2009. Does
16 that, does that encompass all the time that you worked there?

17 A Yeah, I was only there from May 5th of '08 till sometime
18 around October, early October '08.

19 Q Okay, so, what you - what - so, this document at least
20 based on its title indicates these are all the deals that you
21 wrote while you worked there.

22 A Yes.

23 Q Okay, and you used this document to identify those that
24 you claim have not been paid; is that right?

1 A Yes, between that and the actual physical copies I have
2 of my buyers' orders or prospect orders, right.

3 Q Okay, now, how have you gone about the process of
4 evaluating this document and determining which of these deals
5 have been paid for and which you claim that you have not?

6 A Well, it's pretty tough. I have a couple of check stubs
7 that Westgate provided and tried to get an idea of the overall
8 numbers from another recap sheet and then going back, like I
9 say, it's, a lot of times their accounting is hard to figure
10 out and it, it varies with your paperwork. So, you try to
11 get, you know, the best of both worlds. You know, I'm not
12 here to gouge anybody or get anything extra I didn't work for,
13 but then again I'm here to get what monies are due to me that
14 I did earn.

15 Q Yes, sir. Now, you've, you've - have you been involved
16 in lawsuits before or is this your first one?

17 A It's way back years and years and years ago.

18 Q Okay, well, but, but you are - you said you were the
19 organizer of this lawsuit and I assume as the organizer, I
20 mean, you've been sitting at counsel table through the whole
21 trial. I assume you've been working closely with my friends,
22 Mr. Connell and Mr. Canty; correct?

23 A Well, they know what's going on. I really don't. I'm
24 just - they asked me to sit there. So, I did.

1 Q Okay, now, you also know that in a lawsuit a party is
2 entitled to ask the other side questions; right?

3 A Well, sure.

4 Q Entitled to ask them to produce documents that are
5 related to the lawsuit before we get to the courthouse; right?
6 That's called discovery. You understand about that?

7 A Absolutely.

8 Q Okay, now, you understand that, that it would - it is -
9 that it is possible for and the rules provide for if you
10 wanted to know what Westgate said they had paid you for and
11 hadn't paid you for or what CFI said they had paid you for and
12 hadn't paid you for all you would need to do is ask a question
13 of them and the rules would provide they had to give you the
14 answer; correct?

15 A Well, I wasn't sure about the whole legal process.
16 That's why we have attorneys helping us with that stuff.

17 Q But that's your understanding; correct?

18 A Well, my understanding was that every time I asked
19 Westgate for something I could never get it. So, that's why
20 we had to retain attorneys to get the, get it for us.

21 Q Okay, and when you got a lawsuit they can't just say,
22 "I'm not going to give it to you"; can they, if you ask for
23 it?

24 A Well, I mean, we won a judgment in the other lawsuit. We

1 still haven't got a dime. So, I mean, I don't know what's
2 happening with that, but, you know, we won, but there isn't
3 ten cents extra in my pocket.

4 MR. WILKERSON: Can we have an off - off-the-record
5 discussion, Your Honor?

6 THE COURT: All right.

7 All right, ladies and gentlemen, we've got a matter of
8 law we need to take up. I'm going to excuse you back to the
9 jury room for just a minute and we'll bring you back out in
10 just a second.

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right, sir, let me hear from you.

14 MR. WILKERSON: Thank you, Your Honor. Your Honor,
15 please, this witness just blurted out to this jury information
16 that this Court has already determined is not to be presented
17 to the jury and that is there was another lawsuit. As a
18 matter of a fact they tried every which way but loose to get
19 that in in this case. There was another lawsuit, that it went
20 to judgment and that it has not and part of that judgment has
21 not been paid. Mr. Zinn by his own admission has been sitting
22 in the courtroom during this entire time and has heard those,
23 those discussions and debate among counsel and the rulings of
24 this Court and he just now with full knowledge of the

1 implications of that just blurted that out to this jury and it
2 can be, it could be taken as nothing other than an intent by
3 this gentleman to taint this jury based on that information
4 and we therefore are forced to move for a mistrial at this
5 time.

6 THE COURT: All right, Mr. Connell or Mr. Canty,
7 whoever wants to argue against it.

8 MR. CANTY: You can go ahead.

9 MR. CONNELL: Your Honor, the question was really
10 submitted to Mr. Zinn with questions about interrogatories
11 which he didn't understand about. This probably wasn't a
12 proper question to begin with and the fact of the matter is is
13 that Mr. Zinn was just trying to explain in the process.

14 THE COURT: No, he said we've got another judgment
15 hadn't been paid. The sole focus was to impress upon the jury
16 that they should grant them a judgment in this case because
17 they haven't collected on a judgment in another case and
18 that's totally improper. I've already ruled that has - you've
19 got a judgment, whether or not that judgment is collectible
20 whether not that judgment's been paid has nothing to do with
21 this law case, lawsuit because the judgment that you've got
22 specifically excludes this lawsuit and once the cat's out of
23 the bag how is the jury not influenced by the fact that you
24 already know you've got a big judgment out here in another

1 case that hasn't been satisfied. So, that's going to lead
2 them to be more sympathetic in this case saying, "Well, if
3 they didn't pay the other one why not give them a judgment in
4 this one?"

5 MR. CONNELL: Your Honor, you could, you can cure that
6 easily by telling them not, not to consider that information
7 and it would be something that you could tell them to do. I
8 don't even think they know what a judgment is. I mean, that
9 ---

10 THE COURT: I'm sure they know what a judgment is.
11 Pretty much everybody knows what a judgment is. The fact that
12 I'm going to instruct them that they've got to bring back a
13 judgment or either in favor of the Plaintiffs or against the
14 Defendant I'm going to be explaining to them what a judgment
15 is.

16 MR. CONNELL: My understanding about mistrials is is
17 that you - they're rarely, if ever, granted if you can get
18 some curative instruction about that prior to the time that we
19 go to, we go to the, go to jury. All we'd have to do is try
20 this thing all over again which I'm sure Your Honor doesn't
21 want to do anyway.

22 THE COURT: Mr. Wilkerson, let me hear from you as to
23 why a curative instruction won't take care of it.

24 MR. WILKERSON: It just goes so much to the heart of

1 the issues in this case, Your Honor, and their attempt to
2 taint this jury and it's such a taint that I don't believe
3 that the bell can be un-rung.

4 THE COURT: Okay, all right, let's take about a 10-
5 minute recess. Let me take a look at it and I'll come back
6 with my decision in just a minute, all right.

7 MR. WILKERSON: Thank you, Your Honor

8 MR. CANTY: Thank you, Your Honor.

9 THE COURT: All right, we're still at this point in
10 time, Mr. Zinn, in the middle of your testimony. So, you
11 cannot discuss your testimony with anyone, either what you
12 have testified to in the past or if we go forward what you
13 anticipate testifying to in the future. Okay.

14 A Yes, sir.

15 THE COURT: All right, thank you.

16 OFF THE RECORD

17 (On the record. Whereupon, the following takes place outside
18 the presence of the jury.)

19 THE COURT: Thank you very much. Please be seated.
20 All right.

21 MR. CONNELL: Your Honor, might I be heard on one other
22 issue?

23 THE COURT: Yeah.

24 MR. CONNELL: Your Honor, this whole line of questioning

1 was based on something that Mr. Wilkerson asked. He asked if
2 the Plaintiff had been involved in another lawsuit. He
3 specifically asked that. He asked about interrogatories, "Did
4 you not answer" ---

5 THE COURT: Well, there's a big thing saying are you
6 involved in another lawsuit and having a witness just blurt
7 out saying, "Yeah, we got a judgment and they hadn't paid that
8 either," knowing when I've ruled that that's inadmissible and
9 not to go to a jury because it has nothing to do with this
10 case. The problem I've got is I've already told you all that
11 I'm going to charge the jury that if they find any of the
12 wages claimed in this action were covered under the reserve
13 account they cannot include that in damages. Well, now you've
14 got - because of res judicata it's already been decided in
15 another lawsuit. Well, now you've got a jury that knows the
16 judgment obtained in that other lawsuit hadn't been paid. So,
17 how is that going to influence them and when I instruct them
18 that they can't consider that as damages. Are they going to
19 go back there and deliberate saying, "Well, I know he said we
20 couldn't include it in this one because it was in the other
21 one but they hadn't paid the other one either."

22 MR. CONNELL: Your Honor, you have to presume that
23 they're going to follow the instructions you give them.
24 Otherwise you wouldn't have any - that happens in every case.

1 I mean, so, you're ---

2 THE COURT: Well, yeah, you always have that risk of
3 whether they're going to follow the instructions of the Court.
4 The question is is have they been unduly influenced by
5 evidence that the Court has ruled inadmissible and has been
6 placed in evidence over the Court's ruling by a Plaintiff for
7 the sole purpose of prejudicing this jury to feel sympathetic
8 towards the Plaintiff's cause. The fact of the matter is is
9 it was placed in evidence by a Plaintiff for no other person -
10 I mean no other reason than to inflame the passions of the
11 jury. That's the only reason he said that was basically they
12 haven't paid us on this other judgment, so to get the jury mad
13 at a Defendant so that they would bring back a bigger
14 judgment, which is totally improper and that's the problem
15 I've got. Let me hear from the Defense about just the
16 curative instructions because you're going to get the res
17 judicata charge if it goes to a jury. I still haven't decided
18 if it's going to a jury at all, but if it goes to a jury where
19 they can include it in their judgment and a curative
20 instruction that says a judgment compensate the Plaintiff.
21 It's out there. They've got a judgment. It is a lien. It
22 attaches against their - so, they've already been compensated
23 in that case. You can't double compensate them and I'll
24 instruct that to all of them. I'll explain it to the jury

1 saying, "They've got a judgment. That means they've got a
2 lien already against all of the Defendants' assets for
3 whatever they've obtained in that other lawsuit."

4 MR. WILKERSON: Your Honor, I think the Court stated
5 it very, very succinctly and that is that what we have here is
6 a blatant attempt by a person who knew the rules and knew the
7 rulings by this Court to inflame the passions of this jury.
8 Now, if - and to me that's, that's very clear that that has
9 been accomplished by that statement.

10 THE COURT: well, I know that was the intent of the
11 witness but I don't know if it's been accomplished.

12 MR. WILKERSON: Well ---

13 THE COURT: And I - there's no way we're going to know
14 whether it's been accomplished.

15 MR. WILKERSON: Yes, sir, and I just keep coming back
16 to this concept of you can't un-ring a bell. Sometimes,
17 sometimes you can explain to a jury why something was said and
18 that it was improper, it really doesn't have anything to do
19 with the case and it doesn't go to the heart of the, of the
20 lawsuit. This, however, goes right to the heart of it, that
21 is, I mean, we've been fighting here all, this entire time
22 over what is and is not reserves and what is and is not
23 recoverable in an action to collect, to collect alleged unpaid
24 commissions and to attempt to taint this jury by that.

1 statement is - it's, that cannot go unnoticed and unaccounted
2 for, and I believe that the only remedy at this time is for
3 the Court to declare a mistrial and unfortunately wasted this
4 time that we've had in the courtroom.

5 MR. CONNELL: Your Honor, the case law says that the
6 grant of a motion for mistrial is an extreme measure that
7 should be taken only when the incident is so grievous and
8 prejudicial that it can be removed in no other way. Two
9 things, a curative instruction could remove it, number one.
10 Number two, this whole line of questioning was when John asked
11 the witness about legal matters such as interrogatories, other
12 lawsuits he'd been a Plaintiff in. That's when this
13 information came out.

14 THE COURT: So, how is his answer in response to that
15 question, how is his response, "Yeah, we got a judgment and
16 they hadn't paid that either," how is that responsive to his
17 question?

18 MR. CONNELL: Your Honor, could we get the question
19 read back and his answer so we can understand that.

20 (Last question and answer read back by court reporter.)

21 THE COURT: And he was talking about contracts.

22 MR. CONNELL: Well, he's talking about a lawsuit and of
23 course Mr. ---

24 THE COURT: No, no, he was talking about contracts.

1 He said you bring a lawsuit and you want these documents they
2 can't just refuse to give them to you then.

3 MR. CONNELL: Your Honor, the question could have been
4 interpreted two different ways.

5 THE COURT: No, no, no, no, no, no, it couldn't. No,
6 it couldn't. All right, all right, I'm going to bring the
7 jury in. We're going to go ahead and break for lunch, bring
8 them back and I'm going to have to ponder over this a little
9 bit more. Okay?

10 MR. CONNELL: All right.

11 THE COURT: Mr. Zinn, we're still in the middle of
12 your testimony. You cannot discuss your testimony with anyone
13 either what you've testified to in the past or what you
14 anticipate testifying to if the trial goes forward. Okay?

15 A Yes, Your Honor

16 THE COURT: All right, one thing I'm going to be doing
17 is going back and looking at some curative instructions to see
18 if anything can be given. Let's go ahead and bring the jury
19 back in.

20 MR. CONNELL: Your Honor, you might want to look at
21 this State versus Beckham.

22 THE COURT: Yeah, those are all criminal cases.
23 There's a different kind of thing in criminal cases when
24 you're talking about incarceration over civil cases.

1 MR. CONNELL: I noticed ---

2 THE COURT: That's part of the problem I've had is my
3 quick research in the five, 10 minutes we were back there, the
4 only thing that popped up was criminal cases where you would
5 be convicting a Defendant on a criminal charge based upon
6 improper evidence. If this was a criminal case there's no
7 doubt that it would be a mistrial. My question is is since
8 it's a civil case does that kind of lessen the sting any and I
9 don't know that it does.

10 (Whereupon, the following takes place in the presence of
11 the jury.)

12 THE COURT: All right, ladies and gentlemen, welcome
13 back. We had to take up this matter of law but given the time
14 and since we've already taken this break it's a good time for
15 us to go ahead and break for lunch. So, I'm going to let you
16 go to lunch. Please be back in the jury room at 2:15.
17 That'll give you about an hour and 25 minutes to eat lunch.
18 Do not discuss the case even among yourselves at this point in
19 time. Don't conduct any independent investigations. It's
20 still too early for you to begin your deliberations. Make
21 sure you leave your pads here in the seat in the jury box.
22 We'll collect them and give them back to you. Hope everybody
23 has a good lunch and please be back in the jury room at 2:15.
24 Thank you very much.

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

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

5 MR. CONNELL: Your Honor, my quick research shows there
6 are two civil cases Vestry and Church Wardens of the Church of
7 Holy Cross versus Orkin Exterminating, 682 S.E.2d 489 2009.
8 "In order to receive a mistrial the moving party must show
9 error and resulting prejudice. The finding of a mistrial
10 should only be granted when absolutely necessary and the trial
11 court should exhaust other methods to cure possible prejudice
12 before aborting a trial."

13 THE COURT: Okay.

14 MR. CONNELL: So, there you have it.

15 MR. WILKERSON: What's that cite, again, counsel?

16 MR. CONNELL: That is 682 S.E.2d 489.

17 MR. WILKERSON: Thank you

18 MR. CONNELL: A 2009 case.

19 THE COURT: Yeah, so, basically what it does is it -
20 I'm sure it's within the judge's discretion for me to
21 determine whether or not the jury has been so influenced by
22 inadmissible evidence that it's going to prejudice their
23 decision and if I think their decision in any way is going to
24 be influenced by that inadmissible evidence then I grant a

1 mistrial.

2 MR. CONNELL: Your ---

3 THE COURT: Or I think it's going to be cannot be

4 cured by any other remedy ---

5 MR. CONNELL: Right.

6 THE COURT: --- then I have to grant a mistrial is my

7 understanding of it.

8 MR. CONNELL: Your sound discretion of granting or

9 refusing a mistrial.

10 THE COURT: Yeah, so, I - what I have to do is sit

11 back there and try to determine whether or not this jury is

12 going to be influenced by Mr. Zinn's testimony that I had

13 previously ruled inadmissible. All right.

14 MR. CONNELL: Thank you, Your Honor.

15 MR. WILKERSON: And I'd like to look at those cases

16 as well. I'll take some time ---

17 THE COURT: Yeah, let's get back ---

18 MR. WILKERSON: --- over the break and - but I would

19 point out to the Court that throughout this trial the, the,

20 the segregation of the reserve issue has been central to our

21 defense.

22 THE COURT: Well, the - I'm not so concerned with the

23 segregation of the other lawsuit. What raises the question in

24 my mind is the testimony that we've got a judgment and they

1 hadn't paid that either, you know, that is what leads me to
2 believe that this jury might issue a judgment based upon
3 sympathy or passion rather than the actual facts of the case
4 because these two lawsuits are intertwined. They're going to
5 know about the other lawsuit and they're going to know and
6 they're going to know that there was a judgment in the other
7 lawsuit and that the Plaintiffs made a recovery in the other
8 lawsuit and that that recovery was based in part for unpaid
9 commissions and that's why I was going to give them an
10 instruction that if you find that any of the wages sought in
11 this lawsuit were covered in that lawsuit it's barred by res
12 judicata and I'll explain to them what res judicata is. My
13 problem now is the fact that they know that that judgment
14 hadn't been paid by the Defendant in the other lawsuit. So,
15 is that going to lead them to believe, "Well, if they hadn't
16 paid that judgment then why aren't they entitled to recover
17 again for it?"

18 MR. WILKERSON: Or stated differently, "Why don't we
19 go ahead and give them another judgment in this case, it
20 doesn't really matter how big a judgment we give them if
21 they're not going to pay it anyway."

22 THE COURT: Exactly, exactly, and that's my concern.

23 MR. CONNELL: But, Your Honor, that presumes that
24 they're going to, they're going to disavow what you tell them

1 and that's not the way the law is supposed to work. You can -
2 what you tell them ---

3 THE COURT: Well, no, I can, you know, in every case
4 ---

5 MR. CONNELL: Yes, sir.

6 THE COURT: --- where there's a mistrial granted the
7 judge has to make a decision. I mean, if every case could be
8 cured by simply the judge instructing them on the law and the
9 presumption that they're going to follow the judge's
10 instructions there would never be a mistrial. That's why
11 you've got mistrials is that there are some matters which
12 regardless of the curative instructions given by the judge you
13 know the jury's not going to follow the judge's instructions.
14 They're going to be basing their decision on a motion or
15 compassion for one party, not based upon the facts of a case
16 but based upon extraneous circumstances that they're not
17 supposed to consider and that's what I've got to decide. So,
18 the fact that this other lawsuit is out there doesn't concern
19 me. The fact that it's intertwined with this one doesn't
20 concern me. I could explain that and I was going and had
21 gotten some instructions to explain that. My concern is
22 you've got testimony, "Well, there was a judgment in that one.
23 It hadn't been paid."

24 MR. CONNELL: Well, Your Honor, how, how different is

1 that than the cases you and I have tried where the witness has
2 said something about insurance? I mean, that has happened I
3 bet five or six times to me in practicing law where the
4 witness has said something about insurance, that's not
5 supposed to be interjected and the judge has said at the end
6 don't consider the fact that insurance got injected in the
7 trial. You've already said that you're going to tell ---

8 THE COURT: Well, but if it was - but it's a little
9 bit different between - I think a jury is more inclined when a
10 judge instructs them whether or not a person has insurance has
11 absolutely no bearing on whether or not a person was liable in
12 causing a damage and you're not to consider whether or not a
13 person has insurance in determining whether or not the person
14 was liable. The question you have here is there is a lawsuit
15 for unpaid wages by a Defendant and what the testimony was
16 trying to do is saying, "Well, they didn't pay this judgment
17 either. We're more believable that they haven't paid us our
18 wages because they hadn't paid this judgment either," and they
19 were offering it as proof that they don't pay any of their
20 bills. They don't pay the judgments. They don't pay the
21 wages. They don't pay anything and, you know, that, and
22 that's, that was the reason it was presented to the jury was
23 not to show that they haven't paid wages in this case but to
24 paint the Defendant as somebody that doesn't - that it doesn't

1 matter, they're not going to pay it anyway. So, I think there
2 is a distinction but be that as it may let me take a look over
3 it. I don't know what I'm going to do yet. I've got to look
4 and see and come up with some curative instructions to see if
5 I can. If there's any way - I can tell you this, if there's
6 any way I can avoid granting a mistrial I'm going to because I
7 think we've just wasted, you know, three days of trial time if
8 I have to grant a mistrial but let's be back at two o'clock.
9 The jury is coming back at 2:15. Let's get back at two
10 o'clock, okay?

11 MR. WILKERSON: Thank you, Your Honor.

12 MR. CANTY: Thank you, Your Honor.

13 MR. CONNELL: Thank you.

14 OFF THE RECORD

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

17 THE COURT: All right, all right, Mr. Wilkerson, I'm
18 going to deny your motion for a mistrial. I'm going to go
19 ahead - I am going to give the jury pretty stringent curative
20 instructions basically of, one, instruct them that they've
21 heard testimony in this case about a judgment obtained by the
22 Plaintiffs against the Defendant in another case. I'll charge
23 them with the law. When I charge them with the law to be
24 applied in this case I'll advise them to what extent if at all

1 they can consider that other case and judgment. During cross
2 examination of this witness he made reference to the judgment
3 in the other case. They're to disregard that testimony in its
4 entirety. That lawsuit involved a different issue and
5 culminated in the settlement of a disputed claim, and
6 therefore, whether or not there is a judgment in another case
7 or whether or not that judgment has been satisfied in full, in
8 part or not at all has absolutely no bearing on whether or not
9 the Plaintiffs are entitled to a judgment in this case. I
10 note your exception but that's, that's going to be my ruling.
11 We're going to have to go forward with the case. All right?
12 Anything from the Plaintiff before we bring the jury in?

13 MR. CONNELL: Your Honor, you're going to put - we're
14 going to put Mr. Zinn back up? You're going to cross examine
15 him, John?

16 THE COURT: Zinn back, and he's going to continue
17 with his cross examination.

18 MR. WILKERSON: Yes.

19 MR. CONNELL: Your Honor, could I confer with the
20 witness for a minute just, just to tell him not to mention
21 that again?

22 THE COURT: Well, not about testimony. If he mentions
23 it again then we'll deal with it when it comes back up but in
24 the middle of his testimony and we can't, can't, can't discuss

1 any testimony with the witness in the middle of the testimony.

2 MR. CONNELL: All right, well, Your Honor, could I ask
3 you to inform the witness not to mention that case again so we
4 can make sure?

5 THE COURT: It is the ruling of this Court that whether or
6 not there was a judgment obtained in another lawsuit, whether
7 or not that judgment has been satisfied in full, whether or
8 not it's been satisfied partially, whether or not it remains
9 totally unsatisfied has no bearing on the issues of the
10 liabilities in this case. Okay? All right, all right, Mr.
11 Zinn, if you'd come back and take the stand, please.

12 A Yes, Your Honor.

13 THE COURT: Anything from the Plaintiff before we
14 bring the jury back in?

15 MR. CONNELL: No, sir.

16 THE COURT: Anything from the Defense?

17 MR. WILKERSON: Nothing, Your Honor, thank you.

18 THE COURT: All right, let's bring the jury back in.

19 MR. CONNELL: Your Honor, we have two short witnesses
20 once Mr. Zinn is finished.

21 THE COURT: Okay, all right.

22 MR. CONNELL: I hope they'll be short and sweet.

23 (Whereupon, the following takes place in the presence of
24 the jury.)

1 THE COURT: All right, ladies and gentlemen, welcome
2 back. I hope everyone had a good lunch. I remind you if you
3 have any cell phones, pagers or other communication devices if
4 you'd turn those off at this time. Also make sure you have
5 your own pads and don't have someone else's.

6 Now, before we get started or resume the cross
7 examination of this witness I need to go over some, some
8 instructions with you. You've heard testimony in this case
9 about a judgment obtained by these Plaintiffs against this
10 Defendant in another case. Now, when I charge you with the
11 law to be applied in this case I'll advise you to what extent
12 if at all you can consider the other case and judgment.
13 However, during cross-examination this witness made reference
14 to the judgment in the other case. You are to disregard that
15 testimony about the other judgment in its entirety. That
16 lawsuit involved a different issue and culminated in the
17 settlement of a disputed claim. Therefore, the existence of a
18 judgment in another case and whether or not that judgment has
19 been satisfied in full, partially or not at all has absolutely
20 no bearing on whether or not the Plaintiffs are entitled to a
21 judgment in this case. So, you're to disregard any reference
22 to that other judgment. All right? All right, Mr. Wilkerson,
23 you can continue your cross examination.

24 MR. WILKERSON: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. WILKERSON:

3 Q Now, Mr. Zinn, we were - I think we had established that
4 if you had wanted to know information about the status of
5 various contracts, accounts, etcetera, from my client it would
6 have been simply a matter of your lawyer asking for it and
7 that - and we would have had to give that to him; right? Do
8 you agree with that?

9 MR. CONNELL: Objection, Your Honor, that calls for,
10 that calls for a legal issue, interrogatories, that kind of
11 stuff. This witness is not competent to answer those
12 questions.

13 THE COURT: Okay, I sustain the objection.

14 MR. WILKERSON: All right, sir.

15 BY MR. WILKERSON:

16 Q Mr. Zinn, has your - have, have you or your lawyers
17 asked my client for any information concerning any of these
18 accounts in this case?

19 A Oh, yes, sir.

20 Q Show it to me, please, sir.

21 A You talking about document, documentation on my pay?

22 Q Show me where your - where your lawyers have asked in
23 this case for my client to produce any documents at all
24 related to any of these contracts that you're suing on.

1 A I have a hard time knowing exactly what my attorneys
2 have done because I haven't been privy to that. I mean, I'm
3 sort of at a loss on how to answer you, sir.

4 Q You got all these files over here, right?

5 A Yes, sir.

6 Q You want to show me? Go talk to your lawyers, find
7 these documents and show them to me?

8 MR. CONNELL: Objection, Your Honor, that's not a
9 proper question for him to be asking about what documents we
10 got in discovery. He's one of 20 some or 18 Plaintiffs.

11 THE COURT: Well, I think his question is is was
12 there any discovery requested. His testimony has been that
13 the Defendant wouldn't give these documents and the cross
14 examination question was, "Well, where have you requested
15 them," and so, that's simply the question, "Where has he
16 requested them," because he's testified that they wouldn't
17 give it to him.

18 MR. CONNELL: All right.

19 THE COURT: All right, so, I'm going to allow the
20 questioning. Go ahead.

21 MR. CONNELL: Thank you, Your Honor.

22 BY MR. WILKERSON:

23 Q Would you show me where you've requested those documents
24 from us in this case?

1 A The best thing I could tell you is we've - I've
2 requested them with Attorney Connell and Attorney Cauty, and I
3 assume they've gotten them but I don't know. I haven't seen
4 them.

5 Q You're welcome to go confer with them to find it and show
6 it to me.

7 A Okay.

8 Q You've got all these files in the room. Go talk to them
9 and show me what you have.

10 THE COURT: No, let's continue with the cross
11 examination. It's obvious he doesn't know whether they've
12 been produced or not been produced, or let me correct that.
13 He doesn't know whether they've been requested or have not
14 been requested, let me put it that way.

15 Q But Mr. Zinn, you're not aware of any requests that
16 you, that you or your attorneys have made from my client in
17 this case for information that we have not provided; are
18 you?

19 A I'm not aware of any, sir.

20 Q All right, sir, now, you were testifying from this
21 document that we've marked as Defendant's Exhibit 32 and which
22 has been, which is described as all written deals for the
23 entire time you were working for the company; is that right?

24 A Yes, sir.

1 Q Okay, and you were about to tell us which of - how this,
2 how this document informs you on your ability to tell this
3 jury how much you claim that you are owed. Can you explain
4 that to us, please, sir?

5 A Okay, it's a summary of my sales there combined with a
6 payment report here, combined with a paycheck stub here,
7 combined with copies of canceled checks here.

8 Q All right, sir, well ---

9 A And other paycheck stub here, Westgate Resorts and CFI.

10 Q All right, sir, are you able to look at this list
11 identified as Defendant's 32 and tell this jury which of these
12 deals or alleged sales you believe you should have been paid
13 for that you have not?

14 A Yes.

15 Q Okay, and you do that by referring - by referencing all
16 these documents that you have here?

17 A Uh-huh, and I've actually put them in a concise little
18 thing here on this summary.

19 Q You didn't prepare this summary; right?

20 A Right.

21 Q Okay.

22 A It is a pretty close recap of my deals.

23 Q Okay, and I see that you got some tick marks out here
24 beside some of the names. Are those the people that you -

1 those the contracts that you claim you have not been paid for?

2 A Those are the ones I have been paid for.

3 Q You have been paid for?

4 A Yes.

5 Q All right, sir.

6 A In, in part or all.

7 Q Okay, so, is it your testimony that you have not been

8 paid for those that are not checked?

9 A Yes, sir. Yes, sir.

10 Q Okay, so, if we want to figure out which, which claims

11 that you - which, which contracts, customers that you claim

12 that you should've been paid for but have not, we can look at

13 this document, Number 32, we look at the list, those that have

14 been checked, exclude those and all others are the ones that

15 you're complaining about today?

16 A I would just like the opportunity to re-add them and

17 make sure I'm not - nothing's deceitful.

18 Q Sure.

19 A Because it was just the best of my knowledge.

20 Q Yes, sir. I'd like to identify the contracts that

21 you're - that are in dispute with you, sir?

22 A Okay, thank you, sir.

23 Q Yes, sir.

24 A To the best of my knowledge, sir, it's going to be

1 pretty close.

2 Q Pretty close?

3 A Yes, sir.

4 Q All right, sir, let me see it again.

5 A Sure.

6 Q Thank you. Now, I believe I understood your direct

7 examination or your testimony when your lawyer was asking you

8 questions that you identified one contract that you believed

9 someone, another sales rep - had been transferred over to

10 another sales rep, sales representative?

11 A Yes, sir.

12 Q That he had gotten credit for it; is that right?

13 A Yes, sir.

14 Q Okay, and that - you identified that as Gil Foster;

15 correct?

16 A Yes, sir.

17 Q And that would be the contract that's located on this

18 document, Exhibit Number 32, at the bottom of the page?

19 A Yes, sir.

20 Q Is that right?

21 A Yes, sir.

22 Q Is that the right one?

23 A Gil and Donna.

24 Q okay, and you have written half check by that. You will

1 agree with me that you were paid a half check on that
 2 transaction; were you not?

3 A Got a full down payment of \$7000, yes, sir.

4 Q All right, sir, and so, you got the full half check as
 5 you're entitled to which is a max of \$500; correct?

6 A Yes, sir.

7 Q All right, sir, and you believe that that, that that
 8 transaction was transferred to someone else and you didn't get
 9 credit for it?

10 A Yes, sir.

11 Q Now, isn't it true, Mr. Zinn, that Mr. Foster exercised
 12 his right of rescission and canceled that contract?

13 A No, sir, not within the five days. I made sure I kept
 14 my eye on that one. We had a sheet print out every day.

15 Q All right, sir, now, you see a column here on this list
 16 that you've been relying upon. It's got a cancel column;
 17 right?

18 A I understand.

19 Q It's got yes or no; right?

20 A Right.

21 Q And it's got yes by Mr. Foster; correct?

22 A Doesn't mean I agree with it because let me tell you,
 23 that printout sheet came out every day and you walked to that
 24 bulletin board to see which one of your deals kicked,

1 especially a \$65,000 deal.

2 Q And you'd be real surprised to learn that Mr. Foster, in
3 fact, did rescind his contract?

4 A Not within the five days he didn't. I don't know what
5 happened to it after that, sir.

6 Q All right, sir, bear with me just a moment, please, sir.

7 A Yes, sir.

8 Q Thank you. All right, so, this document that you're
9 relying upon, Defendant's Exhibit 32, it also has an
10 indication here as to which of these contracts had a full down
11 payment made; correct?

12 A It has an indication there but that's way off. Basically
13 that's part of the documents I rely on, not all, that's not
14 all of it.

15 Q Okay, so, what you're telling this jury is this document
16 you're going to pick and choose what information you are going
17 to rely upon here and that which you, which you don't like
18 you're just going to disregard?

19 A No, I deem to be valid, sir. I'm not here to deceive
20 anyone.

21 Q All right, sir, you will agree with me that a number of
22 the items, a number of the contracts that you identified here
23 as those that are the basis of your claim indicate out in the
24 column a full down payment, that the full down payment was not

1 made; correct?

2 A That's what that says although I know to the better.

3 Q Okay.

4 A If I may, sir, I would like a copy of that back if that's
5 okay.

6 THE COURT: It's in evidence, sir.

7 A Oh, okay.

8 THE COURT: You'll have to deal with that with your
9 attorney.

10 A Okay.

1 MR. WILKERSON: Thank you, Your Honor.

2 A Thank you, Your Honor.

3 THE COURT: Redirect?

4 MR. CONNELL: Just one.

5 REDIRECT EXAMINATION

6 BY MR. CONNELL:

7 Q Have you also relied on contact with your customers in
8 making your decisions?

9 MR. WILKERSON: Objection.

10 MR. CONNELL: He brought it up, Your Honor. He wanted
11 to know what he relied upon and he's talking about ---

12 THE COURT: But now you're soliciting some additional
13 information. I sustain the objection.

14 MR. CONNELL: Come down.

15 A Thank you, Your Honor.

16 THE COURT: All right, you can call your next witness.

17 MR. WILKERSON: Your Honor, could I, could I borrow
18 that exhibit for just a few moments?

19 THE COURT: Just make sure you - can he?

20 MR. WILKERSON: I'll return it.

21 THE COURT: Make sure you bring it back.

22 MR. WILKERSON: Thank you.

23 Whereupon, Mark D'Amico was called to the stand, duly
24 sworn by the clerk and testified as follows:

1

THE CLERK: State your name for the Court and spell

1 your last name, please.

2 MR. DAMICO: Mark D'Amico, D-A-M-I-C-O.

3 DIRECT EXAMINATION

4 BY MR. CONNELL:

5 Q All right, Mr. D'Amico, tell me, please, sir, where you
6 live and what you do for a living.

7 A 2061 Ayershire Lane, Myrtle Beach, South Carolina. I own
8 a carpet cleaning company with my partner.

9 Q All right, and when did you come to Myrtle Beach and why?

10 A Back in '94 I moved down here just to get away from the
11 cold. I sold my business up north and was tired of those cold
12 winters.

13 Q Okay, and when you came down to Myrtle Beach what year
14 was it?

15 A '94.

16 Q And what have you done since 1994?

17 A A couple of different businesses, worked for timeshare in
18 marketing and sales.

19 Q Okay, and how many timeshare companies have you worked
20 for?

21 A Probably three the whole time.

22 Q Okay, what was the first timeshare company you started
23 working for?

24 A Plantation Resort.

- 1 Q All right, and where is that located?
- 2 A Surfside Beach.
- 3 Q And what did you do at Plantation Resort?
- 4 A Started with marketing, worked in sales for a small, a
- 5 little time.
- 6 Q All right, and how long did you work at Plantation
- 7 Resort?
- 8 A Probably two years.
- 9 Q All right, and when did you leave Plantation Resort?
- 10 A I'd say '98, somewhere around there.
- 11 Q Okay, and where did you go to after Plantation Resort?
- 12 A At that time was Embassy Suites, which is now the
- 13 Sheraton.
- 14 Q And what job did you get at the Embassy Suites?
- 15 A Marketing.
- 16 Q And what were you marketing?
- 17 A Timeshare vacation ownership.
- 18 Q And how long were you in the marketing department at
- 19 Embassy Suites?
- 20 A A couple of years, probably the same thing.
- 21 Q 1998 to 2000?
- 22 A Uh-huh.
- 23 Q Where did you go next?
- 24 A I think I took a little time off at a, you know, do one

1 of those small business I tried for a while and then got back
2 into sales of timeshare.

3 Q When did you go to work at Westgate Resorts?

4 A Started in May 5th of '08.

5 Q How did you come to get - to decide you were going to
6 work at Westgate Resorts?

7 A Heard some good things about it as far as definitely the
8 no chargebacks, saw the ad, been seeing ads in the paper
9 constantly and figured I'd give it a try.

10 Q Let me show you this ad that's already been introduced in
11 as evidence, Plaintiff's Number Four, and ask if that is
12 similar to the ad you saw.

13 A Yeah, yeah, that's it.

14 Q All right, and what appealed to you about the ad?

15 A No chargebacks.

16 Q Okay, and when you saw the ad and saw no chargebacks did
17 you know what that meant?

18 A Yes, uh-huh.

19 Q How did you know?

20 A Well, being in the industry it's pretty, you know,
21 common.

22 Q Okay, and what do you understand no chargebacks to mean?

23 A That once you get past your five day rescission you, you
24 know, it's a, it's a, you know, considered a valid deal, and

1 you know, you should get paid your percentage.
2 Q Okay, now, who was your training person when you went ---
3 A Von Sant, Mr. Von Sant, Frederick.
4 Q Okay, and you went to the timeshare school we've heard
5 about?
6 A Yeah, you know, classes, yeah, uh-huh.
7 Q And how long did the classes last?
8 A Three weeks, I believe.
9 Q And you pass all the tests?
10 A Yes, uh-huh.
11 Q And when did you go to work on the floor?
12 A Just before I guess Memorial Day weekend, pretty close to
13 that.
14 Q Okay, Memorial Day weekend of what year?
15 A '08, 2008.
16 Q And were you presented with a contract?
17 A Yes, uh-huh.
18 Q And what contract were you presented with? Let me show
19 you this and ask if this is the contract that or one similar
20 to the one that you would have signed?
21 A Yeah, seems to be, uh-huh.
22 Q Okay, and what percentage were you to get?
23 A Ten percent.
24 Q All right, and how long did you work at Westgate after

1 Memorial Day 2008?

2 A They let me go in October 14th of 2008.

3 Q All right, and why did you, why did they let you go?

4 A I don't know. I just sold a full down deal the two days

5 before. I was wondering myself why I went, I was let go.

6 Q Okay, I know, I know we've been over this a number of

7 times and I hate to ask you again, using the timeshare lingo

8 what is a full down deal?

9 A The agreed amount that they agreed to pay for the

10 timeshare, they wanted a - their down payment, 10 percent down

11 payment and they paid it in full that day.

12 Q All right, so, two days before you were let go ---

13 A Uh-huh.

14 Q --- you got a full down deal?

15 A Uh-huh, yes.

16 Q And what - how much was that?

17 A I think it was 70 - let me see here, 7200.

18 Q Okay, were you paid for that full down deal?

19 A Actually, let's see, it's - I was paid but it was instead

20 of 10 it was - they made it - it was actually seven percent.

21 Q All right, let's talk about that.

22 A Yeah.

23 Q Were you given any documents in writing to show that you

24 were going to be paid seven percent and 10 percent or rather

1 than the 10 percent you had agreed to previously?

2 A They did hand us some paperwork that morning that we were
3 going on the floor and said either you sign it or you might as
4 well just go home. So ---

5 Q All right, who gave it to you?

6 A I'm trying to think at the time. It was ---

7 MR. WILKERSON: If Your Honor, please, if he's going
8 to talk about paperwork and he's relying on it for the truth
9 of the matter asserted we need to have the document here.
10 It's hearsay.

11 THE COURT: Okay, you can bring that up in cross
12 examination.

13 MR. WILKERSON: Objection to the testimony.

14 THE COURT: I understand, overruled.

15 Q Okay, so, the day that you sold the full down ---

16 A Uh-huh, right.

17 Q --- you were given a document?

18 A Yeah, well, we, we made it - I don't, I don't even -
19 actually I wish I could - I don't even have it.

20 Q Okay.

21 A They didn't give us a copy of it or anything.

22 Q All right, but you were given it, given it seven days
23 prior?

24 A No, it was that day, that morning.

1 Q Okay, and that was the day you sold it?
2 A Yeah, I believe so, yes, it was.
3 Q All right.
4 A Uh-huh.
5 Q So, there was a three percent difference?
6 A Yes.
7 Q Is that right? All right, have you been able to
8 determine looking at your records based on your memory and
9 your understanding as to what you are owed in unpaid
10 commissions?
11 A I came up with 87 - \$8,760.
12 Q Okay, come down here, write that on this board, please,
13 sir.
14 A All right, okay.
15 Q Thank you, sir. Now, take us through how you determine
16 that you were owed \$8,760.
17 A Well, going by the list here of all my deals that were
18 written through the company, which I got a copy of right here
19 ---
20 Q Okay.
21 A --- came up with certain ones that I just wasn't - I've
22 never got payment on ---
23 Q Okay.
24 A --- that I believe I was due payment on.

1 Q All right, and which ones did you come up with?

2 A Let's see, I got here Cosmer [spelled phonetically],

3 Darlene first name; Goble; Rolson [spelled phonetically];

4 Graham; last name Quick, first name Frank; James Smith and

5 Michael Phillips.

6 Q What if any other timeshare sales did you make after this

7 - after you were reduced from 10 percent to seven percent?

8 A I did write down one here on it, maybe not, I think that

9 was it.

10 Q All right.

11 A I thought I saw five percent but I don't know. It's

12 written on there, but ---

13 Q Was there any - are there any documents that there was

14 five percent written on?

15 A No, but I do have a document that came from corporate

16 that I got paid on it in the columns everything else is 10

17 and this one particular transaction, like I was saying, is

18 seven and it's right here.

19 Q Okay.

20 A Coming from corporate, payment detail report dated 4-13.

21 Q All right, okay, tell me about any conversations that you

22 had with any manager of Westgate Resorts to obtain your money.

23 A Well, when they let me go basically they said just you're

24 going to have to - you're dealing with Florida. So, I would

1 call down there and sent a letter and, you know, kept calling
2 down there for ---

3 Q Let me ask you who you called down there.

4 A Connie Sharp.

5 Q All right.

6 A Most of the time tried to anyway, I mean.

7 Q Did you ever talk to her?

8 A Yeah, a couple of times, actually finally got through to
9 her.

10 Q All right, and what did she tell you?

11 A Well, we're looking through it and if you have any money
12 coming you'll be getting it in the mail.

13 Q Okay, was that money - did you ever get that money in the
14 mail?

15 A Not on these particular, you know, transactions. I got
16 some other monies from hourly that we used to get to and ---

17 Q Okay.

18 A --- you know, some, some other monies that didn't pertain
19 to these particular deals.

20 Q What, what other conversations did you have with anybody
21 at Westgate besides Connie Sharp?

22 A That was it. I, you know, I never really bothered going
23 back there, couldn't get in the door, you don't work there
24 anymore, they really, you know, it's hard to get in there.

1 Q Okay, and what about the letter that you wrote, what if
2 any response did you get to the letter that you wrote?

3 A Just she wanted, she wanted something in writing.

4 Q All right.

5 A That was basically it, you know.

6 Q Did she give you something in writing back?

7 A No. I mean I did get - she did send up, you know, your
8 copy of the transactions that you were getting paid for and
9 showed which ones were just six timely payments. That was
10 about it, I guess, really.

11 Q What do you know about or any of your deals been up-sold?

12 A That I don't know.

13 Q Okay.

14 A All right, I never really got into all that but I just
15 wanted what was coming to me basically.

16 Q Were you given written advance notice of any changes in
17 employment terms within seven days?

18 A No.

19 Q All right, have the Defendants paid all your wages within
20 30 days of you leaving the company?

21 A Absolutely no, no.

22 Q Do you feel the Defendants have complied with their
23 contract?

24 A No, I don't think they did, no.

1 Q Okay, were you given written notice prior to the change
2 in the commission from 10 to seven percent?

3 A Like I said, that morning we signed something. I
4 couldn't even tell you now what it was. It was put in front
5 of us and sign it or go home basically.

6 Q All right, about how many times did you try to contact
7 Connie Sharp?

8 A Ten, 12 maybe, kept calling constantly.

9 Q And how many times did you get a - actually talk with
10 her?

11 A I believe twice the whole time.

12 Q All right, do you have any knowledge about what occurred
13 in the deeding room regarding these particular contracts?

14 A While you're sitting there, and you know, for a little
15 while and then basically you're told to leave, you know,
16 towards the end of deeding or in the middle maybe you get,
17 invite them in, sit with them for a little bit and then they
18 finish up.

19 Q Who was the - who would have been the manager that would
20 have been there during that period of time?

21 A I'm trying to think who was left at that time, for this
22 particular, the one with the seven percent?

23 Q Of any of them.

24 A Well, Victor Curry at that point, Frederick was basically

1 the trainer, but he was helping out on the other side.

2 Towards the end we were short on staff and it's hard to
3 remember. It's been a while, you know.

4 Q You sound to me like you knew, you had a lot - some more
5 knowledge about timeshare than a lot of the other people.

6 A Oh, yeah, I've been in and out of it for since I moved
7 down here pretty much.

8 Q Okay, and how important is the no chargebacks?

9 A Oh, that's huge. I mean, that was ---

10 Q Okay, tell us why because I ---

11 A Well, because a lot of resorts, you know, they charge you
12 back after they didn't make their payments and knowing that
13 there weren't - you know, once I got past the five-day
14 rescission it's a closed deal, the money's in, it's you pretty
15 much should have been guaranteed your, your pay. That's,
16 that's, that's big in the business, you know, anybody wants to
17 make sure they're getting paid, not finding out later on that
18 you're, you know, you have to pay this money back or you're
19 not getting all of your pay. So, yeah, that was, that was
20 big, huge.

21 Q Was that a big decision in you deciding to go to work at
22 Westgate?

23 A That was pretty much my main decision, yeah, oceanfront
24 resort, promising a lot of nice, you know, amenities and all

1 that, and oh, and the other thing was that there was really no
 2 financing, it was debt-free supposedly, or, or ---
 3 Q Okay, you've got to explain what you mean by debt-free.
 4 A He didn't owe any, any money, you know.
 5 Q Who, who are you talking about?
 6 A Richard Siegel, Mr. Siegel. I mean, that was ---
 7 Q You were - were you told by someone there that he ---
 8 A Yeah, people that worked there, you know, that I've known
 9 in the industry that actually, you know, and then when we
 10 trained it was all over. I mean, that was kind of how we
 11 presented it and that's why you should come with, you know,
 12 come on board as an owner with, you know, Westgate Resorts.
 13 His picture was in the hall with, you know, movie stars and
 14 whatnot and it was pretty impressive, you know.
 15 Q So, you were selling based on the representation that the
 16 resort, Westgate Resort was debt-free?
 17 A Well, that he - yeah, his company, sure, yeah.
 18 Q All right, and why was, why was that such an attraction
 19 versus the other places you had worked at?
 20 MR. WILKERSON: Your Honor, same objection and I've
 21 been listening for testimony as to who exactly said this and
 22 all I've heard is co-workers. If that's the case it's
 23 hearsay. Mr. Connell obviously thinks it goes to the truth of
 24 the matter asserted. So, I'm moving to exclude that testimony

1 and moving to strike it.

2 THE COURT: Well, I'll sustain the objection but it's
3 already been asked and answered, but I sustain the objection
4 on grounds of hearsay.

5 MR. CONNELL: All right, Your Honor. Okay, let me talk
6 to my co-counsel.

7 BY MR. CONNELL:

8 Q Mr. D'Amico, you were asking Connie for the commissions
9 over the reserve; is that right?

10 A Uh-huh, yes, yes.

11 Q All right, thank you, sir. Answer any questions they
12 have.

13 MR. CONNELL: No objection, the same things?

1 MR. WILKERSON: Defendant's 33 and 34 offered without
2 objection, Your Honor.

3 THE COURT: Any - okay, Defendant's Exhibits Number 33
4 and 34 admitted into evidence without objection.

5 MR. WILKERSON: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. WILKERSON:

8 Q Mr. D'Amico, I'm sorry, would you pronounce your name
9 again?

10 A D'Amico, Mark D'Amico

11 Q D'Amico?

12 A Yes, sir.

13 Q Okay, I don't want to mispronounce your name and I
14 apologize if I do. 33, is that your signature?

15 A No. You got DeVitis. You got the wrong, they got the
16 wrong file.

17 Q Got the wrong one.

18 A Yeah.

19 MR. CONNELL: What's that?

20 Q Let me try again. I got the wrong one. I'm sorry.

21 MR. CONNELL: All right.

22 MR. WILKERSON: Would you bear with me just a
23 minute, Your Honor, two names that were similar. I was trying
24 to call him DeVitis and his name is D'Amico.

1 THE COURT: All right.
2 MR. CONNELL: Do you want to take it out?
3 MR. WILKERSON: I do. I want to take it out and
4 substitute if you ---
5 THE COURT: Well, let's - I don't know that we can
6 take them out. Can you? Okay, all right, so, strike
7 Defendant's Exhibits 33 and 34. So, we'll have a clean record
8 let's go ahead and use the next exhibit numbers.
9 (Court Reporter and Court confer.)
10 THE COURT: Okay, all right.
11 MR. CONNELL: Mr. DeVitis is going next. Is that the
12 ones you've put in right?
13 MS. MAYSONET: Yeah.
14 MR. WILKERSON: We'll just, we'll just keep those in then.
15 MR. CONNELL: Why don't you keep them in and just ---
16 MR. WILKERSON: All right, we'll keep 33 and 34 in,
17 Your Honor, without objection. We'll come back and deal with
18 those in a minute and I want to offer ---
19 MR. CONNELL: Let me see those so I can make sure we ---
20 MR. WILKERSON: Yeah, this is the one ---
21 MR. CONNELL: --- not that I don't trust you but might
22 as well look at them now.
23 MR. WILKERSON: I've proven my lack of
24 trustworthiness, Your Honor, so.

1 MR. CONNELL: Okay, all right, sir.
2 MR. WILKERSON: We together now?
3 MR. CONNELL: Yeah, I think so.
4 THE COURT: All right.
5 MR. WILKERSON: Without objection.
6 THE COURT: These are 35 and 36?
7 MR. WILKERSON: Just 35, Your Honor.
8 THE COURT: Okay, so, Defendant's Exhibits 33, 34 and
9 35 are admitted into evidence without objection.
10 MR. WILKERSON: Thank you, Your Honor.
11 (Whereupon, Defendant's Exhibit Number 33 [Terms of Employment
12 Notice - DeVitis], Defendant's Exhibit Number 34 [Commission
13 Sales Schedule - DeVitis] and Defendant's Exhibit Number 35
14 [Commission Sales Agreement - D'Amico] admitted into evidence
15 and appropriately marked.)
16 BY MR. WILKERSON:
17 Q Now I show you Number 35, Mr. D'Amico.
18 A Uh-huh.
19 Q Is that your signature?
20 A Yes, yes, it is.
21 Q And that's the commission schedule that you're relying
22 upon in your lawsuit against my client; correct?
23 A Correct, right.
24 Q Okay, now, you've testified that you came there because

1 of a representation in a newspaper article that there were no
2 chargebacks; is that right?

3 A Correct.

4 Q You said that that was a very important aspect of your
5 decision to come to work to sell these Westgate units; is that
6 correct?

7 A Right, uh-huh.

8 Q And you've also said that what that meant was once there
9 was a sale with a full down payment made you're entitled to
10 the commission regardless; right?

11 A Correct.

12 Q Now, you will agree with me that this contract that you
13 rely upon doesn't actually say that; does it?

14 A I don't know exact, you know, to what degree. I mean my
15 thing is when they - chargeback to me is once the full down
16 payment's in it's pretty much, you know, it's a done, it's a
17 deal, that's it.

18 Q In fact, chargebacks is whatever the contract says it is;
19 right?

20 A Right, yeah, whatever is on the paper, yeah.

21 Q Okay, now, looking at the paper, which is Defendant's
22 Exhibit 35, you'll agree with me that and I'm sorry, I'm not
23 capable of handling this myself. So, we're going to have to
24 do it the old fashioned way. I'm going to read this and I

1 want you to make sure I read this right. It says,
2 "Chargebacks on cancelled deals."

3 A Uh-huh.

4 Q This is Section 6(A) and I'm reading, "During the term
5 that employee is engaged by employer, during the term that
6 employee is engaged by employer, no sales originated by
7 employee for which employee has been paid a commission will be
8 subject to chargeback except as otherwise set forth herein."
9 Did I read that right?

10 A Yeah.

11 Q Would you read, would you read B for the jury, please
12 sir?

13 A "In the event employee is no longer engaged by employer
14 for any - for the reason for termination of engagement
15 employee shall be charged back for all sales upon which
16 commissions have been paid in the event the purchaser has not
17 made six timely and consecutive monthly payments as well as 10
18 percent minimum down payment."

19 Q All right, sir, so, according to the contract that after
20 you no longer are employed there your sales are subject to a
21 chargeback unless the customer makes six consecutive timely
22 monthly payments; correct?

23 A Well, that's what it's on the paper, but that's not how
24 it was advertised and how we decide, most of us decided to go

1 there.

2 Q Okay.

3 A You know, and again, when all these documents were put in
4 front of us there were a lot more than that and you were
5 rushed through the stuff.

6 Q How long did you work there?

7 A May 5th through October 14th of 2008.

8 Q Okay, all right, sir, I'm sorry, you also agree with me
9 that even if the down payment is made and the customer comes
10 back and rescinds the contract you're not entitled to a
11 commission; right?

12 A No, I don't, I don't agree with that.

13 Q You don't?

14 A No.

15 Q You think ---

16 A Down payment was made, you're saying what now, the down
17 payment's made?

18 Q Yes, sir.

19 A Okay.

20 Q And the customer comes back and exercises his right of
21 rescission to cancel the contract you still think you're
22 entitled to a commission?

23 A No, I got this - no, I didn't count. In my numbers I
24 didn't count the rescission that's on your documents that you

1 sent. I counted the other ones that I'd never received any
2 final commissions for. There's two on here. I only have two
3 in all of my paperwork that, you know, were on the rescission
4 and I didn't count that number in there, so, no.

5 Q So, you would agree with me that if the customer
6 rescinded the contract you're not entitled to any commission;

1 right?

2 A Yeah, on, yeah, uh-huh.

3 Q Okay, that's all I have. Thank you.

4 REDIRECT EXAMINATION

5 BY MR. CONNELL:

6 Q Just, just a couple of issues, Mr. Wilkerson made a good
7 point. If you were still employed there no chargebacks;
8 right?

9 A Right.

10 Q No, but you decided to leave chargebacks?

11 A Correct.

12 Q What in this newspaper article did you see that made you
13 aware that that was the case or that the employment?

14 A I don't see anything.

15 Q All right, was that distinction made to you?

16 A No.

17 Q All right, was that distinction made - where's his? Oh,
18 he didn't, okay?

19 MR. CONNELL: You don't have terms of employment for
20 him?

21 MR. WILKERSON: Don't have one he signed, no, sir, I
22 don't.

23 Q Okay, thank you, sir. Come down.

24 THE COURT: All right, you can call your next witness.

1

MR. CONNELL: All right, Mr. DeVitis.

1 Whereupon, Thomas DeVitis was called the stand, duly
2 sworn by the clerk and testified as follows:

3 THE CLERK: State your name for the Court, please,
4 sir, and spell your last name.

5 MR. DEVITIS: Thomas DeVitis, D-E-V-I-T-I-S.

6 DIRECT EXAMINATION

7 BY MR. CONNELL:

8 Q All right, Mr. DeVitis, tell us, please, sir, where you
9 are from and how you came to Myrtle Beach.

10 A Originally from New Jersey, moved down here in 2004.

11 Q All right, and when you came down here in 2004 why did
12 you come to the Myrtle Beach area?

13 A Sold my business up there like everybody else.

14 Q You liked the weather?

15 A I liked the weather.

16 Q Right.

17 A You know, it was, yeah, that's basically it.

18 Q All right, and when you came down here and after you sold
19 your business - what business did you have up in New Jersey?

20 A A trucking company.

21 Q All right, and what kind of work did you start out with
22 after you came down here?

23 A I bought a bar.

24 Q All right, and how long were you in the bar business?

- 1 A Two years.
- 2 Q And then what did you do after that?
- 3 A I got into the timeshare business.
- 4 Q All right, had you ever been in the timeshare business
5 before?
- 6 A No.
- 7 Q Did you know anything about the timeshare business?
- 8 A Just from one of our regular customers. That's how I got
9 educated about it.
- 10 Q You say one of your regular customers, one ---
- 11 A In the bar business.
- 12 Q Oh, I see.
- 13 A Yes, she was a manager and she kept telling me about it,
14 thought I would do good at it. So, she said, "Why don't you
15 get into it?"
- 16 Q Okay, and where did you decide to go and get a job in the
17 timeshare business?
- 18 A Bluegreen.
- 19 Q All right, and what job did you get at Bluegreen?
- 20 A A sales rep.
- 21 Q And how long were you a salesman at Bluegreen?
- 22 A About two and a half years.
- 23 Q And what years was that, those?
- 24 A That would be 2006 and 2007.

1 Q And then after Bluegreen where did you go work?

2 A I took some time off because I got laid off at Bluegreen
3 and I think when the season came back around that's when I
4 went to work for Westgate in May.

5 Q All right, and why did you decide to go to work at
6 Westgate Resorts?

7 A To be honest with you it was - there was a local watering
8 hole close to Bluegreen and of course a lot of timeshare
9 people would go in there and I would see these reps come in
10 with sneakers and Hawaiian shirts and I said, "Where do you
11 work," and they said Westgate and everybody was telling me how
12 it was a good company to work for, 10 percent, which I think
13 at Bluegreen I was only getting seven.

14 Q All right.

15 A And like the resort was on the ocean, looked like a good
16 place to go. So, I kept that in mind and then that following
17 season I just went in there and had - asked for an interview.

18 Q All right, did you have a chance to look at the newspaper
19 article?

20 A No.

21 Q That did not influence you at all?

22 A No.

23 Q All right, who did you go see when you went to the - to
24 Westgate?

1 A Von Sant, I can't think of his first name, the trainer.
 2 Q Frederick Von Sant?
 3 A Yeah, that's him.
 4 Q And was he the individual who gave you the job?
 5 A Yeah.
 6 Q And what was his position at Westgate?
 7 A He was a trainer. I believe at the time he was the
 8 interviewer, too, also.
 9 Q Now, did you go through the training course that's been
 10 talked about the last couple of days?
 11 A Yeah, uh-huh.
 12 Q And when did you finally take the floor, if you will?
 13 A The same class as Mark. I was in the - it was the May 9th
 14 class.
 15 Q All right.
 16 A And Tim he was in that class, also.
 17 Q Who was in the class with you?
 18 A Tim.
 19 Q Mr. Zinn was in that class?
 20 A Uh-huh, uh-huh.
 21 Q And so was Mark.
 22 A Yeah, that's in this room, yeah.
 23 Q All right, and were you given a contract to look at?
 24 A Yeah, there was a lot of stuff we had to sign.

1 Q Okay, Plaintiff's Eight and Nine were you given an
2 opportunity to look at and review the contract?

3 A Yeah.

4 Q All right, how much time were you given to do that?

5 A It was like a firemen's shuffle, you know, you just sort
6 of ---

7 Q Okay.

8 A --- got it, signed it and kept going.

9 Q All right, a firemen's shuffle. I'm not sure I've heard
10 that phrase before but what is that?

11 A That's just you're in and out, like the bell rings and
12 you get down the pole and you're in the truck.

13 Q Okay, kind of reminds me back going in the army when you
14 had to get a - sign all these papers; is that what you're
15 talking about?

16 A Exactly, yep.

17 Q All right.

18 A Get in where you fit in; right?

19 Q All right, so, after that you started working. How long
20 did you work at Westgate?

21 A From May until October, about the end of October.

22 Q All right, and what were you to be paid?

23 A Ten percent.

24 Q And have you had a chance to review your records and

1 determine what unpaid commissions you believe that you are due
2 from your time at Westgate?
3 A Yeah.
4 Q All right, sir, come down and write that on this board,
5 please. That's yours?
6 A Yeah.
7 Q Put your number right there.
8 A Yeah.
9 Q These others have written their number.
10 A Yeah. (Complies with request.)
11 Q Okay, all right.
12 MR. CONNELL: And Your Honor, he's written down \$3400.
13 BY MR. CONNELL:
14 Q Is that right?
15 A Uh-huh, yeah.
16 Q Now, tell me, sir, how you came up with the number \$3400?
17 A Well, to the best of my knowledge, again, because if you
18 looked at my sheet I don't know if we've used these for
19 evidence most of my business was full down.
20 Q Okay, you've got to - even though we've talked about full
21 down, I'm sure they're sick of hearing about it.
22 A Yeah.
23 Q Tell me what a full down payment is again.
24 A Basically no - it's not a pender, whatever the deal was

1 the person either gave a credit card or check or cash for the
 2 full down payment.

3 Q All right.

4 A And from what I can determine the best, this is the best
 5 I can do there was three deals at the end that weren't full
 6 down and what they were - what they - what they came up to be
 7 was one was 10,000. So, that would have been a thousand. One
 8 was 14,000, which would have been 1400 and the last one was, I
 9 believe, 5,000. So, that would be 500. So, it was, you know,
 10 that's how I came up with that figure.

11 Q Okay, all right, are we missing any?

12 A Well, actually, no, actually, you know what, I was
 13 looking at - actually I hurt myself. One was a \$10,000 deal.

14 Q Okay.

15 A It was, it was - if you look at my sheet there's yes,
 16 Y's, I believe are for yes.

17 Q Okay.

18 A N's are for no. So, there was a \$10,000 deal. There was
 19 another \$10,000 deal and there was a \$14,000 deal. I'm sorry.
 20 The \$5,000 deal was a full down.

21 Q Okay, that's how you get the ---

22 A Okay, so, that's ---

23 Q --- \$3400?

24 A --- so, that's a little bit more actually. It'd be 3400,

1 yeah, 34 and change. That's exactly it, yep, that's it.

2 Q Okay, now, what steps have you taken or did you take to

3 ask about this, about these unpaid commissions?

4 A Like everybody else I called, they told me to, you know,

5 once I went into the office they said call Connie and she'll

6 get that squared up for you.

7 Q Did you ever speak to her?

8 A Spoke to her one time.

9 Q All right, were you required to write her a letter?

10 A You know, I can't remember. This was 2008.

11 Q All right, I understand.

12 A You know, I wrote it off of my mind.

13 Q I understand, and what did, what did she tell you when

14 you called her in 2008?

15 A Okay, I know we're not talking about ---

16 Q You can tell me what she said.

17 A Okay, basically we had to wait for the six timely

18 payments.

19 Q Okay.

20 A And then once they got through the six timely payments if

21 they did the right thing she would forward the money.

22 Q Okay, now, if you had been employed there would that have

23 been required?

24 A Well, if you're employed you're sort of there, you're in

1 their face everyday.

2 Q Okay.

3 A So, you kind of could keep a track on what you're doing

4 and, you know, you're an employee.

5 Q All right, now, were you reduced from 10 to seven

6 percent?

7 A No, when I, when I - they let me go I was still at 10

8 percent.

9 Q Okay, what other complaints did you make to any other

10 Westgate officials, managers or that type about your pay?

11 A To be honest with you back then when I was working there

12 I really didn't have any complaints.

13 Q Okay.

14 A I was - everything was going good, you know.

15 Q What about this money, the 3400?

16 A Well, again, you know, once I found out that it was

17 Florida there was no reason to go back to the resort and

18 that's who I just kept dealing with her. I went, wait,

19 watching, you know, not waiting and watching but figured it

20 would come in the mail, thought, you know, thought you were

21 dealing with a reputable company. That's all.

22 Q Were you paid within 30 days of separation?

23 A No.

24 Q Were you given any advance notice of any changes in your

1 employment contract?

2 A No, because when I was there like I had said from what -
3 again what I assume, and so, it's not, I don't know if you can
4 document it, but when things starting getting slow is when
5 they reduced the reps. When I was there it was still in the
6 season basically.

7 Q All right.

8 A Just coming out of the season October, September, you
9 know, it's sort of the end of it.

10 Q So, in October the reps are historically reduced; is that
11 what happens?

12 A Well, that's what they told me. You know, I mean, I'm
13 looking at my sheet, my percentage rate wasn't that bad. I
14 had a lot of good business. I think my net VPG was 2000,
15 which isn't bad. My close, net closing was 15 percent. They
16 kind of told us in the beginning to stick around, you have to
17 maintain like a 20, 25 percent average. So, what happened
18 was, you know, I got along good with everybody and they called
19 me in and basically, you know, give you the sit down and we're
20 going to tell you some bad news and we'll see you later.

21 Q All right, okay, when did you first learn about the
22 chargebacks?

23 A You know, to be honest with you unlike what Mark had said
24 I was pretty new to the business. I had worked for Bluegreen

1 and Westgate. So, Bluegreen they had the same kind of a deal.
2 What happened was they kept a reserve, okay, and it was \$3500.
3 So, with that company as long as you were selling, everything
4 was cool. What happens when they let me go, well, then, of
5 course, you had those six timely payments. So, in that case
6 with that company I called up that person that was, you know,
7 comparable to Connie Sharp and what she did was when I, when I
8 got - I think my last check there was 75 - 1700. as opposed to
9 3500. So, I called her up. I said, "How come I only got
10 1700?" She sent me a letter showing me ---

1 MR. WILKERSON: Objection, are we talking about
2 another employer?
3 A We're just on the same, well ---
4 THE COURT: Yeah, that was my understanding.
5 MR. WILKERSON: Yeah, objection.
6 THE COURT: All right, sustained.
7 Q All right.
8 A Well, basically all it was was from what I understood it
9 supposed to go into your reserve account. Okay, now, after
10 payments are made in a timely fashion you're supposed to get
11 back the money that's owed to you.
12 Q Was the whole commission to go into reserve or 10
13 percent?
14 A It's supposed to be 10 percent of what you get. So, if
15 you had a \$3,000 check you get \$300 put into your reserve
16 account.
17 Q I see, okay. No further questions. Thank you, sir.
18 A Uh-huh.
19 THE COURT: Cross examination.
20 CROSS EXAMINATION
21 BY MR. WILKERSON:
22 Q But you were aware, sir, that after you were terminated
23 all of your commissions went into the reserve account?
24 A Well, you know what, was I aware of it? Now you - now I

1 say to you that was hearsay.

2 MR. CONNELL: Objection, Your Honor, objection, Your
3 Honor, the contract doesn't say that either.

4 A Yeah, that's hearsay.

5 THE COURT: He can ask the question. Cross
6 examination. Overruled.

7 MR. CONNELL: Okay, all right, thank you.

8 A Yeah, I, I was never - again, that's what you - that -
9 the scuttlebutt around the water cooler was that if, in fact,
10 you got let go, well, then, forget about the money you're
11 owed. That was, no, that's what I - that was hearsay but it
12 seemed to be true.

13 Q It was all in the reserve account, all, all were
14 transferred to the reserve; correct?

15 A Again, I don't know. I don't know. You know, you're
16 saying I signed that. So, you're telling me that's what it
17 is?

18 Q No, I'm going to get to that in a minute.

19 A Oh, okay.

20 Q That's my next question.

21 A Okay.

22 Q I was hoping to get an answer to this one first.

23 A Well, like I said, you know, nobody ever tells you the
24 bad news. They always tell you the good news. So, nobody

1 ever told me that.

2 Q Okay, now, that's your signature?

3 A Yes, yes, it is.

4 Q Okay, that's on Exhibit 33?

5 A Uh-huh.

6 Q And Exhibit 34, is that your signature on the last

7 page?

8 A I'm sure it is. It's here; right?

9 Q Well, I got it wrong last time.

10 A Yeah, that's me. That's me.

11 Q Okay, that's you, okay. Now, you've identified three

12 transactions, but you didn't, you didn't give me the stuff I

13 need and that is the names of the customers. Can you do that

14 for me?

15 A Yes, sir, okay. You're going to go ---

16 Q Two 10,000 deals and a 14,000 deal; is that

17 right?

18 A Yes, uh-huh, and I'll give you the date, too. It was 8-

19 14, Michael C-H-O-U-N, Choun, Choun.

20 Q C-H-O-U-N?

21 A Yes, sir.

22 Q All right, sir.

23 A Okay, next one was 8-18. It was Tim N-A-K-A-T-S-U, you

24 can translate that one, and then we had on 8-30, 2008, we had

1 Keisha Watson.

2 Q And those are the three deals you claim you're entitled
3 to be paid on?

4 A Yeah.

5 Q And you would agree with me that unless the full down
6 payment was made you wouldn't be entitled to any commission;
7 right?

8 A In time I would be, once - if, if they made their six
9 timely payments.

10 Q Well, you recognize that if a full down payment was not
11 made you're never entitled to any commission; right?

12 A No, I didn't, the first time I'm hearing that from you,
13 but I know you're saying I signed, but they didn't tell me
14 that.

15 Q That's what the contract says; isn't it?

16 A That was that fireman shuffle thing I was telling you
17 about.

18 Q Fireman shuffle thing?

19 A Yeah, just, "Here, sign, sign, sign. You got a job.
20 Welcome to Westgate. You're privileged to be here," yep,
21 because again, when you work for a company you don't want to
22 think that they're going to - what's the right word to use
23 here, bend you over, maybe?

24 Q All right, sir.

1 A I mean to sign all, to read every document that they had
2 you sign it would take us another week just to get through
3 that and probably have to go to a gentleman like yourself to
4 make sure that we're signing the right thing. So, I think
5 that's called fine print.

6 Q Well, let's talk about the fine print.

7 A Yeah, let's do that.

8 Q The first page of the document?

9 A Okay.

10 Q Okay?

11 A Yes, sir.

12 Q The same size print as everything else; right?

13 A Yeah.

14 Q Okay, paragraph II, commission based on unit week sold;
15 correct?

16 A Yeah.

17 Q And, I mean, we can read this entire thing but I think we
18 just need to get to the, get to the meat of it.

19 A Uh-huh.

20 Q I'll let you read the whole thing if you'd like.

21 A No, that's good.

22 Q "While in training in addition to base compensation
23 described in 1(B) above," and that's your minimum wage; right?

24 A Yeah.

1 Q Okay, "Employee shall receive a commission in connection
2 with its rendition of service for each sale of a one bedroom,
3 two bedroom, three bedroom or four bedroom unit or half week,
4 accompanied by a 10 percent minimum down payment." See where
5 it says you get a commission you get a commission on anything

1 that's accompanied by a 10 percent minimum down payment; is
2 that what that says?

3 A That's what it says, but - yeah, let's leave it at that.
4 Go ahead.

5 Q All right, sir. No further questions, thank you.

6 THE COURT: All right, redirect?

7 MR. CONNELL: Just a couple. Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. CONNELL:

10 Q Were you told in training there would be no chargebacks?

11 A I believe I was told that at the interview.

12 Q Okay, can you tell me where in the contract it says that
13 they get to put all your commission in the reserve account?

14 A I can't tell you that because I, I don't remember reading
15 it to be honest with you. I wasn't told that. Let's put it
16 that way, verbally, from the trainer.

17 Q All right, and the six timely payments only applies to
18 the reserve account?

19 A Six timely payments I believe what that falls under is
20 the whole contract.

21 Q Okay.

22 A In other words if they don't make their six timely
23 payments then it would go into default, and then of course,
24 that would be like a repossession, all the nonsense of

1 getting, trying to get their money. The company would be
2 getting their money.

3 Q All right, come down, please, sir.

4 THE COURT: All right, call your next witness.

5 MR. CONNELL: That's it, Your Honor, the Plaintiffs
6 rest.

7 THE COURT: All right. All right, ladies and
8 gentlemen, the Plaintiff has presented their case and now is
9 the time of the trial where I need to take up some matter of
10 laws, matters of law with the attorneys. As I told you before
11 it's not that we're hiding anything from you. It's just that
12 when we discuss these legal issues or these matters of law it
13 often requires me as the judge and the attorneys to discuss
14 factual matters. Well, what we say in discussing these legal
15 matters is not evidence; and so, we don't want you to be
16 influenced by anything that the attorneys might say in making
17 their argument or that I might say in response to their
18 argument; and so, that's why we excuse you out while we decide
19 some of these legal issues, but it'll give you a little break,
20 opportunity to stretch your legs, returns any calls. Don't
21 talk about this case. Don't conduct any independent
22 investigations. Leave your pads in the jury box and we'll
23 bring you back in in just a minute. Thank you very much.

24 MR. WILKERSON: Your Honor, before they're excused

1 could we, could we approach?

2 THE COURT: Yes, sir.

1 MR. WILKERSON: Thank you.

2 THE COURT: Hold for a second.

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

5 THE COURT: All right, ladies and gentlemen, the
6 attorneys have advised me that this is a good time for us to
7 go ahead and break for the day, that we do have some legal
8 matters that I need to take up with the attorneys, plus the
9 Defense, they've got to set up and things before we can
10 actually get into the defense of this case; and so, given that
11 it's 3:15, rather than giving you a long break and then
12 bringing you back for a short period of time we're going to go
13 ahead and excuse you for the remainder of the day, but let's -
14 I think I will go ahead and bring them back at 9 o'clock
15 tomorrow morning. I'll try to take the bench at 9:15; okay?

16 MR. WILKERSON: Thank you, Your Honor.

17 THE COURT: Since we're breaking a little early today
18 please be back in the jury room tomorrow morning at 9 o'clock.
19 We'll try to get started a little bit earlier today [sic]
20 since I'm letting you go a little early this afternoon. Leave
21 your pads in the jury box. I hope you have a good afternoon.
22 Do not discuss the case. Don't conduct any independent
23 investigations. Everybody get a good rest and we'll see you
24 tomorrow morning at 9 o'clock. Thank you very much.

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right, anything from the Plaintiff
4 before we break for the evening?

5 MR. CANTY: No, Your Honor.

6 THE COURT: All right, anything from the Defense?

7 MR. WILKERSON: Yes, Your Honor.

8 THE COURT: All right, let me hear from you.

9 MR. CANTY: Your Honor, if we're going to go into
10 directed verdict arguments might I have one minute to ---

11 THE COURT: Okay.

12 MR. CANTY: Thank you so much.

13 THE COURT: All right, let's give him one second.

14 MR. WILKERSON: I need to exercise that same one-
15 minute prerogative. Your Honor, thank you.

16 THE COURT: That'll be fine. That'll be fine.

17 MR. WILKERSON: Thank you, Your Honor.

18 MR. CONNELL: Your Honor, Mr. Ryba did not testify and
19 his case is out, just so you're ---

20 THE COURT: Mr.?

21 MR. CONNELL: Gerald Ryba did not testify. He's off,
22 and as I said Mark - Michael Zanardo he's out. Matthew Reed
23 did not testify. I think I've mentioned that earlier.

24 THE COURT: So, he's voluntarily dismissed?

1 MR. CONNELL: Yes, sir.

2 THE COURT: All right, and I think I've gotten Mr.

3 Haynes I can't remember if he ---

4 MR. CANTY: He should.

5 MR. CONNELL: He testified; didn't he?

6 THE COURT: He testified.

7 MS. MAYSONET: Yeah.

8 MR. CONNELL: Okay, just had so many I'm getting - are

9 missing any that we haven't?

10 MR. EPSTEIN: Yeah, Whitney Knox.

11 MR. CONNELL: Whitney Knox I think I had indicated

12 before, Your Honor, that we would dismiss her. She did not

13 testify.

14 THE COURT: All right.

15 MR. EPSTEIN: Joe Maranville.

16 MR. CONNELL: Joe Maranville I had told the Court I

17 think before that he was in Texas and would not be appearing.

18 MR. EPSTEIN: Right, well, I mean, he's still a party

19 until such time as he's been dismissed.

20 THE COURT: Okay, I've got voluntarily dismissed,

21 Jimmy Kelly, Whitney Renee Knox, Joe Maranville, Matthew Reed,

22 Gerald Ryba, Stratton Vitikos and Michael Zanardo.

23 MR. CONNELL: Yes, sir.

24 MR. EPSTEIN: Yes, sir, that's correct.

1 THE COURT: Any others?

2 MR. EPSTEIN: Are these with or without prejudice?

3 We're here for trial. I think this - this ought to be a with

4 prejudice for failure to prosecute, adjudicate.

5 THE COURT: Yeah, I think, yeah.

6 MR. CONNELL: We're not, we're not, we're not going to

7 bring it back.

8 THE COURT: Okay, all right, so, that'll be a

9 voluntary dismissal with prejudice. We still waiting on Mr.

10 Canty?

11 MR. CONNELL: I don't know what's happened to him.

12 MR. CANTY: Thank you, Your Honor.

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

14 MR. EPSTEIN: Your Honor, thank you.

15 On behalf of the Defendant, CFI Sales and Marketing

16 Limited, we make a motion for a directed verdict and 'voluntary

17 dismissal as to all or substantial portions of the respective

18 claims brought and asserted by these Plaintiffs. The first

19 question I think we need to ask ourselves is what precisely is

20 this case actually about.

21 THE COURT: Well, no, the - I understand what the case

22 is about, but the question is is has there been any evidence

23 presented which a - can be - upon which a jury can base a

24 verdict or based upon the Plaintiff's evidence is the

1 Defendant entitled to judgment as a matter of law.

2 MR. EPSTEIN: With respect to the claims that have
3 actually been asserted in the complaint and that's where I was
4 going to connect that question and that is the answer to the
5 question is we need to look at the complaint and see what has
6 actually been alleged here, which is actually actionable based
7 upon the complaint because what this trial has involved is
8 approximately 19 people testifying broadly about essentially
9 that Westgate and CFI Sales and Marketing Ltd. are bad dudes,
10 but without trying to tie much of that denigrating testimony
11 to the claims that are actually contained in this complaint.
12 So, let me just briefly, you know, look at this.

13 There's five claims in the complaint. There's a claim
14 for an accounting. There - that's count one. Count two is a
15 claim for a declaratory judgment. Count three is a claim for
16 unpaid wages, the statutory claim for unpaid wages. Count
17 four is a claim for breach of contract accompanied by
18 fraudulent act, and count five is a breach, is just a simple
19 breach of contract claim.

20 Let's start at the beginning with the count one, an
21 accounting. There's been no evidence presented by the
22 Plaintiffs in this case that would require this Court to
23 engage in the equitable process of conducting an accounting.
24 There are prerequisites to that and we've outlined that and

1 the Court is fully aware of that. This is simply not an
2 accounting case. It's a breach of contract case. I mean
3 there isn't a legitimate claim for an accounting here. The
4 Court is not going to be asked upon to render an accounting.
5 This jury is not going to be asked to render an accounting.
6 They're not looking, you know, at a business transaction.

7 MR. CONNELL: We'll withdraw that cause of action, save
8 you some time, Your Honor.

9 MR. EPSTEIN: Okay.

10 THE COURT: All right.

11 MR. CONNELL: Make it easy.

12 THE COURT: Accounting cause of action is withdrawn.

13 MR. EPSTEIN: Now, the declaratory judgment claim, you
14 know, is sort of representative of what the essence of the
15 problem is. In this claim they make the broad allegation,
16 "Defendants' practices with regard to notice to employees
17 required by," and I'll just shorten it, "41-30 - 41-10-30(A)
18 do not comply with the statute. Defendants' practices with
19 regard to notice to employees of gross pay and itemized
20 deductions do not comply with the statutes. Defendants'
21 practices with regard to withholding and diverting portions of
22 Plaintiffs' wages do not comply with the statute. Defendants'
23 practices with regard to time and place of payment do not
24 comply. Defendants' practices with regard to payment of wages

1 to discharge do not, discharge employees do not comply, and
2 that we've, that Defendant failed and refused to timely pay
3 wages due within the meaning of the statute, 40-10-80(C)."
4 Now, the essence of the claim is very simple. Each of these
5 Plaintiffs has testified to the extent that we've been able to
6 elicit it as to discreet transactions in which they claim they
7 have earned a commission and that commission has not been
8 paid. So, it's really as simple as that, but we have heard
9 testimony about the so-called, alleged business practices
10 involving say, for instance, the execution of all of the
11 documents upon which the Plaintiffs, in fact, base their case,
12 something akin to some sort of a duress or fraud or unfair
13 practices claim which would ostensibly result in rescission,
14 but there's no claim for rescission. There's no claim at
15 all for any relief regarding at least half of the testimony
16 that we've heard in this case that is attempting to portray
17 the Defendant as having done something that violates the law.
18 In fact, none of these statutes would require that the
19 employer provide a specific period of time to an employee to
20 read over a series of contract documents that they're being
21 asked to sign. There's nothing in the common law of the State
22 of South Carolina that requires that. What it does say,
23 obviously, is that potentially in a contract of adhesion one
24 could argue that the contract is not enforceable as it's

1 unconscionable, you know, or the like, but they're not doing
2 that. They're, they're not saying the contract's
3 unenforceable because they're relying on the contract or else
4 they have no cause of action because they have no other basis
5 to claim a commission without these very same contracts that
6 they're portraying as having been signed under conditions of
7 duress or the like or that they haven't read it or that they
8 didn't have time to read it. The point, I guess, is that
9 because they didn't read it, because they didn't have time to
10 read it, because they weren't given the contract, a copy of it
11 at the time they signed it but later that somehow they
12 shouldn't be held responsible to comply with provisions of the
13 contract, wait, wait a second, not all provisions of the
14 contract because some provisions of the contract they have to
15 claim compliance with because it's the one that allows for
16 them to actually recover a commission here. It's but for that
17 contract they have no right to a commission. They have a
18 right to minimum wage, which they've already been paid. They
19 all essentially testified that they've been paid minimum wage
20 already. So, but for the contract they have no contract, they
21 have no claim for breach of contract or for that matter for
22 violation of the wage statute because they've been paid all
23 the wages that they would be entitled to but for the contract.
24 So, what is the purpose of all of that testimony? What is, in

1 essence, the argument that they're making, the claim that
2 they're making? The claim they're making and what's
3 ultimately going to be the subject matter of the declaratory
4 judgment is that they should not be responsible to comply with
5 those provisions of a contract that they didn't read that they
6 don't like, but that they should be able to enforce those
7 portions of a contract that they didn't read that they do
8 like, all in retrospect, and they, that they cannot do. So,
9 in the declaratory judgment claim I think what we're - what we
10 suggest you have to do is essentially at this point reject the
11 declaratory judgment claim. They can't pick and choose
12 whether this contract is enforceable or not enforceable as
13 they may wish depending upon what day it is, what time of day
14 it is, what constellation the moon is or in anything like
15 that. They either accept the contract in its entirety,
16 whether they read it or not, whether they had time to read it
17 before they signed it or not because they're relying on it or
18 they reject the contract in entirety and that's what the
19 declaratory judgment claim has got to be. If the contract is
20 valid then it's valid and the declaratory judgment ought to be
21 denied. If the contract violates some principle of South
22 Carolina law then the entire contract is gone and so are all
23 the rest of their claims because they have no basis to claim
24 commissions without the contract. So, we would ask you to

1 enter a directed verdict on the declaratory judgment claim
2 because they simply can't have it both ways. Either they want
3 the contract or they don't want the contract and they can't
4 have both.

5 THE COURT: All right.

6 MR. EPSTEIN: Now, let me also point out and I'm
7 anticipating what the argument is going to be. There are two
8 provisions of the contract that they don't like. They don't
9 like the provision dealing with chargebacks post-employment
10 and they don't like the provision dealing with the reserve.
11 Well, you know, for all the reasons I just said they shouldn't
12 be able to pick and choose, but more importantly you've
13 already granted summary judgment on that issue, that that
14 issue simply is not part of this case, that the, that the
15 legality, sufficiency, enforceability of those provisions that
16 deal with the reserve is not before this Court in this case in
17 this trial. So, if the purpose of the declaratory judgment is
18 to cherry pick out those two provisions, the only ones that
19 anybody has really ever talked about, that they don't like,
20 then you can't do it because you've already said you can't do
21 it. You've already told the jury essentially that you're not
22 going to do it and they're not going to do it. So, there's no
23 relief that can be granted legally here because that relief is
24 already adjudicated in the final judgment that was entered in

1 the Parker case, and one other thing that you might hear and
2 that is the notice issue. One of the litany of statutes
3 that's cited to is the notice issue. The notice would relate,
4 as best as I can figure here, only to changes in the
5 commission rate. Now, assume for purposes of this discussion
6 that they're right, that commissions were changed and there is
7 a provision in the commission schedule that does afford CFI
8 Sales and Marketing the absolute right to modify or change the
9 commission structure upon notice. What it doesn't provide for
10 is the seven day notice that South Carolina law requires.
11 Each one of them testified that they were told that the
12 commission rate was changing and that would comply with the
13 contract. So, it is a fair question, I suppose, to ask does
14 that contractual provision as implemented, which everyone said
15 it was implemented with notice, they were all told, does that
16 comply with South Carolina Payment of Wages statutes. Assume
17 for the moment that it does not because that's what your
18 obligation is on a motion for directed verdict. Where does
19 that get us? What is the Court going to do? Okay, the Court
20 can potentially declare that any changes in the commission
21 rates that were not preceded by proper notice are invalid.
22 Then what do we do? What remedy does the statute provide?
23 The statute provides that the wages that were adjusted because
24 of that change that was not subject to prior notice would

1 ostensibly be recouped. We have no evidence of that, none,
2 nothing, not a single witness testified that, "Here are each
3 contract that, here's the commission that I was paid, here's
4 what the commission ought to have been but for the improper
5 notice and here's what I am owed," not a single one of them
6 testified to anything like that. All we've got in this record
7 literally other than maybe Ms. Singleton is a series of people
8 saying, "I wrote this deal. I wrote this deal. I wrote this
9 deal. Here's the commission I was owed and I didn't get it,"
10 and these are almost to the one, to the each one deals that
11 were written at the very tail end of their employment so that
12 the conditions to them earning those commissions had not yet
13 occurred at the time of the termination. So, to the extent
14 that you're going to hear an argument that this failure to
15 provide notice gives rise to a violation, okay, maybe it does,
16 but that still imposes a burden on the Plaintiff by the
17 preponderance of some evidence to prove what the impact of
18 that was. Absent that evidence that even if there is a
19 technical violation of the statute we're entitled to directed
20 verdict because there's no evidence upon which the Court or
21 the jury could award any relief because the relief is unpaid
22 wages, plus in the Court's discretion treble damages, treble
23 those unpaid wages. Treble what? There's nothing there to
24 treble. So, we have a complete and utter failure of proof

1 with respect to that issue.

2 Now, the other three claims can be talked about I think
3 pretty much in the same breath. They all derive from the
4 contract, the unpaid wages that would be due under the
5 statute; whether they'd be due within seven days or the next
6 pay period after termination of employment. Those wages under
7 the statute, just like those commissions, i.e. wages, under
8 the contract are only payable when they are earned. In fact,
9 the statute under 41-10-80, sub C, "In case of any failure to
10 pay wages due to an employer, employee rather as required by
11 Section 41-10-40 or 41-10-50 the employee may receive in a
12 civil action an amount equal to three times the full amount of
13 the unpaid wages plus costs and attorney's fees."

14 Okay, then we go back to 41-10-40 and 50. 41-10-40 deals
15 with medium of payment, you know, time and place of payment
16 which in theory we don't really have here because 41-10-50
17 really is the one that applies. It's entitled payment of
18 wages due discharged employees. "When an employer separates
19 an employee from the payroll for any reason the employer shall
20 pay all wages due to the employee within 48 hours of the time
21 of separation or the next regular payday which shall not
22 exceed 30 days." So, 41-10-50 uses the terminology wages due
23 to the employee as does 41-10-80, so, wages due, wages due can
24 only in the common vernacular using a commonsense definition

1 mean wages that have actually been earned. So, we turn to the
2 contract and the Court has noticed a pattern in the inquiry
3 that we've made of each of the Plaintiffs and that is that
4 there are two conditions precedent to their entitlement, the
5 Plaintiffs' entitlement to payment of these wages, the making
6 of a 10 percent down payment by the buyer and that rescission,
7 statutory rescission right was not exercised. There is a very
8 simple rule of law that relates to what the prima facie case
9 is under a contract, a breach of contract claim. We have a
10 couple of cases which if I may I'll provide to the Court and
11 to counsel. This is for the Court.

12 MS. MAYSONET: May I approach, sir?

13 THE COURT: Yes.

14 MR. EPSTEIN: To counsel.

15 THE COURT: Thank you.

16 MR. EPSTEIN: We have the Huffines Company, H-U-F-F-I-N-
17 E-S, Company v. Lockhart, L-O-C-K-H-A-R-T, cited at 617 S.E.2d
18 125, a Court of Appeals decision from 2005, and the second
19 decision is Champion, C-H-A-M-P-I-O-N, v. Whaley, W-H-A-L-E-Y,
20 cited at 311 S.E.2d 404, also Court of Appeals decision from
21 1984. Both of these cases deal with a broker seeking the
22 payment of a commission, which is very, very, very comparable,
23 if not identical from a legal standpoint to what we're dealing
24 with here. There are conditions precedent that the South

1 Carolina law, you know, procuring cause law has developed.
2 Here ours are set by contract. This is more or less set by
3 law or by contract. In the Huffines Company case at the
4 seventh page of the decision it has the rule of law that is
5 applicable here. This is the seventh page of the slip to
6 where - you just had right on the middle of the left-hand
7 column, "A broker ordinarily has the burden of proving that
8 any conditions precedent to the duty of the seller to pay have
9 been fulfilled." That's the standard, prima facie case that a
10 broker is obligated, a Plaintiff in this case is obligated to
11 sustain. The Champion case amplifies a bit on that. On the
12 second page of the opinion, left-hand column about two-thirds
13 of the way down, "A Plaintiff suing on a conditional contract
14 has the burden of proving that all conditions precedent to his
15 right of performance have occurred." Then skipping the
16 citations, "Thus a broker who sues for his commission
17 ordinarily has the burden of proving that any conditions
18 precedent to the duty of the seller to pay have been
19 fulfilled." Now, it is important to note that Champion is an
20 involuntary non-suit or a directed verdict case. So, it is
21 dealing precisely with the issue that is before the Court.

22 In this case the Plaintiffs who brought this action
23 knowing what was in the contract that they were suing upon had
24 the affirmative obligation to bring forth to this Court with

1 respect to every one of those transactions that each of these
2 Plaintiffs identified albeit mostly under cross examination
3 that two conditions had been satisfied, one, that the 10
4 percent down payment had been fully made. I remember one,
5 basically only one contract, Mr. Oxentine on the very first
6 day with that \$5700 down payment which was, in fact, a trade
7 in but nonetheless it satisfied the condition. Each one of
8 the other Plaintiffs to a person has basically testified they
9 don't have that information, they don't have that knowledge,
10 they don't have that proof. Do they have the proof of whether
11 there was a statutory cancellation? Not a single one of them
12 literally has testified in any competent way that there was a
13 satisfaction of that particular condition precedent. So, the
14 fact of the matter is as of right now we do not know whether
15 any of these transactions other than perhaps that one from Mr.
16 Oxentine which at least we know there was a down payment. We
17 don't know about whether the statutory right of rescission was
18 exercised, but of the hundred or so transactions that have
19 been testified to here does the Court recall one witness
20 testifying that, "I can say as a matter of absolute fact based
21 upon either the documents that are present before this Court
22 or otherwise that the entire 10 percent down payment was
23 made?" I don't remember a witness that said that. I will say
24 that your recollection of that is certainly better than mine,

1 but we know that virtually none of these witnesses were able
2 to speak competently on that issue. They endeavored, you
3 know, to bring in hearsay, bring in antidotal evidence, bring
4 in rumors, bring in innuendo regarding those issues, but no
5 facts, no evidence, nothing that this jury, nothing that would
6 support a jury verdict on the satisfaction of that condition
7 precedent. Likewise, there's been no testimony and in fact
8 there couldn't even be this kind of testimony antidotally
9 because these, this is something that is uniquely within the
10 possession of CFI Sales and Marketing Ltd. regarding whether
11 any of these buyers exercised the right of rescission, and
12 candidly, Your Honor, the reason why none of that evidence is
13 before this Court is because the Plaintiffs never asked. As
14 we pointed out, I mean, I don't want to make too big a point
15 of this, but the Plaintiffs did no discovery in this case.
16 They never asked those questions that prompted Mr. Zinn, you
17 know, to make the comment that he made. None of those
18 questions were ever asked of CFI Sales and Marketing and it
19 is, you know, irritating to say the least to hear from witness
20 to witness to witness that Westgate, that CFI Sales and
21 Marketing is being lambasted for not providing the information
22 that they need to be able to answer the questions that Ms.
23 Maysonet or Mr. Wilkerson asked of them when, in fact, they
24 never asked. They didn't ask any questions. They didn't seek

1 any documents and the only excuse for the Plaintiffs not being
2 able to prove these two elements of their case is that they
3 never sought to get the evidence that certainly does exist in
4 order to be able to prove those elements of the case and the
5 mere fact that, you know, it seems maybe they're sympathetic
6 does not excuse their obligation to actually prove these two
7 elements of their case.

8 Now, the other part, you know, of, of these three claims
9 that I think bears discussion right now is the claim for
10 breach of contract accompanied by a fraudulent act. Have we
11 heard any clear and convincing evidence that would support a
12 jury finding of fraud? We have a contract. They're basing
13 their claims on a contract, notwithstanding that we heard
14 endlessly what they were told or not told in training, what
15 they read or didn't read in a, in a want ad, what they saw or
16 didn't see in a little magazine or flyer, whether they read or
17 didn't read their contract. None of that is relevant to the
18 only issue, the only real claim in this case. Even if the
19 entire relationship that each of these people had with CFI
20 Sales and Marketing was overwhelmingly permeated by fraud,
21 there is no claim for that. Even if every one of these people
22 as we've heard repeatedly was unfairly and precipitously
23 terminated from work, notwithstanding their superlative VPGs
24 and the fact that they were the employee of the month, year,

1 decade or century, yet they were still fired unfairly, one has
2 to question why are we hearing all that if, in fact, the
3 justification is we have to establish the date of termination.
4 Well, it seems to me candidly, Your Honor, you could ask one
5 question, what was your last day of work, but we didn't hear
6 that question. We heard, "Tell me why you were terminated."
7 What was the point to that? To bring out things that they
8 were supposedly told that may not have been true. Why?
9 Because that ostensibly is the fraud and that, I think, is
10 what you're going to hear. It's clear that Westgate defrauded
11 these people from day one, from before day one because the
12 want ad was a lie, too, but who cares? There's no claim for
13 fraud in inducement to a contract of employment. They're not
14 seeking rescission. There's no claim for improper
15 termination, not a single one of them is making a claim for
16 improper termination. If those were claims that were
17 legitimate on these facts they should have brought it. They
18 didn't and we oppose any amendments, you know, to, to conform
19 to the evidence because we've objected to this evidence
20 repeatedly. So, the only fraud that is actionable would be
21 that with respect to the non-payment of the specific
22 commissions that are related to the contract and they've not
23 shown anything that would support clear and convincing
24 evidence that the jury could rely upon to prove fraud in

1 connection with the breach of a contract. So, we would ask
2 specifically for a directed verdict on count four of the
3 complaint, which is the breach of contract accompanied by
4 fraud.

5 What, I'm trying to make this short and focused because
6 there's plenty I think, I think you can appreciate that I
7 could say about things that have been elicited from witnesses
8 in this case, but the case that has been pleaded here in this,
9 in this complaint is a very simple, straightforward linear
10 non-payment of wages claim. Regrettably that's not the case
11 that has actually been litigated here, and this is the time,
12 Your Honor, to hold the Plaintiffs to prove the claims that
13 were actually asserted in this case, those were unpaid wages,
14 and look at the only evidence that has been submitted
15 supporting those claims, those various specific purchasers
16 ostensibly generating a commission but absent any evidence
17 that given the two conditions precedent that using the
18 contractual language those commissions have been earned, using
19 the statutory language those commissions are due. Absent
20 evidence that the conditions precedent have been satisfied,
21 there's no breach of contract and there's no statutory
22 violation for non-payment of wages. So, we'd ask for a
23 directed verdict on count two, the declaratory judgment
24 action, because they simply have not provided any evidence

1 that would support a declaratory judgment for the violation of
2 any state, any statute other than the potential non-payment of
3 wages, but counts two, counts three, four and five dealing
4 with those non-payment of wages they failed to prove that the
5 conditions precedent have been satisfied that would make the
6 wages due or earned depending upon the respective statutory or
7 contractual language. Therefore, those two have to be looked
8 at together, you link them together. If the failure of proof
9 on the non-payment of wages dooms those three contract and
10 payment of wages claims then it must doom as well the
11 declaratory judgment claim. So, with that, Your Honor, we ask
12 the Court to enter a directed verdict in favor of the
13 Defendant, judgment for the Defendant and then we'll deal with
14 whatever the consequences of that may be.

15 THE COURT: All right, Mr. Connell or Mr. Canty.

16 MR. CANTY: May it please the Court, Your Honor, I
17 think my friend is a bit premature in his directed verdict
18 motion. I think what he seeks is an involuntary non-suit with
19 prejudice in light of the fact that no defense evidence has
20 been presented, and further, under the law all presumptions,
21 all inferences are drawn in favor of the Plaintiffs in the
22 case of a motion for an involuntary non-suit.

23 This contract has never been tested under South Carolina
24 law. I think it's repugnant on its face to the Payment of

1 Wages Act in a number of respects, specifically the chargeback
2 scheme. My friend has pointed out that there is no
3 requirement that an employee be given a specific time to read
4 the contract and I think there's abundant evidence as to the
5 technique that was used by the Defendant to obtain the
6 signatures to these contracts, and we have law in South
7 Carolina that says courts do not favor forfeitures, and in
8 cases of doubtful construction, refuse to permit a forfeiture,
9 and what the Defense argues is that these employees have
10 forfeited these commissions by virtue of the chargeback scheme
11 after advertising in the newspaper that there would be no
12 chargebacks, after telling them in training that there would
13 be no chargebacks, and then submitting a stack of documents
14 for them to endorse, including a provision that says, "Oh, by
15 the way, there are chargebacks," and it's found on page two of
16 this three-page contract, and there are a number of cases that
17 deal precisely with this conduct. There's one from the Sixth
18 Circuit, Walker versus Ryan's Family Steak Houses. That's 400
19 F.3d 370, 2005 opinion and the facts in that case were as
20 follows: "Plaintiff cites several examples of applicants who
21 were hired on the spot after a 15 to 20-minute interview
22 during which the hiring manager hurriedly presented them with
23 various documents that they were instructed to sign in order
24 to be considered for a job. The manager rarely explained the

1 nature of the arbitration agreement to the applicants," and in
2 this - this case is about an arbitration clause, not the
3 entire contract, just the arbitration clause, "nor were the
4 applicants given the opportunity to take home and review any
5 of the forms before signing or provided with copies of the
6 executed arbitration agreement or rules," and in this instance
7 not only was it affirmatively represented there were no
8 chargebacks in the newspaper to get them in the door, during
9 training it was affirmatively represented that there were no
10 chargebacks. Precisely this sort of technique was used in
11 order to induce the signatures to the contract, and the Court
12 went on in the Walker case to say, "When managers presented
13 the application packet they would simply tell the applicants
14 if they wanted a job sign these documents here and additional
15 evidence suggested on those occasions when Ryan's managers
16 would discuss the agreement they would provide misleading
17 information." Plainly there was misleading information
18 provided in this case.

19 The chargeback scheme violates public policy and there
20 are - I have cited a number of cases starting with the
21 enactment of the original Payment of Wages Act in 1899,
22 Trammel v. Victory Manufacturing [spelled phonetically], in
23 1915, Cato versus Grendel Cotton Mills, 1925, Kimbrell versus
24 Jolog Sportswear, 1962, and what the Courts have consistently

1 held is that where a provision in a contract violates public
2 policy, in this case it not only violates the statute it
3 violates the public policy because the state has an interest
4 in its citizens being paid the wages, the commissions that
5 they have earned, that you cannot contract out of that, it is
6 not within the power of the parties to contract out of that.

7 What we seek to have set aside is the misleading portions
8 of the contract, the contract, the portions of the contract
9 that are repugnant to public policy. With regard to the
10 reserve fund my friend has argued that you've granted summary
11 judgment as to the reserve fund. The reserve fund was
12 litigated in the prior case. The evidence which the Defense
13 has put into evidence in this case says two things, one, 10
14 percent of the commission goes into the reserve fund, not the
15 entire commission; two, the reserve fund is limited to \$3500,
16 and what they have argued now is that whatever was owed at the
17 time that the employee separated from the payroll, all went
18 into the reserve fund. I would urge the Court to review those
19 employment agreements and the Exhibit A, the commission
20 schedule, and find a place where it says that when you
21 separate from the payroll all your commissions go into the
22 reserve fund.

23 THE COURT: Yeah, but I mean you've settled a prior
24 lawsuit that said, "We're not entitled to any money in that

1 reserve fund."

2 MR. CANTY: That's correct.

3 THE COURT: And you didn't specify what was in the
4 reserve fund, you didn't specify what was to be in the reserve
5 fund, I've got a court order from Judge Baxley that says,
6 "These Plaintiffs are not entitled," I mean, "That these
7 Plaintiffs are settling their claim to any monies in that
8 reserve fund for this amount."

9 MR. CANTY: And what we are saying is that there is no
10 legal or factual basis for them to now contend that more than
11 \$3500 goes into that reserve fund, more than 10 percent of a
12 commission goes into the reserve fund.

13 THE COURT: Why not? Why can't they say, "A million
14 dollars is in that reserve fund and we settled that case with
15 you last time, if you disagreed with that, if you still, if
16 you thought too much - that you weren't getting everything you
17 were entitled to that was in that reserve fund you shouldn't
18 have settled that lawsuit."

19 MR. CANTY: Because they drew the contract that says
20 \$3500.

21 THE COURT: But the order, Judge Baxley's order
22 doesn't mention \$3500 at all. It just says these Plaintiffs
23 are settling any and all claims they have to any and all funds
24 in this reserve fund for \$650,000.

1 MR. CANTY: That's correct.

2 THE COURT: Okay.

3 MR. CANTY: But there is no legal basis to contend
4 under the evidence that they themselves drafted and presented
5 to this Court that more than \$3500 goes into that reserve
6 account.

7 THE COURT: Or less than \$3500. I mean ---

8 MR. CANTY: Exactly.

9 THE COURT: --- it doesn't matter what was in that
10 reserve account, you all filed a lawsuit saying, "We're
11 entitled to that reserve account." They said, "No, you're
12 not." You all settled it. So, whatever's in that reserve
13 account whether it was over-funded, under-funded or wasn't
14 funded at all, that is a dead issue.

15 MR. CANTY: But our point is that having settled that
16 claim for the reserve account they cannot now come back and
17 say, "Well, all that you have claimed in this lawsuit over and
18 above \$3500 for example was magically somehow transmuted into
19 the reserve account," when their own contract says otherwise.

20 THE COURT: So, you're saying if they say it's in the
21 reserve fund you can go back and get more out of the reserve
22 fund in - regardless of what Judge Baxley's order says?

23 MR. CANTY: No, Your Honor, what we're saying is that
24 there's no legal or factual basis for them to contend that

1 their own - money that their own contract says cannot be in
2 the reserve fund ---

3 THE COURT: Well, we don't know. We hadn't heard any,
4 any, anything from the Defendant in that regard yet.

5 MR. CANTY: They have put their contracts into
6 evidence.

7 THE COURT: Okay.

8 MR. CANTY: And ---

9 THE COURT: But they haven't put up anything that says
10 what was in that reserve account or what was not in that
11 reserve account.

12 MR. CANTY: But what they have put up says the reserve
13 account is up to \$3500 and it consists of 10 percent of the
14 commission. That's what their contract says.

15 THE COURT: Okay, all right, go ahead.

16 MR. CANTY: There has been some confusion over
17 cancellation and rescission and I've listened carefully as my
18 friends have cross examined these witnesses. Rescission is a
19 statutory right in South Carolina. There is a five-day period
20 following the execution of agreements under which the buyer
21 can rescind and they are using that term interchangeably with
22 the term cancellation, and we have documents, we assume that
23 they will present documents that say this agreement was
24 cancelled. Now, their definition, there's no evidence that

1 their definition of cancellation is the same as the statutory
2 definition of rescission. If the buyer did, in fact, rescind
3 then no commission was earned. That's undisputed. Because
4 they put the label cancelled on an agreement that does not
5 necessarily equal a statutory rescission and we have testimony
6 from at least one witness who said, "I checked every day, that
7 they put the list of rescinded contracts up on the board. I
8 checked every day. That contract was not rescinded." So,
9 then at that point cancellation and rescission are two
10 different things. If they contend that contract was cancelled
11 it was not rescinded under the statute. If it was rescinded
12 within five days then there's no commission. If they describe
13 it as somehow cancelled, well, then we need to find out what
14 the facts are, why - how do they define it as cancelled, what
15 in their mind determines a cancellation.

16 Now, with regard to the six consecutive timely monthly
17 payments the contract is very clear that that applies to the
18 reserve fund and what our witnesses have testified to is that
19 they have commissions due over and above any reserve fund and
20 that subsequent to their termination, their separation from
21 the payroll they contacted Connie Sharp and said, "What about
22 my commissions," and Connie Sharp told them, "Well, you'll
23 have to wait until there are six consecutive timely monthly
24 payments in order to get that commission," as distinguished

1 from reserves and there's simply no provision for that in the
2 contract.

3 The Payment of Wages Statute, I've given the legislative
4 history in the memorandum and the interpretations by the
5 courts over the past more than a century has specific
6 provisions in it and those provisions include that no changes
7 may be made without written notice seven days in advance. We
8 have testimony that that provision of the statute has been
9 violated. We have language that says when you separate
10 someone from the payroll you have to pay them their wages
11 within 48 hours, their next regularly scheduled payday, which
12 may not exceed 48 hours, which may not exceed 30 days and I
13 understand my friend's argument with regard to whether or not
14 the condition, whether or not the commissions were due, and
15 what I have cited is not - I think he describe a commonsense
16 definition. I looked at Black's Law Dictionary, the Fourth
17 Edition, which identifies due as remaining unpaid, owing,
18 payable, justly owed, that which one contracts to pay or
19 perform to another, that which law or justice requires to be
20 paid or done, owed or owing as distinguished from payable. A
21 debt is often said to be due from a person where he is the
22 party owing it or primarily bound to pay, whether the time for
23 payment has or has not arrived, and if you look at the
24 contract which they drafted, in their description, if they

1 contend that these commissions went into the reserve account
2 their own contract says 10 percent of the commission due. So,
3 these funds which they are disputing now by the terms of their
4 own contract are due and the contract goes on to say that
5 whatever funds are remaining in the reserve account when an
6 employee is no longer engaged is subject to the six timely
7 monthly payments. It's under VII, reserve, describes these as
8 commissions due and it says at such time as the employee is no
9 longer engaged. That is at that moment in time when he
10 separates from the payroll. The funds remaining in the
11 reserve account will be reimbursed to the employee after it's
12 been determined six consecutive and timely monthly payments
13 have been made. So, if the commissions were due and they
14 weren't in the reserve account at the moment of separation
15 then they could not be remaining in the reserve account, and
16 therefore, the six consecutive timely monthly payments
17 provision could not apply to those commissions.

18 THE COURT: All right, thank you.

19 MR. CANTY: And I just reiterate this is involuntary
20 non-suit. He can argue directed verdict after all the
21 evidence.

22 THE COURT: All right, anything in reply briefly ---

23 MR. EPSTEIN: Thank you, Your Honor.

24 THE COURT: --- as to ---

1 MR. EPSTEIN: I was sitting here kind of getting that,
2 you know, that sense of deja vu that we all got because I know
3 I have heard that argument that Mr. Canty just made before.
4 It was his very same argument almost verbatim in opposition to
5 CFI Sales and Marketing Ltd.'s motion for summary judgment in
6 the Parker case. These are, these - all these issues about
7 the reserve, all these issues about the contract and whether
8 it authorizes money to go into the reserve, all these issues
9 about the chargebacks, all of those are reserve issues, and
10 there's a very good reason why I didn't address a single one
11 of those in the, in the motion because Mr. Canty's entire
12 argument is predicated upon evidence that is not in this
13 record as opposed to what he should have been focusing in on
14 and what the Court must focus in on on evidence that is
15 actually in the record and more importantly the evidence that
16 is missing. Our point regarding whether they have satisfied
17 their prima facie case is very simple. Under the undisputed
18 law applicable to their burden of proof, the two cases we've
19 cited, they had to prove satisfaction of both conditions
20 precedent. That proof is absent, period. It doesn't matter
21 what else happened. That proof is absent here; and so, we
22 never have to find out what actually happened to the
23 commissions. We don't have to find out whether they were due
24 or not due, whether they were earned or not earned because

1 that was the Plaintiffs' obligation in their prima facie case
2 and they didn't satisfy it. It's premature as Mr. Canty
3 indicated to start talking about what the case entirely after
4 the Defendant has put on its case may reveal because we're not
5 at that point and we have no obligation to put on evidence if
6 they haven't satisfied their burden of proof.

7 Mr. Canty focuses in on the chargebacks provision. He
8 says that the declaratory judgment presumably, he didn't
9 articulate it this way, the declaratory judgment ought to be
10 that the chargeback provision is unenforceable. Well, why
11 don't we - because they were told at the outset in the ad, in
12 training, in orientation that there were no chargebacks.
13 Well, why don't we read the chargeback provision because he
14 declined to do that. It's paragraph six, "Chargeback on
15 canceled deals. A, during the term that employee is engaged
16 by employer no sales originated by employee for which employee
17 has been paid a commission will be subject to chargeback
18 except as otherwise set forth herein," and other than the next
19 paragraph there is no otherwise. So, it says exactly what
20 each of those people claims they were told, "There shall be no
21 chargeback while they are employed by the employer, by CFI
22 Sales and Marketing." Then in B it says, "In the event
23 employee is no longer engaged by employer, irrespective of the
24 reason for termination of engagement, the employee," and then

1 this mirrors the language in the reserve, and that is what is
2 connected to the reserve, "shall be charged back for all sales
3 upon which commissions have been paid in the event the
4 purchasers has not, have not made six timely and consecutive
5 monthly payments as well as the 10 percent minimum down
6 payment," and that ties directly into the reserve, which the
7 Court has already noted was the very premise of the Parker
8 lawsuit. Every one of these arguments regarding both
9 paragraph six and paragraph seven of this exhibit have been
10 fully litigated and a judgment has been entered and just to
11 make clear for the record the standard for res judicata is
12 very simple and extremely broad, and I'm citing to a six month
13 old case from the Supreme Court, Judy, J-U-D-Y, versus Judy
14 cited at 393 - excuse me 712 S.E.2d 408, and they cite to a
15 Court of Appeals' decision, no, excuse me, a Supreme Court
16 decision of Plum Creek Development versus City of Conway, 512
17 S.E.2d 106, 1999 case, and it's short. I'll just read this
18 quote, "Res judicata bars subsequent actions by the same
19 parties," clearly we have that. "When the claims arise out of
20 the same transaction or occurrence," we clearly have that.
21 "That was the subject of a prior action between those parties.
22 Under the doctrine of res judicata," quote, "a litigant is
23 barred from raising any issues which were adjudicated," and we
24 believe these were fully litigated and adjudicated.

1 THE COURT: Well, let me and I apologize, I understand

2 ---

3 MR. EPSTEIN: Well ---

4 THE COURT: --- the doctrine but - and I apologize for
5 interrupting, but why did your client agree to a settlement
6 that specifically excluded this case if you were going to come
7 in now and say it's res judicata and they're bound by the
8 Parker case?

9 MR. EPSTEIN: Because it didn't exclude this case in
10 that fashion. The language is very clear. What it excluded
11 was the unpaid wage claims. It reads, "This settlement shall
12 not dispose of the claims for unpaid wages (not commission
13 reserves), set forth in the matter styled Thomas Zinn." So,
14 it excluded from the exclusion, in other words included in
15 Parker any claims in the Zinn case for commission reserves.
16 So, it did exactly what it was designed to do and it didn't do
17 what they're arguing because they're not including the
18 parenthetical which is in the agreement that was an exhibit to
19 the judge's order and which he approved. So, the Zinn case
20 was not excluded in its entirety, only those parts of the Zinn
21 case that didn't deal with the reserve.

22 THE COURT: Okay, so, you acknowledge that when you
23 settled the Parker case that you were still, there were still
24 outstanding valid claims in this case for unpaid wages.

1 MR. EPSTEIN: There were valid claims. We didn't think
2 they would be supported by the evidence but that's irrelevant
3 to that consideration but let me just finish the quote because
4 it's really the critical part of the quote to put in context,
5 "A litigant is barred from raising any issues which were
6 adjudicated in the former suit and any issues which might have
7 been raised in the former suit." So, even if for instance,
8 which it's not true, but even if Mr. Canty's argument had not
9 been made in open court before Judge Hyman regarding that very
10 same provision of the contract in the Parker case it could
11 have been because they were litigating over just those
12 provisions. The chargebacks and reserves, that was the entire
13 essence of the Parker case. There was nothing else once the
14 parties figured out where they were going in that case and
15 this case evolved, so in our view was adjudicated but even if
16 it wasn't the question you asked me before on Monday, even if
17 it wasn't it clearly might have been, not even should have
18 been. It's a very low bar, might have been. How can you say
19 that the two connected provisions including the \$3500 cap,
20 including the maximum 10 percent, those were all part and
21 parcel of the very same provisions of the contract that they
22 were challenging in that case that resulted in the final
23 judgment. If they were not articulated in the complaint, well,
24 we don't have any claim specifically articulated in this

1 complaint either and yet you can see where we are. So, that's
2 not the criteria. The criteria is what was absolutely,
3 positively, unquestionably the subject matter of that case and
4 there's only two provisions of these contract documents that
5 relate to reserve, the two we've been talking about. Those are
6 the only things that that case could have been about. Even if
7 we don't know anything more about it other than there's a
8 complaint and the judgment, the only things it could have been
9 about were those and that satisfies the might have been raised
10 standard as well, you know, in contrast, Your Honor, you know,
11 with due respect collateral estoppel deals only with specific
12 issues that were actually adjudicated. That's where there is
13 some other issue, but we've got res judicata here, identical
14 parties, identical complaints. So, the claims are obviously
15 the same. Identical facts, we know there's no different facts
16 here. It's all the same, and issues that either were
17 adjudicated or might have been adjudicated and certainly were.
18 So, the only, the only exercise left in this case is, yes, for
19 CFI Sales and Marketing to put on evidence showing if it does
20 and we believe it will that the money that they're claiming to
21 be due under any of these contracts either wasn't earned
22 because one of the conditions precedent wasn't satisfied, but
23 it's not our burden to disprove that in their prima facie
24 case. It's their burden to prove that in their prima facie

1 case or that the money was transferred into reserve prior to
2 January 29th, 2010. If we do that we win the case factually
3 but we're not arguing about that now. We're only arguing about
4 whether they've proven what they need to do to force us to put
5 that on. That's all, Your Honor.

6 THE COURT: All right, all right.

7 MR. CANTY: Would Your Honor care to hear very
8 briefly?

9 THE COURT: No, no, we've been arguing a directed
10 verdict motion for over an hour.

11 All right, all right, I'm going to grant the directed
12 verdict as to the claim by Steven Gregory Thoni because I'm
13 going back and ruling on the motion to strike his testimony
14 because he failed to produce in discovery, he cited contracts
15 that did not support, he produced different contracts in
16 support of his claim than what he testified to. So, I'm
17 striking his testimony and granting directed verdict in favor
18 of the claim by Steven Gregory Thoni. Likewise, I am denying
19 the motion to permit the testimony of Khalif Middleton and
20 granting a directed verdict as to his claim as well as Lynn
21 Lanpher, Michael Wills on those claims. There was nothing
22 shown to support those claims other than their testimony that
23 they sold X amount, they were entitled to X amount, they
24 didn't get it. So, their testimony, any judgment would be

1 based exclusively on speculation, conjecture or surmise. The
2 others have identified contracts where they said they were not
3 paid their commission. So, their - I think those do go to the
4 jury. So, a directed verdict is granted as to the claims
5 Steven Gregory Thoni, Khalif Middleton, Lynn Lanpher, Michael
6 Wills, that's it, denied, motion for directed verdict is
7 denied as to causes of action on the other claims against - by
8 the other Plaintiffs in this action. All right.

9 MR. CANTY: Thank you, Your Honor.

10 MR. WILKERSON: May I ask a point of clarification,
11 Your Honor?

12 THE COURT: Yes, sir.

13 MR. WILKERSON: Perhaps it's not a point of
14 clarification, it's to point out a consistency I think and
15 that is I believe that Ms. Singleton's testimony falls within
16 the same category.

17 THE COURT: Well, and that's what I had a question
18 mark by hers and I was going to check with the court reporter
19 but as I understand I don't have where any contracts were
20 presented by her and I don't know if, can you all ask me, I
21 didn't write it in my notes and I was going to have to check
22 back with the court reporter on her testimony. I don't have
23 where she testified as to any specific contracts either.

24 MS. MAYSONET: Sir, she did ---

1 COURT REPORTER: I can't hear you.

2 THE COURT: I'm sorry. We can't hear you. You're
3 going to have to speak up so the court reporter can hear what
4 you're saying.

5 MS. MAYSONET: Ms. Singleton, as you'll recall, did the
6 math based on her gross net. She never did present the
7 contracts and when I asked her she couldn't point it out.

8 THE COURT: Okay, and that was - hers was basically
9 the same as Mr. Wills as I understand it.

10 MR. CONNELL: Your Honor, I'd like to go back and look
11 at that overnight and see because, I mean, that wasn't
12 addressed in what they - in the motion they've made. None of
13 these individuals were addressed.

14 THE COURT: Well, and I'm going to go ahead and grant
15 the directed verdict as to Sherry Singleton, too, because I'm
16 pretty confident. I had a question mark but I started
17 specifically writing down the contracts after her testimony;
18 and so, I'm going to go ahead and grant a directed verdict as
19 to Sherry Singleton, too, for not, for any, any judgment
20 issued in her favor would be based upon speculation, surmise
21 or conjecture because she basically said, "I know I sold," or
22 she said, "I know I'm entitled to \$100,000 in commissions
23 because I sold over a million dollars worth of timeshares,"
24 and that was basically my understanding of her testimony.

1 MR. CONNELL: Your Honor, is it your intention to grant
2 a directed verdict now at the close of the Plaintiffs' case on
3 these Plaintiffs before reply testimony or anything else would
4 be offered?

5 THE COURT: Right, because they don't have to even put
6 up a defense; and so, what I do is I look at the Plaintiffs'
7 case in the light most favorable to the Plaintiff at this
8 juncture and as to those Plaintiffs, even if the Defense
9 didn't put up anything right now and it went straight to the
10 jury now, uncontradicted, any judgment in favor of those
11 Plaintiffs that I granted a directed verdict in favor of would
12 be based on speculation and conjecture on their testimony
13 that, "I sold X amount. I only received X amount in
14 commission and they owe me Y amount," without identifying what
15 they've sold, how much they sold it for and things of that
16 nature.

17 MR. CONNELL: Your Honor, can we ask you to articulate -
18 I'm a little bit confused about Lynn Lanpher and about Mr.
19 Wills as to what, as to what testimony you're relying on in
20 granting the directed verdict.

21 THE COURT: They - it's not that I'm relying on
22 testimony. It's that I'm - I am granting a directed verdict
23 on their failure to produce sufficient evidence upon which a
24 jury could base a verdict other than on speculation,

1 conjecture or surmise, that if a - that the only verdict that
2 the jury could grant in their favor would be based upon their
3 all-inclusive testimony, "I sold X amount of timeshares,
4 therefore, I was entitled to Y amount in commissions," without
5 identifying who they sold it to and things - that's the major
6 thing is this jury won't know, doesn't know, quite frankly, if
7 they sold that, you know, their, their testimony was so
8 speculative, Mr. Wills, I mean, he just basically rounded his
9 off at 26,000, "I don't really know how much I sold but I know
10 they owe me at least 26,000," and that was kind of the same
11 thing as Ms. Singleton's testimony, "I'm not sure how much
12 they owe me, but I know they owe me at least 100,000," and
13 that was basically the extent of their testimony. So, any
14 verdict in favor of those Defendants [sic] would be just based
15 upon their speculation of not knowing how much was owed to
16 him, to them, but you know, "I know they owe me this amount,"
17 so it's all, it's too speculative. So, that's what I'm
18 granting the directed verdict on.

19 MR. CONNELL: Your Honor, my - my remembrance about Ms.
20 Lanpher was she went through an extensive calculation as to
21 how she reached the amount she was owed.

22 THE COURT: She had a specific amount but as I recall
23 it was, "I was due a 10 percent commission. I sold \$136,950.
24 So, therefore, I'm owed \$13,695," without specifying what

1 contracts constituted the \$136,950.

2 MR. CONNELL: I was under the impression that she said,
3 "I looked at all my - at all the deals that we had and that's
4 how I came up with that number."

5 THE COURT: Yeah, but she didn't say what the deals
6 were.

7 MR. CONNELL: But I mean, she ---

8 THE COURT: That's basically what all of these
9 Plaintiffs said is, "Yeah, I had all these deals."

10 MR. CONNELL: But her testimony was of the amount owed
11 was based upon her review of the records as to how much she
12 thought she was owed.

13 THE COURT: But she never put the records in. The
14 jury's not going to be able to look at the records that she
15 relied on. It's based on speculation.

16 MR. CONNELL: I don't think she - you have to put the
17 records in, do you, Your Honor, to have a - to be able to
18 testify as to what you - you can either put - you can either
19 offer direct testimony, you can offer ---

20 THE COURT: So, you're saying that a Plaintiff could
21 get up on that stand and just say, "Based upon my review of
22 the records I sold \$10 million worth of timeshares and they
23 owe me \$1 million," and that would be sufficient to get around
24 a directed verdict?

1 MR. CONNELL: I'm saying, Your Honor, that in this case
2 when the Plaintiff got up and said, "I'm owed \$13,652 and it's
3 based upon my review of these records and their calculations
4 and that's how I came up with that number," I think that is
5 enough to get past directed verdict and go to the jury on
6 that. If they want to ---

7 THE COURT: So, rather than saying \$13,695, if you
8 just interpose two million in place of that that would be
9 enough to get around a directed verdict? See, I think you're
10 putting emphasis on the fact that it's not a round number and
11 because it's not a round number it makes it less speculative
12 and I don't think that's the case.

13 MR. CONNELL: I'm putting emphasis on the way the
14 calculation was determined based on the testimony that was
15 offered about how she arrived at the calculation.

16 THE COURT: I understand but I'm going to grant the
17 directed verdict.

18 MR. CONNELL: All right, Your Honor.

19 THE COURT: All right.
20 All right, anything else?

21 MR. WILKERSON: Nothing from us, Your Honor.

22 MR. EPSTEIN: Nothing from us, Your Honor.

23 THE COURT: All right.

24 MR. EPSTEIN: Thank you.

1 THE COURT: Stand in recess until - the jury's coming
2 in at nine o'clock. I'll take the stand [sic] at 9:15.

3 MR. EPSTEIN: No, they're coming in at nine.

4 THE COURT: They're coming in at nine.

5 MR. EPSTEIN: Right.

6 THE COURT: And I'll take the bench at 9:15. All
7 right.

8 MR. WILKERSON: Thank you, Your Honor.

9 THE COURT: Thank you.

10 OFF THE RECORD

11 (On the record, Thursday, February 16, 2012. Whereupon the
12 following takes place outside the presence of the jury.)

13 THE COURT: All right, anything from the Plaintiff
14 before we bring the jury back in?

15 MR. CONNELL: Yes, sir.

16 THE COURT: All right.

17 MR. CONNELL: Your Honor, we - I understand your ruling
18 from yesterday in regards to the directed verdict.

19 THE COURT: Right.

20 MR. CONNELL: I would ask you to respectfully to
21 reconsider on a couple of issues. Your Honor, as you know,
22 the motion for directed verdict under Rule 50 is only
23 concerned with the existence or non-existence of evidence, not
24 its weight, and the four people that you let - that you

1 dismissed, Mr. Middleton, Ms. Lanpher, Mr. Thoni and Mr. Wills
2 I got - I asked the court reporter to give me Ms. Lanpher's
3 testimony as an example and I think Your Honor said that you
4 were letting, you were dismissing her case because sales were
5 about \$130,000 and the trial testimony indicates that she
6 determined her value by looking at the sales of \$224,330 using
7 her W-2s. The trial testimony also indicates that she said,
8 "I have all my sales and deals," and on cross examination that
9 question was asked and she said, "I have them all right here.
10 Would you like to look at them," and the Defendants declined
11 to do that. Your Honor, our position is is that that
12 testimony goes to the weight of the evidence and not to the,
13 and not to the non-existence of evidence and the same goes
14 with Mr. Wills. If Your Honor remembers his testimony he
15 testified that he had a 12 percent deal and that he had
16 already sold something and that the day after he had sold
17 something he was told by Mr. Siegel that the commissions had
18 been switched to 10 percent. Well, that's entirely in
19 violation of the, of the, of failure to Pay Wages Statute and
20 the rule that says that, you know, you've remedial acts, the
21 legislature, the legislature expects that, that - it's a
22 remedial legislation which is to protect those people. So, I
23 mean, there's direct evidence from Mr. Wills that his
24 commission was switched without notice and that would go to

1 the weight, too, not to the, not to the non-existence of
2 evidence. So, Your Honor, the only case I could find is Long
3 versus Norris and Associates and that's 538 S.E.2d 5 and the
4 Court of Appeals states, "In ruling on a directed verdict
5 motion the trial court is only concerned with the existence or
6 non-existence of evidence, not with the weight," and all of
7 the issues in this case are about the weight of the evidence.
8 I understand Your Honor's position that I think you've said I
9 got a contract for \$1 million and I'm entitled to 10 percent.
10 I think you have to go more, but I would submit that those
11 issues go to the weight of what we're dealing with here and
12 not with the existence or non-existence of evidence and that's
13 the rule.

14 THE COURT: All right.

15 MR. CONNELL: And finally, Your Honor, we would ask if
16 Your Honor's position is the same as yesterday that we'd like
17 to make a proffer at the end of the trial with Ms. Lanpher as
18 to why - as to these issues of the sales because she had, she
19 did not take just 10 percent.

20 THE COURT: No, that would just be giving her
21 opportunity to put in more evidence. The question is is at
22 the close of the Plaintiffs' case what evidence is in the
23 record, if any, for a jury to consider, okay.

24 MR. CONNELL: Your Honor, our position is is what

1 evidence is in the record, existence of evidence not the
2 weight.

3 THE COURT: Exactly and I understand that. So, if
4 you're talking about proffering additional testimony I'm not
5 going to allow that ---

6 MR. CONNELL: I understand.

7 THE COURT: --- because the Plaintiffs already closed
8 their case. It's based upon what is in the record now that
9 the jury would review.

10 MR. CONNELL: Yes, sir, and that's got to be liberally
11 construed in our favor; and so, we would ask Your Honor to
12 vacate your previous ruling based on this existence of - they
13 can argue about that and they can put up evidence otherwise
14 that they don't owe us anything, but it still goes to the
15 weight of the testimony.

16 THE COURT: I understand. I understand, but I'm going
17 to leave my decision in place on the directed verdict.

18 MR. EPSTEIN: Thank you, Your Honor.

19 THE COURT: All right, anything further from the
20 Plaintiff before we bring the jury in?

21 MR. CONNELL: Nothing, nothing from us, Your Honor.

22 THE COURT: All right, anything from the Defense?

23 MR. WILKERSON: Nothing, Your Honor.

24 THE COURT: All right, let's go ahead - I'm going to -

1 let's go ahead and bring the jury in. When they get in I'm
2 going to advise them that I have dismissed the claims of these
3 Defendants for legal reasons that is not to be considered by
4 the jury. The fact that they're dismissed doesn't mean -
5 doesn't affect the claims by the other Plaintiffs. The fact
6 that they were dismissed does not reduce the validity of the
7 existing Plaintiffs' claims nor the fact that these Plaintiffs
8 are left in the lawsuit create any inference that they have a
9 more valid claim and I'm going to instruct them that way. All
10 right?

11 MR. CONNELL: Your Honor, could I just - I want to mark
12 Ms. Lanpher's trial testimony as an exhibit.

13 THE COURT: Court's Exhibit?

14 MR. CONNELL: Court's Exhibit, if that's okay.

15 THE COURT: All right, Court's Exhibit Five.

16 MR. CONNELL: Thank you, Your Honor.

17 (Whereupon, Court's Exhibit Number Five [Testimony of
18 Lynn Lanpher] appropriately marked.)

19 (Whereupon, the following takes place in the presence of
20 the jury.)

21 THE COURT: All right, ladies and gentlemen, welcome
22 back. Hope everyone had a restful evening. We're ready to
23 resume the trial of this case. I want to remind you if you
24 have any cell phones or pager devices if you'd please turn

1 those off at this time. Also, if you're taking notes make
2 sure that you have your own notepad.

3 Now, we broke a little bit early yesterday because I told
4 you we did have some legal matters that we needed to take up,
5 and during the course of dealing with those legal matters
6 yesterday afternoon I dismissed the claims of Sherry
7 Singleton, Steven Gregory Thoni, Khalif Middleton, Lynn
8 Lanpher and Michael Wills. I dismissed those claims based
9 upon legal grounds, okay? They're not grounds that you need
10 to be concerned with but it was for legal reasons is why I
11 dismissed those claims.

12 Now, the fact that I dismissed those claims does not mean
13 that there is any less validity to the claims of the
14 Plaintiffs that remain in this lawsuit. The fact that these
15 Plaintiffs remain in the lawsuit does not create any
16 presumption that they have more valid claims. There is a
17 purely legal reason for dismissing these five Plaintiffs from
18 this case and it has absolutely no influence on the validity
19 or invalidity of the remaining Plaintiffs' claims; okay? So,
20 you're not to consider the dismissal of these claims in any
21 way, shape or form when it's time to deliberate on the
22 remaining Plaintiffs in this case.

23 All right, is the Defense ready to proceed?