

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

JOHN SMITH and)
BEVERLY SMITH,)
)
Plaintiff,)
)
v.) DOCKET NO.: 3:18-cv-429-HSM-DCP
)
BLUEGREEN VACATIONS UNLIMITED,)
INC., BLUEGREEN CORPORATION,)
VACATION TRUST, INC.,)
BLUEGREEN VACATION CLUB, INC.,)
)
Defendants.)

AMENDED COMPLAINT

COME NOW the Plaintiffs, John Smith and Beverly Smith, (hereinafter collectively referred to as "Plaintiffs"), and for their Amended Complaint against Bluegreen Vacations Unlimited, Inc., Bluegreen Corporation, Vacation Trust, Inc., and Bluegreen Vacation Club, Inc., (hereinafter referred to jointly as "Bluegreen" or "Defendants") state as follows:

PARTIES

1. The Plaintiffs are senior citizens who resided in Tennessee at all times relevant to this Complaint.
2. The Plaintiffs purchased Bluegreen points and timeshares.
3. The Plaintiffs purchased Bluegreen timeshares and signed their last timeshare contracts in the State of Tennessee.
4. Specifically, the Plaintiffs purchased a Bluegreen timeshare while in Sevier County, Tennessee, on approximately October 2, 2014 and November 11, 2014.

5. Defendant Bluegreen Vacations Unlimited, Inc. was listed as “Club Developer” in the Certificate of Owner Beneficiary Rights. It is a corporation formed in Florida and licensed to do business in Tennessee. Its principal office is at 4960 Conference Way N Ste 100, Boca Raton, FL 33431-3311.
6. Bluegreen Vacations Unlimited, Inc. can be served through its registered agent, Corporation Service Company at the following address: 2908 Poston Ave., Nashville, TN 37203.
7. Defendant Bluegreen Corporation provided the Plaintiffs with a “30 DAY SAME AS CASH PAYOFF COUPON” at the closing, telling the Plaintiffs they could pay off their balance by paying Bluegreen Corporation. Bluegreen Corporation also is the entity to which the Plaintiffs were instructed to send their payments. It is a corporation formed in Florida and licensed to do business in Tennessee. Its principal office is at 4960 Conference Way N Ste 100, Boca Raton, FL 33431-3311.
8. Bluegreen Corporation can be served through its registered agent, The Prentice-Hall Corporation System, Inc., at the following address: 2908 Poston Ave., Nashville, TN 37203.
9. Defendant Vacation Trust, Inc. is named as the Plaintiffs’ Trustee in the Bluegreen Owner Beneficiary Agreement. It is a corporation formed in Florida and licensed to do business in Tennessee. Its principal office is at 4950 Communication Ave., Boca Raton, FL 33431-3315.
10. Vacation Trust, Inc. can be served through its registered agent, Corporation Service Company at the following address: 2908 Poston Ave., Nashville, TN 37203.
11. Defendant Bluegreen Vacation Club, Inc. is a corporation formed in Florida. Its principal business office is 4950 Communication Avenue, Suite 900, Boca Raton, FL 33431.
12. Bluegreen Vacation Club, Inc. can be served through its registered agent, Corporation Service Company, 1201 Hays Street, Tallahassee, FL 32301.

13. The Plaintiffs reserve the right to amend this Complaint upon investigation and discovery of additional agents, employees, or associates of Bluegreen. Should the Plaintiffs find information on any other agent of the Defendants throughout the course of this lawsuit, the Plaintiffs reserve the right to amend this Complaint and add them as Defendants.

14. At all times mentioned here, each Defendant, and the sales agents named herein, were the alter egos, agents, partners, joint ventures, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all time relevant hereto were acting within the course and scope of their authority as such alter egos, agents, partners, joint ventures, joint employers, representatives, servants, employees, successors, coconspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and consent of each Defendant designated herein. Defendants are, therefore, jointly and severally liable to Plaintiffs for damages alleged herein.

15. It is unclear to Plaintiffs whether the Defendants' employees are also employees of one or more of the other Defendants and/or vice versa. Therefore, Plaintiffs will refer to all the Defendants jointly as "Bluegreen."

JURISDICTION AND VENUE

16. This Court has jurisdiction over this Complaint pursuant to 28 U.S.C. § 1331.

17. Jurisdiction is proper in the State of Tennessee because:

- a. Bluegreen Corporation is registered to do business in Tennessee under Secretary of State Control Number 000256226.
- b. Vacation Trust, Inc. is registered to do business in Tennessee under Secretary of State Control Number 000526971.

- c. Bluegreen Vacations Unlimited, Inc. is registered to do business in Tennessee under Secretary of State Control Number 000354527.
- d. Bluegreen transacted business with Plaintiffs within the State of Tennessee; therefore, Bluegreen has conducted business in Tennessee. Tenn. Code Ann. § 20-2-201(b).
- e. The acts and omissions made the subject of this Complaint occurred within the State of Tennessee while Bluegreen was transacting business in this state; therefore, Bluegreen has submitted to this jurisdiction. Tenn. Code Ann. § 20-2-214(a) and (c).
- f. Christopher Maples was the sales agent who sold the Smiths their October 2, 2014 timeshare and is or was an employee/agent of Bluegreen Vacations Unlimited, who is a resident of and conducts business in the State of Tennessee, and holds a Tennessee Real Estate license #322019. Bluegreen Vacations is vicariously liable for the acts or omissions of Christopher Maples by the doctrine of *respondent superior*.
- g. Brian Speanburgh was the inventory specialist who assisted in the sale of the October 2, 2014 timeshare to the Smiths and is or was an employee/agent of Bluegreen Vacations Unlimited, who is a resident of and conducts business in the State of Tennessee, and holds a Tennessee Real Estate license #313332. Bluegreen Vacations is vicariously liable for the acts or omissions of Christopher Maples by the doctrine of *respondent superior*.
- h. Melinda Henry was the quality assurance person who conducted the closing for the October 2, 2014 timeshare and is or was an employee/agent of Bluegreen, who conducts business in the State of Tennessee. Bluegreen Vacations is vicariously liable for the acts or omissions of Melina Henry by the doctrine of *respondent superior*.

- i. Angela Coker was the sales agent who sold the Smiths their November 11, 2014 timeshare and is or was an employee/agent of Bluegreen Vacations Unlimited, who is a resident of and conducts business in the State of Tennessee, and holds a Tennessee Real Estate license #254693. Bluegreen Vacations is vicariously liable for the acts or omissions of Coker by the doctrine of *respondent superior*.
- j. Cammie Palmer was the inventory specialist who assisted in the sale of the October 2, 2014 timeshare to the Smiths and is or was an employee/agent of Bluegreen Vacations Unlimited, who is a resident of and conducts business in the State of Tennessee, and holds a Tennessee Real Estate license #226456. Bluegreen Vacations is vicariously liable for the acts or omissions of Palmer by the doctrine of *respondent superior*.
- k. Katie Sheets was the quality assurance person who conducted the closing for the October 2, 2014 timeshare and is or was an employee/agent of Bluegreen, who conducts business in the State of Tennessee. Bluegreen Vacations is vicariously liable for the acts or omissions of Sheets by the doctrine of *respondent superior*.
- l. Robert Breckenridge is a Tennessee resident, and Director of Marketing at Smoky Mountain Preview Center in Sevierville, Tennessee regarding Bluegreen's sales and marketing activities. Mr. Breckenridge had management and/or supervisory authority over the sales to the Plaintiffs, and knowledge of the training and sales compliance required to sell timeshares in Tennessee.
- m. Philip Hicks is a Tennessee resident, and Director of Sales at Smoky Mountain Preview Center in Sevierville, Tennessee regarding sales training and supervision of Bluegreen sales representatives. had management and/or supervisory authority over the sales to the

Plaintiffs, and knowledge of the training and sales compliance required to sell timeshares in Tennessee.

- n. The Defendants have “continuous and systematic” contacts with the State of Tennessee sufficient to establish personal jurisdiction.
- o. The above-named individuals did business in Tennessee and are residents of Tennessee. They are material witnesses to this action.
- p. In addition, Bluegreen owns and/or operates at least two (2) timeshare properties and other resorts located in Tennessee.
- q. The Bluegreen resorts employ a large number of people, over 100, when various jobs are considered, including sales staff, maids, gardeners, maintenance, security, management and other staff.
- r. Bluegreen conducts large scale marketing and sales activities within the State of Tennessee, including but not limited to direct mail, email, telemarketing, internet distribution channels, travel agencies and other partners such as Bass Pro Shops stores located in Tennessee.
- s. Bluegreen markets and sells its products and services directly to the Plaintiffs and other Tennessee residents using the internet.
- t. Bluegreen marketed and sold Vacation Ownership Interests (“VOIs”) to the Plaintiffs within the State of Tennessee.
- u. Plaintiffs bought a timeshare interest in Bluegreen Vacation Club.
- v. Bluegreen Vacation Club contains a collection of real property known as component sites.

- w. One of these component sites is physically located in Sevier County, Tennessee, therefore jurisdiction and venue are appropriate with this Honorable Court.
 - x. The Bluegreen Defendants are contractually obligated to render services at Bluegreen Vacation Club components sites, including the component site located in Sevier County, Tennessee.
 - y. Plaintiffs were damaged at the Bluegreen timeshare location in Sevier County, Sevier County, Tennessee.
 - z. Bluegreen filed several Tennessee Timeshare Public Offering Statements with the Tennessee Real Estate Commission and annually submits renewal applications to the Commission including payment of renewal fees using a Bluegreen check.
 - aa. Plaintiffs purchased Bluegreen timeshares and were induced into signing timeshare documents in the State of Tennessee.
18. Defendants have subjected themselves to the jurisdiction in the State of Tennessee as they must comply with all rules and regulations of the Tennessee Real Estate Commission.
19. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district, and Bluegreen has a sales office at and the sale of Plaintiffs' last timeshare transaction occurred in Sevier County, Tennessee and the witnesses to the transaction are located in Tennessee. This is not an "in rem" action, but rather an action for the torts that occurred by employees of Bluegreen to defraud Plaintiffs into a purchase, and subsequent breach of contract regarding that same purchase.
20. The Plaintiffs purchased Bluegreen timeshares and signed the timeshare contracts in the State of Tennessee.

21. Bluegreen went through the process of selling the timeshare at issue in this case within the State of Tennessee.

22. Specifically, the Plaintiffs purchased Bluegreen timeshare at the Bluegreen office in Sevier County, Tennessee, contract #862632 on October 2 and contract #870477 on November 11, 2014. (See Exhibit A and B).

23. The Plaintiffs and Bluegreen entered into a contract for sale of the timeshare property while in Sevier County, Tennessee.

24. The Defendants have “continuous and systematic” contacts with the State of Tennessee sufficient to establish jurisdiction.

25. Bluegreen regularly engages in the practice of timeshare sales in the state of Tennessee, including Sevier County.

26. Bluegreen Vacations Unlimited, Inc., Bluegreen Corporation, Inc., and Vacation Trust, Inc. all have registered agents for service of process located in Davidson County, Tennessee.

FACTS

27. In late 2015, Plaintiffs began to suspect they had been defrauded, but were not sure, and so they began to seek legal counsel.

28. In 2016, when they were advised of their rights by legal counsel, the Plaintiffs came to the realization that their entire relationship with the Defendants was a fraud, built on Defendants’ pattern of misrepresentations, false promises, and failures to uphold their end of the bargain. They also discovered that the rooms were always fully booked and they could never get a reservations, which is something that was not readily apparent right away, but only after repeatedly trying to book a room for vacations.

The Sales Process

29. Over the years and in different states, the Defendants' sales processes were nearly identical: a sales representative(s) applied high pressure sales techniques and verbal misrepresentations for hours; then another agent of the Defendants would pressure the Plaintiffs into signing a stack of legal documents very quickly, without reading them or consulting outside counsel.

30. Bluegreen timeshare owners are coerced, forced, and/or required to attend "owner update" or other meetings that are intended for no purpose other than to manipulate and pressure the owners to buy additional timeshare points.

31. Such high pressure by Bluegreen often confused the Plaintiffs, causing them to misunderstand what they were purchasing, what they were trading, and the actual terms and conditions of the purchase. For example, Plaintiffs thought they had purchased a timeshare in Sevier County, Tennessee. However, it turned out to be an out-of-state timeshare.

32. Plaintiffs and other similarly situated timeshare owners end up owning more points than they can use, because after the initial purchase, they are told each time they vacation that they had to attend an owner "update" meeting, which they are led to believe is mandatory. These updates are supposed to last about an hour, but in reality, they usually end up being a several- hours long high pressure sales job.

33. During the high-pressure sales presentation that Plaintiffs attended on November 11, 2014, and October 2, 2014, they were there for nearly three hours despite being told the presentation would last only one hour.

34. Consequently, Bluegreen and its agents made material false and/or misleading statements

upon which the Plaintiffs relied in deciding to purchase Bluegreen timeshares, and then misleading them into buying additional largely worthless timeshare points without actually offering anything of value in return.

35. Bluegreen engaged in a variety of other deceptive sales tactics. These deceptive tactics are used company-wide with the knowledge, endorsement and encouragement of senior management.

36. Bluegreen's deceptive tactics are part of its corporate philosophy to make every sale at any cost. This corporate philosophy is pervasive and drives the need for the use of these deceitful tactics.

37. At each meeting, Plaintiffs are told by Bluegreen sales representatives that they need to purchase additional Bluegreen timeshare points in order to achieve several of Plaintiffs' "goals," including the future sale or use of their existing Bluegreen timeshares.

38. Defendants now mostly sell timeshares with a "points" system, rather than a traditional "fixed week" or deed.

39. With points, there is no limit to the amount of inventory that can be sold or monitored for overuse and ownership is highly diluted.

The Rental Pitch

40. There is a limited universe of new client prospects capable of and willing to buy timeshares.

41. Therefore, Bluegreen had to find other potential sources to buy timeshare points. One available source was current owners. Bluegreen, therefore, developed ways to entice current owners to buy more timeshare points. Specifically, Bluegreen created the "Rental Pitch" and trained its sales representatives to use the "Rental Pitch" as a tactic to lure current owners, including Plaintiffs, to buy more points.

42. Each time Plaintiffs attended a sales meeting, the Bluegreen sales agents told them that the timeshares would greatly increase the amount of rental income Plaintiffs would receive because the timeshares being purchased from Bluegreen were in very high demand and would bring in more income from rentals of the timeshares.

43. In addition, Bluegreen controls inventory allotment.

44. Bluegreen deliberately restricts the quantity and quality of the inventory available to rent, so the average Owner does not get a big price on their rental. This is not ever explained or told to the Owners, and it was never explained to the Plaintiffs.

45. Plaintiffs are also not told they will be competing with Bluegreen on the open market, who rents out the resorts on the Internet through sites like Orbitz, Hotels.com, and Hotwire.

46. Defendants' sales agents, with the knowledge and approval of Bluegreen management, routinely violate the Tennessee Timeshare Act, which prohibits agent from giving Plaintiffs and other similarly situated owners and potential owners the "Rental Pitch" in order to induce them into buying more points and more timeshare products.

47. However, Bluegreen's deceptive tactic is to have Plaintiffs and similarly situated timeshare owners then sign a document saying they were not told or promised rental as part of the sales presentation, when in reality, it is a pitch Plaintiffs got with each purchase, and it is routinely done by Bluegreen agents.

The Closing Process Is Part of the Scam

48. It is the common practice and scheme of the Defendants, through its agents, to purposely make misrepresentations during the sales presentation. This is done with the full knowledge of Defendants and the management.

49. However, in order to limit their liability, Defendants then, during the "closing" process,

which includes signing documents, deliberately and fraudulently attempt to get Plaintiffs to sign statements that disavow that such fraudulent statements were made by the sales agents.

50. This is a common scheme involving multiple employees and agents of the Defendants, in a civil conspiracy.

51. In other words, Bluegreen knows that misleading or false statements will be used to con or induce sales to Plaintiffs and other similarly situated timeshare owners or potential owners. However, they then have people sign documents during closing agreeing they were not told false statements and violations of the Tennessee Timeshare Act did not occur.

52. Moreover, each Bluegreen timeshare contract closing required the Plaintiffs to sign and/or initial numerous separate contracts or other documents without legal or financial counsel.

53. Bluegreen required the Plaintiffs to sign numerous contracts or documents that internally referred to separate additional documents that were never presented to or signed by the Plaintiffs or were hundreds of pages long, and could not possibly be reviewed in one sitting, and especially without a lawyer. For example, Plaintiffs were forced to sign documents stating that they had received additional pages, such as the Public Offering Statement, but in reality, there was no way for Plaintiffs to review such complicated and lengthy legal documents.

54. Plaintiffs were not allowed to read through the Bluegreen timeshare contracts and other documents. In addition, Plaintiffs were on vacation, but were told they would only expend “45 minutes” at their owner’s update meeting, but it turned into hours. To review all the documents, Plaintiffs would have spent countless hours of precious vacation time having to look at all the documentation at that time.

55. Plaintiffs signed the Bluegreen timeshare contracts without being given an opportunity to read them because of being tired, hungry, pressured, harassed, and/or bullied into signing.

56. Bluegreen's employees, agents and/or representatives, in this case, Speanburgh and Palmer would not allow the Plaintiffs an opportunity to read the timeshare contracts or other documents without a Bluegreen agent or representative being present.

57. Bluegreen rushed the Plaintiffs through the execution of each timeshare contract and other documents.

58. Plaintiffs were not read the documents out loud and the federal legal requirements regarding lending were not met as they were not gone over line item.

Consumer Affairs Complaints

59. Bluegreen engages in a pattern, practice, habit and routine of racketeering through deceptive sales practices, high pressure sales, and exploitation of the elderly.

60. Attorneys General across the nation have had hundreds of complaints filed by Bluegreen timeshare owners, and consent orders have been lodged against Bluegreen for their practices, and settlements have even been paid out to victims, such as in Pennsylvania in 2010.

61. There was a class action filed against Bluegreen in 2016 in California for using "hard sell" tactics and misinformation to convince consumers to enter into timeshare contracts, and complaints that Bluegreen regularly engages in the practice of making and advertising false promises and statements with regards to its timeshare contracts that it had no intention of honoring.

62. Bluegreen's sales agents are allowed to continue to use deceptive, high pressure, and misleading sales tactics, and even ones that violate their own internal rules.

63. These complaints were filed and Bluegreen was sanctioned, all before the Plaintiffs were deceived by the sales people they encountered, because Bluegreen refuses to put a stop to these

practices, as they would rather continue making money than clean up their act.

64. According to the Better Business Bureau, their files indicate that Bluegreen Vacations Unlimited has a pattern of complaints concerning misrepresentation in selling practices.

65. The Better Business Bureau has received 2.49 out of 5 stars based on 108 Customer Reviews, with 94 of those review being negative for Bluegreen Vacations Unlimited, Inc..

66. Consumer complaints report that the verbal representations are inconsistent with the written agreement. According to the Better Business Bureau, they have received, and continue to receive, a pattern of complaints from consumers alleging:

- a. Difficulties canceling vacation packages booked through Bluegreen Corporation. Consumers claim, although Bluegreen Corporation has a cancel within 30 days policy, their requests for refunds for canceled trips are denied.
- b. Deceptive sales practices -- Consumers claim resorts are never available when they contact Bluegreen Corporation.
- c. The "free" vacation Bluegreen Corporation offers is not free and involve fees they were not made aware of.
- d. If you book something, you'll often find that what you're trying to book is in "high red" or "ultra high red" seasons. But, you can only use the 5,000 points from THIS year. If you book something in high or ultra high, Bluegreen will take your newest points and leave you with the old points, which can only be used for NON-high red. That means you get leftovers, and you can rarely stay more than 3-4 nights using Bluegreen points.

67. Plaintiffs were the victim of all these deceptive practices. Bluegreen Vacations Unlimited, Inc.'s sales agents, Coker and Maples, intentionally misrepresented numerous material terms of the transactions in order to induce the Plaintiffs to upgrade, and trade or purchase additional Bluegreen timeshare properties, as stated above.

68. Bluegreen Vacations' sales agents, concealed from or failed to disclose to the Plaintiffs the Public Offering Statement required under the State's Time-share Act, or force Plaintiffs to sign something saying they had received it, knowing that no one could possible review a document

that was complicated in one sitting or without professional advice about its contents.

69. Bluegreen sales agents, concealed from or failed to disclose to the Plaintiffs certain significant provisions in the timeshare supplemental contracts, including but not limited to material financing terms such as the interest rate, term of loan, total interest, or total of payments.

70. During their purchases, Bluegreen failed to properly disclose to the Plaintiffs about the statutory rescission or "cooling off period" giving Plaintiffs the right to cancel within a certain number of days after the purchase.

Psychological Tactics

71. During sales presentations, a team of commissioned sales agents apply pre-scripted psychologically based sales tactics designed to pressure the consumer to purchase (or "upgrade") a timeshare interest, overcoming the consumer's objections that they did not want and/or could not afford to own the pitched product.

72. For example, Plaintiffs were told by Bluegreen sales agents Maples and Coker that they were getting special discounted pricing to upgrade or purchase additional timeshares and/or timeshare points.

73. Plaintiffs were offered by Bluegreen's agents Coker and Maples special reduced pricing and/or unique favorable terms on certain timeshare contracts ("Special Offers"), but then represented that such offers had expired or were no longer available.

74. Most of the time, Plaintiffs were told by Bluegreen agents that certain Special Offers were only valid that day, and that if Plaintiffs declined the Special Offer, they would never again be allowed to participate in the Special Offer.

75. In addition, Bluegreen sales agents, including Maples and Coker, made numerous intentional or negligent misrepresentations to the Plaintiffs designed by Bluegreen to create a false

sense of urgency, pressuring the Plaintiffs to purchase new or additional timeshares. For example, they were told their maintenance fees would only go up “a little bit” if they made a purchase that day, but that was not true.

76. Plaintiffs were concerned about the high-interest rates on loans, often in the teens, but when they raised such concerns, they were intentionally or negligently told by Coker and Maples, that they could take a timeshare deed to their bank, mortgage company, credit union or other financial institution to refinance the loan made by Bluegreen to the Plaintiffs at a much lower interest rate. This is a falsehood.

77. Coker and Maples verbal misrepresentations made the timeshares/points appear more attractive or valuable than they really were, as an inducement to get the Plaintiffs to make the purchase.

78. The misrepresentations made by Defendants’ agents, specifically Coker and Maples, included:

- a. That the purchase was an investment that would increase in value and could be easily sold at a profit; the truth was that the timeshares/points are an illiquid asset with no aftermarket value, making it impossible for the Plaintiffs to resell.
- b. That the Plaintiffs could rent out their timeshare/points to earn income or pay their maintenance fees; the truth was that since it is extremely difficult to get reservations at all, renting it out is not an option.
- c. That the offer being made to the Plaintiffs was available for that day only; on information and belief, the Defendants made substantially the same offer to other customers on subsequent days.

79. Regardless of the year or location of the sale, a second agent of the Defendants used the same exact techniques to pressure the Plaintiffs into signing a stack of legal documents quickly, without reading them and without an opportunity to bargain or consult legal counsel or financial counsel.

80. The closing agent would show the Plaintiffs a document, give a brief and inadequate

explanation of the document, and pressure the Plaintiffs to sign it or initial it immediately without reading it.

81. The uniform actions of the various closing agents indicate that they were following precise instructions or a script from the Defendants.

82. The pattern and practice of Bluegreen, which Plaintiffs experienced at every single purchase they ever made include:

- a. Applying extreme pressure to act quickly, after the Plaintiffs were already worn down by hours of intense sales pitches;
- b. Applying extreme pressure not to read the documents;
- c. Showing each document to the Plaintiffs quickly;
- d. Giving a very brief, inadequate explanation of each document;
- e. Telling the Plaintiffs where to sign or initial while they clearly lacked an understanding of what each document meant.

83. As a result of these confusing, high-pressure tactics by the Defendants' agents, including Coker and Maples, the Plaintiffs were induced into entering agreements while they did not have an adequate understanding of the contracts they signed or the full extent of their financial obligations.

84. These tactics are used company-wide with the knowledge, endorsement, and encouragement of senior management.

85. Bluegreen Vacation's deceptive tactics are part of its corporate philosophy to make every sale at any cost.

86. Bluegreen's corporate philosophy is pervasive and drives the need for the use of these sales tactics.

87. One of the Plaintiffs' timeshare purchases was on October 2, 2014 in Sevierville, TN.

88. The Plaintiffs purchased timeshares/points for \$30,350.00
89. The sales representatives, Chris Maples and Brian Speanburgh, used the same high-pressure sales tactics and misrepresentations described above to wear down the Plaintiffs and induce them into accepting the Defendants' offer.
90. Maples told the Smiths the meeting would only be 2 hours or less but kept them there more than 4 hours.
91. Maples also told the Smiths that the timeshares would be a good investment that would increase in value.
92. He also told the Smiths they could rent out his timeshare for a profit.
93. Maples also told Plaintiffs this was a one day only deal and would be gone if they left.
94. Maples also told the Plaintiffs that Bluegreen would purchase the property back if they were not happy, this was one of the biggest reasons they purchased.
95. Maples also pushed significantly that they could rent their timeshare out for a profit.
96. Maples told Plaintiffs he would be their personal representative and assist them going forward.
97. Maples also told the Plaintiffs he had a child that had cancer so this sale would really help him out.
98. Neither agent mentioned the Smiths right to rescission.
99. The closing agent, Speanburgh, used the same high-pressure tactics described above to get the Plaintiffs to sign a stack of legal papers without an opportunity to read them or consult counsel.
100. Bluegreen Vacations Unlimited, Inc. was named as Developer/Seller in the Equity

Trade document.

101. Bluegreen Vacations Unlimited, Inc. was named as the administrator of the Enhanced/Traveler Plus Program, which gave the Plaintiffs a one-year membership for no charge.

102. Bluegreen Corporation is listed as Creditor on the Truth in Lending Statement and Payee on the Promissory Note.

103. Vacation Trust, Inc. was identified as Trustee of the Trust Agreement.

104. The Plaintiffs made their subsequent Bluegreen purchase on approximately November 11, 2014 in Sevier County, Tennessee.

105. On that date the Plaintiffs met Bluegreen sales representatives Angie Coker and Cammie Palmer.

106. The purchase price was \$20,300.00.

107. The sales representatives, Coker and Palmer, used the same high-pressure sales tactics and misrepresentations described above to wear down the Plaintiffs and induce them to accept the Defendants' offer.

108. Coker told the Smiths the meeting would only last a short time but ended up taking several hours.

109. Coker also told the Smiths the timeshare would be a good investment and would increase in value.

110. Coker also told the Smiths the timeshare could be rented for a profit.

111. Coker also told the Smiths the deal she had for them was a today only deal and that there were Brazilian individuals who were snatching up all the property, so it would be gone if they did not buy immediately.

112. At one point the Smiths specifically asked about maintenance fees and Coker told them specifically that they would not go up any longer, this was not true.

113. Coker never mentioned the Smiths right of rescission.

114. Bluegreen Corporation was named as "Payee" in the Promissory Note and accepted payments from the Plaintiffs.

115. Bluegreen Vacations Unlimited, Inc. was named as Developer/Seller and deeded the property to Vacation Trust, Inc.

116. Vacation Trust, Inc. was named as Grantor in the Purchase Money Deed of Trust.

COUNT I
(VIOLATION OF THE TENNESSEE TIMESHARE ACT)
(BLUEGREEN VACATIONS UNLIMITED, INC)

117. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

118. Tennessee law, specifically Title 66, Chapter 32 of the Tennessee Time-Share Act of 1981 ("Timeshare Act") governs timeshare sales in the State of Tennessee. Tenn. Code Ann. § 66-32-

119. Bluegreen violated Tenn. Code Ann. § 66-32-132 of the Timeshare Act entitled Advertising Specific Prohibitions.

120. Section 66-32-132 of the Timeshare Act states that:

No advertising for the offer or sale of time-share intervals shall:

(1) Contain any representation as to the availability of a resale program or rental program offered by or on behalf of the developer or its affiliate unless the resale program

and/or rental program has been made a part of the offering and submitted to the commission;

(2) Contain an offer or inducement to purchase which purports to be limited as to quantity or restricted as to time unless the numerical quantity and/or time applicable to the offer or inducement is clearly and conspicuously disclosed;

(3) Contain any statement concerning the investment merit or profit potential of the time-share interval unless the commission has determined from evidence submitted on behalf of the developer that the representation is neither false nor misleading;

(4) Make a prediction of or imply specific or immediate increases in the price or value of the time-share intervals; nor shall a price increase of a time-share interval be announced more than sixty (60) days prior to the date that the increase will be placed into effect;

(5) Contain statements concerning the availability of time-share intervals at a particular minimum price if the number of time-share intervals available at that price comprises less than ten percent (10%) of the unsold inventory of the developer, unless the number of time-share intervals then for sale at the minimum price is set forth in the advertisement;

(6) Contain any statement that the time-share interval being offered for sale can be further divided unless a full disclosure is included as to the legal requirements for further division of the time-share interval;

(7) Contain any asterisk or other reference symbol as a means of contradicting or changing the ordinary meaning of any previously made statement in the advertisement;

(8) Misrepresent the size, nature, extent, qualities, or characteristics of the accommodations or facilities which comprise the time-share project;

(9) Misrepresent the nature or extent of any services incident to the time-share project;

(10) Misrepresent or imply that a facility or service is available for the exclusive use of purchasers or owners if a public right of access or of use of the facility or service exists;

(11) Make any misleading or deceptive representation with respect to the contents of the time-share program, the purchase contract, the purchaser's rights, privileges, benefits or obligations under the purchase contract or this part;

(12) Misrepresent the conditions under which a purchaser or owner may participate in an exchange program; or

(13) Describe any proposed or uncompleted private facilities over which the developer has no control unless the estimated date of completion is set forth and evidence has been presented to the commission that the completion and operation of the facilities are reasonably assured within the time represented in the advertisement.

Tenn. Code Ann. § 66-32-132.

121. Bluegreen, its agents and employees, including Maples and Coker, violated Section 66-32- 132 of the Timeshare Act by advertising and marketing the Bluegreen timeshares to the Plaintiffs in such ways that omitted material information and/or made fraudulent, deceptive, misleading statements or representations, including but not limited to the following:

- a. Made representations that the timeshares offered to the Plaintiffs were limited as to quantity or restricted as to time without the numerical quantity and/or time applicable to the offer being conspicuously disclosed;
- b. Made predictions of and/or implied specific and/or immediate increases in the price or value of the timeshares being sold to the Plaintiffs;
- c. Made statements concerning the availability of the timeshares being sold to the Plaintiffs at a particular price without properly disclosing the number of such timeshares then for sale at the price being disclosed or set forth to the Plaintiffs;
- d. Misrepresented the size, nature, extent, qualities, or characteristics of the accommodations or facilities which comprise the timeshares being purchased by the Plaintiffs;
- e. Misrepresented to the Plaintiffs the nature or extent of any services incident to the timeshares purchased by the Plaintiffs, including but not limited to rental, advisory, exchange and resell services;
- f. Misrepresented to the Plaintiffs that certain facilities and/or services available to the Plaintiff was for their exclusive use;
- g. Made misleading and/or deceptive representations to the Plaintiffs with respect to the contents of the timeshares and/or timeshare programs being sold to the Plaintiffs, as well as misleading and/or deceptive representations regarding the purchase contract and the purchasers' rights, privileges, benefits or obligations under the Plaintiffs' timeshare contracts;
- h. Misrepresentations to the Plaintiffs regarding the conditions under which the Plaintiffs may participate in one or more exchange, rental or resell programs;
- i. Described proposed or uncompleted private facilities to the Plaintiffs, such as water parks, theme parks, tourist attractions, over which Bluegreen had no control without the estimated date of completion being set forth, and evidence has been presented to the commission that the completion and operation of the facilities are reasonably assured within the time represented by Bluegreen.

122. For example, Defendants violated section h by failing to disclose that the contract was of perpetual duration.

123. Coker and Maples also violated nearly every single section above by stating:

- a. That the purchase was an investment that would increase in value and could be easily

sold at a profit; the truth was that the timeshares/points are an illiquid asset with no aftermarket value, making it impossible for the Plaintiffs to resell.

- b. That the Plaintiffs could rent out their timeshare/points to earn income or pay their maintenance fees; the truth was that since it is extremely difficult to get reservations at all, renting it out is not an option.
- c. That the offer being made to the Plaintiffs was available for that day only; on information and belief, the Defendants made substantially the same offer to other customers on subsequent days.
- d. That they could deduct the timeshare on their taxes.
- e. That the more points they bought, the more places Plaintiffs could go

124. Bluegreen violated Tenn. Code Ann. § 66-32-131 of the Timeshare Act entitled Misleading advertising unlawful.

125. Section 66-32-131 of the Timeshare Act states that:

It is unlawful for any person with intent directly or indirectly to offer for sale or sell time-share intervals in this state to authorize, use, direct or aid in the publication, distribution or circulation of any advertisement, radio broadcast or telecast concerning the time-share project in which the time-share intervals are offered, which contains any statement, pictorial representation or sketch which is false or misleading.

Tenn. Code Ann. § 66-32-131.

126. Bluegreen, its agents and employees, including Coker and Maples, violated Section 66-32-131 of the Timeshare Act in that they sold the Plaintiffs timeshares in Tennessee using certain advertisements, publications, materials, pictorial representations, and other marketing material that contained false and/or misleading statements, including:

- a. That the purchase was an investment that would increase in value and could be easily sold at a profit; the truth was that the timeshares/points are an illiquid asset with no aftermarket value, making it impossible for the Plaintiffs to resell.
- b. That the Plaintiffs could rent out their timeshare/points to earn income or pay their maintenance fees; the truth was that since it is extremely difficult to get reservations at all, renting it out is not an option.

- c. That the sales representative did not work on commission and that the sale had no bearing on his/her income; the truth, upon information and belief, is that the sales representatives receive a significant commission payment for each sale.
- d. That the offer being made to the Plaintiffs was available for that day only; on information and belief, the Defendants made substantially the same offer to other customers on subsequent days.
- e. That they could deduct the timeshare on their taxes.
- f. That the more points they bought, the more places Plaintiffs could go.

127. As a proximate result, the Plaintiffs have suffered damages.

128. The Tennessee Timeshare Act provides that:

(a) If a developer or any other person subject to this part violates any provision thereof or any provision of the project instruments, any person or class of persons adversely affected by the violation has a claim for appropriate relief. Punitive damages may be awarded for a willful violation of this part. The court may also award reasonable attorney's fees.

(b) Except as provided in subsection (c), any developer or any other person subject to this part who offers or disposes of a time-share interval without having complied with this part or who violates any provision of this part commits a Class C misdemeanor.

(c) Any developer or any other person subject to this part who knowingly, willfully and intentionally offers, disposes of, or jeopardizes the interest of the purchaser of a time-share interval in violation of § 66-32-113, § 66-32-122(a) or § 66-32-128 commits a felony punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment for not less than one (1) year nor more than three (3) years, or by both such fine and imprisonment.

(d) Nothing in this part limits the power of the state to punish any person for any conduct or omission which constitutes a violation under any other provision of this code.

Tenn. Code Ann. § 66-32-188.

129. WHEREFORE, the Plaintiffs seek compensatory and punitive damages plus interest and costs. Plaintiffs pray for such other and further relief this Court deems appropriate.

**COUNT II
(CONSTRUCTIVE FRAUD)**

(Bluegreen Vacations Unlimited, Inc.)

130. The below statements were made by Chris Maples on October 2, 2014, at Bluegreen's resort/sales center in Sevier County, Tennessee, and by Angie Coker on November 11, 2014 also at the resort/sales center in Sevier County Tennessee, both of whom upon information and belief were acting as employees and agents of Bluegreen Vacations Unlimited, Inc.

131. Defendants had a legal and/or equitable duty to Plaintiffs to provide accurate and complete

132. information either orally or in written communications, including during sales presentations, in marketing materials used during the podium presentation, marketing materials used during the sales presentation at the tables, or any other documents presented to Plaintiffs at any time during their purchase from Defendants, including closing documents.

133. On this day, Plaintiffs were there on vacation and when Plaintiffs were told that they needed to attend a mandatory owner's update meeting but would be given a gift at the end. This meeting was neither mandatory nor an update meeting. Instead it turned out to be a high-pressure sales presentation.

134. Maples told Plaintiffs he had a special deal for them if they purchased that day.

135. Coker made the same representation on November 11, 2014.

136. Maples told Plaintiffs they could rent their timeshare for hundreds of dollars per night and could recoup all of their maintenance fees plus more, even though he knew this to not be true.

137. Coker made this same representation on November 11, 2014 also knowing it to be false.

138. Maples told the Plaintiffs that the timeshare would be a good investment that they could turn around and resell it easily for a profit at any time this is one of the primary reasons that talked the Smiths into purchasing.

139. Coker also told the Smiths in November that they could sell their timeshare for a profit.

140. Coker, in November, said that if Plaintiffs made the purchase, their maintenance fees would not go up any.

141. Maples told Plaintiffs he would be their personal representative and they could even call him on his cell phone, which violates Bluegreen policy in that all calls are supposed to be on Bluegreen phone lines so they can be monitored and recorded.

142. Coker told the Plaintiffs in November she would now be their personal representative and gave her supposed cell phone number to the Smiths as well.

143. Maples and Coker made each of these misrepresentations knowing that they were not true.

144. They made each of these misrepresentations knowing Plaintiffs would be hurried through a closing which would induce them to sign documents stating they did not hear any of this information.

145. Speanburgh and Palmer rushed the Plaintiffs through the closing having them sign dozens of lines without fully explaining or allowing the Plaintiffs to read and understand what they were signing.

146. As a result of these confusing, high-pressure tactics by the Defendants' agents, the Plaintiffs were induced into entering agreements while they did not have an adequate understanding of the contracts they signed or the full extent of their financial obligations.

147. In addition to the duties imposed on contracting parties by the express terms of their agreement, the law implies in every contract a duty of good faith and fair dealing.

148. Plaintiffs justifiably placed their trust in Defendants and their agents, including Maples and Coker and other yet to be discovered sales agents and employees of Bluegreen Vacations Unlimited who came in contact with Plaintiffs during their purchase of a timeshare.

149. Plaintiffs put their trust and confidence in Bluegreen Vacations Unlimited and their sales agents, including Maples, Coker, and other employees and personnel, given their reputations, superior skill in timeshare transactions, knowledge, training, and expertise as well as their holding themselves out as an advisor to the Plaintiff.

150. Defendants, including Maples and Coker, further were under a duty to exercise reasonable care to disclose to Plaintiffs, before the transactions described herein were consummated, facts basic to the transaction.

151. Defendants, through their sales agents named herein, managing brokers, and other employees knew that the Plaintiffs were about to enter into a timeshare purchase due to a mistake, and/or misrepresentation, and/or fraud, and that Plaintiffs, because of the longstanding ongoing relationship between them, reasonably expected a disclosure of these facts.

152. Such facts that were not disclosed were:

- i. The material facts affecting the timeshare's value, known to Defendants but not to Plaintiffs, such as the lack of aftermarket value, inability to refinance the timeshare, that "equity" paid in is has no value outside the Bluegreen system
- ii. The demand for requested occupancy, the valuation of their points or how the Developer/Seller adjusted the values in order to respond to actual Purchaser use pattern and changed in Purchaser use demands for Accommodations existing at that time within the Bluegreen Vacation Club Trust.
- iii. That the timeshare was not an investment of any kind

- iv. That the timeshare could not be rented, or would be very difficult to rent, or that the return on rental was much lower than anything stated
- v. That there was no special offer for the price of points offered on any given purchase Plaintiffs were entering into
- vi. That reservations are very difficult to obtain as most resorts are booked up

153. These were all basic facts assumed by the parties as a basis for the transaction itself and were an important part of the substance of what was bargained for.

154. Plaintiffs reasonably acted to their detriment without the benefit of the undisclosed information, Bluegreen, having a legal and/or equitable duty to disclose.

155. Upon information and belief Bluegreen made substantial pecuniary gain from Plaintiffs' transaction.

156. Plaintiffs would not have purchased the Bluegreen timeshares had the undisclosed information been disclosed.

157. Plaintiffs have been damaged as a result of the Defendants' misrepresented and undisclosed information.

158. Plaintiffs recently discovered, after their purchase, and less than three years ago, that these material facts were suppressed and concealed by Defendants, including Coker and Maples.

159. Bluegreen Vacations Unlimited is liable for the actions of their sales team by respondeat superior and vicarious liability.

160. WHEREFORE, premises considered, Plaintiffs seek compensatory and punitive damages plus interest and costs, and rescission of the contracts at issue here, as well as such other and further relief as this Court deems appropriate.

COUNT III
(FRAUD - INTENTIONAL MISREPRESENTATION/FRAUD IN THE INDUCEMENT)
(Bluegreen Vacations Unlimited, Inc.)

161. The below statements were made by Chris Maples on October 2, 2014, at Bluegreen's resort/sales center in Sevier County, Tennessee, and by Angie Coker on November 11, 2014 also at the resort/sales center in Sevier County Tennessee, both of whom upon information and belief were acting as employees and agents of Bluegreen Vacations Unlimited, Inc.

162. Maples and Coker made numerous material false representations to the Plaintiffs including, but not limited to, timeshare and timeshare contract terms and conditions, timeshare resale, rental, exchange, and other benefits or provisions of the Bluegreen timeshares purchased by the Plaintiffs, and the parties' access, capabilities, maintenance and administration of the Bluegreen timeshares.

163. Maples stated the deal he offered was good for that day only, even though he knew the statement was not true, as the price is good much past the one day.

164. Coker made the same misrepresentation in November 2014.

165. Maples further told Plaintiffs they could rent their timeshare for hundreds of dollars per night and could recoup all of their maintenance fees plus more, even though he knew this to not be true.

166. Coker made this exact same representation in November.

167. Maple and Coker's false representations detailed above were intended to provide a measure of security to the Plaintiffs that buying more points and upgrading was a viable investment.

168. Maple and Coker's knowing misrepresentations have harmed the Plaintiffs, resulting in the loss of their entire investment plus mental pain and suffering.

169. Plaintiffs were induced to purchase the Bluegreen timeshares at issue as a result Maple and Coker's false and misleading representations.

170. These representations made by Maple and Coker's were false, and Defendants knew or should have known they were false when making such misrepresentations.

171. Plaintiffs' reasonably relied on these statements because they were already in a relationship with Bluegreen for many years, and trusted Maples and Coker to guide them properly on how to be able to get better use out of their timeshare, even if that meant upgrading.

172. Defendant's agents made these misrepresentations intentionally, recklessly, and willfully knowing they were false.

173. Maple and Coker made the misrepresentations with the intent that the Plaintiffs would relying upon them, in order to induce the Plaintiffs to purchase timeshares, upgrades, programs, memberships and points.

174. Maple and Coker made the misrepresentations in order to gain a financial benefit.

175. Plaintiffs discovered the full extent of the falsity of these representations and the true intent of the Defendants after they hired legal counsel and were advised of their rights and the falsehood that they were told.

176. Had the Plaintiff been informed of the truth they would never have entered any contract with Bluegreen, they would never have closed the sale, they would never have purchased the time-share interest, and they would absolutely never have paid any purchase funds.

177. Bluegreen Vacations Unlimited, Inc., through their marketing department and sales agents, has knowingly engaged in a wide-spread, company-wide scheme of making false

promises, omissions, and high-pressure sales tactics to make sales at all costs, in order to enrich themselves, and they have been sued hundreds of times in court across America, and hundreds of complaints have been filed all across the nation for the exact same allegations Plaintiffs are making here.

178. The transaction documentation contains a provision that provides that the Plaintiffs are not relying on any spoken statements by the sales staff for their decision to make the purchase, when in reality the Plaintiffs were relying solely on the spoken statements made by the sales staff, because the entire sales presentation was made orally.

179. Upon information and belief Bluegreen Vacations Unlimited, Inc. and/or Bluegreen Corporation, Inc. made substantial pecuniary gain from Plaintiffs' transaction.

180. Plaintiffs have suffered damages, including mental pain and suffering, as a result of the action of Blue greens Vacations Unlimited, Inc's agents by making the statements set forth herein.

181. Bluegreen Vacations Unlimited is liable for the actions of Maples and Coker under the doctrine of respondeat superior and vicarious liability.

182. WHEREFORE, premises considered, Plaintiffs seek compensatory and punitive damages plus interest and costs. Plaintiffs pray for such other and further relief this Court deems appropriate.

**COUNT IV
(FRAUDULENT CONCEALMENT)**

(BLUEGREEN VACATIONS UNLIMITED, INC.)

183. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

184. Through its agents, Maples, Spearburgh, Henry, Coker, Palmer and Sheets, Defendant Bluegreen Vacations Unlimited, Inc. concealed or misrepresented the following a material facts:

- i. The sales presentation was in actually a high pressure sales
- ii. That the timeshare was not an investment of any kind
- iii. That the timeshare could not be rented, or would be very difficult to rent, or that the return on rental was much lower than anything stated
- iv. That maintenance fees would increase, or would increase at a higher rate than stated
- v. That there was no special offer for the price of points offered on any given purchase Plaintiffs were entering into and everyone was getting the same price that day
- vi. That the timeshare was subject to dilution and other rule changes
- vii. That the actual value of the timeshare purchase was far different from the “equity” amount they had paid in, and were “rolling into” their new purchases
- viii. The demand for requested occupancy, the valuation of their points or how the Developer/Seller adjusted the values in order to respond to actual Purchaser use pattern and changed in Purchaser use demands for Accommodations existing at that time within the Bluegreen Vacation Club Trust. In fact, Plaintiffs complained during their November 11 sales presentation about not being able to get any reservations, and Bluegreen had to intervene to help them get some.
- ix. That there was no after-market value whatsoever and in fact, Bluegreen would not even place a value on it to buy it back
- x. That reservations are very difficult to come by, especially in the more popular resorts
- xi. That rooms at Bluegreen resorts were being rented on the internet, which reduced the exclusivity of timeshare access and ownership, and also that they were being rented out at a fraction of what timeshare ownership costs.

185. All of the Defendants, and their agents, were under a duty to disclose the above-referenced facts to the plaintiffs.

186. All the defendants, and their agents, intentionally concealed or suppressed these facts with the intent to deceive the plaintiffs.

187. The plaintiffs were not aware of these facts and would have acted differently if the plaintiffs knew of the concealed or suppressed fact.

188. As a result of the concealment or suppression of these fact, the plaintiffs sustained damage.

189. Wherefore, premises considered, Plaintiffs seek compensatory and punitive damages plus interest and costs, and rescission of the contracts at issue here, as well as such other and further relief as this Court deems appropriate.

**COUNT V
(BREACH OF CONTRACT)**

(Bluegreen Vacations Unlimited, Inc.)

190. Plaintiffs and Defendant entered into several contracts described above. Some contracts were oral promises, as described above, such as promising to be their personal representative and that they would answer their cell phones. Some terms of the contract are incorporated by reference and are not in the possession of Plaintiffs, such as the Trust Agreement, and the Public Offering Statement.

191. These contracts were adhesive in nature, and the Plaintiffs were not allowed to negotiate the terms and conditions of these contracts.

192. Defendant Bluegreen Vacations Unlimited was to provide certain benefits and services, and perform certain obligations under each contract. Some of the contracts were oral, as enumerated herein.

193. Plaintiffs performed all of their obligations under the contracts until they realized they were not getting the benefit of the bargain.

194. Defendant breached said contracts by failing to provide, and/or changing, or eliminating certain benefits and services.

195. The Defendant promised to deliver various services to Plaintiffs. Incidental to the purchase of the time-share interest was the purchase of the services necessary to utilize the time-

share interest-specifically, the booking, reservations, customer service, and support services that would allow the Plaintiffs to utilize their interest with Bluegreen, and with Bluegreen affiliates around the world.

196. Defendant's conduct in retaliating against Plaintiffs for merely hiring legal counsel by taking away their rights to their legally owned deeded timeshare interest constitutes breach of contract.

197. Additionally, throughout their ownership, Plaintiffs were repeatedly denied reservations when rooms were available, because Bluegreen was renting them on the open market, such as via internet travel sites, and for Bluegreen marketing purposes, instead of making sure they were available to Plaintiffs and other similarly situated Bluegreen owners, in order to enrich themselves.

198. Plaintiffs were repeatedly denied reservations when rooms were available, because Bluegreen Vacations Unlimited, Inc. was overselling the resorts.

199. Defendant promised to deliver various services to Plaintiffs. Incidental to the purchase of the time-share interest was the purchase of the services necessary to utilize the time-share interest- specifically, the booking, reservations, customer service, and support services that would allow the Plaintiffs to utilize their interest with Bluegreen.

200. Upon information and belief none of the funds Defendants obtained from rental income through the open market or their own marketing purposes, was retained for the benefit of Bluegreen owners, and/or Plaintiffs.

201. By doing so, the Bluegreen Vacations Unlimited breached their contracts as stated above with Plaintiffs because Plaintiffs were denied access to the properties and benefits to which they are entitled under the terms of the contract.

202. The above breaches are continuing breaches.

203. Plaintiffs were damaged as a result of said breaches.

204. WHEREFORE, premises considered, Plaintiffs seek compensatory and punitive damages plus interest and costs. Plaintiffs pray for such other and further relief this Court deems appropriate.

**COUNT VI
(NEGLIGENT MISREPRESENTATION)**

(Bluegreen Vacations Unlimited, Inc.)

205. The below statements were made by Chris Maples on October 2, 2014, at Bluegreen's resort/sales center in Sevier County, Tennessee, and by Angie Coker on November 11, 2014 also at the resort/sales center in Sevier County Tennessee, both of whom upon information and belief were acting as employees and agents of Bluegreen Vacations Unlimited, Inc.

206. Bluegreen's sales agents and employees as described above, on the dates enumerated to the respective Plaintiffs, acting in the course of their employment or service, and motivated by their pecuniary interest in making a commission from selling the Plaintiffs a timeshare, either negligently or recklessly supplied false information to the Plaintiffs, as a matter of habit, practice and routine, with approval of management and in a culture-wide attitude of "sell at any cost."

207. Maples told Plaintiffs he had a special deal for them if they purchased that day.

208. Coker made the same representation on November 11, 2014.

209. Maples told Plaintiffs they could rent their timeshare for hundreds of dollars per night and could recoup all of their maintenance fees plus more, even though he knew this to not be true.

210. Coker made this same representation on November 11, 2014 also knowing it to be false.

211. Maples told the Plaintiffs that the timeshare would be a good investment that they could turn around and resell it easily for a profit at any time this is one of the primary reasons that talked the Smiths into purchasing.

212. Coker also told the Smiths in November that they could sell their timeshare for a profit.

213. Coker, in November, said that if Plaintiffs made the purchase, their maintenance fees would not go up any.

214. Maples told Plaintiffs he would be their personal representative and they could even call him on his cell phone, which violates Bluegreen policy in that all calls are supposed to be on Bluegreen phone lines so they can be monitored and recorded.

215. Coker told the Plaintiffs in November she would now be their personal representative and gave her supposed cell phone number to the Smiths as well.

216. Maples and Coker made each of these misrepresentations knowing that they were not true.

217. Maples and Coker made false statements detailed above with intent of misleading the Plaintiffs into relying upon their statements in order to induce them into buy a timeshare.

218. Maples and Coker falsely represented to the Plaintiffs that the Bluegreen timeshares being purchased by the Plaintiffs have sponsorship, approval, characteristics, uses, benefits or qualities that they did not have.

219. Such false information supplied by Bluegreen's sales agents and employees was meant to guide and/or manipulate the Plaintiffs in making a decision to purchase, exchange, trade or upgrade a Bluegreen timeshare.

220. Bluegreen's sales agents and employees failed to exercise reasonable care in how such information was obtained, or such information was communicated to the Plaintiffs.

221. The Plaintiffs were justified in relying on the information being supplied by Bluegreen

in this commercial transaction because it came from an authorized agent of Bluegreen and the unequal bargaining powers between the parties.

222. Defendants had a duty to follow and enforce its internal sales compliance procedures and to act with reasonably prudent care in the administration of Plaintiffs' vacation ownership points.

223. Defendants breached this duty by not following and enforcing its internal sales compliance procedures and by making it difficult, if not impossible, for Plaintiffs to utilize their points to the fullest extent possible.

224. For example, Defendants' sales agents are not supposed to make representations regarding the ability to rent and rental income that can be obtained, yet the sales agents, including Maples and Coker, told the Plaintiffs, as well as similarly situated timeshare owners, that they can rent out their timeshares and make enough money to cover their maintenance fees.

225. Defendants are not supposed to offer "special deals" and say they are good for that day only, or some other special deal.

226. Bluegreen knew or should have known that it is engaging in deceptive sales tactics, and often the sales agents told Plaintiffs one thing orally, then to cover their liability, purposefully had them sign a document saying the opposite.

227. The numerous State complaints to Attorneys' General, the Better Business Bureau complaints, and the lawsuits filed against Bluegreen all alleging the very same misrepresentations that happened to Plaintiffs, as well as violations of their own Sales Compliance Manual, and psychological tactics to overcome Plaintiffs' ability to say no, show that Bluegreen knew it was making false representations through its agents.

228. As a result of said misrepresentations, Plaintiffs suffered damages.

229. Upon information and belief Bluegreen made substantial pecuniary gain from Plaintiffs' transaction.

230. WHEREFORE, premises considered, Plaintiffs seek compensatory damages plus interest and costs.

231. Plaintiffs pray for such other and further relief this Court deems appropriate.

**COUNT VII
(UNCONSCIONABILITY)
(Bluegreen Vacations Unlimited, Inc.)**

232. The Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

233. As stated above, the Defendants and the Plaintiffs entered into contracts for the sale of Bluegreen timeshare property.

234. Unconscionable contracts shall not be enforced.

235. Unconscionability can be evidenced by the presence of both procedural unconscionability and substantive unconscionability.

236. The contracts – and the Defendants' abusive sales tactics – include extreme procedural unconscionability.

237. The contracts were contracts of adhesion, offered on a "take it or leave it" basis under extreme pressure from the Defendants.

238. The Defendants rushed and pressured the Plaintiffs to sign a large number of legal documents quickly, forcing the Plaintiffs to rely on brief, inadequate verbal explanations of the documents by the Defendants' closing agent.

239. The rushed, high pressure closing did not afford the Plaintiffs a realistic opportunity to

bargain, consult counsel, or even read the contracts.

240. Before signing, the Plaintiffs, senior citizens, had to endure hours of high pressure sales pitches, designed by the Defendants to wear them down physically, mentally, and emotionally.

241. The Defendants spent several hours making verbal misrepresentations to the Plaintiffs, knowing that the written documents would contradict the verbal misrepresentations.

242. The contracts also include extreme substantive unconscionability.

243. The terms of the contracts between the Plaintiffs and the Defendants are beyond the reasonable expectations of an ordinary person, or oppressive or unconscionable. See *Buraczynski v. Eyring*, 919 S.W.2d 314, 320 (Tenn.1996).

244. Under the contracts, the Plaintiffs paid thousands for timeshares that are practically worthless in resale value, despite the Defendants' repeated verbal promises that they were a good investment.

245. As part of the contracts between the parties, the Plaintiffs are required to pay maintenance fees for a period of time that has no end.

246. This perpetual and continuous payment of maintenance fees is beyond the reasonable expectations of an ordinary person.

247. There is literally no way to end the contract between the Plaintiffs and Bluegreen.

248. Moreover, the Plaintiffs have no control over the fluctuation in price of the maintenance fees.

249. The Defendants are in complete and total control of the maintenance fees and the amount they increase each year.

250. This lack of say in a contract that exists for an indefinite period of time goes beyond the reasonable expectations of an ordinary person.

251. The inequality of this contract is shocking to the common sense of a reasonable individual.

252. This provision is so one-sided, in view of all the facts and circumstances, that the Plaintiffs are denied any opportunity for a meaningful choice.

253. WHEREFORE, the Plaintiffs would request that the Court hold that the contracts at issue in this Complaint are unconscionable and void.

COUNT VII
(CONTRACT OF INDEFINITE DURATION)
(Bluegreen Vacations Unlimited, Inc.)

254. The Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

255. The contract for requiring the continuous payment of maintenance fees by the Plaintiffs is a perpetual contract.

256. Tennessee courts disfavor perpetual contracts and hold that they are to be avoided unless there is a clear manifestation that the parties intended the contract to be perpetual.

257. With the Defendants pressuring the Plaintiffs to sign the contracts without the opportunity to read them or consult outside counsel, the agreement between the parties and the surrounding circumstances do not clearly manifest an intention – no meeting of the minds – that the contractual obligations shall last in perpetuity.

258. The Plaintiffs in this case did not intend that they enter into a perpetual contract.

259. Plaintiffs were not told this was a perpetual contract with no way to ever get out of it, and it would be passed on to their heirs even upon death.

260. Tennessee law holds that in the absence of an explicit agreement as to date of termination, the contract is terminable at will by either party.

261. WHEREFORE, the Plaintiffs would request that the Court hold that the contracts at

issue in this Complaint are of an indefinite duration and terminable at will by either party.

262. WHEREFORE, the Plaintiffs seek compensatory and punitive damages, attorneys' fees, plus interest and costs, reasonable attorneys' fees and demand trial by jury on all issues so triable.

The Plaintiffs pray for such other and further relief this Court deems appropriate.

**COUNT IX
(CIVIL CONSPIRACY)**

**(Bluegreen Vacations Unlimited, Inc., Bluegreen Corporation, Inc.,
Vacation Trust, Inc., Bluegreen Vacation Club, Inc.)**

263. Plaintiffs repeat and re-aver the allegations in the foregoing paragraphs as if fully set forth herein.

264. There exists a common design between Bluegreen Vacations Unlimited, Inc., Bluegreen Corporation, Inc., Vacation Trust, Inc., Bluegreen Vacation Club, Inc., and their management, as well as sales agents, Maples and Coker, to dupe Plaintiffs, and other similarly situated people, into purchasing points based upon false promises regarding the use and value of timeshare points.

265. In order to carry out this conspiracy, sales and marketing directors such as Robert Breckenridge, Phillip Hicks, and Todd Smith personally directed Bluegreen sales agents to lie, falsify and/or misrepresent information related to the value, use, and/or transferability of Bluegreen timeshare points, and Maples and Coker, did so to the Plaintiffs, in order to close the deal in October 2 and November 11, 2014.

266. Bluegreen then to mailed invoices to the Plaintiffs and electronically debited the monthly payments from them.

267. The Defendants devised and implemented a strategy instructing the sales agents to provide false and/or misleading information in response to commonly raised questions from purchasers

and potential purchasers in a scheme to defraud by allowing sales agent, to violate the Tennessee Timeshare Act with misleading and false statements being made in sales presentations.

268. Pursuant to the conspiracy, the sales agents were coached to provide this false information in order to ensure that the Plaintiffs did not leave the meeting without having agreed to buy points.

269. Bluegreen's management and agents, such as Todd Smith, Judith Norris, and Melissa East knew the company policy was to allow sales agents to violate the Tennessee Timeshare Act with misleading and false statements, and so they deliberately turned a blind eye, as such behavior was personally benefitting them because of bonuses they received on all sales.

270. Todd Smith, Judith Norris, and Melissa East had "performance standards" they had to maintain in regard to sales and "take backs," which motivated them to allow fraudulent and misleading advertising and sales to go on under their management, because they resulted in more and higher sales.

271. Bluegreen Corporation, Inc. knew that the sales agents selling Bluegreen services and products through its subsidiaries, such as Bluegreen Vacations Unlimited, Inc., were violating statutory and common laws, and it was benefitting by collecting the mortgage payments Plaintiffs made.

272. In furtherance of the conspiracy, after the sale, each month, the Plaintiffs were then mailed invoices for payment and maintenance fees, resulting in Bluegreen Corporation, Inc., and/or Bluegreen Vacations Unlimited, Inc., and/or Bluegreen Vacations Club, Inc. debiting money from Plaintiffs' accounts for a mortgage, benefitting Bluegreen Corporation and maintenance fees benefitting the Owners' Association.

273. Plaintiffs own property that is part of Vacation Trust, Inc. and the trust is supposed to act in a fiduciary capacity, but instead, allowed Bluegreen Corporation to foreclose on Plaintiffs, which was a breach of fiduciary duty.

274. All defendants worked together to accomplish by concerted action an unlawful purpose which was to violate the Tennessee Timeshare Act, commit intentional or negligent misrepresentation, breach of contract, and deprive Plaintiffs of their money, and then, the use of the timeshare while litigation is pending.

275. In the alternative, all defendants acted in concert for a lawful purpose by unlawful means by violating the Tennessee Timeshare Act, committing intentional or negligent misrepresentation, breach of contract, and depriving Plaintiffs of their money, and then, the use of the timeshare while litigation is pending.

276. Each conspirator had the intent to accomplish this common purpose, and each knew of the other's intent, as hundreds of complaints about misleading and fraudulent sales agents and sales tactics were lodged with Bluegreen each month, and Bluegreen has been sued many dozen if not hundreds of times, yet nothing changed year after year, and instead, Bluegreen Vacations Unlimited has chosen to pay people off and enter into confidential settlements as a cost of doing business, instead of cleaning up their act.

277. The agreement was not necessarily formal, but everyone knew how to play the game, from the sales agents to managers and executives alike such as Todd Smith, Judith Norris, and Melissa East.

278. As a result, each conspirator is liable for the damage to Plaintiffs, which were caused by the others.

279. WHEREFORE, the Plaintiffs seek compensatory and punitive damages, attorneys' fees, plus interest and costs, reasonable attorneys' fees and demand trial by jury on all issues so triable. The Plaintiffs pray for such other and further relief this Court deems appropriate.

WHEREFORE THE PLAINTIFFS RESPECTFULLY REQUEST THE FOLLOWING:

1. That process issue and the Defendants be required to respond in accordance with the Tennessee Rules of Civil Procedure;
2. That the Plaintiffs be awarded compensatory and punitive damages;
3. That the Plaintiffs' attorneys be awarded a reasonable amount in attorneys' fees;
4. That all discretionary costs be awarded to the Plaintiffs;
5. That the costs of this cause be taxed to the Defendants;
6. That injunctive relief be issued against the Defendants;
7. That declaratory relief be issued against the Defendants; and
8. For such other and general relief the Court deems just and proper.

Respectfully submitted,

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