

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 20-CV-24681-RNS

BLUEGREEN VACATIONS) VOLUME IV
UNLIMITED, INC., ET AL,) PAGES: 1 - 110
)
PLAINTIFF(S),)
)
VS.) DATE OF PROCEEDINGS:
) AUGUST 24, 2023
)
TIMESHARE LAWYERS, P.A., ET) COURTROOM #12-3
AL,) WILKIE D. FERGUSON
) COURTHOUSE
DEFENDANT(S) .)

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS
BEFORE THE HONORABLE ROBERT N. SCOLA, JR.,
UNITED STATES DISTRICT JUDGE AT
400 NORTH MIAMI AVENUE,
MIAMI, FLORIDA, 33128

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<u>Plaintiff's Exhibit</u>	<u>Description</u>	<u>Page</u>
1570	Telephone Recording; Wyndham Litigation Trial Ex. No. 21764.	5
1977	Wyndham Trial Exhibit No. 9156.	5

1 (Proceedings commencing at 9:12 a.m.)

2 **THE COURT:** Okay. So let's go back to the non-jury
3 trial. We're here for the closing arguments. Who's going to
4 make closing arguments on behalf of the plaintiffs.

5 **ATTORNEY LEGER:** Christian Ledger, Your Honor. But
6 before we begin, I think we have some brief housekeeping
7 matters on both sides.

8 **THE COURT:** Okay.

9 **ATTORNEY ELLIOTT:** Good morning, Your Honor, Benjamin
10 Elliott for the plaintiffs, in review of the exhibits last
11 night, we realized that were two exhibits that did not get
12 mentions that were admitted per the parties' stipulation.

13 **THE COURT:** Okay.

14 **ATTORNEY ELLIOTT:** And we've discussed with opposing
15 counsel and they are in agreement.

16 **THE COURT:** Okay.

17 **ATTORNEY ELLIOTT:** When you're ready.

18 **THE COURT:** Okay.

19 **ATTORNEY ELLIOTT:** The first is 1570. Plaintiff's
20 Exhibit 1570.

21 **THE COURT:** And was that what, a stipulation?

22 **ATTORNEY ELLIOTT:** Yes, Your Honor.

23 **THE COURT:** From the first day of trial?

24 **ATTORNEY ELLIOTT:** Correct.

25 **THE COURT:** Okay.

1 (Plaintiff's Exhibit 1570 was admitted into the
2 record.)

3 **ATTORNEY ELLIOTT:** And similarly, number 1977, also a
4 stipulation from day 1.

5 **THE COURT:** Okay.

6 (Plaintiff's Exhibit 1977 was admitted into the
7 record.)

8 **ATTORNEY ELLIOTT:** And then the next issue from
9 plaintiff's perspective is a number of the exhibits that have
10 been used during this trial contained personal information of
11 third party consumers.

12 **THE COURT:** Yes.

13 **ATTORNEY ELLIOTT:** And this matter during discovery up
14 to the trial has been by governed by an agreed confidentiality
15 agreement. That agreement directs the parties to speak about
16 how to handle things at trial. We have had that discussion
17 this morning. And the parties agree that, you know, it would
18 be appropriate to have the documents containing that
19 information be kept under seal. And if Your Honor's agreeable
20 to that, we would leave it to your discretion about how to
21 communicated to the clerk which exhibits those are. We can
22 submit a written document articulating --

23 **THE COURT:** All right. You need to file a motion to
24 seal and list the specific documents, and with a proposed order
25 and say they'll be sealed for five years and then destroyed by

1 the clerk.

2 **ATTORNEY ELLIOTT:** Okay. We will do that within
3 24 hours, Your Honor.

4 **THE COURT:** Thank you.

5 **ATTORNEY ELLIOTT:** That's it for the plaintiffs.

6 **ATTORNEY BRADFORD:** Your Honor, Pat Bradford, with
7 respect to the last item, if there are documents that are
8 mentioned in the record, how is that going to be handled? If a
9 customer's name and personal information is read from a
10 document in the record, how do you guys propose we handle that.

11 **ATTORNEY ELLIOTT:** I don't think the sensitive
12 information is referenced in the record. Social security
13 numbers were not discussed during trial. Home addresses and
14 phone numbers were never discussed.

15 **ATTORNEY BRADFORD:** It's just names and amounts. Names
16 and loan balances. You're okay with that?

17 **ATTORNEY ELLIOTT:** Yes. That's fine.

18 **ATTORNEY BRADFORD:** Your Honor, we're going to look at
19 1570 and 1977. We understand that they're audiotapes that were
20 covered by the stipulation. We're going to look at that just
21 to confirm it. If there's something different, we'll let you
22 know.

23 **THE COURT:** Okay.

24 **ATTORNEY ELLIOTT:** With respect to conditionally
25 admitted exhibits by plaintiffs, Plaintiffs 1192 through 1267

1 and Plaintiff's 1268 through 1388, we did have a chance to look
2 at them. And they are what the plaintiff say they are. So
3 we're fine with them being admitted.

4 **THE COURT:** Okay.

5 **ATTORNEY BRADFORD:** We have additional documents that
6 we failed to cite to Your Honor that should be included in the
7 record. And I just want to be clear that the these were
8 covered by the stipulation from the first day.

9 **THE COURT:** Okay.

10 **ATTORNEY BRADFORD:** They are Defendant's 550 through
11 634, and Defendant's 3- --

12 **THE COURT:** Hold on. 550.

13 **ATTORNEY BRADFORD:** Yep.

14 **THE COURT:** Through 6-

15 **ATTORNEY BRADFORD:** Through 634.

16 **THE COURT:** -34. Okay.

17 **ATTORNEY BRADFORD:** And also Defendant's 347.

18 **THE COURT:** Wait. Backwards. 347. I have that marked
19 but not in.

20 **ATTORNEY BRADFORD:** Okay. 347 through 363.

21 **THE COURT:** I have 348 through 363 already in. So 347
22 is included in that. Okay.

23 **ATTORNEY BRADFORD:** Through 363. Thank you, Your
24 Honor.

25 **THE COURT:** Okay. So the plaintiff, how much time do

1 you want to reserve for your rebuttal?

2 **ATTORNEY LEGER:** Ten minutes, Your Honor.

3 **THE COURT:** Okay.

4 **ATTORNEY LEGER:** Good morning, Your Honor.

5 **THE COURT:** Good morning.

6 **ATTORNEY LEGER:** As we've seen over the course of this
7 trial, Timeshare Compliance, Mr. Folk and Mr. Wilson, the
8 defendants in this case, have a business operation that really
9 has one goal in mind, and that is causing timeshare owners to
10 stop paying Bluegreen as part of the exit process. The ruse,
11 the deception, the thing, the elephant in the room, if you
12 will, is a pretext that misrepresentations of the developer are
13 somehow being leveraged against the developer in an effort to
14 get somebody out of their timeshare contract.

15 Sure, Timeshare Compliance is collecting that
16 information. It's being written down in some fashion and sent
17 to an attorney on a GOOGLE drive. But there is nothing about
18 the collection of that information that is then being leveraged
19 to get the timeshare owner out. The only thing that's being
20 used is the nonpayment of the timeshare.

21 That's what the Court found on summary judgment in the
22 Diamond matter. That's what this Court echoed in its summary
23 judgment order. And that is certainly what the evidence has
24 borne out over the past three days, Your Honor.

25 **THE COURT:** So let me ask you some questions starting

1 out, because I know there's some factual issues that I still
2 need to resolve in this trial. But a lot of my decisions in
3 this part of the case are decisions in equity.

4 So part of your presentation in this case was the
5 testimony of several timeshare owners, right?

6 **ATTORNEY LEGER:** Yes, Your Honor.

7 **THE COURT:** And they testified by depo. That's still
8 testimony. And you, I assume, that you want me to accept the
9 truthfulness of their testimony in terms of all of the
10 misrepresentations that were made by the defendants.

11 **ATTORNEY LEGER:** Yes, Your Honor.

12 **THE COURT:** And I'm sure -- I assume that you believe
13 that they're just overall just honest witnesses or you wouldn't
14 have selected them.

15 **ATTORNEY LEGER:** That's correct, Your Honor.

16 **THE COURT:** Okay. So it appears every single one of
17 these people, at least if you put them together, there may be a
18 few differences, but virtually all of them, okay, had the same
19 history with your clients, all right, where they feel that your
20 client misrepresented things to them, mislead them, pressured
21 them.

22 Would you agree that was their testimony?

23 **ATTORNEY LEGER:** For the majority of them, Your Honor.

24 **THE COURT:** Okay. So I went through a lot of the
25 depositions and demand letters which set forth -- and it seems

1 that these were the consistent complaints about Bluegreen's
2 sales process and what these people claim are
3 misrepresentations; first, that it's a prudent or good
4 investment. That's kind of ambiguous. So I'm going to set
5 that aside. Okay, that it could be passed down to their
6 children. I guess set that aside because that is passed down.
7 Of course the debt is also passed down.

8 But then this: The owners could rent out for extra
9 money. Once they own it, they could rent it out for extra
10 money, which never really happens, right?

11 Do you agree that these people were misled by your
12 clients with those representations?

13 **ATTORNEY LEGER:** I don't agree that they were misled,
14 Your Honor. The timeshare contracts --

15 **THE COURT:** Okay. I don't want an argument. Okay. So
16 that one is not a truthful one. Okay.

17 Next, that they were pressured to buy saying this was
18 an exclusive offer and it was only good for that day, for that
19 only, when that really wasn't true.

20 Is that a truthful statement by them?

21 **ATTORNEY LEGER:** Your Honor, Bluegreen does often run
22 promotions that are only good for that day. That a truthful
23 statement to that timeshare owner.

24 **THE COURT:** Okay. So that's not either.

25 Okay. That their ownership interest would increase in

1 value and have great resale value.

2 **ATTORNEY LEGER:** If that was made, that would be,
3 potentially, a misrepresentation. What I would add, Your
4 Honor --

5 **THE COURT:** "If it was made." They're saying it was
6 made. So is that a truthful statement by them?

7 **ATTORNEY LEGER:** We don't believe it's a truthful
8 statement, Your Honor, because the contracts --

9 **THE COURT:** Okay. Another one.
10 That the sales rep misrepresented the financial
11 significance of the maintenance fees and failed to properly
12 explain them.

13 **ATTORNEY LEGER:** It's flatly disclosed in the
14 disclosure to closing, Your Honor.

15 **THE COURT:** So they're wrong about that?

16 **ATTORNEY LEGER:** That is correct.

17 **THE COURT:** Okay. That the sales rep was -- coerced
18 them to purchase points and misrepresented the points increment
19 and its significance.

20 **ATTORNEY LEGER:** Again, laid out in the contract, Your
21 Honor.

22 **THE COURT:** So they're also wrong about that, correct?

23 **ATTORNEY LEGER:** Correct, Your Honor.

24 **THE COURT:** Okay. And that the sales rep
25 misrepresented the outside exchange program.

1 **ATTORNEY LEGER:** I don't believe they're correct about
2 that either. These are all also matters that are within the
3 contract documents.

4 **THE COURT:** Okay. That the sales rep coerced them into
5 applying for Bluegreen credit card.

6 **ATTORNEY LEGER:** I don't believe that's correct either.

7 **THE COURT:** Okay. That the -- that if they upgraded,
8 it would give the owner greater booking priority when in fact
9 that didn't really happen.

10 **ATTORNEY LEGER:** Well, that's a true statement.
11 Mr. Humphrey testified under oath that the more points that an
12 owner owes, the greater access they have to book reservations
13 on the Bluegreen's portfolio of resorts.

14 **THE COURT:** Right. But the owner's position was they
15 upgraded and they didn't really get that. So are they wrong
16 about that?

17 **ATTORNEY LEGER:** Yes, Your Honor.

18 **THE COURT:** And that the representative sales reps
19 would be like their personal assistants to be available for
20 them. But after the sale, they never returned their phone
21 calls.

22 **ATTORNEY LEGER:** Yes, Your Honor.

23 **THE COURT:** They're wrong about that?

24 **ATTORNEY LEGER:** Yes.

25 **THE COURT:** Okay. And that the sales rep failed to

1 disclose the correct interest rates.

2 **ATTORNEY LEGER:** Disclosed in the documents, Your
3 Honor.

4 **THE COURT:** So they're wrong about that?

5 **ATTORNEY LEGER:** Yep.

6 **THE COURT:** And that the sales rep failed to disclose
7 the right to cancel or rescind the contract.

8 **ATTORNEY LEGER:** Again, disclosed in the documents.

9 **THE COURT:** So they're wrong about that?

10 **ATTORNEY LEGER:** Yes.

11 **THE COURT:** So basically, every single claimed
12 misrepresentation that these people made about your clients,
13 you're telling me don't accept it, right?

14 **ATTORNEY LEGER:** Yes, Your Honor.

15 **THE COURT:** I just went through every one of them.

16 **ATTORNEY LEGER:** That's right.

17 **THE COURT:** So every single one of the them I'm not
18 going to accept. But all of the misrepresents made by the
19 people on the other side of the courtroom you want me to
20 accept?

21 **ATTORNEY LEGER:** If I may, Your Honor.

22 **THE COURT:** Yes or no?

23 **ATTORNEY LEGER:** Yes, that's correct.

24 **THE COURT:** Okay. So let me ask you a question: Is
25 there any other industry, product, or service that people are

1 so dissatisfied with that they're willing to pay thousands of
2 dollars to get out of that industry, product, or service?

3 **ATTORNEY LEGER:** Not that I'm personally aware of, Your
4 Honor.

5 **THE COURT:** Okay. So you think these tens of thousands
6 or hundreds of thousands of people that are going to these
7 timeshare exit companies, okay, are just all wrong.

8 **ATTORNEY LEGER:** If I may, Your Honor, what I think
9 happened here is Bluegreen has a set of disclosures that are
10 made to an owner at closing, and there are recorded calls of
11 those closings in which a quality assurance person walks
12 through them point by point to address the things that you just
13 went through, Your Honor. And those are documents that have
14 been produced in this case where they go through and they say,
15 "You do understand, Ms. Jones, this is not an investment, and
16 we are not buying this based on price appreciation. What I
17 will tell you is that -- "

18 **THE COURT:** So these tens of thousands or hundreds of
19 thousand of people are wrong?

20 **ATTORNEY LEGER:** We have recordings of these people
21 which the defendants didn't show anybody --

22 **THE COURT:** They're wrong or they're right? Yes or no?
23 They're wrong.

24 **ATTORNEY LEGER:** They're mistaken.

25 **THE COURT:** Okay.

1 **ATTORNEY LEGER:** It is perfectly valid, possible, that
2 they left feeling like that's what the representation were.
3 However, my client has documentations, not just the signing end
4 of a form contract, a recording of a human being walking
5 through those misrepresentations with the owner to give them a
6 real verbal experience with that in try and maintain that they
7 are not purchasing on those basis.

8 **THE COURT:** And do you, when somebody complains to you,
9 like either through Mr. Slattery or just another company or a
10 person on their own, contacts you, do you say, like, here's a
11 copy of the recording we have of you where we explain those to
12 you, so you're wrong?

13 **ATTORNEY LEGER:** The evidence is that, Your Honor, when
14 Mr. Slattery or Timeshare Compliance and one of their lawyers
15 sent it, Bluegreen does not respond.

16 **THE COURT:** Okay. All right. Go ahead.

17 **ATTORNEY LEGER:** All right.

18 Your Honor, in my opening, I told you that stopping
19 payments was vital to Timeshare Compliance because it has no
20 other way to exit a Bluegreen owner. And that's exactly what
21 the evidence showed.

22 Viewed it as a whole, if you look at the Timeshare
23 Compliance sales pitch, they have identified every friction
24 point that a timeshare owner might experience with stopping
25 their payment, and have tried to find some way to ease that

1 friction point so that the owner will stop making their
2 payments. The most obvious thing that will happen to a
3 timeshare owner, if they stop making their payments, is their
4 credit's going to get hurt while Timeshare Compliance proposes
5 to provide a solution to that. What about getting collection
6 calls, because you stopped making your payments. Well, they
7 have an attorney who's going to send a letter and say, "stop
8 contacting my client." They purport to have a solution for
9 that.

10 "Are you worried about how expensive Timeshare
11 Compliance costs is going to be? Well, that's okay, because
12 you can stop paying Bluegreen when you hire us, and our cost
13 only going to be a fraction of what you're paying Bluegreen."
14 And that was in every script we saw, Your Honor.

15 And the reason why that is because it removes that. Of
16 course, if you are paying my client \$200 a month, you can
17 afford to pay Timeshare Compliance \$100 a month. And by
18 therefore making their -- or advertising 'no credit damage,'
19 'attorney's going to stop the collection calls,' and 'we're
20 less expensive,' they've removed every conceivable obstacle or
21 objection that a customer might ordinarily have to stopping
22 their payments.

23 And Mr. Humphrey testified that when loans are
24 defaulted, they do injure these plaintiffs in a number of ways,
25 most specifically, BVC, Bluegreen Vacations Corporation, being

1 harmed when loans default, and Bluegreen Vacations Unlimited,
2 BVU, being harmed whenever inventory is reacquired through
3 carrying costs and re-marketing costs.

4 And Your Honor, the *Lanham Act* provides a remedy to
5 stop these defendants from continuing to make these same claims
6 in their advertising.

7 Now, the primarily focus that the defendants have
8 latched on to, at least in their opening, was the suggestion
9 that these statements were not sufficiently disseminated. And
10 frankly, Your Honor, the evidence could thought be further from
11 the truth, or couldn't be further because it shows that the
12 analysts disseminated these statements often.

13 There's no dispute in this case that the analyst is the
14 closer. Every timeshare owner who signs with up Timeshare
15 Compliance goes through an analyst. That's why I walked
16 Mr. Grey through the process of they hear a radio ad, they hear
17 a TV ad, they are exposed to digital marketing, whatever the
18 case may be. They then come down to the specialist. They come
19 to the vetting. They come down to the booking. And
20 ultimately, to the analyst. Mr. Grey described the analyst as
21 'the closer.'

22 The analyst is the party who convinces them to sign a
23 contract. There can be no dispute that the analyst is the
24 single more important part of the defendant's advertising and
25 promotion. And Your Honor, we have known this Court numerous,

1 numerous examples of the dissemination of the five statements
2 that we assert are false and misleading.

3 If you would, please publish what is in evidence as
4 defendant's, should be 1392. And please go to RFA number 159.

5 While he's bringing that up, Your Honor, this relates
6 to the statement that your credit will be protected.

7 While Mr. Grey was on the stand, I showed him
8 transcripts of eight separate analysts. Those recordings, Your
9 Honor, span a period of almost 18 months of eight separate
10 analysts making the exact same credit protection statements to
11 a number of owners, and the transcript showed every single one
12 of those statements was made in the context of 'it's safe for
13 your to stop making your payments because we are going to
14 protect your credit.' And just to read those in the record,
15 those transcripts were 405, sorry, Defendant's 504, Defendant's
16 506, Defendant's 487, Defendant's 519, Defendant's 517,
17 Defendant's 476, Defendant's 491, and Defendant's 516.

18 And the analysts included in those matching up to those
19 numbers are Grady Bickle, Taylor Otto, Cortland Logger, Luke
20 King, Rick Recania, James Leonard, Richard Otto, and Kimmer
21 Franz. That's eight analysts, Your Honor. And Mr. Grey
22 testified that there's between eight and a dozen analysts at
23 any given time. That's most of the analysts right there.

24 The defendants in this case are asking this Court to
25 impose a standard of uniformed dissemination. And frankly,

1 there is no support in the case law or in the evidence that the
2 requirement that I am required to show is the uniform
3 dissemination of a statement. In fact, what the Eleventh
4 Circuit has adopted is a statement of sufficient dissemination,
5 and courts have upheld advertising as actionable under the
6 *Lanham Act* even when it's not uniformly disseminated. There's
7 a seminal case of *7-Up Co. versus Coca Cola Co.*, decided by the
8 Fifth Circuit, 1996, Your Honor. And in that case, Coca Cola
9 was going around giving presentations to independent bottlers.
10 I'm going to give you the cite. I forgot it. It's *86 F3d,*
11 *1379.*

12 And in those presentations, Coca Cola was using false
13 and misleading statements about 7-Up. There were 74 bottlers
14 that were potential customers in that market. Coca Cola gave
15 its presentation to I think it was 12 of the 74. And for some
16 of them, it didn't even give the whole presentation. 12 of 74,
17 some of them with a partial presentation. And the Fifth
18 Circuit upheld that as commercial advertising, actionable under
19 the *Lanham Act* because there was no doubt that the purpose of
20 the advertising was not casual or isolated conversations
21 between sales reps and perspective customers. Those
22 presentations were part of a targeted, identifiable, concerted
23 marketing effort by Coca Cola to take business. And therefore,
24 Your Honor, the Court upheld that that was actionable
25 advertising under the *Lanham Act*.

1 The defendants want to look at this and say, well, the
2 exact same statement wasn't made to every owner in every
3 instance; and therefore, somehow, that means that you can't sue
4 us under the *Lanham Act*. And there's simply no requirement of
5 that.

6 The other case that I would cite Your Honor is Florida
7 *Breckinridge versus Solvay Pharmaceuticals*. That's a 1998 case
8 from the southern district by Judge Ryskamp, Your Honor. It's
9 1998 W-L 468753. And after discussing the oral statements that
10 one of the sales reps made, Judge Ryskamp held: It's unclear
11 from the defendant's deposition how many times he made the
12 above-referenced statements. It is clear, however, that the
13 defendant's statements were not isolated occurrences but were
14 instead an integral part of the defendant's advertising
15 campaign.

16 Same thing here. Your Honor.

17 There's no doubt that the reason that they're telling
18 timeshare owners these things is so that they will buy
19 Timeshare Compliance's services and they will stop making their
20 payments to my client.

21 I would also note for the Court without reading it into
22 the record that 7-Up goes through an very extensive analysis of
23 why commercial advertising is not specifically defined and the
24 whole purpose of the dissemination requirement is just to make
25 sure that it's not casual, isolated, one-off conversations.

1 That it's actually commercial activity.

2 Did we happen to get 1392 available? 1391. Excuse me.

3 1390. Excuse me.

4 And focussing on the credit, the statement is: Admit
5 that Pandora tells timeshare owners that their credit will be
6 protected during the timeshare exit process. Admitted.

7 There's no dispute in this case that they're telling them that
8 they're going to protect their credit during the exit process.

9 There's no qualification there, Your Honor.

10 There's also no dispute that this is false. The
11 testimony that this Court heard was the testimony of Angela
12 Consalvo that what happens is that they're sending off a form
13 dispute letter without any information on the front end,
14 crossing their fingers effectively, and hoping that somebody
15 doesn't respond on time or made a mistake. And she testified
16 that the success rate of doing that is very low.

17 There's also other evidence in the record of owners who
18 were having their credit damaged. We look at the owner
19 deposition, Ms. Tilahun, at page 24 to 25; Mr. Mailhoit at page
20 25 to 30. Even Wayne Norland. And Your Honor, I will tell you
21 that I deposed Mr. Norland. You could not find a human being
22 that was less enthused to be talking to Bluegreen's lawyer than
23 Mr. Norland. And even Mr. Norland admitted that he started at
24 an 805 when he hired Timeshare Compliance, he was now, at the
25 time of his deposition, at a 619 because he stopped paying his

1 Bluegreen timeshare.

2 Mr. Barnett testified at the time of his deposition at
3 page 27 to 28 and then again at 38 to 39 that his credit's
4 being affect.

5 Mr. Marston, at page 29, testified that his credit was
6 adversely affected.

7 Mr. Humphrey testified for Your Honor that the
8 defendants' process does nothing to interfere with Bluegreen's
9 credit reporting.

10 Mr. Grey admitted that if somebody said their credit
11 was going to be protected, that it would be a violation. In
12 response to Mr. Elliott's questioning, Mr. Hall said, "Stopping
13 payments isn't safer with credit protection." Therefore, Your
14 Honor, the last thing I would add is Plaintiff's 1978, where
15 Ms. Consalvo is saying to Ms. Matua of Timeshare Compliance,
16 "Please, please, tell them this that is not guaranteed. Tell
17 them this is an attempt." And is Ms. Matua's response is,
18 "I've brought this up many times and also recently advised in
19 the analysts meeting. And I hope it stops soon." Because
20 what's being told to these people is that their credit will be
21 protected.

22 There's no doubt that this representation is material,
23 Your Honor.

24 Ms. Prosek, who's one of the timeshare owners,
25 testified at 23 to 25 that she was told basically just stop

1 making payments and our credit would not be affected. I asked
2 her: "Was your credit important to you?"

3 She said "absolutely."

4 I said: "And was one of the reasons why you hired
5 Timeshare Compliance the fact that they told you that they
6 would protect your credit?"

7 Answer: "Yes."

8 I asked Mr. Marston at page 23: "Had Timeshare
9 Compliance at any point told you that they would protect your
10 credit if you stopped making your payments?"

11 Answer: "We were told that part of our things that we
12 did that they would go through and do a credit block, or
13 something like that, to keep our credit from being hurt from
14 not making the payments.

15 I asked: "Did the fact that Timeshare Compliance was
16 hooking you up with a credit service, I think you used the word
17 'block company,' give you the confidence that you should stop
18 making your payment?"

19 Answer: "Yes, I did. That's why we stopped."

20 There's other ones. Ms. Harding at page 24;
21 Mr. Mailhoit at 28 to 30; Ms. Ivy, or Freed, at page 30;
22 Ms. Tilahun at 26; Mr. Lathren at 26; Ms. King at 24 to 25;
23 Mr. Barnett at 22 and 34. And the list goes on. Mr. Schupp at
24 27 to 28. And Driver and Braswell also had the same testimony.

25 Your Honor, there's no dispute that the owners are

1 stopping their payments because of these statements.

2 **THE COURT:** These are the owners that you just admitted
3 to me were, at best, mistaken or were, at worse, lying about
4 all these misrepresentations that your clients made to them.
5 So obviously, these tape recordings of what the defendants told
6 them. So I guess you're telling me, well, you don't have to
7 believe them because we have the tape recordings of what was
8 said to them and, you know, and we have other evidence of
9 whether that's true or not.

10 You want me to believe them when they say that that was
11 material to their decision making. Okay. And so to me, it's
12 really hard to pick out like if somebody's either telling the
13 truth or they're not telling the truth. Those are all major
14 things. I know some people are going to tell the truth about
15 some things but not other things. But it seems to me the whole
16 genesis of this case are these same people's claims of these
17 misrepresentations by your client, which is a major, major part
18 of everything in their head about these cases that you want me
19 to say, okay, they're wrong about that, or they're lying about
20 that. But please listen to them about why they did things with
21 Timeshare Compliance.

22 **ATTORNEY LEGER:** Your Honor, even if you were to
23 credit --

24 **THE COURT:** It doesn't make common sense. Doesn't make
25 sense as a judge and a fact finder, okay, that you have scores

1 of people saying the exact same thing and they're all wrong.

2 **ATTORNEY LEGER:** Your Honor, even if your credit the
3 testimony of every one of those timeshare owners, what the
4 law --

5 **THE COURT:** I don't want to credit them. I want you to
6 credit them. You won't credit them for negative comments they
7 make about your clients.

8 **ATTORNEY LEGER:** Your Honor, I don't believe that every
9 one of those people believe those things were said to them.

10 **THE COURT:** Okay.

11 **ATTORNEY LEGER:** What I will say is that the causation
12 standard under the *Lanham Act* only requires that my client
13 prove during this trial that the defendant's conduct was a
14 substantial cause of their decision to stop making their
15 payments. I don't think there's any dispute on this record
16 given this testimony. And the sheer fact that en mass, upon
17 hiring Timeshare Compliance, these people start defaulting on
18 their mortgages, I don't think there's any dispute that what
19 the defendants are doing is a substantial cause of these
20 owners' conduct.

21 And Your Honor, if we look at why this is going on,
22 Mr. Slattery testified, "that's because the credit is
23 essentially the only leverage to persuade the clients to
24 continue making their payments." That's why they're doing
25 this. They're trying to remove any leverage to continue

1 payment.

2 Timeshare Compliance, in an e-mail, if you would please
3 publish Plaintiff's 1574. I Think plaintiff's 1574 is a
4 completely crucial document, Your Honor, because in that
5 document, Lauren Jones of Timeshare Compliance, is expressly
6 laying out that credit repair has to be pitched as contract
7 resolution. And I didn't take Mr. Grey through it during his
8 testimony, but there is a line further down -- are we getting
9 15? Thank you.

10 All right. Go down a little more. The second to last
11 bullet point, Your Honor. It was reiterated the analysts
12 should never be giving timeframes. Instead, they should pitch
13 contract resolution and the credit program as a contract
14 resolution. If the developer's not affecting your life style,
15 you're basically out. That's the position the defendants are
16 trying to take. If I can top you from getting calls, I can
17 stop your credit from getting hurt, you're out. And that's
18 what they're selling and that's false. And owners are
19 believing it and stopping their payments.

20 Your Honor, just to run through, we've also seen
21 Plaintiff's 1985, where they're claiming that the Trade Blc
22 makes foreclosure an exit. Mr. Baskett, who's deposition
23 you've reviewed, gave a training where he trained the room to
24 say, "If you know that the credit protection is going to be in
25 place and they can't get your credit during the process, why

1 would you want to make payments."

2 And Your Honor, I want to cite you to *ADT versus Vision*
3 *Security, LLC*. That's an opinion out of the southern district
4 by Judge Hurley. And what he said there, and that's 2014 West
5 Law, 3764152. He said, "When advertisements are made by oral
6 sales agents, courts may consider defendant's sales training
7 materials to determine the contents of the statements that were
8 made."

9 And Your Honor, we've identified numerous training
10 materials where the offending statements are made.

11 As far as injury goes, Your Honor, I addressed that
12 earlier. Mr. Humphrey testified extensively as to the injury
13 these plaintiffs suffered when loans default, both of them.

14 I'm going to run briefly through the other four because
15 the evidence is largely overlapping in terms of causation.

16 There's also statements made by the defendants that the
17 attorney will provide the resolution. We know that that's
18 false. Mr. Slattery has testified, and Mr. Christu showed him
19 his deposition where he said that the response from Bluegreen
20 is pretty consistent. They don't respond.

21 The only resolutions that the plaintiffs, I'm sorry,
22 the defendants even attempted to show you, Your Honor, were
23 from 2018. There's nothing from 2019. There's nothing from
24 2020. There's nothing from '21. There's nothing from '22.

25 The fact that these timeshare owners are being told

1 that an attorney will negotiate with them is important. And I
2 also want to point out, Mr. Grey, on Mr. Benford's questions,
3 introduced a script. That's the new script, Defendant's 416.
4 And even that script, Your Honor, which was made this year,
5 tells the timeshare owner that the attorney is going to
6 negotiate them out of their timeshare contract. And the owners
7 in their testimony confirmed that being represented by an
8 attorney gave them the comfort to stop making their payments.

9 Mr. -- Ms. Harding at 23; Ivy Freed at pages 80 to 81;
10 Tilahun at page 23; and again, Mr. Humphrey testified about the
11 zero-tolerance policy. Pandora's interrogatory response was
12 introduced to show that they're not aware of a single owner who
13 continued making their payments and got out.

14 So Your Honor, we know that the fact that they're
15 telling these people that an attorney's going to represent them
16 and get them out is both false and it's important to them and
17 it causes them to stop their payments.

18 Ms. King, at page 35, says that the attorney
19 representations gave her confidence to stop making her
20 payments. Mr. Marston, at page 24 and 25, I asked him: "Did
21 the fact that Timeshare Compliance was going to be referring
22 you to an attorney give you confidence that you could stop
23 making your payments safely?"

24 Answer: "Yes, it did."

25 Next statement is the 100 percent success rate or

1 sometimes stated as having never lost a case.

2 The transcripts that were introduced, Your Honor, all
3 contain the statement, with the exception of the 2023
4 transcript, which I'll address, that they've never lost a case.
5 "We resolve all cases we've taken on. We have never lost a
6 single case." And that includes Plaintiff's 1480, plaintiff's
7 1482, Plaintiff's 1484, among others.

8 We also put into evidence Plaintiff's 1497, which was a
9 training manual where, in response to the question: "What is
10 the success rate of Timeshare Compliance?" The representative
11 is trained to respond: "We've never lost a case."

12 The owners depositions again confirm that this statement
13 gives them confidence to stop their payments.

14 Ms. Harding, at page 28, I asked her: And what did you
15 understand Mr. Logger to be communicating to you and your
16 husband during that portion of the audio after being told that
17 they had never lost a case?"

18 She said: "That it was over. That they had taken care
19 of it. That we were out of it. It was done."

20 I asked Ms. Freed, at page 36: "Is the fact that they
21 told you that they had a hundred percent success rate of
22 getting people out of their timeshares, did that give you nor
23 comfort in stopping your payments to Bluegreen."

24 Answer: "Yes."

25 Ms. King, at page 33 to 35, was told she'd be the first

1 person that they ever didn't get out. And then she said that
2 it was important to her that they told her it was a hundred
3 percent successful.

4 Your Honor, Mr. Grey flatly admitted on the stand they
5 don't have a hundred percent success rate. There is no dispute
6 that that is a literally false statement before the Court
7 today.

8 There's also the statement of it being faster, easier,
9 quicker or expedited if you stop making your payments. There
10 are a number of different variations on the phrasing that go
11 into this. I even, when I was preparing last night, Your
12 Honor, I found two training instances where in Plaintiff's
13 Exhibit 1497, there was a case representative e-mail, welcome
14 e-mail. And in the welcome e-mail, they said, "What we can
15 tell you is that our attorneys have more success in a shorter
16 period of time." Same message, slightly different phrasing.

17 On page 20, they do it again in another section. And
18 they say: "However, the attorneys have recorded success much
19 sooner when we are not making payments."

20 So Your Honor, the fact that these statements have
21 these little tiny variations don't have any material affect to
22 the consumer and shouldn't have any material affect to Your
23 Honor's consideration here.

24 We know that statement is false because what the
25 attorneys do is they send two letters. That's it. When you

1 get to Carlsbad Law Group, they're going to send a cease and
2 desist letter, they're going to send a demand letter. And
3 nothing about the sending of the cease and desist letter and
4 the demand letter is in anyway affected by whether the owner
5 continues making their payments. It also gives the false
6 impression that somehow what the lawyer is doing is going to be
7 the method by which they get out.

8 Your Honor, there's also the statement that people can
9 stop making their payments when they hire Timeshare Compliance.
10 We've seen that over and over again. I showed you at
11 plaintiff's 1855 an e-mail from Mr. David Kong. In January
12 22nd of 2021, which post dates all the developer lawsuits,
13 where Mr. Kong is asking folks: "Do you think it's possible
14 when speaking to the clients in the engagement process and when
15 we tell them to stop their payments to the developer, to also
16 mention that if they have, sorry, if they are on autopay to
17 call the developer to get off of autopay."

18 The scripts repeatedly have the phrase that "once the
19 developer receives the cease and desist letter, you're done.
20 And is in a short period of time, you're not making any more
21 payments."

22 If you would, could you please publish Plaintiff's 1977
23 and begin paying it at three minutes.

24 (Recorded media was played in open court.)

25 **ATTORNEY LEGER:** Your Honor, that's a training

1 recording in which the analysts are being told to "build the
2 theater." And you can hear clear as day that what they're
3 training them on to say is, as soon as you're hired, you're not
4 making anymore payments. You're done making your payments.
5 And numerous owners, Your Honor, testified that they understood
6 that once they hired Timeshare Compliance, they could stop
7 making their payments. Mr. Grey testified, plainly, that there
8 is nothing that Timeshare Compliance does that gives them the
9 ability to tell owners to immediately stop their payments.

10 I want to briefly address the idea that somehow
11 Bluegreen's recovery of certain interests should eliminate its
12 harm. And I'd cite the Court to the *Diamond Resorts Versus*
13 *Newton Group Matter*, decided here in the southern district,
14 Your Honor. That's 2022-WL-1642865. That was by Judge
15 Reinhart, acting under consent as the district judge in that
16 case, Your Honor. He found, "I find that the value plaintiffs
17 may ultimately gain from the reclaimed points is not a factor
18 for the jury to consider in determining disgorgement of
19 damages. While the value of the reclaimed points may certainly
20 be relevant to the defendant's argument, as to plaintiff's
21 claimed monetary losses, it has no bearing on the disgorgement
22 profit analysis, which the case law establishes turns on the
23 defendant's conduct, profits and expenses to determine the
24 equitable award necessary to compensate the plaintiffs for the
25 defendant's conduct to deter future conduct and prevent unjust

1 enhancement."

2 And we also cited for Your Honor the *Rolex Watch Versus*
3 *BeckerTime* case, which granted summary judgment on the issue of
4 a mitigation affirmative defense on the finding that all that's
5 left here is disgorgement of damages, so why would have
6 consider mitigation. That's 2021-WL-4311540.

7 And Your Honor, there's no basis to deduct any costs
8 from the disgorgement that we're seeking here today. That
9 disgorgement is in the amount of \$1,558,158.62. And that, Your
10 Honor, is the aggregate of the fees charged by Timeshare
11 Compliance on the agreements lists at Exhibits 1,001 through
12 1,191.

13 The reason why I say there's no basis for deduction,
14 Your Honor, is because there's no showing that what was on the
15 profit and loss actually related to the sale of these timeshare
16 -- sorry or these exit services. The *Burger King* case at 934
17 *Federal Supp.*, 425, again, from this district, decided by Judge
18 King where he laid out the law related to this. He said, "All
19 doubt must be resolved against the infringer, that to allow
20 deductions from gross profits, defendants must establish that
21 the claimed expenses actually relate to the sale and production
22 of the infringing product, and that internal apportionments
23 made by defendants are not necessarily determinative."

24 There was no showing here, Your Honor, of how
25 individual expenses related to the sale of timeshare exit

1 services to Bluegreen. In fact, there were entire wholesale
2 categories that Mr. Grey couldn't differentiate, he couldn't
3 tell me what they were. There were whole categories that
4 clearly related to other business ventures.

5 We'll also cite the fact that none of the monies paid
6 to Mr. Folk or Mr. Wilson are probably detectable. The
7 Eleventh Circuit as held in *SEC versus U.S. Pension Trust Corp*,
8 that's *444 Federal Appendix, 435*, that "it matters not how the
9 ill-gotten gains were ultimately expended so long as the
10 spending of the ill-gotten gains bestowed a benefit on the
11 person for whom the monies are to be disgorged."

12 Therefore, Your Honor, the defendants have entirely
13 failed to meet their burden of cost deduction. And it's
14 important to know that it's their burden. It's a hundred
15 percent their burden. And it's not fair for the defendants,
16 themselves having that burden to hand Your Honor 28 page profit
17 and loss statement and expect you to parse through what are not
18 properly deductible expenses especially without the back-up
19 documentation that Mr. Grey admitted would be necessary to even
20 engage in the exercise in the first place.

21 As I noted yesterday --

22 **THE COURT:** And if I believe these people and believe
23 that they were abused by your clients and then later by abused
24 by the defendants and I want to -- I feel like I know that part
25 of disgorgement is to deter the conduct of the defendants. But

1 am I legally allowed to say instead of disgorging one and give
2 it to you, can I say give it back to the customers?

3 **ATTORNEY LEGER:** I don't believe that's available, Your
4 Honor. I'm not aware of it. I will tell you this: That there
5 are three interests that are served by disgorgement; unjust
6 enrichment, deterrence and compensation. Any one of them will
7 do. All three of them are justified in this case.

8 Turning briefly to the tortious interference, Your
9 Honor. I mentioned this yesterday, Bluegreen believes we have
10 put sufficient evidence of ongoing harm by the defendant's
11 conduct into the Court record. Obviously, except until the
12 Court entered its preliminary injunction already, they were
13 continuing to engage in this activity. And Florida law
14 expressly authorizes the entry of an injunction as a remedy for
15 a tortious interference claim in appropriate cases. That's
16 *Paul's Drugstore versus Southern Bell Telephone & Telegraph,*
17 *Co., 175 So. 2d, 203.* I have the third DCA where the Court
18 said, "The Courts of this state have consistently adhered to
19 the rule that interference with any contract with a tort. And
20 that in the proper case, such interference may be the object of
21 injunctive relief."

22 We've also shown that Timeshare Compliance and Carlsbad
23 Law Group were operating in a conspiracy. Everybody knew that
24 Bluegreen wouldn't be negotiating with them. And what I think
25 is the most damning, Your Honor, is the fact that a Sean

1 Slattery admitted that for a period of time, he told Timeshare
2 Compliance that he only wanted clients that the Trade Blc
3 protection in place. That's direct evidence, Your Honor, that
4 he knows that what they're doing is selling these people credit
5 protection as a way of getting them to stop their payments.
6 And we know that because Ms. White, at Plaintiff's 1990, which
7 is a November 2018 e-mail, says that "All they do is send two
8 letters." She gets in trouble with Timeshare Compliance who
9 says, "Hi, Debbie. Yes. Less is more when it comes to
10 clients, honestly."

11 And then she goes on to say, "I already feel like we
12 were scammed because of the history with the developer. So we
13 pry to move them away from that feeling by letting them know
14 that all is good as long as they aren't hearing from the
15 developer and if the Trade Blc is in place for debt clients."

16 We also have another e-mail from Ms. White at
17 Plaintiff's 1981, from March of 2018, where she says, "CLG
18 doesn't tell people to stop because it's a liability issue.
19 They rely on RAG for that." And again, we heard information
20 that RAG was operated by Pandora Marketing. It's the same
21 sales representatives.

22 Mr. Slattery, also in the e-mail regarding Mary Jo
23 Anderson and George Totten, which was Plaintiff's 1985.
24 Mr. Slattery expressly says that he describes to Mr. Totten how
25 Trade Blc makes foreclosure an exit. Mr. Slattery knows that

1 they're using the credit protection service to get people to
2 stop making their payments. And even after learning about what
3 defendants were saying through three litigations, Bluegreen,
4 Diamond, Wyndham, he didn't stop doing that until injunctions
5 were entered against him. In fact, Your Honor, I don't know if
6 you're aware, because it's been filed with the Court record,
7 Mr. Slattery, in the *Wyndham* case, Judge Burger, in the middle
8 district, found that conspiracy was proven on these same facts.
9 That was an order that was entered on August 7th of this year
10 finding that it was contributory false advertising and it was
11 conspiracy to commit tortious interference.

12 Mr. Slattery continually claimed before this Court that
13 Bluegreen was doing this just to put him out of business. But
14 again, when he decided to go to trial on the merits, he was
15 found to be guilty of exactly the claims that were against him.

16 Finally, Your Honor, I want to address the issue of the
17 *Deceptive and Unfair Trade Practices Act* in section 135.
18 There's no dispute in this case anywhere -- I think I got three
19 minutes left; is that right?

20 **THE COURT:** As long as you're not repeating yourself.
21 You can take more time. I'll give more time.

22 **ATTORNEY LEGER:** Thank you, Your Honor.

23 With regard to Section 6155, it's a California statute
24 that expressly says that "nobody can make the referral and no
25 attorney shall receive the referral if their business is in

1 whole or in part the referral of clients to an attorney."

2 The defendants here refer every client to an attorney,
3 at least every Bluegreen client. And there's no doubt that
4 that's affecting Florida timeshare owners.

5 It's not an accident, Your Honor, that the Pandora
6 Marketing agreement that we chose to use as an example was
7 Nancy and Bobby Braun. Their agreement's at Plaintiff's 1021.
8 Those are Florida residents who tired Timeshare Compliance and
9 got referred to a California attorney.

10 There's also Plaintiff's 1005, which is Roberto Cedeno
11 and Beatriz Astencio. Excuse me. I probably butchered that.
12 They're Florida residents. Linda Sue and Manual Aguinaga.
13 Florida residents. Daniel and Cheryl Burns at Plaintiff's
14 1031, also Florida residents. And those are more than -- there
15 are more examples. Those are just a few examples.

16 I also want to address the fact, Your Honor, that one
17 of the Pandora's defenses during this trial appears to be the
18 fact that they have now cleaned up their act and they should be
19 immune from any liability in this case. We've heard extensive
20 testimony about websites being revised and all of the other
21 things that they have purportedly done. But none of that
22 changes Bluegreen's right to relief in this case.

23 In *Shelly versus MRI Radiology Network*, that's an
24 Eleventh Circuit case from 2007, at 505 F3D, 1173, the Court
25 noted, "The formidable heavy burden of persuading the Court

1 that the challenged conduct cannot reasonably be expected to
2 start up again lies with the party asserting mootness. A
3 defendant's assertion that it has no intention of reinstating
4 the challenged practice does not suffice to make a case moot,
5 and it is but one factor to be considered in determining the
6 appropriateness of granting an injunction against now
7 discontinued act."

8 And then the Court laid out three factors that the
9 Court should consider. The first one was whether the
10 challenged conduct was isolated or unintentional as opposed to
11 a continuing and deliberate practice. Well, we know that this
12 wasn't isolated or unintentional, Your Honor. We've shown you
13 examples of it happening for years on dozens and dozens of
14 occasions. We also know that it wasn't unintentional because
15 even after there were -- even after their depositions, when
16 everybody realizes Bluegreen is not going to respond to these
17 letters, both sets of defendants, the marketers and the
18 lawyers, kept on going just as they had before.

19 The second factor is whether the defendant's cessation
20 of the offending conduct was motivated by a genuine change of
21 heart tying to anticipate suit. I would submit Your Honor the
22 defendant's change in conduct wasn't a change of heart. The
23 Court actually had to enter a preliminary injunction gent e
24 against them to cause them to change their conduct.

25 And then finally, the third factor the Eleventh Circuit

1 set out is whether in ceasing the conduct, the defendant has
2 acknowledged liability. And clearly, we're here arguing about
3 right now. There's been no acknowledgment of liability by
4 these defendants, Your Honor.

5 The last thing I want to address, Your Honor, is
6 Mr. Folk and Mr. Wilson, who haven't appeared at any point
7 during this trial.

8 The request for admissions that were entered into
9 evidence clearly admit that Mr. Folk and Mr. Wilson were
10 responsible for the sales scripts that were used and for the
11 sales training. Mr. Baskett, during his training, sorry,
12 during his testimony, verified that Mr. Folk and Mr. Wilson
13 managed and supervised the sales staff. In fact, Mr. Baskett,
14 one of the most senior members of the Pandora Marketing sales
15 staff, was trained by shadowing Rich Folk during the sales
16 pitch.

17 Scott Grey testified that the transcripts, sorry, that
18 the scripts were reviewed and approved by Mr. Folk and
19 Mr. Wilson. There has not been so much as even a bald denial
20 from anybody in the course of this trial that Mr. Folk and
21 Mr. Wilson are the ones behind the false advertising, Your
22 Honor.

23 Your Honor, I also admitted the depositions of Mr. Folk
24 and Mr. Wilson. Mr. Folk's depo, he corroborates at page 168
25 that he's involved in the scripts. Mr. Folk also admitted at

1 page 166 that credit provides an exit for someone that's not
2 paying. That's his position. And when asked: "So are you
3 saying foreclosure's an exit?"

4 His response was: "Well, that's kind of a grey area."
5 Wouldn't even acknowledge it.

6 Mr. Wilson also admitted that he and Mr. Folk selected
7 credit vendors and managed those vendors at page 49.

8 So Your Honor, there's simply no dispute that Mr. Folk
9 and Mr. Wilson are personally liable for the conduct that we've
10 proven during the course of this trial.

11 Therefore, Your Honor, we would ask that the Court
12 award disgorgement in this matter in the amount of
13 approximately \$1.5 million as previously stated. Thank you,
14 Your Honor, I should have said also injunctive relief
15 prohibiting the defendants from making the five statements that
16 we've identified in any advertising.

17 **THE COURT:** All right. I've been here since 830.
18 Let's take a ten-minute recess and come back at 10:30.

19 (Recess from 10:19 a.m. until 10:28 a.m.)

20 (Proceedings commencing at 10:28 a.m.)

21 **THE COURT:** All right. It looks like everybody's back.
22 And who's going to do the closing for the defense?

23 Mr. Benford?

24 **ATTORNEY BENFORD:** I will, Your Honor. Thank you.

25 Good morning, Your Honor. John Benford for the

1 defendants.

2 Your Honor, the -- as the Court is aware, the *Lanham*
3 *Act*, I think, is the primary issue for this trial. As we
4 stated in opening and in the findings of fact and conclusions
5 of law and in the motion for summary judgment briefing, we
6 believe there are serious deficiencies with regard to
7 Bluegreen's *Lanham Act* claims, the most sufficient of which is
8 that Bluegreen failed to meet its burden of proof as to wide
9 dissemination of the five statements that are issue before the
10 Court.

11 And again, the Court had raised concerns regarding
12 Bluegreen's failure to establish the wide dissemination in its
13 motion for summary judgment order, and we believe those
14 problems still exist after all the evidence has been presented
15 to this Court.

16 It's well established, Your Honor, that under the
17 *Lanham Act*, in order to qualify as advertising and promotions,
18 the statements in issue must widely disseminated and part of
19 the organized -- and part of an organized campaign to penetrate
20 a relevant market. So the statements, Your Honor, we believe,
21 and this Court had cited to this, this language, should be --
22 and this is on page 16 of the Court's motion for summary
23 judgment order -- the Court noted that the statements should be
24 uniform. And our position is the statements need to be
25 specific and uniform, and they need to be specific and uniform

1 from every analyst.

2 Now, Bluegreen's *Lanham Act* claims are based, as Your
3 Honor knows, based on allegedly false and material statements
4 during the sales presentations. And let me just -- I just want
5 to address something that the plaintiffs had mentioned as far
6 as lack of case law on uniformity.

7 There is, admittedly, a dearth of case law regarding
8 the wide dissemination standard. And as far as the -- the
9 cases don't expressly use the term 'uniform.' But that's
10 essentially what the Courts are discussing when they're
11 analyzing the facts and, you know, finding that no wide
12 dissemination has been found in these cases. And Your Honor, I
13 would give -- I would cite to one example. The case I'm citing
14 to *Meredith Lodging, LLC, versus Vacasa, LLC*. It's United
15 States District Court for the District of Oregon. And it is
16 1221 U.S. Lexis 220098. It's a 2021, I'm sorry, a 2021 West
17 Law 5316986. And again, *Meredith Lodging*.

18 And in this case, the Court held there was no wide
19 dissemination because there was a lack of uniformity between
20 the sales calls, and basically a lack of uniformity to the
21 sales calls which contradicted any kind of finding of wide
22 dissemination. And in that case, and I'm reading from the
23 case, in *Arlix* and *Newcal*, both -- pamphlets were disseminated
24 to a wide audience and contained the same commercial speech
25 throughout. In the case at hand, plaintiff alleges defendants

1 placed ten phone calls to a market of over 500 customers.
2 Additionally, defendant made the sporadic communications over a
3 period of several months, and each call contained different
4 alleged falsehoods. The vast differences between the alleged
5 scheme here and those at issue in *Grubbs*, *Arlix* and *Newcal*
6 merely confirms that plaintiff's allegations failed to show the
7 defendant's allegedly false statements were not sufficiently
8 disseminated to qualify as commercial advertising under the
9 *Lanham Act*.

10 So while the cases that interpret wide dissemination
11 may not specifically use the term of 'uniform,' that's
12 essentially what they're discussing and that's the concern that
13 this Court had on page 16 of its motion for summary judgment
14 order. And we believe that's essentially what the plaintiffs
15 are required to show. That is their burden of proof, to show
16 this, you know, sufficient uniformity in order to meet the wide
17 dissemination element under the *Lanham Act*.

18 So Bluegreen's claim is based upon false and material
19 statements that were made during sales presentations. So that
20 was really the critical issue, as Your Honor knows, with
21 respect to the wide dissemination. And Bluegreen is relying
22 almost exclusively on recordings of sales calls and several
23 sales scripts, which it is claiming were, you know, official
24 sanctioned sales scripts by management.

25 And, you know, from this very limited group of

1 evidence, they're trying to show that there was a wide
2 dissemination of the five -- of the five statements.

3 Now, I think its important first, Your Honor, to
4 identify the population of consumers that we're dealing with.

5 So Scott Grey testified that there are 825 Bluegreen
6 owners who hired Pandora. And that's the population that we're
7 dealing with. During discovery, Pandora had produced every
8 audiotape of every conversation with these folks. And then
9 Bluegreen then cherry picked the recordings that relate to
10 essentially 62 owners. So Bluegreen is intentionally, or
11 intentionally selected, you know, these 62 owners to support
12 its case. So the sampling was not random. But, you know,
13 again, it was carefully selected by Bluegreen to support its
14 theory. As a result, what we have is a very biassed and skewed
15 sample.

16 In addition, the sample itself has three fundamental
17 defects, which I'll later describe in more detail. But the
18 general problem is, number one, it's too small to be reliable
19 or statistically sound. It might be sufficient if you were --
20 if the 62 owners -- if you could take these 62 owners and you
21 can extrapolate them to the remaining 825, if each of the five
22 statements that was made to these 62 owners was contained in
23 these statements and it was uniform.

24 So the problem is there's an inconsistency as to the
25 frequency in which the statements were made to the each of the

1 62 owners, and there's an inconsistency as to the nature and
2 substance of what was said to the 62 owners. And I'll discuss
3 this is in a little more detail.

4 With regard to the inconsistency as to the frequency,
5 we have essentially 92 calls involving these 62 owners. And we
6 have a chart. Ms. Higgins, can you -- yeah. Thank you.

7 So, and Your Honor, we'll provide a hard copy later so
8 that when the Court reviews the evidence, it can use the chart
9 as an aid.

10 But the matrix contains all sales calls that are in
11 evidence, the frequency of the five statements, the analysts
12 who made the statements, the 'yes' is the 'Y' obviously. And
13 is that's where the statements appear. And the 'no' is where
14 they don't appear. So that kind of summarizes the inconsistent
15 frequency of the statements.

16 Now, the other problem. And unfortunately, you know,
17 it's like the -- it's a worn out cliché that the devil's in the
18 details. But I'm sure -- Scott Grey testified that he ran
19 numerous searches on the search terms that he used and he
20 testified, generally, as to the inconsistencies as to the
21 context of the statements. And Your Honor, we're confident
22 that after this Court has reviewed the actual content, what was
23 said, and the variations as to what was said, it will find the
24 same problems with the consistency and the uniformity as to the
25 substance of the statements. And we have limited time. But I

1 just wanted to show a few examples.

2 My apologizes, Your Honor.

3 So we have Taylor Otto, who really does not mention --
4 this is on the credit issue, doesn't mention the credit. This
5 is from Defendant's 464, which is also Plaintiff's 1654. And
6 the statement is, "Okay. Down the road, if you need some sort
7 of monitoring, we can do that for you; but you can decide that
8 at a later date. You don't need that now."

9 I don't know how that's possibly supports, you know,
10 any kind of theory that the credit, the statement regarding
11 credit, was deceptive.

12 And then let's go to D-450, which is also P-1627 at 42
13 to 42 -- I'm sorry. 42-1 to 42-4. And Mr. Otto says, "All
14 right. Um, so basically, what it comes down to is that we do
15 take measures to preserve your credit and we offer a service,
16 which is available, to restore it or basically, you know,
17 preserve."

18 And then -- do we have Luke King's statement at D-448?
19 Well, and I'll just -- okay. Yeah.

20 And the last one there, Derrick, this has to do with --
21 "We work with third party credit monitoring and repair company.
22 If you wanted to sign up for that, that's an additional program
23 that we don't cover. Most clients just chose to monitor their
24 own credit with their bank."

25 And then Derrick responds: "Yeah. I just rather do

1 that."

2 Again, Your Honor, we are kind of perplexed as to what
3 -- what the false and misleading statement is in these types of
4 examples. And again, I think what this also illustrates is the
5 inconsistency. In addition, some other examples -- And I think
6 that the point I'm trying to make, Your Honor, and I sympathize
7 with the Court having to go through all these statements. But
8 the the point I'm trying to make is when the Court does, it
9 will see an inconsistency in the actual substance of the
10 statements.

11 But here, by way of other examples, on D-496, Luke King
12 does not make a 100 percent guarantee. He doesn't mention
13 credit. He doesn't say it's easier or faster.

14 On D-541, Walter Gard doesn't talk about credit. He
15 doesn't talk about anything about any nonpayment being easier
16 and faster to get out of the timeshare.

17 Richard Otto, on D-545, does not talk about any kind of
18 100 percent success rate or credit or it's easier or faster to
19 get out of your are timeshare if you stop paying.

20 On D-548, James Leonard does not talk about credit or
21 that it's easier or faster to get out of your timeshare if you
22 stop paying. These are just examples of how, you know, there
23 is inconsistency as to frequency and to the actual statements
24 that were made.

25 So the other part of this or kind of group of evidence

1 is we don't have any evidence as to the extent. And the Court
2 had noted this on page 16 of its order. We don't have any
3 evidence as to the extent in which the scripts were used on
4 calls.

5 And you know, we believe that plaintiff has also failed
6 to meet its burden of proof on this issue. Scott Grey
7 testified that the only script authorized by Pandora was
8 Defendant's Exhibit 1488. And again, this script does not
9 contain the five alleged false statements. And the other
10 scripts -- and here's the issue: The other scripts that
11 Bluegreen relies on were not authorized by Pandora. And they
12 only cite to a handful of these scripts, one of them was from
13 Taylor Otto, whom, you know, we acknowledged that the company
14 had an issue with and he was disciplined. And another one was
15 Vicky Jaramillo, who was not only disciplined, she was fired.

16 So those are two scripts, again, not authorized by the
17 company.

18 So we also have evidence of the policy and procedure
19 documents where it shows that Pandora representatives were not
20 permitted to advise owners not to pay. And that would be
21 Defendant's Exhibit 325 and 327. Scott Grey then testified
22 that it's been Pandora's policy since he arrived that the
23 employees may not tell customers not to pay. And that's
24 supported by the 'analyst's do and don'ts,' which point number
25 1: Do not tell the customer or the client not to pay.

1 The fact, and we believe that the fact that Pandora's
2 policies prohibit analysts from saying certain statements would
3 explain why we have many cases, many situations, where
4 statements are not contained in these audio pitches and why
5 there's such inconsistencies. So Pandora's policies are
6 relevant to understanding why the sales calls are not uniform.
7 And I think it also explained why, you know, from these 825
8 customers in all these, you know, audiotapes that the
9 plaintiffs listened to to prepare their case, and they had a
10 lot of time to go through these, they were only able to come up
11 with these, you know, very non-uniform examples.

12 So the -- and I think this kind of gets back to the key
13 issue, as far as policy, that it's clear from the policies and
14 procedures that the representatives were not authorized, any
15 kind of representative, whether it's a case manager or it's a
16 specialist or it's a -- it's an analyst, that nobody in the
17 company's authorized to tell somebody not to pay.

18 Now, the welcome e-mail that the plaintiff cite to,
19 which is 1497, we don't believe it's relevant to the *Lanham Act*
20 because the sales process, that's not part of the sales process
21 that occurs. This welcome e-mail is used after Pandora's hired
22 and after the sale is made. So I don't believe as a matter of
23 law the *Lanham Act* can apply to that document.

24 Regarding the elements of the *Lanham Act* claim, as a
25 general matter, Bluegreen's *Lanham Act* claim as to the five

1 statements, we believe is deficient legally. Bluegreen has not
2 offered evidence from, you know, evidence of consumer surveys,
3 market research or expert testimony, which is almost always
4 required in any *Lanham Act* case, to prove the elements of
5 deception and materiality, how these statements would have
6 impacted the customer.

7 So with regard to statement one, Pandora's process
8 permits timeshare owners to stop making payments on their
9 timeshare, we don't believe this is false and misleading. We
10 have Mr. Slattery and Mr. Hall testified that they analyzed
11 the client's document and information as provided by Pandora.
12 There were numerous demand letters in evidence that are each
13 tailored to the specific fact situations of each client and
14 contained detailed facts and legal analysis.

15 Mr. Hall and Mr. Slattery testified the demand letters
16 established a basis for the affirmative defense and the
17 counterclaim of rescission if the client is sued, which has
18 occurred on approximately 50 occasions. And then we
19 acknowledge that it's not common but it has occurred. In
20 addition to that, there were 20 arbitrations, all by one, you
21 know, timeshare developer.

22 So while Bluegreen may have an internal practice, which
23 it doesn't announce to anybody, not to sue owners, the
24 important thing, Your Honor, is that Bluegreen, like other
25 timeshare companies who do sue, they have that right. They

1 have the right under the terms of their contract, including the
2 loan balance. Excuse me, they have the right, including under
3 the terms of the contract, to sue for various types of relief,
4 including an unpaid loan balance and recover attorney's fees
5 and costs relating to that litigation. And there's no evidence
6 that Bluegreen intends to remove that language from its
7 contract. It's still in there.

8 And the -- Mr. Hall also testified that the client
9 stopping payment is necessary as part of their process. So the
10 affirmative defense of rescission can be preserved in that it's
11 not waived.

12 He also testified that he believes, and it's his
13 opinion as a lawyer, that it's legal and ethical under
14 California law for attorneys to advise clients to breach a
15 contract if it best advances the client's objectives.

16 Now, in addition, Mr. Hall and Mr. Slattery testified
17 that Carlsbad explained the risks of its strategic default to
18 clients. They advised the clients to seek credit counseling
19 and monitoring services. The clients are almost always willing
20 to accept the risk to the credit and a decline in credit rating
21 in exchange for stopping the payment and having an attorney
22 defend them if a lawsuit is brought and otherwise advise them
23 on legal matters.

24 We believe the evidence is compelling, that the
25 zero-tolerance policy was not communicated to Pandora, Carlsbad

1 or their clients until after this lawsuit was filed. Bluegreen
2 has not provided any date or clear event where everyone, you
3 know, at both sides of the table, well, the -- Pandora and
4 Carlsbad or the clients would have known about this
5 zero-tolerance policy.

6 There was a press release. We don't believe that's
7 enough. We don't believe you can sue based upon a press
8 release. It was from a service, or it was published on an
9 Internet site that Business Wire or something that I've never
10 even heard of. It's not like this press release is ubiquitous
11 knowledge. I mean, it wasn't put CNN or FoxNews or in some,
12 you know, some major periodical. There's no indication that
13 you could run a GOOGLE search and it would pop up.

14 So press release was not known until after the
15 litigation was filed. It wasn't consistently applied. And we
16 believe, yeah, it was -- it's a document. It's a pretext. It
17 was fabricated to generate this lawsuit, to serve as a basis
18 for this lawsuit or one of the bases for the lawsuit.

19 In any event, we don't believe the press release would
20 defeat the legal, or the zero-tolerance policy rather, would
21 defeat the legal method of a strategic default and posturing
22 for defense in case a lawsuit is filed and waiting for it, as
23 Mr. Hall and Mr. Slattery testified, the four year statute of
24 limitations or whatever applicable statute of limitations would
25 run.

1 Mr. Hall and Mr. Slattery testified that it's their
2 clear defense -- my apologizes, clear intent to represent all
3 Bluegreen owners until they are terminated by Bluegreen even
4 after the statute of limitations applies. In the event, and I
5 think it would be a very unlikely event, Bluegreen decides to
6 bring action, either arbitration or a lawsuit after the
7 four-year applicable statute of limitations, to the extent that
8 that happens, Mr. Hall and Mr. Slattery testified that very few
9 developers allow owners to remain delinquent for more than
10 three years without recovering properties. And any financial
11 interest, it is clearly in the financial interest of the
12 developers to recover the timeshare properties and turn them
13 into performing assets.

14 In addition, Your Honor, we respectfully don't believe
15 that advising a client to stop paying a timeshare is a false
16 statement under the *Lanham Act*.

17 Now, in addition to that, it was not a material
18 statement, and we're kind of getting back to the materiality,
19 it was not a material statement, for example, the five out of
20 17 owners, or Bluegreen is only offering essentially five out
21 of 17 owners who were deposed to support its claim that this
22 was material to all of the owners, you know, who were affected.

23 Now, there's even a greater problem with statement two,
24 the 100 percent success rate, because Bluegreen's evidence of
25 materiality consist of one out of 17 deposed owners, one out of

1 17 deposed owners. And there's no other evidence that the
2 statement was material to the pool of consumers that we're
3 dealing with, the 825 Bluegreen owners who hired Pandora and
4 then later Carlsbad.

5 So again, it's very difficult without an expert on
6 consumer behavior, our position is, to determine the
7 materiality with respect to the 100 percent success rate and
8 what impact that would have had on customers.

9 With respect to credit protection, there's no false or
10 misleading statements. Mr. Grey testified the credit service
11 does repair an owner's damages credit either entirely or
12 substantially. I think this, you know, distinction between
13 preserve and repair, you know, is semantics and splitting
14 hairs. If you're able to restor -- if you're able to restore
15 the, for example, if you're able to completely restore credit,
16 let's say you have an 800 credit score and it declines to 730
17 and UD Prep is able to improve that from 730 back to the 800,
18 that would be, you know, arguably, that would be protecting
19 credit. That repair, or the restoration, of the credit would
20 be protecting credit.

21 So in addition, as we argued in the findings of fact
22 and conclusions of law, predictions about what will happen to
23 an owner's credit in the future, we believe, are a
24 nonactionable opinions.

25 So the only evidence that Bluegreen really offered is

1 to the materiality of this statement, the statement which is
2 very inconsistent, very nonuniform, is five out of 17 owners
3 who again, were not randomly selected but were specifically
4 selected by Bluegreen to try to support their theory.

5 So again, Bluegreen does not argue in their findings of
6 fact and conclusions of law that the credit statement passes
7 what they call 'the inherent feature of the product test.' And
8 this is the doctrine that they tried to avoid, or which they
9 used to try to avoid materiality of the other four statements.
10 The problem -- and I understand, Your Honor this is a little
11 hyper technical, but it's still the way -- it's still the way
12 the inherent features of the product tests works. They can't
13 make this claim about the credit since the credit service is
14 not offered by Pandora. It's offered by a third party.

15 So that's another issue that's arguably one of the, you
16 know, lesser issues in this problem with respect to Bluegreen's
17 credit protection claim.

18 In addition, as Pandora had stated in its findings and
19 of fact and conclusions of law, the inherent feature doctrine,
20 which, you know, again, you know, we believe is more of a
21 secondary argument. The inherent feature doctrine doesn't
22 replace the consumer-oriented nature of the materiality
23 determination which is required under *JB Weld*. And the
24 plaintiffs have the burden of proof in establishing that this
25 statement is material to the purchasing decisions of these

1 folks. And we have, like the other elements, we'd have you
2 know, very slim evidence. Again, we have five out of 17 owners
3 who were deposed, again, not randomly selected but specifically
4 cherry picked from these 825.

5 On statement four, the lawyers won't negotiate on the
6 owners behalf, Bluegreen's evidence of materiality, we believe,
7 is really lacking in this case as far as materiality. Again,
8 and I don't want to belabor this point, but we don't have an
9 expert, and you know, consumer behavior expert or any similar
10 expert. What we have is basically two out of 17 owners they
11 cite to. So we don't believe it's fraud. We don't believe
12 it's -- we also don't believe it's false or misleading for
13 reasons that, you know, we've discussed previously.

14 Mr. Grey also had testified that approximately
15 50 percent of all exits are negotiated by Pandora's attorneys
16 with regard to all developers across the boards. And then
17 Pandora, we also presented evidence that Pandora was able to
18 negotiate exits and that Bluegreen was cooperating until
19 instituted a zero-tolerance policy and really begin enforcing
20 it, again, to build what we believe is a essentially an
21 artificial basis for this lawsuit.

22 Now, with respect to statement five, the lawyers obtain
23 faster and easier results when the owners stop their payments,
24 we respectfully, Your Honor, do not believe this is false or
25 misleading. Lawyers are more likely to achieve a desired exit

1 when the owner's not paying. And we certainly heard that
2 testimony from the Carlsbad representatives regarding that, you
3 know, that issue and the effectiveness of these strategic
4 defaults enforcing negotiations. But there's no evidence, any
5 evidence, that we've seen that this statement, "the faster and
6 easier result" statement, was deceived by -- deceived, sorry,
7 deceived any of 17 owners. Any of these real human beings they
8 had, you know, plenty of opportunity to ask these questions and
9 determine in these depositions what impact this had. They had
10 plenty of opportunity to hire a consumer behavior expert, which
11 they didn't do. So instead, they're relying on the testimony
12 of 17 deposed owners to determine, you know, what impact it had
13 on these owners, how they behaved, how they responded to the
14 statement, 'this faster and easier statement.' And there's no
15 evidence this deceived anyone.

16 As to disgorgement, Your Honor, 15 U.S.C. 1117 provides
17 that disgorgement is subject to the principles of equity. And
18 if the Court finds a recovery based upon profits is excessive,
19 the Court has discretion to enter a judgment in a sum that the
20 Court finds is just according to the circumstances of the case.
21 In addition, disgorgement shall constitute compensation, not a
22 penalty. The Court held that -- or courts have held, I'm
23 sorry, that the defendants profits do not necessarily provide
24 an accurate, I'm sorry. If the defendants profits do not
25 necessarily provide an accurate or even reasonable estimate of

1 the plaintiff's damages, the disgorgement is not an appropriate
2 remedy. And in a similar vein, courts have held that
3 disgorgement should not produce a gross disconnect between harm
4 and recovery.

5 So there are a number of issues here. We've talked
6 about the evidence that Bluegreen recovered the 140 properties
7 out of 207 loans, which are at issue in this case. And they
8 again, they have the ability to quickly recover the remainder
9 of these properties. So that's one, you know, issue. But the
10 next component of that is the disgorgement of profits under the
11 *Lanham Act*. Courts have held that expenses should be deducted
12 from revenue in determining disgorgement under the *Lanham Act*.
13 And courts have held that variable and fixed expenses or
14 overhead, rather, may be deducted. And I will refer the Court
15 to the Second Circuit case, which is frequently cited, *Hamil,*
16 *H-a-m-i-l, American, Inc., versus GFI, 193 Federal 3d, 92.* And
17 in this case, the Court held that the deduction of the overhead
18 expenses, or the Court held that the defendant could deduct
19 overhead expenses from revenues. The Court held that the
20 defendant only needs to establish a sufficient nexus between
21 the category of overhead expenses and the sale of the product
22 or the service at issue. And the Court held that a range of
23 overhead expenses could be deducted, including rent, business,
24 entertainment, personnel and public relations expenses. And
25 the Court also noted that the trial court doesn't need to

1 scrutinize, you know, particular items in the overhead
2 categories. The Court held, for example, that entertainment
3 expenses, such as country club dues, that was one of the issues
4 in that case, could be a category of overhead related -- or
5 overhead related to a product that was sold.

6 Now, in addition, I'd refer the Court to the *Choice*
7 *Hotels* case. It's a Northern District of Florida case. And
8 the citation, Your Honor, is 2018 U.S. District, Lexis 229599
9 or I'm sorry, 2018 West Law, 5818372. And in that case, the
10 Court -- the Court estimated the profit margin of the defendant
11 based upon an affidavit that was provided by the defendant.

12 So we don't believe that these -- we don't believe that
13 these expenses need to be proven with scientific certainty.
14 The evidence that was provided, Pandora provided evidence of
15 its fixed and variable expenses. These expenses total
16 approximately 95 percent of the revenues. Mr. Grey testified
17 that the fixed and variable costs increased each year as the
18 revenue increases. The overhead costs, such as advertising and
19 marketing, are certainly necessary. He testified that they
20 were necessary to increase revenue. And Your Honor, it's -- we
21 believe it's commonsensical that an expense like advertising
22 will increase sales and various marketing expenses will
23 increase sales.

24 So he testified to the expenses that are listed every
25 year from 2016 to 2023. We also have the combined amounts in

1 the P and L on the last two pages of the profit and loss
2 summaries. So our position is that if the Court believes that
3 a specific expense category is not deductible, it can certainly
4 determine that it's not deductible. And it may add that to the
5 percentage of the total revenue, the profit margin, to be
6 deducted.

7 For example, if the Court -- I know that there was one
8 expense relating to, I think it was events like Christmas
9 parties and things like that, when arguably, you can relate,
10 you know, promote sales in a, you know, in a company by keeping
11 the employees happy and working harder. But if the Court
12 believes that things like entertainment that's not connected
13 with a, you know, with a client or with a potential customer,
14 the Court can, you know, can line item remove that expense and
15 then come up with a profit margin that the -- ultimately come
16 up with an appropriate profit margin that it believes that
17 Bluegreen would be entitled to recover and apply that to the
18 total number of Bluegreen, the Bluegreen-generated revenues, or
19 the revenues generated from the sale of defendant's services to
20 the Bluegreen, you know, to the Bluegreen customers.

21 With respect to the scope of injunctive relief, Your
22 Honor, we believe it's well established that injunctive relief
23 is dictated by the extent of the violation. The Court must
24 insure that the scope of the awarded relief doesn't exceed the
25 identified harm. So assuming the Court is inclined to enter a

1 preliminary injunction, that the injunction, at most, should
2 address the established violation. And with respect to the
3 *Lanham Act*, that would be a specific or false, deceptive --
4 that would be a specific, false or deceptive advertising
5 statement and only enjoin Pandora from making those statements,
6 those specific statements in the future. I'm assuming the
7 Court is able to identify a specific statement. And part of
8 the problem is this lack of uniformity.

9 So we also believe that any injunction should be
10 limited to just the Bluegreen owners. And at the end of the
11 day, an injunction, we believe that's broader and unwarranted
12 or, excuse me, that's broader would be inconsistent under the
13 Eleventh Circuit authority that we cite to in the findings of
14 fact and conclusions of law.

15 And I think importantly, the injunction, assuming the
16 Court is inclined to find in favor of the plaintiffs on the
17 *Lanham Act*, and again, we don't think that the Court even needs
18 to get there, but assuming the Court finds a *Lanham Act*
19 violation, we believe that the injunction should not prohibit
20 Pandora from conducting business with any Bluegreen clients.

21 In addition, we'd respectfully ask that the Court
22 consider the many efforts that Pandora has made in complying
23 with this Court's preliminary injunction. And we have, you
24 know, there's testimony and documentation, documentary
25 evidence, as to the numerous changes that they made in their

1 Internet advertising language, sales scripts, and their
2 operating procedures.

3 Your Honor, I'm not sure where we are in time. I can
4 wind it up now. But if the Court would, you know, grant me a
5 few more minutes. Maybe I'll just like to touch on some of the
6 other issues.

7 **THE COURT:** You have like 22 minutes, at least. Do you
8 have -- if you need extra time and you're not repeating
9 yourself, you can take extra time.

10 **ATTORNEY BENFORD:** Thank you, Your Honor.

11 So just very briefly, under the tortious interference.
12 Bluegreen has the burden of proof to establish that Pandora
13 interfered with each and every contract at issue. And we
14 believe that is the standard and there's certainly authority
15 that we cite to in the findings of fact and conclusions of law
16 that would support that. And they must show that the
17 interference was done by inducing or coercing each individual
18 owner to break his or her contract. And there's no evidence
19 that Pandora interfered with the contracts of the non-deposed
20 owners. And that's the issue that we're having, one of the big
21 issues that we're having, with the tortious interference count.

22 In addition, Bluegreen can't establish the essential
23 elements of damages.

24 This Court had noticed in the summary judgment order,
25 and I'm reading right from the order, Your Honor, "Bluegreen

1 repossesses the interest, offer for an amount equal to the
2 total outstanding balance on the terminated loan, then resells
3 the interest, resells interest, sorry, but it doesn't track the
4 value of the resold interest. The Court also noted that
5 Bluegreen failed to provide evidence as to the degree in which
6 it otherwise has been damaged by the owners' default, such as
7 through the cost of re-selling the particular timeshare
8 interest or through the costs of servicing fees."

9 And we simply don't believe, respectfully, that
10 Bluegreen has met its burden of proof on this issue.

11 In addition, I think it's important that Bluegreen
12 repeatedly disclaimed this damage throughout the discovery
13 period, claiming that the evidence of damages, other than the
14 unpaid loan balances. In this case, I'm a very late entrant, I
15 guess, to this case. I've been involved in this case, you
16 know, since only February of this year. But I have reviewed
17 the, you know, I have reviewed the, you know, discovery in the
18 case and discussed these issues with Mr. Bradford. But the
19 damages that were -- that they're claiming, these other types
20 of damages or harm, I guess, that they're claiming, you know,
21 these servicing fees and things like that, were only mentioned
22 a couple weeks before the discovery cut off. So I think
23 there's a real argument under Rule 37 as to whether the Court
24 should even consider this evidence. But the evidence that was
25 presented at trial was just -- it was -- well, it was very

1 flimsy, Your Honor. They don't have any expert on damages, no
2 financials were provided, no specific concrete information was
3 provided, you know, regarding these other costs. So we believe
4 that's, you know, very problematic.

5 Now, in addition Bluegreen must prove an unjustified
6 interference with the contracts. And I think, Your Honor, it's
7 well established, and we talked about this in the findings of
8 fact and the conclusions of law, it's well established that
9 there's no cause of action, okay, if the defendant did nothing
10 more than provide the third party with truthful information.

11 And as we discussed, Pandora, to the extent it
12 happened, truthfully informed customers that when they cease
13 making payments, it is easier and faster to get them out of
14 their contracts. Defendants, I'm sorry, Mr. Hall and
15 Mr. Slattery provided considerable -- considerable testimony
16 that the statement is accurate. And again, as a matter of law,
17 an owner's right to rescind the contract on the grounds of
18 fraud may be waived. And they talked about this, maybe waived
19 whether the owner continues to make payments despite knowing
20 that the developer defrauded them or taken the position that
21 the developer defrauded them into entering into the agreement.

22 Pandora also truthfully informs its owners that
23 Bluegreen would not likely initiate litigation against them for
24 a deficiency. And this is something that Mr. Carlsbad,
25 Mr. Slattery, Mr. Hall and the other attorneys, this is a

1 discussion that they have with their clients.

2 And we're one party to a contract. In addition, if one
3 party to a contract breaches that contract, the other party may
4 treat the breach as a discharge of their contractual liability
5 and may treat the contract as void. So breaching -- the
6 breaching party, may not enforce a contract, and the
7 non-breaching party's failure -- and we discussed this in the
8 conclusions of law, the non-breaching party's failure to
9 continue to perform under a contract does not constitute a
10 breach of the contract.

11 In addition, for Bluegreen to prevail on the tortious
12 interfere and civil conspiracy causes of action, it needs to
13 establish that each timeshare owner breached his or her
14 contract with the plaintiff by defaulting on his or her loan.
15 And here, Bluegreen breached the contracts with the timeshare
16 owners before the owners defaulted on their loan. And that's
17 how, you know, the contract issue, the breach of contract
18 issue, you know, would pertain, you know, as a potential
19 defense just like the rescission defense.

20 So Bluegreen's breach of those contracts, we believe
21 would be -- well, would prohibit Bluegreen from enforcing those
22 contracts. And we believe this is just as important as a
23 rescission defense.

24 So I'm just going to briefly going over standing, Your
25 Honor. I think there's numerous issues with standing. But in

1 general, because Bluegreen doesn't own 200 loans at the time
2 this caution of action arose, we don't believe they have
3 standing to sue on any claims that relate to these 2,000 loans.
4 And to the extent they repurchased them, you know, again, we
5 believe this was a self-inflicted damage decision that they
6 made, and they made to try to artificially create a basis for
7 this lawsuit.

8 The owners of the loans at the time of the default, and
9 we believe this is important, did not assign Bluegreen the
10 right to bring the causes of action of these loans, and the
11 non-written assignments do not convey Bluegreen the right to
12 bring these causes of action.

13 Now, regarding securitization, the -- there's a chart
14 that we prepared as a demonstrative aid to show how many loans
15 that Bluegreen did not take back and were subject to the
16 non-written assignments, or Bluegreen is claiming were subject
17 to the non-written assignments. And the evidence has shown
18 that Bluegreen cannot track, as Your Honor knows, Bluegreen is
19 not able to track an identifiable interest.

20 For example, one loan came up in the testimony, I
21 believe it was on cross-examination of Mr. Humphrey related to
22 owners named Braun, B-r-a-u-n-s. And there was an identifier
23 for the loan of 6-6-0-1-Y-2-4-E.

24 So the bottom line is Bluegreen, I don't think it's
25 really in dispute, Bluegreen can't track an identifiable

1 interest.

2 So Mr. Humphrey also testified that there is a
3 voluntarily repurchase, you know, that he explained those for
4 the broader business goal of a reputational risk. And we
5 believe this shows a lack of causation as well.

6 I think causation is a big issue here, Your Honor. And
7 because they intentionally and voluntarily repurchased the
8 defaulted loans, Bluegreen's required to show proximate
9 causation. And is it's required to show proximate causation
10 under tortious interference on a contract-by-contract basis and
11 can rely on temporal proximity. And we cite to a number of
12 cases and these mostly come out of the middle district. But
13 recently, the Court in California in the *Wyndham*, I believe
14 *Diamond*, sorry, *Diamond*, and we cite to this in our findings of
15 fact and conclusions of law, recently addressed this issue with
16 temporal proximate causation. And as the Court knows, it's a
17 long standing, you know, concept that runs throughout our
18 jurisprudence that correlation does not equal causation.

19 And the Courts, again, in similar timeshare exit
20 litigation rejected any attempts by developers to offer expert
21 testimony on statistically analysis. And so even when experts
22 were used to extrapolate, the Courts were very strict in
23 allowing this testimony to go forward in a couple of these
24 cases in the Middle District. And again, recently, the Court
25 in the *Diamond Resorts versus Pandora Marketing*, I can't cite

1 to the case now but it is in the findings of fact and
2 conclusions of law, you know, the Central District of
3 California granted Pandora's motion to strike the developer's
4 expert testimony. And again, it was an expert, a statistician
5 or an expert on statistical analysis because the Court
6 recognized the problems of making this, you know,
7 extrapolation.

8 So I mean, our position in general -- I mean, our
9 position, kind of to summarize the tortious interference,
10 because the plaintiffs didn't provide testimony of a customer
11 survey expert in this action and there's no record evidence
12 from the individual owners regarding causation with respect to
13 101 of the 218 loans, I know that's now down to 207, I would
14 need to check, but because of these reasons, causation hasn't
15 been established.

16 Under FDPA, the Court held on a summary judgment that
17 the Pandora's business practices were deceptive because the
18 entire business model is based on offering a service, a legal
19 cancellation of a timeshare contract they don't actually
20 provide. And we believe that the, you know -- and we -- we're
21 recognizing the Court's decision. We believe the record
22 evidence actually demonstrates that Pandora does in fact
23 provide a legal -- a legal cancellation of the timeshare
24 contracts. Pandora, again, recommends a lawyer to each of its
25 -- each of its clients and those lawyers provide legal

1 services. Mr. Slattery, and Mr. Hall testified to these
2 services. Those services include drafting cease and desist
3 letters among other things, demand letter to other develops and
4 negotiating agreed exits with developers, including although
5 limited with Bluegreen. But certainly that attempt is
6 Bluegreen is made.

7 Lawyers then recommend, including Carlsbad, have, you
8 know, again, they've negotiated settlement agreements. They've
9 negotiated deeds in lieu of foreclosure and other agreed exits
10 with Bluegreen and other timeshare developers. And certainly
11 we acknowledge the instances with Bluegreen have been limited.
12 All of these lawyer-negotiated exits, we believe, would
13 constitute a legal cancellation of a timeshare contract. And
14 the Pandora-recommended lawyers have also represented Pandora
15 clients, again, in litigations and arbitrations that were
16 brought by the developers.

17 Pandora has paid, importantly, has paid for the legal
18 representation when these lawsuits and arbitrations arise. And
19 they've also paid in the cases where they resulted in a loss
20 for the client, they've covered any kind of attorney's fees,
21 costs or any kind of award that was associated with those
22 arbitrations.

23 So the litigations and arbitrations resulted in the
24 Pandora clients being fully released from their timeshares with
25 no further liability to the developer. And we believe that

1 certainly, you know, these efforts constitute legal
2 cancellation of timeshare contracts. And when a lawyer
3 recommend a strategic default to a client in order to bring the
4 developer to the bargaining table, we also believe that
5 represents legal advice as well.

6 Now, as to the strategic defaults, again, they were --
7 Mr. Slattery and Mr. Hall testified that they were consistent
8 with California law. We cited a cases and the conclusions of
9 law that permit them in the Eleventh Circuit. The lawyers
10 representing Pandora clients, I think the evidence is pretty
11 clear, that the lawyers representing the Pandora clients,
12 again, this is Mr. Hall and Mr. Slattery, have found that the
13 developers are likely to negotiate and agree to exists with the
14 owners continues to make payments on the timeshare contracts.
15 So the strategic default are often successful in getting the
16 developer's attention and getting them to negotiate with an
17 owner's lawyer.

18 Now, you know, obviously, this is not the case now or
19 since the zero-tolerance policy since Bluegreen started to
20 enforce its zero-tolerance policy. But again, we believe the
21 zero-tolerance policy, the evidence is pretty clear, was an
22 event to artificially provide a basis in this lawsuit. I think
23 it's also pretty clear from the evidence that it's in the
24 financial interest to recoup and resell the timeshares. And
25 the only reason, again, that Bluegreen is not doing this is to

1 try to create a basis for all of its claims in this action.

2 And then, I guess in conclusion, Your Honor, I know
3 this Court is has been very diligent in looking over the
4 evidence and probably doing much more reading than it typically
5 does in a case where 1.5 million in damages are being claimed;
6 but we would -- we do not believe that Bluegreen has met its
7 burden of proof on any of these issues, but in particular, Your
8 Honor, on the *Lanham Act*, we believe that plaintiffs are trying
9 to expand the *Lanham Act* beyond the strictures that are defined
10 in the act and the case law that interprets the *Lanham Act*. We
11 believe it's way beyond the original intent of the *Lanham Act*.

12 And you know, the *Lanham Act*, we believe, was designed
13 to address a situation where, as Your Honor noted, there's a
14 uniform statement. There's a uniform, consistent specific,
15 identifiable statement that's made. It would be Coca Cola
16 advertising that Pepsi has harmful chemicals, chemicals that
17 could damage somebody's health. Very specific statement. And
18 you look at the bulk of the *Lanham Act* cases and that's what
19 you were. It's a specific statement rarely made in sales
20 presentations. It's made in mass media, on TV, on the
21 Internet, in newspapers, radio, assuming anybody listens to
22 radio any more. And that is wide dissemination.

23 Thank you, Your Honor. We appreciate the Court's time.

24 **THE COURT:** All right. Thank you.

25 **ATTORNEY LEGER:** Thank you, Your Honor. If I could, we

1 also have prepared a demonstrative aid that summarizes the
2 recordings that we'd like to present to the Court.

3 **THE COURT:** Okay. You can give it to the Court's
4 security officer. Thank you.

5 **ATTORNEY LEGER:** And Your Honor, rather than engaging
6 in a qualitative assessment 'yes' or 'no,' we have copied and
7 pasted directly from the transcripts the exact statements that
8 were made in the various recordings that have been admitted.
9 And as Your Honor can see, when you do that, it's a 91-page
10 summary of just how often these representations are being made.

11 The defendants have cited one case for Your Honor where
12 there were ten out of 500 people contacted over a number of
13 years. It's not even remotely comparable to what we have here,
14 Your Honor. And Mr. Benford is right: We should look at the
15 population.

16 There have been 825 Bluegreen owners. But that's not
17 the population. The population's half that, because what we're
18 concerned about is the Bluegreen owners with mortgage debt.
19 Those are the owners that get told to stop making their
20 payments. Mr. Humphrey testified that's half the population of
21 Bluegreen owners, so the real number is even smaller. It's a
22 little over 400.

23 As we've heard some of those people may have been
24 defaulted before they contacted Pandora. Those are not the
25 people that we're talking about, Your Honor. What we're

1 talking about are the people who showed up to Pandora, they
2 were current on their payments, they had the ability to keep
3 making their payments, and we have provided the Court with
4 evidence that 190 of those people stopped making their payments
5 after they talked to the defendants.

6 As a further demonstrative, Your Honor, this
7 summarizes -- if I could be switched over to the elmo very
8 quickly.

9 **THE COURT:** On top, there's like a wheel. Sometimes it
10 takes a while to start working. Okay.

11 **ATTORNEY LEGER:** All right. Your Honor, as you can see
12 here, of those 180 owners, which is 198 contracts that we've
13 entered into evidence, 50 percent of them go delinquent in one
14 year or less.

15 If we go to one to two months, it adds another
16 22.73 percent. Go to two to three months, we get almost ten
17 more percent, and then almost 12 more percent, and then another
18 6.06 follow, for a massive default ratio following hiring the
19 defendants.

20 I also have a copy of this for Your Honor.

21 Your Honor, these owners were not cherry picked. This
22 is not a situation where we have gone in and are trying to show
23 the Court some small sampling. Of the approximately 200 owners
24 we presented you with the actual recordings of what was said to
25 over 80 of them. That's a large sample. The search terms that

1 the defendants keep attempting to use are no good because as
2 the we've shown very minor variations can result in their
3 search terms, and telling the Court that, no, no
4 misrepresentations was made. Just because, for example, as I
5 showed with Mr. Grey, Luke King, in a presentation, said that
6 the lawyer's process is expedited, instead of it going faster.
7 There's really no reliability to the chart that they have made
8 based on those search terms.

9 **THE COURT:** So let me ask a question: If I'm a
10 timeshare owner and I don't like my experience and I just, on
11 my own without speaking to anybody, decide to not pay. I mean,
12 I would be subject to whatever the penalties are for breaching
13 that contract, but I'm not like committing any torts, right?

14 **ATTORNEY LEGER:** That's right, Your Honor.

15 **THE COURT:** And I'm that same timeshare owner and I'm
16 unhappy and I go to my lawyer, not any exit company, not any
17 lawyer who specializes in getting people out of their contract.
18 I just go to my own lawyer and say, "Hey, I got this timeshare.
19 I'm really not happy." And is he or she says, "Well, if you
20 stop paying, you know, you'll be in breach of the agreement, it
21 could hurt your credit, they could default, they could get a
22 foreclosure but that's up to you."

23 Has that lawyer done anything wrong.

24 **ATTORNEY LEGER:** No, Your Honor.

25 **THE COURT:** Okay.

1 **ATTORNEY LEGER:** But I would note --

2 **THE COURT:** So the problem in this case is that by the
3 time -- if they just on their own had gone to see Mr. Slattery,
4 there wouldn't be any problem. So your position is by going to
5 these defendants first and getting referred to the same
6 lawyers, that's where the problem is that you have, somebody
7 from outside the relationship between the owner and the
8 timeshare company interfering with that relationship.

9 **ATTORNEY LEGER:** Yes and no. That is the problem. But
10 the bigger problem is that everything you just described is not
11 what's sold to the timeshare owner on the front end. In the
12 example you gave, Your Honor, I'm assuming that the lawyer,
13 when he was signing you up as a client, didn't falsely describe
14 for you what his services would be.

15 We would have no problem somebody walked up to Pandora
16 Marketing and they said, we can't do anything for you. The
17 easiest way to do this is stopping your payments. What's
18 happening here though is they are charging tens of thousands of
19 dollars to timeshare owners based on the premise that some
20 leveraging of sales misrepresentations is going to result in
21 the termination of their timeshare contract. And the entire
22 thing is a facade. That is not what's happening at all, and
23 you can see that from Mr. Slattery's communications to Pandora
24 Marketing. You can see that in Pandora's internal
25 communications. The whole thing is designed to get you to stop

1 paying while selling you some grandiose attorney who's going to
2 fight like hell against Bluegreen, when in reality, everybody
3 knowing there's two letters that's going to get written. And
4 when Debbie White told a client that, she got chastised by
5 Ashley Matua and told: "When it comes to clients, honestly,
6 less is more."

7 Ms. White's response was: "I've learned my lesson. I
8 won't do it again."

9 The problem here is the complete, total and utter
10 disconnect between what a timeshare owner is told and pays tens
11 of thousands of dollars for and then what they actually
12 receive, which is foreclosure and credit damage.

13 With regard to these misrepresentations, Mr. Benford
14 would have you believe these are just one-offs. But I think
15 maybe one of the most salient and important pieces of evidence
16 in this entire case, Your Honor, is the Jim Baskett training
17 audio and the deposition of Mr. Jim Baskett walking through
18 that where what we have is Mr. Jim Baskett being asked by
19 senior management to go give a presentation to the entire sales
20 staff. And all the misrepresentations that we're alleging are
21 in Mr. Baskett's training. He's literally on a Zoom recording
22 training the staff on how to say these things, at the behest of
23 management. And yet, somehow, the defendants want you to
24 believe that these are random, isolated events that are
25 occurring just because somebody went off message a little bit.

1 **THE COURT:** And instead of five misrepresentations or
2 misstatements, what if you had a case where there was a hundred
3 misrepresentations and there were a hundred clients that were
4 contacted, and each client was only told one of them, and each
5 client was told a different one. But each one of those
6 misstatements was material and caused them to take whatever
7 action there was. Would that be widespread dissemination?

8 **ATTORNEY LEGER:** That would not be, Your Honor.
9 Because in there, every statement was made one time.

10 **THE COURT:** Okay. So it's not the question of whether
11 it's a false statement was made to each person, it has to be
12 the same false statement multiple times?

13 **ATTORNEY LEGER:** Your Honor --

14 **THE COURT:** Because of these five, you don't have to
15 have every client being told each of the five, but you have to
16 have each of those five told to a number of clients.

17 **ATTORNEY LEGER:** That's right. And let me tell you
18 why, Your Honor: Because not every timeshare owner -- remember
19 when I mentioned the three friction points at the beginning of
20 my presentation? Not every timeshare owner treats those
21 friction points equally. And so what happens is the analyst
22 effectively has a toolbox of things that they can use.
23 Whenever -- if this particular owner is very worried about
24 their credit, don't worry, we've got the solution for the
25 credit. If this particular owner is worried about being able

1 to afford both services, because that happens, timeshare owners
2 in the transcripts you've received will say, "Mr. So and so, I
3 just simply can't afford to pay the timeshare and pay for this
4 exit service that you're offering me." And they go: "Don't
5 worry, because once you hire us, you don't have to pay them any
6 more." Maybe that person's not that worried about their credit
7 and they don't need that to close the sale. What happens is --
8 and these misrepresentations, they're not unrelated.

9 For example, the credit misrepresentation and the
10 'you-can-stop-your-payment' misrepresentation very often go
11 hand and in. And in the eight transcripts that I showed
12 Mr. Grey, in almost everyone, the way that it was presented was
13 "You can stop your payment when you hire us because we're going
14 to protect your credit." Sometimes it's, "You should stop your
15 payment when you hire us because that makes the process go
16 faster."

17 So the problem is they weave these together. There are
18 five elements that, together, remove any fiction for
19 nonpayment, and none of them are true. And we've presented
20 numerous, numerous examples of each statement being
21 systematically made, the sales staff being trained to make
22 these misrepresentations and of them actually being made and
23 timeshare owners, in their depositions, saying that those
24 actual statements result in their nonpayment and those actual
25 statements result in their hiring Timeshare Compliance. It's a

1 literal diversion of the payments coming to my client to the
2 defendant.

3 Your Honor, Mr. Benford made a statement about expert
4 testimony not being presented in this case, but there is zero
5 requirement that my client present expert testimony to support
6 a *Lanham Act* claim. And in fact, I will submit to the Court
7 that the individual owner testimony that we've presented is
8 better than a survey. Ordinarily, a survey would involve
9 surveying people who are not the actual purchasers of the
10 product in a controlled and test environment and asking them
11 questions. I don't need non-purchasers. These people are the
12 actually people who heard the presentation, purchased the
13 product, telling you why they did what they did. There can be
14 no better evidence of causation in materiality as it relates to
15 the consumer than the words of the consumer his or herself.

16 One issue that has come up, Your Honor, is the
17 defendant's claim that they didn't know about the
18 zero-tolerance policy. And one thing that I realized when I
19 was preparing for today: When we filed this complaint, there's
20 only one version of the complaint, one of the very first
21 affirmative defenses the lawyer defendants raised in the case,
22 the seventh affirmative defense is that Bluegreen has unclean
23 hands because Bluegreen doesn't respond to any of our
24 inquiries. It's one of the very first affirmative defenses
25 that they raised in the case. It was also stricken and the

1 Court adopted Judge Goodman's R and R recommending that it be
2 stricken.

3 I would also note that the *Lanham Act* itself doesn't
4 have any particular requirement of knowledge or intent or
5 woefulness. It's a strict liability statute. And the Eleventh
6 Circuit has affirmed that on several occasions. Moreover, even
7 if the Court were to look at that factor, Mr. Slattery
8 testified that if they don't hear from the developer within
9 60 days, it probably means they're not going to hear from the
10 developer. Yet. He didn't hear from Bluegreen in 2019. He
11 didn't hear from them in 2020. He didn't hear from them in
12 '21, '22. There's plenty of reason why he knows he's not going
13 to hear from Bluegreen and why he knew as soon as he got sued
14 that he needed to raise that as an affirmative defense.

15 The idea that this is something that was just sprung on
16 the defendants and that magically they learned it midway
17 through the litigation is nonsensical and it's contradicted by
18 the record, Your Honor.

19 Mr. Benford also incorrectly cites the number of
20 examples that we've provided to the Court supporting
21 materiality and causation. Those depositions speak for
22 themselves, Your Honor.

23 Mr. Benford also addressed the 'we get you out faster
24 or easier or quicker' type of misrepresentation and suggested
25 that was truthful, but Mr. Slattery also clearly testified that

1 he's got 825 Bluegreen timeshare owners that he cannot get out
2 of their timeshare contract. So I would submit that that, Your
3 Honor, is that proof positive that that statement is facially
4 false.

5 I want to move now to the idea of the *Lanham Act* being
6 compensation and not punishment.

7 As we noted, there are three interests that are served
8 by disgorgement, and I'm going to cite to the Court an Eleventh
9 Circuit case. *Burger King versus Mason*. It's 855 F.2d, 779,
10 from 1998. This is the first head note. It says, "Contrary to
11 Mason's argument, the law in the circuit is well settled that a
12 plaintiff need not demonstrate actual damage to obtain an award
13 reflecting an infringers profits under the *Lanham Act*. An
14 accounting of profits has been determined by this Court to
15 further the congressional purpose by making infringement
16 unprofitable, and it is justified because it deprives the
17 defendant of unjust enrichment and provides a deterrent to
18 similar activity in the future."

19 And the reason why this is important, Your Honor, is
20 there are certain activities that are violative of the *Lanham*
21 *Act* that are, frankly, so profitable that it would just be
22 easier for the defendant to continue engaging in those
23 activities and wait for the plaintiff to try and prove some
24 form of actual damages.

25 That's what the Eleventh Circuit's saying here, is that

1 the reason that we have to do is this isn't necessarily to
2 always compensate the plaintiff. The congressional purpose is
3 to make sure that the defendants aren't just making so much
4 money doing what they're doing that they keep doing it no
5 matter how wrong it is. And Your Honor, frankly, we have
6 evidence in this case that that's a real concern here because
7 after they found out -- each one of them admitted in their
8 depositions that they were taking on Bluegreen owners know that
9 Bluegreen wasn't going to respond to the attorney, still
10 selling them the attorney service anyway, and taking their
11 money to the tune of tens of thousands of dollars.

12 The reason why this Court needs to disgorge the profits
13 is to make them stop. And that's what we're asking the Court
14 to do.

15 Your Honor, Mr. Benford has attempted to attack the
16 number of examples we've cited to the Court. Your Honor, we
17 exhausted the ten deposition limit under the federal rules. We
18 obtained leave to depose 20 additional timeshare owners. We
19 have done everything we can within the bounds and limits of the
20 Federal Rules of Civil Procedure to provide this Court with as
21 many examples of the wrongful of conduct as possible.

22 And then toward the end of the presentation given by
23 Mr. Benford, there were a number of issues which are simple
24 attempts to ask this Court to relitigate either what has
25 already been decided on the Court's motion in limine or the

1 Court's motion for summary judgment. The harm issues were
2 expressly raised, including Rule 37 in the motion in limine.
3 The Court denied the motion in limine.

4 There was also an attempt by Mr. Benford to relitigate
5 the truthful advise defense. The standing arguments that
6 Mr. Benford raised were the exact arguments that the Court
7 rejected in the Court's summary judgment motion. I won't go
8 through them; but the same evidence that was presented in this
9 Court was the same evidence that the Court already considered
10 in rejecting those arguments.

11 There was also a statement that Bluegreen hasn't
12 presented any evidence of damages. And Your Honor, or sorry,
13 the statement was that there was no evidence as to the amount
14 of the damages that Mr. Humphrey, or the injuries, that
15 Mr. Humphrey testified to. And Your Honor, what Mr. Benford is
16 doing there is conflating injury and damages. For example, in
17 2017, is it the Federal Circuit, *684 F Appendix 974*, the
18 federal circuit held: "The district court directly held that
19 injury and damages are separate inquiries under the *Lanham*
20 *Act.*"

21 There's other cases. I have an entire stream of cites,
22 but I'm not going to read in the record. But there are.

23 We filed a brief with the Court. The defendants,
24 during the litigation, requested a brief on the issue of
25 disgorgement. They filed it, we responded. And there's an

1 entire stream cite in there, Your Honor, in which we
2 differentiate this exact issue that what we're required to show
3 for the disgorgement and injunction remedies is an injury, not
4 damages. Therefore, Mr. Benford's argument that, "Well,
5 Mr. Humphreys hasn't quantified the amount of servicing fees or
6 carrying costs" is entirely inapposite to these proceedings.

7 Mr. Benford made the statement that Bluegreen can't
8 track its assignments. Yet, Mr. Bradford showed Mr. Humphrey
9 an extensive chart of the tracking of assignments and even
10 explained to the Court how to correlate the chart to the actual
11 L-SAMS records that were in evidence. So we would reject that
12 as facially false, Your Honor.

13 Mr. Benford also mentioned that the Court should reject
14 causation based on the voluntarily repurchase. Again, a
15 re-litigation of the summary judgment order.

16 And again I also want to raise that the correlation
17 versus causation argument that Mr. Benford cited is very
18 misfounded.

19 There is case law, Your Honor, admittedly, that says
20 temporal proximity alone is not evidence of causation. But
21 there are numerous examples: This Court's summary judgment
22 order; Judge Dalton's order in the *Diamond versus Aaronson*
23 case; Judge Berger in the middle district has an order which
24 says that evidence of temporal proximity can be evidence, when
25 coupled with other evidence, that shows why that temporal

1 proximity is happening.

2 Here, Your Honor, it's no accident that the second
3 demonstrative that I've handed you showing a steep default rate
4 immediately following the defendant's conduct, because as we've
5 seen from the recordings and the testimony of owners, they're
6 induced to stop those payments by the defendants.

7 Give me one brief moment, Your Honor.

8 The last thing I would say, Your Honor, is to address
9 the point that you questioned me about initially: Both things
10 can be true. The timeshare owners can be dissatisfied with
11 their timeshare contracts. And I promise you, when we bring
12 them into the depositions, they are not happy to be deposed by
13 Bluegreen's counsel. Yet, they still come and they give
14 accurate and honest accounts of what the defendants told them.
15 And those accounts should be credited by this Court as why they
16 did what they did.

17 And therefore, Your Honor, we would submit that
18 Bluegreen is entitled to relief on each of the remaining
19 claims. Thank you.

20 **THE COURT:** Thank you. So ordinarily when I finish a
21 non-jury trial, I get the order out within a few days, but we
22 still have the depositions.

23 So first, when are those going to be added in and ready
24 for my review? Basically, I mean...

25 **ATTORNEY LEGER:** Your Honor, we're okay with your

1 existing review of the depo transcripts standing.

2 **THE COURT:** Okay.

3 **ATTORNEY LEGER:** As you suggested yesterday.

4 **THE COURT:** But any depositions somebody wants me to
5 watch, I'm going to watch them. So what depositions do you
6 want me to watch?

7 **ATTORNEY BRADFORD:** Your Honor, my understanding is
8 that there's one -- my understanding is that there is one
9 deposition for Mr. Eddie, Volume I, that you have not received.
10 They had no designations for it. And we did. And so --

11 **THE COURT:** I reviewed two depositions of Mr. Eddie.

12 **ATTORNEY LEGER:** There's no video for one of them.

13 **THE COURT:** Oh.

14 **ATTORNEY LEGER:** There's written transcription but
15 no...

16 **THE COURT:** Okay.

17 **ATTORNEY BRADFORD:** So apparently we're still waiting
18 on your ruling for Eddie I.

19 It just came in. I'm sorry, Your Honor.

20 **THE COURT:** It did.

21 **ATTORNEY CHRISTU:** We just got it.

22 **ATTORNEY BRADFORD:** Okay. So with respect to the
23 depositions, the idea is that you read them when you called
24 balls and strikes. Is that's sufficient? Is that sufficient
25 for Your Honor?

1 **THE COURT:** It is for me. But again, if you think I
2 need to, you know, watch someone's deposition in particular,
3 I'll do it.

4 **ATTORNEY BRADFORD:** Okay. We're fine. We're fine with
5 that.

6 **THE COURT:** Okay.

7 **ATTORNEY BRADFORD:** And then what about the audiotapes?

8 **THE COURT:** I have all of those, don't I?

9 **ATTORNEY BRADFORD:** But what about the edited snippets?
10 Does he have those?

11 **ATTORNEY LEGER:** I believe that we've submitted is the
12 summary in the written form. It's much easier for the Court to
13 review. We're fine relying on the summary of the written
14 transcripts rather than submitting.

15 **THE COURT:** If you want me to get those, when can you
16 have them to me?

17 **ATTORNEY BRADFORD:** I'm sorry. Your Honor. When you
18 say "summary," what are you talking about, Christian?

19 **ATTORNEY LEGER:** So the transcripts are in evidence,
20 and both sides have submitted to the Court a demonstrative of
21 that evidence. We're fine with relying on the transcripts in
22 the reports and the demonstratives related to those.

23 **ATTORNEY BRADFORD:** Have they been highlighted? Have
24 you submitted transcripts that are highlighted with the
25 snippets that Magistrate Judge Goodman said you had to provide?

1 **ATTORNEY LEGER:** I don't believe so.

2 **ATTORNEY BRADFORD:** Because yesterday, my understanding
3 is that you asked the judge if you wanted -- if you wanted him
4 to submit the actual snippets so he wouldn't have to listen to
5 the whole thing. He could listen to just the portion that you
6 wanted. And then we said, "Yes. But include ours as well."

7 **ATTORNEY LEGER:** Your Honor, we did consider that. And
8 at the end of the day, I think it's much more cumbersome for
9 you to review the actual audio files when you have the written
10 transcripts. And so our preference at this time would be for
11 the transcripts to speak for themselves.

12 **ATTORNEY HERSHMAN:** May I be heard on the housekeeping
13 issue regarding the plaintiff's and defendant's exhibit numbers
14 regarding the transcripts and the audio files?

15 **THE COURT:** Okay.

16 **ATTORNEY HERSHMAN:** There are several different
17 versions of the numbering. So initially, plaintiff's
18 identified a certain number of audio files. And when we had
19 them transcribed, the first page of each transcription
20 references the earlier plaintiff's exhibit number, which don't
21 correspond to the current audio files on the plaintiff's
22 exhibit list. So there's the old plaintiff's exhibit file of
23 audio number, which are referenced on the transcripts, there is
24 the transcript number, which is on the defendant's exhibit. We
25 included the audio files again on our list, and those have

1 defendant's exhibit numbers. But in case the Court has a hard
2 time navigating, because during the testimony, all of the --
3 all of the transcripts that the plaintiff's used were
4 referencing their -- the audio files with the new plaintiff's
5 numbers, we'd be happy to coordinate with opposing counsel and
6 create a road map just so that there is, you know, four sets of
7 numbers.

8 **THE COURT:** Right. And how much time do you want to do
9 that.

10 **ATTORNEY LEGER:** I don't think we need more than --

11 **THE COURT:** A few days.

12 **ATTORNEY LEGER:** Today or tomorrow.

13 **ATTORNEY HERSHMAN:** Today, probably, if I can
14 coordinate with them.

15 **ATTORNEY BRADFORD:** Is that enough time for you?

16 **ATTORNEY HERSHMAN:** Yes. Today. Tomorrow certainly.

17 **ATTORNEY BRADFORD:** Okay. We'll do our best to get it
18 to you by tomorrow, Your Honor.

19 Okay. Your Honor, I've said this a number of times.
20 And I don't mean to belabor the point, but I've got to advocate
21 for my client.

22 It is as important to our *Lanham Act* theory that
23 certain statements were never made on the recordings, not just
24 that they were made in a different form. And so the chart that
25 we've provided for you is color coded so that the green blocks

1 mean --

2 **THE COURT:** Wait. I don't have it. You showed it on
3 the --

4 **ATTORNEY BRADFORD:** I'm bringing it to you now. Okay.
5 I'm bringing up the latter chart as well as our master loan
6 chart. They provided everything in there.

7 **THE COURT:** Okay.

8 **ATTORNEY BRADFORD:** Thank you, sir.
9 But again.

10 **THE COURT:** Wait till I have it so when you're talking
11 about it, I can see what you're talking about.

12 **ATTORNEY BRADFORD:** Your Honor, with respect to the
13 color coded chart that our witness, Scott Grey and my colleague
14 Lisa Hershman compiled for Your Honor, the idea is that when
15 there's a green box, the statement wasn't made. And one of the
16 reasons that we gave you the list of search terms is so that
17 you could independently, or your law clerk, independently test
18 to see what's going on there. And our position is we were
19 trying to create a visual that shows you 'here are the five
20 statements.'

21 Now, the first two pages are recordings that they
22 chose. It was their first 26 plus 61. The last page are 19
23 that we chose. And the idea is if the universe of recordings
24 is this big and they choose this amount and you get a matrix
25 like that, and then we chose one that shows ours, it's just --

1 we're trying to make the point that the statements were not
2 made in the significant number of calls. And as Mr. Benford
3 said during the closing, when you have a green box, you have an
4 analyst who's acting within the written policies.

5 I won't belabor the point any more. Thank you, Your
6 Honor.

7 **THE COURT:** Okay. So since there's going to be
8 additional work for me, do you all want to update your proposed
9 findings of fact and give a post trial findings of fact?

10 **ATTORNEY BRADFORD:** Absolutely.

11 **ATTORNEY LEGER:** Sure, Your Honor.

12 **THE COURT:** I'll only do that if you do it within a
13 reasonable period of time.

14 **ATTORNEY BRADFORD:** Can we get three weeks, Your Honor?
15 Is that too long?

16 **ATTORNEY LEGER:** I was going to say next Wednesday.

17 **THE COURT:** Two weeks. Let's see what I got. I'm
18 going to be in trial next week. Next week is the 28th. Is how
19 about -- how about September 11th. That's like two-and-a-half
20 weeks.

21 **ATTORNEY LEGER:** Fine with us, Your Honor.

22 **ATTORNEY BRADFORD:** That's fine.

23 **THE COURT:** So both sides -- I don't need any more
24 legal arguments. You've already done that. Both sides can
25 submit their proposed findings based upon the trial testimony

1 and evidence by September 11th.

2 **ATTORNEY BRADFORD:** And will we get the transcript?

3 **THE COURT:** See, that's where the problem is. Then
4 there's like -- and she goes on vacation and the thing is six
5 months later. So if you pay her today, that's one; two, so
6 that's the 7th. All right. I'll give you to the 15th.

7 **ATTORNEY BRADFORD:** Okay. How many pages, Your Honor?

8 **THE COURT:** I don't care about that.

9 **ATTORNEY BRADFORD:** Okay. Thank you.

10 **THE COURT:** As long as it's related to the issues that
11 I have to decide and the facts that were brought out during the
12 trial.

13 **ATTORNEY BRADFORD:** Thank you.

14 **THE COURT:** All right. Thank you all for your
15 presentations. We'll be in recess in this matter.

16 (Proceedings concluded at 11:58 a.m.)

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C E R T I F I C A T E

I certify that the foregoing pages represent a true and correct transcript of the official electronic sound recording as provided to me by the U.S. District Court, Southern District of Florida, as taken on the date and time previously stated in the above matter.

I certify that the foregoing pages represent a true and correct transcript of the above-styled proceedings as reported on the date, time, and location listed.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was reported, and further that I am not financially nor otherwise interested in the outcome of the above-entitled matter.

/s/Quanincia S. Hill, RPR
Quanincia S. Hill, RPR
Official Court Reporter
Southern District of Florida

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