

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

TERRY D. THOMAS,

*

Plaintiff,

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*

*

v.

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CIVIL ACTION NO. 07-BE-1282-S

HOUSEHOLD FINANCE CORP.

*

OF NEVADA, a Corporation;

*

WYNDHAM VACATION RESORTS

*

INC., f/k/a FAIRFIELD RESORTS,

*

INC.,

*

a Corporation

*

*

Defendants.

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**WYNDHAM VACATION RESORTS, INC.'S
ANSWER TO PLAINTIFF'S COMPLAINT**

COMES NOW Defendant Wyndham Vacation Resort Inc.'s ("WVR") and answers Plaintiff's Complaint as follows:

ANSWER

With regard to the specific allegations of the Complaint, WVR says as follows:

Jurisdiction and Venue

1. WVR is without sufficient information, belief or knowledge to admit or deny the allegations in this paragraph and, therefore, denies them.

2. WVR is without sufficient information, belief or knowledge to admit or deny the allegations in this paragraph and, therefore, denies them.

3. WVR is without sufficient information, belief or knowledge to admit or deny the allegations in this paragraph and, therefore, denies them.

4. WVR admits that it is a Delaware corporation with its principal place of business in Orlando, Florida. WVR objects to the remaining allegations of this paragraph as calling for a legal conclusion, but to the extent an answer is required, WVR denies those allegations.

FACTS

5. WVR admits that it received a copy of the discharge order. WVR is without sufficient information, belief or knowledge to admit or deny the remaining allegations in this paragraph and, therefore, denies them.

6. WVR is without sufficient information, belief or knowledge to admit or deny the allegations in this paragraph and, therefore, denies them.

7. WVR is without sufficient information, belief or knowledge to admit or deny the allegations in this paragraph and, therefore, denies them.

8. WVR is without sufficient information, belief or knowledge to admit or deny the allegations in this paragraph and, therefore, denies them.

9. WVR is without sufficient information, belief or knowledge to admit or deny the allegations in this paragraph and, therefore, denies them.

10. Deny.
11. Deny.
12. Deny.
13. Deny.
14. Deny.
15. Deny.
16. Deny.
17. Deny.
18. Deny.
19. Deny.
20. Deny.
21. Deny.
22. Deny.
23. Deny.
24. Deny.
25. Deny.
26. Deny.
27. Deny.
28. Deny.
29. Deny.

FIRST CLAIM FOR RELIEF
State Law Claims

30. WVR adopts and incorporates herein its responses to paragraphs 1 through 29.

31. Deny.

32. Deny.

33. Deny.

34. Deny.

35. Deny.

36. Deny.

37. Deny.

38. Deny.

RELIEF SOUGHT

39. WVR denies that Plaintiff is entitled to any relief against it whatsoever.

40. WVR denies that Plaintiff is entitled to any relief against it whatsoever.

AFFIRMATIVE DEFENSES

WVR asserts the following affirmative defenses:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

WVR denies each and every allegation of the Complaint and demands strict proof thereof.

THIRD DEFENSE

WVR says that it is not guilty of the matters and things alleged in the Complaint.

FOURTH DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations.

FIFTH DEFENSE

WVR does not service loans.

SIXTH DEFENSE

The Fair Credit Reporting Act § 624(b)(1)(F), 15 U.S.C. § 1681t(b)(1)(F), preempts the purported state-law claims against WVR.

SEVENTH DEFENSE

WVR is not the proper party defendant in this action.

EIGHTH DEFENSE

WVR says that Plaintiff's claim for punitive damages is violative of provisions of both the Alabama State and United States Constitutions.

NINTH DEFENSE

An award of punitive damages in this case would violate the due process clause of the Constitution of the United States and the Constitution of Alabama, because Alabama's law regarding imposition of punitive damages in wrongful death actions lacks adequate standards for determining whether or not to award punitive damages and, if so, the amount of such an award.

TENTH DEFENSE

An award of punitive damages in this case would violate the Fourth, Fifth, Sixth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States and Article I, Section 6, and other provisions of the Constitution of Alabama, on the following separate and several grounds:

(a) That civil procedures pursuant to which punitive damages are awarded may result wrongfully in a punishment by a punitive damages award after the fact.

(b) That civil procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing.

(c) That civil procedures pursuant to which punitive damages are awarded fail to provide means for awarding separate judgments against alleged joint tortfeasors.

(d) That civil procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against the defendants.

(e) That civil procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages.

(f) That civil procedures pursuant to which punitive damages are awarded fail to provide specific standards for the award of punitive damages.

(g) That civil procedures pursuant to which punitive damages are awarded permit the award of punitive damages upon satisfaction of a standard of proof less than that applicable to the imposition of criminal sanctions.

(h) That civil procedures pursuant to which punitive damages are awarded permit multiple awards of punitive damages for the same alleged act.

(i) That civil procedures pursuant to which punitive damages are awarded fail to provide a clear, consistent appellate standard of review of an award of punitive damages.

(j) That civil procedures pursuant to which punitive damages are awarded permit the admission of evidence relative to the punitive damages in the

same proceeding during which liability and compensatory damages are determined.

(k) That standards of conduct upon which punitive damages are awarded are vague.

(l) That civil procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines.

(m) That civil procedures pursuant to which punitive damages are awarded permit the award of punitive damages upon satisfaction of a standard of proof which is not heightened in relation to the standard of proof for ordinary civil cases.

(n) That civil procedures pursuant to which punitive damages are awarded permit the imposition of arbitrary, capricious or oppressive penalties.

(o) That civil procedures pursuant to which punitive damages are awarded fail to limit the discretion of the jury in the award of punitive damages.

ELEVENTH DEFENSE

Plaintiff has failed to mitigate his damages, if any.

TWELFTH DEFENSE

Plaintiff's damages, if any, were not proximately caused by any act or omission of WVR.

THIRTEENTH DEFENSE

Plaintiff's damages, if any, resulted from the acts or omissions of a third party, not WVR.

FOURTEENTH DEFENSE

Plaintiff's damages, if any, resulted from intervening superseding causes unrelated to WVR.

FIFTEENTH DEFENSE

WVR acted reasonably and in full compliance with the law. No action by WVR can support liability to Plaintiff under his alleged claims.

SIXTEENTH DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

SEVENTEENTH DEFENSE

Plaintiff's claims are barred by the doctrine of contributory negligence.

EIGHTEENTH DEFENSE

Plaintiff's claims are barred by the doctrine of payment.

NINETEENTH DEFENSE

Plaintiff's claims are preempted by the Bankruptcy Code.

TWENTIETH DEFENSE

WVR's actions were justifiable and reasonable.

TWENTY-FIRST DEFENSE

WVR asserts the defense of truth.

TWENTY-SECOND DEFENSE

WVR adopts and incorporates all applicable affirmative defenses asserted by its co-defendants and reserves the right to assert additional affirmative defenses as discovery reveals are applicable.

s/ J. Eric Getty
One of the Attorneys for Wyndham
Vacation Resorts, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification and a copy of the foregoing to the persons listed below on this the 21st day of September, 2007:

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