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# Wyndham Hit With OT Action Over Tweaked Time Clocks

By Emily Atkin

A timeshare salesman hit two Wyndham Worldwide Corp. subsidiaries with a proposed collective action in Florida federal court Thursday, claiming the hospitality giant unlawfully manipulates its timekeeping system to avoid paying overtime.

Darren Koch's suit says Wyndham Worldwide Operations Inc. and Wyndham Vacation Ownership Inc. — both in the business of selling and soliciting timeshares in Florida — tweak information plugged into time clocks by employees, making it seem as though employees have not worked more than 40-hour weeks when they actually have.

The practice, the suit says, violates the Fair Labor Standards Act.

Wyndham's "deliberate and manipulative acts of altering its timekeeping system are willful violations of the FLSA," the suit says. "Defendants have been previously sued for similar FLSA violations but have failed to modify their unlawful pay practices."

In 2010, Wyndham Vacation settled a similar opt-in FLSA suit in Florida federal court for \$600,000, which also accused the unit of denying overtime pay, according to court documents. That suit, which did not target Wyndham Worldwide, was brought by Charles J. Thompson in 2009 on behalf of a collective class of time share sales agents.

The current suit seeks to certify a broader collective class than the 2009 suit, of "various" types of commissioned Wyndham salespeople and not just time share agents, according to the complaint.

Plaintiff counsel Michael Cotzen of Mansfield Bronstein PA told Law360 on Tuesday that the suit's proposed class is broader because there could be many other types of commissioned Wyndham salespeople who are being denied overtime.

"Of all the salesmen Wyndham has, Mr. Koch just happens to be a timeshare salesman," he said. "We don't know what the size of the class is, and we don't know how many other salesmen are owed overtime."

"We do know, however, that Wyndham has been willfully reducing the hours that Mr. Koch has been working by changing the amount on his time sheet. ... He knows what he's been working, and he knows he hasn't been getting paid for it," Cotzen added.

According to the complaint, Koch and the members of the proposed collective class are commissioned employees and do not receive an hourly rate. Still, Cotzen said, they are non-exempt employees under the FLSA who are entitled to receive time-and-a-half for all hours worked over 40.

"Commissioned employees can be paid overtime based on their commissions," Cotzen said. "That's why he clocked in and out, and that's why Wyndham has been manipulating the information."

Representatives for Wyndham could not immediately be reached for comment.

Counsel information for Wyndham was not immediately available.

Darren Koch is represented by Michael Cotzen and Jonathan Scott Minick of Mansfield Bronstein PA.

The case is Koch v. Wyndham Worldwide Operations Inc., et al., case number 6:13-cv-00627, in the U.S. District Court for the Middle District of Florida.