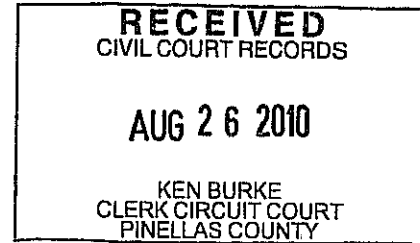


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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

MICHAEL STARKE,  
individually, and on behalf of all other  
similarly situated persons,

**Plaintiff.**



v.

Case No. 10 - 1284 4 CI - 19

**PFS CONCEPTS, INC.**  
(d/b/a US Vacations), a Florida  
corporation,

**CLASS REPRESENTATION  
DEMAND FOR JURY TRIAL**

**Defendant.**

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, MICHAEL STARKE (hereinafter "Plaintiff" or "Starke"), individually, and on behalf of all other similarly situated persons, pursuant to Rule 1.220, Fla. R. Civ. P., sues Defendant, PFS CONCEPTS, INC. (d/b/a US Vacations) (hereinafter "Defendant" or "PFS Concepts"), as follows:

**INTRODUCTION**

1. This is a class action on behalf of consumers in the United States who paid fees to the Defendant for timeshare resale services *and* (a) prior to the payment of the fees, were not provided with a written disclosure of the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by Defendant for each of the previous two calendar years *or* (b) prior to the payment of the fees, did not execute a contract for services provided by Defendant.

## JURISDICTION AND VENUE

2. Jurisdiction is proper because this is a class action for damages which exceeds \$15,000, exclusive of attorneys' fees, interests and costs.

3. Venue is proper in this Court because the named representative's causes of action accrued in Pinellas County, Florida, and the Defendant is a Florida corporation with its principal place of business located within Pinellas County, Florida. The statutory violations alleged herein have affected residents of more than one state.

## THE PARTIES

4. Plaintiff, Michael Starke, is an individual residing in California, and an owner of several timeshare interests located outside the state of Florida.

5. Defendant, PFS Concepts, Inc. (d/b/a US Vacations), is a Florida corporation. Defendant's principal place of business is located within Pinellas County. Defendant solicits customers throughout the United States from within Florida and payment is made to Defendant in Florida. Defendant holds several Florida business licenses, including a telemarketing license from the Florida Department of Agriculture and Consumer Services.

## GENERAL ALLEGATIONS

### *Defendant's Regular Custom, Course and Practice*

6. Defendant is a business engaged in the timeshare "advertising" resale business.

7. Defendant regularly solicits timeshare interest owners in the state of Florida and throughout the United States via its telemarketing operations.

8. As a matter of custom, course and practice, in order to induce the timeshare owner to pay an upfront fee for its services, Defendant represents to timeshare interest owners that a buyer is

“ready and willing” to purchase the timeshare even though no actual buyer currently exists.

9. As a matter of custom, course and practice, Defendant charges and collects a fee from the timeshare interest owner of approximately \$900.

10. As a matter of custom, course and practice, Defendant charges and collects a fee from the timeshare interest owner prior to receiving a signed contract from the timeshare interest owner.

11. As a matter of custom, course and practice, prior to “advertising” the timeshare interest, the Defendant fails to provide a written disclosure of the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by Defendant for each of the previous two calendar years. Instead, rather than actually providing timeshare interest owners with this disclosure at the time of the charging and collecting a fee from the timeshare interest owner, Defendant buries a misleading and inaccurate disclosure at the bottom of its website, in small font, under the Tab entitled “Legal Notice.” (<http://www.usvacation.net/newlegal.php>). Defendant also fails to provide the timeshare interest owner with the disclosure in its contract for services.

*Plaintiff Michael Starke's Dealings with Defendant*

12. Similar to other class members, Starke was solicited by Defendant on or about October 30, 2009 to engage the services of Defendant. In connection with the solicitation, Defendant, by and through its employees and/or authorized representatives:

- a) Stated that it had nine buyers seeking to purchase Starke's timeshare for between \$29,950 and \$32,250 per week, and that the property was guaranteed to be sold by the end of the year.

- b) Billed Starke's credit card in the amount of \$941 on the same day despite the lack of a written signed contract.
- c) Failed to provide Starke with a written contract until November 6, 2009. Even then, the written contract did not disclose the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by Defendant for each of the previous two calendar years. A copy of the Contract signed by Starke, and believed to have been provided to all timeshare interest owners in substantially the same form, is attached hereto as "Exhibit A."
- d) Never provided a buyer for the timeshare despite its representation that many buyers were ready and willing and that the property would be sold by the end of the year.
- e) Refused to provide a refund of the fee upon demand.

#### CLASS REPRESENTATION ALLEGATIONS

*Definition of the Alleged Class.* Fla. R. Civ. P. 1.220(c)(2)(D)(ii):

13. The Class is defined as all consumers in the United States who paid fees to the Defendant for timeshare resale services *and* (a) prior to the payment of the fees, were not provided with a written disclosure of the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by Defendant for each of the previous two calendar years *or* (b) prior to the payment of the fees, did not execute a contract for services provided by Defendant.

*Numerosity.* Fla. R. Civ. P. 1.220(a)(1):

14. The members of the Class are so numerous that separate joinder of each member is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. Pursuant to Fla. R. Civ. P. 1.220(c)(2)(D)(i), the class consists of an estimated 8,900 consumers. Upon information and belief, 1,798 advertisements were placed with the Defendant during the 2009 calendar year, and 1,953 advertisements were placed with the Defendant during the 2008 calendar year. Based upon this data, an estimated 8,900 class members exist from October, 2005 to the present date.

*Commonality.* Fla. R. Civ. P. 1.220(a)(2):

15. There is a well-defined community of interest in the questions of law and fact involved in this case. The claims of the representative party raise questions of law and fact common to the questions of law and fact raised by the claims of each member of the class. Pursuant to Fla. R. Civ. P. 1.220(c)(2)(B), the questions of law and fact that are common to the claims of the representative party and the claims of each member of the class include (1) whether, prior to collecting fees from class members, the Defendant failed to provide a written disclosure of the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by Defendant for each of the previous two calendar years; and (2) whether, prior to collecting fees from class members, the Defendant received a signed contract from the timeshare interest owner.

*Typicality.* Fla. R. Civ. P. 1.220(a)(3):

16. The claims of the Plaintiff Michael Starke are typical of those of the Class members. Pursuant to Fla. R. Civ. P. 1.220(c)(2)(C), the Plaintiff Michael Starke and all Class members were equally affected by the Defendant's failure, prior to charging and collecting a fee for services, (1) to

provide a written disclosure of the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by Defendant for each of the previous two calendar years or (2) to obtain a signed contract from the Class members. In the event that the approximately 8,900 individual class members were required to prosecute their claims separately, it is highly likely that a limited number of putative class members would go forward with litigation to obtain relief in a timely manner due to the relatively nominal amount at issue per each individual member (i.e., approximately \$900).

***Adequacy.*** Fla. R. Civ. P. 1.220(a)(4):

17. Plaintiff can, and will, fairly and adequately protect and represent the interests of the Class. Pursuant to Fla. R. Civ. P. 1.220(c)(2)(D)(iii), the Plaintiff is a mature, stable, and responsible individual interested in the fair and equitable adjudication of all class claims. Plaintiff is willing and able to fully and faithfully participate in this litigation from its inception to its conclusion. Plaintiff has personal knowledge about the facts and circumstances surrounding this controversy. Plaintiff has no interests which conflict with those of the Class.

18. Class counsel are experienced in class action litigation, having participated in (and are currently participating in) numerous class actions in the state of Florida and across the country. Class counsel possesses the requisite financial resources to maintain this litigation on behalf of the Plaintiff and class members.

***Claims Maintainable.*** Fla. R. Civ. P. 1.220(b):

19. The claims are maintainable on behalf of a class because the prerequisites of subdivision (a) of Fla. R. Civ. P. 1.220 are satisfied, as more fully alleged herein, and because:

- (1) the prosecution of separate claims by individual members of the class would create a risk of adjudications concerning individual members of the class which could, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications, or substantially impair or impede the ability of other members of the class who are not parties to the adjudications to protect their interests. Pursuant to Fla. R. Civ. P. 1.220(c)(2)(E), all members of the class were similarly affected by the Defendant's failure to provide the aforementioned written disclosure or to obtain a signed contract prior to charging and collecting a fee for services, and the legal and factual issues related to the failure to provide such disclosure or to obtain a signed contract are common to both the Plaintiff and the members of the class, as more fully alleged herein; and
- (2) the questions of law or fact common to the claims of the representative party and the claims of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy. Pursuant to Fla. R. Civ. P. 1.220(c)(2)(E), as alleged herein, the claims of the representative party clearly raise questions of law and fact common to the questions of law and fact raised by the claims of each member of the class. In this regard, this case is best served by prosecuting these questions of law and fact on

a class-wide basis instead of on an individual basis. Second, upon information and belief, there is no pending litigation to which any member of the class is a party and in which any question of law or fact controverted in this case is to be adjudicated. Third, it is desirable to concentrate the litigation in this forum where this case is instituted since the class consists of consumers who were solicited by the Defendant, a Florida corporation, from its principal place of business in Florida. Finally, there are no difficulties to be encountered in the management of the claims on behalf of a class given the questions of law and fact that are clearly common to all the members of the class.

20. Therefore, pursuant to Fla. R. Civ. P. 1.220(c)(2)(A), the claims are maintainable on behalf of a class under the following particular provisions of subdivision (b) of Fla. R. Civ. P. 1.220: (1)(B) and (3).

21. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

22. Starke has retained the undersigned counsel to represent him and the unnamed class plaintiffs in this matter and is obligated to pay his reasonable attorneys' fees incurred in this action.

23. All conditions precedent to the maintenance of this action have been met, sustained or been waived.

**COUNT I**  
**Violation of Florida Deceptive and Unfair Trade Practices Act**  
**Chapter 501, Part II, Fla. Stat.**

24. Plaintiff incorporates paragraphs 1 through 23 by reference.



25. Pursuant to the Florida Vacation Plan and Timesharing Act, Fla. Stat. Section 721.20(9)(a), "prior to listing or advertising a timeshare interest for resale, a resale service provider shall provide to the timeshare interest owner ...the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by the resale service provider for each of the previous two calendar years."

26. Pursuant to Fla. Stat. Section 721.20(9)(b), "[f]ailure to disclose the above information in writing constitutes an unfair and deceptive trade practice pursuant to chapter 501. Any contract entered into in violation of this subsection is void and the purchaser is entitled to a full refund of any moneys paid to the resale service provider."

27. As further alleged herein, as a matter of custom, course and practice, Defendant failed, prior to charging and collecting a fee for services, to provide a written disclosure of the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by Defendant for each of the previous two calendar years.

28. Section 501.204 of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") provides that unfair and deceptive trade practices in the conduct of any trade or commerce are unlawful.

29. Defendant engaged in unfair and deceptive trade practices by failing to provide the written disclosure required by the Florida Vacation Plan and Timesharing Act, as alleged herein.

30. Plaintiffs suffered damages as a result of Defendant's failure to provide such written disclosures.

31. Section 501.211 of FDUTPA provides that: (1) Without regard to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this part may bring an action

to obtain a declaratory judgment that an act or practice violates this part and to enjoin a person who has violated, is violating, or is otherwise likely to violate this part. (2) In any action brought by a person who has suffered a loss as a result of a violation of this part, such person may recover actual damages, plus attorneys' fees and court costs as provided in s. 501.2105.

32. The Defendant is liable for Plaintiffs' reasonable attorneys' fees incurred in this action pursuant to section 501.2105, Fla. Stat.

WHEREFORE, Class Plaintiffs demand judgment against Defendant PFS Concepts for injunctive relief to enjoin Defendant from violating FDUTPA, actual damages, interest, costs, court costs, attorneys' fees and for such other and further relief as this Court deems just and appropriate under the circumstances.

**COUNT II**  
**Violation of Florida Telemarketing Act**  
**Chapter 501, Part IV, Fla. Stat.**

33. Plaintiff incorporates paragraphs 1 through 23 by reference.

34. Pursuant to Fla. Stat. Section 501.615(2), "a commercial telephone seller who engages a salesperson to make, or cause to be made, a telephone sales call shall not make or submit any charge to the purchaser's credit card account or make or cause to be made any electronic transfer of funds until after the commercial telephone seller receives from the purchaser a copy of the contract, signed by the purchaser..... The commercial telephone seller shall then send the purchaser a written confirmation of the sale."

35. As a matter of custom, course and practice, Defendant charges timeshare owners' credit cards before the timeshare owner signs a contract with Defendant.

36. Plaintiffs are entitled to a refund of all fees paid due to Defendant's failure to obtain signed contracts before charging for services.

37. In addition to any other penalties or remedies provided under law, a person who is injured by a violation of the provisions of this part may bring a civil action for recovery of actual damages and/or punitive damages, including costs, court costs, and attorneys' fees. *See Fla. Stat. § 501.625.* No provision in this part shall be construed to limit any right or remedy provided under law. *Id.*

WHEREFORE, Class Plaintiffs demand judgment against Defendant PFS Concepts for actual damages, interest, costs, court costs, attorneys' fees and for such other and further relief as this Court deems just and appropriate under the circumstances.

**COUNT III**  
**Violation of Florida Vacation Plan and Timesharing Act**  
**Chapter 721, Part I, Fla. Stat.**

38. Plaintiff incorporates paragraphs 1 through 23 by reference.

39. Pursuant to the Florida Vacation Plan and Timesharing Act, Fla. Stat. Section 721.20(9)(a), "prior to listing or advertising a timeshare interest for resale, a resale service provider shall provide to the timeshare interest owner ...the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by the resale service provider for each of the previous two calendar years."

40. Pursuant to Fla. Stat. Section 721.20(9)(b), "[f]ailure to disclose the above information in writing constitutes an unfair and deceptive trade practice pursuant to chapter 501. Any contract entered into in violation of this subsection is void and the purchaser is entitled to a full refund of any moneys paid to the resale service provider."

41. As further alleged herein, as a matter of custom, course and practice, Defendant failed, prior to charging and collecting a fee for services, to provide a written disclosure the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by Defendant for each of the previous two calendar years.

42. Plaintiffs are entitled to a full refund of any money paid to Defendant because Defendant failed to comply with this statute.

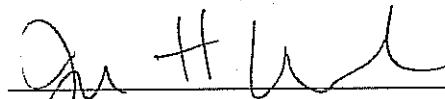
WHEREFORE, Class Plaintiffs demand judgment against Defendant PFS Concepts for a refund of all moneys paid to Defendant, interest, costs, court costs and for such other and further relief as this Court deems just and appropriate under the circumstances.

**JURY DEMAND**

Plaintiff and Class Plaintiffs demand a trial by jury on all issues so triable.

Date: August 25<sup>th</sup>, 2010.

By:  
**FORIZS & DOGALI, P.A.**



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