

FLSA NARRATIVE

Establishment Info

Legal Name: Disney Vacation Club Management Corp (DVCMC) &
Walt Disney Parks & Resorts U.S. Inc. (WDPR)
DBA: Disney Florida Resorts

Local File No: 2017-214-14159
Case ID #: 1811342

Physical Address for Team Disney
Team Disney, 4th Floor North
1375 E. Buena Vista Drive
Lake Buena Vista, Florida 32830

*The above address is the address entered in WHISARD for this investigation under the employer Information section. In addition to Disney's Old Key West Resort, which was investigated under Case ID # 1775907, there are 20 other additional Disney Resort Hotels included in this investigation(See Exhibit A on the ECA or Exhibit B-Oj for the names and addresses of all of the other locations).

Principal Address of Disney Vacation Club Management Corp (DVCMC)
1390 Celebration Blvd
Celebration FL, 34747

EIN: 95-2412883-Walt Disney Parks & Resorts U.S. Inc. (WDPR)

EIN: 59-3039581-Disney Vacation Club Management Corp (DVCMC)

Contact person:

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How is the hotel operated: Mr. Armando A. P [REDACTED] z-Feo (Disney's Principal Counsel) advised the WHI that there were approximately [REDACTED] EX 4 employees working at Disney's Florida Resort Hotels. The majority of the employees work at one main location however, they can pick up shifts at other locations if they are available. The payroll records reflected Disney was combining the hours the employees worked each week at all locations.

All of Disney's Florida Resort Hotels are operated by either Walt Disney Parks & Resorts U.S. Inc. (WDPR) or Disney Vacation Club Management Corp (DVCMC) (See Exhibits C-1-C-5).

Disney's Principal Counsel provided documentation reflecting the corporate officers of Disney Vacation Club Management Corp (DVCMC) and their respective titles (See Exhibit C-4)

History: All case files listed below have been linked to this case file in WHISARD.

This employer has had several FLSA & FMLA investigations conducted per MODO notification # 17489.

The most recent investigations are listed below:

Case ID # 1775907 - Disney's Old Key West Resort. FLSA Investigation conducted by the Jacksonville District Office in 2015. MW, OT, & RK violations were cited. **Total back wages due to 698 employees is \$209,951.99.** No CMPs assessed. This investigation was the first resort location where the pre-shift post shift uncompensated work and costume deduction was uncovered. Disney deducted the cost of the costume piece from the employee's pay when they failed to return their costume piece or if they had too many costumes on hand. Some of the employees fell below minimum wage due to the costume deductions taken. Additionally, Disney did not compensate some employees for performing pre-shift & post-shift work during the grace-in and grace-out period. Finally, Disney also failed to keep accurate records for all non-exempt employees. Disney ATC/ATP. Disney also agreed to begin training all managers and supervisors at all Florida Resort Hotels on what constitutes compensable work time and

the need to accurately record all such time within 30 days of the execution of the ECA. The ECA was executed on March 17th, 2017 (See ECA & Exhibit E-1).

Case ID #: 1760618 – Disney's Old Key West Resort. FMLA Investigation conducted by the Jacksonville District Office in 2015. The [REDACTED] alleged [REDACTED]. No back wages were assessed as the [REDACTED] could not be substantiated. The investigation revealed that the [REDACTED] was terminated for falsifying her time sheet when she clocked in and ran out to park her vehicle while on work time. Disney agreed to remain in compliance under FMLA (See Exhibit E-2).

Case ID #: 1219335 - Data Comm (Disney Contractor). FLSA investigation conducted by the Jacksonville District Office in 2002. Record keeping and de minimus OT violations cited. No back wages or CMPs were assessed. The [REDACTED] alleged Disney had intentionally allowed Data Comm employees to work off the [REDACTED]. The investigation revealed some employees were clocking in earlier than their scheduled shift due to traffic congestion. It was also learned that Disney kept two time-cards on the employees. One card was their actual clock in time and one was their scheduled start time. The investigator concluded that the pre-shift time system raised questions regarding both sets of time-cards and their accuracy. It is interesting to note that in this investigation, Disney expressed frustration that they were unable to change the situation of their time-system for contractual reasons. Future compliance was assured (See Exhibit E-3).

Case ID #: 104217- Walt Disney World's Reservation Unit in Tampa FL. FLSA Self Audit supervised by the Jacksonville District Office in 1999. **Total back wages due to 1,864 employees was \$563,714.45.** No CMPs assessed. The investigation that revealed Disney had not paid for all hours worked by employees in their reservation unit in Tampa Florida. The unpaid hours occurred when employees arrived before their shift starting times to prepare for that days shift. Some of the pre-shift work included activities such as reading about the day's promotions or turning on the computer to log into the day's activities. Disney ATC/ATP (See Exhibit E-4).

COVERAGE

Enterprise Coverage: Enterprise coverage was established for the entire investigative period. Disney acknowledged that it is a covered enterprise under **Sections 203 (r) and 203 (s)** of the Act and that the provisions of the Act apply to all of its Florida Resorts (See Exhibits C-1-C-5).

Scope of Investigation: This was a full investigation of Disney's other Florida Resort Hotels (See Exhibit B-Oj or Attachment A to the ECA for all locations covered).

Investigation Site: Various locations (See Exhibit B-Oj & Attachment A to ECA)

Period of Investigation: January 1st, 2015 through March 18th, 2017.

On June 20th, 2016, Under Case ID # 1775907, the Secretary and the Employer entered into a Statute of Limitations Tolling Agreement, tolling the running of the applicable statutes of limitations for the period of June 2nd, 2014 through December 12th, 2016. This agreement was further extended to toll the period through January 31st, 2017 (See Exhibits A-1 and A-2). In consultation with the RSOL, the statute of limitations was extended beyond the standard two year period for both investigations.

MODO: The MODO is in Orlando, Florida which is part of the Jacksonville DO. This case has been associated to MODO Control Record # 17489 Walt Disney World Co. (See Exhibit D-1).

Employment Relationship: The employer does not classify any member of the staff as an independent contractor therefore, an employment relationship and independent contractor test was not administered as it was not applicable.

Joint Employment (29 CFR Part 791.2): There were no joint employment relationships explored during this investigation.

EXEMPTIONS

Section 13(a) (1):

The “white collar” exemption from minimum wage and overtime applied to several of the management positions under the 541 provisions at Disney’s OKW Resort. The positions below are similar at all of the Disney other Florida Resort Hotels.

541.100: Executive Employees

Under 541.102; Management.

EX 6 & EX 7C received in excess of \$455 per week. See Exhibit B-25)

EX 6 & EX 7C weekly. See Exhibit B-20)

EX 6 & EX 7C in excess of \$455 per week. See Exhibit B-65)

EX 6 & EX 7C **EX 4** per week. See Exhibit B-69)

The Executive Exemption was tested and applies to all of the positions above. All of the employees were compensated on a salary basis at a rate of not less than \$455 per week and their primary duty is management of employees in the enterprise or specific departments. All of the listed managers customarily direct the work of two or more employees, they can hire or fire employees or make recommendations to hire and fire the employees; they discipline, coach, train, schedule, and can adjust the pay of the employees in their respective departments in the time keeping system.

STATUS OF COMPLIANCE

EX 7 (E) ID # 1775907 to include all other Disney Florida Resorts in addition to Disney’s OKW. The

EX 7 (D) Disney's OKW investigation was as a result of FLSA issues uncovered during an FMLA investigation at Disney's OKW (Case ID: 1760618). During the FMLA investigation, the WHI learned that Disney's payroll records included time which was recorded as unpaid time. Further fact finding uncovered Disney had a common practice of allowing employees to clock in up to 15 minutes prior to their scheduled start time shift, and clock-out up to 15 minutes after their scheduled ending shift. The employer's payroll records referred to this time as "grace-in" or "grace-out time" (See Exhibit D-4).

During the interview process for the FMLA investigation, it was disclosed that some of the employees appeared to be performing a first principal activity before the start of their paid time. In addition, some employees alleged they were performing work activities after their scheduled shift ended however, some employees alleged they were not compensated for this time. The FMLA investigation also suggested that this issue could be systemic at the various Disney Florida Resorts since the employees used the same time keeping system "Workbrain". The investigation also uncovered that at Disney's OKW, the employees utilized various time stamped systems like "iFOB" or "Trakka" to remove items that were integral and indispensable to their positions such as keys, banks, radios and iPads. It was apparent that the employees were using those systems to retrieve or return items during the 15 minute grace-in or grace-out period (See Exhibits D-3 & D-6).

Finally, further fact finding disclosed that some of the employees signed a daily time sheet (PU sheet) which often reflected their scheduled time instead of their actual clock-in and clock out time. This sheet was often used to document when employees started working before or after their scheduled shift. However, management did not always change their time record to include this time if it was during the grace period (See Exhibits D-5-D-6).

Violations:

Section 206, Minimum Wage: Minimum wage violations disclosed during Disney's OKW Resort investigation. Disney failed to pay certain employees at Disney's OKW the proper minimum wage when Disney took a uniform or "costume" deduction, which resulted in the employee's rates falling below the Federal minimum wage during the workweek the deduction was made.

Prior to Disney's OKW Resort investigation, any employee who did not return a costume piece had the cost of their particular costume piece deducted immediately and automatically from their next paycheck. A deduction was also taken if the employee had too many costume pieces on hand. The investigation further revealed that although the deduction would normally take place immediately upon the costume not being returned, it could sometimes take a pay period or two for the employee to be reimbursed for the deduction.

It is significant to note that Disney's Principal Counsel immediately corrected this issue during the investigation of Disney's OKW Resort. Additionally, he advised the WHI that a "control" was put in the payroll software to ensure that the employees do not fall below minimum wage for any future costume deduction. Finally, the "control" was put in the payroll system to prevent any costume deduction from cutting into overtime.
(See Exhibits A-172 & C-12).

Section 207, Overtime: Overtime violations disclosed. The investigation revealed that the employer failed to compensate certain employees at Disney's OKW and all other Disney Florida Resorts for principal activities performed during the 15 minute "grace-in" period before the designated start of the shift. In addition, they were not compensated up until they performed their last principal activity of the shift, if that took place during the 15 minute "grace-out" period after the designated end of the shift. The investigation revealed, certain positions showed a larger number of employees performing a principal work activity during the grace periods. Some examples of the positions mostly affected by this policy include: Concierge, who might have counted his/her money prior to the beginning of their paid time; Custodian, who might have grabbed his keys and began gassing up his vehicle prior to the beginning of their paid time; Bellman, who might have gathered his/her equipment and immediately started working prior to the beginning of their paid time (See Exhibits B-2; B-10; B-17; B-28; B-41; B-45 B-63; & E-10). However the investigation also disclosed that not all employees performed work activities during the grace period. Some employees simply just clocked in during the grace period and waited in the break room to start their shift, thus; not engaging in a first principal activity until the start of paid time (See Exhibits B-6; B-14; B-26 & E-7).

In addition, if Disney employees clocked in 1 minute prior to the 15 "grace-in" period; or 1 minute after their scheduled "grace-out" period could result in points accumulated, which could lead to disciplinary measures. Many of the employees indicated that they wanted to be on time

in order to avoid accumulating points that could result in disciplinary action (See Disney policy & Contract in Exhibits E-8 & E-9).

During the investigation, Disney's Principal Counsel produced a letter dated April 17th, 2003 addressed to a former WHI in the Orlando AO which reads as follows: "This will confirm our telephone conversation during which we discussed the companies proposed changes to its time recording practices"(See Exhibit E-5) . Under item one it stated, Notification to Cast members who use time clocks that they should clock in no more than 15 minutes prior to the start of their shift and clock out no more than 15 minutes after the end of their shift". The letter noted that random spot audits would be conducted to verify all employees were being paid for all hours worked. Although requested, Disney never provided any proof that audits were conducted to ensure that all employees were being paid for all hours they worked.

It is significant to note that the WHI whom Disney addressed this letter to was the WHI who handled the two investigations; Case ID #: 1042173 and Case ID #: 1219335. Both of these case are mentioned in the Related Files section of this report. The two investigations involved allegations of EEs performing pre-shift work (See Exhibit E-3-E-4).

Method of Computation:

The back wages were computed by the employer. The employer calculated the back wages by adding the unpaid "grace-in" and "grace-out" time for all employees in an overtime status or, any employee whereas the grace-in and grace-out would push the employee's hours worked above 40 in a given workweek for the entire investigative period.

Based on the investigative findings showing that not all employees performed pre-shift or post-shift work during the grace period, WHD and Disney's Principal Counsel determined that the back wages computed would be 40% of the total figure the employer calculated for the entire investigative period. Per WHD policy, this investigation does not include back wages which were less than \$20.00 (See Exhibit A-3-A-171).

The total overtime liability for all other Disney Florida Resorts is \$3,607,200.69 to 15,641 employees.

The total overtime liability for Disney's OKW was \$209,951.99 to 698 employees.

Total back wages due to 16,339 employees is \$3,817,152.68

Section 211, Record Keeping: A record keeping violation was cited as the employer failed to keep accurate records of hours worked by certain employees at Disney's OKW and all other Disney Florida Resorts (See Exhibits D-3 & D-6).

Section 212, Child Labor: No instances of illegal employment of minors were discovered by observation, records examination, or employee interviews (See Exhibits B-1-B-73 & C-5).

Family and Medical Leave Act: The subject firm is an industry engaged in commerce and is covered under FMLA since it has employed 50 or more workers for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. Their FMLA policy was reviewed without discrepancies by the WHI during the FMLA investigation (Case ID: 1760618) (See Exhibit E-2).

PART IV: DISPOSITION

Several meetings took place during the investigative process between WHD and Disney's Principal Counsel relating to this investigation and the investigation covering Disney's OKW Resort (Case ID #: 1775907).

In December 2015, after the WHI held an Initial Conference with Disney's Principal Counsel, ADD Wildalí De Jesús contacted the Southeast Regional Office (SE RO), including the Regional Solicitor's Office (RSOL) to advise them of the potential systemic issues of this investigation.

The WHI conducted interviews in early January 2016 at Team Disney. On January 7th, 2016, the WHI discussed findings from the interviews with ADD De Jesus and the SE RO.

On January 22nd, 2016, the WHI met and discussed costume deductions with Disney's Principal Counsel and Disney's Compensation Consultant, Mr. Patrick Hayes. Specifically,

Disney's Principal Counsel was advised that the firm was deducting for costume pieces which could result in minimum wage violations. The WHI also discussed the costume deduction relating to overtime. Disney's Principal Counsel noted he would look into the payroll records to see if any minimum wage violations occurred. He also noted that he would look into a way of making sure this does not occur if it was happening. Additionally, the WHI also received several binders of time records at this time (See Exhibit C-13).

On March 4th, 2016 and March 7th, 2016 the WHI, ADD and the SE RO discussed the findings of the record review and synopsis of the "grace-in" and "grace-out" time for several employees via conference call. After conducting additional interviews, a case development conference (CDC) was conducted with RSOL Bobby Walter and the SE RO.

On June 2nd, 2016, the WHI, ADD De Jesús, and RSOL Walter met with Disney's Principal Counsel to discuss the findings of the investigation. The WHI went through the various positions and what was uncovered. At this meeting, Disney's Principal Counsel noted that Disney would calculate back wages for three months in December, September, and July and get back to WHD after the back wages were completed. Disney's Principal Counsel also stated that he would look into the costume deduction and employees who received their last paycheck and had a costume deduction. RSOL discussed a tolling agreement and the concept of the first principal activity under the law. It is significant to note that Disney's Principal Counsel advised all present that if Disney removed the "grace-in" and "grace-out" time from their time keeping system, they might be subjected to an unfair labor practice. He further noted that there is a union contract between "WDPR" and the Service Trades Council Union which does not expire until September 21st, 2019. Alternative methods on how to come into compliance were discussed at this meeting including but not limited to, locking employees out from having access to keys before their scheduled starting time and training employees on "first principal activity" (See Exhibits C-12 & E-8 & E-9).

On June 20th, 2016, the Secretary and the Employer entered into a Statue of Limitations Tolling Agreement, tolling the running of the applicable statute of limitations for the period of June 2nd, 2014 through December 12th, 2016. This agreement was further extended the tolling of the running of the Applicable Statue of Limitations for the period June 2nd, 2014 through January 31st, 2017.

On August 31st, 2016, Disney's Principal Counsel started providing the calculations for the back wages they computed for the three month period to the WHI. The back wages were reviewed and discussed with the ADD.

On September 13th, 2016 the WHI, ADD De Jesús, and RSOL Walter met with Disney's Principal Counsel and Mr. Patrick Hayes, Disney's Compensation Consultant to discuss the back wages, the execution of an Enhanced Compliance Agreement (ECA), and the systemic issues at other resorts.

On September 15th, 2016, the WHI and ADD discussed the Disney investigation with the Regional Office relating to the possibility of expanding to other locations.

On January 5th, 2017, the WHI, ADD, and RSOL had a conference call with Disney's Principal Counsel to discuss the ECA and interviewing additional employees from other locations. Throughout the month of January 2017, several other conference calls took place between the RSOL; Disney Principal Counsel; ADD Dejesus * the WHI to discuss back wages; the ECA; and interviewing at other locations.

On January 27th, 2017, the WHI met with Disney's Principal Counsel to review the training materials Disney put together which is referenced in the ECA. On January 31st, 2017, the WHI, ADD De Jesus, RSOL, SE RO, & the NO, held a conference call to discuss the findings and status of both investigations.

On March 6th, 2017, the WHI received excel spreadsheets from Disney's Principal Counsel consisting of the back wages for Disney's OKW Resort and All other Florida Resorts.

On March 17th, 2017, a Compliance agreement was executed by and between the Wage and Hour Division, United States Department of Labor ("WHD") on behalf of the Secretary of Labor ("Secretary"), and Disney Vacation Club Management Corp. ("DVCMC") and Walt Disney Parks and Resorts U.S., Inc. ("WDPR") or referred below as "Disney".

Disney agreed to the following:

Corporate-wide compliance with Sections 206, 207, and 211 of the Act.

The payment of back wages to 698 employees who worked at OKW under Case ID # 1775907 during the applicable Investigation Period in the amount of \$209,951.99.

The payment of back wages to 15641 employees who worked at Disney's remaining Florida Resort Hotels under Case ID # 1811342 during the applicable Investigation Period in the amount of \$3,607,200.69

Disney agreed that, on or before July 31, 2017, it will pay or cause to be paid the back wages due in both this investigation and Case ID # 1775907.

Disney agreed that, on or before August 31, 2017, it will provide WHD's representative, proof of payment for each employee due back wages.

Disney agreed to pay their non-exempt employees the higher of the state or the federal minimum hourly wage for all hours worked on their regularly scheduled payday.

Disney agreed to pay their employees not exempt from overtime pay one and one half time's their regular rate for all hours worked over 40 in a workweek. For such non-exempt employees, weekly hours worked include a combination of all hours worked in the same work week for Disney. For such non-exempt employees, weekly hours worked also include all hours worked regardless of whether the work occurs outside of the employee's scheduled work time. Hours worked include any work which takes place after an employee's first principal activity of a work day until the end of the last principal activity of his or her work day.

Disney agreed that the employee's regular rate for overtime purposes will include any extra compensation, including but not limited to bonuses, shift differentials, training rates and/or commissions, insofar as the regulations and interpretations of the Secretary require such inclusion.

Disney agreed that within 30 days of the execution of the compliance agreement, Disney will begin training all managers and supervisors at all Florida Resort Hotels on what constitutes compensable work time and the need to accurately record all such time.

That training will include: an explanation of the meaning of principal activities which may encompass, insofar as they are “hours worked” under the regulations and interpretations of the Secretary, signing out keys, logging on to a computer, fueling vehicles, communicating with guests, answering the phones, logging out tablets, reading and responding to emails, and counting money; an explanation that pre-shift and post-shift time can be compensable if it includes the performance of principal activities; a statement that non-exempt employees cannot waive their rights to compensation for work time or volunteer to work without compensation, including during any unpaid pre-shift or post-shift period; and a statement that meal periods and work start and stop times should be accurately recorded and maintained. Disney will allow WHD to review and comment on the contents of this training before it is delivered. WHD's review of such training does not represent any endorsement of any Disney policy or waiver of Disney's liability under any of the laws enforced by WHD. Disney will also provide the training described in this Paragraph to new managers and supervisors upon hire or advancement.

Disney agreed that within 30 days of the execution of the compliance agreement, Disney will begin training to all non-exempt employees at all Florida Resort Hotels on what constitutes compensable work time and the need to accurately record all such time. That training will include examples of activities that constitute compensable work time which may include, insofar as they are “hours worked” under the regulations and interpretations of the Secretary, signing out keys, logging on to a computer, fueling vehicles, communicating with guests, answering the phones, logging out tablets, reading and responding to emails, and counting money; a statement that pre-shift and post-shift time can be compensable if it includes the performance of principal activities; a statement that non-exempt employees cannot waive their rights to compensation for work time or volunteer to work without compensation, including during any unpaid pre-shift or post-shift period; and a statement that meal periods and work start and stop times should be accurately recorded. Disney will provide the training described in this Paragraph to new non-exempt employees upon hire.

Disney agreed that they will accurately record all hours worked in accordance with Section 211 of the Act, 29 C.F.R. § 516 (Records to be kept by Disney), and 29 C.F.R. § 531 (Wage payments under the Act of 1938). Disney will retain an accurate record of hours worked on a daily, as well as, a weekly basis for all non-exempt employees subject to the minimum wage and overtime requirements of the Act.

Disney agreed that they shall record the name and Florida Resort Hotel location of the facility where the work is being performed by all non-exempt employees.

Disney agreed that they will not discriminate against or discharge any employee for participating in any proceeding or asserting any rights guaranteed to such employee under the Act, including such employee's right to proper payment under the Act.
(See Exhibits A-1-A-171; B-1-B-73; C-1-C-13; D-1-D-6; E-1-E-9)

Recommendations: the WHI recommends closing this file once all the back wages are paid. Additionally, the WHI recommends to spot check Disney in the future to make sure they are in compliance with everything they agreed to under the ECA.

Publications Provided in addition to the HRG:

- WH 1261- Regulations Part 516, Records to be kept by Employers
- WH 1262- Regulations Part 778: Interpretive Bulletin on Overtime Compensation
- WH 1282- Handy Reference Guide to the Fair Labor Standards Act
- WH 1312- Regulations Part 785. Hours Worked Under the FLSA
- WH 1281-Regulations Part 541 Exemptions
- WH 1330 - Youth Employment Provisions in Nonagricultural Occupations under the FLSA (Rev. July 2010)

Fact sheets Provided

WHD FS #16 Deductions; Fact Sheet #21 Record Keeping Requirements under the FLSA; Fact Sheet #44-Visits to Employers; and FS #77A- Prohibiting Retaliation under FLSA; Fact Sheets #79E & 35 on Joint Employment; Fact Sheet #28N Joint Employer responsibilities under FMLA; Fact Sheet #28D Employer Notification under FMLA; Facts Sheet #22 Hours worked & Fact Sheet #23 OT

Send all Correspondence to:

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EX 6 & EX 7C

gator

Orlando Area Office
March 23th, 2017