

DECLARATION OF DANIEL J. HOWARD

I, Daniel J. Howard, do hereby declare:

1 1. I was asked by Chuck Foster to provide an addendum to my previous
2 Declaration dated October 18, 2014, and to specifically address the issue of
3 Theresa Keeping and or Dale Merkel claiming the \$53,470 which was wire
4 transferred to Wishcruise Pirate Adventures Ltd. bank account on or about
5 February 10, 2013 from the 1727482 Alberta Ltd. bank account with the Royal
6 Bank of Canada was a “charitable donation.”

7 2. Chuck also asked me to address the issue of Theresa Keeping and or
8 Dale Merkel’s claim that they never intended to, nor did they ever invest in
9 Wishcruise Pirate Adventures, Ltd.

10 3. Since December of 2012 when I first began communicating with
11 Theresa and Dale about the Wishcruise Pirate Adventures opportunity, I can say
12 with absolute certainty that at no time was the topic of “charitable donation”
13 discussed, suggested or implied. That from the initial communication in
14 December of 2012, until the last time I communicated with Theresa and Dale, that
15 being April of 2013, the primary focus of conversation about Wishcruise Pirate
16 Adventures was this being an investment opportunity with not only expected
17 financial benefits, but an opportunity for Theresa to meet with news media,
18 celebrities and high profile business people that would be beneficial to her art and
19 paintings interests.

20 4. The \$53,470 wire transfer was to be the “first” transfer of funds
21 pursuant to the terms and conditions of the Wishcruise Pirate Adventures
22 Partnership Agreement she and Dale signed in the Eisenhower Suite of the Queen
23 Mary Hotel in Long Beach during January of 2013. This money was specifically
24 designated to pay for the pirate ship’s construction plans and initial Wishcruise
25 Pirate Adventures start-up and operating capital. I know that to be the case
26 because I was present and witnessed this contract signing. I was also present
27 during the dinner celebration that followed during which substantial amount of
28 the dinner conversation was about the Wishcruise Pirate Adventures
“partnership,” Theresa being the company’s President, Dale being a company
vice-president, and with some conversation about the pirate ship’s construction
details.

 5. As stated in my prior Declaration, I have known Dale as a male
companion and business associate of Theresa’s since summer of 2007. As was
the case with Theresa, I was also a business confidant to Dale regarding
anticipated Canadian business opportunities prior to, then later regarding
Wishcruise Pirate Adventures.

1 6. My declaration is based upon my having personally been present and
2 witnessed as a participant and/or as observer regarding meetings, conversations,
3 email communications, document review, etc. pertaining to Wishcruise Pirate
4 Adventures in which Theresa, Dale and Chuck are now litigant parties; and based
5 upon what I witnessed as a confidant to Theresa and Dale involving Wishcruise
6 Pirate Adventures, and Vinking and Port Harmon business dealings.

7 7. During January of 2013, Chuck and Mary Ann and I met with
8 Theresa and Dale in their Eisenhower Stateroom suite of the Queen Mary Hotel
9 ship at 10:00 AM. We discussed what we collectively believe would be the most
10 important aspects of the investment/partnership opportunity, review the two or
11 three pages of the building plans Chuck had obtained from the ship's design
12 architect, attempt to answer any additional questions then ask if and to what
13 degree Theresa and Dale would be interested in participating. Chuck and I then
14 discussed and answered questions about the proposed partnership agreement.

15 8. After Chuck gave a brief recap of what he believed had been discussed
16 and accomplished to date, he then showed the ship's design plans about which
17 Theresa seemed to take a high level of interest. With her focus being on the ship's
18 equipment and boating related products,

19 9. It was when Chuck began summarizing his explanation of the
20 investment vs. partnership opportunities when Theresa interrupted Chuck and
21 said, "*Stop! We want to do this!*" *We want to be your partners!*" Chuck was
22 surprised at the interruption and asked, "*Are you sure!*" Theresa answered, "*I'm*
23 *sure.*" and Dale added, "*We're both sure!*"

24 10. After the initial handshakes and hugging ended, there was a review
25 and some discussion about some initial modifications to the agreement Chuck had
26 previously provided. About a half hour later, Chuck, Theresa and Dale said they
27 were satisfied with the modified partnership agreement document and taking
28 turns, Chuck, Theresa, then Dale initialed each page of the document, then signed
the signature page.

11. That evening, we all ate dinner at the Bottle Inn restaurant in Hermosa
Beach. The evening was festive with much talk about how excited Theresa and
Dale were about their new Wishcruise Pirate Adventures partnership. We left the
restaurant about 10:00 pm. I remember Dale paying for the dinner.

12. During February of 2013, I received emails and copies of documents
indicating Theresa had set up the promised Canadian bank trust-holding account
for Wishcruise Pirate Adventures as previously agreed; that the bank account
balance was in excess of \$1.4+ million, and that \$53,470 had been wire-
transferred from this account into the Wishcruise Pirate Adventures bank account

1 in Las Vegas, Nevada. I was also copied on an email indicating Chuck had given
2 Theresa and Dale bank account details whereby they had unrestricted viewing
3 access to, and could monitor the Wishcruise Pirate Adventures Nevada bank
4 account at any time.

5 13. During March of 2013, I met in Stephenville, Newfoundland and
6 Labrador, Canada, at the Port Harmon Authority office to discuss the
7 VinKing/Port Harmon Authority project. Present were Theresa, Colleen Oliver,
8 Gary Rideout, Fred Young and Vinking's receptionist, "Kim." Later that
9 evening, I met with Theresa, Oliver and Rideout for dinner at one of Theresa's
10 homes in Port au Port West, Newfoundland and Labrador, Canada, where the
11 Vinking/Port Harmon Authority projects were discussed, along with Theresa's
12 ownership interest in and future plans for Wishcruise Pirate Adventures.

13 14. I subsequently met with Dan Villeneuve at the Holiday Inn in
14 Stephenville, Newfoundland and Labrador, Canada, and discussed the
15 VinKing/Port Harmon Authority projects, as well as Theresa's ownership interest
16 and future plans for Wishcruise Pirate Adventures.

17 15. I also met again with Colleen Oliver at the Port Harmon Authority
18 offices and at the Holiday Inn in Stephenville, Newfoundland and Labrador,
19 Canada, and discussed the VinKing/Port Harmon Authority projects, along with
20 Theresa's ownership interest in and future plans for Wishcruise Pirate
21 Adventures.

22 16. I was present with Chuck in Huntington Beach during a phone
23 conversation between Theresa and Dale. The nature of the conversation was that
24 Theresa's attorney and accountant were out of town and not available until after
25 the Easter Holidays. To protect the agreed upon ship's construction and delivery
26 date, Theresa and Dale requested Chuck make the ship's initial \$50,000 down
27 payment so construction could begin, and that he would be reimbursed from the
28 next bank wire transfer on or before April 3, 2013.

17. While I was at the Gambol Industries boatyard, Dale contacted me by
telephone and advised me he needed more time to arrange the next money
transfer. His explanation was that Theresa was having problems arranging the
next money transfer for the shipbuilder because she'd been "*hospitalized due to
stress and her Crohn's disease ...*" and that more time was needed to arrange the
transfer. Dale added, "*Danny, you know you can trust us, and on my and
Theresa's word of honor, we guaranteed you that that the money transfer for the
shipbuilder will be made, if not on Friday afternoon by 4 pm on April 5 (2013), it
will be no later than the end of the day pm Monday, April 8th (2013).*" Until then,
Dale requested Chuck and I take care of whatever matters were necessary.

18. I would later discover that Dale lied about Theresa's hospitalization, and when confronted, Dale told me that I must have misunderstood what he said, and now claimed he told me that, *"Theresa wasn't feeling well, and because of her Crohn's disease conditions, she was thinking about checking herself into the hospital."*

19. During April of 2013, Theresa and Dale contacted me by telephone in Las Vegas, Nevada USA, and advised, that due to money problems, they were backing out of the project, but that she intended to reimburse Chuck for the \$50,000.00 dollars given to the shipbuilder as had been requested. Dale interrupted Theresa arguing, *"No, we don't have the money to reimburse Chuck when we can't even come up with money that's committed to another project."* I advised Theresa and Dale to contact Chuck as she (Theresa) was the LLC's President and held a 49% ownership/net revenue sharing interest in the company, also to advise Chuck of the circumstances, and we would touch base again and see what steps we could take to move forward.

20. A day or two later, Dale and Theresa contacted me by telephone in Huntington Beach, California, USA. Throughout the phone conversation, Theresa sounded agitated, and her speech was slurred as she insisted that Chuck was trying to con them and used as an example that Chuck had not paid for the ship's drawings and thereby stole her money. As a result, Theresa said she and Dale would not have anything else to do with Chuck, would not communicate with him, that that Chuck could *"kiss his \$50,000.00 goodbye."* I advised Theresa and Dale that I was a witness to the contract signing, and as well as related payment conversations, and if payment wasn't made as agreed, this would likely become a legal matter.

21. Using a barrage of continuing derogatory terms and expletives, Theresa said, *"You know Danny, that if Chuck sues me, it will be seven years before anything gets decided, and we'll see who can last the longest. You also know that I have the money – Chuck doesn't. I intend to spend whatever is needed and do whatever it takes do keeping this thing going until Chuck Foster goes bankrupt or quits!?"*

22. I again suggested that Theresa and Dale contact Chuck, or have their attorney contact Chuck, and see if we could work something out, without it becoming a legal matter.

23. Theresa and Dale continued with their derogatory and expletives comments, with Theresa claiming she had contacted the police about Chuck; was warned not to speak with him under any circumstances; told to get a restraining

order; that the police were currently parked in front of her house; and to expect the police to be contacting Chuck in the near future.

1 24. It had been discussed and agreed in my presence by Chuck, Theresa
2 and Dale, that the \$1,500,000 in the holding/trust account Theresa would deposit
3 with the Royal Bank of Canada in St. John's, was for the exclusive Wishcruise
4 Pirate Adventures purpose set forth within "Attachment 2/page 12" of the
5 Wishcruise Pirate Adventures partnership agreement, of which a copy of this
6 document is attached to my declaration. At no time did Theresa or Dale advise
7 me, nor was I independently aware that this money was to be removed and used
8 for, or that funds from this account had already been removed for purposes other
9 than as defined within the Wishcruise Pirate Adventures agreement, and certainly
10 not for Theresa and Dale's personal use.

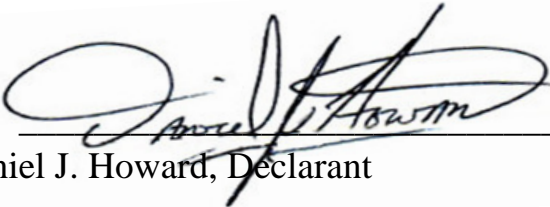
11 25. To the best of my knowledge, I have been copied on the majority, if
12 not all of the relevant correspondence between Chuck, Theresa and Dale from
13 January through April, 2013, and subsequent attempts by Chuck to communicate
14 with them thereafter.

15 26. To the best of my knowledge, I have been present and participated in
16 the majority of meetings, and by telephone conference, on the majority of
17 discussions regarding Wishcruise Pirate Adventures with Chuck, Theresa and
18 Dale.

19 27. At no time during any meeting, conversation, phone conversation,
20 email, text message or any type of communication to which I was an observer or
21 participant, did Theresa ever state or imply that her \$1,500,000 Wishcruise Pirate
22 Adventures funding was anything other than an investment, and never about this
23 money being a charitable "donation" or "contribution."

24 28. Based upon the above mentioned, I have reviewed the Foster v.
25 Keeping and WishCruise Pirate Adventures, Ltd. lawsuits filed in both the
26 California Superior Court and U.S. District Court to the best of my knowledge, all
27 of the allegations claimed in these are true and correct.

28 **Dated this 13th day of December, 2014, upon information and belief,
and to my best recollection, the above information set forth within this
Declaration, including any attachment(s), is truthful in its entirety, and if
called to testify, I would so state Under Oath and under penalty of perjury
pursuant to the laws and statutes of State of California, USA and Canada.**

By: 
Daniel J. Howard, Declarant