

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):** **THERESA KEEPING;
DALE MERKEL**

Does 1 thru 25, Inclusive,
**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CHUCK FOSTER

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

05/24/2013 at 12:39:12 PM
Clerk of the Superior Court
By **Natasha Dorfman, Deputy Clerk**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, County of Orange

Central Justice Center, 700 Civic Center Drive West, Santa Ana, CA 92701

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Chuck Foster, 8941 Atlanta Ave #512, Huntington Beach, CA 92646

DATE: **05/24/2013** ALAN CARLSON, Clerk of the Court
(Fecha)

Clerk, by Natasha Dorfman, Deputy
(Secretario) (Adjunto)

CASE NUMBER: Judge James J. Di Cesare
(Número del Caso):
30-2013-00651568-CU-FR-CJC

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)). **Natasha Dorfman**



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Chuck Foster 8941 Atlanta Ave #512, Huntington Beach, CA 92646 TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (Name): In Pro Per	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of Orange 05/24/2013 at 12:39:12 PM Clerk of the Superior Court By Natasha Dorfman, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92646 BRANCH NAME: Central Justice Center	CASE NUMBER: 30-2013-00651588-CU-FR-CJC
CASE NAME: Chuck Foster vs. Theresa Keeping; Dale Merkel	JUDGE: Judge James J. Di Cesare DEPT: _____
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input checked="" type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): _____
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 23, 2013

Chuck Foster
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice–Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case–Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ–Administrative Mandamus
 - Writ–Mandamus on Limited Court Case Matter
 - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (*non-harassment*)
 - Mechanics Lien
 - Other Commercial Complaint Case (*non-tort/non-complex*)
 - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

1 Chuck Foster
2 8941 Atlanta Avenue #512
3 Huntington Beach, CA 92646
4 Telephone: (702) 449-8712
5 Email: chuckfoster@aol.com

6 Plaintiff in Pro Per

7
8 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**
10

11 CHUCK FOSTER, an individual, } **CASE NO:** 30-2013-00651568-CU-FR-CJC
12 Plaintiff. }
13 vs. } **JUDGE:**
14 } **COMPLAINT FOR DAMAGES**
15 THERESA KEEPING, an Individual } 1. Fraud
16 DALE MERKEL, an Individual } 2. Negligence
and DOES 1 thru 25, Inclusive, } 3. Breach of Contract
17 } 4. Breach of Implied Covenant of Good
} Faith and Fair Dealing
18 Defendants. } 5. Conspiracy
} **Judge James J. Di Cesare**

19
20 PLAINTIFF CHUCK FOSTER complains and for cause of action alleges as follows:

21 **PRELIMINARY ALLEGATIONS**

22 1. That the true names and capacities, whether individual, corporate, associate or
23 otherwise of defendants, DOES 1 to 25, inclusive, are unknown to plaintiff at this time. As a
24 result, plaintiff sues said defendants by such fictitious names, and when their true names and
25 capacities are ascertained, plaintiff will seek leave of court to amend this complaint
26 accordingly. Plaintiff is informed and believes, and thereon alleges, that each of the
27 defendants designated herein as a DOE is responsible contractually, tortiously or otherwise,
28 for the events and happenings herein referred and caused to plaintiff, as hereinafter alleged.

1 2. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, the wrongful acts described in, and relative to the causes of action set forth within
3 this complaint occurred in the Central Justice Center of Orange County, State of California.

4 3. Defendants, Theresa Keeping, Dale Merkel, and Does 1 to 25, and each of
5 them, were and remain the individuals purportedly seeking to have entered into an oral
6 agreement with plaintiff, Chuck Foster.

7 4. As set forth herein, plaintiff and the defendants did, in fact, enter into a verbal
8 agreement, and it is this contract upon which the below stated causes of action are based.

9 5. At all times herein mentioned defendants knew of, ratified, and authorized the
10 acts and conduct of the other co-defendants, and acted in concert and conspiracy therewith.

11 6. The above referenced Agreement was entered into, and plaintiff's damages
12 resulted within the jurisdiction of the above entitled court.

13 7. At all times herein mentioned, said Agreement was in full force and effect while
14 plaintiff performed all conditions of the agreement on his part to be performed.

15 8. Defendant Keeping's email dated January 29, 2013 to plaintiff stated:

16 "Hello Mary Ann, Chuck & Dan! We arrived in good time at 4 pm. this
17 afternoon today to a beautiful blue sky sunny day, (usually that means it's
18 cold outside) yup! -27°. We spent a large part of our trip thinking and talking
19 about the events that led us down the Wish Cruise Navy Path together. I
20 speak for Dale and I when I say we are so pleased to have met you and thank
21 God for giving us the courage to see the dreams of Addison come true for all
22 children who suffer from any life threatening sickness. It is not up to us to
rationalize why any child would get sick, however it is within our power to
join together in whatever way we can to contribute to Addison's Dream.
Thank you for this opportunity. We will stand forever for children's wishes!
We start our diet tomorrow, Aaaaarrrrgggghhhh! Theresa & Dale"

23 A copy of the above email, marked as PLAINTIFF'S EXHIBIT 01, is attached
24 hereto, and incorporated hereinafter by reference.

25 9. Defendant Keeping's email dated January 30, 2013 to plaintiff stated:

26 "Hello Partners: Thank you and good afternoon. Sent off an email to my
27 Accountants and Lawyer to get things rolling, and will keep you posted on
the details as well as when we will make the Bank Transfer (*redaction*) In
regards to the LLC,

28 1. I'm sure to here back soon and will pass on the information as soon as it is
available.

1 2. Theresa Keeping, (address and phone number redacted for privacy) Dale
Merkel (same address)

2 3. Theresa (redacted) email: theresa@wishcruisepirates.com fax; (redacted)
if this is available

3 4. Dale Ph: (redacted) email: dale@wishcruisepirates.com fax (redacted)
4 You can reach us on the email address you are using now until we set up the
5 new one this week, we will email you to let you know when it is set up. You
6 can use the phone & fax above.

7 happy you started your diet, let us know how Mary Ann does in surgery.
8 Bless you all

9 Theresa & Dale

10 ps: The first portrate to be painted for the first Pirate is Addison, so please
11 send me some photos of him Chuck I would like to get started as soon as I
12 find a window of time to feel my creativity.” [Underline emphasis added]

13 A copy of the above email, marked as PLAINTIFF’S EXHIBIT 02, is attached
14 hereto, and incorporated hereinafter by reference.

15 10. Defendant Keeping’s email dated February 9, 2013 to plaintiff stated:

16 “Hello Chuck.

17 Hope Mary Ann is feeling well. Happy to see you have the bank account set
18 up. I will do the deposit Monday morning, so it will be there before you get
19 up & going. The time here is 5:00 pm now, I think that is a 4 1/2 hr.
20 difference. Like I mentioned before my Lawyer and Accountants had me set
21 up a new Holdings Company to put the funds into before they get transferred
22 out of the country. Tax issues are far better addressed before an investment
23 than later. Anyway everything is done on this end now, so the first transfer is
24 next. Sorry for any inconvenience this may have caused. I have been
25 swamped with VinKing this last week because we are closing on some
26 property here. We leave for Toronto on Tuesday after which we go on to
27 Zurich, with a return on 21 Feb. We both have access to our emails and
28 intend to have our addresses set up to received and send, before we leave.

I am on the east coast side of the Island of Newfoundland I believed Dan is
on the West Coast, I will try to reach him after this email.

Theresa and Dale ” [Underline emphasis added]

29 A copy of the above email, marked as PLAINTIFF’S EXHIBIT 03, is attached
30 hereto, and incorporated hereinafter by reference.

31 11. “The deposit” to which defendant Keeping’s above 2/9/13 email refers, is a
32 purported “trust account” she opened in the name of 1727482 Alberta Ltd. on January 31,
33 2013 at Royal Bank of Canada. Based upon subsequent RBC staff confirmation, the amount
34 of said deposit was \$1,467,169, the required agreed upon “capitalization” payment for which
35 defendant Keeping paid to acquire a 49% ownership interest in WishCruise Pirate
36 Adventures, Ltd. (WCPA), a United States based management company.

1 12. 1727482 Alberta Ltd. was represented by defendant Keeping as being the
2 “holding company” she created to timely distribute the \$1,467,169 WCPA capitalization
3 funds needed to pay for the estimated \$1.25MM to \$1.3MM construction of the 75’ “pirate
4 theme” boat (“boat”) to be built in Long Beach, California by Gambol Industries, Inc.
5 (“Gambol”). The balance of said funds was for WCPA’s start-up and initial operating
6 expenses. Thereafter, as WCPA generated boat-related revenue, said “holding company”
7 would be the entity used to receive entitled proceeds on defendant Keeping’s behalf.

8 13. Upon completion of said boat, it would become the designated *flagship* and a
9 primary source of self-support revenue for *WishCruise Navy*, the non-profit organization that
10 would provide celebrity co-captained *Pirate Adventure WishCruise*¹ experiences for children
11 suffering with a life-threatening illness. Ancillary boat use would be incorporated into
12 *WishCruise Navy*’s character/self-esteem mentoring, juvenile delinquency diversion, and
13 career-pathway education programs for “at risk” teens.

14 14. WCPA responsibilities included overseeing the boat’s proper and timely
15 construction, then oversee and manage the boat’s use on *WishCruise Navy*’s behalf.

16 15. Relative to the RBC bank account, plaintiff received an email from defendants’
17 dated Tuesday, February 12, 2013, stating in part:

18 “Helo, Chuck
19 For the LLC
20 Company name is 1727482 ALBERTA LTD.
21 Was incorporated on 2013/01/31.
22 Box 4, RR2, Site 13, Cochrane, Alberta, Canada, T4C 1A2
23 I have tried numerous times to transfer the funds from the company RBC
24 (Royal Bank of Canada Account) and to no avail. So tomorrow at about
25 1pm, I am meeting at the bank to wire transfer the funds. I will contact you
26 after it is done and will scan the receipt so you can inquire about it because
27 we are leaving for Zurich Friday. Will call you later tomorrow evening. Have
28 a great evening. Theresa & Dale”


25 A redacted copy of the above email, marked as PLAINTIFF’S EXHIBIT 04, is
26 attached hereto and incorporated hereinafter by reference.

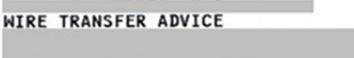
28
¹ See internet website: www.wishcruisepirate.org


1 16. On Wednesday, February 13, 2013, plaintiff received a phone call from
 2 defendant Keeping stating she was at the RBC and requested he speak directly with the RBC
 3 employee. During the resulting conversation, the RBC bank employee confirmed to plaintiff
 4 that the trust account existed as defendant Keeping had alleged, and it currently contained
 5 \$1,467,169. The Bank employee also acknowledged that defendant Keeping told her the
 6 money was to pay for the cost of “building a pirate ship for a children’s wish-fulfilling
 7 charity and WCPA start-up expenses.” Also discussed were relevant details regarding the
 8 wire transfer of \$53,482 from the RBC bank to WCPA’s U.S. bank account which, as
 9 indicated within the below indicated bank statement, occurred on February 13, 2013.

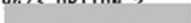
10 A copy of the below redacted document marked as PLAINTIFF’S EXHIBIT-05,
 11 is attached hereto and incorporated hereinafter by reference.

12



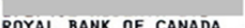




13 


14 PAGE 1 OF 1
 15 WIRE TRANSFER ADVICE
 16 

17 ||||| WX 0000 027 010290 8801 AT 0.384
 18 WISHCRUISE PIRATE ADVENTURES, LTD
 19 

20 DATE: 02/13/13
 21 DIRECT INQUIRIES TO:
 22 800.729.9673 OPTION 2
 23 ACCOUNT: 

24 **THE FOLLOWING WIRE WAS CREDITED TODAY:** USD AMOUNT \$53,482.00

TRANSACTION REF:		SERVICE REF: 004772
SENDER'S REF:		RELATED REF: SWF OF 13/02/13
IMAD:		ID: 
ORIGINATOR:	ROYAL BANK OF CANADA	ID: 
ORIGINATOR'S BANK:	JPMORGAN CHASE BANK, NA	ID: 
SENDING BANK:	WISHCRUISE PIRATE ADVENTURES LTD.	ID: 
BENEFICIARY:		

25 PAYMENT DETAIL: 

26 17. Upon WCPA’s receipt of the above transferred funds, the boat’s construction
 27 plans were purchased from the architect on February 15, 2013 and delivered to Gambol on
 28 February 18, 2013.

18. From the provided boat construction plans, the agreed upon price to build said
 boat was confirmed, including the boat’s required “on or before November 3, 2013” delivery

1 date. This delivery date was essential for the boat's first planned use being a series of
2 "thank you" celebration activities honoring America's active duty, reserve, retired, veteran,
3 wounded and fallen soldiers over Veteran's Day Weekend.

4 19. On or about March 21, 2013, details of written agreement proposed by Gambol
5 were discussed by plaintiff and defendants, including the need for said construction
6 agreement to be signed, including the amended payment schedule, and the initial payment
7 needing to be made on March 25, 2013.

8 20. Defendants told plaintiff that the transfer of funds from RBC trust account
9 required prior written approval by their attorney or accountant, and "due to their Easter
10 Holiday schedules," neither would be available in time to sign-off on the next wire transfer in
11 time to meet Gambol's March 25, 2013 payment deadline.

12 21. Defendants were told by plaintiff that Gamble would not start the boat-building
13 process until payment was received, and any delay beyond March 25, 2013 would
14 foreseeably prevent Gambol from meeting its required "on or before November 3, 2013" boat
15 completion deadline. As a result, defendant Keeping said she had "*credit cards without*
16 *charging limits*" and, if acceptable to Gamble, she could use them to make the timely
17 required payment.

18 22. When told that Gamble rejected the credit card payment offer, defendant
19 Keeping asked plaintiff to contact Gamble to determine the amount needed to consummate
20 the Gamble boat-building agreement and meet the November 3, 2013 completion date.

21 23. After obtaining Gambol's confirmation information, plaintiff told defendants
22 Keeping and Merkel by phone, and in writing, that the minimum amount required was
23 \$50,000, and that boat's Nov. 3, 2013 construction completion deadline was predicated upon
24 the initial payment being made by March 25, 2013; Gambol also required Email confirmation
25 by April 3rd from RBC confirming that \$1.3MM was available for the boat's construction.
26 (See attached redacted copy of plaintiff's email to defendants dated March 29, 2013 marked
27 as PLAINTIFF'S EXHIBIT-06, attached hereto, and incorporated hereinafter by reference.

28 24. Defendant Keeping asked if plaintiff had, or had access to the funds needed to
make the \$50,000 payment on her behalf, and if so, she would personally guarantee

1 immediate reimbursement by using her credit card(s) if needed to obtain the money or, if
2 plaintiff could wait, his reimbursement would be included in the next wire transfer of funds
3 to WCPA from the RBC account on April 3, 2013.

4 25. Based upon defendant Keeping's personal reimbursement guarantee offer,
5 coupled with plaintiff's prior knowledge of the WCPA trust fund balance on deposit with
6 RBC, plaintiff accepted defendant Keeping's offer and, on defendant Keeping's behalf,
7 made the \$50,000 boat-building installment payment to Gambol on March 28, 2013

8 26. Notwithstanding defendant Keeping and Merkel's assurances, the promised
9 reimbursement was not received on April 3, 2013, nor was the requested email confirmation
10 from the (RBC) bank confirming \$1.3MM was available for the boat's construction cost.

11 27. Defendant Merkel apologized for the failure to reimburse as promised,
12 explaining, "*The reason the wire transfer didn't happen was because Theresa (defendant*
13 *Keeping) ... had checked herself into the hospital.*"

14 28. Defendant Merkel then communicated his personal assurance that no other
15 problems existed that would delay or prevent said wire transfer from taking place,
16 emphasizing plaintiff had his and defendant Keeping's personal guarantee that the \$50,000
17 reimbursement money would be included with the wire transfer for the boat's next
18 installment payment, said payment being: "... if not on Friday [April 5, 2013], absolutely no
19 later than Monday [April 8, 2013]."

20 29. Understandably concerned and sympathetic about defendant Keeping being
21 hospitalized, plaintiff attempted to send flowers to Keeping, only to be told by hospital staff
22 that, "... our computer is linked to all of the nearby hospitals, and we can't find any record of
23 recent hospitalization or emergency room treatment by anyone with the first or last names of
24 Theresa or Keeping."

25 30. On or about February 13, 2013, when plaintiff initially spoke with RBC staff
26 about the initial \$53,482 wire transfer from RBC to WCPA, he was told the RBC account
27 from which the wire transfer was coming contained \$1,467,169. On April 4, 2013, however,
28 RBC staff told plaintiff that, "*Our records indicated all but the current balance of \$11,507 in*
this account was withdrawn on February 25, 2013." [Underline emphasis added]

1 31. Plaintiff subsequently discovered that the WCPA capitalization funds
2 defendants withdrew from the RBC on February 25, 2013, were used to make other business
3 investments, purchases and/or improvements to properties in which defendants had an
4 ownership interest, including: VinKing Marine Enterprises, Inc. (Port Harmon Authority,
5 Port of Belledune and Charlo Airport); Ocean View Estates; T.S. Signs; and/or Keeping's
6 rental properties in Fort McMurray, Alberta.

7 32. When defendants learned that plaintiff had discovered their false, fraudulent
8 representations, including details of the unlawful withdrawal of WCPA's capitalization funds
9 from the purported RBC "trust account" on February 25, 2013, they stopped answering or
10 returning any of plaintiff's phone calls, voice or email messages.

11 33. Defendants also ignored or disregarded plaintiff's repeated pleas for assistance
12 to prevent or mitigate existing and further anticipated damages, including their failure to
13 provide plaintiff with the name of their attorney, or instruct their attorney to contact him.

14 34. For the reasons set forth above and hereinafter, including attached
15 PLAINTIFF'S EXHIBIT-07 incorporated hereinafter by reference, this lawsuit is filed as a
16 direct and proximate result of defendants' negligence, fraud, breach of contract, and breach
17 of implied covenant of good faith and fair dealing.

18 I. FIRST CAUSE OF ACTION

19 (Fraud)

20 35. Plaintiff incorporates herein by reference, all allegations set forth within
21 preceding paragraphs 1-34 and hereafter.

22 36. As set forth within preceding paragraphs 1-34, defendants knew there were
23 insufficient funds in the previously described RBC bank account to pay the \$50,000
24 promised reimbursement to plaintiff as, on February 25, 2013, they had unlawfully
25 withdrawn the capitalization funds defendant Keeping paid and deposited into said "trust
26 account" to acquire her 49% WCPA ownership interest.

27 37. Knowing the WCPA trust account's prior balance had been reduced from
28 \$1,467,169 to \$11,507, by their concealing this fact, defendants falsely and fraudulently
misled plaintiff into believing that sufficient funds were still available in said bank account;

1 and from said funds, the \$50,000 paid on defendant Keeping's behalf by plaintiff to Gambol
2 on March 28, 2013, would be reimbursed in full on or before April 3, 2013. When
3 reimbursement did not occur on April 3rd, or the subsequently promised dates of April 5 or
4 "*no later than April 8th*," defendant Merkel lied to plaintiff when claiming the reason for the
5 non-payment was defendant Keeping's hospitalization.

6 38. When the defendants made their reimbursement assurances to plaintiff, they
7 knew them to be false, and made them with intent to deceive and defraud plaintiff by
8 inducing him to act in the manner herein alleged.

9 39. At the time defendants made said false and fraudulent assurances, they had no
10 intention of keeping them, nor have said promises been performed by defendants to date.

11 40. When said representations were made by defendants causing plaintiff to act as
12 herein alleged, he was ignorant of their falsity and believed them to be true.

13 41. At the time defendants' assurances were made, and at the time plaintiff took the
14 actions herein alleged, plaintiff was ignorant of defendants' having depleted all but \$11,507
15 from WCPA trust account at the RBC bank; that defendants' intention was to not perform as
16 represented; or that any known cause existed that would prevent defendants from performing
17 as represented.

18 42. Plaintiff had no reasonable cause to suspect or, in the exercise of reasonable
19 diligence, have foreseeably discovered defendants' secret non-performance intentions or their
20 unlawful acts.

21 43. In good faith belief and reliance upon defendants' representations, plaintiff, on
22 defendant Keeping's behalf, made the initial \$50,000 boat payment to Gambol on March 28,
23 2013.

24 44. Had plaintiff known about defendants' unlawful acts and deceptive intentions,
25 plaintiff would not have agreed to, nor performed as stated.

26 45. Plaintiff's reliance on defendants' representations was reasonable and justified
27 as on February 13, 2013, plaintiff had personally spoken with an RBC officer about details
28 pertaining to an expected \$53,482 wire transfer.

1 46. At that time, the bank official confirmed to plaintiff that said trust account for
2 WCPA had been established by defendant Keeping, and said account balance was
3 \$1,467,169.

4 47. Moreover, plaintiff had personal knowledge that \$53,482 was, in fact, wire
5 transferred from the Canada bank to WCPA's bank in America on February 13, 2013.
6 Plaintiff also had personal knowledge that defendants' Canadian assets were purportedly
7 worth an estimated \$30+ million, and that defendant Keeping had a lengthy and positive
8 history for various acts of philanthropy.

9 48. Defendants' fraud and deceit as herein alleged has damaged plaintiff in an
10 amount to be proved at trial, but which exceeds the jurisdictional minimum of this court.

11 49. By the acts herein alleged, defendants acted with oppression, fraud, and malice
12 and plaintiff is entitled to punitive damages in the sum to be determined by the trier of fact.

13 **II. SECOND CAUSE OF ACTION**

14 **(Negligence)**

15 50. Plaintiff incorporates herein by reference, all allegations set forth within
16 preceding paragraphs 1-49 and hereafter.

17 51. By virtue of the existing business and social relationship that existed between
18 defendants and plaintiff as identified within above paragraphs 1-34, defendants undertook
19 and owed plaintiff a duty of care.

20 52. At all times prior, during, and after their request for plaintiff's financial
21 assistance as previously described, defendants knew, or should have known, that plaintiff
22 would foreseeably believe, rely and act upon their representations to plaintiff's detriment.

23 53. Due to defendants' knowing they had depleted and used WCPA capitalization
24 funds to pay for their personal business purchases and property development costs as
25 previously described, defendants knew, or should have known, they lacked sufficient funds
26 to timely reimburse plaintiff as promised.

27 54. Defendants, and each of them, breached their duty to exercise due care by
28 making promises and assurances that were not only false and misleading, but were promises
 and assurances defendants either chose not, and/or were not capable of performing.

1 61. Due to said RBC funds “being temporarily unavailable,” defendant proffered
2 to plaintiff that, if he could obtain, or use his personal funds to make the required payment to
3 Gambol, defendant Keeping would personally guarantee reimbursement to plaintiff on or
4 before April 3, 2013.

5 62. Mutual consideration being that plaintiff and defendants each stood to mutually
6 benefit by the boat’s timely construction and subsequent use, and relying upon defendant
7 Keeping’s promise, coupled with her having the apparent and believed ability to timely
8 reimburse the funds as represented, plaintiff accepted defendants’ reimbursement offer and
9 used his personal funds to make the \$50,000 boat-construction payment to Gambol on
10 defendant Keeping’s behalf.

11 63. When the promised funds were not received by plaintiff on April 3, 2013 as
12 defendants had promised, defendant Merkel conveyed his apology for the delay, and renewed
13 his assurance that plaintiff’s \$50,000 reimbursement was going to be made, “if not on Friday
14 [April 5, 2013], absolutely no later than Monday [April 8, 2013].” Concurrent with
15 defendant Merkel’s apology, was his explanation that the promised funds not being
16 reimbursed on April 3, 2013, was, “*Theresa ... checked herself into the hospital.*” [Underline
17 emphasis added]

18 64. Sympathetic and concerned about defendant Keeping’s purported
19 hospitalization, plaintiff attempted to send her flowers, but was told by hospital staff that
20 their computers were linked to all of the nearby hospitals and there was “*no record of recent*
21 *hospitalization or emergency room treatment of anyone with the first or last names of*
22 *Theresa or Keeping.*” When confronted with plaintiff’s discovery, defendant Merkel claimed
23 what he meant to say was that defendant Keeping told him that she was “thinking about
24 checking herself into the hospital.”

25 65. On or about February 13, 2013, when plaintiff initially spoke with RBC staff
26 about an initial \$53,482 wire transfer of WCPA’s capitalization funds, he was told the
27 account from which the wire transfer is coming contains \$1,467,169. On April 4, 2013,
28 however, when plaintiff inquired about the same bank account, RBC staff told plaintiff, “*Our*

1 *records indicated all but the current balance of \$11,507 in this account was withdrawn on*
2 *February 25, 2013.*“ [Underline emphasis added]

3 66. Plaintiff subsequently discovered that the WCPA capitalization funds
4 defendants withdrew from the RBC on February 25, 2013, were used to make other business
5 investments, purchases and/or improvements to properties in which defendants had an
6 ownership interest, including: VinKing Marine Enterprises, Inc. (Port Harmon Authority,
7 Port of Belledune and Charlo Airport); Ocean View Estates; T.S. Signs; and several of
8 Keeping's Canadian rental properties.

9 67. When defendants learned that plaintiff had discovered their false, fraudulent
10 representations, including details of the unlawful withdrawal of WCPA’s capitalization funds
11 from the RBC on February 25, 2013, they stopped answering or returning any of plaintiff’s
12 repeated phone calls, voice or email messages.

13 68. Defendants also ignored or disregarded plaintiff’s repeated plea for assistance to
14 prevent or mitigate existing and further anticipated damages, including their refusal to
15 provide plaintiff with the name of their attorney, or instruct their attorney to contact plaintiff.

16 69. Plaintiff has performed all covenants and promises required on its part to be
17 performed in accordance with the terms and conditions of the said Agreement. If any claim
18 of nonperformance by plaintiff occurred, defendants were the cause of said nonperformance.

19 70. As a direct and proximate result of defendants’ breach of contract, plaintiff has
20 been damaged in an amount not yet known and to be proved at trial, but no less than
21 \$50,000.

22 71. Wherefore, Plaintiff prays for judgment as to be determined at time of trial.

23 **IV. FOURTH CAUSE OF ACTION**

24 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

25 72. Plaintiff incorporates herein by reference, all allegations set forth within
26 preceding paragraphs 1-71 and hereafter.

27 73. California law implies a covenant of good faith and fair dealing in all contracts
28 between parties entered into in the State of California, and requires the parties thereto not
deliberately contravene the spirit and intention of its terms.

1 74. As previously set forth within above paragraphs 1-71, plaintiff reasonably relied
2 upon the representations of defendants, and entered into an oral agreement therewith.

3 Plaintiff then performed as agreed based upon his belief that defendants Keeping and Merkel
4 would honor and satisfy their personal assurances, obligations and guarantees under the
5 stated Agreement, knowing failure to comply would foreseeably, if not predictably, cause
6 plaintiff to sustain financial, as well as other related damages to all parties concerned.

7 75. As a result of the acts by defendant's Keeping and Merkel, and each of them, as
8 set forth hereinabove, defendants violated the law by breaching the State's implied Covenant
9 of Good Faith and Fair Dealing mandate by making false, misleading statements resulting in
10 plaintiff's performance as above stated. Moreover, after plaintiff's good faith performance,
11 defendants refused and thereby failed to reimburse plaintiff for the \$50,000 he was requested
12 to spend, and did spend, on defendants behalf. Defendants also refused to assist or
13 cooperative with plaintiff, or independently, make an independent effort, to prevent or
14 mitigate damages resulting from their intentional contract breach.

15 76. As a direct and proximate result of defendants' breach of covenant of good faith
16 and fair dealing, plaintiff has been damaged in an amount to be proved at trial, but no less
17 than \$50,000.

18 77. Wherefore, Plaintiff prays for judgment as fully set forth below.

19 **V. FIFTH CAUSE OF ACTION**

20 **(Conspiracy)**

21 78. Plaintiff incorporates herein by reference, all allegations set forth within
22 preceding paragraphs 1-77 and hereafter.

23 79. On or about March 21, 2013, Defendants, and each of them, knowingly and
24 willfully conspired to misrepresent their intent and ability to perform as more fully explained
25 within above paragraphs 8-34.

26 80. The alleged facts stated herein constitute the tort or other civil wrongs
27 committed by defendants and the injury caused thereby to plaintiff.

1 81. Defendants Keeping and Merkel, and each of them, did said acts and things
2 herein alleged pursuant to, and in furtherance of, the conspiracy and above-alleged
3 agreement.

4 82. Defendants furthered the conspiracy by cooperation with, lent aid and
5 encouragement, and/or ratified and adopted the acts of each other as deemed necessary to
6 persuade plaintiff to perform as above indicated, then deny plaintiff the benefit of being
7 reimbursed for the money he spent at defendants' request and on their behalf.

8 83. As a direct and proximate result of defendants' conspiracy, plaintiff has been
9 damaged in an amount to be proved at trial, but no less than \$50,000.

10 84. Defendants did the things herein alleged maliciously and to oppress plaintiff.


11 85. Plaintiff is therefore entitled to exemplary and punitive damages in an amount to
12 be determined by the trier of fact.

13 **VI. PRAYER**

14 **WHEREFORE plaintiff prays for judgment as follows:**

- 15 1. General damages in a sum to be proved at trial but exceeding 50,000;
16 2. Special damages in an amount to be proved at time of trial;
17 3. Punitive damages appropriate to punish defendants and deter others from
18 engaging in similar conduct; and
19 4. Such other relief as the court may deem proper.

20
21 Dated: May 23, 2013

22 By: 
Chuck Foster, Plaintiff in Pro Per

From: [Theresa Keeping](#)
Date: 1/29/2013 8:38:09 PM
To: captainchuck@wishcruisenavy.org
Cc: [Daniel J. Howard](#)
Subject: Home in the Cold North

PLAINTIFF'S EXHIBIT-01

Hello Mary Ann, Chuck & Dan!

We arrived in good time at 4 pm. this afternoon today to a beautiful blue sky sunny day, (usually that means its cold outside) yup! - 27%.

We spent a large part of our trip thinking and talking about the events that led us down the Wish Cruise Navy Path together . I speak for Dale and I when I say we are so pleased to have met you and thank God for giving us the courage to see the dreams of Addison come true for all children who suffer from any life threatening sickness.

It is not up to us to rationalize Why any child would get sick, however it is within our power to join together in whatever way we can to contribute to Addison's Dream .

Thank you for this opportunity. We will stand forever for children's wishes!

We start our diet tomorrow,

Aaaaarrgggghhhh !

Theresa & Dale

Have to find Mary Ann's email tomorrow

Sent from my iPad

From: [Theresa Keeping](#)
Date: 1/30/2013 8:03:23 PM
To: [WishCruiseNAVY](#)
Cc: [Daniel J. Howard](#)
Subject: Re: Follow up ...

PLAINTIFF'S EXHIBIT-02

Hello Partners:

Thank you and good afternoon.

Sent off an email to my Accountants and Lawyer to get things rolling, and will keep you posted on the details as well as when we will make the Bank Transfer.

Your meeting with Michael Lesner sounds positive, it will be great to have him oversee the media sponsorship and advertising, this is very important and would be great to have this done.

In regards to the LLC,

1. I'm sure to here back soon and will pass on the information as soon as it is available.
2. Theresa Keeping, [REDACTED] Cochrane, Alberta, Canada, T4C 1A2 Dale Merkel (same address)
3. Theresa Ph: [REDACTED] email: theresa@wishcruisepirates.com fax; [REDACTED] if this is available
4. Dale Ph: [REDACTED] email: dale@wishcruisepirates.com fax [REDACTED]

You can reach us on the email address you are using now until we set up the new one this week, we will email you to let you know when it is set up. You can use the phone & fax above.

happy you started your diet, let us know how Mary Ann does in surgery.

Bless you all

Theresa & Dale

ps: The first portrate to be painted for the first Pirate is Addison, so please send me some photos of him Chuck I would like to get started as soon as I find a window of time to feel my creativity.

From: [Theresa Keeping](#)
Date: 2/9/2013 12:49:49 PM
To: [WishCruise PIRATE](#)
Subject: Re: Call me re. on-line bank access details ...

PLAINTIFF'S EXHIBIT-03

Hello Chuck

Hope Mary Anne is feeling well.

Happy to see you have the bank account set up, I will do the deposit Monday morning, so it will be there before you get up & going. The time here is 5:00 pm. now, I think that is a 4 1/2 hr. difference.

Like I mentioned before my Lawyer and Accountants had me set up a new Holdings Company to put the funds into before they get transferred out of the country. Tax issues are far better addressed before an investment than later.

Anyway everything is done on this end now, so the first transfer is next. Sorry for any inconvenience this may have caused. I have been swamped with VinKing this last week because we are closing on some property here.

We leave for Toronto on Tuesday after which we go on to Zurich, with a return on the 21 Feb.

We both have access to our emails and intend to have our addresses set up to receive and send, before we leave.

I am on the east coast of the Island of Newfoundland I believe Dan is on the West Coast, I will try to reach him after this email. So best to all for now and I will call shortly.

Theresa & Dale

-----Original Message-----

From: [dale merkel](#)

Date: 2/12/2013 5:46:30 PM

To: [WishCruise PIRATE](#)

Subject: Fwd: Follow up to today's phone conversation

PLAINTIFF'S EXHIBIT-04

Helo Chuck

For the LLC

Company name is 1727482 ALBERTA LTD.

Was Incorporated in Alberta on 2013/01/31

Box 4, RR2, Site 13, Cochrane, Alberta, Canada, T4C 1A2

I have tried numerous times to transfer the funds from the company RBC (Royal Bank of Canada Account) and to no avail. So tomorrow at about 1pm. I am meeting at the bank to wire transfer the funds. I will contact you after it is done and will scan the receipt so you can inquire about it because we are leaving for Zurich Friday.

Will call you later tomorrow evening.

Have a great evening.

Theresa & Dale

PLAINTIFF'S EXHIBIT-05

H

PAGE 1 OF 1

WIRE TRANSFER ADVICE

WX 0000 027 010290 #001 AT 0.384
WISHCRUISE PIRATE ADVENTURES, LTD

DATE: 02/13/13
DIRECT INQUIRIES TO:
800.729.8673 OPTION 2
ACCOUNT:

THE FOLLOWING WIRE WAS CREDITED TODAY:

USD AMOUNT \$53,482.00

TRANSACTION REF: [REDACTED]
SENDER'S REF: [REDACTED]
IMAD: [REDACTED]
ORIGINATOR: [REDACTED]
ORIGINATOR'S BANK: ROYAL BANK OF CANADA
SENDING BANK: JPMORGAN CHASE BANK, NA
BENEFICIARY: WISHCRUISE PIRATE ADVENTURES LTD.

SERVICE REF: 004772
RELATED REF: SWF OF 13/02/13
ID: [REDACTED]
ID: [REDACTED]
ID: [REDACTED]
ID: [REDACTED]

PAYMENT DETAIL: [REDACTED]



From: [WishCruiseNAVY](#)
Date: 3/29/2013 2:53:11 PM
To: [Theresa](#); [Dale](#)
Cc: [Dan](#); [Mary Ann](#)
Subject: YESTERDAY'S NEWS ...

PLAINTIFF'S EXHIBIT-06

YESTERDAY'S NEWS:

1. Dan, Sheila and I met with John Bridwell at Gamble at noon, took photos of the area where the Pirate Ship is to be built.

While John and I privately discussed the contract and payment, Dan and Sheila were given a tour of "[Sojourn](http://www.fraseryachts.com/Charter/charter_gallery.aspx?YachtID=Y5465_FL)" ([http://www.fraseryachts.com/Charter/charter_gallery.aspx?YachtID=Y5465 FL](http://www.fraseryachts.com/Charter/charter_gallery.aspx?YachtID=Y5465_FL)) the 130' mega yacht built by Gambol Industries and belonging to Gambol's owner, Robert Stein.

Due to the delay with legal and accounting issues, and to protect the on or before November 5, 2013 delivery date, I personally withdrew \$50,000 from my social security CD and presented to Mr. Bridwell as a demonstration of good faith. As a result, Mr. Bridwell conditionally agreed to move forward with the understanding that the balance of the first installment be completed prior to the end of business on Friday, April 5th. Once this payment condition was mutually accepted, Dan, Sheila and Gambol's owner, Bob Stein came into the office to witness the money counting, contract signing and the ceremonial handshake! (see photos at this [SmugMug link](#))

Note: Mr. Bridwell requires Email confirmation from bank confirming \$1.3MM available for boat construction by next Wednesday, April 3rd.

DECLARATION OF CHUCK FOSTER

I, Chuck Foster, declare as follows:

Preface-- Upon information and belief, witness testimony, and documentary evidence will confirm that Canadian residents and business partners, Theresa Keeping and Dale Merkel, by their statements, acts and omissions, have conspired to commit, and violated civil statutes including fraud, conversion, contract breach, breach of covenant of good faith, negligence, and felony crimes of embezzlement, fraud and theft by false pretense as below represented.

1. For reasons stated below, Theresa Keeping agreed and entered into an agreement whereby, for \$1,467,169, she became a 49% owner in WishCruise Pirate Adventures, a Nevada limited liability company

2. I received an email from Theresa Keeping on Feb. 9, 2013, which read: *"I will do the deposit Monday morning, so it will be there before you get up & going. The time here is 5:00 pm now, I think that is a 4 1/2 hr. difference. Like I mentioned before my Lawyer and Accountants had me set up a new Holdings Company to put the funds into before they get transferred out of the country. Tax issues are far better addressed before an investment than later. Anyway everything is done on this end now, so the first transfer is next. Sorry for any inconvenience this may have caused. I have been swamped with VinKing this last week because we are closing on some property here."*

3. "The deposit" to which defendant Keeping's above email refers is purportedly placed into a "trust account" Keeping opened in the name of 1727482 Alberta Ltd. on January 31, 2013 at Royal Bank of Canada.

4. The amount of said deposit was \$1,467,169, the required agreed upon "capitalization" payment for which defendant Keeping paid to acquire a 49% ownership interest in WishCruise Pirate Adventures, Ltd. (WCPA), a United States based management company.

5. 1727482 Alberta Ltd. was represented by defendant Keeping as being the "holding company" she created to distribute the \$1,467,169 WCPA capitalization funds needed to pay for the estimated \$1.25MM to \$1.3MM construction of the 75' "pirate theme" boat ("boat") to be built in Long Beach, California by Gambol Industries, Inc. ("Gambol"). The balance of said funds were for WCPA start-up and initial operating expenses. Thereafter, as WCPA generated boat-related revenue, said "holding company" would be the entity used to receive entitled proceeds on defendant Keeping's behalf.

6. Upon completion of said boat, it would become the designated flagship, and a primary source of self-support revenue for WishCruise Navy, the non-profit organization that would provide celebrity co-captained Pirate Adventure WishCruise experiences for children suffering with a life-threatening illness. Ancillary boat use would be incorporated into WishCruise Navy's character/self-esteem mentoring, juvenile delinquency diversion, and career-pathway education programs for "at risk" teens.

7. WCPA responsibilities included overseeing the boat's proper and timely construction, then oversee and manage the boat's use on WishCruise Navy's behalf.

8. Relative to the RBC bank account, I received an email from Keeping (using Merkel's email address) dated Tuesday, February 12, 2013, stating in part: *"I have tried numerous times to transfer the funds from the company RBC (Royal Bank of Canada Account) and to no avail. So tomorrow at about 1pm, I am meeting at the bank to wire transfer the funds. I will contact you after it is done and will scan the receipt so you can inquire about it because we are leaving for Zurich Friday. Will call you later tomorrow evening. Have a great evening. Theresa & Dale"*

9. On Wednesday, February 13, 2013, I received a phone call from Keeping stating she was at the RBC and asked me to speak directly with the RBC employee. During the resulting conversation, the RBC bank employee told me that a "trust account" existed as Keeping had alleged, and it currently contained \$1,467,169. The Bank employee also acknowledged that Keeping told her the money was to pay for the cost of *"building a pirate ship for children's wish-fulfilling charity and WCPA start-up expenses."* Also discussed were relevant

details regarding the wire transfer of \$53,482 from the RBC bank to WCPA's U.S. bank account which WCPA's bank statement will confirm occurred on February 13, 2013.

10. Upon WCPA's receipt of the above transferred funds, the boat's construction plans were purchased from the architect John Avoures on February 15, 2013 and delivered to Gambol on February 18, 2013.

11. From the provided boat construction plans, the agreed upon price to build said boat was confirmed, including the boat's required "*on or before November 3, 2013*" delivery date. This delivery date was essential for the boat's first planned use being a series of "thank you" celebration activities honoring America's active duty, reserve, retired, veteran, wounded and fallen soldiers over Veteran's Day Weekend.

12. On or about March 21, 2013, I discussed details of the written agreement proposed by Gambol with Keeping and Merkel, including the need for said boat's construction agreement to be signed, including the amended payment schedule, and the initial payment needing to be made on or before March 25, 2013.

13. Keeping and Merkel told me that the transfer of funds from RBC trust account required prior written approval by their attorney or accountant, and "*due to their Easter Holiday schedules,*" neither would be available in time to sign-off on the next wire transfer in time to meet Gambol's March 25, 2013 payment deadline.

14. When I told Keeping and Merkel that Gamble would not start the boat-building process until payment was received, and any delay beyond March 25, 2013 would foreseeably prevent Gambol from meeting its required "*on or before November 3, 2013*" boat completion deadline, Keeping told me she had "*credit cards without charging limits*" and, if acceptable to Gamble, she could use them to make the timely required payment.

15. When I told Keeping and Merkel that Gamble rejected her credit card payment offer, Keeping asked me to find out the minimum amount of money needed to consummate the Gamble boat-building agreement to immediately start the boat-building process.

16. After obtaining the requested information from Gambol, I told Keeping and Merkel that \$50,000 was required, and the Nov. 3, 2013 construction deadline was predicated upon the initial payment being made by March 25, 2013.

17. Keeping and Merkel told me the funds held in trust could not be released without their attorney or accountant's approval and that both were unavailable due to the Easter holiday. Keeping then asked if I had access to the funds needed to make the \$50,000 payment on her behalf, and if so, she would personally guarantee immediate reimbursement by using her credit card(s) to obtain and send me the money or, if I could wait, my reimbursement would be included in the next wire transfer of funds from the RBC account to WCPA on April 3, 2013.

18. Based upon Keeping's personal reimbursement guarantee offer, coupled with my prior knowledge of the WCPA trust fund balance on deposit with RBC, I agreed as Keeping requested and, on her behalf, I made the \$50,000 boat-building installment payment to Gambol on March 28, 2013.

19. Notwithstanding Keeping and Merkel's assurances, the promised reimbursement was not received on April 3, 2013, nor was the requested email confirmation from the (RBC) bank confirming \$1.3MM was available for the boat's construction cost.

20. Merkel apologized to WCPA's Director of Security, Dan Howard ("*Howard*") and told him the reason the wire transfer didn't happen as expected was because, "*Theresa (Keeping) ... had checked herself into the hospital.*"

21. Merkel also told Howard, "You have my personal assurance there were no other reasons that would delay or prevent said wire transfer from taking place," again emphasizing his and Keeping's personal guarantee that the \$50,000 reimbursement money would be included with the wire transfer for the boat's next installment payment, said payment being, "*... if not on Friday [April 5, 2013], absolutely no later than Monday [April 8, 2013].*"

22. Concerned and sympathetic about Keeping being hospitalized, I attempted to send flowers to Keeping, only to be told by hospital staff that: "... our computers are linked to all of the nearby hospitals, and we can't find any record of recent hospitalization or emergency room treatment by anyone with the first or last names of Theresa or Keeping."

23. When I checked with RBC on April 4, 2013, however, I was told that Keeping had withdrawn all but \$11,507 from the account on February 25, 2013, and there was no record indicating a wire transfer to WCPA was scheduled.

24. With Dan Howard's assistance, I learned that the WCPA capitalization funds wrongfully taken from the RBC "trust account," had been used by Keeping and Merkel for other Canadian business investments, purchases and/or improvement to properties in which Keeping and/or Merkel had ownership interests, including: VinKing Marine Enterprises, Inc. (Port Harmon Authority, Port of Belledune and Charlo Airport); Ocean View Estates; T.S. Signs; and several of Keeping's Canadian rental properties.

25. I and a witness, Mary Ann Mercer, were with Mr. Howard in Huntington Beach, California on the evening of April 5, 2013, when he received a phone call from defendants Keeping and Merkel. As Mr. Howard's cell phone was using the "speaker" mode, I and Ms. Mercer were able to hear both sides of the phone conversation. During the conversation, defendant Keeping claimed she wasn't returning my phone calls or email messages because she felt "threatened and afraid" due to my recent emails and voice mail messages. Defendant Keeping claimed she was so afraid for her safety that she reported me to the police, was told not to speak with me under any circumstances, that she was receiving police protection and a police car was currently parked in front of the house.

When the phone call ended, I took Mr. Howard to the airport for his return flight to Canada. Later that evening, I called the Alberta and Royal Canadian Mounted Police Departments by phone, spoke with and explained the above circumstances to officers from both departments, and provided them with name, address phone numbers, date of birth, etc.

Officers from both agencies thanked me for taking the initiative to contact them, and after checking their records told me they had "... no record of any call, complaint made, or report taken involving Theresa Keeping, Dale Merkel, Chuck Foster or any other person with the last name Foster.

Note: From the first time I was introduced to Keeping and Merkel in January of 2013 to date, Dan Howard has been cc'd on all of my email communication regarding Keeping and Merkel; he was also present when the agreement was entered into whereby Keeping would acquire a 49% partner/ownership interest in WishCruise Pirate Adventures, Ltd.

Mr. Howard was also a listening or participant party to the above mentioned phone conversations when I was speaking with Keeping and/or Merkel.

26. When Keeping/ Merkel learned that I had discovered their false representations, including details of the unlawful withdrawal of WCPA's capitalization funds from the purported RBC "trust account" on February 25, 2013, they stopped answering or returning any of my or Mr. Howard's repeated phone calls, voice or email messages.

Upon information and belief, the above information set forth within this Declaration is truthful in its entirety, and under penalty of perjury under the laws and statues of the State of California, County of Orange, is so stated and signed by me on this 23rd day of May, 2013,

By: CHUCK FOSTER, DECLARANT

