

**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 co-business partners, Theresa Keeping and Dale Merkel, by their statements, acts and omissions, have conspired to commit, and have committed 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) was experiencing severe symptoms due to her Crohn's Disease and 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 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, is so stated and signed by me on this 9th day of May, 2013,

By: CHUCK FOSTER, DECLARANT

