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Michael A. Lotta, C.S.B. N° 94301
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ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE CENTRAL DISTRICT OF CALIFORNIA

WISHCRUISE PIRATE
ADVENTURES, LTD., etc.,

Plaintiff,

v.

THERESA KEEPING, etc., et al,

Defendants.

Case No: SACV14-00012-AG-
(DFMx)

**FIRST AMENDED COMPLAINT
FOR DAMAGES; Fraud;
Conversion; Breach of Fiduciary
Duty; Negligence**

JURY TRIAL DATE: August 18, 2016
DISCOVERY CUT-OFF: May 18, 2015
JUDGE: Hon. Andrew J. Guilford
MAGISTRATE: Hon. Douglas F. McCormick

Plaintiff herein complains and alleges as follows:

PARTIES

1. Plaintiff, WishCruise Pirate Adventures, Ltd. ("WCPA") is a Nevada limited liability company with its principal place of business in California being Huntington Beach, Ca, USA.
2. Defendant Theresa Keeping ("Keeping") is an individual whose residence, at all material times, was Cochrane /Alberta, and/or Port au Port/Newfoundland, Canada.
3. Defendant Dale Merkel ("Merkel") is an individual whose residence, at all material times, was Cochrane /Alberta, and/or Port au Port /Newfoundland, Canada.

1 4. Defendant 1727482 Alberta Ltd., Inc. ("1727482 Alberta") is a Canadian
2 limited liability company ("LLC") and, at all material times, had principal places of
3 business in Cochrane/Alberta and at Port au Port/Newfoundland, Canada.

4 5. Defendant Shawn Simon, d/b/a Simon's Holding Ltd ("Simon"), at all
5 material times, resided and/or operated his place of business in
6 Stephenville/Newfoundland, Canada.

7 6. Defendant Cecil Stein ("Stein") an individual who, at all material times,
8 resided and/or operated his business located in Stephenville, Newfoundland,
9 Canada.

10 7. The true names and capacities, whether individual, corporate, partnership,
11 associate or otherwise, of defendants Does I through 25 inclusive, and each of
12 them, are unknown to WCPA who therefore sues them by such fictitious names.

13 8. WCPA will seek leave to amend this Complaint to show the true names and
14 capacities of Does I through 25 when he has discovered them.

15 9. WCPA alleges that, at all times mentioned herein, all of the defendants
16 acted or participated in some manner in the acts alleged herein, and in some way
17 caused and are responsible for WCPA's damages.

18 10. Unless otherwise stated, references to "defendants" shall interchangeably
19 include defendants as individuals and/or collectively, also Does 1 through 25.

20 11. WCPA alleges that, at all times mentioned herein and, unless otherwise
21 indicated, each of the defendants was and/or now is the agent of each of the other
22 defendants, and that each of the defendants, in performing the acts alleged, were
23 acting in the course and scope of such agency.

24 **STATEMENT OF THE CASE**

25 Plaintiff herein alleges based upon personal knowledge and/or information and
26 belief that:

27 12. On or about January 31, 2013, and as supported by defendant Keeping and
28

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1 Merkel's emails and, Canadian Providence, witness testimony and other business
2 records, defendants requested and obtained a Canadian limited liability company
3 known as 1727482 Alberta Ltd, Inc.

4 13. An example of defendant's case-related emails referenced above are set forth
5 below and incorporated hereinafter by reference.

6 14. Keeping Email #1 - Jan. 29, 2013

7 -----Original Message-----

8 From: Theresa Keeping

9 Date: 1/29/2013 8:38:09 PM

10 To: captainchuck@wishcruisenavy.org

11 Cc: Daniel J. Howard

12 Subject: Home in the Cold North

13
14 Hello Mary Ann, Chuck & Dan! We arrived in good time at 4 pm. this
15 afternoon today to a beautiful blue sky sunny day, (usually that means its
16 cold outside) yup! -27%. We spent a large part of our trip thinking and talking
17 about the events that led us down the Wish Cruise Navy Path together. I
18 speak for Dale and I when I say we are so pleased to have met you and thank
19 God for giving us the courage to see the dreams of Addison come true for all
20 children who suffer from any life threatening sickness.

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

24 We will stand forever for children's wishes!

25 We start our diet tomorrow, Aaaaarrrrgggghhhh!

26 Theresa & Dale
27
28

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1 Keeping Email #2 - Jan. 30, 2013
 2 -----Original Message-----
 3 From: Theresa Keeping
 4 Date: 1/30/2013 8:03:23 PM
 5 To: WishCruiseNAVY
 6 Cc: Daniel J. Howard
 7 Subject: Re: Follow up ...
 8

9 Hello Partners: Thank you and good afternoon. Sent off an email to my
 10 Accountants and Lawyer to get things rolling, and will keep you posted on the
 11 details as well as when we will make the Bank Transfer. Your meeting with
 12 (name redacted) sounds positive ...

13 In regards to the LLC,

- 14 1. I'm sure to here back soon and will pass on the information as soon as it is
- 15 available.
- 16 2. Theresa Keeping (address redacted) Dale Merkel (same address)
- 17 3. Theresa Ph:403 -(redacted) email:(redacted) fax; 1-709-(redacted)
- 18 4. Dale Ph:709-(redacted) email: (redacted) fax 1-709-(redacted)

19 You can reach us on the email address you are using now until we set up the new
 20 one this week, we will email you to let you know when it is set up. You can use
 21 the phone & fax above. happy you started your diet, let us know how Mary Ann
 22 does in surgery. Bless you all Theresa & Dale ps: The first portrate to be painted
 23 for the first Pirate is Addison, so please send me some photos of him Chuck I
 24 would like to get started as soon as I find a window of time to feel my creativity.
 25

26 Keeping Email #3 - Feb. 9, 2013
 27 -----Original Message-----
 28

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1 From: Theresa Keeping
2 Date: 2/9/2013 12:49:49 PM
3 To: WishCruise PIRATE
4 Subject: Re: Call me re. on-line bank access details ...
5

6 Hello Chuck Hope Mary Anne is feeling well.
7 Happy to see you have the bank account set up, I will do the deposit Monday
8 morning, so it will be there before you get up & going. The time here is 5:00 pm.
9 now, I think that is a 4 1/2 hr. difference. Like I mentioned before my Lawyer and
10 Accountants had me set up a new Holdings Company to put the funds into before
11 they get transferred out of the country. Tax issues are far better addressed before
12 an investment than later. Anyway everything is done on this end now, so the first
13 transfer is next. Sorry for any inconvenience this may have caused. I have been
14 swamped with VinKing this last week because we are closing on some property
15 here. We leave for Toronto on Tuesday after which we go on to Zurich, with a
16 return on the 21 Feb. We both have access to our emails and intend to have our
17 addresses set up to receive and send, before we leave. I am on the east coast of the
18 Island of Newfoundland I believe Dan is on the West Coast, I will try to reach
19 him after this email. So best to all for now and I will call shortly.

20 Theresa & Dale
21
22

23 Keeping Email #4 - Feb. 12, 2013

24 -----Original Message-----

25 From: dale merkel
26 Date: 2/12/2013 5:46:30 PM
27 To: WishCruise PIRATE
28

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

2

3 Helo Chuck

4 For the LLC [the]Company name is 1727482 ALBERTA LTD.

5 Was Incorporated in Alberta on 2013/01/31 (address redacted)I have tried
6 numerous times to transfer the funds from the company RBC (Royal Bank of
7 Canada Account) and to no avail. So tomorrow at about 1pm. I am meeting at the
8 bank to wire transfer the funds. I will contact you after it is done and will scan the
9 receipt so you can inquire about it because we are leaving for Zurich Friday.
10 Will call you later tomorrow evening. Have a great evening. Theresa & Dale

11

12 15. The purpose of the 1727482 Alberta LLC, and its subsequently established
13 RBC bank account by the same name, was:

14 a. To receive and exclusively distribute Keeping's WCPA \$1,500,000
15 capitalization funds designated to specifically pay for:

16 I) Construction cost of a pirate-themed watercraft vessel that was to be used in
17 conjunction with a non-profit, childrens "wish" fulfilling charity, WishCruise
18 Navy ("WCN"), and WCN programs involving children suffering with a
19 life-threatening illness, as well as other community service programs including
20 juvenile delinquency diversion and career pathway education programs for "at
21 risk" youth; and

22 ii) Provide WCPA start-up costs and initial operating expenses.

23 b. Once WCPA was established, its primary purpose was to manage said
24 vessel, and vessel-related programs and use, for and on behalf of WishCruise
25 Navy.

26 16. On February 8, 2013, WCPA received Certification of Organization notice
27 from the Nevada Secretary of State acknowledging that WCPA had been

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1 accepted and approved as a Nevada limited liability company. WCPA's LLC
2 identity number is E0062522043-5.

3 17. Effective February 8, 2013, and for the agreed upon and previously stated
4 consideration for Keeping's WCPA capitalization investment, Keeping became
5 WCPA's President and a voting Member with a forty-nine percent (49%)
6 equity/ownership, and net revenue sharing entitlement. Keeping's capitalization
7 investment was to be \$1,467,169.

8 18. Effective February 8, 2013, at Keeping's request, Merkel was named as a
9 WCPA vice-president.

10 19. As WCPA's president and vice-president, Keeping and Merkel's agreed
11 upon responsibility and fiduciary duties were to act in good faith, with the utmost
12 care, and to oversee and manage 1727482 Alberta and dits funds for the benefit
13 of and on WCPA's behalf as set forth below.

14 20. WCPA's financial oversight notwithstanding, Keeping's additional
15 responsibility was to create and provide original WCN/WCPA cause-related
16 paintings as requested by WCN; Merkel's additional responsibility was to attend
17 WCPA events and activities and, for publicity and Keeping's painting purposes,
18 take and provide WCPA with photographs.

19 21. Defendants' Keeping and Merkel's above indicated emails, WCPA/RBC
20 bank records, testimony of third-party witnesses, including RBC personnel,
21 confirm that, on February 13, 2013, Keeping deposited her \$1,467,169
22 capitalization investment into a purported "trust/holding account" identified as
23 "1727482 Alberta, Ltd."

24 22. The funds deposited into the 1727482 Alberta account indicated above were
25 at the Royal Bank of Canada ("RBC") located in St. John's, Newfoundland,
26 Canada.

27 23. As known and agreed to by Keeping, distribution and use of her WCPA's
28

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1 \$1,467,169 capitalization funds were restricted, and to only to be used for the
2 following purposes: a) \$1,300,000 to pay for the WishCruise Navy flagship
3 ("vessel") construction cost; b) \$30,000 for the vessel's engineered architectural
4 construction plans; and c) WCPA start-up costs and day-to-day operating
5 expenses. At no time, did Keeping and/or Merkel represent and/or disclose to
6 WCPA that said funds were for any other use than for WCPA and/or its interests.

7 24. Acting in her capacity as WCPA's President, Keeping deposited her
8 \$1,467,169 WCPA capitalization payment into the agreed upon RBC account.
9 Upon deposit, said funds became, and at all times thereafter, were the sole,
10 exclusive property of WCPA.

11 25. As WCPA's President, it was Keeping's agreed-upon duties as set forth
12 above and to oversee, manage and be responsible for the timely and "as needed"
13 distribution of 1727482 Alberta funds on WCPA's behalf. As a result, Keeping
14 arranged for, and facilitated what was represented as "the first" wire transfer.

15 26. On February 13, 2013, WCPA requested, and as evidenced below, Keeping
16 wire-transferred \$53,482 from the 1727482 Alberta account to WCPA's
17 Nevada/USA bank account.

18 27. On February 14, 2013, WCPA wire-transferred \$30,000 to the vessel's
19 architect, Daniel Avoures and Associates, which was payment in full for the
20 vessel's construction plans.

21 28. On or about March 25, 2013, Keeping told WCPA that her "... attorney or
22 accountant's signature is needed for wire-transfers regarding the 1727482 Alberta
23 account, and they're out of town for the Easter holidays."

24 29. As a result of the purported attorney/accountant unavailability, and with the
25 vessel's construction contract and initial deposit being due on March 25, 2013,
26 defendants Keeping and Merkel requested WCPA's manager, Chuck Foster, on
27 their and WCPA's behalf, to sign the vessel's construction agreement with
28

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1 Gambol Marine Industries, and to make the initial Fifty Thousand Dollar
2 (\$50,000) payment using personal funds which defendants promised to reimburse
3 and include with the next wire transfer scheduled to take place during the first
4 week of April, 2013.

5 30. Based upon Keeping's personal reimbursement assurance, coupled with
6 WCPA having previously confirmed on February 13, 2013, that \$1,467,169 had
7 been deposited in the 1727482 Alberta RBC trust/holding account, WCPA's
8 manager, at Keeping's request and on WCPA's behalf, Chuck Foster used his
9 personal funds as requested to pay the \$50,000 initial vessel construction
10 installment payment to Gambol Marine Industries on the extended, March 26,
11 2013, payment due date.

12 31. Notwithstanding defendants' assurances, neither the WCPA capitalization
13 funds required for the next vessel construction payment, nor WCPA manager's
14 \$50,000 promised reimbursement was received on any of Keeping/Merkel's
15 promised (April 3, 5 or 8, 2013) dates.

16 32. Regarding the funds not being timely received, defendant Merkel
17 apologized to WCPA, and claimed, "...it didn't happen because Theresa was
18 hospitalized in Alberta" and that "she checked herself into the hospital due to the
19 pain associated with her Crohn's Disease." When seeking to send flowers and a
20 "get well" message to Keeping, however, Alberta hospital staff told WCPA, "our
21 computers are linked to all nearby hospitals, and we can't find any record of
22 recent hospitalization or emergency room treatment by anyone with the first or
23 last names of Theresa or Keeping."

24 33. Defendant Merkel further communicated to WCPA, and gave his personal
25 assurance that no other problems existed that would delay or prevent said wire
26 transfer from taking place, emphasizing WCPA had his and Keeping's personal
27 guarantee that the money needed for the next vessel construction payment, and
28

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1 WCPA manager's \$50,000 reimbursement, would be wire transferred, "... if not
2 on Friday [April 5, 2013], absolutely no later than Monday [April 8, 2013]."

3 34. When WCPA initially spoke with RBC bank staff about the initial \$53,482
4 wire transfer to WCPA on February 13, 2013, WCPA was told the RBC account
5 from which the wire transfer was coming was 1727482 Alberta Ltd and that this
6 account had a balance of \$1,467,169. When WCPA recontacted the RBC on
7 April 4, 2013, however, RBC staff told WCPA that bank records indicated, "...
8 all but the current balance of \$11,507 in this account had been withdrawn on
9 February 25, 2013." Bank officials also told WCPA that Keeping was the person
10 requesting the funds be withdrawn.

11 35. WCPA subsequently discovered that its capitalization funds had been taken
12 and used by defendants Keeping and/or Merkel to make personal business
13 purchases and/or investments in Newfoundland, Canada, e.g., land and a
14 commercial building from Shawn Simon (Simon's Holding Ltd); and the VinKing
15 Marine Enterprises/Port Harmon Authority business from Cecil Stein resulting in
16 defendants getting vice-president positions and acquiring substantial
17 VinKing/Port Harmon Authority company stock interest.

18 36. When defendants learned that WCPA had discovered their false
19 representations, including details of the unknown and unapproved withdrawal of
20 WCPA's capitalization funds, defendants stopped answering or returning any of
21 WCPA's numerous phone calls, voice or email messages.

22 37. Defendants also ignored and/or disregarded WCPA's repeated pleas for
23 assistance to prevent or mitigate existing and further anticipated damages,
24 including their failure to provide the name of their attorney, or instruct their
25 attorney to contact WCPA.

26 38. For the reasons set forth above and hereinafter, this lawsuit is filed as a
27 direct and proximate result of defendants' unlawful acts and omissions.
28

I. FIRST CAUSE OF ACTION

(Fraud by Defendant's Keeping and Merkel and Does 1-25)

39. WCPA incorporates by reference each and every allegation contained in paragraphs 1- 38 above and hereinafter, and upon personal knowledge, information or belief further alleges:

40. By or about February 13, 2013, defendant' Keeping and Merkel represented that they had deposited on behalf of WCPA and only for the use of WCPA the sum of \$1,467,169 the 1727482 Alberta "trust/holding" account at capitalization payment for and on WCPA's behalf. Thereafter and on or about March 25, 2013, the defendants Keeping and Merkel, withdrew all but \$11,507 of said funds without the knowledge and consent of WCPA and concealed the same from the plaintiff. Furthermore and by February 13, 2013, the defendants Keeping and Merkel represented to WCPA that they would adequately fund WCPA and its projects.

41. Defendants Keeping and Merkel concealed the above stated facts from WCPA, and by so doing, defendants falsely and fraudulently mislead WCPA into believing that sufficient funds still existed in the RBC bank account and were available for WCPA's agreed-upon use. The defendants, and each of them, made the representations and concealed the facts set forth above in the factual Statement Of The Case.

42. The representations of the defendants were false. The truth was and is that defendants, and each of them, did not intend to finance and/or fund WCPA and were using the same for their personal gain, reputation and interests. The defendants, and each of them, intended to take and convert all the money they could for their personal use to the detriment of the plaintiff; and intended to delay and refuse to pay the plaintiff any amounts so as to benefit financially while causing financial distress and hardship to the plaintiff.

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1 43. At the time of the representations and deposit of funds in an account for
2 WCPA, and when the representations were made, the defendants, and each of
3 them, knew they were false or had no reasonable ground for believing the
4 representations to be true.

5 44. The defendants, and each of them, made the representations and concealed
6 and suppressed material facts with the intent to defraud the plaintiff; obtain
7 personal gain and advance their reputation and interests, make money from the
8 same and attempt to and/or avoid and delay payments to the plaintiff so as to
9 financially benefit thereby.

10 45. The plaintiff not knowing the representations to be false, unaware of the
11 concealed and suppressed facts and unaware of the intention of the defendants,
12 and each of them, to act as stated above, relied upon the stated facts and entered
13 into contracts, initiated the Wishcruise projects and used personal funds of a third
14 party to do the same. Under the above described circumstances, the plaintiff
15 reasonably and justifiably relied upon the representations and the facts as
16 presented by the defendants, and each of them; and thereby directly and legally
17 suffered the injuries and damages set forth herein.

18 43. Defendants' deception and misconduct also caused WCPA's manager to use,
19 then not receive the promised reimbursement, of his personal funds used to make
20 the initial \$50,000 vessel construction payment to Gambol Marine Industries.

21 44. When the promised wire-transfer did not occur on April 3, 2013, or the
22 subsequently revised promised dates of April 5 or "no later than April 8th," the
23 fraud continued evidenced by Merkel's falsely telling WCPA that the reason for
24 the wire-transfer payment delay was due to Keeping's hospitalization.

25 45. Defendants Keeping and Merkel knew their omissions, information and
26 assurances they gave to WCPA were false and misleading, and made said
27 assurances with intent to mislead, deceive and defraud WCPA, and WCPA's
28

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1 manager, causing same to act in the manner herein alleged.
2 46. At the time defendants Keeping and Merkel were making said false and
3 fraudulent assurances, they had no intention of making the above stated payments
4 to WCPA, nor returning WCPA's \$1,413,687 capitalization funds that had been
5 unlawfully taken from the 1727482 Alberta RBC account.
6 47. When said representations were made by defendants, WCPA was ignorant
7 of their falsity and believed them to be true.
8 48. At the time defendants' assurances were made, and at the time WCPA and
9 its manager took the actions herein alleged, WCPA was ignorant of defendants'
10 having depleted all but \$11,507 from the WCPA trust account at the RBC bank.
11 49. At the times defendants' assurances were made, the intent was to
12 subsequently take, use, deprive and prevent WCPA from using the capitalization
13 funds existing within the 1727482 Alberta trust/holding account at the RBC.
14 50. In good faith belief and reliance upon defendants' representations, WCPA's
15 manager, on Keeping's and WCPA's behalf, made the initial \$50,000 vessel
16 construction payment to Gambol on March 26, 2013.
17 51. As a result of Keeping's false representations, WCPA entered into, and
18 became liable for said vessel's \$1,300,000 construction costs, a 20-year boat
19 dock/operating permit with the City of Long Beach, California/USA, plus
20 management and operations staffing promises.
21 52. Had WCPA known about defendants' intent to commit deceptive and/or
22 unlawful acts, WCPA would not have relied or acted upon Keeping or Merkel's
23 representations; nor would defendants have been given the opportunity to
24 become involved with WCPA and/or its charitable programs.
25 53. WCPA's reliance on defendants' representations was reasonable and
26 justified as on February 13, 2013, WCPA's manager, at Keeping's request,
27 personally spoke with the RBC official about details pertaining to an expected
28

1 \$53,482 wire transfer.

2 54. Defendants' fraud, deceit and other stated causes of action herein alleged
3 has damaged WCPA in a sum exceeding the \$1,467,169 that was deposited into
4 an account for WCPA only and no others, in amount to be proved at trial, but
5 which exceeds the jurisdictional minimum of this court.

6 58. That the defendants, and each of them, in making the representations
7 described herein above and in concealing and suppressing material facts as set
8 forth above, acted maliciously, oppressively, fraudulently, in conscious disregard
9 of plaintiff's rights and with the intent to injure plaintiff and deprive plaintiff of
10 monies and payments needed for WCPA; and plaintiff is informed and believes
11 and thereon alleges that defendants 1727482 Alberta LTD, Inc. And Does 1 to
12 100, and each of them, authorized, ratified and directed the acts and
13 representations of their agents, servants and employees including, but not limited
14 to Keeping and Merkel, who made said representations; and said defendants, and
15 each of them, knew of the unfitness of their said agents, servants and employees
16 prior to their employment, hiring, retention and the ordering and acceptance of
17 the goods and supplies referenced herein. All of which entitle plaintiff to an
18 award of punitive and exemplary damages against the defendants, and each of
19 them, in a sum within the jurisdiction of this Court.

. LOTTA, INC.
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20
21 **II. SECOND CAUSE OF ACTION**

22 **(Conversion by Defendants Keeping, Merkel and Does 1-25)**

23 59. WCPA incorporates by reference each and every allegation contained in
24 paragraphs 1- 58 above and hereinafter, and upon personal knowledge,
25 information or belief further alleges:

26 60. On or about April 4, 2013, WCPA discovered defendants Keeping and
27 Merkel had taken and used WCPA funds as indicated above. At that time,
28

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1 WCPA was the sole owner of said \$1,413,687 capitalization funds, and had the
2 right to exclusive possession and control of the capitalization funds taken by
3 defendants. The specific sum of money converted by defendants Keeping and
4 Merkel is \$1,455,662. The plaintiff at all times relevant hereto had a right to the
5 sum of

6 61. The defendants, and each of them, intentionally and substantially interfered
7 with the plaintiff's property and funds, took possession of the same, prevented
8 the plaintiff from having access to the funds and refused to return the funds to the
9 plaintiff.

10 62. The plaintiff did not consent to the conversion and taking of said funds.

11 63. As a result of defendants' interference, WCPA has been damaged in an
12 amount at least as great as \$1,413,687.

13 64. By refusing to return WCPA funds in the amount of \$1,413,687,
14 defendants' exercised dominion and control over WCPA's property.

15 65. As a direct and legal result of defendants' conversion and actions, WCPA
16 has been damaged at least in the amount of \$1,413,687, and such other yet
17 unknown damages subject to proof at time of trial.

18 66. That the defendants, and each of them, in converting the property of the
19 plaintiff described herein above and in conducting themselves as set forth above,
20 acted maliciously, oppressively, fraudulently, in conscious disregard of plaintiff's
21 rights and with the intent to injure plaintiff and deprive plaintiff of monies and
22 payments needed for WCPA; and plaintiff is informed and believes and thereon
23 alleges that defendants 1727482 Alberta LTD, Inc. And Does 1 to 100, and each
24 of them, authorized, ratified and directed the acts and representations of their
25 agents, servants and employees including, but not limited to Keeping and Merkel,
26 who made said representations; and said defendants, and each of them, knew of
27 the unfitness of their said agents, servants and employees prior to their
28

1 employment, hiring, retention and the ordering and acceptance of the goods and
2 supplies referenced herein. All of which entitle plaintiff to an award of punitive
3 and exemplary damages against the defendants, and each of them, in a sum
4 within the jurisdiction of this Court.
5
6

7 **III. THIRD CAUSE OF ACTION**

8 **(Breach of Fiduciary Duty by Defendants Keeping, Merkel and Does 1-25)**

9 67. WCPA incorporates by reference each and every allegation contained in
10 paragraphs 1- 66 above and hereinafter, and upon personal knowledge,
11 information or belief further alleges:

12 68. As officers of the plaintiff LLC and under CACI 4100, the defendants, and
13 each of them, owed and continue to owe, fiduciary duties to WCPA. Said
14 fiduciary duties include obligations to exercise good business judgment, to act
15 prudently in the operation of WCPA's business, to discharge their actions in good
16 faith, to act in the best interest of WCPA and its members, and to put the interests
17 of WCPA before their own.

18 69. Given defendant Keeping's WCPA President, and Merkel's Vice-President
19 positions, coupled with Keeping being the person whose financial investment in
20 WCPA resulted in her acquiring 49% equity/net revenue sharing interest therein,
21 and with Keeping and Merkel's purported knowledge and resources to properly
22 deal with Canada's tax laws, as well as other Canadian laws and statutes,
23 governing international transfers of money on WCPA's behalf, defendants
24 requested, and were afforded a unique position of trust upon which WCPA could
25 and would need to vulnerably rely.

26 70. By reason of converting the funds of WCPA and not making the promised
27 contributions, the defendants, and each of them, knowingly acted against
28

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1 WCPA’s financial interests in connection with the capitalization and deposit of
2 operating funds for WCPA.

3 71. The plaintiff did not give consent, let alone informed consent, to the
4 conduct of the defendants, and each of them.

5 72. As a direct and legal result thereof, the plaintiff has been damaged
6 in the sum of no less \$1,413,687, plus such other damages as yet to be fully
7 ascertained and according to proof at time of trial.

8 73. Based upon the facts set forth in paragraphs 1 through 72, the conduct of
9 the defendants, and each of them, was deliberate, malicious and oppressive so as
10 to support and claim for punitive damages against the defendants, and each them.

11
12 **IV. FOURTH CAUSE OF ACTION**

13 **(Negligence by Defendants Keeping, Merkel and Does 1-25)**

14 74. WCPA incorporates by reference each and every allegation contained in
15 paragraphs 1 - 73 above and hereinafter, and upon personal knowledge,
16 information or belief further alleges:

17 75. Based upon the facts set forth in paragraphs 1 through 73, above, and the
18 relationship between the parties, as alleged hereinabove, the defendants, and each
19 of them, owed a duty to exercise reasonable care, at all times relevant hereto
20 including the responsible oversight and management of business and financial
21 matters with, on behalf of, and/or pertaining to WCPA.

22 76. Based upon the facts set forth above, the defendants, and each of them,
23 negligently and carelessly deposited \$1,467.169 into an account for WCPA; and
24 then without advising or notifying the plaintiff withdrew all but \$11,507 from the
25 account. In addition, the defendants, and each of them, negligently and
26 carelessly failed to timely and accurately communicate with WCPA and its
27 management staff; negligently and carelessly failed to manage and protect
28

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1 WCPA's property and capitalization funds; negligently and carelessly took
2 WCPA capitalization funds without WCPA knowledge or approval, and used the
3 funds for unauthorized personal purchases and investments.

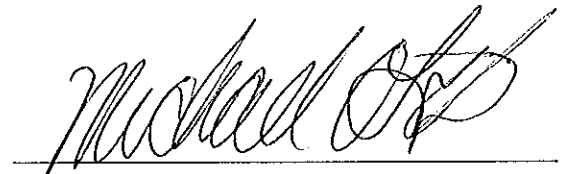
4 82. As a direct and legal result of defendants' breach of care duty, WCPA was
5 damaged due to its inability to pay for resulting debts and expenses; suffered the
6 loss of \$1,413,687, suffered the loss of Chuck Foster's \$50,000.00; and suffered
7 other damages according to proof.

8
9 WHEREFORE, the plaintiff prays for judgment against the defendants, and
10 each of them, as follows:

- 11 1. The sum of \$1,467,169;
- 12 2. The \$50,000 paid by Chuck Foster;
- 13 3.. Incidental expenses and damages according to proof;
- 14 4. Prejudgment interest according to proof;
- 15 5. Punitive and exemplary damages according to proof;
- 16 6. Costs of suit incurred herein; and
- 17 7. For such other and further relief as the Court may deem just and

18 proper.

19
20 DATED: March 21, 2014



21 **MICHAEL A. LOTTA**
22 Attorney for Plaintiff

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1 **WISHCRUISE PIRATE ADVENTURES v. THERESA KEEPING, et al**

2 **CASE NO.: SACV14-0012-AG**

3
4 **PROOF OF SERVICE**

5 I, the undersigned, declare under penalty of perjury that the following is true and correct.

6 I am over the age of 18 years and a party to the within action. My business address is 4244
7 E. 4th Street, Suite A, Long Beach, CA 90814, which is where the mailing described below took
8 place. I am familiar with the practice at my place of business for collection and processing of
9 documents for mailing with the U.S. Postal Service. Documents so collected and processed are
10 deposited with the U.S. Postal Service that same day in the ordinary course of business.

11 On **March 21, 2014**, at said place of business, following the business practice described
12 above, I mailed true and correct copies of the: **FIRST AMENDED COMPLAINT FOR**
13 **DAMAGES; Fraud; Conversion; Breach of Fiduciary Duty; Negligence**
14 in a sealed envelope, with postage thereon fully prepaid, for collection and mailing that same day
15 with the U.S. Postal Service, addressed to all interested parties herein, as follows:

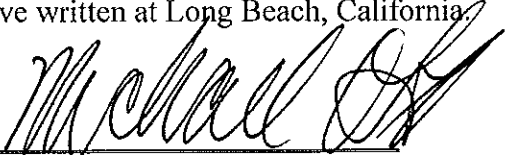
16
17 Michael J. Sullivan, Esq.
18 The Ashcroft Law Firm
19 200 State Street, 7th Floor
20 Boston, MA 02109

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

19 Keith M. Davidson, Esq.
20 Davidson & Associates
21 8383 Wilshire Blvd., Suite 510
22 Beverly Hills, CA 90211

Jeffrey A. Robinson, Esq.
Robinson & Robinson
2301 Dupont Drive, Suite 530
Irvine, CA 92612

23
24 I declare, under penalty of perjury and the laws of the United States, that the foregoing is true
25 and correct; that I am employed by a member of the bar of this Court at whose direction this service
26 was made; and that this was executed the date first above written at Long Beach, California.

27
28 
Michael A. Lotta