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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 MERCEDES ROSENBERG,
19 BENNET G. FELDMAN, ANDRE
20 VON HOYER, and OLGA VON
21 HOYER, individually and on behalf
22 of all others similarly situated,

23 Plaintiffs,

24 v.

25 VIKING RIVER CRUISES, INC.
26 d/b/a VIKING CRUISES and
27 VIKING OCEAN CRUISES, a
28 California corporation,

Defendants.

Case No. 2:19-cv-09691

**COMPLAINT FOR DAMAGES,
RESTITUTION, AND INJUNCTIVE
RELIEF FOR:**

- 1. FRAUD
 - 2. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT
 - 3. VIOLATION OF THE UNFAIR COMPETITION LAW
 - 4. VIOLATION OF CALIFORNIA PENAL CODE § 496
 - 5. UNJUST ENRICHMENT
- CLASS ACTION**

DEMAND FOR JURY TRIAL

1 VRC is engaged in the business of marketing and selling cruises under the “Viking
2 Cruises” trademark or tradename. The cruises are booked with various “carriers”
3 which include, but are not limited to, Viking River Cruises AG; Viking River Tours
4 Ltd.; Viking Ocean Cruises Ltd.; Viking Ocean Cruises II Ltd.; Viking Cruises
5 USA Ltd. and Viking Cruises S.A. VRC is responsible for booking travel for cruise
6 passengers, sending cruise and travel information to the passengers and collecting
7 payments.

8 6. Viking Cruises, Ltd., Viking River Cruises (Bermuda) Ltd. and Viking
9 River Cruises (International) LLC are foreign corporations, which establish policies
10 and procedures governing the marketing, sale and operation of cruises under the
11 Viking Cruises tradename. One such policy or procedure is the misrepresentation
12 to Viking passengers by VRC and the other Viking entities that gratuities paid
13 directly to Viking instead of the crew members would all be distributed to the crew.
14 Instead Viking, through an established procedure, diverts 10% of the gratuities to
15 its own Viking Tip Account.

16 7. The Defendant VRC at all material times hereto, personally or through
17 an agent:

- 18 a. Operated, conducted, engaged in or carried on a business
19 venture in this state and/or county or had an officer or agency in
20 this state/or county;
- 21 b. Was engaged in substantial activity within the state;
- 22 c. Operated vessels in the waters of the state; and
- 23 d. Purposely availed themselves of the benefits of conducting
24 activities in California by purposely directing activities toward
25 the state, thereby obtaining the benefits and protections of the
26 state's laws.

27 8. At all times material, VRC derived substantial revenue from cruises
28 originating and terminating in various locations throughout the world including,

1 Los Angeles, California.

2 **Jurisdiction and Venue**

3 9. This Court has subject matter jurisdiction over this action pursuant to
4 the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one
5 class member is of diverse citizenship from Defendants; there are more than 100
6 class members; and the aggregate amount in controversy exceeds \$5,000,000.

7 10. This Court has personal jurisdiction over the parties because VRC is a
8 California corporation/and it conducts substantial business in this state.

9 11. Venue is proper in this District under 28 U.S.C. § 1391(a) because a
10 central part of the events or omissions giving rise to the claims occurred within this
11 District, VRC has caused harm to class members residing within this District, and
12 VRC maintains its corporate headquarters in this District.

13 **Allegations Common to All Claims**

14 12. Viking is one of the largest and best-known cruise lines in the world,
15 currently operating 66 vessels.

16 13. Passengers on Viking vessels understand and expect that the cost of
17 travel includes incidental expenses such as a gratuity for service. It is a widely
18 recognized practice in the cruise industry for passengers to tip crew members either
19 by leaving cash in their rooms upon checkout or by handing the tip or gratuity
20 directly to the crew members.

21 14. Viking is well aware of this custom and in fact encourages its
22 passengers to tip crew members upon conclusion of the cruise. In a deviation from
23 the typical procedure, however, Viking encourages its passengers, including
24 Plaintiffs and the class members, to pay the intended tips or gratuities to Viking,
25 either through cash or credit card.

26 15. Pursuant to Viking procedures, Plaintiffs and the class members were
27 led to believe that all tips and gratuities that they paid to Viking were to be
28

1 distributed to crew members.

2 16. Prior to embarkation, VRC issued all U.S. Viking passengers a cruise
3 itinery booklet, which stated that gratuities would be distributed to the Program
4 Director and staff. VRC created and sent these booklets from its California
5 headquarters.

6 17. In addition, during Program Director Debarkation Talks on board the
7 various vessels, Viking verbally represented that gratuities would be distributed to
8 the Program Director and staff.

9 18. However, not all the monies that were paid Viking as gratuities by
10 passengers to Viking were actually paid or distributed to crew members aboard the
11 Viking vessels as intended. Instead, 10 percent of all gratuities on all Viking vessels
12 were diverted to the Viking Tip Account. As such, the 10 percent of passenger tips
13 or gratuities which were converted by Viking represent ill-gotten gains obtained
14 through a fraudulent scheme.

15 19. VRC and the other Viking entities had exclusive knowledge that 10
16 percent of all gratuities on all Viking vessels were diverted to the Viking Tip
17 Account and concealed this information from customers.

18 20. At all relevant times VRC acted as a co-conspirator and aider and
19 abettor of the other Viking entities in fraudulently inducing customers to pay
20 gratuities intended for crew members to Viking and converting 10 percent of these
21 amounts. VRC concurred in the scheme with knowledge of its illegality and gave
22 substantial assistance in the scheme. VRC is liable not only for its own actions but
23 those of the other Viking entities.

24 21. VRC and Viking continue to engage in the unlawful conduct alleged
25 herein, so Plaintiffs and the general public face continuing, present, adverse effects
26 and the likelihood of future injury from their conduct.

27
28

Class Representatives

1
2 22. On May 29, 2016, Plaintiff Mercedes Rosenberg (“Rosenberg”) and
3 her husband embarked on a seven-day cruise entitled “Castles and Legends” aboard
4 the Viking ship “Prestige.”

5 23. Before Ms. Rosenberg embarked on the cruise, VRC sent her a cruise
6 itinerary booklet that recommended a gratuity of 2 Euros per day per guest for the
7 Program Director and 12 Euros per day per passenger for the ship’s staff, which
8 would be distributed to the Program Director and staff.

9 24. At the conclusion of the cruise, in reliance upon VRC and Viking's
10 representations that 100 percent of the gratuity would be disbursed to the crew, Ms.
11 Rosenberg paid directly to Viking a tip or gratuity intended for the Viking Prestige
12 crew members. Notwithstanding its purposeful and fraudulent statements to the
13 contrary, Viking converted 10 percent of the gratuity to its own Viking Tip
14 Account.

15 25. Ms. Rosenberg discovered that Viking converted 10 percent of the
16 gratuity to its own Viking Tip Account in September of 2019 through her counsel.
17 Ms. Rosenberg was unable to discover Viking’s wrongdoing earlier because Viking
18 kept its fraudulent scheme secret from customers and the public.

19 26. On September 29, 2013, Plaintiff Bennet G. Feldman (“Feldman”)
20 embarked on a seven-day cruise from St. Petersburg to Moscow aboard the Viking
21 Ship “Rurik.”

22 27. Before Mr. Feldman embarked on the cruise, VRC sent him a cruise
23 itinerary booklet that recommended a gratuity of 2 Euros per day per guest for the
24 Program Director and 12 Euros per day per passenger for the ship’s staff, which
25 would be distributed to the Program Director and staff.

26 28. At the conclusion of the cruise, in reliance upon VRC and Viking's
27 representations that 100 percent of the gratuity would be disbursed to the crew, Mr.
28 Feldman paid directly to Viking a tip or gratuity intended for the Viking Rurik crew

1 members. Notwithstanding its purposeful and fraudulent statements to the contrary,
2 Viking converted 10 percent of the gratuity to its own Viking Tip Account.

3 29. Mr. Feldman discovered that Viking converted 10 percent of the
4 gratuity to its own Viking Tip Account in March of 2017 through a former
5 employee of Viking. Mr. Feldman was unable to discover Viking's wrongdoing
6 earlier because Viking kept its fraudulent scheme secret from customers and the
7 public.

8 30. On August 18, 2015, Plaintiffs Andre Von Hoyer and Olga Von Hoyer
9 (collectively, the "Von Hoyers") embarked on Viking's Rhine Gateway Cruise; on
10 May 26, 2017, the Von Hoyers embarked on Viking's Romantic Danube Cruise; on
11 March 30, 2018, the Von Hoyers embarked on Viking's Passage to Eastern Europe
12 Cruise; and on July 15, 2019, the Von Hoyers embarked on Viking's Waterway of
13 The Tsars cruise.

14 31. At the conclusion of the aforementioned cruises, Plaintiffs paid
15 directly to Viking a tip or gratuity intended for the Viking crew members.
16 Notwithstanding its purposeful and fraudulent statements to the contrary, Viking
17 converted 10 percent of the gratuity to its own Viking Tip Account.

18 **Class Action Allegations**

19 32. Plaintiffs bring this suit as a class action pursuant to Rule 23 of the
20 Federal Rules of Civil Procedure, on behalf of themselves and all others similarly
21 situated. The class is defined as follows: All persons who paid a tip or gratuity to
22 Viking for distribution to crew members, which Viking did not distribute in full to
23 crew members.

24 33. Excluded from the class are Defendants, their subsidiaries and
25 affiliates, as well as Defendants' executives, board members, and immediate
26 families. Also excluded are all governmental entities and any judicial officers
27 assigned to hear any aspect of this case.

28 34. Plaintiffs reserve the right to amend or modify the class definition with

1 greater specificity or further division into subclasses limited to particular issues.

2 35. Class certification is appropriate under Rule 23(b)(3) because this
3 action satisfies the applicable numerosity, commonality, typicality, adequacy,
4 predominance, and superiority requirements. Notice to the proposed class in
5 compliance with Rule 23(c)(2)(B) is contemplated and required.

6 36. Numerosity. The proposed class is sufficiently numerous, as yearly,
7 hundreds of thousands of consumers have cruised with Viking and have paid to
8 Viking tips or gratuities which were intended to be distributed to crew members.
9 The members of the class are so numerous and dispersed that joinder of all
10 members is impracticable.

11 37. Common questions of fact and law. Common questions of fact and law
12 exist as to all members of the class. Common questions of fact and law include:

- 13 a. Whether VRC's representations that the tips or gratuities were to
14 be distributed to crew members were false and deceptive;
- 15 b. Whether VRC conspired with the other Viking entities to
16 defraud Plaintiffs and the members of the class;
- 17 c. Whether Viking's retention of 10 percent of the tips or gratuities
18 intended for the crew members is fraudulent;
- 19 d. Whether Plaintiffs and the members of the class sustained
20 damage and ascertainable loss as a result of Viking's conduct as
21 alleged herein;
- 22 e. The amount of compensatory damages to which the class is
23 entitled; and
- 24 f. Whether exemplary damages should be awarded.

25 38. Predominance. Common questions of law and fact identified in the
26 preceding paragraph predominate over any questions affecting solely individual
27 members of the class. Pursuant to Federal Rule of Civil Procedure 23(b)(3) the suit
28 is properly maintainable as a class action.

1 44. VRC's herein-alleged wrongful acts and omissions were knowingly,
2 willfully, intentionally, maliciously, oppressively, and fraudulently undertaken with
3 the express purpose and intention of defrauding Plaintiffs and the class, all to the
4 substantial financial benefit of VRC and its co-conspirators, entitling Plaintiff to
5 punitive damages.

6 45. All of the Viking entities conspired, through a common plan or
7 scheme, to defraud Plaintiffs Rosenberg and Feldman and the class members out of
8 10% of the gratuities intended for the Viking crew members. VRC concurred in
9 this scheme with knowledge of its unlawful purpose and and gave substantial
10 assistance in the scheme. In addition to direct liability for its fraudulent conduct,
11 VRC is also liable for conspiring with the other Viking entities to commit fraud and
12 for aiding and abetting the fraud of the other Viking entities. VRC is liable not only
13 for its own actions but those of its co-conspirators, the other Viking entities.

14 46. As a direct and proximate result of Viking's illegal conspiracy,
15 scheme, plan fraudulent acts and misrepresentations, Plaintiffs Rosenberg and
16 Feldman and the class suffered damages including but not limited to, the 10 percent
17 of tips and gratuities fraudulently retained by Viking and other foreseeable and
18 consequential damages, costs and fees. In addition, Plaintiffs Rosenberg and
19 Feldman and the class seek an award of punitive or exemplary damages since VRC
20 had advance knowledge of the fraudulent scheme alleged herein which was directed
21 by officers, directors or managing agents of VRC and Viking.

22 **Second Claim for Violation of the Consumers Legal Remedies Act**
23 **California Civil Code § 1750, et seq.**
24 **(On Behalf of Plaintiffs Rosenberg and Feldman and the Class)**

25 47. Plaintiffs Rosenberg and Feldman incorporate by reference and
26 reallege paragraphs 1-41 previously alleged herein.

27 48. VRC violated California Civil Code § 1750 *et seq.*, the Consumers
28 Legal Remedies Act (the "CLRA") by engaging in the following conduct in the

1 course of transactions that were intended to result in the sale of goods or services:

- 2 a. Representing that goods or services have characteristics which
3 they do not have in violation of California Civil Code
4 § 1770(a)(5);
- 5 b. Advertising goods or services with intent not to sell them as
6 advertised in violation of California Civil Code § 1770(a)(9);
7 and
- 8 c. Representing that a transaction confers or involves rights,
9 remedies, or obligations that it does not have or involve, or that
10 are prohibited by law in violation of California Civil Code §
11 1770(a)(14).

12 49. VRC's CLRA violations have caused Plaintiffs Rosenberg and
13 Feldman and the class to lose money or property by paying money to Viking that
14 they would not have otherwise paid to Viking.

15 50. VRC's CLRA violations are ongoing and present a continuing threat
16 that members of the public will be misled.

17 51. VRC is subject to direct liability for this claim because its acts and
18 omissions violate the CLRA. VRC is also liable for conspiring with the other
19 Viking entities to violate the CLRA and aiding and abetting the CLRA violations of
20 the other Viking entities.

21 52. Plaintiffs presently do not seek damages under the CLRA, but intend
22 to seek actual damages, punitive damages, and restitution upon satisfaction of the
23 CLRA's notice requirements.

24 **Third Claim for Violation of the Unfair Competition Law**
25 **California Business and Professions Code § 17200, et seq.**
(On Behalf of Plaintiffs Rosenberg and Feldman and the Class)

26 53. Plaintiffs Rosenberg and Feldman incorporate by reference and
27 reallege all paragraphs previously alleged herein.
28

1 54. California Business and Professions Code § 17200, *et seq.*, (the
2 “Unfair Competition Law” or “UCL”) prohibits unlawful, unfair, and fraudulent
3 business practices.

4 55. VRC’s above alleged actions and omissions violate the UCL’s
5 fraudulent prong because the actions and omissions were likely to, and did, deceive
6 Plaintiff and the public.

7 56. VRC’s above alleged actions and omissions violate the UCL’s
8 unlawful prong because the actions and omissions violate, without limitation
9 California Civil Code § 1750, *et seq.* and constitute fraud.

10 57. VRC’s above alleged actions and omissions violate the UCL’s unfair
11 prong because they are (1) immoral, unethical, oppressive, unscrupulous, and
12 substantially injurious and the injury to Plaintiffs and class members outweighs
13 their utility; and (2) they violate, *inter alia*, California’s public policy against false
14 advertising, fraud and deception.

15 58. VRC’s above alleged misrepresentations and non-disclosures have
16 caused Plaintiffs Rosenberg and Feldman and the class to lose money or property
17 by paying money to Viking that they would not have otherwise paid to Viking.

18 59. VRC is subject to direct liability for this claim because it performed
19 acts constituting violations of the UCL. VRC is also liable for conspiring with the
20 other Viking entities to violate the UCL and aiding and abetting the UCL violations
21 of the other Viking entities. Likewise, VRC is liable not only for its own UCL
22 violations but those of its co-conspirators, the other Viking entities.

23 **Fourth Claim for Violation of California Penal Code § 496**
24 **(On Behalf of Plaintiffs Rosenberg and Feldman and the Class)**

25 60. Plaintiffs incorporate by reference and reallege paragraphs 1-46
26 previously alleged herein.

27 61. California Penal Code § 496(c) authorizes any person injured by a
28 violation of Penal Code section 496 subdivisions (a) or (b) to recover three times

1 the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and
2 reasonable attorney's fees.

3 62. California Penal Code § 496(a) makes receiving, buying, or
4 withholding property that has been obtained in any manner constituting theft an
5 action punishable by imprisonment.

6 63. Theft, under California Penal Code § 496(a), includes knowingly and
7 designedly defrauding any other person of money "by any false or fraudulent
8 representation or pretense." *See Bell v. Feibush*, 212 Cal. App. 4th 1041, 1047-48
9 (2013) (citing Penal Code § 484(a)).

10 64. VRC and the other Viking entities fraudulent acquisition of Plaintiffs'
11 and class members' property constitutes theft as defined by California Penal Code
12 § 484(a).

13 65. With the knowledge, agreement, and substantial assistance of VRC,
14 Viking entities received and possessed 10% of the gratuities Plaintiffs and class
15 members intended for the Viking crew members, knowing that they were
16 fraudulently and illegally obtained.

17 66. VRC is liable for conspiring with the other Viking entities to violate
18 the California Penal Code § 496(a) and aiding and abetting the California Penal
19 Code § 496(a) violations of the other Viking entities. VRC is thus liable for the
20 California Penal Code § 496(a) violations of its co-conspirators, the other Viking
21 entities.

22 **Fifth Claim for Unjust Enrichment**
23 **(On Behalf of Plaintiffs and the Class)**

24 67. Plaintiffs incorporate by reference and reallege paragraphs 1-41
25 previously alleged herein.

26 68. VRC and the other Viking entities collected tips from Plaintiffs and
27 other class members that were intended for crew members, but VRC and the other
28 Viking entities only paid 90% of these amounts to crew members. As a result,

1 Plaintiffs and the class have conferred a benefit on VRC and the other Viking
2 entities.

3 69. VRC and the other Viking entities had knowledge of this benefit and
4 voluntarily accepted and retained the benefit conferred.

5 70. VRC and the other Viking entities will be unjustly enriched if they are
6 allowed to retain the aforementioned benefits. Plaintiffs and each class member are
7 entitled to recover the amount by which VRC and the other Viking entities were
8 unjustly enriched at Plaintiffs' and each class member's expense.

9 **Prayer For Relief**

- 10 1. For damages (but not on the CLRA claim);
- 11 2. For punitive damages (but not on the CLRA claim);
- 12 3. For treble damages pursuant to California Penal Code § 496(c);
- 13 4. For restitution (but not on the CLRA claim);
- 14 5. For public injunctive relief halting VRC and Vikings' unlawful
- 15 conduct;
- 16 6. For attorneys' fees and expenses pursuant to all applicable laws
- 17 including without limitation, California Code of Civil Procedure
- 18 §1021.5, California Civil Code § 1780(e), California Penal Code
- 19 § 496(c), and Fed. R. Civ. P. 54(d);
- 20 7. For pre- and post-judgment interest on any amounts awarded; and
- 21 8. For such other and further relief as the Court deems just and proper.

22 **Respectfully Submitted,**

23 DATED: November 12, 2019

24 **GALLO LLP**

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27 By: /s/ Ray E. Gallo
28 Ray E. Gallo
Attorneys for Plaintiffs

ADDITIONAL COUNSEL

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*Pro hac vice admission to be sought

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of all issues, claims, and causes of action so triable.

DATED: November 12, 2019

RESPECTFULLY SUBMITTED,

GALLO LLP

By: /s/ Ray E. Gallo
Ray E. Gallo
Attorneys for Plaintiffs