

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

DANIEL FINERMAN and DONNA DEVINO,
Individually and on behalf of all others similarly situated,

Plaintiffs,

Case No.: 3:14-cv-1154-J-32-MCR

vs.

MARRIOTT OWNERSHIP RESORTS, INC.,
a foreign corporation, and INTERNATIONAL
CRUISE & EXCURSION GALLERY, INC., a
foreign corporation,

Defendants.

_____/

**DEFENDANT INTERNATIONAL CRUISE & EXCURSION GALLERY, INC.'S
ANSWER, DEFENSES, AND AFFIRMATIVE DEFENSES TO SECOND AMENDED
COMPLAINT**

Defendant, INTERNATIONAL CRUISE & EXCURSION GALLERY, INC.
("Defendant" or "ICE"), hereby answers the Second Amended Class Action Complaint (the
"SAC") filed by Plaintiffs DANIEL FINERMAN ("Finerman") and DONNA DEVINO
("Devino") (collectively, "Plaintiffs"), and asserts its affirmative defenses, and states as follows:

NATURE OF THE ACTION

1. ICE denies the allegations in Paragraph 1 of the SAC except to admit that Plaintiffs purport to bring this action as a class action lawsuit.
2. ICE denies the allegations in Paragraph 2 of the SAC.

PARTIES, JURISDICTION AND VENUE

3. ICE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the SAC.
4. ICE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the SAC.

5. ICE admits the allegations in Paragraph 5 of the SAC.

6. ICE denies the allegation that it “employs hundreds of individuals selling its cruise programs to consumers, but otherwise admits the allegations in Paragraph 6 of the SAC.

7. ICE denies the allegations in Paragraph 7 of the SAC, except that ICE admits that it is a party to a 2009 agreement with Marriott Ownership Resorts, Inc. (“MORI”).

8. ICE admits that its business activities include selling cruises to Marriott Vacation Club (“MVC”) members on various cruise lines and that such cruise lines may, from time to time, charge their own customers certain amounts for government taxes and other amounts sometimes denominated in the cruise industry as “port charges”, “port fees” or “port expenses”. ICE admits that MVC members cannot pay with their points for certain fees, and pay with a credit card. In connection with these amounts, ICE sometimes takes the customer’s credit card number over the phone, and relays it to the cruise line. The cruise line, in turn charges the cash amounts ICE specifies to the MVC member, against the card, and the cruise line later refunds to the customer any overage paid for such fees. ICE denies the remaining allegations of paragraph 8.

9. ICE admits that it sends MVC members written confirmations of their cruise bookings, and those written confirmations – which have been produced in this case for Plaintiffs – speak for themselves and provide the best description and evidence of their contents. ICE admits that it provides MVC members the opportunity to purchase travel insurance when booking cruise through their memberships. ICE otherwise denies the allegations in Paragraph 9 of the SAC.

10. ICE denies the allegations of paragraph 10 of the SAC, except that it admits that its business activities include booking cruises for MVC members

11. ICE denies the allegations of paragraph 11.

12. ICE admits the allegations of paragraph 12 for jurisdictional purposes only but denies that Plaintiffs are entitled to any relief requested in their SAC.

13. ICE admits the allegations of paragraph 13 for purposes of venue only but denies that Plaintiffs are entitled to any relief requested in their SAC.

FACTUAL ALLEGATIONS

14. ICE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the SAC.

15. ICE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the SAC.

16. ICE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the SAC.

17. ICE denies the allegations in Paragraph 17 of the SAC.

18. ICE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the SAC.

19. ICE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the SAC.

20. ICE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the SAC.

21. ICE denies the allegations in Paragraph 21 of the SAC.

22. ICE denies the allegations in Paragraph 22 of the SAC.

23. Paragraph 23 of the SAC only states an unqualified opinion of Plaintiffs and makes no allegation to which a response is required by ICE. Further answering, ICE respectfully

refers to the entirety of cited website, other agreements and documents of Carnival Cruise Lines and of other cruise lines, during the course of the relevant time period for this litigation, for the proper interpretation and meaning of cruise industry terms. ICE otherwise denies the allegations in Paragraph 23 of the SAC.

24. ICE denies the allegations in Paragraph 24 of the SAC.

25. Paragraph 25 of the SAC only states an unqualified opinion of Plaintiffs, makes no allegation to which a response is required by ICE, and is grammatically incomplete. ICE otherwise denies the allegations in Paragraph 25 of the SAC.

26. Paragraph 26 of the SAC states an unqualified opinion of Plaintiffs, makes no allegation to which a response is required by ICE, contains an unclear antecedent, and presents an incomplete quotation, and the cited blog speaks for itself and is the best evidence of its contents. ICE otherwise denies the allegations in Paragraph 26 of the SAC.

27. ICE answers that the website purportedly accessed by Plaintiffs on June 17, 2016, and quoted in Paragraph 27 of the SAC speaks for itself and is the best evidence of its contents on that date. ICE otherwise denies the allegations in Paragraph 27 of the SAC.

28. Paragraph 28 of the SAC only states legal conclusions and makes no allegation to which a response is required by ICE. Further answering, ICE respectfully refers to the entirety of the American Society of Travel Agents' Code of Ethics for the full and proper interpretation of that entity's standards for travel agents. ICE otherwise denies the allegations in Paragraph 28 of the SAC.

29. ICE answers that the transcript of the deposition referenced in Paragraph 29 of the SAC speaks for itself and is the best evidence of its contents. ICE otherwise denies the allegations in Paragraph 29 of the SAC.

30. ICE answers that the judicial decision and agreements referenced in Paragraph 30 of the SAC speaks for themselves and are the best evidence of their contents. ICE otherwise denies the allegations in Paragraph 30 of the SAC.

31. ICE admits that it charged MVC members a processing fee of \$19.95 for booking a cruise. ICE otherwise denies the allegations in Paragraph 31 of the SAC.

INDIVIDUAL PLAINTFFS' ALLEGATIONS

A. Daniel Finerman

32. ICE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 of the SAC.

33. ICE admits the allegations in Paragraph 33 of the SAC.

34. ICE admits the allegations in Paragraph 34 of the SAC.

35. ICE admits the allegations in Paragraph 35 of the SAC.

36. ICE answers that the full and original versions of the emails referenced in Paragraph 36 of the SAC speak for themselves and are the best evidence of their contents. ICE otherwise admits the allegations in Paragraph 36 of the SAC.

37. ICE lacks knowledge or information sufficient to form a belief about Finerman's concerns or purported telephone conversation with a representative of MORI. ICE denies all other allegations in Paragraph 37 of the SAC.

38. ICE denies the allegations of Paragraph 38 of the SAC, except ICE admits that Mr. Finerman paid the referenced sums.

39. ICE denies the allegations of Paragraph 39 of the SAC.

B. Donna Devino

40. ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 40.

41. ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 41.

42. ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 42.

43. ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 43.

44. ICE answers that the full and original version of the written booking confirmation pasted into the SAC after Paragraph 44 speaks for itself and is the best evidence of its contents. ICE otherwise denies the allegations in Paragraph 44 of the SAC as stated.

45. ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 45.

46. ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 46.

47. ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 47.

48. ICE answers that the written booking confirmation for the cruise described in Paragraph 48 of the SAC speaks for itself and is the best evidence of its contents. ICE otherwise denies the allegations in Paragraph 48 of the SAC as stated.

49. ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 49.

50. ICE answers that the written booking confirmation for the cruise described in Paragraph 50 of the SAC speaks for itself and is the best evidence of its contents. ICE otherwise denies the allegations in Paragraph 50 of the SAC as stated.

51. ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 51.

52. ICE denies the allegations in Paragraph 52 of the SAC.

CLASS ACTION ALLEGATIONS

53. The allegations of Paragraph 53 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 53 of the SAC.

54. The allegations of Paragraph 54 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 54 of the SAC.

55. The allegations of Paragraph 55 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 55 of the SAC.

56. The allegations of Paragraph 56 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 56 of the SAC.

57. The allegations of Paragraph 57 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 57 of the SAC.

58. The allegations of Paragraph 58 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 58 of the SAC.

59. The allegations of Paragraph 59 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 59 of the SAC.

60. The allegations of Paragraph 60 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 60 of the SAC.

61. The allegations of Paragraph 61 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 61 of the SAC.

62. ICE lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 62.

63. The allegations of Paragraph 63 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 63 of the SAC.

64. The allegations of Paragraph 64 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 64 of the SAC.

65. The allegations of Paragraph 65 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 65 of the SAC.

66. The allegations of Paragraph 66 of the SAC constitute legal conclusions to which no response is required of ICE; to the extent a response is deemed required of ICE, ICE denies the allegations of Paragraph 66 of the SAC.

67. ICE denies the allegations in Paragraph 67 of the SAC.

**COUNT I – VIOLATION OF FDUTPA AS TO BOTH DEFENDANTS AS TO THE
NATIONWIDE CLASS**

68. ICE realleges and incorporates by reference its answers to Paragraphs 1 through 67 as if fully set forth herein.

69. ICE admits that Plaintiffs purport to state a cause of action on behalf of themselves and the Nationwide Class; ICE denies that Plaintiffs are entitled to any such relief.

70. The allegations of Paragraph 70 of the SAC constitute legal conclusions to which no response is required of ICE.

71. The allegations of Paragraph 71 of the SAC constitute legal conclusions to which no response is required of ICE.

72. ICE denies the allegations in Paragraph 72 of the SAC.

73. ICE denies the allegations in Paragraph 73 of the SAC.

74. ICE denies the allegations in Paragraph 74 of the SAC.

**COUNT II – UNJUST ENRICHMENT AS TO BOTH DEFENDANTS AS TO THE
NATIONWIDE CLASS**

75. ICE realleges and incorporates by reference its answers to Paragraphs 1 through 67 as if fully set forth herein.

76. ICE admits that Plaintiffs purport to state a cause of action on behalf of themselves and the Nationwide Class; ICE denies that Plaintiffs are entitled to any such relief.

77. ICE denies the allegations in Paragraph 77 of the SAC.

78. ICE denies the allegations in Paragraph 78 of the SAC.

79. ICE denies the allegations in Paragraph 79 of the SAC.

80. ICE denies the allegations in Paragraph 80 of the SAC.

81. ICE denies the allegations in Paragraph 81 of the SAC.

**COUNT III – BREACH OF CONTRACT AS TO MARRIOTT VACATION CLUB AS TO
THE NATIONWIDE CLASS**

82-87. Plaintiffs seek no relief from ICE in Count III of the SAC, and ICE denies any liability to Plaintiffs for the claims asserted in Count III.

**COUNT IV – VIOLATION OF NJCFA AS TO BOTH DEFENDANTS AS TO THE NEW
JERSEY CLASS**

88. ICE realleges and incorporates by reference its answers to Paragraphs 1 through 67 as if fully set forth herein.

89. ICE admits that Devino purports to state a cause of action on behalf of herself and the New Jersey Subclass; ICE denies that Plaintiffs are entitled to any such relief.

90. The allegations of Paragraph 90 of the SAC constitute legal conclusions to which no response is required of ICE.

91. The allegations of Paragraph 91 of the SAC constitute legal conclusions to which no response is required of ICE.

92. The allegations of Paragraph 92 of the SAC constitute legal conclusions to which no response is required of ICE.

93. The allegations of Paragraph 93 of the SAC constitute legal conclusions to which no response is required of ICE.

94. ICE denies the allegations in Paragraph 94 of the SAC.

95. ICE denies the allegations in Paragraph 95 of the SAC.

96. ICE denies the allegations in Paragraph 96 of the SAC.

97. ICE denies the allegations in Paragraph 97 of the SAC.

98. ICE denies the allegations in Paragraph 98 of the SAC.

99. ICE denies the allegations in Paragraph 99 of the SAC.

100. ICE denies the allegations in Paragraph 100 of the SAC.

101. The allegations of Paragraph 101 of the SAC constitute legal conclusions to which no response is required of ICE.

102. The allegations of Paragraph 102 of the SAC constitute legal conclusions to which no response is required of ICE.

103. ICE denies the allegations in Paragraph 103 of the SAC.

COUNT V – VIOLATION OF FLORIDA TELEPHONE RECORDING LAW AS TO BOTH DEFENDANTS AS TO THE FLORIDA SUBCLASS

104. ICE realleges and incorporates by reference its answers to Paragraphs 1 through 67 as if fully set forth herein.

105. ICE denies the allegations in Paragraph 105 of the SAC.

106. ICE denies the allegations in Paragraph 106 of the SAC.

RELIEF SOUGHT

ICE denies that Plaintiffs are entitled to the relief being sought.

DEMAND FOR JURY TRIAL

ICE denies a jury trial is warranted for this case.

DEFENSES AND AFFIRMATIVE DEFENSES

FIRST DEFENSE

107. The SAC fails to state a claim against ICE upon which relief can be granted. Plaintiffs fail to allege facts demonstrating that ICE engaged in any acts constituting deceptive or unfair trade practices causing actual damages to Plaintiffs or any other consumer as a result of ICE booking cruises for MVC members using points. Similarly, Plaintiffs can allege no benefit

that they conferred upon ICE to support a claim for unjust enrichment. Additionally, Plaintiffs failed to allege facts demonstrating any violation by ICE of Chapter 934, Florida Statutes.

SECOND DEFENSE

108. ICE is not a proper defendant with respect to some or all of Plaintiffs' claims.

THIRD DEFENSE

109. Plaintiffs and members of the putative class have not suffered any damages as a result of the alleged acts and/or actions of ICE or for which ICE is responsible.

FOURTH DEFENSE

110. Plaintiffs and members of the putative class have not suffered any injury caused by any act or omission of ICE or for which ICE is responsible.

FIFTH DEFENSE

111. Plaintiffs and members of the putative class have not suffered an ascertainable loss.

SIXTH DEFENSE

112. Any ascertainable loss suffered by Plaintiffs or members of the putative class was not caused by any act or omission of ICE or for which ICE is responsible.

SEVENTH DEFENSE

113. The claims of Plaintiffs and members of the putative class for unjust enrichment are barred because the parties have a valid agreement.

EIGHTH DEFENSE

114. At all times relevant to this action, ICE acted lawfully, in good faith, in the best interests of Plaintiffs and without any intent to deny Plaintiffs any of their rights.

NINTH DEFENSE

115. Plaintiffs and members of the putative class would be unjustly enriched by any recovery.

TENTH DEFENSE

116. The claims of Plaintiffs and the members of the putative class are barred by the doctrines of waiver, estoppel, and ratification.

ELEVENTH DEFENSE

117. The claims of Plaintiffs and the members of the putative class are barred, in whole or in part, by the provisions of their relevant contractual agreements.

TWELFTH DEFENSE

118. The claims of Plaintiffs and the members of the putative class are barred, in whole or in part, by Plaintiffs' failure to mitigate their damages.

THIRTEENTH DEFENSE

119. The claims of Plaintiffs and the members of the putative class are barred, in whole or in part, by the principle of avoidable consequences.

FOURTEENTH DEFENSE

120. The claims of Finerman and members of the putative Florida Subclass asserted in Count V of the SAC are barred by the business extension exception to the Florida Security of Communications Act. ICE's recording of customer calls in the ordinary course of its business do not constitute "interceptions" under Chapter 934, Florida Statutes, and there can be no liability against ICE under Section 934.10.

FIFTEENTH DEFENSE

121. The claims of Finerman and the members of the putative Florida Subclass asserted in Count V of the SAC are barred by their consent and knowledge to the recording of their calls.

SIXTEENTH DEFENSE

122. ICE did not engage in the deceptive creation, fabrication, inflation, collection or retention of government taxes or other aspects of the price of the cruises ICE sold to MVC members. No person or entity acted with ICE's knowledge, approval or authority in connection with any deceptive creation, fabrication, inflation, collection or retention of such items. To the extent that Plaintiffs or the members of the putative class suffered any harm or damage from any improper acts in connection with the conduct alleged in the SAC, ICE is not responsible for such harm or damage.

SEVENTEENTH DEFENSE

123. Class certification is not appropriate in this action because Plaintiffs cannot prove that they have met any of the requirements or elements of Fed. R. Civ. P. 23. For example, there are insufficient questions of law and fact common to the entire class; the claims of the Plaintiffs in this matter are not typical of the claims of the putative class; questions of law or fact common to all of the putative class members do not predominate over questions affecting only individual members of the putative class, and a class action is not superior to other available methods for fairly and efficiently adjudicating this matter.

WHEREFORE, Defendant International Cruise & Excursions Gallery, Inc. respectfully requests that judgment be entered in its favor and against Plaintiffs, together with attorneys' fees and costs and such other relief as may be just and proper.

Dated this 10th day of February, 2017.

Respectfully submitted,

GREENSPOON MARDER, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2017, a true and correct copy of the foregoing is being served via electronic mail to:

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