



CASE NO: A-20-814111-C
Department 14

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and Sig Rogich*

10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 STATE OF NEVADA Ex. Rel. Mark Fierro
13 and Sig Rogich,

14 Plaintiffs,

15 vs.

CASE NO.
DEPT.

COMPLAINT

JURY TRIAL DEMAND

16 ORBITZ WORLDWIDE, LLC; ORBITZ,
17 LLC; ORBITZ, INC.; TRAVELSCAPE,
18 LLC; TRAVELOCITY, INC.; CHEAP
TICKETS, INC., EXPEDIA INC., EXPEDIA
19 GLOBAL, LLC; HOTELS.COM LP;
HOTWIRE INC.; BOOKING HOLDINGS
20 INC.; PRICELINE.COM LLC;
TRAVELWEB LLC; TRAVELNOW.COM
21 INC.; BOOKING.COM USA INC., AGODA
INTERNATIONAL USA LLC; HOTEL
22 TONIGHT, INC.; HOTEL TONIGHT, LLC;
TRIPADVISOR LLC; TRIPADVISOR INC.;
23 TRIP.COM, INC.; REMARK HOLDINGS,
INC.; DOES I through XXX, inclusive and
24 ROE BUSINESS ENTITIES I through XXX,
inclusive,

25 Defendants.

26 COMES NOW the State of Nevada ex rel. Mark Fierro and Sigmund ("Sig") Rogich, on
27 behalf of real parties in interest, the counties of Nevada, by and through counsel Michael
28

1 Cristalli, Esq. and Dominic P. Gentile, Esq., of Clark Hill PLC, and hereby complains of
2 Defendants as follows:

3 **NATURE OF THE ACTION**

4 1. This action is brought in the public interest for and on behalf of the State of
5 Nevada, *ex rel.* Mark Fierro and Sigmund Rogich pursuant to the Nevada False Claims Act, NRS
6 357.010 *et seq.*

7 2. NRS 357.080(1) authorizes private persons to bring civil actions on behalf of
8 themselves and on behalf of the State of Nevada. They are *qui tam* Plaintiffs also known as
9 Plaintiff-Relators.

10 3. This lawsuit is to recover damages and injunctive relief from Defendants, web-
11 based hotel booking companies, who have knowingly engaged in a common practice/scheme to
12 avoid payment of Nevada’s Combined Transient Lodging Tax as required by Nevada law.

13 4. Defendants contract with hotels for the right to purchase rooms at discounted or
14 “wholesale” prices. Defendants then sell the rooms to the public through their internet sites or
15 toll-free numbers at marked-up, “retail” prices, plus certain “tax recovery and fees.” Defendants
16 charge the customers’ credit cards for the entire amount, which includes the retail price of the
17 room and amounts sufficient to pay occupancy taxes on the retail price of the rooms. The hotels
18 in turn invoice Defendants for the rooms at the discounted price and the applicable occupancy
19 tax rate on the discounted rate.

20 5. For example, an online travel company such as Travelocity, Inc. obtains a room
21 from a hotel at a previously negotiated wholesale price of, for instance \$150. Travelocity, Inc. in
22 turn sells that same hotel room to an occupant over the internet for \$200. Because Travelocity,
23 Inc. controls the occupancy of the hotel room, the amount due to the city by law in this example
24 is the applicable percentage of \$200, or AMOUNT. Travelocity, Inc., however, remits the
25 transient occupancy tax based on the lower wholesale price of \$150, thus creating a loss of
26 AMOUNT to the state for that sale alone.

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1 **THE PARTIES AND JURISDICTION**

2 6. Plaintiff Mark Fierro is an individual resident of Clark County, Nevada who is
3 entitled to bring this action on his own account and on behalf of the State of Nevada pursuant to
4 NRS 357.080.

5 7. Plaintiff Sigmund Rogich is an individual resident of Clark County, Nevada who
6 is entitled to bring this action on his own account and on behalf of the State of Nevada pursuant
7 to NRS 357.080.

8 8. Defendant Orbitz Worldwide, LLC is a Delaware limited liability company with
9 its principal place of business in Chicago, Illinois. Defendant Orbitz Worldwide, LLC has at all
10 times relevant to this litigation conducted business in this state.

11 9. Defendant Orbitz, LLC is a Delaware limited liability company with its principal
12 place of business in Chicago, Illinois. Defendant Orbitz, LLC has at all times relevant to this
13 litigation conducted business in this state.

14 10. Defendant Orbitz, Inc. is a Delaware corporation with its principal place of
15 business in Chicago, Illinois. Defendant Orbitz, Inc. has at all times relevant to this litigation
16 conducted business in this state.

17 11. Defendant Travelscape, LLC is a Nevada limited liability company
18 (“Travelocity”) with its principal place of business in Las Vegas, Nevada. Defendant
19 Travelscape, LLC has at all times relevant to this litigation conducted business in this state.

20 12. Defendant Travelocity, Inc. is a Nevada corporation with its principal place of
21 business in Las Vegas, Nevada. Defendant Travelocity, Inc. has at all times relevant to this
22 litigation conducted business in this state.

23 13. Defendant Cheap Tickets, Inc. is a Delaware corporation with its principal place
24 of business in Honolulu, Hawaii. Defendant Cheap Tickets, Inc. has at all times relevant to this
25 litigation conducted business in this state.

26 14. Defendant Expedia, Inc. is a Washington corporation with its principal place of
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1 business in Seattle, Washington. Defendant Expedia, Inc. has at all times relevant to this
2 litigation conducted business in this state.

3 15. Defendant Expedia Global, LLC is a Nevada limited liability company with its
4 principal place of business in Seattle, Washington. Defendant Expedia Global, LLC has at all
5 times relevant to this litigation conducted business in this state.

6 16. Defendant Hotels.com LP is a Texas limited partnership with its principal place of
7 business in Dallas, Texas. Defendant Hotels.com LP has at all times relevant to this litigation
8 conducted business in this state.

9 17. Defendant Hotwire Inc. is a Delaware corporation with its principal place of
10 business in San Francisco, California. Defendant Hotwire Inc. has at all times relevant to this
11 litigation conducted business in this state.

12 18. Defendant Booking Holdings Inc. is a Delaware corporation with its principal
13 place of business in Norwalk, Connecticut. Defendant Booking Holdings Inc. has at all times
14 relevant to this litigation conducted business in this state.

15 19. Defendant Priceline.com LLC is a Delaware limited liability company with its
16 principal place of business in Norwalk, Connecticut. Defendant Priceline.com LLC has at all
17 times relevant to this litigation conducted business in this state.

18 20. Defendant Travelweb LLC is a Delaware limited liability company with its
19 principal place of business in Norwalk, Connecticut. Defendant Travelweb LLC has at all times
20 relevant to this litigation conducted business in this state.

21 21. Defendant Travelnow.com Inc. is a Delaware corporation with its principal place
22 of business in Bellevue, Washington. Defendant Travelnow.com Inc. has at all times relevant to
23 this litigation conducted business in this state.

24 22. Defendant Booking.com (USA) Inc. is a Delaware corporation with its principal
25 place of business in New York, New York. Defendant Booking.com (USA) Inc. has at all times
26 relevant to this litigation conducted business in this state.

27 23. Defendant Agoda International USA LLC is a Delaware limited liability company
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1 with its principal place of business in New York, New York. Defendant Agoda International
2 USA LLC has at all times relevant to this litigation conducted business in this state.

3 24. Defendant Hotel Tonight, Inc. is a Delaware corporation with its principal place
4 of business in San Francisco, California. Defendant Hotel Tonight, Inc. has at all times relevant
5 to this litigation conducted business in this state.

6 25. Defendant Hotel Tonight, LLC is a Delaware limited liability company with its
7 principal place of business in San Francisco, California. Defendant Hotel Tonight, LLC has at all
8 times relevant to this litigation conducted business in this state.

9 26. Defendant Tripadvisor LLC is a Delaware limited liability company with its
10 principal place of business in Needham, Massachusetts. Defendant Tripadvisor LLC has at all
11 times relevant to this litigation conducted business in this state.

12 27. Defendant Tripadvisor Inc. is a Delaware corporation with its principal place of
13 business in Needham, Massachusetts. Defendant Tripadvisor LLC has at all times relevant to this
14 litigation conducted business in this state.

15 28. Defendant Trip.com, Inc. is a Delaware corporation with its principal place of
16 business in Shanghai, China. Defendant Trip.com, Inc. has at all times relevant to this litigation
17 conducted business in this state.

18 29. Defendant Remark Holdings, Inc. is a Delaware corporation with its principal
19 place of business in Las Vegas, Nevada. Defendant Remark Holdings, Inc. has at all times
20 relevant to this litigation conducted business in this state.

21 30. NRS 357.080(1) authorizes private persons to bring civil actions on behalf of
22 themselves and on behalf of the State of Nevada. They are qui tam Plaintiffs also known as
23 Plaintiff-Relators.

24 31. At all times relevant, Defendants transacted business in the State of Nevada and in
25 the County of Clark by, among other activities, contracting to purchase hotel rooms from hotels,
26 advertising such hotel rooms to customers, and selling/booking such hotel rooms to the general
27 public.

1 Clark County include the Las Vegas Convention and Visitors Authority, the Clark County
2 School District, local transportation districts, the Nevada Department of Tourism, the state of
3 Nevada general fund, the State Supplemental School Fund, and the Clark County General Fund.

4 41. Defendants are operators of transient lodging establishments and/or managing
5 agents that exercise judgment and discretion in performing the functions of an operator.

6 42. Defendants negotiate with hotels and/or hotel chains for rooms at discounted
7 room rates, then make their inventory of rooms available for rent to customers on web-based
8 search engines at marked-up retail prices.

9 43. Defendants charge customers and receive payment from customers on their
10 websites for the hotel accommodations selected by the customers.

11 44. Defendants set the cancellation policies for the customers' chosen hotel
12 accommodations and determine customers' requests to modify reservations.

13 45. Defendants confirm customers' prepaid reservations for the right to occupy the
14 hotel rooms on the dates selected at the retail prices charged by Defendants.

15 46. Defendants remit taxes to the State based on the lower, discounted room rates that
16 Defendants negotiated with hotels. Defendants have failed to remit the transient lodging tax on
17 the full amount of rent charged to guests that is due and owing to the State of Nevada.

18 47. At all times relevant, Defendants had a duty to collect and remit the transient
19 lodging tax based on the retail price the Defendants charged their customers for use and
20 occupancy of hotel rooms.

21 **COUNT ONE**
22 **VIOLATION OF THE FALSE CLAIMS ACT**
23 **NRS 357.010, et seq.**

24 48. Plaintiffs re-allege and incorporate the allegations set forth above as though fully
25 alleged herein.

26 49. Nevada's False Claims Act imposes liability on any person who knowingly
27 conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit
28 money or property to the State or a political subdivision. NRS 357.040(1)(g).

1 more Defendants who wrongfully exercised dominion and control over the monies owing to
2 Plaintiffs on behalf of the State of Nevada, thereby depriving Plaintiffs the use and the benefit
3 thereof.

4 59. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered,
5 and will continue to suffer injury including damage in an amount to be determined according to
6 proof at the time of trial.

7 60. In converting these monies, Defendants acted wantonly, willfully, and in knowing
8 disregard of the rights of Plaintiffs. Accordingly, an award of punitive damages is appropriate.
9 Plaintiff re-alleges and incorporates the allegations set forth above as though fully
10 alleged herein.

11 **COUNT THREE**
12 **UNJUST ENRICHMENT**

13 61. Plaintiffs re-allege and incorporate the allegations set forth above as though fully
14 alleged herein.

15 62. Defendants have obtained a benefit that in equity and good conscience they
16 should not have obtained or possessed because the benefits rightfully belonged to Plaintiffs.

17 63. Defendants are liable to Plaintiffs under the doctrine of unjust enrichment for full
18 amount of taxes collected, plus interest and penalties.

19 **COUNT FOUR**
20 **CONSTRUCTIVE TRUST**

21 64. Plaintiffs re-allege and incorporate the allegations set forth above as though fully
22 alleged herein.

23 65. At all times relevant, Plaintiffs' monies were in possession and under the control
24 of Defendants. Defendants have taken this property for their own use and benefit, thereby
25 depriving Plaintiffs of the use and benefit thereof. Plaintiffs have been damaged by their failure
26 to receive the monies.

27 66. The retention of monies by Defendants would be inequitable.
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1 to prosecute the claims herein; therefore, Plaintiffs are entitled to recover all expenses incurred in
2 this action, including without limitation, all costs and attorney's fees together with interest
3 thereon.

4 WHEREFORE, Plaintiff State of Nevada ex rel. Mark Fierro and Sigmund Rogich
5 request that judgment be entered as follows:

6 1. That a judgment be entered in favor of Plaintiff State of Nevada ex rel. Mark
7 Fierro and Sigmund Rogich which awards Plaintiff damages in an amount equal to three times
8 the amount of all transient lodging taxes, penalties and interest that Defendants owe as a result of
9 Defendants' violations of NRS 357.040(1)(g), plus mandatory statutory penalties;

10 2. That the Court award Plaintiffs Mark Fierro and Sigmund Rogich on their own
11 behalf between 15 percent and 30 percent of the proceeds collected by the State of Nevada as a
12 result of this action;

13 3. For costs of suit and reasonable attorney's fees;

14 4. For such additional or alternative relief as this Court deems appropriate under the
15 circumstances.

16 Respectfully Submitted this 24th day of April, 2020.

17 **CLARK HILL PLLC**

18 */s/ Michael Cristalli*

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