

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**MARCIA WACHHAUS and DANIEL  
WACHHAUS,**

**Case No.:**

**Plaintiffs,**

**vs.**

**VIKING CRUISES USA LTD CO and  
VIKING RIVER CRUISES, INC.,**

**Defendants.**

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**COMPLAINT**  
**Demand For Jury Trial**

**COMES NOW**, the Plaintiffs, Marcia Wachhaus and Daniel Wachhaus, by and through their undersigned counsel, brings this lawsuit seeking declaratory relief, injunctive relief, monetary and punitive damages against Defendants, Viking Cruises USA LTD Co (“Viking Cruises”) and Viking River Cruises, Inc. (“VRC”) (collectively “The Defendants”) for violations of the Florida Civil Rights Act of 1992, and Title III of the Americans with Disabilities Act. Defendants denied the Plaintiffs full and equal enjoyment of Defendants’ services, facilities, and privileges. Defendants also failed to make reasonable modifications in policies, practices, or procedures, and failed to take such steps as are necessary to ensure this couple was not excluded, denied services, or otherwise treated differently during their two week cruise which departed from Miami, Florida in November of 2017. A cruise which was purchased to celebrate the couple’s fiftieth (50th) wedding anniversary.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the actions pursuant to 28 U.S.C. § 1331, 1343.
2. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1)-(b)(2) because (1) the Defendant is located in this district, and (2) a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred within this district.

**PARTIES**

**PLAINTIFFS**

3. Plaintiff, MARCIA WACHHAUS ("Mrs. Wachhaus") is and was, at all times material hereto, a resident of Polk County, Florida. Mrs. Wachhaus is disabled and has Parkinson Like Syndrome, she has had several strokes which impair her speech and vision, and requires the use of a scooter to ambulate for distance.
4. Plaintiff, DANIEL WACHHAUS ("Mr. Wachhaus") is and was, at all times material hereto, a resident of Polk County, Florida. Mr. Wachhaus is the husband of Marcia Wachhaus. Mr. Wachhaus is not disabled, but provides full time care for his wife, and is a qualified companion.

**DEFENDANTS**

5. Defendant, VIKING CRUISES USA LTD CO ("Viking Cruises") is a private entity that owns, leases, operates, and/or manages a place of public accommodation, the vessel *Viking Sky* operating in United States' water or those of its territories, as defined by Title III of the ADA, 42 U.S.C. §§ 12181(6)(7), 28 C.F.R. § 36.104.

6. Viking River Cruises, Inc. (VRC) is a sales establishment, a travel service, engages in the sale of food, and offers a place of entertainment and lodging, as defined by Title III of the ADA, 42 U.S.C. §§ 12181(6) (7), 28 C.F.R. § 36.104.

7. Viking River Cruises, Inc. (VRC) is a corporation organized under the laws of California, with its headquarters in Woodland Hills, California.

8. Defendants at all times material, personally, or through an agent;

a. Operated, conducted, engaged in or carried on a business venture in this state and/or county;

b. Was engaged in substantial activity within this state;

c. Operated vessels in the waters of this state;

d. Directed substantial marketing activity, to include use of the mails of the United States, television advertising, and internet advertising;

e. The acts of Defendant set out in this Complaint occurred in whole or in part in this county and/or state;

f. The Defendant was engaged in the business of providing to the public and to the Plaintiffs in particular, for compensation, vacation cruises aboard the vessel, *The Viking Sky*.

9. Defendants are places of public accommodation, and covered under the Florida Civil Rights Act. Fla. Stat. § 760.02 (11).<sup>1</sup>

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<sup>1</sup> Disability discrimination claims under the Florida Civil Rights Act are analyzed using the same framework as American with Disabilities Act claims. *Samson v. Federal Exp. Corp.*, 746 F.3d 1196 (11th Cir. 2014).

**FACTUAL ALLEGATIONS**

10. Marcia Wachhaus (“Mrs. Wachhaus”) is disabled, and has Parkinson Like Syndrome, and several other disabilities which require the use of the scooter to ambulate. Without the scooter she can barely walk.

11. Daniel Wachhaus (“Mr. Wachhaus”) is the husband of Marcia Wachhaus. Mr. Wachhaus is not disabled, but provides full time care for his wife.

12. Mr. Wachhaus booked a cruise on the Viking Sky, departing from Miami, Florida, for November 26, 2017 to December 10, 2017 to celebrate their 50<sup>th</sup> wedding anniversary.

13. The tour package included on shore excursions at each port of call including: Coxen Hole, Roatan Honduras; Puerto Limon, Costa Rica; Colon, Panama; Cartagena, Columbia; Montego Bay, Jamaica; and Grand Cayman.

14. On or about November 26, 2017, Mr. & Mrs. Wachhaus (collectively the Plaintiffs) boarded the Viking Sky. Upon arrival and boarding of the ship, the Viking staff initially welcomed the Plaintiffs, and were aware of Mrs. Wachhaus’ use of a scooter because they assisted her onto the vessel while seated on her scooter.

15. On the second day of the cruise, the Plaintiffs enjoyed an on shore excursion at Key West, Florida. Mrs. Wachhaus departed/boarded the cruise ship, and navigated through the on shore excursion by way of her scooter without issue.

16. On or about November 28, 2017, the third day of the cruise, a person believed to be Giseleen Gatchalian, confronted the Plaintiffs while they were playing a trivia game.

Without providing a reason, Ms. Gatchalian told the Plaintiffs Mrs. Wachhaus' scooter was to be immediately confiscated.

17. Mr. Wachhaus asked if the conversation about the scooter could wait until the trivia game was over since they were in a very public place. Instead of maintaining decorum and some privacy for the Plaintiffs, Ms. Gatchalian made a scene in front of the crowd playing trivia, and told the Plaintiffs they were prohibited from using the scooter for the remainder of the trip.

18. The Plaintiffs were humiliated and degraded by the treatment of the staff. Mr. Wachhaus was in tears as he sought the help of other staff members in the room, who told him they could not assist.

19. Mr. & Mrs. Wachhaus were forced to stay in their cabin for the remainder of the cruise due to the confiscation of the scooter. They left the cabin only a few times for some meals when Mrs. Wachhaus had the strength to walk short distances with her walker.

20. The confiscation of the scooter also resulted in the Plaintiffs being denied access to the on shore excursions at each port of call (included in the cruise package) to include; Coxen Hole, Roatan Honduras; Puerto Limon, Costa Rica; Colon, Panama; Cartagena, Columbia; Montego Bay, Jamaica; and Grand Cayman.

21. The unlawful confiscation of the scooter prohibited the Plaintiffs from the full enjoyment and benefit of the services they paid for as part of the cruise based on Mrs. Wachhaus' disabilities.

22. On or about December 11, 2017, one day after returning from the cruise, Mr. Wachhaus emailed a complaint to VRC, and asked to be contacted by Guest Relations.

23. Mr. Wachhaus later received a phone call from Steve Winters in Guest Relations who explained that he spoke with “the involved people”. Mr. Winters verified the confiscation of the scooter and apologized. For the discriminatory act of confiscation, Defendants only offered \$500.00 cash back, along with two (2) vouchers for \$500.00 on a future Viking cruise. The cost of the 50<sup>th</sup> wedding anniversary cruise they purchased, including ancillary expenses e.g. parking etc., was approximately \$9,600.00.

24. This discriminatory event caused emotional harm and degradation to Mr. & Mrs. Wachhaus who were trying to enjoy the cruise on the Viking Sky for their 50<sup>th</sup> wedding anniversary.

25. Prior to this cruise on Viking, Plaintiffs have been on approximately fifteen (15) other cruises. After the discriminatory event by the Defendants in November 2017, Plaintiffs have been on approximately seven (7) other cruises. Mrs. Wachhaus’ scooter has never been confiscated by any other cruise line. Due to their extensive cruise history, Plaintiffs would like to book a future cruise with Viking, and be accommodated.

26. Although not legally required to do so, in good faith Plaintiffs attempted to rectify this matter prior to filing this Complaint.

### **COUNT I**

#### **VIOLATIONS OF FLORIDA CIVIL RIGHTS ACT**

27. Plaintiffs repeat and re-allege allegations ¶¶ 1-26 in support of their claims.

28. Plaintiffs have timely complied with all legally required administrative prerequisites before filing this action. Plaintiffs received Notice from the Florida

Commission on Human Relations on March 22, 2019 confirming the exhaustion requirement had been satisfied.

29. All persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, national origin, sex, pregnancy, handicap, familial status, or religion. Fla. Stat. § 760.08.

30. The Florida Civil Rights Act affords protection to individuals who associate, or are the companions of persons with disabilities who have been denied services based on disability. Fla. Stat. § 760.08.

31. Defendants violated the Florida Civil Rights Act by discriminating against the Plaintiffs with reckless disregard for their rights when they, knowingly and openly, confiscated Mrs. Wachhaus' scooter, and then denied Plaintiffs' affirmative requests to be accommodated.

32. As a result of Defendants' actions described above, Plaintiffs suffered irreparable loss and injury including, but not limited to, humiliation, embarrassment, emotional distress, and a deprivation of their rights to non-discrimination on the basis of Mrs. Wachhaus' disabilities, and from being a qualified companion to an individual with disabilities.

## **COUNT II**

### **TITLE III OF THE AMERICAN WITH DISABILITIES ACT**

33. Plaintiffs incorporate and re-allege paragraphs ¶¶ 1-26 as it fully set forth herein.

34. Defendants are entities covered by Title III of the ADA, 42 U.S.C. § 12101, *et seq.*

35. Defendant, Viking Cruises, is a private entity that owns, leases, operates, and/or manages a place of public accommodation, the vessel The Viking Sky, operating in United States' water or those of its territories, as defined by Title III of the ADA, 42 U.S.C. §§ 12181(6) (7), 28 C.F.R. § 36.104.

36. Defendant, Viking River Cruises, Inc. (VRC) is sales establishment, a travel Service, engages in the sale of food, offers a place of entertainment and lodging, as defined by Title III of the ADA, 42 U.S.C. §§ 12181(6) (7), 28 C.F.R. § 36.104.

37. Defendants' vessel, The Viking Sky, includes places of public accommodations, *inter alia*, cabins, dining venues, specialty restaurants, bars and lounges, swimming pools, performance and movie theaters, internet cafes, spa and beauty salon, work out rooms, outdoor jogging tracks, and medical and auxiliary services (i.e., infirmary or medical center). 42 U.S.C. §§ 12181(6) (7), 28 C.F.R. § 36.104.

38. Title III of the Americans with Disabilities Act states that no person shall be discriminated against on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations by any person who owns or operates a place of public accommodation. 42 U.S.C. § 12182.

39. Defendants denied Plaintiffs the opportunity to benefit from its services, facilities, privileges, advantages, and accommodations that were equal to that afforded to other individuals who are not disabled in violation of the prohibition against discrimination based on disability contained in Title III of the ADA, 42 U.S.C. § 12182, *et seq.*

40. Defendant intentionally failed to make reasonable modifications in its policies,



practices, and/or procedures as necessary to afford Plaintiffs with its goods, services, facilities, privileges, advantages, and/or accommodations in violation of the prohibition against discrimination based on disability contained in Title III of the ADA, 42 U.S.C. § 12182, *et seq.*

41. A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. 28 C.F.R. § 36.205.

42. As a result of Defendants' actions described above, Plaintiffs suffered irreparable loss and injury including, but not limited to, humiliation, embarrassment, emotional distress, and a deprivation of their rights to non-discrimination on the basis of their disabilities. In engaging in this unlawful conduct described above, Defendants acted maliciously to damage the rights and dignity of Plaintiffs.

**Relief Requested**

**WHEREFORE**, Plaintiffs respectfully request the following relief:

- A. That the Court assume jurisdiction;
- B. Issue a declaratory judgment that Defendants' policies, procedures, and practices have subjected Plaintiffs to discrimination in violation of the Florida Civil Rights Act, and Title III of the Americans with Disabilities Act;
- C. Enjoin Defendants from any policy, procedure, or practice that will deny disabled individuals, such as Plaintiffs, equal access to and an equal opportunity to participate in and benefit from Defendants' services;

- D. Order Defendants to train all its employees about Plaintiffs' rights, and the rights of individuals who are disabled to access services on Vikings' vessels;
- E. Award actual damages to both Plaintiffs;
- F. Award compensatory damages to both Plaintiffs for violation on the Florida Civil Rights Act;
- G. Award punitive damages for violation of the Florida Civil Rights Act;
- H. Award reasonable attorney's fees, expenses and costs of suit; and
- I. Grant such other relief as the Court may deem equitable and just under the circumstances.

**JURY DEMAND**

Plaintiffs demand trial by jury on all issues which can be heard by a jury.

DATE: April 3, 2019.

Respectfully submitted,  
MORGAN AND MORGAN

*/s/ Sharon Caserta*  
Sharon Caserta, Esq.  
Florida Bar No.: 0023117  
Morgan & Morgan  
Deaf /Disability Rights  
76 South Laura Street, Suite 1100  
Jacksonville, FL 32202  
(904) 245-1121 V/TTY  
(904) 361-0078 (Voice)  
(904) 361-4305 (Facsimile)  
[scaserta@forthepeople.com](mailto:scaserta@forthepeople.com)  
*Trial Counsel for Plaintiffs*