

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORBITZ WORLDWIDE, LLC,
ORBITZ LLC, ORBITZ INC,
TRAVELSCAPE LLC,
TRAVELOCITY INC, CHEAP
TICKETS INC, EXPEDIA INC,
EXPEDIA GLOBAL LLC,
HOTELS.COM LP, HOTWIRE INC,
BOOKING HOLDINGS INC,
PRICELINE.COM LLC, TRAVELWEB
LLC, TRAVELNOW.COM INC,
AGODA INTERNATIONAL USA
LLC, HOTEL TONIGHT INC, HOTEL
TONIGHT LLC,

Petitioners,

v.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF
CLARK and the Honorable MARK R.
DENTON,

Respondents,

and

STATE OF NEVADA EX REL. MARK
FIERRO and SIG ROGICH,

Real Parties in Interest.

Supreme Court Case No.

Electronically Filed
Aug 03 2022 10:14 a.m.

Elizabeth A. Brown

District Case No. A-20-81411-13
Dept No. 13

Clerk of Supreme Court

**PETITION FOR WRIT OF MANDAMUS OR,
IN THE ALTERNATIVE, PROHIBITION**

Petitioners' Appendix – Volume I

<p>Joel E. Tasca, Esq. Nevada Bar No. 14124 David E. Chavez, Esq. Nevada Bar No. 15192 BALLARD SPAHR LLP 1980 Festival Plaza Drive, Suite 900 Las Vegas, Nevada 89135</p> <p><i>Attorneys for Petitioners</i></p>	<p>Douglas W. Baruch, Esq. Elizabeth B. Herrington, Esq. MORGAN, LEWIS & BOCKIUS LLP 1111 Pennsylvania Avenue, NW Washington, DC 20004</p> <p><i>Attorneys for Petitioners Orbitz Worldwide, LLC, Orbitz, LLC, Orbitz, Inc., Travelscape LLC, Travelocity, Inc., Cheap Tickets, Inc., Expedia, Inc., Expedia Global, LLC, Hotels.Com, LP, Hotwire, Inc., and Travelnow.com, Inc.</i></p>
<p>Anne Marie Seibel, Esq. Tiffany J. deGruy, Esq. BRADLEY ARANT BOULT CUMMINGS LLP 1819 5th Avenue N Birmingham, Alabama 35203</p> <p><i>Attorneys for Petitioners Booking Holdings, Inc., Priceline.com LLC, Travelweb LLC, and Agoda International USA LLC</i></p>	<p>Catherine A. Battin, Esq. Jon Dean, Esq. MCDERMOTT WILL & EMERY LLP 444 West Lake Street Chicago, Illinois 60606</p> <p><i>Attorneys for Petitioners Hotel Tonight, Inc. and Hotel Tonight LLC</i></p>

ALPHABETICAL INDEX

Document	Filing Date	Volume and Bates Number(s)
Affidavits of Service – Booking Holdings, Inc.; Cheap Tickets, Inc.; Hotel Tonight LLC; Hotel Tonight Inc.; Orbitz, Inc.; Orbitz, LLC; Priceline.com LLC; TravelNow.com; TravelWeb LLC	January 15, 2021	I PA 012-020
Affidavit of Service – Agoda International USA, LLC; Booking.com USA, Inc.; Expedia Global, LLC; Expedia Inc.; Hotels.com LP; Hotwire, Inc.; Orbitz Worldwide, LLC; Travelocity, Inc.; Travelscape, LLC	January 20, 2021	I PA 021-029
Answer by Agoda International USA LLC to Complaint (Original)	June 30, 2021	I PA 067-080
Answer by Booking Holdings Inc. to Complaint (Original)	June 30, 2021	I PA 081-094
Answer by Hotel Tonight, Inc., Hotel Tonight, LLC to Complaint (Original)	June 30, 2021	I PA 095-111
Answer by Orbitz Worldwide, LLC, Orbitz, LLC, Orbitz, Inc., Travelscape LLC, Travelocity, Inc., Cheap Tickets, Inc., Expedia, Inc., Expedia Global, LLC, Hotels.com, LP, Hotwire, Inc., and TravelNow.com, Inc. to Complaint (Original)	June 30, 2021	I PA 112-135
Answer by Priceline.com, LLC, Travel Web LLC to Complaint (Original)	June 30, 2021	I PA 136-150
Complaint (First Amended)	May 16, 2022	II PA 336-344
Complaint (Original)	April 24, 2020	I PA 001-011
Motion for Leave to Amend Complaint	April 5, 2022	II PA 276-295
Motion for Reconsideration or In the Alternative to Stay Proceedings	May 13, 2022	II PA 322-335

Motion for Summary Judgment	February 24, 2022	I PA 184-218
Motion to Dismiss Complaint	March 5, 2021	I PA 030-061
Notice of Entry of Order Denying Defendants' Motion for Reconsideration and Granting Partial Stay	July 13, 2022	II PA 415-424
Notice of Entry of Order Denying Defendants' Motion for Summary Judgment	April 29, 2022	II PA 303-313
Opposition to Motion for Bifurcated Discovery	July 14, 2021	I PA 151-177
Order Denying Defendants' Motion for Reconsideration and Granting Partial Stay	July 12, 2022	II PA 407-414
Order Denying Defendants' Motion for Summary Judgment	April 29, 2022	II PA 296-302
Order Granting In Part and Denying In Part Motion for Bifurcated/Phased Discovery	September 20, 2021	I PA 178-183
Order Granting In Part and Denying In Part Motion to Dismiss	June 2, 2021	I PA 062-066
Reply in Support of Motion for Reconsideration or In the Alternative to Stay Proceedings	June 6, 2022	II PA 377-386
Reply in Support of Motion for Summary Judgment	March 21, 2022	II PA 241-253
Response to Motion for Reconsideration or In the Alternative to Stay Proceedings	May 27, 2022	II PA 345-376
Response to Motion for Summary Judgment	March 10, 2022	I PA 219-240
Stipulation and Order for Withdrawal of Defendants' Opposition to Relators' Motion for Leave to Amend Complaint	May 7, 2022	II PA 314-321
Transcript of Hearing on Motion for Reconsideration or in the Alternative Stay of Proceedings	July 11, 2022	II PA 387-406
Transcript of Hearing on Motion for Summary Judgment	March 29, 2022	II PA 254-275

CERTIFICATE OF SERVICE

I hereby certify that this **Petitioners' Appendix – Volume I** was filed electronically with the Nevada Supreme Court on August 2, 2022. Participants in this case who are registered with Eflex will be served by the Eflex system and other parties, listed below, who are not registered with the Eflex will be served with a sealed copy of the foregoing via regular U.S. Mail.

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Ivy P. Hensel, Esq.
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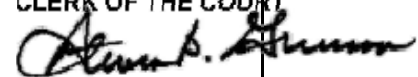
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/s/ C. Wells

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

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*Attorneys for Plaintiffs Mark Fierro
and Sig Rogich*

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

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

Plaintiffs,

vs.

CASE NO.
DEPT.

COMPLAINT

JURY TRIAL DEMAND

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

Defendants.

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

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.

27 ///

THE PARTIES AND JURISDICTION

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

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

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

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

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

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

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

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

14. Defendant Expedia, Inc. is a Washington corporation with its principal place of

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 32. This Court has jurisdiction over Plaintiffs' claims as they involve claims arising
2 exclusively under Nevada statutes.

3 33. Venue is proper because injuries to Plaintiffs occurred in Clark County, Nevada
4 and because Defendants committed unlawful acts and conducted their unlawful practices in
5 Clark County, Nevada.

6 34. That the true names and capacities, whether individual, corporate, associates, co-
7 partnership, or otherwise of Defendants DOES 1 through 100 and ROE Corporations 1 through
8 100, are unknown to Plaintiffs who therefore sues said defendants by such fictitious names.
9 Plaintiffs are informed and believe and thereon allege that each of the defendants designated as
10 DOES 1 through 100 and ROE Corporations 1 through 100 are responsible in some manner for
11 the events and happenings referred to in this action and proximately caused damages to Plaintiffs
12 as herein alleged.

13 35. That this civil action arising from actions occurring within County of Clark, State
14 of Nevada, involving an amount in controversy in excess of the sum of \$15,000.00, exclusive of
15 costs and interests, thereby giving this Court jurisdiction over this matter.

16 **FACTUAL ALLEGATIONS**

17 36. In Nevada, proprietors of transient lodging as well as their managing agents have
18 a duty to collect and remit tax to the State on rents charged to guests pursuant to Clark County
19 Code 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335, *et seq.*

20 37. The combined transient lodging tax is calculated as a percentage of gross rental
21 receipts and ranges between 10.5% and 13.38%.

22 38. Rent is the amount charged for a sleeping room/space in a transient lodging
23 establishment.

24 39. The transient lodging tax may be collected from the paying transient guests and
25 may be shown as an addition to the rent charged.

26 40. Upon information and belief, recipients of the tax collected within unincorporated
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Clark County include the Las Vegas Convention and Visitors Authority, the Clark County School District, local transportation districts, the Nevada Department of Tourism, the state of Nevada general fund, the State Supplemental School Fund, and the Clark County General Fund.

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

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

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

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

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

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

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

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

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

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

1 50. Defendants have made numerous agreements with hotels for discounted room
2 rates to make their inventory of hotel rooms available to customers on websites for rent at a
3 marked-up retail price.

4 51. Defendants knowingly and improperly avoided and/or decreased their obligation
5 to pay money to the State by failing to remit the transient lodging tax on the full amount of rent
6 charged to guests that is due and owing to the State of Nevada pursuant to Clark County Code
7 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335, *et seq.*

8 52. Defendants knowingly and intentionally failed to charge, collect and remit the
9 transient lodging tax on the retail price of the rent charged to customers.

10 53. Defendants have engaged in a practice to evade payment of substantial amounts
11 of taxes on rent charged to customers.

12 54. As a direct and proximate result of the aforementioned actions of Defendants, the
13 State of Nevada has been deprived of substantial tax revenues to which the State of Nevada is
14 otherwise entitled. Defendants are liable to the State of Nevada for three times the amount of
15 damages sustained by the State of Nevada in the form of unpaid transient lodging tax, for the
16 costs of bringing this action, and for a civil penalty of not less than \$5,500 or more than \$11,000
17 for each act constituting a violation.

18 55. Plaintiffs are entitled to recovery pursuant to NRS 357.210.

19 **COUNT TWO**
20 **CONVERSION**

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

23 57. At all times relevant, Plaintiffs on behalf of the State of Nevada have been
24 entitled to and have had the right to the immediate possession of personal property, the taxes due
25 and owing.

26 58. At all times relevant, the monies due and owing were in the possession of one or
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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.
28

1 67. By virtue of Defendants' actions, Defendants hold these funds as constructive
2 trustees for the benefits of the Plaintiffs. The existence and imposition of a constructive trust is
3 essential to the effectuation of justice. The Plaintiffs request an order that Defendants be directed
4 to give possession thereof to Plaintiffs.

5 **COUNT FIVE**
6 **CONSUMER FRAUD/VIOLATION OF NRS 598**
7 **DECEPTIVE TRADE PRACTICES ACT**

8 68. Plaintiffs re-allege and incorporate the allegations set forth above as though fully
9 alleged herein.

10 69. NRS 41.600(2) defines "consumer fraud" as "(e) a deceptive trade practice as
11 defined in NRS 598.0915 to 598.0925, inclusive."

12 70. Defendants, as previously alleged, performed acts and omitted performing acts,
13 which constitute an unfair trade practice under one or more provisions of NRS 598.0903, *et seq.*,
14 including but not limited to NRS 598.0915(13), (14), and (15).

15 71. Plaintiff was damaged as previously alleged as a direct and proximate result of
16 Defendants' violations of said statutes.

17 **COUNT SIX**
18 **DECLARATORY RELIEF**

19 72. Plaintiff re-alleges and incorporates the allegations set forth above as though fully
20 alleged herein.

21 73. A dispute has arisen between Plaintiffs and Defendants that is ripe for
22 adjudication concerning the interpretation of Nevada's combined transient lodging tax, the False
23 Claims Act, and the Deceptive Trade Practices Act.

24 74. As a result of Defendants' actions, Plaintiffs have been damaged in an amount in
25 excess of AMOUNT to be determined at the time of trial.

26 75. As a result of Defendants' actions, it has become necessary to retain an attorney
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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*

19

MICHAEL CRISTALLI, ESQ.

20 Nevada Bar No. 6266

21 DOMINIC P. GENTILE, ESQ.

22 Nevada Bar No. 1923

23 IVY P. HENSEL, ESQ.

24 Nevada Bar No. 13502

25 CLARK HILL PLC

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28 Las Vegas, NV 89169

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Steven D. Grierson

Affidavit of Process Server

EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA

STATE OF NEVADA Ex. Rel. Mark Fierro & Sig Rogich

VS ORBITZ WORLDWIDE, LLC et al

A-20-814111-C

PLAINTIFF/PETITIONER

DEFENDANT/RESPONDENT

CASE NUMBER

I KEVIN S. DUNN PROCESS SERVER being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service. RECEIVED 12/11/2020

Service: I served BOOKING HOLDINGS, INC.

NAME OF PERSON / ENTITY BEING SERVED

with-(list documents)SUMMONS-CIVIL & COMPLAINT WITH JURY DEMAND

by leaving with LYNANNE GARES (authorized person at agent) At

NAME

RELATIONSHIP

☐ Residence

ADDRESS

CITY / STATE

☒ Business C/O CORPORATION SERVICE CO. 251 LITTLE FALLS DR. WILMINGTON, DE 19808

ADDRESS

CITY / STATE

On 12/11/2020 AT 12:45 PM

DATE

TIME

Thereafter copies of the documents were mailed by prepaid, first class mail on

DATE

from

CITY

STATE

ZIP

Manner of Service:

☒ CORPORATE

☐ Personal: By personally delivering copies to the person being served.

☐ Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 16 and explaining the general nature of the papers.

☐ Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.

☐ Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

☐ Non-Service: After due search, careful inquiry and diligent attempts at the address (es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

☐ Unknown at Address ☐ Moved, Left no Forwarding ☐ Service Cancelled by Litigant ☐ Unable to Serve in Timely Fashion

☐ Address Does Not Exist ☐ Other

Service Attempts: Service was attempted on: (1)

DATE

TIME

(2)

DATE

TIME

(3)

DATE

TIME

(4)

DATE

TIME

(5)

DATE

TIME

AGE

40

Sex female

Race WHITE

Height 5'5

Weight 180

HAIR BROWN

Kevin S. Dunn
SIGNATURE OF PROCESS SERVER
KEVIN S. DUNN
PROCESS SERVER

SUBSCRIBED AND SWORN in the State of Delaware, New Castle County before me this 11TH day of DECEMBER, 2020.

DENORRIS ANGELO BRITT

NOTARY PUBLIC

STATE OF DELAWARE

My Commission Expires May 1, 2022

[Signature]
SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of DELAWARE

I PA 012

Steven D. Grierson

Affidavit of Process Server

EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA

STATE OF NEVADA Ex. Rel. Mark Fierro & Sig Rogich

VS ORBITZ WORLDWIDE, LLC et al

A-20-814111-C

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CASE NUMBER

I KEVIN S. DUNN PROCESS SERVER being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service. RECEIVED 12/11/2020

Service: I served CHEAP TICKETS, INC.

NAME OF PERSON / ENTITY BEING SERVED

with (list documents) SUMMONS-CIVIL & COMPLAINT WITH JURY DEMAND

by leaving with LYNANNE GARES (authorized person at agent) At

NAME

RELATIONSHIP

☐ Residence

ADDRESS

CITY / STATE

☒ Business C/O CORPORATION SERVICE CO. 251 LITTLE FALLS DR. WILMINGTON, DE 19808

ADDRESS

CITY / STATE

On 12/11/2020 AT 12:45 PM

DATE

TIME

Thereafter copies of the documents were mailed by prepaid, first class mail on

DATE

from

CITY

STATE

ZIP

Manner of Service:

☒ CORPORATE

☐ Personal: By personally delivering copies to the person being served.

☐ Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 16 and explaining the general nature of the papers.

☐ Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.

☐ Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

☐ Non-Service: After due search, careful inquiry and diligent attempts at the address (es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

☐ Unknown at Address ☐ Moved, Left no Forwarding ☐ Service Cancelled by Litigant ☐ Unable to Serve in Timely Fashion

☐ Address Does Not Exist ☐ Other

Service Attempts: Service was attempted on: (1) _____ (2) _____

DATE

TIME

DATE

TIME

(3) _____ (4) _____ (5) _____

DATE

TIME

DATE

TIME

DATE

TIME

AGE 40 Sex female Race WHITE Height 5'5 Weight 180 HAIR BROWN

Kevin S. Dunn
SIGNATURE OF PROCESS SERVER
KEVIN S. DUNN
PROCESS SERVER

SUBSCRIBED AND SWORN in the State of Delaware, New Castle County before me this 11TH day of DECEMBER, 2020.

DENORRIS ANGELO BRITT

NOTARY PUBLIC

STATE OF DELAWARE

My Commission Expires May 1, 2022

[Signature]
SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of DELAWARE

I PA 013

Steven D. Grierson

Affidavit of Process Server

EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA

STATE OF NEVADA Ex. Rel. Mark Fierro & Sig Rogich VS ORBITZ WORLDWIDE, LLC et al A-20-814111-C

PLAINTIFF/PETITIONER

DEFENDANT/RESPONDENT

CASE NUMBER

I KEVIN S. DUNN PROCESS SERVER being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service. RECEIVED 12/11/2020

Service: I served HOTEL TONIGHT LLC
NAME OF PERSON / ENTITY BEING SERVED

with-(list documents)SUMMONS-CIVIL & COMPLAINT WITH JURY DEMAND

by leaving with LYNANNE GARES (authorized person at agent) At
NAME RELATIONSHIP

☐ Residence

ADDRESS

CITY / STATE

☒ Business C/O CORPORATION SERVICE CO. 251 LITTLE FALLS DR. WILMINGTON, DE 19808
ADDRESS CITY / STATE

On 12/11/2020 At 12:45 PM
DATE TIME

Thereafter copies of the documents were mailed by prepaid, first class mail on _____
DATE

from _____
CITY STATE ZIP

Manner of Service:

☒ CORPORATE

☐ Personal: By personally delivering copies to the person being served.

☐ Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 16 and explaining the general nature of the papers.

☐ Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.

☐ Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

☐ Non-Service: After due search, careful inquiry and diligent attempts at the address (es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

☐ Unknown at Address ☐ Moved, Left no Forwarding ☐ Service Cancelled by Litigant ☐ Unable to Serve in Timely Fashion

☐ Address Does Not Exist ☐ Other

Service Attempts: Service was attempted on: (1) _____ (2) _____
DATE TIME DATE TIME

(3) _____ (4) _____ (5) _____
DATE TIME DATE TIME DATE TIME

AGE 40 Sex female Race WHITE Height 5'5 Weight 180 HAIR BROWN

SIGNATURE OF PROCESS SERVER
KEVIN S. DUNN
PROCESS SERVER

SUBSCRIBED AND SWORN in the State of Delaware, New Castle County before me this 11TH day of DECEMBER, 2020.

DENORRIS ANGELO BRITT
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires May 1, 2022

SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of DELAWARE

I PA 014

Steven D. Grierson

Affidavit of Process Server

EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA

STATE OF NEVADA Ex. Rel. Mark Fierro & Sig Rogich

VS ORBITZ WORLDWIDE, LLC et al

A-20-814111-C

PLAINTIFF/PETITIONER

DEFENDANT/RESPONDENT

CASE NUMBER

I KEVIN S. DUNN PROCESS SERVER being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service. RECEIVED 12/11/2020

Service: I served HOTEL TONIGHT INC

NAME OF PERSON / ENTITY BEING SERVED

with (list documents) SUMMONS-CIVIL & COMPLAINT WITH JURY DEMAND

by leaving with LYNANNE GARES (authorized person at agent) At

NAME

RELATIONSHIP

☐ Residence

ADDRESS

CITY / STATE

☒ Business C/O CORPORATION SERVICE CO. 251 LITTLE FALLS DR. WILMINGTON, DE 19808

ADDRESS

CITY / STATE

On 12/11/2020 AT 12:45 PM

DATE

TIME

Thereafter copies of the documents were mailed by prepaid, first class mail on

DATE

from

CITY

STATE

ZIP

Manner of Service:

☒ CORPORATE

☐ Personal: By personally delivering copies to the person being served.

☐ Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 16 and explaining the general nature of the papers.

☐ Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.

☐ Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

☐ Non-Service: After due search, careful inquiry and diligent attempts at the address (es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

☐ Unknown at Address ☐ Moved, Left no Forwarding ☐ Service Cancelled by Litigant ☐ Unable to Serve in Timely Fashion

☐ Address Does Not Exist ☐ Other

Service Attempts: Service was attempted on: (1) _____ (2) _____

DATE

TIME

DATE

TIME

(3) _____ (4) _____ (5) _____

DATE

TIME

DATE

TIME

DATE

TIME

AGE 40 Sex female Race WHITE Height 5'5" Weight 180 HAIR BROWN

Kevin S. Dunn
SIGNATURE OF PROCESS SERVER
KEVIN S. DUNN
PROCESS SERVER

SUBSCRIBED AND SWORN in the State of Delaware, New Castle County before me this 11TH day of DECEMBER, 2020.

DENORRIS ANGELO BRITT
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires May 1, 2022

SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of DELAWARE

I PA 015

Steven D. Grierson

Affidavit of Process Server

EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA

STATE OF NEVADA Ex. Rel. Mark Fierro & Sig Rogich

VS ORBITZ WORLDWIDE, LLC et al

A-20-814111-C

PLAINTIFF/PETITIONER

DEFENDANT/RESPONDENT

CASE NUMBER

I KEVIN S. DUNN PROCESS SERVER being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service. RECEIVED 12/11/2020

Service: I served ORBITZ, INC

NAME OF PERSON / ENTITY BEING SERVED

with (list documents) SUMMONS-CIVIL & COMPLAINT WITH JURY DEMAND

by leaving with AMY MCLAREN (authorized person at agent) _____ At _____
NAME RELATIONSHIP

☐ Residence

ADDRESS

CITY / STATE

☒ Business C/O NATIONAL REGISTERED AGENTS. 1209 ORANGE STREET WILMINGTON, DE 19801

ADDRESS

CITY / STATE

On 12/11/2020 AT 2:45 PM

DATE

TIME

Thereafter copies of the documents were mailed by prepaid, first class mail on _____

DATE

from _____

CITY

STATE

ZIP

Manner of Service:

☒ CORPORATE

☐ Personal: By personally delivering copies to the person being served.

☐ Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 16 and explaining the general nature of the papers.

☐ Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.

☐ Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

☐ Non-Service: After due search, careful inquiry and diligent attempts at the address (es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

☐ Unknown at Address ☐ Moved, Left no Forwarding ☐ Service Cancelled by Litigant ☐ Unable to Serve in Timely Fashion

☐ Address Does Not Exist ☐ Other

Service Attempts: Service was attempted on: (1) _____

DATE

TIME

(2) _____

DATE

TIME

(3) _____

DATE

TIME

(4) _____

DATE

TIME

(5) _____

DATE

TIME

AGE

40

Sex female

Race WHITE

Height 5'5

Weight 130

HAIR BROWN

Kevin S. Dunn
SIGNATURE OF PROCESS SERVER
KEVIN S. DUNN
PROCESS SERVER

SUBSCRIBED AND SWORN in the State of Delaware, New Castle County before me this 11TH day of DECEMBER, 2020.

DENORRIS ANGELO BRITT
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires May 1, 2022

SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of DELAWARE

I PA 016

Steven D. Grierson

Affidavit of Process Server

EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA

STATE OF NEVADA Ex. Rel. Mark Fierro & Sig Rogich

VS ORBITZ WORLDWIDE, LLC et al

A-20-814111-C

PLAINTIFF/PETITIONER

DEFENDANT/RESPONDENT

CASE NUMBER

I KEVIN S. DUNN PROCESS SERVER being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service. RECEIVED 12/11/2020

Service: I served ORBITZ, LLC

NAME OF PERSON / ENTITY BEING SERVED

with (list documents) SUMMONS-CIVIL & COMPLAINT WITH JURY DEMAND

by leaving with AMY MCLAREN (authorized person at agent) At

NAME

RELATIONSHIP

☐ Residence

ADDRESS

CITY / STATE

☒ Business C/O NATIONAL REGISTERED AGENTS. 1209 ORANGE STREET WILMINGTON, DE 19801

ADDRESS

CITY / STATE

On 12/11/2020 AT 2:45 PM

DATE

TIME

Thereafter copies of the documents were mailed by prepaid, first class mail on

DATE

from

CITY

STATE

ZIP

Manner of Service:

☒ CORPORATE

☐ Personal: By personally delivering copies to the person being served.

☐ Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 16 and explaining the general nature of the papers.

☐ Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.

☐ Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

☐ Non-Service: After due search, careful inquiry and diligent attempts at the address (es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

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☐ Address Does Not Exist ☐ Other

Service Attempts: Service was attempted on: (1)

DATE

TIME

(2)

DATE

TIME

(3)

DATE

TIME

(4)

DATE

TIME

(5)

DATE

TIME

AGE 40 Sex female Race WHITE Height 5'5 Weight 130 HAIR BROWN

Kevin S. Dunn
SIGNATURE OF PROCESS SERVER
KEVIN S. DUNN
PROCESS SERVER

SUBSCRIBED AND SWORN in the State of Delaware, New Castle County before me this 11TH day of DECEMBER, 2020.

DENORRIS ANGELO BRITT
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires May 1, 2022

Denorris Angelo Britt
SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of DELAWARE

I PA 017

Steven D. Grierson

Affidavit of Process Server

EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA

STATE OF NEVADA Ex. Rel. Mark Fierro & Sig Rogich

VS ORBITZ WORLDWIDE, LLC et al

A-20-814111-C

PLAINTIFF/PETITIONER

DEFENDANT/RESPONDENT

CASE NUMBER

I KEVIN S. DUNN PROCESS SERVER being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service. RECEIVED 12/11/2020

Service: I served PRICELINE.COM LLC

NAME OF PERSON / ENTITY BEING SERVED

with-(list documents)SUMMONS-CIVIL & COMPLAINT WITH JURY DEMAND

by leaving with LYNANNE GARES (authorized person at agent) At

NAME

RELATIONSHIP

☐ Residence

ADDRESS

CITY / STATE

☒ Business C/O CORPORATION SERVICE CO. 251 LITTLE FALLS DR. WILMINGTON, DE 19808

ADDRESS

CITY / STATE

On 12/11/2020 AT 12:45 PM

DATE

TIME

Thereafter copies of the documents were mailed by prepaid, first class mail on

DATE

from

CITY

STATE

ZIP

Manner of Service:

☒ CORPORATE

☐ Personal: By personally delivering copies to the person being served.

☐ Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 16 and explaining the general nature of the papers.

☐ Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.

☐ Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

☐ Non-Service: After due search, careful inquiry and diligent attempts at the address (es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

☐ Unknown at Address ☐ Moved, Left no Forwarding ☐ Service Cancelled by Litigant ☐ Unable to Serve in Timely Fashion

☐ Address Does Not Exist ☐ Other

Service Attempts: Service was attempted on: (1) _____ (2) _____

DATE

TIME

DATE

TIME

(3) _____ (4) _____ (5) _____

DATE

TIME

DATE

TIME

DATE

TIME

AGE 40 Sex female Race WHITE Height 5'5 Weight 180 HAIR BROWN

Kevin S. Dunn
SIGNATURE OF PROCESS SERVER
KEVIN S. DUNN
PROCESS SERVER

SUBSCRIBED AND SWORN in the State of Delaware, New Castle County before me this 11TH day of DECEMBER, 2020.

DENORRIS ANGELO BRITT
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires May 1, 2022

SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of DELAWARE

I PA 018

Steven D. Grierson

Affidavit of Process Server

EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA

STATE OF NEVADA Ex. Rel. Mark Fierro & Sig Rogich VS ORBITZ WORLDWIDE, LLC et al A-20-814111-C

PLAINTIFF/PETITIONER

DEFENDANT/RESPONDENT

CASE NUMBER

I KEVIN S. DUNN PROCESS SERVER being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service. RECEIVED 12/11/2020

Service: I served TRAVELNOW.COM INC.
NAME OF PERSON / ENTITY BEING SERVED

with (list documents) SUMMONS-CIVIL & COMPLAINT WITH JURY DEMAND

by leaving with AMY MCLAREN (authorized person at agent) At
NAME RELATIONSHIP

☐ Residence ADDRESS CITY / STATE
☒ Business C/O NATIONAL REGISTERED AGENTS. 1209 ORANGE STREET WILMINGTON, DE 19801
ADDRESS CITY / STATE

On 12/11/2020 AT 2:45 PM
DATE TIME

Thereafter copies of the documents were mailed by prepaid, first class mail on _____
DATE

from _____
CITY STATE ZIP

Manner of Service:

- ☒ **CORPORATE**
- ☐ **Personal:** By personally delivering copies to the person being served.
- ☐ **Substituted at Residence:** By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 16 and explaining the general nature of the papers.
- ☐ **Substituted at Business:** By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.
- ☐ **Posting:** By posting copies in a conspicuous manner to the front door of the person/entity being served.
- ☐ **Non-Service:** After due search, careful inquiry and diligent attempts at the address (es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

☐ Unknown at Address ☐ Moved, Left no Forwarding ☐ Service Cancelled by Litigant ☐ Unable to Serve in Timely Fashion
☐ Address Does Not Exist ☐ Other

Service Attempts: Service was attempted on: (1) _____ (2) _____
DATE TIME DATE TIME

(3) _____ (4) _____ (5) _____
DATE TIME DATE TIME DATE TIME

AGE 40 Sex female Race WHITE Height 5'5" Weight 130 HAIR BROWN

SIGNATURE OF PROCESS SERVER
KEVIN S. DUNN
PROCESS SERVER

SUBSCRIBED AND SWORN in the State of Delaware, New Castle County before me this 11TH day of DECEMBER, 2020.

DENORRIS ANGELO BRITT
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires May 1, 2022

SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of DELAWARE

I PA 019

Steven D. Grierson

Affidavit of Process Server

EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA

STATE OF NEVADA Ex. Rel. Mark Fierro & Sig Rogich

VS ORBITZ WORLDWIDE, LLC et al

A-20-814111-C

PLAINTIFF/PETITIONER

DEFENDANT/RESPONDENT

CASE NUMBER

I KEVIN S. DUNN PROCESS SERVER being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service. RECEIVED 12/11/2020

Service: I served TRAVELWEB LLC

NAME OF PERSON / ENTITY BEING SERVED

with (list documents) SUMMONS-CIVIL & COMPLAINT WITH JURY DEMAND

by leaving with LYNANNE GARES (authorized person at agent) At

NAME

RELATIONSHIP

☐ Residence

ADDRESS

CITY / STATE

☒ Business C/O CORPORATION SERVICE CO. 251 LITTLE FALLS DR. WILMINGTON, DE 19808

ADDRESS

CITY / STATE

On 12/11/2020 AT 12:45 PM

DATE

TIME

Thereafter copies of the documents were mailed by prepaid, first class mail on

DATE

from

CITY

STATE

ZIP

Manner of Service:

☒ CORPORATE

☐ Personal: By personally delivering copies to the person being served.

☐ Substituted at Residence: By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 16 and explaining the general nature of the papers.

☐ Substituted at Business: By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.

☐ Posting: By posting copies in a conspicuous manner to the front door of the person/entity being served.

☐ Non-Service: After due search, careful inquiry and diligent attempts at the address (es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

☐ Unknown at Address ☐ Moved, Left no Forwarding ☐ Service Cancelled by Litigant ☐ Unable to Serve in Timely Fashion

☐ Address Does Not Exist ☐ Other

Service Attempts: Service was attempted on: (1)

DATE

TIME

(2)

DATE

TIME

(3)

DATE

TIME

(4)

DATE

TIME

(5)

DATE

TIME

AGE

40

Sex female

Race WHITE

Height 5'5

Weight 180

HAIR BROWN

SIGNATURE OF PROCESS SERVER
KEVIN S. DUNN
PROCESS SERVER

SUBSCRIBED AND SWORN in the State of Delaware, New Castle County before me this 11TH day of DECEMBER, 2020.

DENORRIS ANGELO BRITT
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires May 1, 2022.

SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of DELAWARE

I PA 020

AFFIDAVIT OF SERVICE

Electronically Filed
1/20/2021 10:15 AM
Steven D. Grierson

CLERK OF THE COURT

Job: 514037 (20-12351) *[Signature]*

Case: A-20-81411-B	Court: EIGHTH JUDICIAL DISTRICT COURT	County: CLARK COUNTY/SPRINGFIELD
Plaintiff / Respondent: DAVID ON NOVADA, BK, BILLY MARI HERRO AND SUGRODCH		Defendant / Petitioner: ORBITZ WORLDWIDE, LLC, ORBITZ LLC, ORBITZ, INC., TIMBERWARE, LLC, TIMBERGATE, INC., ET AL
Received by: Dillonburg Process Service, License #1876		Filer: J & J Process Service
To be served upon: ASSOCIATION INTERNATIONAL USA, LLC		

I, Tanya Mahme, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action; and that within the boundaries of the State where service was effected, I was authorized by law to make service of the documents and inform said person of the contents herein.

Respondent's Address: ASSOCIATION INTERNATIONAL USA, LLC, 600 REGISTERED AGENTS CORPORATION SERVICE COMPANY, 10000 W. ST. CARRINGTON, NV 89708

Manner of Service: Authorized Agent lawfully designated in a court service at process
KIM GIBSON, CORPORATE SPECIALIST, DEDU 11/20/20 2:44 PM PST

Pursuant to NRS 1A 020, documents served to a person of suitable age and discretion at the above address with address is the address of the incident/agent as shown on the current certificate of designation filed with the Secretary of State.

Document(s): SUMMONS, COMPLAINT

Additional Comments:

Pursuant to NRS 59.045, I did so under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

[Signature]
Tanya Mahme
w. Mahme
Date: December 16, 2020

Dillonburg Process Service, License #1876
2416 Grant Drive, Suite 1
Reno, NV 89509
(775) 687-8188

J & J Process Service, License #1936
220 W. 9th Street, Suite 434
Reno, Nevada 89510

AFFIDAVIT OF SERVICE

Electronically Filed
1/20/2021 10:15 AM
Steven D. Grierson

CLERK OF THE COURT

502-22 (20-1850)

Case A-20-81411-B	Court EIGHTH JUDICIAL DISTRICT COURT	County CLARK COUNTY, NEVADA
Plaintiff / Petitioner STATE OF NEVADA, vs. WEL MARI PERD AND HIS ROGIC	Defendant / Respondent OUBITZ WORKTRADING LLC, OUBITZ, LLC, OUBITZ, INC. TRAVELSONE, LLC, TRAVELCITY, INC., ET AL.	
Received by: Halle Beth Frances Servino, (702) 414-1171	Per: Jill Frances Servino	
To be served upon: OUBITZ WORKTRADING LLC		

I, Tanya Malone, being duly sworn, depose and say, I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein.

Recipient Name / Address: OUBITZ WORKTRADING LLC, 200 REGISTERED AGENT CORPORATION SERVICE COMPANY, 11200 N. 11TH ST., CARSON CITY, NV 89703

Manner of Service: Authorized as an agent lawfully assigned to accept service of process
BRIAN BROWN, CORPORATE SPECIALIST, Dec 11, 2020, 2:18 PM PST

On or about 12/11/20, documents served to a person of suitable age and discretion at the above address. This address is the address of the Resident Agent as shown on the annual certificate of designation filed with the Secretary of State.

Declarations: I, Tanya Malone, depose and say

Additional Comments:

I, Tanya Malone, do declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.


Tanya Malone
WR 100245
December 15, 2020
Date

Continental Process Services, LLC
3700 S. 11TH ST.
Reno, NV 89509
(775) 507-7188

Per: J. L. Frances Servino, (702) 414-1171
200 N. 11TH ST. BOULEVARD, 197
Reno, Nevada 89110

AFFIDAVIT OF SERVICE

Electronically Filed
1/20/2021 10:15 AM
Steven D. Grierson

CLERK OF THE COURT

Case: A-20-814111-C	Court: EIGHTH JUDICIAL DISTRICT COURT	County: CLARK COUNTY, NEVADA	Job: 51-20-17-20-12943 <i>Steven D. Grierson</i>
Plaintiff / Petitioner: STATE OF NEVADA, EX. REL MARK FIERRO AND SIG ROGICH		Defendant / Respondent: ORBITZ WORLDWIDE, LLC.; ORBITZ, LLC.; ORBITZ, INC.; TRAVELSCAPE, LLC.; TRAVELOCITY, INC.; ET AL.	
Received by: Battle Born Process Service, License #1876		For: J & L Process Service	
To be served upon: EXPEDIA GLOBAL, LLC.			

I, Tonya Malone, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: EXPEDIA GLOBAL, LLC., C/O REGISTERED AGENT: NATIONAL REGISTERED AGENTS, INC.: 701 S CARSON ST
SUITE 200, CARSON CITY, NV 89701

Manner of Service: Authorized - an agent lawfully designated to accept service of process
DANIELLE NAKI, ADMINISTRATIVE ASSISTANT, Dec 11, 2020, 2:41 pm PST

Pursuant to NRS 14.020, documents served to a person of suitable age and discretion at the above address, which address is the address of the Resident Agent as shown on the current certificate of designation filed with the Secretary of State.

Documents: SUMMONS, COMPLAINT

Additional Comments:

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.



Tonya Malone
#R-100246

December 16, 2020

Date

Battle Born Process Service, License #1876
3710 Grant Drive Suite L
Reno, NV 89509
(775) 507-7188

for J & L Process Service, License #1926
420 N. Nellis Boulevard, #A3-197
Las Vegas, Nevada 89110

AFFIDAVIT OF SERVICE

Electronically Filed
1/20/2021 10:15 AM
Steven D. Grierson

Case: A-20-814111-C	Court: EIGHTH JUDICIAL DISTRICT COURT	County: CLARK COUNTY, NEVADA	CLERK OF THE COURT JOB: 51497 (20-17842)
Plaintiff / Petitioner: STATE OF NEVADA, EX. REL MARK FIERRO AND SIG ROGICH		Defendant / Respondent: ORBITZ WORLDWIDE, LLC.; ORBITZ, LLC.; ORBITZ, INC.; TRAVELSCAPE, LLC.; TRAVELOCITY, INC.; ET AL.	
Received by: Battle Born Process Service, License #1876		For: J & L Process Service	
To be served upon: EXPEDIA, INC.			

I, Tonya Malone, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: EXPEDIA, INC., C/O REGISTERED AGENT: NATIONAL REGISTERED AGENTS, INC.: 701 S CARSON ST SUITE 200, CARSON CITY, NV 89701

Manner of Service: Authorized - an agent lawfully designated to accept service of process
DANIELLE NAKI, ADMINISTRATIVE ASSISTANT, Dec 11, 2020, 2:41 pm PST

Pursuant to NRS 14.020, documents served to a person of suitable age and discretion at the above address, which address is the address of the Resident Agent as shown on the current certificate of designation filed with the Secretary of State.

Documents: SUMMONS, COMPLAINT

Additional Comments:

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.



Tonya Malone
#R-100246
December 16, 2020
Date

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(775) 507-7188

for J & L Process Service, License #1926
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Las Vegas, Nevada 89110

AFFIDAVIT OF SERVICE

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1/20/2021 10:15 AM
Steven D. Grierson

Case: A-20-81411-B	Court: DISTRICT JUDICIAL DEPARTMENT COURT	County: CLARK COUNTY, NEVADA	CLERK OF THE COURT JOB: 5100005 (20-12044) <i>[Signature]</i>
Plaintiff / Petitioner: HOTELS.COM, INC. DBA: MARriott FERRACINO SIGNATURE		Defendant / Respondent: ORBITZ/WORLDWIDE, LLC; ORBITZ, LLC; ORBITZ, INC.; TRAVELSCAPE, LLC; TRAVELOCITY, INC.; ET AL.	
Received for: Radio Data Phone Service, License #1870		For: JSL Proceedings	
To be served upon: HOTELS.COM, INC.			

I, Tanya Malone, being duly sworn, depose and say, I am over the age of 18 years and not a party to this action, and that within the boundaries of the State wherein this was filed, I was summoned by law to make service of the documents and inform said person of the contents herein.

Recipient Name / Address: HOTELS.COM, INC. 500 REGISTERED AGENT NATIONAL REGISTERED, LEGISLATION, 204 E. CARSON ST. SUITE 200
LAS VEGAS, NV 89101

Method of Service: Authorized court agent lawfully designated to accept service of process
DANIELLE MAH, ADMINISTRATIVE ASSISTANT, COURT, COURT 2 #100 PST

This is to certify that I, the undersigned, have personally served the documents and information at the above address, which address is the address of the Resident Agent as shown on the current certificate of designation filed with the Secretary of State.

Document(s): SUMMONS COMPLAINT

Subscribed & Sworn to:

Subscribed to (NRS 53.045): I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

[Signature]
Tanya Malone
IN: 180046
December 15, 2020
Date

Notary Public/Notary Service, License #1176
5770 Grand Canyon Square
Reno, NV 89509
(775) 507-9189

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Steven D. Grierson

CLERK OF THE COURT

Job: 51-1000 (20-12345) *Steven D. Grierson*

FROM: ACTIVIA, INC.	COURT: CLINTON JUDICIAL DISTRICT COURT	COUNTY: CLARK COUNTY, NEVADA
Plaintiff's Name: STATE OF NEVADA, et al. vs. MARK FIERRO AND BIG HORN		Defendant's Name: URBITZ WORLDWIDE, LLC, ORBITZ INC., ORBITZ INC., TRAVELSCAPE, LLC, TRAVELURB, INC. ET AL.
Received by: Bettie Born Process Service, License #1177		Suit: 18-1111111111111111
To be served upon: ACTIVIA, INC.		

I, Tonya Malone, being duly sworn, depose and say on oath over the age of 18 years and not a party to this action, and that within the jurisdiction of the State of Nevada service was effected (I was authorized by law to make service of this documents and affirmed said person is the correct person).

Registration address: ACTIVIA, INC., 1111 REGISTERED AGENT, NATIONAL REGISTERED AGENTS INC., 2014 HANSON ST SUITE 200, CALICO, NV, 89001

Manner of Service: Authorized agent lawfully designated to accept service of process
TAMARA MALONE ADMINISTRATIVE ASSISTANT Dec 11, 2020 2:11 PM PST

I am under NRS 54.020, documents served to a person of suitable age and discretion at the above address which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

Indubitably: SUMMONS AT MARIANA

Additional Comments:

Substantive (NRS 53.045) I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Tamara Malone
December 16, 2020

Tamara Malone
WR-100245 Date

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Hend, NV 89016
(775) 507-1111

tony@activia.com License #1021
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Las Vegas, Nevada 89110

AFFIDAVIT OF SERVICE

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1/20/2021 10:15 AM
Steven D. Grierson

Case: A-20-814111-C	Court: EIGHTH JUDICIAL DISTRICT COURT	County: CLARK COUNTY, NEVADA	CLERK OF THE COURT 509-49 (20-1-837)
Plaintiff / Petitioner: STATE OF NEVADA, EX. REL MARK FIERRO AND SIG ROGICH		Defendant / Respondent: ORBITZ WORLDWIDE, LLC.; ORBITZ, LLC.; ORBITZ, INC.; TRAVELSCAPE, LLC.; TRAVELOCITY, INC.; ET AL.	
Received by: Battle Born Process Service, License #1876		For: J & L Process Service	
To be served upon: ORBITZ WORLDWIDE, LLC.			

I, Tonya Malone, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: ORBITZ WORLDWIDE, LLC., C/O REGISTERED AGENT: NATIONAL REGISTERED AGENTS, INC.: 701 S CARSON ST
SUITE 200, CARSON CITY, NV 89701

Manner of Service: Authorized - an agent lawfully designated to accept service of process
DANIELLE NAKI, ADMINISTRATIVE ASSISTANT, Dec 11, 2020, 2:41 pm PST

Pursuant to NRS 14.020, documents served to a person of suitable age and discretion at the above address, which address is the address of the Resident Agent as shown on the current certificate of designation filed with the Secretary of State.

Documents: SUMMONS, COMPLAINT

Additional Comments:

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.



Tonya Malone
#R-100246

December 16, 2020

Date

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1/20/2021 10:15 AM
Steven D. Grierson

Case: A-20-814111-C	Court: EIGHTH JUDICIAL DISTRICT COURT	County: CLARK COUNTY, NEVADA	CLERK OF THE COURT JOB: 510035 (20-12340)
Plaintiff / Petitioner: STATE OF NEVADA, EX. REL MARK FIERRO AND SIG ROGICH		Defendant / Respondent: ORBITZ WORLDWIDE, LLC.; ORBITZ, LLC.; ORBITZ, INC.; TRAVELSCAPE, LLC.; TRAVELOCITY, INC.; ET AL.	
Received by: Battle Born Process Service, License #1876		For: J & L Process Service	
To be served upon: TRAVELOCITY, INC.			

I, Tonya Malone, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: TRAVELOCITY, INC., C/O REGISTERED AGENT: NATIONAL REGISTERED AGENTS, INC.: 701 S CARSON ST SUITE 200, CARSON CITY, NV 89701

Manner of Service: Authorized - an agent lawfully designated to accept service of process
DANIELLE NAKI, ADMINISTRATIVE ASSISTANT, Dec 11, 2020, 2:41 pm PST

Pursuant to NRS 14.020, documents served to a person of suitable age and discretion at the above address, which address is the address of the Resident Agent as shown on the current certificate of designation filed with the Secretary of State.

Documents: SUMMONS, COMPLAINT

Additional Comments:

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.



Tonya Malone
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1/20/2021 10:15 AM
Steven D. Grierson

Case: A-20-814111-C	Court: EIGHTH JUDICIAL DISTRICT COURT	County: CLARK COUNTY, NEVADA	CLERK OF THE COURT JOB: 51-0003 (20-17339) <i>Steven D. Grierson</i>
Plaintiff / Petitioner: STATE OF NEVADA, EX. REL MARK FIERRO AND SIG ROGICH		Defendant / Respondent: ORBITZ WORLDWIDE, LLC.; ORBITZ, LLC.; ORBITZ, INC.; TRAVELSCAPE, LLC.; TRAVELOCITY, INC.; ET AL.	
Received by: Battle Born Process Service, License #1876		For: J & L Process Service	
To be served upon: TRAVELSCAPE, LLC.			

I, Tonya Malone, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: TRAVELSCAPE, LLC., C/O REGISTERED AGENT: NATIONAL REGISTERED AGENTS, INC.: 701 S CARSON ST SUITE 200, CARSON CITY, NV 89701

Manner of Service: Authorized - an agent lawfully designated to accept service of process
DANIELLE NAKI, ADMINISTRATIVE ASSISTANT, Dec 11, 2020, 2:41 pm PST

Pursuant to NRS 14.020, documents served to a person of suitable age and discretion at the above address, which address is the address of the Resident Agent as shown on the current certificate of designation filed with the Secretary of State.

Documents: SUMMONS, COMPLAINT

Additional Comments:

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.



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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL.
Mark Fierro and Sig Rogich,

Plaintiffs,

v.

ORBITZ WORLDWIDE, LLC et al.,

Defendants.

Case No.: A-20-814111-B

Dept. No.: XVI

HEARING REQUESTED

MOTION TO DISMISS BY DEFENDANTS ORBITZ WORLDWIDE, LLC, ORBITZ, LLC, ORBITZ, INC., TRAVELSCAPE LLC, TRAVELOCITY, INC., CHEAP TICKETS, INC., EXPEDIA, INC., EXPEDIA GLOBAL, LLC, HOTELS.COM, LP, HOTWIRE, INC., TRAVELNOW.COM, INC., BOOKING HOLDINGS, INC., PRICELINE.COM LLC, TRAVELWEB LLC, BOOKING.COM (USA) INC., AGODA INTERNATIONAL USA LLC, HOTEL TONIGHT INC., AND HOTEL TONIGHT LLC

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1 Defendants Orbitz Worldwide, LLC, Orbitz, LLC, Orbitz, Inc., Travelscape LLC,
2 Travelocity, Inc., Cheap Tickets, Inc., Expedia, Inc. Expedia Global, LLC, Hotels.Com, LP,
3 Hotwire, Inc., Booking Holdings, Inc., Priceline.com LLC, Booking.com (USA) Inc., Agoda
4 International USA LLC, Hotel Tonight Inc., and Hotel Tonight LLC (“Defendants”),¹ by and
5 through their attorneys, respectfully submit this brief in support of their Motion to Dismiss the
6 Complaint of Relators Mark Fierro and Sig Rogich (“Relators”).

7 As set forth below, the Complaint must be dismissed in its entirety, with prejudice. Count
8 One—which alleges a violation of the Nevada False Claims Act (“NFCA”), must be dismissed
9 because: (1) the allegations made by Relators have been publicly disclosed in the news media and
10 local government administrative hearings, and therefore the NFCA’s public disclosure bar, NRS
11 357.100, precludes Relators’ claim; (2) it otherwise fails to comply with the pleading requirements
12 of Rule 9(b) of the Nevada Rules of Civil Procedure; and (3) it fails to plausibly allege at least one
13 necessary element of the alleged NFCA violation.

14 Counts Two through Six—which allege non-NFCA causes of action—must be dismissed
15 because Relators lack standing to pursue them on behalf of the State of Nevada.

16 **INTRODUCTION**

17 The NFCA is patterned after the federal false claims act (“FCA”), 31 U.S.C. §§ 3729-3733,
18 which imposes civil liability and penalties for persons who submit false or fraudulent claims for
19 payment to the government.² Like the FCA, the NFCA—through its *qui tam* provisions—
20 incentivizes certain private parties (*qui tam* relators) with inside information about such conduct,
21 sometimes referred to as whistleblowers, to initiate an action on behalf of the government and, if
22

23 ¹ Defendant Booking.com (USA) Inc. is not engaged in the business activities alleged in the
24 Complaint and is wrongly named for that reason.

25 ² Recognizing that the NFCA is modeled after the federal FCA, the Nevada Supreme Court has
26 made clear that Nevada courts can (and should) look to the federal courts’ interpretation of the FCA
27 for guidance. *See Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 122 Nev. 132, 150-51, 127
28 P.3d 1088, 1101-02 (2006) (finding that when the Nevada legislature adopted the NFCA, a statute
substantially similar to the FCA, there is a presumption “that the legislature knew and intended to
adopt the construction placed on the federal statute by federal courts”) (omitting internal
quotations); *Simonian v. Univ. & Cmty. Coll. Sys. of Nevada*, 122 Nev. 187, 192, 128 P.3d 1057,
1060 (2006) (looking to Supreme Court’s analysis of the FCA and applying that same reasoning to
the NFCA claim at issue).

1 the action is successful, to receive a portion of the government’s proceeds. NRS 357.080. As
2 shown below, Relators here—two media consultants—claim to be “whistleblowers,” but they
3 clearly are not. Their Complaint merely rehashes publicly disclosed information—already well
4 known to the government—and makes generalized allegations of wrongdoing that do not pass legal
5 muster under the NFCA and otherwise.

6 Indeed, Relators’ agenda here seems to be an inappropriate effort to change state and local
7 tax law for online travel companies (“OTCs”) that facilitate hotel reservations for travelers seeking
8 to stay in Clark County. Through their Complaint, Relators are seeking to revive and foster a
9 debate—long-since settled in the OTCs’ favor—over whether Clark County should impose a tax
10 on OTCs. Whatever their motive, this attempt to use the NFCA to set tax policy (in contravention
11 of the wishes of the legislative and executive branches) is precisely the type of action that the
12 Nevada Supreme Court has warned against:

13 When the resolution of a false claims action requires a factual
14 evaluation under, or legal interpretation of, the revenue statutes—
15 for instance, in situations involving arguable distinctions on whether
16 taxes are owed under the circumstances—**that action should be
resolved, in the first instance, by the entity entrusted to maintain
consistency and uniformity in the tax laws.**

17 *Int’l Game Tech., Inc.*, 122 Nev. at 161 (emphasis added). Under this standard, any uncertainty as
18 to whether OTCs have a tax obligation under the current statutes or Chapter 4.08 of Clark County’s
19 Code of Ordinances (“CCC” or “Code”) is a question for the agencies charged with overseeing the
20 revenue collection laws.³

21 Once the Relators filed their Complaint under seal, the Nevada Attorney General discharged
22 his statutory mandate to “investigate diligently” these allegations. NRS 37.070.1. Following that
23 investigation, the Attorney General notified the Court that he was declining to intervene in the
24 Relators’ action. NRS 357.110.2.

25
26 ³ No such uncertainty should exist in any event. In April 2005, the State of Nevada Department of
27 Taxation specifically provided an opinion letter stating that Nevada’s transient occupancy taxes do
28 not apply to OTCs. As described below, it was reported in the media that this agency determination
was considered by the Commission when it expressly declined to impose transient lodging taxes
on OTCs. *See infra* at 7.

1 As evidenced by the substantial record compiled herein, the relevant government authorities
2 knew all about the debate on whether transient occupancy taxes should apply to OTCs long before
3 Relators filed this suit. The threshold question at the heart of Relators' NFCA claim—whether
4 OTCs have an obligation to remit transient lodging taxes on the compensation they earn for the
5 marketplace facilitation services they provide online—was openly debated in Nevada, generated
6 substantial media coverage, including the reporting described below, and was resolved (firmly in
7 the OTCs' favor) at the State level and in Clark County Council hearings.

8 Under well-established law, the Court should find that Relators' Complaint is improper and
9 must be dismissed for three reasons. First, Relators are precluded from pursuing their NFCA claim
10 on behalf of the government under what is known as the “public disclosure bar.” In declined NFCA
11 *qui tam* cases such as this one, the Court “shall dismiss” the action under the NFCA’s public
12 disclosure bar if the action is “substantially based on allegations or transactions that have been
13 disclosed publicly.” NRS 357.080.1. As demonstrated below, the *qui tam* allegations have been
14 publicly disclosed—repeatedly and in detail—in both news media and administrative hearings. In
15 fact, not only have these allegations been publicly disclosed and reported on, but there has been
16 public debate about whether Clark County should enact legislation imposing a tax on OTCs, which
17 was settled long ago when Clark County decided not to tax OTCs. Because the NFCA claim (Count
18 One) is based on the same public information, it is statutorily barred and must be dismissed.

19 Second, even absent the public disclosure bar, the NFCA claim should be dismissed because
20 it fails to satisfy the pleading requirements of N.R.C.P. Rules 9(b) and 12(b)(5). In sweeping
21 fashion, naming as defendants virtually every major OTC that may have facilitated reservations for
22 travelers staying at hotels in Clark County, Relators accuse the entire online travel industry of
23 knowingly failing to comply with a Clark County tax code (after Clark County, itself, declined to
24 file suit on this subject). Yet the Complaint fails to allege even a single particularized instance of
25 a supposed tax obligation that any Defendant failed to satisfy. Likewise, the NFCA count in the
26 Complaint fails to plausibly plead that each Defendant acted “knowingly” in failing to fulfill any
27 tax obligation, which is a required element of the NFCA claim.

28 Finally, as *qui tam* plaintiffs, Relators' standing to pursue claims on behalf of the State is

1 limited to NFCA claims. NRS 357.080. Count One is the only NFCA claim in the Complaint.
2 Because Relators have no statutory authority to pursue any non-NFCA claims on behalf of the
3 State, and they do not otherwise allege any personal injury resulting from the alleged tax violations,
4 all of the non-NFCA claims (Counts Two through Six) must be dismissed.

5 **BACKGROUND**

6 Relators' Complaint purports to allege six claims for relief. Each claim rests on the
7 erroneous and general assertion that each Defendant was obligated to remit a combined transient
8 lodging tax to Clark County and that the tax should have been based on the "retail prices Defendants
9 charged their customers" (Compl. ¶ 47).

10 Pursuant to Nevada Revised Statutes 244 and 244A, NRS 244.3351 *et seq.*, counties may
11 impose and collect transient lodging taxes on gross receipts from the rental of transient lodging.
12 Compl. ¶ 36. The Code imposes taxes on gross receipts received by transient lodging
13 establishments from their occupants. *See* CCC §§ 4.08.005, 4.08.130; *see also Cabral v. Caesar*
14 *Entm't Corp.*, No. 78580, 467 P.3d 638 (July 29, 2020) (unpublished disposition).

15 While Relators baldly assert that Defendants are subject to this tax (Compl. ¶ 41), they do
16 not allege any facts supporting their conclusory assertion. To the contrary, they allege that
17 Defendants are "web-based hotel booking companies" (*id.* ¶ 4) that provide services that let
18 customers use their "web-based search engines" to search for, make, pay for, and modify hotel
19 reservations (*id.* ¶¶ 42-45). In other words, Defendants serve as intermediaries between their
20 customers and the hotels in the hotel reservation process. The Complaint does not allege that
21 Defendants provide any other service. Nor does it allege that Defendants actually own or operate
22 any hotels or have anything to do with on-site hotel services such as maintaining or cleaning rooms,
23 employing hotel staff, or providing room keys to guests.

24 Relators' first cause of action alleges that, by only collecting and remitting taxes on the
25 "wholesale prices" (i.e., the rental rate that the hotel charges to rent a room), rather than the
26 "marked-up" amount a traveler pays (which includes payment for Defendants' marketplace
27 facilitation services), Defendants have violated the NFCA's reverse false claims provision, NRS
28 357.040(1)(g). (*See id.* ¶¶ 50-55.) Relators further allege claims of conversion (*see id.* ¶¶ 57-60),

1 unjust enrichment (*see id.* ¶¶ 62-63), constructive trust (*see id.* ¶¶ 65-67), consumer fraud under the
2 Nevada Deceptive Trade Practices Act (“DTPA”) (*see id.* ¶¶ 69-71), and declaratory relief (*see id.*
3 ¶¶ 73-75), without any explanation of how they can legally bring such claims on behalf of the State.

4 ARGUMENT

5 I. The *Oui Tam* Allegations Must Be Dismissed Under the NFCA’s “Public Disclosure Bar”

6
7 Relators’ NFCA claim is based on allegations that have been disclosed publicly on multiple
8 occasions. Consequently, that claim is subject to mandatory dismissal under the NFCA’s public
9 disclosure bar, which provides as follows:

10 Unless the Attorney General Objects, **a court shall dismiss an**
11 **action or a claim** made pursuant to this **chapter that is**
12 **substantially based on the same allegations or transactions that**
13 **have been disclosed publicly:**

14 ...

- 15 2. In an . . . **administrative hearing** to which the State, a
16 political subdivision . . . is a party; or
- 17 3. By the **news media**.

18 Unless the action or claim is brought by the Attorney General . . . or
19 an original source of the information.

20 NRS 357.100 (emphasis added).⁴ This provision enables courts to “weed out FCA claims not based
21 on genuine whistleblower information.” *United States ex rel. Hong v. Newport Sensors, Inc.*, 728
22 F. App’x 660, 662 (9th Cir. 2018); *see also United States ex rel. Hong v. Newport Sensors, Inc.*,
23 No. 13-1164, 2016 WL 8929246, at *4 (C.D. Cal. May 19, 2016) (“The public disclosure bar is
24 intended to encourage suits by whistle-blowers with genuinely valuable information, while

25 ⁴ Once a qualifying public disclosure is identified, the burden shifts to the Relators to demonstrate
26 that they are “original sources” of the information. *See Malhotra v. Steinberg*, 770 F.3d 853, 860
27 (9th Cir. 2014). The NFCA defines an “original source” as a person who either voluntarily
28 discloses the information on which the allegations are based to the government before filing suit,
or a person who has “knowledge of information that is independent of and materially adds to the
publicly disclosed allegations or transactions and voluntarily provides such information to the State
or political subdivision before bringing an action for a false claim based on the information.” NRS
357.026. The Complaint reveals no information that would suggest that Relators qualify for
original source status.

1 discouraging litigation by plaintiffs who have no significant information of their own to
2 contribute.”) (internal quotations and citations omitted). While the public disclosure bar applies
3 even where there is only one qualifying public disclosure, the public disclosures here are
4 voluminous and irrefutable. Indeed, as shown below, the very same allegations raised by Relators
5 in their Complaint have been the subject of repeated news media reports and have been debated in
6 local government administrative hearings.

7 For purposes of this motion to dismiss, the Court may take judicial notice of the news media
8 reports relied on below. NRS 47.130 permits the Court to take judicial notice of facts that are
9 “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot be
10 reasonably questioned.” Publications, including online articles, may be judicially noticed to
11 ““indicate what was in the public realm at the time, not whether the contents of those articles were
12 in fact true.”” *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir.
13 2010) (quoting *Premier Growth Fund v. Alliance Capital Mgmt.*, 435 F.3d 396, 401 n.15 (3d Cir.
14 2006)); *see also Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 259 n.2 (9th Cir. 2013) (granting
15 request on appeal to take judicial notice of magazine, newspaper, and online articles to indicate
16 what was in the public domain, not for the truth of those matters). Here, the evidence of public
17 disclosures is not provided to establish the truth of their contents, but instead to establish that the
18 information and allegations in those reports were in the public realm long before Relators
19 commenced suit, thereby triggering the NFCA’s public disclosure bar and requiring dismissal of
20 the NFCA claim.

21 **A. Relators’ Allegations Have Been Publicly Disclosed on Numerous Occasions**

22 In their Complaint, Relators seek to portray themselves as being the ones to reveal
23 allegations that OTCs are not paying transient lodging taxes due pursuant to Clark County Code
24 4.08, *et seq.* and NRS 244A, 244.335, *et seq.* (*see* Compl. at ¶ 51). But their Complaint omits any
25 mention of the vast public record (including numerous news media disclosures) of these very same
26 allegations. While Relators may prefer to overlook these public disclosures, this Court cannot.
27 Presented with the record below, this Court must dismiss Count One because the elements of public
28 disclosure have been met. *See United States v. My Left Foot Children’s Therapy, LLC*, No. 2:14-

1 CV-01786, 2017 WL 1902159, at *6 (D. Nev. May 9, 2017).

2 NFOA claims based on public disclosures “by the news media” are barred and “shall be
3 dismissed.” NRS 357.100.3.⁵ In addition, NRS 357.100.2 bars claims based on information
4 disclosed publicly in “administrative hearings.” The public disclosures here are vast and
5 overwhelming. During the last two decades, the media have reported numerous times on the same
6 allegations made by Relators. *See* Appendix.⁶ Moreover, the Clark County Commission actually
7 considered (and rejected) amending its ordinance or filing suit against the OTCs, including in public
8 meetings as early as 2009.⁷ And, as the media reported, the Commission declined to take legal
9 action based, in part, on an advisory opinion by the State of Nevada Department of Taxation, dated
10 April 12, 2005, that specifically opined that Nevada’s transient occupancy taxes do not apply to
11 OTCs.⁸

12
13
14
15 ⁵ NRS 357.100.1 does not limit the location or source of the news media that qualify under the
16 public disclosure bar. Thus, news reports in the local as well as national media may qualify as
17 public disclosures. Here, while the bulk of the news media reports are from Nevada news sources,
18 there is no statutory limitation that precludes consideration of non-Nevada news media.

19 ⁶ The Appendix, which has been separately filed, provides a collective, representative sampling of
20 the numerous public disclosures concerning the allegations in the Complaint and not an exhaustive
21 list of the public disclosures available.

22 ⁷ App’x A (Richard N. Velotta, *Online Booking Taxation Issues Percolating*, In Business Las Vegas
23 (Feb. 13, 2004)); App’x B (Richard N. Velotta, *County Chooses not to Sue*, Las Vegas Sun (Jan.
24 19, 2006)); App’x C, *Bd. of Cty. Comm’rs of Clark Cty., NV Meeting Minutes*, (Nov. 17, 2009).

25 ⁸ *See* App’x D (April 12, 2005 Letter to Jones Day); App’x B at DEFSAPP_0004 (Richard N.
26 Voletta, *County Chooses not to Sue*, Las Vegas Sun (Jan. 19, 2006)) (“Chinnock said the [Nevada
27 Taxation Department] last year issued an advisory opinion that was reviewed by the state attorney
28 general’s office. The department said the charges [by the OTCs] are fees and not subject to the
room tax.”). For several years, numerous media reports discussed both the Commission’s decision
whether to bring a lawsuit against OTCs and the 2005 Nevada Department of Taxation advisory
opinion. *See also* App’x E at DEFSAPP_0054 (Joe Schoenmann, *Travel Web Sites: Partner or
Customer? Officials Consider Suing Over Room Taxes*, Las Vegas Sun (Nov. 7, 2009)) (discussing
the advisory opinion and noting that “the Nevada Tax Commission nixed the idea [of bringing suit
against the OTCs] in 2005”); *Video of Board of County Commissioners of Clark County, NV
Meeting Minutes*, (Nov. 17, 2009, Item No. 98, minute mark 33:20–35:02), App’x F
https://clark.granicus.com/MediaPlayer.php?view_id=17&clip_id=1658&meta_id=287610#)
(Commissioner Giunchigliani stating that the “issue of room tax and collections and outside OTC
... has been bandied around probably back and forth for about four or five years” and noting the
2005 Nevada Department of Taxation advisory opinion).

1 **B. The News Media Have Widely Reported the Transient Lodging Tax Issue**
2 **Raised in the Complaint**

3 For almost two decades, the media have been reporting on allegations of under-remittance
4 of transient lodging tax on fees charged by OTCs. Many of the media reports pertain to Clark
5 County administrative hearings in which these precise issues were debated (and rejected).

6 Defendants do not present these public disclosures as evidence of their actual practices.
7 Indeed, many of the media reports inaccurately describe Defendants' business model and practices.
8 The salient point here, however, is that the same allegations about the non-payment of room taxes
9 were publicly disclosed in these media reports.

10 A chronological summary demonstrates the breadth and relatedness of the public
11 disclosures:⁹

- 12 • In October 2003, the *Las Vegas Review-Journal* reported (incorrectly) that
13 OTCs, such as Expedia.com, Hotels.com and Hotwire.com, "routinely buy
14 rooms from Las Vegas-Area hotels at discount rates before reselling them to
15 consumers at marked up prices ***without paying required room taxes on the***
16 ***mark-up.***" App'x G at DEFSAPP_0058 (Chris Jones, *Travel Web Sites Draw*
17 *Board's Ire*, *Las Vegas Review-Journal* (Oct. 15, 2003)) (emphasis added).
18 Contrary to this article, the OTCs have never bought and re-sold hotel rooms.
- 19 • In February 2004, *In Business Las Vegas* reported that Clark County had been
20 "mulling the issue" of taxation "associated with online hotel room bookings ...

21 ⁹ While the Complaint's tax issue was widely and publicly disclosed in Nevada, the issue also
22 received national media attention. For instance, in December 2002, the New York Times reported
23 that a growing number of tax officials in state and local governments were reviewing the OTCs'
24 business model and "preparing to demand that taxes be collected on the full amount paid for the
25 rooms by the customers who book them using Web sites." App'x I at DEFSAPP_0075 (Saul
26 Hansell, *Experts Contend Travel Sites May Skimp on Hotel Taxes*, *The New York Times* (Dec. 23,
27 2002)); see also App'x H at DEFSAPP_0062 (Michael Mazerov, *State and Local Governments*
28 *Should Close Online Hotel Tax Loophole and Collect Taxes Owed*, Center on Budget and Policy
Priorities (Apr. 12, 2011)) ("[A]n OTC retains an extra [amount] in revenue by paying taxes only
on a [] wholesale room charge while setting the 'taxes and services' fee at a level sufficient to cover
the taxes that would have been due on the [] retail room charge."); App'x J at Julia Glick, *Major*
Cities File Lawsuits Against Online Travel Agents, *Midland Reporter-Telegram* (May 11, 2006);
App'x K (David Segal, *Discount Hotel Rates Raise Question of a Tax Dodge*, *The New York Times*
(Aug. 27, 2011)).

1 for close to a year.” App’x A at DEFSAPP_0001 (Richard N. Velotta, *Online*
2 *Booking Taxation Issues Percolating*, In Business Las Vegas (Feb. 13, 2004)).

- 3 • In January 2006, the *Las Vegas Sun* reported that the Clark County Commission
4 “took a close look” at whether to file a lawsuit against the OTCs in Spring 2005
5 and declined to do so. App’x B at DEFSAPP_0004 (Richard N. Velotta, *County*
6 *Chooses not to Sue*, Las Vegas Sun (Jan. 19, 2006)). That article further
7 reported that the Clark County Commissioners declined two Las Vegas
8 attorneys’ requests to file a lawsuit against the OTCs to recover taxes, despite
9 those attorneys’ assertions that the OTCs “shortchange taxing authorities with
10 their sales methods ... [by] pay[ing] taxes only on the discounted nightly room
11 rates they negotiate with resorts.” *Id.* at DEFSAPP_0005. According to the
12 article, the Taxation Department’s executive director Charles Chinnock agreed
13 with others that “the fees charged by the Internet travel operators are not subject
14 to room occupancy taxes.” *Id.* at DEFSAPP_0004.
- 15 • In May 2006, the *Reno Gazette-Journal* reported on cases alleging claims for
16 lost tax revenue against OTCs, such as Expedia, Travelocity, Orbitz, and
17 Priceline.com, in jurisdictions outside of Nevada. App’x L (Julia Glick, *Cities*
18 *Suing Web Travel Sites for Taxes*, Reno Gazette-Journal (May 13, 2006)).
- 19 • In August 2009, the *Ralston Sun* reported that the Clark County Commission,
20 through a public meeting, was again considering whether to file a lawsuit
21 against the OTCs. App’x M (Jon Ralston, *Weighing the Pros and Cons of Clark*
22 *County Suing Web Sites for Room Tax Revenue*, Ralston Sun Columns (Aug. 2,
23 2009)).
- 24 • In November 2009, the *Las Vegas Review-Journal* reported that Clark County
25 Commissioners would “discuss on Nov. 17 whether they should hire an attorney
26 to represent the county in a lawsuit” and that they had declined to do so three
27 years prior. App’x N at DEFSAPP_0090 (Scott Wyland, *Tax Issues May Spur*
28

1 *Lawsuit*, Las Vegas Review-Journal (Nov. 7, 2009)).

- 2
- 3 • In November 2009, the *Las Vegas Sun* reported that “Clark County
- 4 commissioners, prodded by lawyers, are now considering joining the march into
- 5 court [against the OTCs]” and that “[t]he issue was raised several years ago ...
- 6 but it failed to gain traction with the county commissioners.” App’x E at
- 7 DEFSAPP_0053, 0055 (Joe Schoenmann, *Travel Web Sites: Partner or*
- 8 *Customer? Officials Consider Suing Over Room Taxes*, Las Vegas Sun (Nov.
- 9 7, 2009)).
- 10 • In November 2009, the *Las Vegas Review-Journal* reported: “Even though state
- 11 tax officials issued an opinion in 2005 that these Web-based outfits are not
- 12 doing anything wrong, lawyers are whispering to cash-strapped commissioners
- 13 that the lawsuit lottery is ripe for a payout.” App’x O at DEFSAPP_0094
- 14 (*Pound Foolish*, Las Vegas Review-Journal (Nov. 10, 2009)).
- 15 • On November 17, 2009, the Clark County Commissioners considered whether
- 16 to direct the District Attorney to solicit requests for proposals from local law
- 17 firms interested in taking legal action to collect unpaid room taxes from the
- 18 OTCs. The publicly-available meeting minutes document these events. App’x
- 19 C, *Bd. of Cty. Comm’rs of Clark Cty., NV Meeting Minutes*, (Nov. 17, 2009),
- 20 https://clark.granicus.com/MinutesViewer.php?view_id=18&clip_id=1672.
- 21 • Video from the same 2009 Clark County Commission hearing shows express
- 22 consideration of the OTC allegations. *Video of Bd. of Cty. Comm’rs of Clark*
- 23 *Cty., NV Meeting Minutes*, (Nov. 17, 2009),
- 24 [https://clark.granicus.com/MediaPlayer.php?view_id=17&clip_id=1658&met](https://clark.granicus.com/MediaPlayer.php?view_id=17&clip_id=1658&meta_id=287610#)
- 25 [a_id=287610#](https://clark.granicus.com/MediaPlayer.php?view_id=17&clip_id=1658&meta_id=287610#), Item No. 98, hour and minute mark 1:09:45–1:10:17 (Mr.
- 26 Wolens stating he “ha[d] been asked to represent other governments on the East
- 27 Coast and the West Coast and all places in between” against the OTCs); *see*
- 28 *also id.* at 1:12:40–1:15:28 (Mr. Wolens inaccurately, but publicly describing

1 the OTCs’ business model, stating “[t]hese are claims where the online travel
2 company, under the merchant model, buys the room wholesale, marks it up to
3 a retail price, and then sells it to the consumer, all of which is legal” and noting
4 that OTCs remit taxes only on the wholesale price of the room).

- 5 ○ After hearing from the Las Vegas Convention and Visitors
6 Authority, the Nevada Resort Association, and Expedia about the
7 various benefits OTCs bring to Nevada, the Commission again
8 declined to take any action. *Id.* at 1:26:16–1:26:31 (Commissioner
9 Brown stating, “I think we may be ... stepping over dollars to try to
10 get pennies”); *id.* at 1:31:37–1:32:40 (Commissioner Sisolak noting
11 the jobs OTCs bring to Las Vegas and stating, “I really don’t favor
12 moving forward today”).
- 13 • In November 2009, the *Las Vegas Review-Journal* reported on the November
14 17, 2009 Clark County Commissioners’ meeting. App’x. P at DEFSAPP_0096
15 (Scott Wyland, *County Won’t Sue Online Firms to Get Room Taxes*, Las Vegas
16 Review-Journal (Nov. 18, 2009)) (“Clark County commissioners expressed
17 little appetite Tuesday to go after online travel companies for unpaid room
18 taxes.”)
- 19 • In November 2009, *The Associated Press* issued a news alert about the
20 Commission’s consideration of whether to file suit against the OTCs. App’x Q
21 (*Clark County Commission Looks at Unpaid Room Taxes*, The Associated Press
22 (Nov. 18, 2009)).
- 23 • In February 2010, the *Las Vegas Sun* reported on the 2009 Clark County
24 Commissioners’ decision not to sue the OTCs over the hotel tax issue. App’x
25 R at DEFSAPP_0100 (Joe Schoenmann, *Perhaps it Was Prescient not to Sue*
26 *Travel Sites After All*, Las Vegas Sun (Feb. 7, 2010)) (“Commissioners
27
28

1 overwhelmingly decided against suing [the OTCs in November 2009]”).¹⁰

2
3 Each of these news reports, whether individually or combined with others, is more than
4 sufficient to establish that the allegations and transactions set forth in the Complaint were disclosed
5 publicly well prior to Relators’ suit and therefore trigger the public disclosure bar in NRS 357.100.
6 *See, e.g., Hong*, 2016 WL 8929246, at *5 (“Information publicly available on the Internet generally
7 qualifies as ‘news media.’”); *United States ex rel. Carter v. Bridgeport Educ., Inc.*, No. 10-cv-1401,
8 2015 WL 4892259, at *6 n.4 (S.D. Cal. Aug. 17, 2015) (finding that an online comment to a news
9 article on the San Diego Reader website qualified as a public disclosure as news media); *United*
10 *States ex rel. Green v. Serv. Contract Educ. & Training Tr. Fund*, 843 F. Supp. 2d 20, 32 (D.D.C.
11 2012) (“The [False Claims Act] does not define ‘news media,’ and courts that have considered the
12 issue have construed the term to include readily accessible websites.”); *see also My Left Foot*, 2017
13 WL 1902159 at *7 (finding Nevada State Board of Physical Therapy Examiners’ meeting
14 constituted “an administrative hearing under the [False Claims Act’s] public disclosure bar”).¹¹

15 Moreover, media coverage of the same allegations in this lawsuit extended nationwide as
16 other jurisdictions considered (and in some cases acted upon) similar allegations regarding taxation
17 of OTCs.¹² This media coverage has included articles from both traditional media and tax-specific

18 ¹⁰ Notably, there have been no meaningful changes to Clark County’s transient lodging tax that
19 would alter the Commission’s prior consideration. Both in 2009 and today, the relevant tax was
20 based on the “gross receipts” received, which is (and consistently has been) defined as the “total
21 amount of rent received and any forfeited deposits valued in money, whether accepted in money or
otherwise, received *by operators* from occupants of a transient lodging establishment.” CCC §
4.08.005(8) (emphasis added).

22 ¹¹ The industry-wide scope of Relators’ allegations does not alter application of the public
23 disclosure bar. *See United States ex rel. Gear v. Emergency Medical Associates of Illinois, Inc.*,
436 F.3d 726, 728 (7th Cir. 2006) (rejecting “argument that for there to be public disclosure, the
24 specific defendants named in the lawsuit must have been identified in the public records” because
“[t]he disclosures at issue here were of industry-wide abuses and investigations.”); *Natural Gas*
25 *Royalties*, 562 F.3d 1032, 1042-43 (10th Cir. 2009) (holding that where public disclosures “named
a significant percentage of industry participants as wrongdoers and indicated that others in the
26 industry were very likely engaged in the same practices,” such disclosures “were sufficient to set
the government on the trail of the fraud as to all Defendants”).

27 ¹² *See supra* n. 9. *See also, e.g., App’x S* (Joseph Henchman, *Taxation of Online Travel Services:*
28 *Lawsuits Generally Not Succeeding in Effort to Expand Hotel Taxes to Online Travel Services*, Tax
Found. (May 2012, No. 198)); *App’x T* (Robert Wilonsky, *Appeals Court Tosses Hotels.com Tax*
Case That Would Have Meant Millions for Texas Cities, The Dallas Morning News (Dec. 1, 2017));

1 media outlets discussing the claims in lawsuits brought by specific jurisdictions.¹³ Over the years,
2 recognizing that their tax laws (like the one here) do not cover the OTCs' compensation, some
3 jurisdictions amended their tax laws, prompting yet more media coverage.¹⁴

4 Against this overwhelming record, there can be no dispute that the Complaint's allegations
5 are "substantially based on the same allegations that have been disclosed publicly" and that the
6 NFCA's public disclosure bar therefore requires dismissal of the NFCA claim in the Complaint.
7 *See My Left Foot*, 2017 WL 1902159, at *7 (recognizing that to satisfy the "allegations or
8 transactions" component, "there does not need to be an explicit allegation of fraud, rather, the public
9 disclosure bar is met so long as the 'critical elements of the fraudulent transaction' are disclosed in
10 the public domain") (quoting *Hagood v. Sonoma Cty. Water Agency*, 81 F.3d 1465, 1473 (9th Cir.
11 1996)). The following chart—a side-by-side comparison of the Complaint allegations and just a
12 small subset of the public disclosures—illustrates that the NFCA allegations are **based upon** public
13 disclosures and that dismissal is required.¹⁵

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16
17 App'x U (Scott Holland, *Appeals Panel Grants Win to Expedia, Other Travel Websites in Fight*
18 *With Cities Over Hotel Taxes*, Cook County Record (Nov. 29, 2017)); App'x V (Brendan
19 Farrington, *Supreme Court: Surcharge on Travel Websites isn't Taxable*, The St. Augustine Record
20 (June 11, 2015)); App'x W (Jerry DeMarco, *Lyndhurst Can't Sue Priceline for Hotel Taxes, Judges*
21 *Rule*, Rutherford Daily Voice (Aug. 3, 2011)); App'x X (Jeff D. Gorman, *Travel Websites Don't*
22 *Have [to] Shell Out the Tax*, Courthouse News Service (May 11, 2011)); App'x Y (Noah Klug,
23 *Mountain Law: Breckenridge Loses Effort to Make Online Travel Companies Pay Hotel Taxes*,
24 *Summit Daily* (Feb. 27, 2018)).

25
26 ¹³ See, e.g., App'x Z at (Kathy Bergen, *Hotel Markups a Taxing Issue*, Chicago Tribune (Nov. 6,
27 2003)); App'x AA (Jonathan D. Glater, *Cities and States Press Travel Sites to Collect Hotel Taxes*,
28 The New York Times (Feb. 16, 2009)); App'x S (Joseph Henchman, *Taxation of Online Travel*
Services, Lawsuits Generally Not Succeeding in Effort to Expand Hotel Taxes to Online Travel
Services, Tax Foundation Special Report (May 2012, No. 198)); App'x BB (Reid Wilson, *Hotels,*
Online Sites Fight Over Travel Tax Burden, The Washington Post (Oct. 5, 2013)); App'x CC
(Roxanne Bland, *Litigation Surrounding Online Travel Companies*, Tax Notes (Jan. 23, 2017)).

¹⁴ See, e.g., App'x DD (*Summary of Legislative Changes*, Rhode Island Department of Revenue,
Division of Taxation (July 22, 2015)); App'x EE (David Rani, *Wake, Other NC Counties now*
Collecting Once-Disputed Tax, The News & Observer (Aug. 20, 2014)).

¹⁵ All emphases in the chart are added.

Complaint Allegations	Public Disclosures
<p>“Defendants contract with hotels for the right to purchase rooms at discounted or “wholesale” prices. Defendants then sell the rooms to the public through their internet sites or toll-free numbers at marked-up, “retail” prices, plus certain “tax recovery and fees.” Compl. ¶ 4.</p> <p>“Defendants negotiate with hotels and/or hotel chains for rooms at discounted room rates, then make their inventory of rooms available for rent to customers on web-based search engines at marked-up retail prices.” Compl. ¶ 42.</p>	<p>“[T]hird-party Web sites, routinely buy rooms from Las Vegas-area hotels at discount rates before reselling them to consumers at marked up prices without paying required room taxes on the mark-up.” App’x G at DEFSAPP_0058 (Chris Jones, <i>Travel Web Sites Draw Board’s Ire</i>, Las Vegas Review-Journal (Oct. 15, 2003)).</p> <p>“San Antonio believes online travel agencies negotiate room discounts from hotels, and sell the rooms at a markup to consumers.” App’x L at DEFSAPP_0086 (Julia Glick, <i>Cities Suing Web Travel Sites for Taxes</i>, Reno Gazette-Journal (May 13, 2006)).</p> <p>“Clark County might sue online travel companies such as Expedia and Orbitz.... The agencies pay the 12 percent lodging tax on rooms they buy wholesale from hotels but not on the marked-up prices they charge customers online.” App’x N at DEFSAPP_0090 (Scott Wyland, <i>Tax Issues May Spur Lawsuit</i>, Las Vegas Review-Journal (Nov. 7, 2009)).</p> <p>“At issue is the amount of hotel room taxes paid by online travel sites. They obtain blocks of rooms at wholesale prices from hotels and pay lower room taxes on those lower prices, but they are selling those rooms at higher prices.” App’x E at DEFSAPP_0053 (Joe Schoenmann, <i>Travel Web Sites: Partner or Customer? Officials Consider Suing Over Room Taxes</i>, Las Vegas Sun (Nov. 7, 2009)).</p>
<p>“Defendants charge the customers’ credit cards for the entire amount, which includes the retail price of the room and amounts sufficient to pay occupancy taxes on the retail price of the rooms. The hotels in turn invoice Defendants for the rooms at the discounted price and the applicable occupancy tax rate on the discounted rate.” Compl. ¶ 4.</p> <p>“For example, an online travel company such as Travelocity, Inc. obtains a room from a hotel at a previously negotiated wholesale price of, for instance \$150. Travelocity, Inc. in turn sells that same hotel room to an occupant over the internet for \$200. Because Travelocity, Inc. controls the occupancy of the hotel room, the</p>	<p>“For example, Forbuss said Expedia could purchase a room from a local hotel operator for \$50 per night before selling the same room to a consumer for \$100. Though state law typically requires a 9 percent fee on such a transaction, Forbuss said companies such as Diller’s routinely pay only \$4.50, or 9 percent of this example’s original \$50 transaction value.” App’x G at DEFSAPP_0058 (Chris Jones, <i>Travel Web Sites Draw Board’s Ire</i>, Las Vegas Review-Journal (Oct. 15, 2003)).</p> <p>“At issue was the company’s practice of purchasing large blocks of rooms at a discounted rate and paying tax on the wholesale rate instead of the retail rate</p>

1 amount due to the city by law in this example
2 is the applicable percentage of \$200, or
3 AMOUNT. Travelocity, Inc., however, **remits**
4 **the transient occupancy tax based on the**
5 **lower wholesale price of \$150**, thus creating a
6 loss of AMOUNT to the state for that sale
7 alone.” Compl. ¶ 5.

8 “Defendants remit taxes to the State **based on**
9 **the lower, discounted room rates** that
10 Defendants negotiated with hotels.
11 Defendants **have failed to remit the transient**
12 **lodging tax on the full amount of rent**
13 **charged** to guests that is due and owing to the
14 State of Nevada.” Compl. ¶ 46.

charged to customers.” App’x A at
DEFSAPP 0001 (Richard N. Velotta, *Online*
Booking Taxation Issues Percolating, In
Business Las Vegas (Feb. 13, 2004)).

“The Internet operators, the lawyers argue,
shortchange taxing authorities with their sales
methods. The operators, they note, **pay taxes**
only on the discounted nightly room rates
they negotiate with resorts -- not on the service
fees and other administrative costs added that
produce the travel firms’ profit and defray their
expenses.” App’x B at DEFSAPP_0005
(Richard N. Velotta, *County Chooses not to*
Sue, Las Vegas Sun (Jan. 19, 2006)).

“The agencies, though, **only pay hotel taxes on**
the wholesale price. ‘This scheme is being
perpetrated by the Web-based hotel travel
companies on every city and state in the
country as far as we can tell,’ said Steve
Wolens, a lawyer representing the city of San
Antonio.” App’x L at DEFSAPP_0086 (Julia
Glick, *Cities Suing Web Travel Sites for Taxes*,
Reno Gazette-Journal (May 13, 2006)).

“The issue, **which has been percolating for**
years, is starting to bubble up again on Grand
Central Parkway as county commissioners
may soon be asked to sue Internet travel sites
to recoup room tax revenue lost because of a
differential between what Expedia & Co. pay
for blocks of rooms and what they sell them for
to customers. That is, **the companies buy**
blocks of rooms for \$100 each, sell them for,
say \$150, and pay the room tax only on the
\$100.” App’x M at DEFSAPP_0088 (Jon
Ralston, *Weighing the Pros and Cons of Clark*
County Suing Web Sites for Room Tax
Revenue, Ralston Sun Columns (Aug. 2,
2009)).

“Internet companies like Expedia, Travelocity
and Orbitz **pay local taxes on hotel rooms they**
buy wholesale but none on the marked-up
prices they charge customers.” App’x P at
DEFSAPP_0096 (Scott Wyland, *County*
Won’t Sue Online Firms to Get Room Taxes,
Las Vegas Review-Journal (Nov. 18, 2009)).

27 Based on this exhaustive record, the NFCA claim must be dismissed pursuant to the
28 NFCA’s public disclosure bar.

1 **II. The NFCA Claim Must be Dismissed Because the Count Does Not Plead Fraud with**
2 **the Particularity Required by Rule 9(b)**

3 Separate and apart from the public disclosure bar,¹⁶ the NFCA count is deficient and must
4 be dismissed for failure to meet the pleading requirements of N.R.C.P. Rule 9(b). *See Nevada ex*
5 *rel. Hager v. Countrywide Home Loans Servicing, LP*, 812 F. Supp. 2d 1211, 1218-19 (D. Nev.
6 2011) (finding that Rule 9(b) requires a plaintiff to “set forth *more* than the neutral facts necessary
7 to identify the transaction” and to “set forth what is false or misleading about a statement, and why
8 it is false,” including “the who, what, when, where, and how of the misconduct charged”) (internal
9 quotations and citations omitted) (emphasis added). A claim under the NFCA that does not meet
10 this standard is subject to dismissal for failing to state a claim for relief. *See Morris v. Bank of Am.*
11 *Nevada*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994). When evaluating the sufficiency of
12 pleadings, courts need not blindly accept a complaint’s conclusory allegations, unwarranted factual
13 deductions, or unreasonable inferences. *See State v. Cellco P’ship*, No. CV12-03093, 2019 Nev.
14 Dist. LEXIS 972, at *5 (2d Judicial D. Nev., Washoe Cty., Oct. 10, 2019) (“The Court is not
15 required to give credence to conclusory or speculative allegations.”) (citing *Bell Atl. Corp. v.*
16 *Twombly*, 550 U.S. 544, 555 (2007); *see also Norberg v. Nev. Ctr. for Dermatology*, No. CV20-
17 01218, 2020 Nev. Dist. LEXIS 742, at *5 (D. Nev. Oct. 20, 2020) (citing *Sprewell v. Golden State*
18 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)).

19 Here, the NFCA count fails to meet this standard. Tellingly, the “Factual Allegations” in
20 the Complaint – against 22 individually named Defendants and supposedly supporting six distinct
21 causes of action – comprise a mere 12 paragraphs in total and occupy less than one and a half pages
22 of Relators’ 11-page Complaint. (Compl. ¶¶ 36-47).

23 **A. The NFCA Count Fails to Distinguish Among Defendants**

24 The Complaint asserts NFCA violations against “Defendants” collectively—lumping
25 together all of the named Defendants—without specifying any particular conduct, at any time, by
26 any one of them. (*See, e.g.*, Compl. ¶¶ 31, 41-47, 50-54). The Complaint mentions each Defendant

27 ¹⁶ If the Court dismisses the NFCA claim under the “public disclosure bar” for the reasons stated
28 above, the Court need not reach these additional grounds for dismissal of Count One.

1 by name only twice: one time in the case caption and one time in a paragraph in the “Parties and
2 Jurisdiction” section of the Complaint. (*See id.* ¶¶ 8-29, 31, 34). Neither the “Factual Allegations”
3 section nor any other portion of the Complaint mentions any Defendant by name. Fraud allegations
4 that “lump” defendants “together and baldly” make assertions that the defendants committed fraud
5 do not pass muster under Rule 9(b). *See Minnick v. Wittman*, No. A-17-763808-B, 2019 Nev. Dist.
6 Lexis 216, at *9-10 (8th Judicial D. Nev., Clark Cty, Mar. 25, 2019) (dismissing claim that “‘merely
7 lump[s] multiple defendants together,’ because [Federal] Rule 9(b) ‘require[s] plaintiffs to
8 differentiate their allegations when suing more than one defendant’” and noting that this “pleading
9 tactic does not satisfy Rule 9(b)”) (quoting *Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir.
10 2007); *United States v. Corinthian Colleges*, 655 F.3d 984, 997-98 (9th Cir. 2011) (“Rule 9(b) does
11 not allow a complaint to merely lump multiple defendants together but requires plaintiffs to
12 differentiate their allegations when suing more than one defendant and inform each defendant
13 separately of the allegations surrounding his alleged participation in the fraud.”); *see also Ferris v.*
14 *Wynn Resorts Ltd.*, 462 F. Supp. 3d 1101, 1129 (D. Nev. 2020) (holding that under Rule 9(b)—
15 federal counterpart to Nevada’s Rule 9(b)—plaintiffs “must differentiate their allegations as to each
16 Defendant and refrain from lumping multiple Defendants together”). Given that the Complaint
17 does not allege a conspiracy or joint scheme among the Defendants, this lack of individualized
18 pleading against each Defendant is fatal and mandates dismissal of the NFCA claim. The mere fact
19 that Relators chose to combine all Defendants into one “mass action” NFCA complaint does not
20 excuse this pleading shortcoming.

21 Because the Complaint makes fraud allegations against 22 distinct named Defendants, it
22 must plead the particulars of the supposed NFCA violations as to each Defendant. Because the
23 Complaint fails to do so, the Court has an independent ground for dismissing the NFCA allegations
24 in their entirety.

25 **B. The Complaint Also Fails to Specify When Any Violation Allegedly Occurred**

26 The Complaint also fails to specify when any supposed violation occurred. The Complaint
27 makes vague references to alleged violations having occurred at “all relevant times” (*see, e.g., id.*
28 ¶ 47), whatever that might mean, but it does not specify any day, month, year, or even a range of

1 years when the supposed wrongdoing took place, let alone when each Defendant supposedly
2 committed any violation. In fact, the Complaint never once identifies any date at all, for any
3 purpose. This omission highlights the lack of specificity that Relators have about the activities of
4 Defendants, including any alleged fraud, and their lack of diligence before bringing suit and
5 accusing Defendants of fraud. *See Hager*, 812 F. Supp. 2d at 1219 (complaint that “generally states
6 that Defendants committed fraud in the five years proceeding” insufficient under Rule 9(b)); *see*
7 *also Ferris*, 462 F. Supp. 3d at 1119 (“To comply with the rule, the complaint must state with
8 particularity the circumstances constituting the fraud, including an account of the time. . .”) (internal
9 citation omitted); *United States v. Safran Grp.*, No. 15-CV-00746-LHK, 2017 WL 235197, at *10-
10 11 (N.D. Cal. Jan. 19, 2017) (allegation that fraudulent sales were made “[o]ver the last eight
11 years,” without any supporting information as to when misrepresentations as opposed to sales
12 occurred or specifics as to when sales were made to which entities, is insufficient); *Ryan v.*
13 *Microsoft Corp.*, 147 F. Supp. 3d 868, 888 (N.D. Cal. 2015) (allegations that fraudulent
14 misrepresentations occurred “in 2011 and 2012” and “in approximately 2008” are insufficient under
15 Rule 9(b)).

16 **C. The Complaint Does Not Identify Any Specific Misconduct**

17 The Complaint also fails to satisfy Rule 9(b) because it lacks particulars as to any specific
18 violation. Relators do not identify a single, specific transaction – improper or otherwise. And they
19 do not identify a single instance in which an actual “obligation” arose to pay some tax that any
20 Defendant avoided at all, let alone knowingly avoided. Rather, the Complaint proclaims that
21 Defendants “engaged in a practice to evade payment of substantial amounts of taxes on rent charged
22 to customers” (Compl. ¶ 53), without ever identifying a single transaction in which monies properly
23 owed to Clark County were not paid in full. This type of pleading falls far short of what is required
24 by Rule 9(b). *See Hager*, 812 F. Supp. 2d at 1219 (Rule 9(b)’s particularity requirement not met
25 as to NFCA claim where complaint “simply provide[d] that at some point in time all of these
26 Defendants filled out forms, made false statements, and avoided paying taxes”); *see also United*
27 *States ex rel. Mateski v. Raytheon Co.*, 745 F. App’x 49, 50 (9th Cir. 2018) (finding particularity
28 requirement not satisfied as to “what,” “when,” and “how” when relator alleged for an eight-year

1 period that defendants failed to perform tests but failed to identify which specific tests, on which
2 specific component parts, and how tests were not performed).

3 **III. The NFCA Count Fails to Allege Scienter**

4 The NFCA count also fails to adequately plead scienter—a required element of the
5 supposed violation—providing an additional independent ground for dismissal of the NFCA claim.
6 As the Nevada Supreme Court has explained, “if a pleader cannot allege definitely and in good
7 faith the existence of each element of his claim, it is difficult to see why this basic deficiency should
8 not be exposed at the point of minimum expenditure of time and money by the parties and the
9 court.” *Danning v. Lum’s Inc.*, 86 Nev. 868, 869, 478 P.2d 166, 167 (1970); *see also Stockmeier*
10 *v. Nev. Dep’t of Corr. Psychological Review Panek*, 124 Nev. 313, 316, 186 P.3d 133, 135 (2008).

11 One element of a “reverse” false claim is the “knowledge,” or scienter, requirement. NRS
12 357.040(2)(a)-(c). The Nevada Supreme Court has explained the NFCA’s scienter requirement and
13 how it applies when the allegation is based on supposed violation of the tax laws:

14 Reverse false claims are intended to apply to situations in which it
15 is discovered that a person “knowingly” exploited a false record to
16 conceal, avoid or decrease an obligation to pay. A person acts
17 knowingly with respect to information if he: (a) Has knowledge of
18 the information; (b) Acts in deliberate ignorance of whether the
19 information is true or false; or (c) Acts in reckless disregard of the
20 truth or falsity of the information. So as to avoid punishing honest
21 mistakes or incorrect claims submitted through mere negligence, the
22 requisite scienter has been defined as the knowing presentation of
23 what is known to be false. And known to be false does not mean
24 either to take advantage of a disputed legal question, or scientifically
25 untrue; it means a lie.

26 In many cases, allegations that a taxpayer has failed to pay the
27 correct amount of taxes due under the revenue statutes invoke a
28 good-faith dispute regarding the application of the law to particular
factual circumstances; in other words, the allegations amount to no
more than mere accusations that the taxpayer has taken advantage
of a disputed legal question. To resolve such allegations, the revenue
statutes’ application to the matter’s factual circumstances must be
evaluated.

But, as this court has previously pointed out, the determinations of
fact-based legal issues under the tax statutes should not be made by
the courts; rather, those determinations are best left to the

1 Department of Taxation, which can utilize its specialized skill and
2 knowledge to inquire into the facts of the case.

3 *Int'l Game Tech., Inc.*, 122 Nev. at 156-57 (internal quotations and citations omitted). In other
4 words, an NFCA violation cannot be established in the absence of factual allegations establishing
5 that the Defendant had actual knowledge that the underlying regulation—particularly a tax code
6 provision—was being violated. See *United States ex rel. Complin v. N.C. Baptist Hosp.*, 818 Fed.
7 Appx. 179, 183 (4th Cir. 2020) (holding that “a general and conclusory allegation that [defendants]
8 ‘knowingly’ submitted false claims” is not enough and that “[a]n FCA plaintiff must do more,
9 ‘set[ting] forth specific facts that support an inference’ of scienter” under Federal Rule 12(b)(6))
10 (internal citations omitted).

11 Relators have not, and cannot, allege such facts and have admitted as much in their
12 Complaint. In fact, Count Six of the Complaint expressly states that there is a ripe “dispute” as to
13 “the interpretation of Nevada’s combined transient lodging tax.” Compl. ¶ 73. As such, by
14 Relators’ own contentions, the NFCA count fails to plausibly allege that each Defendant took
15 actions that it knew were false or a lie, in accordance with the standard set forth in *International*
16 *Game Technology*. 112 Nev. at 157-58. Further evidence that the supposed tax violation that is
17 the basis for Relators’ NFCA claim is simply a disputed legal question is the fact that over the past
18 several years numerous courts across the country have considered whether OTCs are subject to
19 state regulations or local ordinances imposing transient lodging taxes—some of them even
20 involving the same “operator” definition and “managing agent” reference as contained in § 4.08.¹⁷

21 ¹⁷ These courts uniformly have held that OTCs are not “operators” or “managing agents” for
22 purposes of tax liability under the tax laws or ordinances at issue. See, e.g., *Pitt Cty. v. Hotels.com,*
23 *L.P.*, 553 F.3d 308, 313 (4th Cir. 2009) (affirming district court’s motion to dismiss action because
24 OTCs are not subject to Pitt County occupancy tax); *City of Columbus v. Hotels.com, L.P.*, 693
25 F.3d 642, 648-49 (6th Cir. 2012) (“conclud[ing] that the district court correctly dismissed [under
26 Rule 12(b)(6)] the localities’ claim that the online travel companies violated each of the localities’
27 tax laws to the extent the claim was based on the theory that the online travel companies have a
28 collection obligation under the adopted tax ordinances, regulations, or resolutions”); *State of New*
Hampshire v. Priceline.com, Inc., 206 A.3d 333, 340 (N.H. 2019) (OTCs were not “operators”
under the New Hampshire Meals and Rooms Tax Law); *Vill. of Bedford Park v. Expedia, Inc.*, 876
F.3d 296, 303-05 (7th Cir. 2017) (affirming that OTCs had no duty to collect or remit hotel
occupancy taxes under various Illinois municipal ordinances); *In re Transient Occupancy Tax*
Cases, 2018 WL 2327523, slip op. (Cal App. 2d Dist. May 23, 2018), review denied (Aug. 29,
2018) (OTCs are not “operators” under San Francisco’s transient occupancy tax statute). Notably,
these case cases—all decided in the OTCs’ favor—were brought by governments seeking to

1 Even if the Clark County tax provision at issue were interpreted as applying to OTCs,
2 Relators have failed to allege any facts indicating that Defendants knew that their interpretation of
3 that provision was false. *See Cellco P'ship*, 2019 Nev. Dist. LEXIS 972, at *8 (NFCA claim “is
4 not appropriate where a defendant follows a reasonable interpretation” of contractual term upon
5 which NFCA violation is based); *United States ex rel. Oliver v. Parsons Co.*, 195 F.3d 457, 464
6 (9th Cir. 1999) (holding that a defendant’s reasonable interpretation, even if it determined to be
7 incorrect, “forecloses the possibility that the scienter requirement is met” for a False Claims Act
8 claim); *Hagood*, 81 F.3d 1478 (“[T]o take advantage of a disputed legal question, as may have
9 happened here, is to be neither deliberately ignorant nor recklessly disregardful.”).

10 Under these circumstances, Count One must be dismissed for the additional reason that the
11 Complaint does not plausibly allege that any Defendant acted with the requisite scienter to establish
12 NFCA liability.

13 **IV. Counts Two Through Six Must Be Dismissed Because Relators Have No Standing to**
14 **Bring Them**

15 The Complaint purports to assert causes of action against each Defendant for conversion
16 (Count Two), unjust enrichment (Count Three), constructive trust (Count Four), consumer fraud
17 under the DTPA (Count Five), and declaratory judgment (Count Six). Each of these Counts must
18 be dismissed for lack of standing because the NFCA does not authorize *qui tam* relators to bring
19 any non-NFCA claims on behalf of the State or any political subdivision (including any counties).
20 The Complaint does not allege that either Relator has sustained personal injury or damage arising
21 from the alleged conduct by Defendants. Instead, Relators purport to act solely on behalf of the
22 government in their capacity as *qui tam* plaintiffs under the NFCA, as reflected in the Complaint.
23 *See* Compl. ¶ 30 (expressly relying on the NFCA as the predicate for all of Relators’ causes of
24 action and stating that “NRS 357.080(1) authorizes private persons to bring civil actions on behalf
25 of themselves and on behalf of the State of Nevada.”).

26
27
28 enforce their own tax laws and ordinances, unlike this case in which Relators are purporting to act
on the State’s behalf (after the Nevada Attorney General declined to intervene in the case).

1 But the NFCA only permits private citizens to “bring a civil action for a violation of NRS
2 357.040” on behalf of the State and/or its political subdivisions. NRS 357.080.1. As such, and as
3 the Supreme Court has recognized, the partial assignment of rights by the government under a false
4 claims act statute is limited. *See Vermont Agency of Natural Resources v. United States ex rel.*
5 *Stevens*, 529 U.S. 765, 773 (2000) (stating that “[t]he [False Claims Act] can reasonably be
6 regarded as effecting a partial assignment of the Government's damages claim”). Neither Nevada,
7 nor any political subdivision thereof, has assigned to Relators the right to pursue any other claims
8 on their behalf.

9 Because Relators do not have standing to pursue any of the non-NFCA claims on behalf of
10 the government and the Complaint does not allege that Relators themselves have suffered any
11 personal injuries that might otherwise confer standing, Counts Two through Six of the Complaint
12 must be dismissed pursuant to N.R.C.P. Rule 12(b)(1).

13 **CONCLUSION**

14 For the reasons above, Defendants respectfully request that the Court dismiss Relators’
15 Complaint. And because any attempt to cure the deficiencies herein would be futile, the Complaint
16 should be dismissed with prejudice.

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18 [Signature On Following Page]
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1 Dated: March 5, 2021

2 Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

2 I certify that on March 5, 2021, I served the foregoing **MOTION TO DISMISS BY**
3 **DEFENDANTS ORBITZ WORLDWIDE, LLC, ORBITZ, LLC, ORBITZ, INC.,**
4 **TRAVELSCAPE LLC, TRAVELOCITY, INC., CHEAP TICKETS, INC., EXPEDIA,**
5 **INC., EXPEDIA GLOBAL, LLC, HOTELS.COM, LP, HOTWIRE, INC.,**
6 **TRAVELNOW.COM, INC., BOOKING HOLDINGS, INC., PRICELINE.COM LLC,**
7 **TRAVELWEB LLC, BOOKING.COM (USA) INC., AGODA INTERNATIONAL USA**
8 **LLC, HOTEL TONIGHT INC., AND HOTEL TONIGHT LLC** and the separately filed
9 supporting **APPENDIX** on the following parties registered to receive service by filing the same
10 with the Court's e-filing system:

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19 **EIGHTH JUDICIAL DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 **STATE OF NEVADA, EX REL,**
22 **Mark Fierro and Sig Rogich,**

23 **Plaintiffs,**

24 **v,**

25 **ORBITZ WORLDWIDE, LLC, et al.,**

26 **Defendants.**

Case No.: A-20-814111-B

Dept. No.: XIII

Hearing Date: May 17, 2021

Hearing Time: 9:00 a.m.

27 **ORDER GRANTING IN PART AND DENYING IN PART**
28 **DEFENDANTS' MOTION TO DISMISS**

1 On March 5, 2021, Defendants filed a motion to dismiss the Relators' complaint
2 with prejudice. On May 3, 2021, the Relators filed their opposition to the motion, and
3 on May 10, 2021, Defendants filed their reply in support of the motion. On May 17,
4 2021, the Court heard oral argument on the motion. Douglas W. Baruch, Esq.,
5 appeared on behalf of all moving Defendants with Maria A. Gall, Esq. as their Nevada
6 counsel¹; Dominic Gentile, Esq. appeared on behalf of the Relators. Based on the
7 foregoing papers and argument, as well as all other filings in this matter, the Court
8 GRANTS the motion in part and DENIES the motion in part as follows:

9 1. The Relators asserted six claims for relief in their Complaint, styled as
10 Counts One through Six.

11 2. As to Counts Two through Six, Relators conceded the Motion.
12 Accordingly, and for good cause shown, Defendants' Motion is GRANTED as to Counts
13 Two through Six and they are dismissed with prejudice.

14 3. The Court DENIES, without prejudice, the Motion as to Count One, which
15 constitutes the Relators' claim under the Nevada False Claims Act ("NFCA"). The
16 Court finds that whether the Relators are "original sources" for purposes of the NFCA
17 public disclosure bar involves questions of fact that are not ripe for resolution on a
18 motion to dismiss.

19 4. The Court will be scheduling a Rule 16 conference in this matter and
20 anticipates discussing at that conference whether to bifurcate and/or phase discovery
21 in this matter so that discovery proceeds first on the question of whether the Relators
22 are proper Relators to bring claims under the NFCA.

23 ///

24 ///

25 ///

26
27 ¹ Also present as counsel on behalf of certain Defendants were Tiffany J. deGruy, Esq.
28 K. Laney Gifford, Esq, and Catherine Battin, Esq.

1 IT IS SO ORDERED.

2
3 ~~Dated this ____ day of ____, 2021.~~ Dated this 2nd day of June, 2021

4
5
6 THE HONORABLE MARK R. DENTON
DISTRICT COURT JUDGE

7
8
9
10 Submitted by the following after providing
11 opposing counsel an opportunity to review and
comment:

12 BALLARD SPAHR LLP

13 By: /s/ Maria A. Gall
Joel E. Tasca, Esq.
14 Nevada Bar No. 14124
Maria A. Gall, Esq.
15 Nevada Bar No. 14200
1980 Festival Plaza Drive, Suite 900
16 Las Vegas, Nevada 89135

17 *Attorneys for Defendants Orbitz Worldwide, et al.*
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 State of Nevada Ex Rel Mark
7 Fierro, Plaintiff(s)

CASE NO: A-20-814111-B

8 vs.

DEPT. NO. Department 13

9 Orbitz Worldwide, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

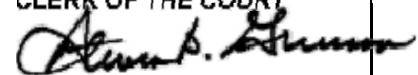
12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 6/2/2021

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*Attorneys for Defendants Booking Holdings
Inc., Priceline.com LLC, Travelweb LLC, and
Agoda International USA LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL.
Mark Fierro and Sig Rogich,

Plaintiffs,

vs.

ORBITZ WORLDWIDE, LLC et, al.,

Defendants.

Case No. A-20-814111-B

Dept. No. XIII

**DEFENDANT AGODA INTERNATIONAL USA LLC'S
ANSWER TO RELATORS' COMPLAINT**

1 Defendant Agoda International USA LLC (“Defendant”) hereby submits its Answer and
2 Affirmative Defenses to Relators’ Complaint (“Complaint”). For purposes of its Answer and
3 Affirmative Defenses, Defendant will respond to all averments in the Complaint directed to
4 “Defendants” as referring only to Defendant. Unless otherwise indicated, Defendant lacks
5 sufficient information to form a belief as to the truth of the averments directed to other Defendants,
6 and on that basis denies each and every such averment.

7 **ANSWER TO RELATORS’ ALLEGATIONS**
8 **CONCERNING “NATURE OF THE ACTION”**

9 1. Defendant admits that the Nevada False Claims Act, NRS 357.010, *et seq.* is a
10 written statute, the terms of which speak for themselves. Except as expressly admitted, Defendant
11 denies the averments in paragraph 1.

12 2. Defendant admits that NRS 357.080(1) is a written statute, the terms of which speak
13 for themselves. Except as expressly admitted, Defendant denies the averments in paragraph 2.

14 3. Defendant admits Relators purport to seek certain relief in paragraph 3 of the
15 Complaint but denies Relators are entitled to any such relief. Except as expressly admitted,
16 Defendant denies the averments in paragraph 3.

17 4. Defendant admits that paragraph 4 of the Complaint contains a characterization of
18 Relators’ case but denies it is obligated to collect and remit the taxes purportedly at issue in this
19 case. Except as expressly admitted, Defendant denies the averments in paragraph 4.

20 5. Defendant avers that paragraph 5 of the Complaint sets forth a hypothetical, to which
21 no response is required. To the extent that paragraph 5 contains allegations of fact, Defendant
22 denies each and every averment in paragraph 5.

23 **THE PARTIES AND JURISDICTION**

24 6. Defendant admits Plaintiff Fierro purports to bring this action on his own behalf and
25 on behalf of the State of Nevada. Except as expressly admitted, Defendant lacks information
26 sufficient to form a belief as to the truth of the averments made in paragraph 6 of the Complaint
27 and on this basis denies each and every averment contained therein.
28

1 7. Defendant admits Plaintiff Rogich purports to bring this action on his own behalf
2 and on behalf of the State of Nevada. Except as expressly admitted, Defendant lacks information
3 sufficient to form a belief as to the truth of the averments made in paragraph 7 of the Complaint
4 and on this basis denies each and every averment contained therein.

5 8. Defendant denies the allegations set forth in paragraph 8 of the Complaint for lack
6 of information sufficient to establish a belief as to the truth thereof.

7 9. Defendant denies the allegations set forth in paragraph 9 of the Complaint for lack
8 of information sufficient to establish a belief as to the truth thereof.

9 10. Defendant denies the allegations set forth in paragraph 10 of the Complaint for lack
10 of information sufficient to establish a belief as to the truth thereof.

11 11. Defendant denies the allegations set forth in paragraph 11 of the Complaint for lack
12 of information sufficient to establish a belief as to the truth thereof.

13 12. Defendant denies the allegations set forth in paragraph 12 of the Complaint for lack
14 of information sufficient to establish a belief as to the truth thereof.

15 13. Defendant denies the allegations set forth in paragraph 13 of the Complaint for lack
16 of information sufficient to establish a belief as to the truth thereof.

17 14. Defendant denies the allegations set forth in paragraph 14 of the Complaint for lack
18 of information sufficient to establish a belief as to the truth thereof.

19 15. Defendant denies the allegations set forth in paragraph 15 of the Complaint for lack
20 of information sufficient to establish a belief as to the truth thereof.

21 16. Defendant denies the allegations set forth in paragraph 16 of the Complaint for lack
22 of information sufficient to establish a belief as to the truth thereof.

23 17. Defendant denies the allegations set forth in paragraph 17 of the Complaint for lack
24 of information sufficient to establish a belief as to the truth thereof.

25 18. Defendant admits that Booking Holdings Inc. is a Delaware corporation with its
26 principal place of business in Norwalk, Connecticut. Except as expressly admitted, Defendant
27 denies the averments in paragraph 18.
28

1 19. Defendant admits that priceline.com LLC is a Delaware limited liability company
2 with its principal place of business in Norwalk, Connecticut. Except as expressly admitted,
3 Defendant denies the averments in paragraph 19.

4 20. Defendant admits that Travelweb LLC is a Delaware limited liability company with
5 its principal place of business in Norwalk, Connecticut. Except as expressly admitted, Defendant
6 denies the averments in paragraph 20.

7 21. Defendant denies the allegations set forth in paragraph 21 of the Complaint for lack
8 of information sufficient to establish a belief as to the truth thereof.

9 22. The Defendant to whom the allegations in this paragraph were directed has been
10 dismissed from this case, and thus, no response is required.

11 23. Defendant admits that Agoda International, LLC is a Delaware limited liability
12 company with its principal place of business in New York, New York. Except as expressly
13 admitted, Defendant denies the averments in paragraph 23.

14 24. Defendant denies the allegations set forth in paragraph 24 of the Complaint for lack
15 of information sufficient to establish a belief as to the truth thereof.

16 25. Defendant denies the allegations set forth in paragraph 25 of the Complaint for lack
17 of information sufficient to establish a belief as to the truth thereof.

18 26. Defendant denies the allegations set forth in paragraph 26 of the Complaint for lack
19 of information sufficient to establish a belief as to the truth thereof.

20 27. Defendant denies the allegations set forth in paragraph 27 of the Complaint for lack
21 of information sufficient to establish a belief as to the truth thereof.

22 28. The Defendant to whom the allegations in this paragraph were directed has been
23 dismissed from this case, and thus, no response is required.

24 29. Defendant denies the allegations set forth in paragraph 29 of the Complaint for lack
25 of information sufficient to establish a belief as to the truth thereof.

26 30. Defendant admits that the Nevada False Claims Act, NRS 357.080 is a written
27 statute, the terms of which speak for themselves. Except as expressly admitted, Defendant denies
28 the averments in paragraph 30.

31. Defendant denies each and every allegation of paragraph 31.

32. Defendant avers that paragraph 32 recites legal conclusions that require no response.

To the extent paragraph 32 contains allegations of fact, Defendant denies each and every averment contained in paragraph 32.

33. Defendant avers that paragraph 33 recites legal conclusions that require no response.

To the extent paragraph 33 contains allegations of fact, Defendant denies each and every averment contained in paragraph 33.

34. Defendant admits Relators name fictitious parties as Defendant. Except as expressly
ed, Defendant denies the averments in paragraph 34.

35. Defendant avers that paragraph 35 recites legal conclusions that require no response.

To the extent paragraph 35 contains allegations of fact, Defendant denies each and every averment contained in paragraph 35.

FACTUAL ALLEGATIONS

36. Defendant avers that paragraph 36 contains a recitation of law, to which no response is required. To the extent that paragraph 36 contains allegations of fact to which a response is required, Defendant denies each and every allegation in paragraph 36 to the extent that the allegations are inconsistent with the express language of the code and statute that the Complaint references.

37. Defendant avers that paragraph 37 contains a recitation of law, to which no response is required. To the extent that paragraph 37 contains allegations of fact to which a response is required, Defendant denies each and every allegation in paragraph 37 to the extent that the allegations are inconsistent with the express language of the code and statute that the Complaint references.

38. Defendant avers that paragraph 38 contains a recitation of law, to which no response is required. To the extent that paragraph 38 contains allegations of fact to which a response is required, Defendant denies each and every allegation in paragraph 38 to the extent that the allegations are inconsistent with the express language of the code and statute that the Complaint references.

1 39. Defendant avers that paragraph 39 contains a recitation of law, to which no response
2 is required. To the extent that paragraph 39 contains allegations of fact to which a response is
3 required, Defendant denies each and every allegation in paragraph 39 to the extent that the
4 allegations are inconsistent with the express language of the code and statute that the Complaint
5 references.

6 40. Defendant denies the allegations set forth in paragraph 40 of the Complaint for lack
7 of information sufficient to establish a belief as to the truth thereof.

8 41. Defendant denies each and every allegation of paragraph 41.

9 42. Defendant admits that paragraph 42 contains Relators' characterization of
10 Defendant's business model but denies that characterization is accurate or that Defendant is
11 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
12 admitted, Defendant denies each and every allegation in paragraph 42.

13 43. Defendant admits that paragraph 43 contains Relators' characterization of
14 Defendant's business model but denies that characterization is accurate or that Defendant is
15 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
16 admitted, Defendant denies each and every allegation in paragraph 43.

17 44. Defendant admits that paragraph 44 contains Relators' characterization of
18 Defendant's business model but denies that characterization is accurate or that Defendant is
19 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
20 admitted, Defendant denies each and every allegation in paragraph 44.

21 45. Defendant admits that paragraph 45 contains Relators' characterization of
22 Defendant's business model but denies that characterization is accurate or that Defendant is
23 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
24 admitted, Defendant denies each and every allegation in paragraph 45.

25 46. Defendant admits that paragraph 46 contains Relators' characterization of
26 Defendant's business model but denies that characterization is accurate or that Defendant is
27 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
28 admitted, Defendant denies each and every allegation in paragraph 46.

47. Defendant avers that paragraph 47 recites legal conclusions that require no response. To the extent paragraph 47 contains allegations of fact, Defendant denies each and every averment contained in paragraph 47.

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

48. Defendant incorporates each of its answers and responses to paragraphs 1 through 47 of the Complaint.

49. Defendant admits that NRS 357.040(1)(g) is a written statute, the terms of which speak for themselves. Except as expressly admitted, Defendant denies the averments in paragraph 49.

50. Defendant admits that paragraph 50 contains Relators' characterization of Defendant's business model but denies that characterization is accurate or that Defendant is obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly admitted, Defendant denies each and every allegation in paragraph 50.

51. Defendant denies each and every allegation of paragraph 51.

52. Defendant denies each and every allegation of paragraph 52.

53. Defendant denies each and every allegation of paragraph 53.

54. Defendant denies each and every allegation of paragraph 54.

55. Defendant denies each and every allegation of paragraph 55.

COUNT TWO CONVERSION

56. Defendant incorporates each of its answers and responses to paragraphs 1 through 55 of the Complaint.

57. Defendant denies each and every allegation of paragraph 57 and avers that the Court has dismissed this Count of the Complaint with prejudice.

58. Defendant denies each and every allegation of paragraph 58 and avers that the Court has dismissed this Count of the Complaint with prejudice.

1 59. Defendant denies each and every allegation of paragraph 59 and avers that the Court
2 has dismissed this Count of the Complaint with prejudice.

3 60. Defendant denies each and every allegation of paragraph 60 and avers that the Court
4 has dismissed this Count of the Complaint with prejudice.

5 **COUNT THREE**
6 **UNJUST ENRICHMENT**

7 61. Defendant incorporates each of its answers and responses to paragraphs 1 through
8 60 of the Complaint.

9 62. Defendant denies each and every allegation of paragraph 62 and avers that the Court
10 has dismissed this Count of the Complaint with prejudice.

11 63. Defendant denies each and every allegation of paragraph 63 and avers that the Court
12 has dismissed this Count of the Complaint with prejudice.

13 **COUNT FOUR**
14 **CONSTRUCTIVE TRUST**

15 64. Defendant incorporates each of its answers and responses to paragraphs 1 through
16 63 of the Complaint.

17 65. Defendant denies each and every allegation of paragraph 65 and avers that the Court
18 has dismissed this Count of the Complaint with prejudice.

19 66. Defendant denies each and every allegation of paragraph 66 and avers that the Court
20 has dismissed this Count of the Complaint with prejudice.

21 67. Defendant denies each and every allegation of paragraph 67 and avers that the Court
22 has dismissed this Count of the Complaint with prejudice.

23 **COUNT FIVE**
24 **CONSUMER FRAUD/VIOLATION OF NRS 598**
 DECEPTIVE TRADE PRACTICES ACT

25 68. Defendant incorporates each of its answers and responses to paragraphs 1 through
26 67 of the Complaint.

69. Defendant admits that the NRS 41.600(2), 598.0915, and 598.0925 are written statutes, the terms of which speak for themselves. Except as expressly admitted, Defendant denies the averments in paragraph 69.

70. Defendant denies each and every allegation of paragraph 70 and avers that the Court has dismissed this Count of the Complaint with prejudice.

71. Defendant denies each and every allegation of paragraph 71 and avers that the Court has dismissed this Count of the Complaint with prejudice.

COUNT SIX DECLARATORY RELIEF

72. Defendant incorporates each of its answers and responses to paragraphs 1 through 71 of the Complaint.

73. Defendant denies each and every allegation of paragraph 73 and avers that the Court has dismissed this Count of the Complaint with prejudice.

74. Defendant denies each and every allegation of paragraph 74 and avers that the Court has dismissed this Count of the Complaint with prejudice.

75. Defendant denies each and every allegation of paragraph 75 and avers that the Court has dismissed this Count of the Complaint with prejudice.

Defendant admits that Relators purport to seek certain relief in the “WHEREFORE” clause and subparts “1” through “4” following paragraph 75 of the Complaint but denies that Relators are entitled to any such relief. Except as expressly admitted, Defendant denies each and every averment contained in the “WHEREFORE” clause and subparts “1” through “4” following paragraph 75 of the Complaint.

DEFENDANT'S AFFIRMATIVE AND OTHER DEFENSES

Without assuming the burden of proof of such defenses that it would not otherwise have, Defendant affirmatively asserts the following defenses, which apply to Relators' claims:

FIRST DEFENSE

Relators' Complaint fails to state a claim under which relief can be granted under Nev. R. Civ. P. 12(b)(5).

1 **SECOND DEFENSE**

2 Relators' claims are barred by the "public disclosure" bar of the Nevada False Claims Act,
3 NRS 357.100.

4 **THIRD DEFENSE**

5 Relators' claims are barred by the "government action" bar of the Nevada False Claims Act,
6 NRS 357.080.3(b), because this action is based on allegations or transactions that are the subject of
7 a civil action for a monetary penalty to which a political subdivision of Nevada is a party.

8 **FOURTH DEFENSE**

9 Relators' claims are barred, in whole or in part, because Defendant did not act with (a)
10 actual knowledge of the falsity of any alleged record or statement at issue, (b) deliberate ignorance
11 concerning the truth or falsity of any alleged record or statement at issue, or (c) reckless disregard
12 concerning the truth or falsity of any alleged record or statement at issue.

13 **FIFTH DEFENSE**

14 The claims in the Complaint are barred, in whole or in part, by the applicable statute of
15 limitations.

16 **SIXTH DEFENSE**

17 Relators' claims are barred, in whole or in part, by the doctrine of laches.

18 **SEVENTH DEFENSE**

19 The Nevada False Claims Act allegations in the Complaint are not pleaded with the requisite
20 particularity.

21 **EIGHTH DEFENSE**

22 Relators' claims are barred, in whole or in part, by Relators' lack of standing.

23 **NINTH DEFENSE**

24 Only one person may bring a *qui tam* action under the Nevada False Claims Act and
25 therefore all, or at least one, of the Relators or their claims must be dismissed.

26 **TENTH DEFENSE**

27 Relators' claims are barred, in whole or in part, because Defendant lacked any obligation to
28 remit the taxes that it purported failed to pay.

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ELEVENTH DEFENSE

Relators’ claims are barred, in whole or in part, because to the extent that there is any ambiguity in the applicable provisions of the Nevada and Clark County Tax Codes, including without limitation in Clark County Code 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335, *et seq.*, such provisions were reasonably interpreted by Defendant.

TWELFTH DEFENSE

Relators’ claims are barred, in whole or in part, because actions of Defendant were reasonable and taken in good faith and/or based on an objectively reasonable understanding of its obligations under the law.

THIRTEENTH DEFENSE

Relators’ claims under the Nevada False Claims Act are foreclosed by the comprehensive administrative framework of the Nevada and/or Clark County Tax Codes.

FOURTEENTH DEFENSE

Relators’ claims are barred, in whole or in part, based on the doctrines of waiver and/or estoppel.

FIFTEENTH DEFENSE

Relators, as partial assignees of the State or political subdivision, are estopped from claiming that the taxes are due based on a State Department of Taxation Advisory Opinion that declares the taxes are not owed by businesses such as those conducted by Defendant.

SIXTEENTH DEFENSE

Relators’ claims or the requested remedies are barred by State of Nevada and/or Clark County’s permission, knowledge, consent, approval, acquiescence, and/or ratification of the transactions and occurrences that are the subject of the Complaint.

SEVENTEENTH DEFENSE

Some or all of the claims are barred by the doctrines of exclusive or primary jurisdiction.

EIGHTEENTH DEFENSE

Relators’ claims fail for lack of any actual loss, injury, or damages.

1 **NINETEENTH DEFENSE**

2 Relators' claims for treble damages, penalties, and interest, above and beyond actual
3 damages, if any, are unconstitutional, because such damages and/or penalties would violate the
4 United States Constitution and the Nevada Constitution.

5 **TWENTIETH DEFENSE**

6 The government failed to mitigate its alleged damages, if any.

7 **TWENTY-FIRST DEFENSE**

8 Any purported claim for punitive damages or for penalties (including statutory penalties or
9 interest) violates the Due Process and Equal Protection Clauses of the United States Constitution,
10 Amend. XIV, and the Nevada Constitution.

11 **TWENTY-SECOND DEFENSE**

12 Imposing liability on Defendant will require expanding the scope of the taxing authorities
13 for which Relators purport to bring this action's ordinances and the applicable statutory provisions
14 beyond their constitutional limits under the United States Constitution, the Nevada Constitution,
15 the wording and underlying intent of the applicable statutes and ordinances, and any reasonable
16 reading of the applicable statutes and ordinances. *See Grayned v. City of Rockford*, 408 U.S. 104,
17 108-09 (1972).

18 **TWENTY-THIRD DEFENSE**

19 The Due Process Clauses of the Fifth and Fourteenth Amendments to the United States
20 Constitution prohibit the taxing authorities for which Relators purport to bring this action from
21 seeking to subject Defendant to registration, reporting, collecting, and remitting obligations and
22 potential penalties and sanctions pursuant to unconstitutionally vague ordinances and statutory
23 provisions. *See, e.g., Grayned*, 408 U.S. at 108-09.

24 **TWENTY-FOURTH DEFENSE**

25 The taxing authorities for which Relators purport to bring this action cannot enforce or
26 collect the tax at issue from Defendant because the attempted collection of the tax violates the
27 Internet Tax Freedom Act (also known as the Internet Tax Nondiscrimination Act), reproduced at
28 47 U.S.C. § 151 note § 1100, *et seq.*, and the Supremacy Clause of the United States

1 Constitution. The Internet Tax Freedom Act forbids a state or political subdivision of a state, such
2 as the taxing authorities for which Relators purport to bring this action, from imposing multiple or
3 discriminatory taxes on electronic commerce. Even if the Court should find that additional taxes
4 are owed to the taxing authorities for which Relators purport to bring this action, collecting or
5 enforcing such taxes against Defendant would violate the Internet Tax Freedom Act because no
6 such taxes are collected or enforced against traditional travel agents, travel wholesalers, travel
7 aggregators, travel packagers, or other traditional “brick and mortar” travel service providers
8 located in the taxing authorities for which Relators purport to bring this action’s taxing jurisdictions
9 that use the same business model and offer the same services to customers as does Defendant.

10 **TWENTY-FIFTH DEFENSE**

11 Defendant’s investigation of Relators’ averments and defenses thereto is continuing;
12 Defendant reserves the right to supplement or amend these defenses.

13 Dated: June 30, 2021

14 Respectfully submitted,

15 BALLARD SPAHR LLP

16 By: /s/ Maria A. Gall
17 Joel E. Tasca, Esq.
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21 -and-

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25 *Attorneys for Defendants Booking Holdings Inc.,*
26 *priceline.com LLC, Travelweb LLC, and Agoda*
27 *International USA LLC*
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that on June 30, 2021, I served a true and correct copy of
3 the foregoing **DEFENDANT AGODA INTERNATIONAL USA LLC'S ANSWER TO**
4 **RELATORS' COMPLAINT** on the following by filing the same with the Court's e-filing system:

5 Michael Cristalli, Esq.
6 Dominic P. Gentile, Esq.
7 Ivy P. Hensel, Esq.
8 CLARK HILL PLLC
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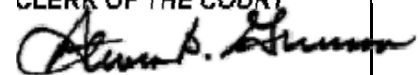
9 *Attorney for Plaintiffs Mark Fierro and Sig*
10 *Rogich*

Attorneys for State of Nevada

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Las Vegas, Nevada 89101

13 *Attorney for Remark Holdings Inc.*

14
15 /s/ Adam Crawford
16 An employee of Ballard Spahr LLP
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Inc., Priceline.com LLC, Travelweb LLC, and
Agoda International USA LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL.
Mark Fierro and Sig Rogich,

Plaintiffs,

vs.

ORBITZ WORLDWIDE, LLC et, al.,

Defendants.

Case No. A-20-814111-B

Dept. No. XIII

**DEFENDANT BOOKING HOLDINGS INC.'S
ANSWER TO RELATORS' COMPLAINT**

1 Defendant Booking Holdings Inc. (“Defendant”) hereby submits its Answer and
2 Affirmative Defenses to Relators’ Complaint (“Complaint”). For purposes of its Answer and
3 Affirmative Defenses, Defendant will respond to all averments in the Complaint directed to
4 “Defendants” as referring only to Defendant. Unless otherwise indicated, Defendant lacks
5 sufficient information to form a belief as to the truth of the averments directed to other Defendants,
6 and on that basis denies each and every such averment.

7 **ANSWER TO RELATORS’ ALLEGATIONS**
8 **CONCERNING “NATURE OF THE ACTION”**

9 1. Defendant admits that the Nevada False Claims Act, NRS 357.010, *et seq.* is a
10 written statute, the terms of which speak for themselves. Except as expressly admitted, Defendant
11 denies the averments in paragraph 1.

12 2. Defendant admits that NRS 357.080(1) is a written statute, the terms of which speak
13 for themselves. Except as expressly admitted, Defendant denies the averments in paragraph 2.

14 3. Defendant admits Relators purport to seek certain relief in paragraph 3 of the
15 Complaint but denies Relators are entitled to any such relief. Except as expressly admitted,
16 Defendant denies the averments in paragraph 3.

17 4. Defendant admits that paragraph 4 of the Complaint contains a characterization of
18 Relators’ case but denies it is obligated to collect and remit the taxes purportedly at issue in this
19 case. Except as expressly admitted, Defendant denies the averments in paragraph 4.

20 5. Defendant avers that paragraph 5 of the Complaint sets forth a hypothetical, to which
21 no response is required. To the extent that paragraph 5 contains allegations of fact, Defendant
22 denies each and every averment in paragraph 5.

23 **THE PARTIES AND JURISDICTION**

24 6. Defendant admits Plaintiff Fierro purports to bring this action on his own behalf and
25 on behalf of the State of Nevada. Except as expressly admitted, Defendant lacks information
26 sufficient to form a belief as to the truth of the averments made in paragraph 6 of the Complaint
27 and on this basis denies each and every averment contained therein.
28

1 7. Defendant admits Plaintiff Rogich purports to bring this action on his own behalf
2 and on behalf of the State of Nevada. Except as expressly admitted, Defendant lacks information
3 sufficient to form a belief as to the truth of the averments made in paragraph 7 of the Complaint
4 and on this basis denies each and every averment contained therein.

5 8. Defendant denies the allegations set forth in paragraph 8 of the Complaint for lack
6 of information sufficient to establish a belief as to the truth thereof.

7 9. Defendant denies the allegations set forth in paragraph 9 of the Complaint for lack
8 of information sufficient to establish a belief as to the truth thereof.

9 10. Defendant denies the allegations set forth in paragraph 10 of the Complaint for lack
10 of information sufficient to establish a belief as to the truth thereof.

11 11. Defendant denies the allegations set forth in paragraph 11 of the Complaint for lack
12 of information sufficient to establish a belief as to the truth thereof.

13 12. Defendant denies the allegations set forth in paragraph 12 of the Complaint for lack
14 of information sufficient to establish a belief as to the truth thereof.

15 13. Defendant denies the allegations set forth in paragraph 13 of the Complaint for lack
16 of information sufficient to establish a belief as to the truth thereof.

17 14. Defendant denies the allegations set forth in paragraph 14 of the Complaint for lack
18 of information sufficient to establish a belief as to the truth thereof.

19 15. Defendant denies the allegations set forth in paragraph 15 of the Complaint for lack
20 of information sufficient to establish a belief as to the truth thereof.

21 16. Defendant denies the allegations set forth in paragraph 16 of the Complaint for lack
22 of information sufficient to establish a belief as to the truth thereof.

23 17. Defendant denies the allegations set forth in paragraph 17 of the Complaint for lack
24 of information sufficient to establish a belief as to the truth thereof.

25 18. Defendant admits that Booking Holdings Inc. is a Delaware corporation with its
26 principal place of business in Norwalk, Connecticut. Except as expressly admitted, Defendant
27 denies the averments in paragraph 18.
28

1 19. Defendant admits that priceline.com LLC is a Delaware limited liability company
2 with its principal place of business in Norwalk, Connecticut. Except as expressly admitted,
3 Defendant denies the averments in paragraph 19.

4 20. Defendant admits that Travelweb LLC is a Delaware limited liability company with
5 its principal place of business in Norwalk, Connecticut. Except as expressly admitted, Defendant
6 denies the averments in paragraph 20.

7 21. Defendant denies the allegations set forth in paragraph 21 of the Complaint for lack
8 of information sufficient to establish a belief as to the truth thereof.

9 22. The Defendant to whom the allegations in this paragraph were directed has been
10 dismissed from this case, and thus, no response is required.

11 23. Defendant admits that Agoda International, LLC is a Delaware limited liability
12 company with its principal place of business in New York, New York. Except as expressly
13 admitted, Defendant denies the averments in paragraph 23.

14 24. Defendant denies the allegations set forth in paragraph 24 of the Complaint for lack
15 of information sufficient to establish a belief as to the truth thereof.

16 25. Defendant denies the allegations set forth in paragraph 25 of the Complaint for lack
17 of information sufficient to establish a belief as to the truth thereof.

18 26. Defendant denies the allegations set forth in paragraph 26 of the Complaint for lack
19 of information sufficient to establish a belief as to the truth thereof.

20 27. Defendant denies the allegations set forth in paragraph 27 of the Complaint for lack
21 of information sufficient to establish a belief as to the truth thereof.

22 28. The Defendant to whom the allegations in this paragraph were directed has been
23 dismissed from this case, and thus, no response is required.

24 29. Defendant denies the allegations set forth in paragraph 29 of the Complaint for lack
25 of information sufficient to establish a belief as to the truth thereof.

26 30. Defendant admits that the Nevada False Claims Act, NRS 357.080 is a written
27 statute, the terms of which speak for themselves. Except as expressly admitted, Defendant denies
28 the averments in paragraph 30.

31. Defendant denies each and every allegation of paragraph 31.

32. Defendant avers that paragraph 32 recites legal conclusions that require no response.

To the extent paragraph 32 contains allegations of fact, Defendant denies each and every averment contained in paragraph 32.

33. Defendant avers that paragraph 33 recites legal conclusions that require no response.

To the extent paragraph 33 contains allegations of fact, Defendant denies each and every averment contained in paragraph 33.

34. Defendant admits Relators name fictitious parties as Defendant. Except as expressly
ed, Defendant denies the averments in paragraph 34.

35. Defendant avers that paragraph 35 recites legal conclusions that require no response.

To the extent paragraph 35 contains allegations of fact, Defendant denies each and every averment contained in paragraph 35.

FACTUAL ALLEGATIONS

36. Defendant avers that paragraph 36 contains a recitation of law, to which no response is required. To the extent that paragraph 36 contains allegations of fact to which a response is required, Defendant denies each and every allegation in paragraph 36 to the extent that the allegations are inconsistent with the express language of the code and statute that the Complaint references.

37. Defendant avers that paragraph 37 contains a recitation of law, to which no response is required. To the extent that paragraph 37 contains allegations of fact to which a response is required, Defendant denies each and every allegation in paragraph 37 to the extent that the allegations are inconsistent with the express language of the code and statute that the Complaint references.

38. Defendant avers that paragraph 38 contains a recitation of law, to which no response is required. To the extent that paragraph 38 contains allegations of fact to which a response is required, Defendant denies each and every allegation in paragraph 38 to the extent that the allegations are inconsistent with the express language of the code and statute that the Complaint references.

1 39. Defendant avers that paragraph 39 contains a recitation of law, to which no response
2 is required. To the extent that paragraph 39 contains allegations of fact to which a response is
3 required, Defendant denies each and every allegation in paragraph 39 to the extent that the
4 allegations are inconsistent with the express language of the code and statute that the Complaint
5 references.

6 40. Defendant denies the allegations set forth in paragraph 40 of the Complaint for lack
7 of information sufficient to establish a belief as to the truth thereof.

8 41. Defendant denies each and every allegation of paragraph 41.

9 42. Defendant admits that paragraph 42 contains Relators' characterization of
10 Defendant's business model but denies that characterization is accurate or that Defendant is
11 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
12 admitted, Defendant denies each and every allegation in paragraph 42.

13 43. Defendant admits that paragraph 43 contains Relators' characterization of
14 Defendant's business model but denies that characterization is accurate or that Defendant is
15 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
16 admitted, Defendant denies each and every allegation in paragraph 43.

17 44. Defendant admits that paragraph 44 contains Relators' characterization of
18 Defendant's business model but denies that characterization is accurate or that Defendant is
19 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
20 admitted, Defendant denies each and every allegation in paragraph 44.

21 45. Defendant admits that paragraph 45 contains Relators' characterization of
22 Defendant's business model but denies that characterization is accurate or that Defendant is
23 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
24 admitted, Defendant denies each and every allegation in paragraph 45.

25 46. Defendant admits that paragraph 46 contains Relators' characterization of
26 Defendant's business model but denies that characterization is accurate or that Defendant is
27 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
28 admitted, Defendant denies each and every allegation in paragraph 46.

47. Defendant avers that paragraph 47 recites legal conclusions that require no response. To the extent paragraph 47 contains allegations of fact, Defendant denies each and every averment contained in paragraph 47.

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

48. Defendant incorporates each of its answers and responses to paragraphs 1 through 47 of the Complaint.

49. Defendant admits that NRS 357.040(1)(g) is a written statute, the terms of which speak for themselves. Except as expressly admitted, Defendant denies the averments in paragraph 49.

50. Defendant admits that paragraph 50 contains Relators' characterization of Defendant's business model but denies that characterization is accurate or that Defendant is obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly admitted, Defendant denies each and every allegation in paragraph 50.

51. Defendant denies each and every allegation of paragraph 51.

52. Defendant denies each and every allegation of paragraph 52.

53. Defendant denies each and every allegation of paragraph 53.

54. Defendant denies each and every allegation of paragraph 54.

55. Defendant denies each and every allegation of paragraph 55.

COUNT TWO CONVERSION

56. Defendant incorporates each of its answers and responses to paragraphs 1 through 55 of the Complaint.

57. Defendant denies each and every allegation of paragraph 57 and avers that the Court has dismissed this Count of the Complaint with prejudice.

58. Defendant denies each and every allegation of paragraph 58 and avers that the Court has dismissed this Count of the Complaint with prejudice.

1 59. Defendant denies each and every allegation of paragraph 59 and avers that the Court
2 has dismissed this Count of the Complaint with prejudice.

3 60. Defendant denies each and every allegation of paragraph 60 and avers that the Court
4 has dismissed this Count of the Complaint with prejudice.

5 **COUNT THREE**
6 **UNJUST ENRICHMENT**

7 61. Defendant incorporates each of its answers and responses to paragraphs 1 through
8 60 of the Complaint.

9 62. Defendant denies each and every allegation of paragraph 62 and avers that the Court
10 has dismissed this Count of the Complaint with prejudice.

11 63. Defendant denies each and every allegation of paragraph 63 and avers that the Court
12 has dismissed this Count of the Complaint with prejudice.

13 **COUNT FOUR**
14 **CONSTRUCTIVE TRUST**

15 64. Defendant incorporates each of its answers and responses to paragraphs 1 through
16 63 of the Complaint.

17 65. Defendant denies each and every allegation of paragraph 65 and avers that the Court
18 has dismissed this Count of the Complaint with prejudice.

19 66. Defendant denies each and every allegation of paragraph 66 and avers that the Court
20 has dismissed this Count of the Complaint with prejudice.

21 67. Defendant denies each and every allegation of paragraph 67 and avers that the Court
22 has dismissed this Count of the Complaint with prejudice.

23 **COUNT FIVE**
24 **CONSUMER FRAUD/VIOLATION OF NRS 598**
25 **DECEPTIVE TRADE PRACTICES ACT**

26 68. Defendant incorporates each of its answers and responses to paragraphs 1 through
27 67 of the Complaint.

28 69. Defendant admits that the NRS 41.600(2), 598.0915, and 598.0925 are written
statutes, the terms of which speak for themselves. Except as expressly admitted, Defendant denies
the averments in paragraph 69.

70. Defendant denies each and every allegation of paragraph 70 and avers that the Court has dismissed this Count of the Complaint with prejudice.

71. Defendant denies each and every allegation of paragraph 71 and avers that the Court has dismissed this Count of the Complaint with prejudice.

COUNT SIX DECLARATORY RELIEF

72. Defendant incorporates each of its answers and responses to paragraphs 1 through 71 of the Complaint.

73. Defendant denies each and every allegation of paragraph 73 and avers that the Court has dismissed this Count of the Complaint with prejudice.

74. Defendant denies each and every allegation of paragraph 74 and avers that the Court has dismissed this Count of the Complaint with prejudice.

75. Defendant denies each and every allegation of paragraph 75 and avers that the Court has dismissed this Count of the Complaint with prejudice.

Defendant admits that Relators purport to seek certain relief in the “WHEREFORE” clause and subparts “1” through “4” following paragraph 75 of the Complaint but denies that Relators are entitled to any such relief. Except as expressly admitted, Defendant denies each and every averment contained in the “WHEREFORE” clause and subparts “1” through “4” following paragraph 75 of the Complaint.

DEFENDANT'S AFFIRMATIVE AND OTHER DEFENSES

Without assuming the burden of proof of such defenses that it would not otherwise have, Defendant affirmatively asserts the following defenses, which apply to Relators' claims:

FIRST DEFENSE

Relators' Complaint fails to state a claim under which relief can be granted under Nev. R. Civ. P. 12(b)(5).

SECOND DEFENSE

Relators' claims are barred by the "public disclosure" bar of the Nevada False Claims Act, NRS 357.100.

1 **THIRD DEFENSE**

2 Relators' claims are barred by the "government action" bar of the Nevada False Claims Act,
3 NRS 357.080.3(b), because this action is based on allegations or transactions that are the subject of
4 a civil action for a monetary penalty to which a political subdivision of Nevada is a party.

5 **FOURTH DEFENSE**

6 Relators' claims are barred, in whole or in part, because Defendant did not act with (a)
7 actual knowledge of the falsity of any alleged record or statement at issue, (b) deliberate ignorance
8 concerning the truth or falsity of any alleged record or statement at issue, or (c) reckless disregard
9 concerning the truth or falsity of any alleged record or statement at issue.

10 **FIFTH DEFENSE**

11 The claims in the Complaint are barred, in whole or in part, by the applicable statute of
12 limitations.

13 **SIXTH DEFENSE**

14 Relators' claims are barred, in whole or in part, by the doctrine of laches.

15 **SEVENTH DEFENSE**

16 The Nevada False Claims Act allegations in the Complaint are not pleaded with the requisite
17 particularity.

18 **EIGHTH DEFENSE**

19 Relators' claims are barred, in whole or in part, by Relators' lack of standing.

20 **NINTH DEFENSE**

21 Only one person may bring a *qui tam* action under the Nevada False Claims Act and
22 therefore all, or at least one, of the Relators or their claims must be dismissed.

23 **TENTH DEFENSE**

24 Relators' claims are barred, in whole or in part, because Defendant lacked any obligation to
25 remit the taxes that it purported failed to pay.

26 **ELEVENTH DEFENSE**

27 Relators' claims are barred, in whole or in part, because to the extent that there is any
28 ambiguity in the applicable provisions of the Nevada and Clark County Tax Codes, including

1 without limitation in Clark County Code 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335,
2 *et seq.*, such provisions were reasonably interpreted by Defendant.

3 **TWELFTH DEFENSE**

4 Relators' claims are barred, in whole or in part, because actions of Defendant were
5 reasonable and taken in good faith and/or based on an objectively reasonable understanding of its
6 obligations under the law.

7 **THIRTEENTH DEFENSE**

8 Relators' claims under the Nevada False Claims Act are foreclosed by the comprehensive
9 administrative framework of the Nevada and/or Clark County Tax Codes.

10 **FOURTEENTH DEFENSE**

11 Relators' claims are barred, in whole or in part, based on the doctrines of waiver and/or
12 estoppel.

13 **FIFTEENTH DEFENSE**

14 Relators, as partial assignees of the State or political subdivision, are estopped from
15 claiming that the taxes are due based on a State Department of Taxation Advisory Opinion that
16 declares the taxes are not owed by businesses such as those conducted by Defendant.

17 **SIXTEENTH DEFENSE**

18 Relators' claims or the requested remedies are barred by State of Nevada and/or Clark
19 County's permission, knowledge, consent, approval, acquiescence, and/or ratification of the
20 transactions and occurrences that are the subject of the Complaint.

21 **SEVENTEENTH DEFENSE**

22 Some or all of the claims are barred by the doctrines of exclusive or primary jurisdiction.

23 **EIGHTEENTH DEFENSE**

24 Relators' claims fail for lack of any actual loss, injury, or damages.

25 **NINETEENTH DEFENSE**

26 Relators' claims for treble damages, penalties, and interest, above and beyond actual
27 damages, if any, are unconstitutional, because such damages and/or penalties would violate the
28 United States Constitution and the Nevada Constitution.

1 **TWENTIETH DEFENSE**

2 The government failed to mitigate its alleged damages, if any.

3 **TWENTY-FIRST DEFENSE**

4 Booking Holdings Inc. is not a proper party to this action because it is a non-operating
5 holding company.

6 **TWENTY-SECOND DEFENSE**

7 Any purported claim for punitive damages or for penalties (including statutory penalties or
8 interest) violates the Due Process and Equal Protection Clauses of the United States Constitution,
9 Amend. XIV, and the Nevada Constitution.

10 **TWENTY-THIRD DEFENSE**

11 Imposing liability on Defendant will require expanding the scope of the taxing authorities
12 for which Relators purport to bring this action's ordinances and the applicable statutory provisions
13 beyond their constitutional limits under the United States Constitution, the Nevada Constitution,
14 the wording and underlying intent of the applicable statutes and ordinances, and any reasonable
15 reading of the applicable statutes and ordinances. *See Grayned v. City of Rockford*, 408 U.S. 104,
16 108-09 (1972).

17 **TWENTY-FOURTH DEFENSE**

18 The Due Process Clauses of the Fifth and Fourteenth Amendments to the United States
19 Constitution prohibit the taxing authorities for which Relators purport to bring this action from
20 seeking to subject Defendant to registration, reporting, collecting, and remitting obligations and
21 potential penalties and sanctions pursuant to unconstitutionally vague ordinances and statutory
22 provisions. *See, e.g., Grayned*, 408 U.S. at 108-09.

23 **TWENTY-FIFTH DEFENSE**

24 The taxing authorities for which Relators purport to bring this action cannot enforce or
25 collect the tax at issue from Defendant because the attempted collection of the tax violates the
26 Internet Tax Freedom Act (also known as the Internet Tax Nondiscrimination Act), reproduced at
27 47 U.S.C. § 151 note § 1100, *et seq.*, and the Supremacy Clause of the United States
28 Constitution. The Internet Tax Freedom Act forbids a state or political subdivision of a state, such

1 as the taxing authorities for which Relators purport to bring this action, from imposing multiple or
2 discriminatory taxes on electronic commerce. Even if the Court should find that additional taxes
3 are owed to the taxing authorities for which Relators purport to bring this action, collecting or
4 enforcing such taxes against Defendant would violate the Internet Tax Freedom Act because no
5 such taxes are collected or enforced against traditional travel agents, travel wholesalers, travel
6 aggregators, travel packagers, or other traditional “brick and mortar” travel service providers
7 located in the taxing authorities for which Relators purport to bring this action’s taxing jurisdictions
8 that use the same business model and offer the same services to customers as does Defendant.

9 **TWENTY-SIXTH DEFENSE**

10 Defendant’s investigation of Relators’ averments and defenses thereto is continuing;
11 Defendant reserves the right to supplement or amend these defenses.

12
13 Dated: June 30, 2021

14 Respectfully submitted,

15 BALLARD SPAHR LLP

16 By: /s/ Maria A. Gall

17 Joel E. Tasca, Esq.

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19 Maria A. Gall, Esq.

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23 -and-

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*Attorneys for Defendants Booking Holdings Inc.,
Priceline.com LLC, Travelweb LLC, and Agoda
International USA LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that on June 30, 2021, I served a true and correct copy of
3 the foregoing **DEFENDANT BOOKING HOLDINGS INC.'S ANSWER TO RELATORS'**
4 **COMPLAINT** on the following by filing the same with the Court's e-filing system:

5 Michael Cristalli, Esq.
6 Dominic P. Gentile, Esq.
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8 CLARK HILL PLLC
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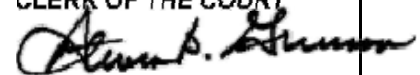
9 *Attorney for Plaintiffs Mark Fierro and Sig*
10 *Rogich*

Attorneys for State of Nevada

11 Puonyarat K. Premsrirut, Esq.
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13 *Attorney for Remark Holdings Inc.*

14
15 /s/ Adam Crawford
16 An employee of Ballard Spahr LLP
17
18
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*Attorneys for Defendants Hotel Tonight, Inc. and
Hotel Tonight LLC*

13
14 EIGHTH JUDICIAL DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 STATE OF NEVADA, EX REL,
17 *Mark Fierro and Sig Rogich,*
18 Plaintiffs,
19 v.
20 ORBITZ WORLDWIDE, LLC et al.,
21 Defendants.
22

Case No.: A-20-814111-B
Dept. No.: XIII

23
24 **DEFENDANTS HOTEL TONIGHT, INC. AND HOTEL TONIGHT, LLC'S**
25 **ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT**
26
27
28

Defendants Hotel Tonight, Inc. and Hotel Tonight, LLC (collectively “Hotel Tonight”), by their undersigned counsel, submit their Answer and Affirmative Defenses (“Answer”) to the Complaint dated July 7, 2020 (“Complaint”) filed by Relators Mark Fierro and Sig Rogich (collectively “Plaintiffs”).

No response is required to the various headings, subheadings and footnotes throughout the Complaint. To the extent that responses are required to such headings, subheadings and footnotes, they are denied.

Unless expressly admitted, Hotel Tonight denies each and every allegation in the Complaint, and all allegations containing legal arguments and/or conclusions of law on the ground that such allegations do not require a response.

Hotel Tonight reserves the right to challenge the relevance and admissibility of all sources and documents referred to or purportedly quoted from in the Complaint. Hotel Tonight further reserves the right to supplement or amend this Answer as may be necessary.

NATURE OF THE ACTION

1. Hotel Tonight admits that Plaintiffs purport to bring this action on behalf of the State of Nevada pursuant to the Nevada False Claims Act, NRS 357.010 *et seq.*, but otherwise denies the allegations in paragraph 1.

2. Paragraph 2 purports to state legal conclusions, to which no response is required. To the extent a response is required, Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2 of the Complaint and therefore denies those allegations.

3. Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 3 of the Complaint and therefore denies those allegations.

4. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4 of the Complaint and therefore denies those allegations.

5. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 5 of the Complaint and therefore denies those allegations.

THE PARTIES AND JURISDICTION

6. Paragraph 6 purports to state legal conclusions, to which no response is required. To the extent a response is required, Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6 of the Complaint and therefore denies those allegations.

7. Paragraph 7 purports to state legal conclusions, to which no response is required. To the extent a response is required, Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7 of the Complaint and therefore denies those allegations.

8. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8 of the Complaint and therefore denies those allegations.

9. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9 of the Complaint and therefore denies those allegations.

10. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 10 of the Complaint and therefore denies those allegations.

11. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 11 of the Complaint and therefore denies those allegations.

12. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 12 of the Complaint and therefore denies those allegations.

13. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13 of the Complaint and therefore denies those allegations.

14. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14 of the Complaint and therefore denies those allegations.

15. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 15 of the Complaint and therefore denies those allegations.

16. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 16 of the Complaint and therefore denies those allegations.

1 17. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations in paragraph 17 of the Complaint and therefore denies those allegations.

3 18. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations in paragraph 18 of the Complaint and therefore denies those allegations.

5 19. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
6 truth of the allegations in paragraph 19 of the Complaint and therefore denies those allegations.

7 20. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
8 truth of the allegations in paragraph 20 of the Complaint and therefore denies those allegations.

9 21. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
10 truth of the allegations in paragraph 21 of the Complaint and therefore denies those allegations.

11 22. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
12 truth of the allegations in paragraph 22 of the Complaint and therefore denies those allegations.

13 23. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
14 truth of the allegations in paragraph 23 of the Complaint and therefore denies those allegations.

15 24. Hotel Tonight denies the allegations in paragraph 24 of the Complaint.

16 25. Hotel Tonight admits the first sentence of paragraph 25 of the Complaint, but denies
17 the allegations in the second sentence of paragraph 25.

18 26. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
19 truth of the allegations in paragraph 26 of the Complaint and therefore denies those allegations.

20 27. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
21 truth of the allegations in paragraph 27 of the Complaint and therefore denies those allegations.

22 28. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
23 truth of the allegations in paragraph 28 of the Complaint and therefore denies those allegations.

24 29. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
25 truth of the allegations in paragraph 29 of the Complaint and therefore denies those allegations.

26 30. Paragraph 30 purports to state legal conclusions, to which no response is required. To
27 the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to
28 Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the

1 truth of the remaining allegations in paragraph 30 of the Complaint and therefore denies those
2 allegations.

3 31. Hotel Tonight admits that it has transacted business in the County of Clark, but denies
4 other allegations as it relates to Hotel Tonight. Hotel Tonight lacks knowledge or information
5 sufficient to form a belief about the truth of the remaining allegations in paragraph 31 of the
6 Complaint and therefore denies those allegations.

7 32. Paragraph 32 purports to state legal conclusions, to which no response is required. To
8 the extent a response is required, Hotel Tonight lacks knowledge or information sufficient to form a
9 belief about the truth of the remaining allegations in paragraph 30 of the Complaint and therefore
10 denies those allegations.

11 33. Paragraph 33 purports to state legal conclusions, to which no response is required. To
12 the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to
13 Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
14 truth of the remaining allegations in paragraph 33 of the Complaint and therefore denies those
15 allegations.

16 34. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
17 truth of the allegations in paragraph 34 of the Complaint and therefore denies those allegations.

18 35. Paragraph 35 purports to state legal conclusions, to which no response is required. To
19 the extent a response is required, Hotel Tonight lacks knowledge or information sufficient to form a
20 belief about the truth of the remaining allegations in paragraph 35 of the Complaint and therefore
21 denies those allegations.

22 **FACTUAL ALLEGATIONS**

23 36. Paragraph 36 purports to state legal conclusions, to which no response is required. To
24 the extent a response is required, Hotel Tonight lacks knowledge or information sufficient to form a
25 belief about the truth of the remaining allegations in paragraph 36 of the Complaint and therefore
26 denies those allegations.

27 37. Paragraph 37 purports to state legal conclusions, to which no response is required. To
28 the extent a response is required, Hotel Tonight lacks knowledge or information sufficient to form a

1 belief about the truth of the remaining allegations in paragraph 37 of the Complaint and therefore
2 denies those allegations.

3 38. Paragraph 38 purports to state legal conclusions, to which no response is required. To
4 the extent a response is required, Hotel Tonight lacks knowledge or information sufficient to form a
5 belief about the truth of the remaining allegations in paragraph 38 of the Complaint and therefore
6 denies those allegations.

7 39. Paragraph 39 purports to state legal conclusions, to which no response is required. To
8 the extent a response is required, Hotel Tonight lacks knowledge or information sufficient to form a
9 belief about the truth of the remaining allegations in paragraph 39 of the Complaint and therefore
10 denies those allegations.

11 40. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
12 truth of the remaining allegations in paragraph 40 of the Complaint and therefore denies those
13 allegations.

14 41. Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight.
15 Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the
16 remaining allegations in paragraph 41 of the Complaint and therefore denies those allegations.

17 42. Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight.
18 Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the
19 remaining allegations in paragraph 42 of the Complaint and therefore denies those allegations.

20 43. Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight.
21 Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the
22 remaining allegations in paragraph 43 of the Complaint and therefore denies those allegations.

23 44. Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight.
24 Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the
25 remaining allegations in paragraph 44 of the Complaint and therefore denies those allegations.

26 45. Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight.
27 Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the
28 remaining allegations in paragraph 45 of the Complaint and therefore denies those allegations.

1 46. Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight.
2 Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the
3 remaining allegations in paragraph 46 of the Complaint and therefore denies those allegations.

4 47. Paragraph 47 purports to state legal conclusions, to which no response is required. To
5 the extent a response is required, Hotel Tonight lacks knowledge or information sufficient to form a
6 belief about the truth of the remaining allegations in paragraph 47 of the Complaint and therefore
7 denies those allegations.

8 **COUNT ONE**
9 **VIOLATION OF THE FALSE CLAIMS ACT**
 NRS 357.010, et seq.

10 48. Hotel Tonight expressly reincorporates and reaffirms each of its responses to
11 Paragraphs 1 through 47 as set forth above.

12 49. Paragraph 49 purports to state legal conclusions, to which no response is required. To
13 the extent a response is required, Hotel Tonight lacks knowledge or information sufficient to form a
14 belief about the truth of the remaining allegations in paragraph 49 of the Complaint and therefore
15 denies those allegations.

16 50. Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight.
17 Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the
18 remaining allegations in paragraph 50 of the Complaint and therefore denies those allegations.

19 51. Paragraph 51 purports to state legal conclusions, to which no response is required. To
20 the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to
21 Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
22 truth of the remaining allegations in paragraph 51 of the Complaint and therefore denies those
23 allegations.

24 52. Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight.
25 Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the
26 remaining allegations in paragraph 52 of the Complaint and therefore denies those allegations.
27
28

54. Paragraph 54 purports to state legal conclusions, to which no response is required. To the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 54 of the Complaint and therefore denies those allegations.

55. Paragraph 55 purports to state legal conclusions, to which no response is required. To the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 55 of the Complaint and therefore denies those allegations.

COUNT TWO CONVERSION

56. Hotel Tonight expressly reincorporates and reaffirms each of its responses to Paragraphs 1 through 55 as set forth above.

57. Paragraph 57 purports to state legal conclusions, to which no response is required. To the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 57 of the Complaint and therefore denies those allegations.

58. Paragraph 58 purports to state legal conclusions, to which no response is required. To the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 58 of the Complaint and therefore denies those allegations.

1 59. Paragraph 59 purports to state legal conclusions, to which no response is required. To
2 the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to
3 Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
4 truth of the remaining allegations in paragraph 59 of the Complaint and therefore denies those
5 allegations.

6 60. Paragraph 60 purports to state legal conclusions, to which no response is required. To
7 the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to
8 Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
9 truth of the remaining allegations in paragraph 60 of the Complaint and therefore denies those
10 allegations.

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

13 61. Hotel Tonight expressly reincorporates and reaffirms each of its responses to
14 Paragraphs 1 through 60 as set forth above.

15 62. Paragraph 62 purports to state legal conclusions, to which no response is required. To
16 the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to
17 Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
18 truth of the remaining allegations in paragraph 62 of the Complaint and therefore denies those
19 allegations.

20 63. Paragraph 63 purports to state legal conclusions, to which no response is required. To
21 the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to
22 Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
23 truth of the remaining allegations in paragraph 63 of the Complaint and therefore denies those
24 allegations.

25 **COUNT FOUR**
26 **CONSTRUCTIVE TRUST**

27 64. Hotel Tonight expressly reincorporates and reaffirms each of its responses to
28 Paragraphs 1 through 63 as set forth above.

66. Paragraph 66 purports to state legal conclusions, to which no response is required. To the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 66 of the Complaint and therefore denies those allegations.

67. Paragraph 67 purports to state legal conclusions, to which no response is required. To the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 67 of the Complaint and therefore denies those allegations.

68. Hotel Tonight expressly reincorporates and reaffirms each of its responses to Paragraphs 1 through 67 as set forth above.

69. Paragraph 69 purports to state legal conclusions, to which no response is required. To the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 69 of the Complaint and therefore denies those allegations.

70. Paragraph 70 purports to state legal conclusions, to which no response is required. To the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the

1 truth of the remaining allegations in paragraph 70 of the Complaint and therefore denies those
2 allegations.

3 71. Paragraph 71 purports to state legal conclusions, to which no response is required. To
4 the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to
5 Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
6 truth of the remaining allegations in paragraph 71 of the Complaint and therefore denies those
7 allegations.

8 **COUNT SIX**
DECLARATORY RELIEF

9 72. Hotel Tonight expressly reincorporates and reaffirms each of its responses to
10 Paragraphs 1 through 71 as set forth above.

11 73. Paragraph 73 purports to state legal conclusions, to which no response is required. To
12 the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to
13 Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
14 truth of the remaining allegations in paragraph 73 of the Complaint and therefore denies those
15 allegations.

16 74. Paragraph 74 purports to state legal conclusions, to which no response is required. To
17 the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to
18 Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
19 truth of the remaining allegations in paragraph 74 of the Complaint and therefore denies those
20 allegations.

21 75. Paragraph 75 purports to state legal conclusions, to which no response is required. To
22 the extent a response is required, Hotel Tonight denies the allegations to the extent that they relate to
23 Hotel Tonight. Hotel Tonight lacks knowledge or information sufficient to form a belief about the
24 truth of the remaining allegations in paragraph 75 of the Complaint and therefore denies those
25 allegations.

26 76. Hotel Tonight admits that Plaintiffs purport to seek the relief requested in Plaintiffs'
27 "WHEREFORE" paragraphs, but denies that Plaintiff is entitled to such relief or any relief at all, and
28 demands strict proof thereof. Except as expressly admitted herein, Hotel Tonight denies each and

every remaining allegation contained in the “WHEREFORE” paragraph and its subparagraphs of the Complaint.

**HOTEL TONIGHT HOTEL TONIGHT, INC. AND HOTEL TONIGHT, LLC’S
AFFIRMATIVE AND OTHER DEFENSES**

77. Without assuming the burden of proof of such defenses that it would not otherwise have, Hotel Tonight affirmatively assert the following defenses, which apply to Relators’ claims. Moreover, Hotel Tonight’s investigation of Plaintiffs’ averments and defenses thereto is continuing; Hotel Tonight reserves the right to supplement or amend these defenses:

FIRST DEFENSE

78. Relators’ Complaint fails to state a claim under which relief can be granted under Nev. R. Civ. P. 12(b)(5).

SECOND DEFENSE

79. Relators’ claims are barred by the “public disclosure” bar of the Nevada False Claims Act, NRS 357.100.

THIRD DEFENSE

80. Relators’ claims are barred by the “government action” bar of the Nevada False Claims Act, NRS 357.080.3(b), because this action is based on allegations or transactions that are the subject of a civil action for a monetary penalty to which a political subdivision of Nevada is a party.

FOURTH DEFENSE

81. Relators’ claims are barred, in whole or in part, because Hotel Tonight did not act with (a) actual knowledge of the falsity of any alleged record or statement at issue, (b) deliberate ignorance concerning the truth or falsity of any alleged record or statement at issue, or (c) reckless disregard concerning the truth or falsity of any alleged record or statement at issue.

FIFTH DEFENSE

82. The claims in the Complaint are barred, in whole or in part, by the applicable statute of limitations.

SIXTH DEFENSE

83. Relators' claims are barred, in whole or in part, by the doctrine of laches.

SEVENTH DEFENSE

84. The Nevada False Claims Act allegations in the Complaint are not plead with the requisite particularity.

EIGHTH DEFENSE

85. Relators' claims are barred, in whole or in part, by Relators' lack of standing.

NINTH DEFENSE

86. Only one person may bring a *qui tam* action under the Nevada False Claims Act and therefore all, or at least one, of the Relators or their claims must be dismissed.

TENTH DEFENSE

87. Relators' claims are barred, in whole or in part, because Hotel Tonight lacked any obligation to collect and remit the taxes that they purportedly failed to pay.

ELEVENTH DEFENSE

88. Relators' claims are barred, in whole or in part, because to the extent that there is any ambiguity in the applicable provisions of the Nevada and Clark County Tax Codes, including without limitation in Clark County Code 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335, *et seq.*, such provisions were reasonably interpreted by Hotel Tonight.

TWELFTH DEFENSE

89. Relators' claims are barred, in whole or in part, because the actions of Hotel Tonight were reasonable and taken in good faith and/or based on an objectively reasonable understanding of their obligations under the law.

THIRTEENTH DEFENSE

90. Relators' claims under the Nevada False Claims Act are foreclosed by the comprehensive administrative framework of the Nevada and/or Clark County Tax Codes.

FOURTEENTH DEFENSE

91. Relators' claims are barred, in whole or in part, based on the doctrines of waiver and/or estoppel.

FIFTEENTH DEFENSE

92. Relators, as partial assignees of the State or political subdivision, are estopped from claiming that the taxes are due based on a State Department of Taxation Advisory Opinion that declares the taxes are not owed by businesses such as those conducted by Hotel Tonight.

SIXTEENTH DEFENSE

93. Relators' claims or the requested remedies are barred by State of Nevada and/or Clark County's permission, knowledge, consent, approval, acquiescence, and/or ratification of the transactions and occurrences that are the subject of the Complaint.

SEVENTEENTH DEFENSE

94. Some or all of the claims are barred by the doctrines of exclusive or primary jurisdiction.

EIGHTEENTH DEFENSE

95. Relators' claims fail for lack of any actual loss, injury, or damages.

NINETEENTH DEFENSE

96. Relators' claims for treble damages, penalties, and interest, above and beyond actual damages, if any, are unconstitutional, because such damages and/or penalties would violate the United States Constitution and the Nevada Constitution.

TWENTIETH DEFENSE

97. The government failed to mitigate its alleged damages, if any.

TWENTY FIRST DEFENSE

98. Imposing liability on Hotel Tonight will require expanding the scope of Plaintiff's ordinances and the applicable statutory provisions beyond their constitutional limits under the United States Constitution, the Nevada Constitution, the wording and underlying intent of the applicable statutes and ordinances, and any reasonable reading of the applicable statutes and ordinances. *See Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

TWENTY SECOND DEFENSE

99. The Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution prohibit Plaintiff from seeking to subject Hotel Tonight to registration,

1 reporting, collecting, and remitting obligations and potential penalties and sanctions pursuant to
2 unconstitutionally vague ordinances and statutory provisions. *See, e.g., Grayned*, 408 U.S. at 108-
3 09.

4 **TWENTY THIRD DEFENSE**

5 100. Plaintiff cannot enforce or collect the tax at issue from Hotel Tonight because the
6 attempted collection of the tax violates the Internet Tax Freedom Act (also known as the Internet
7 Tax Nondiscrimination Act), reproduced at 47 U.S.C. § 151 note § 1100, et seq., and the
8 Supremacy Clause of the United States Constitution. The Internet Tax Freedom Act forbids a state
9 or political subdivision of a state, such as Plaintiff, from imposing multiple or discriminatory taxes
10 on electronic commerce. Even if the Court should find that additional taxes are owed to Plaintiff,
11 collecting or enforcing such taxes against Hotel Tonight would violate the Internet Tax Freedom
12 Act because no such taxes are collected or enforced against traditional travel agents, travel
13 wholesalers, travel aggregators, travel packagers, or other traditional “brick and mortar” travel
14 service providers located in Plaintiff’s taxing jurisdictions that use the same business model and
15 offer the same services to customers as Hotel Tonight.

16 **TWENTY FOURTH DEFENSE**

17 101. Any purported claim for punitive damages or for penalties (including statutory
18 penalties or interest) violates the Due Process and Equal Protection Clauses of the United States
19 Constitution, Amend. XIV, and the Nevada Constitution.

20
21 [signature on following page]
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1 Dated: June 30, 2021

2 Respectfully submitted,

3 BALLARD SPAHR LLP

4 By: /s/ Maria A. Gall

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11 -and-

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17 *Attorneys for Defendants Hotel Tonight, Inc. and*
18 *Hotel Tonight LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that on June 30, 2021, I served a true and correct copy of the
3 foregoing **DEFENDANTS HOTEL TONIGHT, INC. AND HOTEL TONIGHT, LLC'S**
4 **ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT** on the
5 following by filing the same with the Court's e-filing system:

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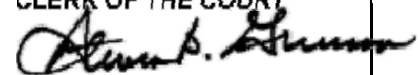
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15
16 /s/ Adam Crawford
17 An employee of Ballard Spahr LLP
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ANSBU

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LLC, Travelocity, Inc., Cheap Tickets, Inc.,
Expedia, Inc., Expedia Global, LLC,
Hotels.Com. LP, Hotwire, Inc., and
Travelnow.com, Inc.*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL.
Mark Fierro and Sig Rogich,

Plaintiffs,

vs.

ORBITZ WORLDWIDE, LLC et, al.,

Defendants.

CASE NO. A-20-814111-B

Dept. No.: XIII

**DEFENDANTS ORBITZ WORLDWIDE, LLC, ORBITZ, LLC, ORBITZ, INC.,
TRAVELSCAPE LLC, TRAVELOCITY, INC., CHEAP TICKETS, INC., EXPEDIA,
INC., EXPEDIA GLOBAL, LLC, HOTELS.COM, LP, HOTWIRE, INC., AND
TRAVELNOW.COM, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO
COMPLAINT**

1 Defendants Orbitz Worldwide, LLC, Orbitz, LLC, Orbitz, Inc., Travelscape LLC,
2 Travelocity, Inc., Cheap Tickets, Inc., Expedia, Inc., Expedia Global, LLC, Hotels.Com, LP,
3 Hotwire, Inc., and Travelnow.com, Inc. (“Expedia Defendants”),¹ by and through their undersigned
4 counsel respectfully submit this Answer and Affirmative Defenses (“Answer”) to the Complaint
5 filed by Relators Mark Fierro and Sig Rogich (“Relators”) as set forth below.

6 **NATURE OF THE ACTION**

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

10 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 1 except to admit that
11 Mark Fierro and Sigmund Rogich have filed the Complaint.

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

15 **ANSWER:** The allegations of this paragraph are conclusions of law for which no
16 response is required, and therefore Expedia Defendants deny the allegations in Paragraph 2.

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

20 **ANSWER:** The allegations in Paragraph 3 are Relators’ characterization of this lawsuit,
21 and to the extent any response is required, Expedia Defendants deny the allegations in Paragraph 3
22 to the extent they are directed to the Expedia Defendants. To the extent the allegations in Paragraph
23 3 are directed to other defendants, no response is required.

24 4. Defendants contract with hotels for the right to purchase rooms at discounted or
25 “wholesale” prices. Defendants then sell the rooms to the public through their internet sites or toll-
26 free numbers at marked-up, “retail” prices, plus certain “tax recovery and fees.” Defendants charge
27

28 ¹ As set forth in the Answers to ¶¶ 12, 13, and 21 below, some of the named “Expedia Defendant”
entities do not exist and are improperly named as Defendants in the Complaint.

1 the customers' credit cards for the entire amount, which includes the retail price of the room and
2 amounts sufficient to pay occupancy taxes on the retail price of the rooms. The hotels in turn invoice
3 Defendants for the rooms at the discounted price and the applicable occupancy tax rate on the
4 discounted rate.

5 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 4 to the extent they
6 are directed to the Expedia Defendants except to admit that some Expedia Defendants operate
7 websites that, among other things, facilitate online travel reservations between individuals and
8 hotels. To the extent the allegations in Paragraph 4 are directed to other defendants, no response is
9 required.

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

17 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 5 to the extent they
18 are directed to the Expedia Defendants. To the extent the allegations in Paragraph 5 are directed to
19 other defendants, no response is required.

20 **THE PARTIES AND JURISDICTION**

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

24 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
25 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.

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

1 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
2 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.

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

6 **ANSWER:** Expedia Defendants admit that Orbitz, Worldwide LLC is a Delaware LLC
7 with its principal place of business in Chicago, Illinois, but otherwise denies the allegations in
8 Paragraph 8.

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

12 **ANSWER:** Expedia Defendants admit that Orbitz, LLC is a Delaware LLC with its
13 principal place of business in Chicago, Illinois, but otherwise denies the allegations in Paragraph
14 9.

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

18 **ANSWER:** Expedia Defendants admit that Orbitz, Inc. is a Delaware corporation with
19 its principal place of business in Chicago, Illinois, but otherwise denies the allegations in Paragraph
20 10.

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

24 **ANSWER:** Expedia Defendants admit that Travelscape, LLC is a Nevada LLC with its
25 principal place of business in Las Vegas, Nevada, but otherwise denies the allegations in Paragraph
26 11.

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

4 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 12 except to state that
5 Travelocity, Inc. was the non-surviving entity of a merger with Travelscape, LLC in 2015 and there
6 currently is no legal entity named Travelocity, Inc.

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

10 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 13. There is no legal
11 entity named Cheap Tickets, Inc.

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

15 **ANSWER:** Expedia Defendants admit that Expedia, Inc. is a Washington corporation
16 with its principal place of business in Seattle, Washington, but otherwise denies the allegations in
17 Paragraph 14.

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

21 **ANSWER:** Expedia Defendants admit that Expedia Global, LLC is a Washington LLC
22 with its principal place of business in Seattle, Washington, but otherwise denies the allegations in
23 Paragraph 15.

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

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1 **ANSWER:** Expedia Defendants admit that Hotels.com LP. is a Texas limited
2 partnership with its principal place of business in Dallas, Texas, but otherwise denies the allegations
3 in Paragraph 16.

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

7 **ANSWER:** Expedia Defendants admit that Hotwire Inc. is a Delaware corporation with
8 its principal place of business in San Francisco, California, but otherwise denies the allegations in
9 Paragraph 17.

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

13 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
14 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.

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 times
17 relevant to this litigation conducted business in this state.

18 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
19 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.

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

23 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
24 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.

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

1 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 21. There is no legal
2 entity named Travelnow.com Inc.

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

6 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
7 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.

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

11 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
12 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.

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

16 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
17 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.

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

21 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
22 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.

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

26 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
27 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.
28

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

4 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
5 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.

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

9 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
10 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.

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

14 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
15 belief about the truth of the allegations in this paragraph, and they are, therefore, denied.

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

19 **ANSWER:** The allegations of this paragraph are conclusions of law for which no
20 response is required, and therefore Expedia Defendants deny the allegations in Paragraph 30 to the
21 extent they are directed to the Expedia Defendants. To the extent the allegations in Paragraph 30
22 are directed to other defendants, no response is required.

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

1 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 31 to the extent they
2 are directed to the Expedia Defendants. To the extent the allegations in Paragraph 31 are directed
3 to other defendants, no response is required.

4 32. This Court has jurisdiction over Plaintiffs' claims as they involve claims arising
5 exclusively under Nevada statutes.

6 **ANSWER:** The allegations of this paragraph are conclusions of law for which no
7 response is required, and therefore Expedia Defendants deny the allegations in Paragraph 32 to the
8 extent they are directed to the Expedia Defendants. To the extent the allegations in Paragraph 32
9 are directed to other defendants, no response is required.

10 33. Venue is proper because injuries to Plaintiffs occurred in Clark County, Nevada and
11 because Defendants committed unlawful acts and conducted their unlawful practices in Clark
12 County, Nevada.

13 **ANSWER:** The allegations of this paragraph are conclusions of law for which no
14 response is required, and therefore Expedia Defendants deny the allegations in Paragraph 33 to the
15 extent they are directed to the Expedia Defendants. To the extent the allegations in Paragraph 33
16 are directed to other defendants, no response is required.

17 34. That the true names and capacities, whether individual, corporate, associates,
18 copartnership, or otherwise of Defendants DOES 1 through 100 and ROE Corporations 1 through
19 100, are unknown to Plaintiffs who therefore sues said defendants by such fictitious names.
20 Plaintiffs are informed and believe and thereon allege that each of the defendants designated as
21 DOES 1 through 100 and ROE Corporations 1 through 100 are responsible in some manner for the
22 events and happenings referred to in this action and proximately caused damages to Plaintiffs as
23 herein alleged.

24 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
25 belief about the truth of the allegations in this paragraph, and they are, therefore, denied to the
26 extent they are directed to the Expedia Defendants. To the extent the allegations in Paragraph 34
27 are directed to other defendants, no response is required.

35. That this civil action arising from actions occurring within County of Clark, State of Nevada, involving an amount in controversy in excess of the sum of \$15,000.00, exclusive of costs and interests, thereby giving this Court jurisdiction over this matter.

ANSWER: The allegations of this paragraph are conclusions of law for which no response is required, and therefore Expedia Defendants deny the allegations in Paragraph 35 to the extent they are directed to the Expedia Defendants. To the extent the allegations in Paragraph 35 are directed to other defendants, no response is required.

FACTUAL ALLEGATIONS

36. In Nevada, proprietors of transient lodging as well as their managing agents have a duty to collect and remit tax to the State on rents charged to guests pursuant to Clark County Code 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335, *et seq.*

ANSWER: The allegations of this paragraph are conclusions of law for which no response is required, and therefore Expedia Defendants deny the allegations in Paragraph 36 to the extent they are directed to the Expedia Defendants. To the extent the allegations in Paragraph 36 are directed to other defendants, no response is required.

37. The combined transient lodging tax is calculated as a percentage of gross rental receipts and ranges between 10.5% and 13.38%.

ANSWER: The allegations of this paragraph are conclusions of law for which no response is required, and therefore Expedia Defendants deny the allegations in Paragraph 37 to the extent they are directed to the Expedia Defendants. To the extent the allegations in Paragraph 37 are directed to other defendants, no response is required.

38. Rent is the amount charged for a sleeping room/space in a transient lodging establishment.

ANSWER: The allegations of this paragraph are conclusions of law for which no response is required, and therefore Expedia Defendants deny the allegations in Paragraph 38 to the extent they are directed to the Expedia Defendants. To the extent the allegations in Paragraph 38 are directed to other defendants, no response is required.

1 39. The transient lodging tax may be collected from the paying transient guests and may
2 be shown as an addition to the rent charged.

3 **ANSWER:** The allegations of this paragraph are conclusions of law for which no
4 response is required, and therefore Expedia Defendants deny the allegations in Paragraph 39 to the
5 extent they are directed to the Expedia Defendants. To the extent the allegations in Paragraph 39
6 are directed to other defendants, no response is required.

7 40. Upon information and belief, recipients of the tax collected within unincorporated
8 Clark County include the Las Vegas Convention and Visitors Authority, the Clark County School
9 District, local transportation districts, the Nevada Department of Tourism, the state of Nevada
10 general fund, the State Supplemental School Fund, and the Clark County General Fund.

11 **ANSWER:** Expedia Defendants lack knowledge or information sufficient to form a
12 belief about the truth of the allegations in this paragraph, and they are, therefore, denied to the
13 extent they are directed to the Expedia Defendants. To the extent the allegations in Paragraph 40
14 are directed to other defendants, no response is required.

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

17 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 41 to the extent they
18 are directed to the Expedia Defendants. To the extent the allegations in Paragraph 41 are directed
19 to other defendants, no response is required.

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

23 **ANSWER:** The allegations in this Paragraph are vague and ambiguous and cannot be
24 answered on that basis. To the extent that an answer may be required from Expedia Defendants,
25 Expedia Defendants deny the allegations in Paragraph 42. To the extent the allegations in
26 Paragraph 42 are directed to other defendants, no response is required.

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

1 **ANSWER:** The allegations in this Paragraph are vague and ambiguous and cannot be
2 answered on that basis. To the extent that an answer may be required from Expedia Defendants,
3 Expedia Defendants deny the allegations in Paragraph 43. To the extent the allegations in
4 Paragraph 43 are directed to other defendants, no response is required.

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

7 **ANSWER:** The allegations in this Paragraph are vague and ambiguous and cannot be
8 answered on that basis. To the extent that an answer may be required from Expedia Defendants,
9 Expedia Defendants deny the allegations in Paragraph 44. To the extent the allegations in
10 Paragraph 44 are directed to other defendants, no response is required.

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

13 **ANSWER:** The allegations in this Paragraph are vague and ambiguous and cannot be
14 answered on that basis. To the extent that an answer may be required from Expedia Defendants,
15 Expedia Defendants deny the allegations in Paragraph 45. To the extent the allegations in
16 Paragraph 45 are directed to other defendants, no response is required.

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

20 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 46 to the extent they
21 are directed to the Expedia Defendants. To the extent the allegations in Paragraph 46 are directed
22 to other defendants, no response is required.

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

26 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 47 to the extent they
27 are directed to the Expedia Defendants. To the extent the allegations in Paragraph 47 are directed
28 to other defendants, no response is required.

COUNT ONE
VIOLATION OF THE FALSE CLAIMS ACT
NRS 357.010, et seq.

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

ANSWER: Expedia Defendants incorporate the foregoing responses as if fully set forth herein. Expedia Defendants deny the allegations in Paragraph 48 to the extent they are directed to the Expedia Defendants, except to admit only that Relators purport to style their Complaint in the manner so indicated. To the extent the allegations in Paragraph 48 are directed to other defendants, no response is required.

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

ANSWER: The allegations of this paragraph are conclusions of law for which no response is required, and therefore Expedia Defendants deny the allegations in Paragraph 49 to the extent they are directed to the Expedia Defendants. To the extent the allegations in Paragraph 48 are directed to other defendants, no response is required.

50. Defendants have made numerous agreements with hotels for discounted room rates to make their inventory of hotel rooms available to customers on websites for rent at a marked-up retail price.

ANSWER: The allegations in this Paragraph are vague and ambiguous and cannot be answered on that basis. To the extent that an answer may be required from Expedia Defendants, Expedia Defendants deny the allegations in Paragraph 50. To the extent the allegations in Paragraph 50 are directed to other defendants, no response is required.

51. Defendants knowingly and improperly avoided and/or decreased their obligation to pay money to the State by failing to remit the transient lodging tax on the full amount of rent charged to guests that is due and owing to the State of Nevada pursuant to Clark County Code 4.08, et seq. and Nevada Revised Statute 244A, 244.335, et seq.

1 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 51 to the extent they
2 are directed to the Expedia Defendants. To the extent the allegations in Paragraph 51 are directed
3 to other defendants, no response is required.

4 52. Defendants knowingly and intentionally failed to charge, collect and remit the
5 transient lodging tax on the retail price of the rent charged to customers.

6 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 52 to the extent they
7 are directed to the Expedia Defendants. To the extent the allegations in Paragraph 52 are directed
8 to other defendants, no response is required.

9 53. Defendants have engaged in a practice to evade payment of substantial amounts of
10 taxes on rent charged to customers.

11 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 53 to the extent they
12 are directed to the Expedia Defendants. To the extent the allegations in Paragraph 53 are directed
13 to other defendants, no response is required.

14 54. As a direct and proximate result of the aforementioned actions of Defendants, the
15 State of Nevada has been deprived of substantial tax revenues to which the State of Nevada is
16 otherwise entitled. Defendants are liable to the State of Nevada for three times the amount of
17 damages sustained by the State of Nevada in the form of unpaid transient lodging tax, for the costs
18 of bringing this action, and for a civil penalty of not less than \$5,500 or more than \$11,000 for each
19 act constituting a violation.

20 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 54 to the extent they
21 are directed to the Expedia Defendants. To the extent the allegations in Paragraph 54 are directed
22 to other defendants, no response is required.

23 55. Plaintiffs are entitled to recovery pursuant to NRS 357.210.

24 **ANSWER:** Expedia Defendants deny the allegations in Paragraph 55 to the extent they
25 are directed to the Expedia Defendants. To the extent the allegations in Paragraph 55 are directed
26 to other defendants, no response is required.

1 **COUNT TWO**
2 **CONVERSION**

3 56. Plaintiffs re-allege and incorporate the allegations set forth above as though fully
4 alleged herein.

5 **ANSWER:** This Count has been dismissed and, therefore, no answer is necessary.

6 57. At all times relevant, Plaintiffs on behalf of the State of Nevada have been entitled
7 to and have had the right to the immediate possession of personal property, the taxes due and owing.

8 **ANSWER:** This Count has been dismissed and, therefore, no answer is necessary.

9 58. At all times relevant, the monies due and owing were in the possession of one or
10 more Defendants who wrongfully exercised dominion and control over the monies owing to
11 Plaintiffs on behalf of the State of Nevada, thereby depriving Plaintiffs the use and the benefit
12 thereof.

13 **ANSWER:** This Count has been dismissed and, therefore, no answer is necessary.

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

17 **ANSWER:** This Count has been dismissed and, therefore, no answer is necessary.

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

21 **ANSWER:** This Count has been dismissed and, therefore, no answer is necessary.

22 **COUNT THREE**
23 **UNJUST ENRICHMENT**

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

26 **ANSWER:** This Count has been dismissed and, therefore, no answer is necessary.

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

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

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

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

COUNT FOUR CONSTRUCTIVE TRUST

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

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

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

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

66. The retention of monies by Defendants would be inequitable.

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

67. By virtue of Defendants' actions, Defendants hold these funds as constructive trustees for the benefits of the Plaintiffs. The existence and imposition of a constructive trust is essential to the effectuation of justice. The Plaintiffs request an order that Defendants be directed to give possession thereof to Plaintiffs.

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

COUNT FIVE
CONSUMER FRAUD/VIOLATION OF NRS 598
DECEPTIVE TRADE PRACTICES ACT

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

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

69. NRS 41.600(2) defines “consumer fraud” as “(e) a deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive.”

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

70. Defendants, as previously alleged, performed acts and omitted performing acts, which constitute an unfair trade practice under one or more provisions of NRS 598.0903, *et seq.*, including but not limited to NRS 598.0915(13), (14), and (15).

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

71. Plaintiff was damaged as previously alleged as a direct and proximate result of Defendants' violations of said statutes.

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

COUNT SIX
DECLARATORY RELIEF

72. Plaintiff re-alleges and incorporates the allegations set forth above as though fully alleged herein.

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

73. A dispute has arisen between Plaintiffs and Defendants that is ripe for adjudication concerning the interpretation of Nevada's combined transient lodging tax, the False Claims Act, and the Deceptive Trade Practices Act.

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

74. As a result of Defendants' actions, Plaintiffs have been damaged in an amount in excess of AMOUNT to be determined at the time of trial.

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

75. As a result of Defendants' actions, it has become necessary to retain an attorney to prosecute the claims herein; therefore, Plaintiffs are entitled to recover all expenses incurred in this action, including without limitation, all costs and attorney's fees together with interest thereon.

ANSWER: This Count has been dismissed and, therefore, no answer is necessary.

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

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

7 **ANSWER:** Expedia Defendants deny that the State of Nevada is entitled to any damages
8 or other relief, including the relief requested, and further deny any allegations in the prayer for
9 relief, to the extent they are directed to the Expedia Defendants. To the extent the allegations are
10 directed to other defendants, no response is required.

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

14 **ANSWER:** Expedia Defendants deny that Relators are entitled to any damages or other
15 relief, including the relief requested, and further deny any allegations in the prayer for relief, to the
16 extent they are directed to the Expedia Defendants. To the extent the allegations are directed to
17 other defendants, no response is required.

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

19 **ANSWER:** Expedia Defendants deny that the State of Nevada and/or Relators are
20 entitled to any damages or other relief, including the relief requested, and further deny any
21 allegations in the prayer for relief, to the extent they are directed to the Expedia Defendants. To
22 the extent the allegations are directed to other defendants, no response is required.

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

25 **ANSWER:** Expedia Defendants deny that the State of Nevada and/or Relators are
26 entitled to any damages or other relief, including the relief requested, and further deny any
27 allegations in the prayer for relief, to the extent they are directed to the Expedia Defendants. To
28 the extent the allegations are directed to other defendants, no response is required.

All Complaint allegations not specifically admitted above are denied.

EXPEDIA DEFENDANTS' AFFIRMATIVE AND OTHER DEFENSES

Without assuming the burden of proof of such defenses that it would not otherwise have, Expedia Defendants affirmatively assert the following defenses, which apply to Relators' claims:

FIRST DEFENSE

Relators' Complaint fails to state a claim under which relief can be granted under Nev. R. Civ. P. 12(b)(5).

SECOND DEFENSE

Relators' claims are barred by the "public disclosure" bar of the Nevada False Claims Act, NRS 357.100.

THIRD DEFENSE

Relators' claims are barred by the "government action" bar of the Nevada False Claims Act, NRS 357.080.3(b), because this action is based on allegations or transactions that are the subject of a civil action for a monetary penalty to which a political subdivision of Nevada is a party.

FOURTH DEFENSE

Relators' claims are barred, in whole or in part, because Expedia Defendants did not act with (a) actual knowledge of the falsity of any alleged record or statement at issue, (b) deliberate ignorance concerning the truth or falsity of any alleged record or statement at issue, or (c) reckless disregard concerning the truth or falsity of any alleged record or statement at issue.

FIFTH DEFENSE

The Claims in the Complaint are barred, in whole or in part, by the applicable statute of limitations.

1 **SIXTH DEFENSE**

2 Relators' claims are barred, in whole or in part, by the doctrine of laches.

3 **SEVENTH DEFENSE**

4 The Nevada False Claims Act allegations in the Complaint are not plead with the requisite
5 particularity.
6

7 **EIGHTH DEFENSE**

8 Relators' claims are barred, in whole or in part, by Relators' lack of standing.

9 **NINTH DEFENSE**

10 Only one person may bring a *qui tam* action under the Nevada False Claims Act and
11 therefore all, or at least one, of the Relators or their claims must be dismissed.
12

13 **TENTH DEFENSE**

14 Relators' claims are barred, in whole or in part, because the Expedia Defendants lacked any
15 obligation to remit the taxes that they purportedly failed to pay.

16 **ELEVENTH DEFENSE**

17 Relators' claims are barred, in whole or in part, because to the extent that there is any
18 ambiguity in the applicable provisions of the Nevada and Clark County Tax Codes, including
19 without limitation in Clark County Code 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335,
20 *et seq.*, such provisions were reasonably interpreted by Expedia Defendants.
21

22 **TWELFTH DEFENSE**

23 Relators' claims are barred, in whole or in part, because actions of Expedia Defendants were
24 reasonable and taken in good faith and/or based on an objectively reasonable understanding of their
25 obligations under the law.
26
27
28

1 **THIRTEENTH DEFENSE**

2 Relators' claims under the Nevada False Claims Act are foreclosed by the comprehensive
3 administrative framework of the Nevada and/or Clark County Tax Codes.

4 **FOURTEENTH DEFENSE**

5 Relators' claims are barred, in whole or in part, based on the doctrines of waiver and/or
6 estoppel.

7 **FIFTEENTH DEFENSE**

8 Relators, as partial assignees of the State or political subdivision, are estopped from
9 claiming that the taxes are due based on a State Department of Taxation Advisory Opinion that
10 declares the taxes are not owed by businesses such as those conducted by the Expedia Defendants.

11 **SIXTEENTH DEFENSE**

12 Relators' claims or the requested remedies are barred by State of Nevada and/or Clark
13 County's permission, knowledge, consent, approval, acquiescence, and/or ratification of the
14 transactions and occurrences that are the subject of the Complaint.

15 **SEVENTEENTH DEFENSE**

16 Some or all of the claims are barred by the doctrines of exclusive or primary jurisdiction.

17 **EIGHTEENTH DEFENSE**

18 Relators' claims fail for lack of any actual loss, injury, or damages.

19 **NINETEENTH DEFENSE**

20 The government failed to mitigate its alleged damages, if any.

21 **TWENTIETH DEFENSE**

22 Relators' claims for treble damages, punitive damages, penalties, and interest, above and
23 beyond actual damages, if any, are unconstitutional, because such damages and/or penalties would
24 violate the United States Constitution and the Nevada Constitution.

1 **TWENTY-FIRST DEFENSE**

2
3 Imposing liability on the Expedia Defendants would expand the scope of the
4 government's ordinances and the applicable statutory provisions beyond their constitutional
5 limits, the wording and underlying intent of the applicable laws, and any reasonable reading of
6 such laws.

7 **TWENTY-SECOND DEFENSE**

8 The Due Process Clauses of the Fifth and Fourteenth Amendments to the United States
9 Constitution prohibit Relators from subjecting the Expedia Defendants to registration, reporting,
10 collecting, and remitting obligations and potential penalties and sanctions pursuant to
11 unconstitutionally vague laws.

12 **TWENTY-THIRD DEFENSE**

13 Relators cannot enforce or collect the tax at issue because the attempted collection of the
14 tax violates the Internet Tax Freedom Act (also known as the Internet Tax Nondiscrimination Act),
15 reproduced at 47 U.S.C. § 151 note § 1100, et seq., and the Supremacy Clause of the United States
16 Constitution. Even if the additional taxes are owed, collecting or enforcing such taxes against the
17 Expedia Defendants would violate the Internet Tax Freedom Act because no such taxes are
18 collected or enforced against traditional travel agents, travel wholesalers, travel aggregators, travel
19 packagers, or other traditional "brick and mortar" travel service providers in the taxing jurisdiction.

20
21 [signature on following page]
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1 Dated: June 30, 2021

Respectfully submitted,

2 BALLARD SPAHR LLP

3 By: /s/ Maria A. Gall

4 Joel E. Tasca, Esq.

Nevada Bar No. 14124

5 Maria A. Gall, Esq.

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8 -and-

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11 Washington, DC 20004

Attorneys for Expedia Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on June 30, 2021, I served a true and correct copy of the foregoing **DEFENDANTS ORBITZ WORLDWIDE, LLC, ORBITZ, LLC, ORBITZ, INC., TRAVELSCAPE LLC, TRAVELOCITY, INC., CHEAP TICKETS, INC., EXPEDIA, INC., EXPEDIA GLOBAL, LLC, HOTELS.COM, LP, HOTWIRE, INC., AND TRAVELNOW.COM, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT** on the following by filing the same with the Court's e-filing system:

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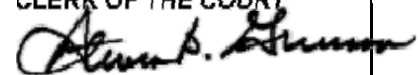
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Agoda International USA LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL.
Mark Fierro and Sig Rogich,

Plaintiffs,

vs.

ORBITZ WORLDWIDE, LLC et, al.,

Defendants.

Case No. A-20-814111-B

Dept. No. XIII

**DEFENDANTS PRICELINE.COM LLC AND TRAVELWEB LLC'S
ANSWER TO RELATORS' COMPLAINT**

1 Defendants Travelweb LLC and priceline.com LLC¹ (collectively, “Defendants”) hereby
2 submit their Answer and Affirmative Defenses to Relators’ Complaint (“Complaint”). For
3 purposes of their Answer and Affirmative Defenses, Defendants will respond to all averments in
4 the Complaint directed to “Defendants” as referring only to Defendants. Unless otherwise
5 indicated, Defendants lack sufficient information to form a belief as to the truth of the averments
6 directed to other Defendants, and on that basis deny each and every such averment.

7 **ANSWER TO RELATORS’ ALLEGATIONS**
8 **CONCERNING “NATURE OF THE ACTION”**

9 1. Defendants admit that the Nevada False Claims Act, NRS 357.010, *et seq.* is a
10 written statute, the terms of which speak for themselves. Except as expressly admitted, Defendants
11 deny the averments in paragraph 1.

12 2. Defendants admit that NRS 357.080(1) is a written statute, the terms of which speak
13 for themselves. Except as expressly admitted, Defendants deny the averments in paragraph 2.

14 3. Defendants admit Relators purport to seek certain relief in paragraph 3 of the
15 Complaint but deny Relators are entitled to any such relief. Except as expressly admitted,
16 Defendants deny the averments in paragraph 3.

17 4. Defendants admit that paragraph 4 of the Complaint contains a characterization of
18 Relators’ case but deny they are obligated to collect and remit the taxes purportedly at issue in this
19 case. Except as expressly admitted, Defendants deny the averments in paragraph 4.

20 5. Defendants aver that paragraph 5 of the Complaint sets forth a hypothetical, to which
21 no response is required. To the extent that paragraph 5 contains allegations of fact, Defendants
22 deny each and every averment in paragraph 5.

23 ///

24
25 ¹ On April 1, 2014, priceline.com Incorporated changed its name to The Priceline Group Inc., and
26 priceline.com LLC assumed the former operations of priceline.com Incorporated as they relate to
27 the merchant model business at issue in this proceeding. On February 21, 2018, The Priceline
28 Group Inc. changed its name to Booking Holdings Inc. To the extent this pleading refers to the
business practices of “Priceline,” including as used in the term “Priceline Defendants,” prior to
April 1, 2014, such references are to priceline.com Incorporated. To the extent this pleading refers
to the business practices of “Priceline,” including as used in the term “Priceline Defendants,” on or
after April 1, 2014, such references are to priceline.com LLC.

THE PARTIES AND JURISDICTION

6. Defendants admit Plaintiff Fierro purports to bring this action on his own behalf and on behalf of the State of Nevada. Except as expressly admitted, Defendants lack information sufficient to form a belief as to the truth of the averments made in paragraph 6 of the Complaint and on this basis deny each and every averment contained therein.

7. Defendants admit Plaintiff Rogich purports to bring this action on his own behalf and on behalf of the State of Nevada. Except as expressly admitted, Defendants lack information sufficient to form a belief as to the truth of the averments made in paragraph 7 of the Complaint and on this basis deny each and every averment contained therein.

8. Defendants deny the allegations set forth in paragraph 8 of the Complaint for lack of information sufficient to establish a belief as to the truth thereof.

9. Defendants deny the allegations set forth in paragraph 9 of the Complaint for lack of information sufficient to establish a belief as to the truth thereof.

10. Defendants deny the allegations set forth in paragraph 10 of the Complaint for lack of information sufficient to establish a belief as to the truth thereof.

11. Defendants deny the allegations set forth in paragraph 11 of the Complaint for lack of information sufficient to establish a belief as to the truth thereof.

12. Defendants deny the allegations set forth in paragraph 12 of the Complaint for lack of information sufficient to establish a belief as to the truth thereof.

13. Defendants deny the allegations set forth in paragraph 13 of the Complaint for lack of information sufficient to establish a belief as to the truth thereof.

14. Defendants deny the allegations set forth in paragraph 14 of the Complaint for lack of information sufficient to establish a belief as to the truth thereof.

15. Defendants deny the allegations set forth in paragraph 15 of the Complaint for lack of information sufficient to establish a belief as to the truth thereof.

16. Defendants deny the allegations set forth in paragraph 16 of the Complaint for lack of information sufficient to establish a belief as to the truth thereof.

1 17. Defendants deny the allegations set forth in paragraph 17 of the Complaint for lack
2 of information sufficient to establish a belief as to the truth thereof.

3 18. Defendants admit that Booking Holdings Inc. is a Delaware corporation with its
4 principal place of business in Norwalk, Connecticut. Except as expressly admitted, Defendants
5 deny the averments in paragraph 18.

6 19. Defendants admit that priceline.com LLC is a Delaware limited liability company
7 with its principal place of business in Norwalk, Connecticut. Except as expressly admitted,
8 Defendants deny the averments in paragraph 19.

9 20. Defendants admit that Travelweb LLC is a Delaware limited liability company with
10 its principal place of business in Norwalk, Connecticut. Except as expressly admitted, Defendants
11 deny the averments in paragraph 20.

12 21. Defendants deny the allegations set forth in paragraph 21 of the Complaint for lack
13 of information sufficient to establish a belief as to the truth thereof.

14 22. The Defendant to whom the allegations in this paragraph were directed has been
15 dismissed from this case, and thus, no response is required.

16 23. Defendants admit that Agoda International, LLC is a Delaware limited liability
17 company with its principal place of business in New York, New York. Except as expressly
18 admitted, Defendants deny the averments in paragraph 23.

19 24. Defendants deny the allegations set forth in paragraph 24 of the Complaint for lack
20 of information sufficient to establish a belief as to the truth thereof.

21 25. Defendants deny the allegations set forth in paragraph 25 of the Complaint for lack
22 of information sufficient to establish a belief as to the truth thereof.

23 26. Defendants deny the allegations set forth in paragraph 26 of the Complaint for lack
24 of information sufficient to establish a belief as to the truth thereof.

25 27. Defendants deny the allegations set forth in paragraph 27 of the Complaint for lack
26 of information sufficient to establish a belief as to the truth thereof.

27 28. The Defendant to whom the allegations in this paragraph were directed has been
28 dismissed from this case, and thus, no response is required.

29. Defendants deny the allegations set forth in paragraph 29 of the Complaint for lack of information sufficient to establish a belief as to the truth thereof.

30. Defendants admit that the Nevada False Claims Act, NRS 357.080 is a written statute, the terms of which speak for themselves. Except as expressly admitted, Defendants deny the averments in paragraph 30.

31. Defendants deny each and every allegation of paragraph 31.

32. Defendants aver that paragraph 32 recites legal conclusions that require no response. To the extent paragraph 32 contains allegations of fact, Defendants deny each and every averment contained in paragraph 32.

33. Defendants aver that paragraph 33 recites legal conclusions that require no response. To the extent paragraph 33 contains allegations of fact, Defendants deny each and every averment contained in paragraph 33.

34. Defendants admit Relators name fictitious parties as Defendants. Except as expressly admitted, Defendants deny the averments in paragraph 34.

35. Defendants aver that paragraph 35 recites legal conclusions that require no response. To the extent paragraph 35 contains allegations of fact, Defendants deny each and every averment contained in paragraph 35.

FACTUAL ALLEGATIONS

36. Defendants aver that paragraph 36 contains a recitation of law, to which no response is required. To the extent that paragraph 36 contains allegations of fact to which a response is required, Defendants deny each and every allegation in paragraph 36 to the extent that the allegations are inconsistent with the express language of the code and statute that the Complaint references.

37. Defendants aver that paragraph 37 contains a recitation of law, to which no response is required. To the extent that paragraph 37 contains allegations of fact to which a response is required, Defendants deny each and every allegation in paragraph 37 to the extent that the allegations are inconsistent with the express language of the code and statute that the Complaint references.

1 38. Defendants aver that paragraph 38 contains a recitation of law, to which no response
2 is required. To the extent that paragraph 38 contains allegations of fact to which a response is
3 required, Defendants deny each and every allegation in paragraph 38 to the extent that the
4 allegations are inconsistent with the express language of the code and statute that the Complaint
5 references.

6 39. Defendants aver that paragraph 39 contains a recitation of law, to which no response
7 is required. To the extent that paragraph 39 contains allegations of fact to which a response is
8 required, Defendants deny each and every allegation in paragraph 39 to the extent that the
9 allegations are inconsistent with the express language of the code and statute that the Complaint
10 references.

11 40. Defendants deny the allegations set forth in paragraph 40 of the Complaint for lack
12 of information sufficient to establish a belief as to the truth thereof.

13 41. Defendants deny each and every allegation of paragraph 41.

14 42. Defendants admit that paragraph 42 contains Relators' characterization of
15 Defendants' business model but deny that characterization is accurate or that Defendants are
16 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
17 admitted, Defendants deny each and every allegation in paragraph 42.

18 43. Defendants admit that paragraph 43 contains Relators' characterization of
19 Defendants' business model but deny that characterization is accurate or that Defendants are
20 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
21 admitted, Defendants deny each and every allegation in paragraph 43.

22 44. Defendants admit that paragraph 44 contains Relators' characterization of
23 Defendants' business model but deny that characterization is accurate or that Defendants are
24 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
25 admitted, Defendants deny each and every allegation in paragraph 44.

26 45. Defendants admit that paragraph 45 contains Relators' characterization of
27 Defendants' business model but deny that characterization is accurate or that Defendants are
28

1 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
2 admitted, Defendants deny each and every allegation in paragraph 45.

3 46. Defendants admit that paragraph 46 contains Relators' characterization of
4 Defendants' business model but deny that characterization is accurate or that Defendants are
5 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
6 admitted, Defendants deny each and every allegation in paragraph 46.

7 47. Defendants aver that paragraph 47 recites legal conclusions that require no response.
8 To the extent paragraph 47 contains allegations of fact, Defendants deny each and every averment
9 contained in paragraph 47.

10 **COUNT ONE**
11 **VIOLATION OF THE FALSE CLAIMS ACT**
12 **NRS 357.010, *et seq.***

13 48. Defendants incorporate each of their answers and responses to paragraphs 1 through
14 47 of the Complaint.

15 49. Defendants admit that NRS 357.040(1)(g) is a written statute, the terms of which
16 speak for themselves. Except as expressly admitted, Defendants deny the averments in paragraph
17 49.

18 50. Defendants admit that paragraph 50 contains Relators' characterization of
19 Defendants' business model but deny that characterization is accurate or that Defendants are
20 obligated to collect and remit the taxes purportedly at issue in this case. Except as expressly
21 admitted, Defendants deny each and every allegation in paragraph 50.

22 51. Defendants deny each and every allegation of paragraph 51.

23 52. Defendants deny each and every allegation of paragraph 52.

24 53. Defendants deny each and every allegation of paragraph 53.

25 54. Defendants deny each and every allegation of paragraph 54.

26 55. Defendants deny each and every allegation of paragraph 55.

1 **COUNT TWO**
2 **CONVERSION**

3 56. Defendants incorporate each of their answers and responses to paragraphs 1 through
4 55 of the Complaint.

5 57. Defendants deny each and every allegation of paragraph 57 and aver that the Court
6 has dismissed this Count of the Complaint with prejudice.

7 58. Defendants deny each and every allegation of paragraph 58 and aver that the Court
8 has dismissed this Count of the Complaint with prejudice.

9 59. Defendants deny each and every allegation of paragraph 59 and aver that the Court
10 has dismissed this Count of the Complaint with prejudice.

11 60. Defendants deny each and every allegation of paragraph 60 and aver that the Court
12 has dismissed this Count of the Complaint with prejudice.

13 **COUNT THREE**
14 **UNJUST ENRICHMENT**

15 61. Defendants incorporate each of their answers and responses to paragraphs 1 through
16 60 of the Complaint.

17 62. Defendants deny each and every allegation of paragraph 62 and aver that the Court
18 has dismissed this Count of the Complaint with prejudice.

19 63. Defendants deny each and every allegation of paragraph 63 and aver that the Court
20 has dismissed this Count of the Complaint with prejudice.

21 **COUNT FOUR**
22 **CONSTRUCTIVE TRUST**

23 64. Defendants incorporate each of their answers and responses to paragraphs 1 through
24 63 of the Complaint.

25 65. Defendants deny each and every allegation of paragraph 65 and aver that the Court
26 has dismissed this Count of the Complaint with prejudice.

27 66. Defendants deny each and every allegation of paragraph 66 and aver that the Court
28 has dismissed this Count of the Complaint with prejudice.

67. Defendants deny each and every allegation of paragraph 67 and aver that the Court has dismissed this Count of the Complaint with prejudice.

COUNT FIVE
CONSUMER FRAUD/VIOLATION OF NRS 598
DECEPTIVE TRADE PRACTICES ACT

68. Defendants incorporate each of their answers and responses to paragraphs 1 through 67 of the Complaint.

69. Defendants admit that the NRS 41.600(2), 598.0915, and 598.0925 are written statutes, the terms of which speak for themselves. Except as expressly admitted, Defendants deny the averments in paragraph 69.

70. Defendants deny each and every allegation of paragraph 70 and aver that the Court has dismissed this Count of the Complaint with prejudice.

71. Defendants deny each and every allegation of paragraph 71 and aver that the Court has dismissed this Count of the Complaint with prejudice.

COUNT SIX DECLARATORY RELIEF

72. Defendants incorporate each of their answers and responses to paragraphs 1 through 71 of the Complaint.

73. Defendants deny each and every allegation of paragraph 73 and aver that the Court has dismissed this Count of the Complaint with prejudice.

74. Defendants deny each and every allegation of paragraph 74 and aver that the Court has dismissed this Count of the Complaint with prejudice.

75. Defendants deny each and every allegation of paragraph 75 and aver that the Court has dismissed this Count of the Complaint with prejudice.

Defendants admit that Relators purport to seek certain relief in the “WHEREFORE” clause and subparts “1” through “4” following paragraph 75 of the Complaint but deny that Relators are entitled to any such relief. Except as expressly admitted, Defendants deny each and every averment contained in the “WHEREFORE” clause and subparts “1” through “4” following paragraph 75 of the Complaint.

1 **DEFENDANTS’ AFFIRMATIVE AND OTHER DEFENSES**

2 Without assuming the burden of proof of such defenses that it would not otherwise have,
3 Defendants affirmatively assert the following defenses, which apply to Relators’ claims:

4 **FIRST DEFENSE**

5 Relators’ Complaint fails to state a claim under which relief can be granted under Nev. R.
6 Civ. P. 12(b)(5).

7 **SECOND DEFENSE**

8 Relators’ claims are barred by the “public disclosure” bar of the Nevada False Claims Act,
9 NRS 357.100.

10 **THIRD DEFENSE**

11 Relators’ claims are barred by the “government action” bar of the Nevada False Claims Act,
12 NRS 357.080.3(b), because this action is based on allegations or transactions that are the subject of
13 a civil action for a monetary penalty to which a political subdivision of Nevada is a party.

14 **FOURTH DEFENSE**

15 Relators’ claims are barred, in whole or in part, because Defendants did not act with (a)
16 actual knowledge of the falsity of any alleged record or statement at issue, (b) deliberate ignorance
17 concerning the truth or falsity of any alleged record or statement at issue, or (c) reckless disregard
18 concerning the truth or falsity of any alleged record or statement at issue.

19 **FIFTH DEFENSE**

20 The claims in the Complaint are barred, in whole or in part, by the applicable statute of
21 limitations.

22 **SIXTH DEFENSE**

23 Relators’ claims are barred, in whole or in part, by the doctrine of laches.

24 **SEVENTH DEFENSE**

25 The Nevada False Claims Act allegations in the Complaint are not pleaded with the requisite
26 particularity.

27 **EIGHTH DEFENSE**

28 Relators’ claims are barred, in whole or in part, by Relators’ lack of standing.

1 **NINTH DEFENSE**

2 Only one person may bring a *qui tam* action under the Nevada False Claims Act and
3 therefore all, or at least one, of the Relators or their claims must be dismissed.

4 **TENTH DEFENSE**

5 Relators' claims are barred, in whole or in part, because Defendants lacked any obligation
6 to remit the taxes that they purported failed to pay.

7 **ELEVENTH DEFENSE**

8 Relators' claims are barred, in whole or in part, because to the extent that there is any
9 ambiguity in the applicable provisions of the Nevada and Clark County Tax Codes, including
10 without limitation in Clark County Code 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335,
11 *et seq.*, such provisions were reasonably interpreted by Defendants.

12 **TWELFTH DEFENSE**

13 Relators' claims are barred, in whole or in part, because actions of Defendants were
14 reasonable and taken in good faith and/or based on an objectively reasonable understanding of their
15 obligations under the law.

16 **THIRTEENTH DEFENSE**

17 Relators' claims under the Nevada False Claims Act are foreclosed by the comprehensive
18 administrative framework of the Nevada and/or Clark County Tax Codes.

19 **FOURTEENTH DEFENSE**

20 Relators' claims are barred, in whole or in part, based on the doctrines of waiver and/or
21 estoppel.

22 **FIFTEENTH DEFENSE**

23 Relators, as partial assignees of the State or political subdivision, are estopped from
24 claiming that the taxes are due based on a State Department of Taxation Advisory Opinion that
25 declares the taxes are not owed by businesses such as those conducted by Defendants.

1 **SIXTEENTH DEFENSE**

2 Relators' claims or the requested remedies are barred by State of Nevada and/or Clark
3 County's permission, knowledge, consent, approval, acquiescence, and/or ratification of the
4 transactions and occurrences that are the subject of the Complaint.

5 **SEVENTEENTH DEFENSE**

6 Some or all of the claims are barred by the doctrines of exclusive or primary jurisdiction.

7 **EIGHTEENTH DEFENSE**

8 Relators' claims fail for lack of any actual loss, injury, or damages.

9 **NINETEENTH DEFENSE**

10 Relators' claims for treble damages, penalties, and interest, above and beyond actual
11 damages, if any, are unconstitutional, because such damages and/or penalties would violate the
12 United States Constitution and the Nevada Constitution.

13 **TWENTIETH DEFENSE**

14 The government failed to mitigate its alleged damages, if any.

15 **TWENTY-FIRST DEFENSE**

16 Any purported claim for punitive damages or for penalties (including statutory penalties or
17 interest) violates the Due Process and Equal Protection Clauses of the United States Constitution,
18 Amend. XIV, and the Nevada Constitution.

19 **TWENTY-SECOND DEFENSE**

20 Imposing liability on Defendants will require expanding the scope of the taxing authorities
21 for which Relators purport to bring this action's ordinances and the applicable statutory provisions
22 beyond their constitutional limits under the United States Constitution, the Nevada Constitution,
23 the wording and underlying intent of the applicable statutes and ordinances, and any reasonable
24 reading of the applicable statutes and ordinances. *See Grayned v. City of Rockford*, 408 U.S. 104,
25 108-09 (1972).

26 **TWENTY-THIRD DEFENSE**

27 The Due Process Clauses of the Fifth and Fourteenth Amendments to the United States
28 Constitution prohibit the taxing authorities for which Relators purport to bring this action from

1 seeking to subject Defendants to registration, reporting, collecting, and remitting obligations and
2 potential penalties and sanctions pursuant to unconstitutionally vague ordinances and statutory
3 provisions. *See, e.g., Grayned*, 408 U.S. at 108-09.

4 **TWENTY-FOURTH DEFENSE**

5 The taxing authorities for which Relators purport to bring this action cannot enforce or
6 collect the tax at issue from Defendants because the attempted collection of the tax violates the
7 Internet Tax Freedom Act (also known as the Internet Tax Nondiscrimination Act), reproduced at
8 47 U.S.C. § 151 note § 1100, *et seq.*, and the Supremacy Clause of the United States
9 Constitution. The Internet Tax Freedom Act forbids a state or political subdivision of a state, such
10 as the taxing authorities for which Relators purport to bring this action, from imposing multiple or
11 discriminatory taxes on electronic commerce. Even if the Court should find that additional taxes
12 are owed to the taxing authorities for which Relators purport to bring this action, collecting or
13 enforcing such taxes against Defendants would violate the Internet Tax Freedom Act because no
14 such taxes are collected or enforced against traditional travel agents, travel wholesalers, travel
15 aggregators, travel packagers, or other traditional “brick and mortar” travel service providers
16 located in the taxing authorities for which Relators purport to bring this action’s taxing jurisdictions
17 that use the same business model and offer the same services to customers as do Defendants.

18 **TWENTY-FIFTH DEFENSE**

19 Defendants’ investigation of Relators’ averments and defenses thereto is continuing;
20 Defendants reserve the right to supplement or amend these defenses.

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23 [signature on following page]
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Dated: June 30, 2021

Respectfully submitted,

BALLARD SPAHR LLP

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*Attorneys for Defendants Booking Holdings Inc.,
Priceline.com LLC, Travelweb LLC, and Agoda
International USA LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that on June 30, 2021, I served a true and correct copy of
3 the foregoing **DEFENDANTS PRICELINE.COM LLC AND TRAVELWEB LLC'S**
4 **ANSWER TO RELATORS' COMPLAINT** on the following by filing the same with the Court's
5 e-filing system:

6 Michael Cristalli, Esq.
7 Dominic P. Gentile, Esq.
8 Ivy P. Hensel, Esq.
9 CLARK HILL PLLC
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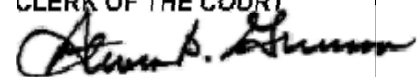
10 *Attorney for Plaintiffs Mark Fierro and Sig*
11 *Rogich*

Attorneys for State of Nevada

12 Puonyarat K. Premsrirut, Esq.
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520 S. Fourth Street, 2nd Floor
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14 *Attorney for Remark Holdings Inc.*

15
16 /s/ Adam Crawford
17 An employee of Ballard Spahr LLP
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7 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

10 Plaintiffs,

11 vs.

12 ORBITZ WORLDWIDE, LLC., et al.

Defendants.

Case No.: A-20-814111-B

Dept. No.: 14

PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
BIFURCATED DISCOVERY

13 Plaintiffs, by and through counsel, hereby submit their Opposition to Defendants'
14 Motion for Bifurcated Discovery filed June 30, 2021. This Opposition is made and based upon
15 the papers and pleadings on file, any attached exhibits, the following points and authorities, and
16 any oral argument the court may allow.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

19 Defendants have filed a Motion to Bifurcate Discovery into two phases in the instant
20 matter. Their claimed basis for the relief sought is that bifurcation as requested will "promote
21 efficiency for the parties and the Court and conserve judicial and party resources."

However, when this Court looks at the totality of the tactical and strategic decisions made by Defendants in connection with this action as well as a companion action filed by Plaintiff Clark County, Nevada against these same Defendants (Eighth Judicial District Court, Case No. A-21-834681-C: Department 24), it should conclude that the Defendants are doing nothing to “promote efficiency for the parties and the Court and conserve judicial and party resources.” Rather, they are seeking to cause two clearly related cases to be tried in different forums so as to increase the cost of litigation, cause duplicative discovery to occur and to delay Plaintiffs’ discovery regarding the merits of this case. Further, they are impermissibly attempting to define and limit the scope and nature of Plaintiffs’ discovery related to Defendants’ affirmative defenses as well as delaying discovery into the merits of the case.

II.

STATEMENT OF RELEVANT FACTS

1. This case (the “Instant Action”) was initiated with the filing of a Complaint on or about April 24, 2020.

2. Defendants filed a Motion to Dismiss on or about March 5, 2021. The Motion to Dismiss was granted in part and denied in part by Order dated June 2, 2021.¹

3. Defendants filed their Answers in the Instant Action on June 30, 2021.

4. On May 14, 2021, Clark County, Nevada filed a new lawsuit (the “Companion Action”) against the same Defendants as named in the Instant Action based upon the same failure to pay transient lodging taxes to various Nevada governmental authorities as is the subject of the Instant

¹ On June 29, 2021, Plaintiffs filed a Motion for Correction of Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss Filed June 2, 2021 (“Relators’ Mot.”), dated June 29, 2021. An Opposition thereto was filed by Defendants on July 13, 2021 and the matter is pending before this Court.

1 Action. [See Case No. A-21-834681-B: Department 24]. A true and correct copy of the
2 Complaint filed in the Companion Action is attached hereto as Exhibit 1.

3 5. Counsel for Plaintiffs in the Instant Action are also counsel for Clark County, Nevada in
4 the Companion Action.

5 6. Joel Tasca of Ballard Spahr is the attorney of record for the following Defendants in the
6 Instant Action: Orbitz Worldwide, LLC, Orbitz, LLC, Orbitz, Inc., Travelscape LLC, Travelocity,
7 Inc., Cheap Tickets, Inc., Expedia, Inc., Expedia Global, LLC, Hotels.Com, LP, Hotwire, Inc.,
8 Travelnow.com, Inc., Booking Holdings, Inc., Priceline.com LLC, Travelweb LLC, Agoda
9 International USA LLC, Hotel Tonight Inc., and Hotel Tonight LLC.

10 7. By email dated May 27, 2021, counsel for Plaintiffs herein and in the Companion Action
11 asked Joel Tasca of Ballard Spahr whether he would agree to accept service of process in the
12 Companion Action on behalf of the Defendants he represented in the Instant Action.

13 8. By email dated May 27, 2021, Mr. Tasca stated as follows: "I don't even know if our
14 firm is being retained yet for this matter, and if so, for which entities, so I'm not in a position to
15 accept service right now."

16 9. By email dated June 10, 2021, Mr. Tasca advised that Ballard Spahr had been retained by
17 the Expedia group of defendants in the Companion Action for the limited purpose of addressing
18 an alleged conflict issue but not for the purpose of accepting service of process or appearing as
19 counsel in the litigation.

20 10. Thereafter, Clark County, Nevada began the process of serving Defendants in the
21 Companion Action through various resident agents in Nevada and Delaware. The following
Defendants in the Companion Action have been served with the date of service set forth by their
name:

ORBITZ WORLDWIDE, LLC-6/24/21

ORBITZ, LLC; ORBITZ, INC.-6/23/21

ORBITZ, INC. – 6/23/21

TRAVELSCAPE, LLC -6/24/21

1 TRAVELOCITY, INC.-6/24/21
2 CHEAP TICKETS, INC.,-6/23/21
3 EXPEDIA INC.-6/24/21
4 EXPEDIA GLOBAL, LLC-6/24/21
5 HOTELS.COM, LP-6/24/21
6 HOTWIRE INC.-6/24/21
7 BOOKING HOLDINGS INC.-6/23/21
8 PRICELINE.COM, LLC-6/23/21
9 TRAVELWEB, LLC-6/23/21
10 TRAVELNOW.COM, INC.-6/23/21
11 AGODA INTERNATIONAL USA LLC-6/24/21
12 HOTEL TONIGHT, INC.-6/23/21
13 HOTEL TONIGHT, LLC-6/23/21

14 11. Rather than filing an Answer or other responsive pleading to the Complaint filed in the
15 Companion Case, Defendants therein have, on July 13, 2021, filed a Notice of Removal of the
16 Companion Action to US District Court, District of Nevada. The US District Court has assigned
17 Case No. 2:21-cv-01328-JCM-VCF to the Companion Action as removed to federal court.

18 12. On June 30, 2021, Defendants filed the instant Motion for Bifurcated Discovery.

19 III.

20 LEGAL ARGUMENT

21 A. The Asserted Basis for Bifurcated Discovery is a Subterfuge

22 Defendants succinctly set forth the asserted basis for bifurcated discovery as follows: “Here,
23 phased discovery will promote efficiency for the parties and the Court and conserve judicial and
24 party resources.” [See Motion at 2:13-14]. Nothing about Defendants’ strategy in defending both
25 the Instant Action and the Companion Action demonstrates a concern for promotion of efficiency
26 for the parties or conservation of judicial and party resources.

1 Indeed, a careful look at the Complaints on file for both the Instant Action and the Companion
2 Action establish that the two actions involve a plethora of common questions of law or fact
3 within the meaning of NRCP 42. Were both cases pending in the Eighth Judicial District Court,
4 the cases would cry out for consolidation and the entry of orders, discovery and otherwise, to
5 “avoid unnecessary cost or delay” as set forth in NRCP 42(a)(3). While Plaintiffs in both actions
6 intended on filing a timely Motion to Consolidate the two actions, EJDRC 2.50 appears to
7 preclude Plaintiffs from filing such a motion until answers have been filed in both actions.
8 EJDRC 2.50(a) provides as follows:

8 **Rule 2.50. Consolidated and coordinated cases.**

9 (a) Consolidated cases.

10 (1) Motions for consolidation of two or more cases must be heard by the
11 judge assigned to the case first commenced. **Such a motion would be
prematurely brought if done in advance of the filing of an answer. If
consolidation is granted, the consolidated case will be heard before the judge
ordering consolidation. (emphasis added).**

12 Had Defendants had any interest whatsoever in promoting efficiency for the parties and
13 Court and/or conserving judicial and party resources, Defendants would have authorized their
14 counsel to accept service of process in the Companion Action in May 2021 rather than forcing
15 Plaintiff to serve process upon Defendants’ resident agents. Were Defendants interested in
16 promoting efficiency and conserving resources, they would have timely answered the Complaint in
17 the Companion Matter and agreed to a consolidation of the two cases in a single court to allow
18 joint discovery in the consolidated matter. Instead, they thwarted consolidation by filing a Notice
19 of Removal to federal court thereby trying to ensure that the same discovery on the merits of the
20 action would need to be conducted in two different forums thereby duplicating depositions and the
21

1 discovery in the two cases, thereby unnecessarily invoking judicial time in two courts rather than
2 one and essentially doubling the costs of litigation.²

3 In determining whether the instant Motion to Bifurcate is really about promoting efficiency
4 and reducing costs of litigation as asserted by Defendants, this Court should look at the totality of
5 the tactical and strategic decisions made by Defendants in connection with both the Instant Action
6 and the Companion Action.

7 **B. The Defendants Are Impermissibly Attempting to Limit Plaintiffs' Discovery
8 Regarding Defendants' Affirmative Defenses**

9 Defendants are seeking an Order from the Court establishing a 90 day discovery schedule into
10 the limited questions relating to whether Plaintiffs are an “original source” and whether Relators’
11 claims are barred by the “public disclosure” bar of the Nevada False Claims Act, NRS 357.100.
12 Defendants’ arguments related to these issues are affirmative defenses they have plead in their
13 Answers. [See 2nd Affirmative Defense asserted by each Answering Defendant].

14 While claiming that Plaintiffs would not be prejudiced by their proposal, Defendants
15 remarkably assert numerous times in their instant Motion that Plaintiffs simply do not need to
16 conduct discovery regarding Defendants’ affirmative defenses. Defendants first assert that
17 “(w)hether or not the public disclosures identified by Defendants suffice under the public
18 disclosure bar is a legal question – not a fact question that requires any discovery.” Motion at
19 footnote 5. This argument is nothing more than a regurgitation of the arguments presented by
20 Defendants at the hearing on their Motion to Dismiss which were rejected by the Court. The
21 Court expressly acknowledged that the issues of public disclosure and original source involved

² Because the filing of the Notice of Removal occurred at 7:21 p.m. on July 13, 2021, Plaintiff in the Companion Case has yet to determine whether the removal is appropriate and whether grounds exist for seeking the remand of the case to the Eighth Judicial District Court for later consolidation with the Instant Action.

1 issues of fact that required further development of the record. That further development of the
2 record is available to Plaintiffs as well as Defendants.

3 While Defendants want 90 days for themselves to conduct “targeted written discovery”
4 regarding their affirmative defense, they boldly assert, as to Plaintiffs, the following: “there
5 would be no reason for Relators to take discovery of any Defendant in Phase 1.” See Motion at
6 7:2-10. They further state as follows: “However, any such challenge – as distinct from an
7 ‘original source’ fact inquiry – would not require discovery, as it would be based on the public
8 disclosures identified by Defendants, consisting of media reports and legislative hearings, as
9 opposed to witness testimony. And any such challenge certainly would not require any discovery
from Defendants.” Motion at footnote 7.

10 It is abundantly clear that Defendants’ instant Motion is not to promote efficiency and reduce
11 costs. It is designed to unfairly limit and/or to entirely prevent Plaintiffs from conducting
12 discovery as to both the underlying merits of the claims regarding unpaid taxes and Defendants’
affirmative defenses.

13 **C. Defendants Are Not Prejudiced By Full Discovery On the Merits**

14 As to permitting discovery as to all matters at issue in the case, in conclusory fashion,
15 Defendants assert that “there is no question that having to engage in such extensive discovery,
16 which may not be relevant in determining the ultimate outcome of this Action, would be
17 prejudicial to Defendants.” Motion at 8:5-8. If this asserted prejudice exists at all, it is entirely a
18 product of Defendants’ strategic and tactical decision to permit the instant case to proceed in the
19 Eighth Judicial District Court while removing the Companion Action to federal court. It is akin
to a person murdering his/her parents and then seeking sympathy for being an orphan.

20 In the Companion Action, which undoubtedly would have been consolidated with the Instant
21 Action if not removed to federal court, the issues relating to original source and prior publication

1 under the Nevada False Claims Act do not exist. The very discovery on the merits that
2 Defendants seek prevent in this case will proceed in the Companion Action, whatever forum it
3 ultimately resides in. If the Companion Action remains in federal court and if the Instant Action
4 is not quickly dismissed pursuant to some dispositive motion later filed by Defendants,
5 duplicative discovery will occur which will double the costs of litigation and consume twice the
6 judicial resources than are necessary. If Defendants do not ultimately obtain a quick dismissal of
7 the Instant Action based upon their affirmative defenses and information obtained in their
8 proposed Phase 1 of discovery, they will still have accomplished their real objective which is to
9 delay providing discovery on the merits and extend this litigation for as long as possible thereby
prejudicing Plaintiffs herein.

10 If this Court denies the instant Motion, Defendants can still focus on and start their discovery
11 immediately on what they refer to as threshold issues and bring their future dispositive motion on
12 their Affirmative Defenses early in the litigation. Nothing prevents them from doing so.
13 However, they should not be allowed to dictate or limit the time and scope of Plaintiffs' discovery on either the affirmative defenses or on the merits of Plaintiffs' case.

14 //

15 //

16 //

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18 //

V.

CONCLUSION

For the above and foregoing reasons, Defendants' instant Motion to Bifurcate Discovery should be denied. If the Court is inclined to order bifurcation, the length of time and the scope of permissible discovery by Plaintiffs during Phase 1 should not be limited to 90 days nor should any available discovery tool be denied to Plaintiffs.

Respectfully submitted this 14th day of July 2021.

CLARK HILL PLLC

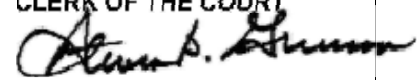
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/s/ Tanya Bain

An Employee of Clark Hill, PLLC

EXHIBIT 1



CASE NO: A-21-834681-C
Department 24

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY, NEVADA,

Plaintiffs,

Case No.:

Dept. No.:

vs.

ORBITZ WORLDWIDE, LLC; ORBITZ,
LLC; ORBITZ, INC.; TRAVELSCAPE,
LLC; TRAVELOCITY, INC.; CHEAP
TICKETS, INC., EXPEDIA INC.,
EXPEDIA GLOBAL, LLC;
HOTELS.COM, LP; HOTWIRE INC.;
BOOKING HOLDINGS INC.;
PRICELINE.COM, LLC; TRAVELWEB,
LLC; TRAVELNOW.COM, INC.; AGODA
INTERNATIONAL USA LLC; HOTEL
TONIGHT, INC.; HOTEL TONIGHT,
LLC; DOES I through XXX, inclusive and
ROE BUSINESS ENTITIES I through
XXX, inclusive,

Defendants.

COMPLAINT

COMES NOW CLARK COUNTY, NEVADA ("CLARK COUNTY" or "Plaintiff"), by
and through their counsel of record of Clark Hill PLLC, and hereby complains of Defendants as
follows:

1 **NATURE OF THE ACTION**

2 1. This lawsuit is to recover damages and obtain other relief from Defendants, web-
3 based hotel booking companies, who have knowingly engaged in a common practice/scheme to
4 avoid payment of Nevada's and CLARK COUNTY's Combined Transient Lodging Tax as
required by Nevada law.

5 2. Defendants contract with hotels for the right to purchase rooms at discounted or
6 "wholesale" prices. Defendants then sell the rooms to the public through their internet sites or
7 toll-free numbers at marked-up, "retail" prices, plus certain "taxes and fees." On information and
8 belief, Defendants charge the customers' credit cards for the entire amount of the transaction,
9 which includes the retail price of the room together with amounts sufficient to pay occupancy
10 taxes on the retail price of the rooms which taxes are lumped together in a single line item which
11 includes unspecified and unitemized "fees." The hotels in turn invoice Defendants for the rooms
at the discounted wholesale price and the applicable occupancy tax rate on the discounted
wholesale rate.

12 3. For example, an online travel company such as Travelocity, Inc. obtains a room
13 from a hotel at a previously negotiated wholesale price of, for instance, \$150. Travelocity, Inc. in
14 turn sells that same hotel room to an occupant over the internet for \$200. In this example,
15 Travelocity, Inc. remits to the hotel the discount wholesale amount (\$150) plus the occupancy
16 tax calculated based upon the \$150 discounted wholesale rate rather than on the \$200 retail rate
17 charged to the consumer. The hotel submits the tax on the \$150 discounted wholesale rate to
18 appropriate Nevada taxing authorities, including CLARK COUNTY. Travelocity retains the \$50
19 difference between the discounted wholesale rate (\$150) and the retail rate charged to consumers
(\$200) plus any taxes and fees collected thereon. This business model deprives Nevada taxing
authorities, including CLARK COUNTY, of taxes due them on the full value of the transaction
whereby a consumer obtains transient lodging in a hotel.

20 ///

21 ///

THE PARTIES

4. Plaintiff CLARK COUNTY is an unincorporated county organized under the laws of the State of Nevada.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 23. Defendant Tripadvisor LLC is a Delaware limited liability company with its
5 principal place of business in Needham, Massachusetts. Defendant Tripadvisor LLC has at all
6 times relevant to this litigation conducted business in this state.

7 24. Defendant Tripadvisor Inc. is a Delaware corporation with its principal place of
8 business in Needham, Massachusetts. Defendant Tripadvisor LLC has at all times relevant to this
9 litigation conducted business in this state.

10 25. Defendant Trip.com, Inc. is a Delaware corporation with its principal place of
11 business in Shanghai, China. Defendant Trip.com, Inc. has at all times relevant to this litigation
12 conducted business in this state.

13 26. Defendant Remark Holdings, Inc. is a Delaware corporation with its principal
14 place of business in Las Vegas, Nevada. Defendant Remark Holdings, Inc. has at all times
15 relevant to this litigation conducted business in this state.

16 27. The true names and capacities, whether individual, corporate, associates, co-
17 partnership, or otherwise of Defendants DOES 1 through 100 and ROE Corporations 1 through
18 100, are unknown to Plaintiffs who therefore sues said defendants by such fictitious names.
19 Plaintiffs are informed and believe and thereon allege that each of the defendants designated as
20 DOES 1 through 100 and ROE Corporations 1 through 100 are responsible in some manner for
21 the events and happenings referred to in this action and proximately caused damages to Plaintiffs
as herein alleged.

JURISDICTION AND VENUE

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

29. This civil action arises from actions occurring within County of Clark, State of Nevada, involving an amount in controversy in excess of the sum of Fifteen Thousand Dollars (\$15,000.00), exclusive of costs and interest, thereby giving this Court jurisdiction over this matter.

30. This Court further has jurisdiction over Plaintiffs' claims as they involve claims arising exclusively under Nevada statutes and CLARK COUNTY Ordinances.

31. Venue is proper because injuries to Plaintiffs occurred in Clark County, Nevada and because Defendants committed unlawful acts and conducted their unlawful practices in Clark County, Nevada.

FACTUAL ALLEGATIONS

32. In Nevada and in Clark County, a “Combined Transient Lodging Tax” is imposed in connection with the sale or rental of “Transient Lodging” in “Transient Lodging Establishments” to “any individual natural person who has or shall have the right of occupancy to any sleeping room/space in a transient lodging establishment for thirty consecutive days or less” pursuant to Clark County Code 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335, *et seq.*

33. The combined transient lodging tax is calculated as a percentage of gross rental receipts and ranges between 10.5% and 13.38%.

34. The “Rent” upon which the Combined Transient Lodging Tax is imposed is defined as “the amount charged for a sleeping room/space in a transient lodging establishment, valued in money, whether received in money or otherwise, and including the following, regardless of whether separately stated:

- (i) Charges that would normally be part of an all inclusive room rate, such as, but not limited to, payment processing fees, check-in fees, accommodation fees, facility fees, access fees, charges for additional guests, late check-out fees, and utility surcharges;
- (ii) Charges applicable to cleaning and readying such room/space for occupancy including, but not limited to, linen fees, cleaning fees, and non-refundable deposits;

- (iii) Charges for rental of furnishings and appliances including, but not limited to, cribs, rollaways, refrigerators, televisions, microwaves, and in-room safes;
- (iv) Room charges applicable to pets including, but not limited to, non-refundable pet cleaning fees/deposits;
- (v) Charges associated with attrition, cancellation, late arrival, or failure to occupy a room, including, but not limited to, attrition fees, cancellation fees, late arrival fees, early departure fees, and no-show fees;
- (vi) Reimbursements received for use of a sleeping room/space under incentive programs, such as, but not limited to, frequent guest programs or rewards programs;
- (vii) The value of a sleeping room/space included as a component of a package, pursuant to Section 4.08.035;
- (viii) ***Any charges for services, amenities, accommodations, or use, not otherwise specified above, that are mandatory in nature and charged in connection with rental of a sleeping/room space.***” See CLARK COUNTY Ordinance 4.08.005(22) (emphasis added).”.

35. The transient lodging tax “shall be collected from every operator in Clark County.” See Clark County Ordinance 4.08.010.

36. An “Operator” of a Transient Lodging Establishment is defined as “the person who is the proprietor of a transient lodging establishment, whether in the capacity of owner, lessee, sublessee, mortgagee, licensee, or any other capacity.” Additionally, when the operator/proprietor “performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal.” See Clark County Ordinance 4.08.005(16).

37. With respect to Defendants’ sale and rental of transient lodging in a transient lodging establishment to transient guests pursuant to the business model set forth in paragraph 3 hereof, Defendants, and each of them, are “managing agents of any type or character” of the operator/proprietor and have the same duties and liabilities as the operator/proprietor in collecting and remitting the Combined Transient Lodging Tax to CLARK COUNTY.

38. With respect to the taxable transaction of selling and renting transient lodging in transient lodging establishments to transient guests, Defendants, and each of them, exercise

1 judgment and discretion in performing the functions of an operator in connection with, among
2 other things, advertising and marketing of the rooms to transient guests, the amount of rent and
3 other fees to be charged to the transient guests, refund and cancellation policies applicable to the
4 transaction and securing reservations and payment therefore from the transient guests. In fact,
5 from initiation of first contact with the transient guest through completion of the taxable
6 sale/rental transaction, the operator/proprietor is not engaged in the transaction with the transient
7 guest at all and all policies and procedures applied to the transaction are within the control and
8 discretion of Defendants.

9 39. The combined transient lodging tax imposed by Clark County Ordinances may be
10 collected from the paying transient guests and may be shown as an addition to the rent charged
11 by the transient lodging establishment. However, the operator and/or managing agent of the
12 operator is liable to CLARK COUNTY for the tax whether or not it is actually collected from the
13 paying transient guest. See Clark County Ordinance 4.08.010(c).

14 40. On information and belief, the Defendants charge and collect from transient
15 guests the Combined Transient Lodging Tax calculated as a percentage of the full retail price
16 Defendants charge transient guests for their rooms.

17 41. Regardless of whether Defendants actually charge and receive from transient
18 guests the full amount of the Combined Transient Lodging Tax calculated as a percentage of the
19 full retail price Defendants charge transient guests for their rooms, CLARK COUNTY is owed
20 the full amount of the Combined Transient Lodging Tax calculated as a percentage of the full
21 retail price Defendants charge transient guests for their rooms.

42. Operators/proprietors and Defendants, as managing agents therefore, are liable to
CLARK COUNTY for the full amount of the Combined Transient Lodging Tax calculated as a
percentage of the full retail price Defendants charge transient guests for their rooms, whether
paid for by transient guests or not.

43. Pursuant to the business model set forth in paragraph 3 hereof, Defendants have
been remitting to operators/proprietors only that portion of the Combined Transient Lodging Tax

1 which was calculated as a percentage of the discounted wholesale price Defendants pay to
2 operators/proprietors rather than the full retail price charged to transient guests and paid to
3 Defendants.

4 44. Pursuant to the business model set forth in paragraph 3 hereof,
5 operators/proprietors have remitted to CLARK COUNTY only that portion of the Combined
6 Transient Lodging Tax they have received from Defendants which was calculated as a
7 percentage of the discounted wholesale price Defendants pay to operators/proprietors.

8 45. Defendants directly remit no Combined Transient Lodging Tax to CLARK
9 COUNTY in connection with the sale or rental of transient lodging in transient lodging
10 establishments to transient guests.

11 46. As a result of the business model utilized by Defendants as set forth in paragraph
12 3 hereof, CLARK COUNTY has, for a period of time presently unknown to Plaintiff, been
13 deprived of receiving million of dollars in Combined Transient Lodging Taxes.

14 47. Upon information and belief, ultimate recipients of the Combined Transient
15 Lodging Tax collected within unincorporated Clark County include the Las Vegas Convention
16 and Visitors Authority, the Clark County School District, local transportation districts, the
17 Nevada Department of Tourism, the state of Nevada general fund, the State Supplemental School
18 Fund, and the Clark County General Fund.

19 **FIRST CLAIM FOR RELIEF**

20 **(Declaratory Judgment)**

21 48. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-47 as if
fully set forth herein.

49. NRS 30.040(1) provides that “[a]ny person interested under a deed, written
contract or other writings constituting a contract, or whose rights, status or other legal relations
are affected by a statute, municipal ordinance, contract or franchise, may have determined any
question of construction or validity arising under the instrument, statute, ordinance, contract or
franchise and obtain a declaration of rights, status or other legal relations thereunder.

1 50. CLARK COUNTY maintains as follows:

- 2 a. Clark County Code 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335,
3 *et seq.* establishes a Combined Transient Lodging Tax which requires the tax
4 be imposed and remitted based upon the full amount of retail rent charged by
5 Defendants to transient guests purchasing transient lodging from them
6 pursuant to the business model set forth in paragraph 3 hereof;
7 b. With respect to the taxable transaction of purchasing or renting transient
8 lodging from Defendants pursuant to the business model set forth in paragraph
9 3 hereof, Defendants are “managing agents of any type or character” of the
10 hotel operators within the meaning of relevant Ordinances; and,
11 c. With respect to the taxable transaction of purchasing or renting transient
12 lodging from Defendants pursuant to the business model set forth in paragraph
13 3 hereof, Defendants are liable for payment of the Combined Transient
14 Lodging Tax based upon the full amount of retail rent charged by Defendants
15 to transient guests to the same extent as operators.

16 51. CLARK COUNTY seeks a judicial declaration of its rights consistent with its
17 opposition as set forth in paragraph 50 hereof.

18 52. NRS 30.130 provides, in relevant part, that “all persons shall be made parties who
19 have or claim any interest which would be affected by the declaration, and no declaration shall
20 prejudice the rights of persons not parties to the proceeding.”

21 53. Defendants herein dispute the interpretation of Nevada statutes and ordinances as
 set forth in paragraph 50 hereof and are the subject of the relief requested herein. Thus, there is a
 justiciable controversy ripe for adjudication between the parties.

 54. As a result of the actions, practices and course of conduct of Defendants, Plaintiff
 has been compelled to retain the services of an attorney for the protection of its interests.

1 63. In failing to remit the Combined Transient Lodging Tax to CLARK COUNTY as
2 required, Defendants wrongfully exercised dominion and control over the monies belonging to
3 CLARK COUNTY thereby depriving Plaintiff of the use and the benefit thereof.

4 64. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered,
5 and will continue to suffer monetary damages in excess of in excess of fifteen thousand dollars
6 (\$15,000.00) subject to proof at trial.

7 65. In converting these monies, Defendants acted wantonly, willfully, and in knowing
8 disregard of the rights of Plaintiff. Accordingly, an award of punitive damages is appropriate in
9 an amount subject to proof at trial.

10 66. As a result of the actions, practices and course of conduct of Defendants, Plaintiff
11 has been compelled to retain the services of an attorney for the protection of its interests

12 **FOURTH CLAIM FOR RELIEF**

13 **(Breach of Fiduciary Duty)**

14 67. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-66 as if
15 fully set forth herein.

16 68. The Combined Transient Lodging Tax constitutes the money and property of
17 CLARK COUNTY, at least, as of the time it becomes due and payable to CLARK COUNTY
18 and/or, alternatively, when it is collected from Defendants' customers as part of the sales or
19 rental transaction.

20 69. In that Defendants are holding the money and property belonging to CLARK
21 COUNTY and have collected the tax due from its customers in the transient lodging transaction,
22 Defendants stand in a fiduciary relationship with CLARK COUNTY as to the amount of taxes
23 due and owing and/or collected from its customers.

24 70. Defendants owe CLARK COUNTY the duty to safeguard and remit as required
25 the money and property of CLARK COUNTY that it is holding in its possession.

26 71. Defendants have breached the fiduciary duty it owes CLARK COUNTY by,

1 among other things, failing to safeguard, account for and/or remit the Combined Transient
2 Lodging Tax as and when due.

3 72. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered,
4 and will continue to suffer monetary damages in excess of in excess of fifteen thousand dollars
5 (\$15,000.00) subject to proof at trial.

6 73. Defendants acted wantonly, willfully, and in knowing disregard of the rights of
7 Plaintiff. Accordingly, an award of punitive damages is appropriate in an amount subject to
8 proof at trial.

9 74. As a result of the actions, practices and course of conduct of Defendants, Plaintiff
10 has been compelled to retain the services of an attorney for the protection of its interests

11 **FIFTH CLAIM FOR RELIEF**
12 **(Unjust Enrichment)**

13 75. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-74 as if
14 fully set forth herein.

15 76. In retaining and failing to remit the Combined Transient Lodging Tax as
16 described herein, Defendants have obtained a benefit that in equity and good conscience they
17 should not have obtained or possessed because the benefits rightfully belonged to Plaintiff.

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

20 78. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered,
21 and will continue to suffer monetary damages in excess of in excess of fifteen thousand dollars
(\$15,000.00) subject to proof at trial.

79. Defendants acted wantonly, willfully, and in knowing disregard of the rights of
Plaintiff. Accordingly, an award of punitive damages is appropriate in an amount subject to
proof at trial.

80. As a result of the actions, practices and course of conduct of Defendants, Plaintiff
has been compelled to retain the services of an attorney for the protection of its interests

1 **FIFTH CLAIM FOR RELIEF**

2 **(Constructive Trust)**

3 81. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-80 as if
4 fully set forth herein.

5 82. At all relevant times, Plaintiff's monies were in the possession and under the
6 control of Defendants. Defendants have taken this property for their own use and benefit, thereby
7 depriving Plaintiffs of the use and benefit thereof. Plaintiffs have been damaged by their failure
8 to receive the monies.

9 83. The retention of monies by Defendants would be inequitable.

10 84. By virtue of Defendants' actions, Defendants hold these funds as constructive
11 trustees for the benefit of CLARK COUNTY. The existence and imposition of a constructive
12 trust is essential to the effectuation of justice. The Plaintiff requests an order that Defendants be
13 directed to give possession thereof to Plaintiff.

14 85. As a result of the actions, practices and course of conduct of Defendants, Plaintiff
15 has been compelled to retain the services of an attorney for the protection of its interests

16 **SIXTH CLAIM FOR RELIEF**

17 **(Consumer Fraud/Violation Of Nrs 598**

18 **Deceptive Trade Practices Act)**

19 86. Plaintiffs re-allege and incorporate the allegations set forth above as though fully
20 alleged herein.

21 87. The business model utilized by Defendants as set forth in paragraph 3 hereof
combined with Defendants' method of invoicing customers is inherently deceptive and is
intended to and does obscure the amount of "Rent" charged for transient lodging in Clark
County, Nevada as well as the amount of taxes and other fees charged and collected by
Defendants.

88. Knowing that taxable "Rent" for transient lodging means the full amount charged
for a sleeping room/space in a transient lodging establishment" and expressly includes charges
that are "mandatory in nature and charged in connection with rental of a sleeping/room space,"

1 Defendants nonetheless utilize a business model that falsely reports to CLARK COUNTY and
2 other governmental bodies collecting a Combined Transient Lodging Tax that the “Rent” is the
3 discounted wholesale amount charged to Defendants by the operator rather than the retail “Rent”
4 paid by transient guests.

5 89. On information and belief, Defendants standard practice is to invoice its retail
6 customers showing only two line items as follows: (1) Room rate and (2) Taxes and other fees.

7 90. In lumping taxes together in a single line item with taxes and other fees,
8 Defendants disguise from both government bodies, including CLARK COUNTY, and
9 Defendants’ customers the actual amount of room taxes the customer is paying for. Said practice
10 also disguises the amount and nature of the additional fees being charged.

11 91. NRS 41.600(2) defines “consumer fraud” as “(e) a deceptive trade practice as
12 defined in NRS 598.0915 to 598.0925, inclusive.”

13 92. Defendants, as previously alleged, performed acts and omitted performing acts,
14 which constitute an unfair trade practice under one or more provisions of NRS 598.0903, *et seq.*,
15 including but not limited to NRS 598.0915(13) and (15). More specifically, the business model
16 utilized by Defendants as set forth in paragraph 3 hereof combined with Defendants’ method of
17 invoicing customers constitutes (a) the making of misleading statements of fact concerning the
18 price of goods or services for sale or lease, or the reasons for, existence of or amounts of price
19 reductions” pursuant to NRS 598.0915(13) and/or (b) knowingly making any other false
20 representation in a transaction pursuant to NRS 598.0915(15).

21 93. As a direct and proximate result of Defendants’ conduct, Plaintiff has suffered,
and will continue to suffer monetary damages in excess of in excess of fifteen thousand dollars
(\$15,000.00) subject to proof at trial.

94. Defendants acted wantonly, willfully, and in knowing disregard of the rights of
Plaintiff. Accordingly, an award of punitive damages is appropriate in an amount subject to proof
at trial.

1 95. As a result of the actions, practices and course of conduct of Defendants, Plaintiff
2 has been compelled to retain the services of an attorney for the protection of its interests

3 WHEREFORE, Plaintiff CLARK COUNTY requests that judgment be entered as
4 follows:

- 5 1. That a judgment be entered in favor of Plaintiff CLARK COUNTY;
- 6 2. That the Court issue a Declaratory Judgment consistent with the matters set forth
7 herein;
- 8 3. For compensatory damages in an amount in excess of Fifteen Thousand Dollars
9 subject to proof at trial;
- 10 4. For punitive damages in an amount subject to proof at trial;
- 11 5. For imposition of a constructive trust;
- 12 6. For costs of suit and reasonable attorney's fees; and,
- 13 7. For such additional or alternative relief as this Court deems appropriate under the
14 circumstances.

15 Respectfully Submitted this 14th day of May, 2020.

16 **CLARK HILL PLLC**

17 /s/ Michael V. Cristalli, Esq.
18 A. WILLIAM MAUPIN, ESQ. (NSBN 1315)
19 DOMINIC P. GENTILE, ESQ. (NSBN 1923)
20 MICHAEL V. CRISTALLI, ESQ. (NSBN 6266)
21 MARK S. DZARNOSKI, ESQ. (NSBN 3398)
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

ORBITZ WORLDWIDE, LLC., et al.

Defendants.

Case No.: A-20-814111-B

Dept. No.: 13

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR BIFURCATED/PHASED
DISCOVERY**

On the 30th day of June, 2021, Defendants Orbitz Worldwide, LLC, Orbitz, LLC, Orbitz, Inc., Travelscape, LLC, Travelocity, Inc., Cheap Tickets, Inc., Expedia, Inc., Expedia Global, LLC, Hotels.com, LP, Hotwire, Inc., Travelnow.com, Inc., Booking Holdings, Inc., Priceline.com LLC, Travelweb LLC, Agoda International USA LLC, Hotel Tonight Inc., and Hotel Tonight LLC (hereinafter collectively "Defendants") filed a Motion for Bilurcated/Phased Discovery (hereinafter "Motion to Bifurcate"). On July 14, 2021, Plaintiffs filed their Plaintiffs' Opposition to Defendants' Motion to Bifurcate Discovery (hereinafter "Opposition to Motion"). On July 29, 2021, Defendants filed Defendants' Reply in Support of Motion for Bilurcated/Phased Discovery (hereinafter "Reply").

1 On August 12, 2021, the Motion to Bifurcate came on regularly for hearing. Defendants
2 appeared at the hearing through their counsel of record, Joel E. Tasca, Esq. of the law firm Ballard
3 Spahr LLP. Plaintiffs appeared at the hearing through their counsel of record, Mark S. Dzarnoski,
4 Esq. of the law firm Clark Hill PLLC. The Court heard oral argument from respective counsel.

5 Following oral argument at the August 12, 2021 hearing, the Court took the matter under
6 advisement and requested that the parties further set forth their positions regarding discovery in a
7 Joint Case Conference Report. The parties filed a Joint Case Conference Report (hereinafter
8 “JCCR”) on August 27, 2021.

9 Having reviewed the Motion to Bifurcate, the Opposition to Motion, the Reply and the
10 matters set forth in the JCCR and having considered the oral arguments of counsel during the
11 hearing of August 12, 2021, the Court, finding good cause, hereby enters the following Order:

12 IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Motion to Bifurcate is
13 GRANTED, in part, as more fully set forth herein.

14 1. Discovery shall be bifurcated in two phases. The first phase shall relate solely to
15 matters reasonably within the ambit of the public disclosure/original source threshold issue. Then,
16 depending on what occurs relative to motion practice on that issue that takes place following such
17 first-phase discovery period, a second phase regarding merits discovery may be warranted.

18 2. The first-phase discovery period shall be completed within 120 days following
19 commencement of first-phase discovery upon entry of this Order.

20 3. During the first phase of discovery, Plaintiffs and Defendants will both be permitted
21 to engage in all forms of discovery pursuant to the rules and schedules set forth in the Nevada
22 Rules of Civil Procedure. Upon expiration of that period, there shall be no further discovery
23 pending rulings on purported dispositive motions directed to the aforesaid threshold issue which
24 shall be promptly served and filed and noticed for hearing in the ordinary course with briefing in
25 accordance with EDCR 2.20.

26 //


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28 //

1 4. If the matter proceeds beyond that point to a second phase of discovery, the Court
2 shall first schedule a supplemental Rule 16 conference to discuss scheduling.

3 **IT IS SO ORDERED.**

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408 JDS 890C CYSE
Mark R. Denton
District Court Judge

Respectfully Submitted by:

CLARK HILL PLLC

/s/ Mark S. Dzamoski, Esq.

A. William Maupin, Esq. (NSBN 1315)
Dominic P. Gentile, Esq. (NSBN 1923)
Michael Cristalli, Esq. (NSBN 6266)
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3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Attorneys for Plaintiffs

Approved as to Form and Content:

BALLARD SPAHR LLP

/s/ Maria A. Gall, Esq.

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MARIA A. GALL, ESQ.
Nevada Bar No. 14200
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135
Attorneys for Defendants

Bain, Tanya

From: Gall, Maria A. <GallM@ballardspahr.com>
Sent: Tuesday, September 14, 2021 4:18 PM
To: Dzarnoski, Mark; Tasca, Joel; Bain, Tanya; Cristalli, Michael
Cc: Bain, Tanya
Subject: RE: Rogich -- ORDER discovery schedule

[External Message]

Hi Mark.

You have permission to affix my /s/ signature to the proposed order. Please cc us on the submission to the Court's inbox. Thanks,

Maria

From: Dzarnoski, Mark <mdzarnoski@ClarkHill.com>
Sent: Tuesday, September 14, 2021 3:30 PM
To: Gall, Maria A. (LV) <GallM@ballardspahr.com>; Tasca, Joel (LV) <TASCA@ballardspahr.com>; Bain, Tanya <tbain@ClarkHill.com>; Cristalli, Michael <mcristalli@ClarkHill.com>
Cc: Bain, Tanya <tbain@ClarkHill.com>
Subject: RE: Rogich -- ORDER discovery schedule

EXTERNAL

I accept those changes. Do I have your authorization to affix Joel's signature to the Proposed Order?

Mark Dzarnoski

Senior Counsel

Clark Hill LLP

3800 Howard Hughes Parkway, Las Vegas, NV 89169
(702) 697-7506 (office) | (702) 862-8400 (fax)
mdzarnoski@ClarkHill.com | www.clarkhill.com

From: Gall, Maria A. <GallM@ballardspahr.com>
Sent: Tuesday, September 14, 2021 3:25 PM
To: Dzarnoski, Mark <mdzarnoski@ClarkHill.com>; Tasca, Joel <TASCA@ballardspahr.com>; Bain, Tanya <tbain@ClarkHill.com>; Cristalli, Michael <mcristalli@ClarkHill.com>
Cc: Bain, Tanya <tbain@ClarkHill.com>
Subject: RE: Rogich -- ORDER discovery schedule

[External Message]

Hi Mark.

Apologies for the delay in responding—we have a number of folks on our side to liaise with. Please see the attached with minor proposed edits in track changes. The first change is consistent with the exchange between you and Joel below. The second change is to be consistent with the administrative order on how the judge's signature line should be styled now that the court has implemented its new "inbox" procedures. Thank you.

Warm regards,
Maria

From: Dzarnoski, Mark <mdzarnoski@ClarkHill.com>
Sent: Tuesday, September 14, 2021 1:04 PM

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada Ex Rel Mark
Fierro, Plaintiff(s)

CASE NO: A-20-814111-B

7 vs.

DEPT. NO. Department 13

8
9 Orbitz Worldwide, LLC,
Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 9/20/2021

16 Todd Bice	tlb@pisanellibice.com
17 Las Vegas Docket	LVDocket@ballardspahr.com
18 Puoy Premsrirut	puoy@brownlawlv.com
19 Marilyn Millam	mmillam@ag.nv.gov
20 David Pope	dpope@ag.nv.gov
21 Joel Tasca	tasca@ballardspahr.com
22 Douglas Baruch	douglas.baruch@morganlewis.com
23 Anne Seibel	aseibel@bradley.com
24 Maria Gall	gallm@ballardspahr.com
25 James Pisanelli	lit@pisanellibice.com

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27
28

1	Lindsay Stadtlander	lindsay@brownlawlv.com
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5	Dominic Gentile	dgentile@clarkhill.com
6	Tanya Bain	tbain@clarkhill.com
7	Michael Cristalli	mcristalli@clarkhill.com
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MSJ
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Attorneys for Defendants Hotel Tonight, Inc. and Hotel Tonight LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL.
Mark Fierro and Sig Rogich,

Plaintiffs,

v.

ORBITZ WORLDWIDE, LLC et al.,

Defendants.

Case No.: A-20-814111-B

Dept. No.: XIII

HEARING REQUESTED

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

1 Defendants¹ respectfully move this Court to enter summary judgment in their favor and
2 dismiss this action with prejudice pursuant to NRS 357.080(3)(b), commonly referred to as the
3 “government action bar.”

4 **INTRODUCTION AND SUMMARY**

5 The Complaint in this case is fatally flawed on multiple threshold grounds. When
6 Defendants filed their Motion to Dismiss on March 5, 2021, the threshold question was whether
7 the action was subject to mandatory dismissal under the NRS 357.100—the Nevada False Claims
8 Act’s (“NFCA”) “public disclosure bar.” On May 14, 2021, after that Motion to Dismiss had been
9 fully briefed, another threshold ground for dismissal arose when Clark County, represented by the
10 same lawyers who represent Relators in this case, filed a separate action arising out of the same
11 allegations and transactions as the Complaint in this case. As a result of the Clark County lawsuit,
12 this action became subject to dismissal under the NFCA’s “government action bar,” which prohibits
13 a relator from maintaining an NFCA action when another action based on the same allegations has
14 been filed by the State or a political subdivision. NRS 357.080(3). Through this Motion,
15 Defendants seek summary judgment under the government action bar.

16 The government action bar states:

17 An action may not be maintained by a private plaintiff pursuant to
18 this chapter . . . [i]f the action is based on allegations or transactions
19 that are the subject of a civil action or an administrative proceeding
for a monetary penalty to which the State or political subdivision is
already a party.

20 NRS 357.080(3)(b). As supported by the Undisputed Material Facts below, every element of the
21 government action bar is satisfied here. (1) this action (“the Qui Tam Action”) is brought by
22 “private plaintiffs” – Relators Mark Fierro and Sigmund Rogich (“Relators”) under the NFCA;

23 ¹ “Defendants” as used herein refers to Orbitz Worldwide, LLC, Orbitz, LLC, Orbitz, Inc.,
24 Travelscape LLC, Travelocity, Inc., Cheap Tickets, Inc., Expedia, Inc. Expedia Global, LLC,
25 Hotels.Com, LP, Hotwire, Inc., Travelnow.com, Inc. (together, “Expedia Defendants”), Booking
26 Holdings, Inc., Priceline.com LLC, Agoda International USA LLC, Hotel Tonight Inc., and Hotel
27 Tonight LLC. On April 1, 2014, priceline.com LLC assumed the former operations of
28 priceline.com Incorporated (n/k/a Booking Holdings Inc.) as they relate to the merchant model
hotel business at issue in this proceeding. As stated in the Expedia Defendants’ Answer and
Affirmative Defenses to the Complaint, Travelocity, Inc., Cheap Tickets, Inc., and Travelnow.com,
Inc. are not existing legal entities and are improperly named as defendants in the Complaint. *See*
Expedia Defendants’ Answer and Affirmative Defenses to Complaint, ¶¶ 12-13, 21.

Defendants¹ respectfully move this Court to enter summary judgment in their favor and dismiss this action with prejudice pursuant to NRS 357.080(3)(b), commonly referred to as the “government action bar.”

INTRODUCTION AND SUMMARY

The Complaint in this case is fatally flawed on multiple threshold grounds. When Defendants filed their Motion to Dismiss on March 5, 2021, the threshold question was whether the action was subject to mandatory dismissal under the NRS 357.100—the Nevada False Claims Act’s (“NFCA”) “public disclosure bar.” On May 14, 2021, after that Motion to Dismiss had been fully briefed, another threshold ground for dismissal arose when Clark County, represented by the same lawyers who represent Relators in this case, filed a separate action arising out of the same allegations and transactions as the Complaint in this case. As a result of the Clark County lawsuit, this action became subject to dismissal under the NFCA’s “government action bar,” which prohibits a relator from maintaining an NFCA action when another action based on the same allegations has been filed by the State or a political subdivision. NRS 357.080(3). Through this Motion, Defendants seek summary judgment under the government action bar.

The government action bar states:

An action may not be maintained by a private plaintiff pursuant to this chapter . . . [i]f the action is based on allegations or transactions that are the subject of a civil action or an administrative proceeding for a monetary penalty to which the State or political subdivision is already a party.

NRS 357.080(3)(b). As supported by the Undisputed Material Facts below, every element of the government action bar is satisfied here. (1) this action (“the Qui Tam Action”) is brought by “private plaintiffs” – Relators Mark Fierro and Sigmund Rogich (“Relators”) under the NFCA;

¹ “Defendants” as used herein refers to Orbitz Worldwide, LLC, Orbitz, LLC, Orbitz, Inc., Travelscape LLC, Travelocity, Inc., Cheap Tickets, Inc., Expedia, Inc. Expedia Global, LLC, Hotels.Com, LP, Hotwire, Inc., Travelnow.com, Inc. (together, “Expedia Defendants”), Booking Holdings, Inc., Priceline.com LLC, Agoda International USA LLC, Hotel Tonight Inc., and Hotel Tonight LLC. On April 1, 2014, priceline.com LLC assumed the former operations of priceline.com Incorporated (n/k/a Booking Holdings Inc.) as they relate to the merchant model hotel business at issue in this proceeding. As stated in the Expedia Defendants’ Answer and Affirmative Defenses to the Complaint, Travelocity, Inc., Cheap Tickets, Inc., and Travelnow.com, Inc. are not existing legal entities and are improperly named as defendants in the Complaint. See Expedia Defendants’ Answer and Affirmative Defenses to Complaint, ¶¶ 12-13, 21.

(2) the “allegations or transactions” in the Qui Tam Action are the subject of a separate civil action commenced by Clark County on May 14, 2021 (“the Clark County Action”); (3) Clark County is a “political subdivision” within the meaning of the NFCA; and (4) notwithstanding the filing of the Clark County Action, Relators are “maintaining” the Qui Tam Action. On this factual record, and under the law, this action cannot proceed. Summary judgment should now be entered for Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES

I. The Undisputed Material Facts

A. The Parties

1. Relators Fierro and Rogich

Relators Fierro and Rogich in the Qui Tam Action are proceeding as private parties under the *qui tam* provisions of the NFCA. *See* Complaint, ¶ 2 (“NRS 357.080(1) authorizes private persons to bring civil actions on behalf of themselves and on behalf of the State of Nevada.”).

2. Defendant OTCs

The named defendants in the Qui Tam Action include the Defendants listed in Footnote 1 herein. In the Clark County Action, the named defendants include each of the named Defendants listed in Footnote 1 herein. *See* Exhibit 1 (Clark County Complaint).²

B. The Qui Tam Action

Relators commenced this Qui Tam Action by filing a Complaint under seal in this Court on April 24, 2020. The Complaint contained six causes of action, including Count One, which purports to state a cause of action under the *qui tam* provisions of the Nevada False Claims Act (NRS 357.080(1)). *See* Complaint, ¶¶ 1, 2, 48-55 (Count One).

On September 29, 2020, after a statutorily required investigation, NRS 357.070 (the “Attorney General shall investigate diligently any alleged liability pursuant to this chapter.”), the Attorney General notified this Court that it was declining to intervene in Relators’ suit and asked that the Complaint be unsealed, NRS 357.110(2). *See* Order to Unseal Complaint, Dec. 23, 2020. This Court unsealed the Complaint, *id.*, and Relators thereafter served it on Defendants. The

² An authenticating declaration follows the memorandum of points and authorities.

1 allegations or transactions in the Complaint are based on the Defendant OTCs' alleged non-
2 payment of combined transient lodging taxes. According to the Complaint:

3 Defendants knowingly and improperly avoided and/or decreased their
4 obligation to pay money to the State by failing to remit the transient
5 lodging tax on the full amount of rent charged to guests that is due and
6 owing to the State of Nevada pursuant to Clark County Code 4.08, *et*
7 *seq.* and Nevada Revised Statute 244A, 244.335, *et seq.*

8 Qui Tam Action Complaint, ¶ 51.

9 Thus, the “transactions” underlying the alleged false claims in the Complaint are the
10 individual hotel transactions facilitated by the OTCs, and the “allegations” are that the OTCs have
11 not paid combined transient lodging taxes due on those transactions. As described below the
12 transactions at issue in the Qui Tam Action involve an alleged violation of the very same Clark
13 County Code tax provision as is at issue in the Clark County Action. As such, the tax statute that
14 must be judicially interpreted and applied to Defendants in both actions is the same.

15 On March 5, 2021, Defendants filed a motion to dismiss the Complaint on multiple grounds,
16 including that the allegations and transactions in the Complaint had been disclosed publicly prior
17 to suit, and that neither Relator qualified as an “original source” of the information. *See*
18 Defendants’ Motion to Dismiss (March 5, 2021).³ The Attorney General interposed no objection
19 or opposition to Defendants’ Motion to Dismiss, including the public disclosure grounds for
20 dismissal. After full briefing on the Motion, the Court scheduled oral argument for Monday, May
21 17, 2021.

22 **C. The Clark County Complaint**

23 On Friday, May 14, 2021, one business day before the Motion to Dismiss hearing in the
24 Qui Tam Action, Clark County filed the Clark County Action in this Court. *See* Exh. 1.

25 ³ Defendants filed their Motion to Dismiss more than two months before the Clark County Action
26 commenced. Defendants thus did not raise, and could not at that time have raised, the government
27 action bar as a ground for dismissal at that time. Relators filed their opposition to the Motion to
28 Dismiss on May 3, 2021, never mentioning the imminent filing of the Clark County Action. Defendants then filed a reply brief in support of their Motion to Dismiss on May 10, 2021, still unaware that Relators’ counsel was preparing to file the Clark County Action on behalf of Clark County. It was not until the eve of the hearing on the Motion to Dismiss that the Clark County Action was filed. Still, neither Relators nor their counsel mentioned the Clark County Action at the May 17, 2021 hearing, despite the same counsel pursuing both actions.

1 The attorneys for Clark County in the Clark County Action are the same attorneys who are
2 representing the Relators in the Qui Tam Action. *Id.*

3 The Clark County Complaint, on its face, arises from the same allegations and transactions
4 that are the subject of the Qui Tam Action. In fact, it appears that Clark County used the Complaint
5 in the Qui Tam Action as the template for drafting the Clark County Complaint.

6 As reflected in the chart below, several of the allegations in the Clark County Complaint
7 are either verbatim or substantively identical to those in the Qui Tam Complaint, including the
8 “Nature of the Action” sections.

<u>Qui Tam Action Complaint</u>	<u>Clark County Complaint</u>
3. This lawsuit is to recover damages and injunctive relief from Defendants, web-based hotel booking companies, who have knowingly engaged in a common practice/scheme to avoid payment of Nevada’s Combined Transient Lodging Tax as required by Nevada law.	1. This lawsuit is to recover damages and obtain other relief from Defendants, web-based hotel booking companies, who have knowingly engaged in a common practice/scheme to avoid payment of Nevada’s and CLARK COUNTY’s Combined Transient Lodging Tax as required by Nevada law.
4. Defendants contract with hotels for the right to purchase rooms at discounted or “wholesale” prices. Defendants then sell the rooms to the public through their internet sites or toll-free numbers at marked-up, “retail” prices, plus certain “tax recovery and fees.” Defendants charge the customers’ credit cards for the entire amount, which includes the retail price of the room and amounts sufficient to pay occupancy taxes on the retail price of the rooms. The hotels in turn invoice Defendants for the rooms at the discounted price and the applicable occupancy tax rate on the discounted rate.	2. Defendants contract with hotels for the right to purchase rooms at discounted or “wholesale” prices. Defendants then sell the rooms to the public through their internet sites or toll-free numbers at marked-up, “retail” prices, plus certain “tax recovery and fees.” On information and belief, Defendants charge the customers’ credit cards for the entire amount of the transaction, which includes the retail price of the room together with amounts sufficient to pay occupancy taxes on the retail price of the rooms, which taxes are lumped together in a single line item which includes unspecified and unitemized “fees.” The hotels in turn invoice Defendants for the rooms at the discounted wholesale price and the applicable occupancy tax rate on the discounted wholesale rate.

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<p>5. For example, an online travel company such as Travelocity, Inc. obtains a room from a hotel at a previously negotiated wholesale price of, for instance \$150. Travelocity, Inc. in turn sells that same hotel room to an occupant over the internet for \$200. Because Travelocity, Inc. controls the occupancy of the hotel room, the amount due to the city by law in this example is applicable percentage of \$200, or AMOUNT. Travelocity, Inc., however, remits the transient occupancy tax based on the lower wholesale price of \$150, thus creating a loss of AMOUNT to the state for that sale alone.</p>	<p>3. For example, an online travel company such as Travelocity, Inc. obtains a room from a hotel at a previously negotiated wholesale price of, for instance \$150. Travelocity, Inc. in turn sells that same hotel room to an occupant over the internet for \$200. In this example, Travelocity, Inc. remits to the hotel the discount wholesale amount (\$150) plus the occupancy tax calculated based upon the \$150 discounted wholesale rate to appropriate Nevada taxing authorities, including CLARK COUNTY. Travelocity retains the \$50 difference between the discounted wholesale rate (\$150) and the retail rate charged to consumers (\$200) plus any taxes and fees collected thereon. This business model deprives Nevada taxing authorities, including CLARK COUNTY, of taxes due them on the full value of the transaction whereby a consumer obtains transient lodging in a hotel.</p>
<p>36. In Nevada, proprietors of transient lodging as well as their managing agents have a duty to collect and remit tax to the State on rents charged to guests pursuant to Clark County Code 4.08, <i>et seq.</i> and Nevada Revised Statute 244A, 244.335, <i>et seq.</i></p>	<p>56. Clark County Ordinances 4.08 et seq. require Defendants to remit to CLARK COUNTY a Combined Transient Lodging Tax based upon the full amount of retail rent charged by Defendants to transient guests purchasing transient lodging from them pursuant to the business model set forth in paragraph 3 above.</p>
<p>37. The combined transient lodging tax is calculated as a percentage of gross rental receipts and ranges between 10% and 13.38%.</p>	<p>33. The combined transient lodging tax is calculated as a percentage of gross rental receipts and ranges between 10.5% and 13.38%.</p>
<p>40. Upon information and belief, recipients of the tax collected within unincorporated Clark County include the Las Vegas Convention and Visitors Authority, the Clark County School District, local transportation districts, the Nevada Department of Tourism, the state of Nevada general fund, the State Supplemental School Fund, and the Clark County General Fund.</p>	<p>47. Upon information and belief, ultimate recipients of the Combined Transient Lodging Tax collected within unincorporated Clark County include the Las Vegas Convention and Visitors Authority, the Clark County School District, local transportation districts, the Nevada Department of Tourism, the state of Nevada general fund, the State Supplemental School Fund, and the Clark County General Fund.</p>

1 See Qui Tam Action Compl. at ¶¶ 3, 4, 5, 36, 37, 40; compared with Exh. 1 at ¶¶ 12, 3, 56, 33, 47.

2 **D. Further Qui Tam Action Proceedings and Relators’ Admissions Concerning the**
3 **Subject of the Clark County Complaint**

4 Following a May 17, 2021 hearing in the Qui Tam Action, the Court entered an order
5 dismissing with prejudice Counts Two through Six of the Complaint, but allowing Count One, the
6 NFCA cause of action, to move forward. See June 2, 2021 Order Granting in Part and Denying in
7 Part Defendants’ Motion to Dismiss. Consequently, the Relators are proceeding with the Qui Tam
8 Action solely in their capacity as private plaintiffs under NRS 357.080.

9 On June 30, 2021, Defendants filed their Answer to the Complaint in the Qui Tam Action,
10 raising the government action bar as their Third Defense. See Defendants’ Answer at 18 (“Relators’
11 claims are barred by the “government action” bar of the Nevada False Claims Act, NRS
12 357.080(3)(b), because this action is based on allegations or transactions that are the subject of a
13 civil action for a monetary penalty to which a political subdivision of Nevada is a party.”).

14 Also, on June 30, 2021, Defendants filed a Motion for Bifurcated Discovery, seeking to
15 limit initial discovery to the threshold question of whether the Complaint is subject to dismissal
16 under the NFCA’s public disclosure bar, NRS 357.100.

17 In response to the bifurcation motion, Relators filed an opposition based in part on the Clark
18 County Action.⁴ In that opposition, in which they attached the Clark County Complaint and
19 referred repeatedly to it, Relators admitted to this Court that the Clark County Action and the Qui
20 Tam Action are based on the same allegations or transactions.

21 On May 14, 2021, Clark County, Nevada filed *a new lawsuit* (the
22 “Companion Action”) *against the same Defendants* as named in the
23 [Qui Tam Action] *based upon the same failure to pay transient lodging*
taxes to various Nevada governmental authorities as is the subject of
the [Qui Tam Action].

24 See Plaintiffs’ Opposition to Defendants’ Motion for Bifurcated Discovery, July 14, 2021, at 2-3
25 (emphasis added); see also Exh. 1 at ¶ 3 (describing the underlying conduct by Defendants—*i.e.*,
26 the non-payment of taxes on individual web-based bookings—as “transactions.”).

27 ⁴ The Attorney General did not oppose Defendants’ motion or otherwise tell the Court that it
28 objected to public disclosure bar discovery or its application in the Qui Tam Action.

1 On September 20, 2021, the Court granted Defendants’ Motion for Bifurcated Discovery,
2 ordering that the parties focus all discovery in “Phase One” on gathering facts relevant to
3 application of the public disclosure bar, *see* Sept. 20, 2021 Court Order at 2, and later extended the
4 Phase One discovery period to February 28, 2022. *See* Jan. 4, 2022 Court Order at 3 (extending
5 Phase One discovery period).

6 On January 14, 2022, the Attorney General, who had not opposed Defendants’ Motion to
7 Dismiss or the Court’s order directing Phase One discovery aimed at the public disclosure
8 question,⁵ sent a letter to the Court, purporting to state an “objection” to “public disclosure bar”
9 dismissal under NRS 357.100.⁶ The Attorney General offered no justification for not speaking to
10 this issue when the Motion to Dismiss was ripe or even when the Court ordered bifurcated
11 discovery. Further the Attorney General’s letter did not state any basis for an objection.

12 The Clark County Action remains pending in federal court following removal and the
13 federal court’s order denying remand. *Clark County, Nevada v. Orbitz Worldwide, LLC, et al.*, No.
14 2:21-CV-1328 JCM (D. Nev.).

15 **II. Legal Argument**

16 “Summary judgment is appropriate and shall be rendered forthwith when the pleadings and
17 other evidence on file demonstrates that no genuine issue of material fact [remains] and that and
18 the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev.
19 724, 729, 121 P.3d 1026, 1029 (2005) (internal quotations omitted) (brackets in original). A
20 genuine issue of material fact exists only where the evidence is such that a rational trier of fact
21 could return a verdict for the nonmoving party. *Id.* at 731, 121 P.2d at 1031; *see also Matsushita*
22 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (non-movant must come forward
23 with “specific facts showing that there is a *genuine issue for trial*” to avoid summary judgment)
24 (emphasis in original). Here, there is no genuine dispute with respect to the material facts set forth
25 above. Each fact supporting application of each element of the NFCA government action bar to

26 ⁵ The Attorney General is on the e-service list for this action and has been served with all filings.

27 ⁶ On February 9, 2022, without any notice to Defendants, Relators filed an ex parte application
28 seeking to terminate Phase One discovery and to shorten time for a hearing on that Motion. This
Court set that motion for hearing on March 3, 2022. *See* February 10, 2022 Order.

1 the Relators' claim is a matter of record that requires no further factual development.

2 **A. The NFCA's Government Action Bar**

3 The Nevada False Claims Act precludes *qui tam* actions in certain circumstances. The
4 government action bar is one such statutory impediment to *qui tam* actions. It provides:

5 An action may not be maintained by a private plaintiff pursuant to
6 this chapter . . . [i]f the action is based on allegations or transactions
7 that are the subject of a civil action or an administrative proceeding
8 for a monetary penalty to which the State or political subdivision is
already a party.

9 NRS 357.080(3)(b).⁷ Under the plain language of the bar, a relator may not maintain a *qui tam*
10 action based on allegations or transactions that either the State or a political subdivision is pursuing
11 in a separate civil action. *See Int'l Game Tech., Inc. v. Second Judicial Dist. Ct.*, 127 P.3d 1088,
12 1094 (2006) (addressing circumstance where separate civil action preceded the false claims act case
13 and noting that “[g]enerally, a false claims action may not be maintained if administrative or court
14 proceedings involving the same underlying facts and allegations were previously instigated.”). *See,*
15 *e.g., People ex rel. Lindblom v. Sears Brands, LLC*, 2018 IL App. (1st) 171468 at ¶ 7 (applying the
16 Illinois False Claims Act government action bar: “The government action bar prohibits *qui tam*
17 actions that are parasitic in that they duplicate the State’s civil suits or administrative proceedings
18 without giving the government any useful return, other than the potential for additional monetary
19 recovery.”). Under the NFCA, if an action cannot be maintained, it must be dismissed. That is the
20 circumstance here. The government action bar applies and requires dismissal of the Qui Tam
21 Action.

22 Federal court decisions interpreting the federal False Claims Act’s government action bar
23 have treated it as jurisdictional. *See, e.g., United States ex rel. Batty v. Amerigroup Ill., Inc.*, 528
24 F. Supp. 2d 861, 876 (N.D. Il. 2007). While Defendants have not identified any Nevada decisions
25 on this issue, regardless of whether the bar is jurisdictional or not, the government action bar is ripe

26 ⁷ Under this provision, the same language—“An action may not be maintained by a private
27 plaintiff”—also applies if the action is “against a member of the Legislature or Judiciary, an
28 elected officer of the Executive Department of the State Government, or a member of the
governing body of a political subdivision” if circumstances exist “at the time the action was
brought.” NRS 357.080(3)(a).

1 for resolution now based on undisputed facts set forth herein and is dispositive of this entire case.

2 **B. Defendants Have Satisfied Each Element of the Government Action Bar**

3 The NFCA’s government action bar has four key elements:

- 4 (1) there must be a *qui tam* action under the NFCA,
5 (2) the “allegations or transactions” in the *qui tam* action must
6 be the subject of a separate civil action,
7 (3) the State or a political subdivision must be a party to the
8 separate civil action, and
9 (4) the relator must be “maintaining” the *qui tam* action despite
10 the separate civil action.

11 As shown below, each of these elements is met here.

12 **1. Relators are Proceeding as Private Plaintiffs Under the NFCA**

13 There is no dispute that Relators are proceeding as “private plaintiffs” under the NFCA.
14 See NRS 357.080(1) (“... a private party may bring an action pursuant to this chapter for a violation
15 of NRS 357.040 . . .”); Complaint, ¶ 2 (“NRS 357.080(1) authorizes private persons to bring civil
16 actions on behalf of themselves and on behalf of the State of Nevada.”). The NFCA provides that
17 a relator initiates suit, under seal, and the Attorney General then investigates and decides whether
18 to intervene in the action. See NRS 357.070(1). Here, the Attorney General notified the Court that
19 it was declining to intervene in this action and Relators elected to continue to pursue this action.
20 NRS 357.110(2) (“If the Attorney General . . . elects not to intervene, the private plaintiff may
21 proceed with the action.”). As such, Relators indisputably are proceeding with this action as
22 “private plaintiffs” within the meaning of the NFCA’s government action bar.

23 **2. Relators’ Qui Tam Action is Based on the Same Allegations or**
24 **Transactions That are the Subject of a Civil Action**

25 This element is readily satisfied as well. Both actions—the Qui Tam Action and the Clark
26 County Action—are based on the same underlying alleged conduct by Defendants—the supposed
27 non-payment of the Combined Transient Lodging Taxes for hotel bookings that Defendants
28 facilitate through their on-line business. Any taxes due, and allegations about non-payment or

1 avoidance of those taxes, therefore, arise out of the same transactions that are the foundation of
2 both cases.

3 In the chart in Section II above, Defendants illustrated these points through a side-by-side
4 comparison of key allegations in each of the complaints. In many cases, the language is identical,
5 and Clark County even characterizes each hotel facilitation as a “transaction.” *See* Exh. 1 at ¶ 36.
6 The comparison of the allegations in these complaints is dispositive proof that the allegations in the
7 Qui Tam Action also are the subject of the Clark County Action.

8 Nonetheless, to the extent any doubt remains, Relators admitted to this Court that Clark
9 County was proceeding against the *same* Defendants and based on the *same* allegations and
10 transactions that are the *subject* of this Qui Tam Action. *See* Plaintiffs’ Opposition to Defendants’
11 Motion for Bifurcated Discovery, May 14, 2020, at 2-3 (“On May 14, 2021, Clark County, Nevada
12 filed a new lawsuit . . . against the same Defendants as named in [this case] based upon the same
13 failure to pay transient lodging taxes to various Nevada governmental authorities as is the subject
14 of [this case].”).

15 Dismissal of this Qui Tam Action under these circumstances will not leave the government
16 without a remedy. If the underlying taxes are due and owing—an allegation that Defendants
17 strongly dispute—any such liability and relief will be determined by the federal court overseeing
18 that litigation. And it is precisely because of that separate action instituted by Clark County—the
19 taxing authority which would then distribute any remitted taxes among the relevant jurisdictions,
20 including the State—that the legislature precluded private parties such as Relators from maintaining
21 their separate suit arising out of the same allegations or transactions. *See* NRS 244.3354(1)(a),
22 (2)(a) (directing 3/8% to be deposited with State Treasurer for tourism fund); CCC 4.08.031(c)
23 (directing 3% to be deposited with State Treasurer for education fund).

24 3. Clark County is a Party to the Civil Action

25 The next element of the government action bar merely requires that either the “State or
26 political subdivision already is a party” to the separate civil action. NRS 357.080(3)(b). Clark
27 County clearly is already a party to the Clark County Action. Nor is there any doubt that Clark
28 County is a “political subdivision” within the meaning of the government action bar. *See* NRS

1 357.030 (“Political subdivision” defined. ‘Political subdivision’ means a county, city,
2 assessment district or any other local government as defined in NRS 354.474.”).

3 **4. Relators are Maintaining This Qui Tam Action Notwithstanding the**
4 **Clark County Civil Action**

5 The final element of the government action bar simply requires that Relators are seeking to
6 “maintain” an action “pursuant to this chapter”—*i.e.*, an action under the NFCA – notwithstanding
7 the separate civil action brought by the government. NRS 357.080(3)(b). That, too, is the case
8 here. Relators know about the Clark County Action—indeed they brought it to this Court’s
9 attention one business day after Relators’ own counsel filed it on behalf of Clark County. Yet,
10 Relators have continued to “maintain” their Qui Tam Action here.

11 With respect to this element, it is worth noting that the language of the NFCA differs
12 materially from the federal False Claims Act’s government action bar. While the federal False
13 Claims Act provides: “In no event may a person **bring** an action under subsection (b) which is
14 based upon allegations or transactions which are the subject of a civil suit or an administrative civil
15 money penalty proceeding in which the Government is already a party,” 31 U.S.C. § 3730(c)(3)
16 (emphasis added), the NFCA uses the term “maintain” as opposed to “bring.” Thus, whereas the
17 federal FCA government action bar operates to prevent a private party from “bring[ing] or
18 commencing an action based on the same matters that are the subject of separate civil suit to which
19 the Government is a party, the Nevada FCA prohibits a private party from “maintain[ing]” or
20 continuing to pursue an NFCA claim when the government has filed a separate civil suit based on
21 the same allegations or transactions.

22 The terms “bring” and “maintain” clearly have different meanings: “Bring an action” means
23 “[t]o sue; institute legal proceedings.” Black’s Law Dictionary (11th ed. 2019). “Maintain” means
24 “[t]o continue (something).” *Id.* Indeed, in *Madera v. State Indus. Ins. Sys.*, 114 Nev. 253 (1998),
25 the Nevada Supreme Court pointed favorably to an earlier—but substantively the same—definition
26 of “maintain” from Black’s Law Dictionary. In that case, the Supreme Court considered the
27 language of NRS 616D.030, which provides that “[n]o cause of action may be brought or
28 *maintained* against an insurer or third party administrator who violates any provision of [Nevada’s

1 industrial insurance statutes].” *Id.* (emphasis added.) After the Supreme Court recognized that the
2 fifth edition of Black’s had defined “maintain” as “to uphold, continue on foot, and keep from
3 collapse a suit already begun” and is “applied to actions already brought, but not yet reduced to
4 judgment,” the Court concluded that “Nevada law is in accord with the dictionary definition of
5 ‘maintain.’” *Id.* at 259.

6 Moreover, beyond the distinct defined meanings, the Nevada Legislature clearly understood
7 the difference between these terms. Not only did the Legislature depart from the “bring” language
8 in the FCA (even though the NFCA is patterned in large measure on the FCA), the Legislature
9 clearly understood the difference between these terms as it used both “bring” and “maintain” in
10 different contexts within the same subsection of the NFCA that contains the government action bar.

11 The Legislature used the term “bring” multiple times in this subsection of the NFCA. *See*
12 NRS 357.080(1) (“a private plaintiff may **bring** an action pursuant to this chapter for a violation
13 of NRS 357.040”) (emphasis added); NRS 357.080(2) (“If a private plaintiff **brings** an action
14 pursuant to this chapter, no person other than the Attorney General or the Attorney General’s
15 designee may intervene or **bring** a related action pursuant to this chapter based on the facts
16 underlying the first action.”) (emphasis added); NRS 357.070(1) (“the Attorney General shall
17 investigate diligently any alleged liability pursuant to this chapter and may **bring** a civil action
18 pursuant to this chapter”) (emphasis added); NRS 357.026 (“‘Original source’ means a person: (1)
19 Who has knowledge of information that is independent of and materially adds to the publicly
20 disclosed allegations or transactions and who voluntarily provides such information to the State or
21 political subdivision before **bringing** an action for a false claim based on the information”)
22 (emphasis added).

23 By contrast, the Legislature used the word “maintain” only one time in the NFCA, with
24 respect to the government action bar. As the Nevada Supreme Court itself has made clear, it is a
25 well-established principle of statutory construction that if the Legislature uses the same word
26 throughout a statute, it is presumed to have the same meaning throughout, whereas a material
27 variation in a term indicates a variation in its meaning. *See Aerogrow Int’l, Inc. v. Eighth Judicial*
28 *Dist. of Nev.*, 137 Nev. Adv. Op. 76, 499 P.3d 1193, 1199 (2021) (“a statute’s use of two different

1 terms evinces the legislature’s intent that different meanings apply to the two terms”) (citing
2 *Labastida v. State*, 115 Nev. 298, 302-03, 986 P.2d 443, 446 (1999); *see also* Norman Singer &
3 Shambie Singer, *2B Sutherland Statutory Construction* § 52:5 (7th ed. 2016) (“when a legislature
4 models a statute after a uniform act, but does not adopt particular language, courts conclude the
5 omission was ‘deliberate’ or ‘intentional’”).

6 Accordingly, based on a plain meaning of the statute, Relators are “maintaining” their Qui
7 Tam Action notwithstanding the Clark County Action. Therefore, this element of the government
8 action bar is satisfied.

9 CONCLUSION

10 For all the foregoing reasons, Defendants request the Court to grant the Motion for
11 Summary Judgment and dismiss this action with prejudice pursuant to the NFCA’s government
12 action bar.

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14 [Signature On Following Page]
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1 Dated: February 24, 2022

2 Respectfully submitted,

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22 *Inc., and Travelnow.com, Inc.*

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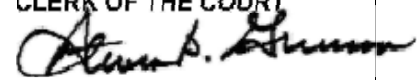
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EXHIBIT 1

EXHIBIT 1



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CASE NO: A-21-834681-C
 Department 24

DISTRICT COURT

CLARK COUNTY, NEVADA

CLARK COUNTY, NEVADA,

Case No.:

Plaintiffs,

Dept. No.:

vs.

ORBITZ WORLDWIDE, LLC; ORBITZ,
 LLC; ORBITZ, INC.; TRAVELSCAPE,
 LLC; TRAVELOCITY, INC.; CHEAP
 TICKETS, INC., EXPEDIA INC.,
 EXPEDIA GLOBAL, LLC;
 HOTELS.COM, LP; HOTWIRE INC.;
 BOOKING HOLDINGS INC.;
 PRICELINE.COM, LLC; TRAVELWEB,
 LLC; TRAVELNOW.COM, INC.; AGODA
 INTERNATIONAL USA LLC; HOTEL
 TONIGHT, INC.; HOTEL TONIGHT,
 LLC; DOES I through XXX, inclusive and
 ROE BUSINESS ENTITIES I through
 XXX, inclusive,

Defendants.

COMPLAINT

COMES NOW CLARK COUNTY, NEVADA ("CLARK COUNTY" or "Plaintiff"), by
 and through their counsel of record of Clark Hill PLLC, and hereby complains of Defendants as
 follows:

1. This lawsuit is to recover damages and obtain other relief from Defendants, web-based hotel booking companies, who have knowingly engaged in a common practice/scheme to avoid payment of Nevada's and CLARK COUNTY's Combined Transient Lodging Tax as required by Nevada law.

3. For example, an online travel company such as Travelocity, Inc. obtains a room from a hotel at a previously negotiated wholesale price of, for instance, \$150. Travelocity, Inc. in turn sells that same hotel room to an occupant over the internet for \$200. In this example, Travelocity, Inc. remits to the hotel the discount wholesale amount (\$150) plus the occupancy tax calculated based upon the \$150 discounted wholesale rate rather than on the \$200 retail rate charged to the consumer. The hotel submits the tax on the \$150 discounted wholesale rate to appropriate Nevada taxing authorities, including CLARK COUNTY. Travelocity retains the \$50 difference between the discounted wholesale rate (\$150) and the retail rate charged to consumers (\$200) plus any taxes and fees collected thereon. This business model deprives Nevada taxing authorities, including CLARK COUNTY, of taxes due them on the full value of the transaction whereby a consumer obtains transient lodging in a hotel.

///

THE PARTIES

4. Plaintiff CLARK COUNTY is an unincorporated county organized under the laws of the State of Nevada.

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

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

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

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

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

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

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

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

1 13. Defendant Hotels.com LP is a Texas limited partnership with its principal place of
2 business in Dallas, Texas. Defendant Hotels.com LP has at all times relevant to this litigation
3 conducted business in this state.

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

7 15. Defendant Booking Holdings Inc. is a Delaware corporation with its principal
8 place of business in Norwalk, Connecticut. Defendant Booking Holdings Inc. has at all times
9 relevant to this litigation conducted business in this state.

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

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

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

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

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

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

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

4 23. Defendant Tripadvisor LLC is a Delaware limited liability company with its
5 principal place of business in Needham, Massachusetts. Defendant Tripadvisor LLC has at all
6 times relevant to this litigation conducted business in this state.

7 24. Defendant Tripadvisor Inc. is a Delaware corporation with its principal place of
8 business in Needham, Massachusetts. Defendant Tripadvisor LLC has at all times relevant to this
9 litigation conducted business in this state.

10 25. Defendant Trip.com, Inc. is a Delaware corporation with its principal place of
11 business in Shanghai, China. Defendant Trip.com, Inc. has at all times relevant to this litigation
12 conducted business in this state.

13 26. Defendant Remark Holdings, Inc. is a Delaware corporation with its principal
14 place of business in Las Vegas, Nevada. Defendant Remark Holdings, Inc. has at all times
15 relevant to this litigation conducted business in this state.

16 27. The true names and capacities, whether individual, corporate, associates, co-
17 partnership, or otherwise of Defendants DOES 1 through 100 and ROE Corporations 1 through
18 100, are unknown to Plaintiffs who therefore sues said defendants by such fictitious names.
19 Plaintiffs are informed and believe and thereon allege that each of the defendants designated as
20 DOES 1 through 100 and ROE Corporations 1 through 100 are responsible in some manner for
21 the events and happenings referred to in this action and proximately caused damages to Plaintiffs
as herein alleged.

JURISDICTION AND VENUE

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

29. This civil action arises from actions occurring within County of Clark, State of Nevada, involving an amount in controversy in excess of the sum of Fifteen Thousand Dollars (\$15,000.00), exclusive of costs and interest, thereby giving this Court jurisdiction over this matter.

30. This Court further has jurisdiction over Plaintiffs' claims as they involve claims arising exclusively under Nevada statutes and CLARK COUNTY Ordinances.

31. Venue is proper because injuries to Plaintiffs occurred in Clark County, Nevada and because Defendants committed unlawful acts and conducted their unlawful practices in Clark County, Nevada.

FACTUAL ALLEGATIONS

32. In Nevada and in Clark County, a "Combined Transient Lodging Tax" is imposed in connection with the sale or rental of "Transient Lodging" in "Transient Lodging Establishments" to "any individual natural person who has or shall have the right of occupancy to any sleeping room/space in a transient lodging establishment for thirty consecutive days or less" pursuant to Clark County Code 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335, *et seq.*

33. The combined transient lodging tax is calculated as a percentage of gross rental receipts and ranges between 10.5% and 13.38%.

34. The "Rent" upon which the Combined Transient Lodging Tax is imposed is defined as "the amount charged for a sleeping room/space in a transient lodging establishment, valued in money, whether received in money or otherwise, and including the following, regardless of whether separately stated:

- (i) Charges that would normally be part of an all inclusive room rate, such as, but not limited to, payment processing fees, check-in fees, accommodation fees, facility fees, access fees, charges for additional guests, late check-out fees, and utility surcharges;
- (ii) Charges applicable to cleaning and readying such room/space for occupancy including, but not limited to, linen fees, cleaning fees, and non-refundable deposits;

(iii) Charges for rental of furnishings and appliances including, but not limited to, cribs, rollaways, refrigerators, televisions, microwaves, and in-room safes;

(iv) Room charges applicable to pets including, but not limited to, non-refundable pet cleaning fees/deposits;

(v) Charges associated with attrition, cancellation, late arrival, or failure to occupy a room, including, but not limited to, attrition fees, cancellation fees, late arrival fees, early departure fees, and no-show fees;

(vi) Reimbursements received for use of a sleeping room/space under incentive programs, such as, but not limited to, frequent guest programs or rewards programs;

(vii) The value of a sleeping room/space included as a component of a package, pursuant to Section 4.08.035;

(viii) ***Any charges for services, amenities, accommodations, or use, not otherwise specified above, that are mandatory in nature and charged in connection with rental of a sleeping/room space.***” See CLARK COUNTY Ordinance 4.08.005(22) (emphasis added).”.

35. The transient lodging tax “shall be collected from every operator in Clark County.” See Clark County Ordinance 4.08.010.

36. An “Operator” of a Transient Lodging Establishment is defined as “the person who is the proprietor of a transient lodging establishment, whether in the capacity of owner, lessee, sublessee, mortgagee, licensee, or any other capacity.” Additionally, when the operator/proprietor “performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal.” See Clark County Ordinance 4.08.005(16).

37. With respect to Defendants’ sale and rental of transient lodging in a transient lodging establishment to transient guests pursuant to the business model set forth in paragraph 3 hereof, Defendants, and each of them, are “managing agents of any type or character” of the operator/proprietor and have the same duties and liabilities as the operator/proprietor in collecting and remitting the Combined Transient Lodging Tax to CLARK COUNTY.

38. With respect to the taxable transaction of selling and renting transient lodging in transient lodging establishments to transient guests, Defendants, and each of them, exercise

1 judgment and discretion in performing the functions of an operator in connection with, among
2 other things, advertising and marketing of the rooms to transient guests, the amount of rent and
3 other fees to be charged to the transient guests, refund and cancellation policies applicable to the
4 transaction and securing reservations and payment therefore from the transient guests. In fact,
5 from initiation of first contact with the transient guest through completion of the taxable
6 sale/rental transaction, the operator/proprietor is not engaged in the transaction with the transient
7 guest at all and all policies and procedures applied to the transaction are within the control and
8 discretion of Defendants.

9 39. The combined transient lodging tax imposed by Clark County Ordinances may be
10 collected from the paying transient guests and may be shown as an addition to the rent charged
11 by the transient lodging establishment. However, the operator and/or managing agent of the
12 operator is liable to CLARK COUNTY for the tax whether or not it is actually collected from the
13 paying transient guest. See Clark County Ordinance 4.08.010(c).

14 40. On information and belief, the Defendants charge and collect from transient
15 guests the Combined Transient Lodging Tax calculated as a percentage of the full retail price
16 Defendants charge transient guests for their rooms.

17 41. Regardless of whether Defendants actually charge and receive from transient
18 guests the full amount of the Combined Transient Lodging Tax calculated as a percentage of the
19 full retail price Defendants charge transient guests for their rooms, CLARK COUNTY is owed
20 the full amount of the Combined Transient Lodging Tax calculated as a percentage of the full
21 retail price Defendants charge transient guests for their rooms.

22 42. Operators/proprietors and Defendants, as managing agents therefore, are liable to
CLARK COUNTY for the full amount of the Combined Transient Lodging Tax calculated as a
percentage of the full retail price Defendants charge transient guests for their rooms, whether
paid for by transient guests or not.

43. Pursuant to the business model set forth in paragraph 3 hereof, Defendants have
been remitting to operators/proprietors only that portion of the Combined Transient Lodging Tax

1 which was calculated as a percentage of the discounted wholesale price Defendants pay to
 2 operators/proprietors rather than the full retail price charged to transient guests and paid to
 Defendants.

3 44. Pursuant to the business model set forth in paragraph 3 hereof,
 4 operators/proprietors have remitted to CLARK COUNTY only that portion of the Combined
 5 Transient Lodging Tax they have received from Defendants which was calculated as a
 percentage of the discounted wholesale price Defendants pay to operators/proprietors.

6 45. Defendants directly remit no Combined Transient Lodging Tax to CLARK
 7 COUNTY in connection with the sale or rental of transient lodging in transient lodging
 8 establishments to transient guests.

9 46. As a result of the business model utilized by Defendants as set forth in paragraph
 10 3 hereof, CLARK COUNTY has, for a period of time presently unknown to Plaintiff, been
 deprived of receiving million of dollars in Combined Transient Lodging Taxes.

11 47. Upon information and belief, ultimate recipients of the Combined Transient
 12 Lodging Tax collected within unincorporated Clark County include the Las Vegas Convention
 and Visitors Authority, the Clark County School District, local transportation districts, the
 13 Nevada Department of Tourism, the state of Nevada general fund, the State Supplemental School
 Fund, and the Clark County General Fund.

14 **FIRST CLAIM FOR RELIEF**

15 **(Declaratory Judgment)**

16 48. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-47 as if
 fully set forth herein.

17 49. NRS 30.040(1) provides that “[a]ny person interested under a deed, written
 18 contract or other writings constituting a contract, or whose rights, status or other legal relations
 19 are affected by a statute, municipal ordinance, contract or franchise, may have determined any
 20 question of construction or validity arising under the instrument, statute, ordinance, contract or
 franchise and obtain a declaration of rights, status or other legal relations thereunder.
 21

1 50. CLARK COUNTY maintains as follows:

- 2 a. Clark County Code 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335,
3 *et seq.* establishes a Combined Transient Lodging Tax which requires the tax
4 be imposed and remitted based upon the full amount of retail rent charged by
5 Defendants to transient guests purchasing transient lodging from them
6 pursuant to the business model set forth in paragraph 3 hereof;
7 b. With respect to the taxable transaction of purchasing or renting transient
8 lodging from Defendants pursuant to the business model set forth in paragraph
9 3 hereof, Defendants are “managing agents of any type or character” of the
10 hotel operators within the meaning of relevant Ordinances; and,
11 c. With respect to the taxable transaction of purchasing or renting transient
12 lodging from Defendants pursuant to the business model set forth in paragraph
13 3 hereof, Defendants are liable for payment of the Combined Transient
14 Lodging Tax based upon the full amount of retail rent charged by Defendants
15 to transient guests to the same extent as operators.

16 51. CLARK COUNTY seeks a judicial declaration of its rights consistent with its
17 opposition as set forth in paragraph 50 hereof.

18 52. NRS 30.130 provides, in relevant part, that “all persons shall be made parties who
19 have or claim any interest which would be affected by the declaration, and no declaration shall
20 prejudice the rights of persons not parties to the proceeding.”

21 53. Defendants herein dispute the interpretation of Nevada statutes and ordinances as
 set forth in paragraph 50 hereof and are the subject of the relief requested herein. Thus, there is a
 justiciable controversy ripe for adjudication between the parties.

 54. As a result of the actions, practices and course of conduct of Defendants, Plaintiff
 has been compelled to retain the services of an attorney for the protection of its interests.

SECOND CLAIM FOR RELIEF

(Violation of CLARK COUNTY Ordinances)

55. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-54 as if fully set forth herein.

56. Clark County Ordinances 4.08 et. seq. require Defendants to remit to CLARK COUNTY a Combined Transient Lodging Tax based upon the full amount of retail rent charged by Defendants to transient guests purchasing transient lodging from them pursuant to the business model set forth in paragraph 3 hereof.

57. Defendants have failed to remit the amount of Combined Transient Lodging Tax due to CLARK COUNTY on account of Defendants' sale or rental of transient lodging in transient lodging establishments to transient guests as more fully set forth hereinbefore.

58. As a direct and proximate result of Defendants' failure to remit the Combined Transient Lodging Tax to Plaintiff when due, Plaintiff has been damaged in an amount in excess of fifteen thousand dollars (\$15,000.00) subject to proof at trial.

59. As a result of the actions, practices and course of conduct of Defendants, Plaintiff has been compelled to retain the services of an attorney for the protection of its interests

THIRD CLAIM FOR RELIEF

(Conversion)

60. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-59 as if fully set forth herein.

61. The Combined Transient Lodging Tax from the sale or rental of transient lodging by Defendants is due and payable to CLARK COUNTY on the first day of each month for transactions consummated in the preceding month. Clark County Ordinance 4.08.055.

62. As of, at least, the date the Combined Transient Lodging Tax is due and payable to CLARK COUNTY, Plaintiff has the right to the immediate possession of the money representing the taxes due and owing.

63. In failing to remit the Combined Transient Lodging Tax to CLARK COUNTY as required, Defendants wrongfully exercised dominion and control over the monies belonging to CLARK COUNTY thereby depriving Plaintiff of the use and the benefit thereof.

64. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered, and will continue to suffer monetary damages in excess of in excess of fifteen thousand dollars (\$15,000.00) subject to proof at trial.

65. In converting these monies, Defendants acted wantonly, willfully, and in knowing disregard of the rights of Plaintiff. Accordingly, an award of punitive damages is appropriate in an amount subject to proof at trial.

66. As a result of the actions, practices and course of conduct of Defendants, Plaintiff has been compelled to retain the services of an attorney for the protection of its interests

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

67. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-66 as if fully set forth herein.

68. The Combined Transient Lodging Tax constitutes the money and property of CLARK COUNTY, at least, as of the time it becomes due and payable to CLARK COUNTY and/or, alternatively, when it is collected from Defendants' customers as part of the sales or rental transaction.

69. In that Defendants are holding the money and property belonging to CLARK COUNTY and have collected the tax due from its customers in the transient lodging transaction, Defendants stand in a fiduciary relationship with CLARK COUNTY as to the amount of taxes due and owing and/or collected from its customers.

70. Defendants owe CLARK COUNTY the duty to safeguard and remit as required the money and property of CLARK COUNTY that it is holding in its possession.

71. Defendants have breached the fiduciary duty it owes CLARK COUNTY by,

1 among other things, failing to safeguard, account for and/or remit the Combined Transient
2 Lodging Tax as and when due.

3 72. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered,
4 and will continue to suffer monetary damages in excess of in excess of fifteen thousand dollars
5 (\$15,000.00) subject to proof at trial.

6 73. Defendants acted wantonly, willfully, and in knowing disregard of the rights of
7 Plaintiff. Accordingly, an award of punitive damages is appropriate in an amount subject to
8 proof at trial.

9 74. As a result of the actions, practices and course of conduct of Defendants, Plaintiff
10 has been compelled to retain the services of an attorney for the protection of its interests

11 **FIFTH CLAIM FOR RELIEF**
12 **(Unjust Enrichment)**

13 75. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-74 as if
14 fully set forth herein.

15 76. In retaining and failing to remit the Combined Transient Lodging Tax as
16 described herein, Defendants have obtained a benefit that in equity and good conscience they
17 should not have obtained or possessed because the benefits rightfully belonged to Plaintiff.

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

20 78. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered,
21 and will continue to suffer monetary damages in excess of in excess of fifteen thousand dollars
(\$15,000.00) subject to proof at trial.

79. Defendants acted wantonly, willfully, and in knowing disregard of the rights of
Plaintiff. Accordingly, an award of punitive damages is appropriate in an amount subject to
proof at trial.

80. As a result of the actions, practices and course of conduct of Defendants, Plaintiff
has been compelled to retain the services of an attorney for the protection of its interests

FIFTH CLAIM FOR RELIEF

(Constructive Trust)

81. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-80 as if fully set forth herein.

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

83. The retention of monies by Defendants would be inequitable.

84. By virtue of Defendants' actions, Defendants hold these funds as constructive trustees for the benefit of CLARK COUNTY. The existence and imposition of a constructive trust is essential to the effectuation of justice. The Plaintiff requests an order that Defendants be directed to give possession thereof to Plaintiff.

85. As a result of the actions, practices and course of conduct of Defendants, Plaintiff has been compelled to retain the services of an attorney for the protection of its interests

SIXTH CLAIM FOR RELIEF

(Consumer Fraud/Violation Of Nrs 598

Deceptive Trade Practices Act)

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

87. The business model utilized by Defendants as set forth in paragraph 3 hereof combined with Defendants' method of invoicing customers is inherently deceptive and is intended to and does obscure the amount of "Rent" charged for transient lodging in Clark County, Nevada as well as the amount of taxes and other fees charged and collected by Defendants.

88. Knowing that taxable "Rent" for transient lodging means the full amount charged for a sleeping room/space in a transient lodging establishment" and expressly includes charges that are "mandatory in nature and charged in connection with rental of a sleeping/room space,"

1 Defendants nonetheless utilize a business model that falsely reports to CLARK COUNTY and
2 other governmental bodies collecting a Combined Transient Lodging Tax that the “Rent” is the
3 discounted wholesale amount charged to Defendants by the operator rather than the retail “Rent”
4 paid by transient guests.

5 89. On information and belief, Defendants standard practice is to invoice its retail
6 customers showing only two line items as follows: (1) Room rate and (2) Taxes and other fees.

7 90. In lumping taxes together in a single line item with taxes and other fees,
8 Defendants disguise from both government bodies, including CLARK COUNTY, and
9 Defendants’ customers the actual amount of room taxes the customer is paying for. Said practice
10 also disguises the amount and nature of the additional fees being charged.

11 91. NRS 41.600(2) defines “consumer fraud” as “(e) a deceptive trade practice as
12 defined in NRS 598.0915 to 598.0925, inclusive.”

13 92. Defendants, as previously alleged, performed acts and omitted performing acts,
14 which constitute an unfair trade practice under one or more provisions of NRS 598.0903, *et seq.*,
15 including but not limited to NRS 598.0915(13) and (15). More specifically, the business model
16 utilized by Defendants as set forth in paragraph 3 hereof combined with Defendants’ method of
17 invoicing customers constitutes (a) the making of misleading statements of fact concerning the
18 price of goods or services for sale or lease, or the reasons for, existence of or amounts of price
19 reductions” pursuant to NRS 598.0915(13) and/or (b) knowingly making any other false
20 representation in a transaction pursuant to NRS 598.0915(15).

21 93. As a direct and proximate result of Defendants’ conduct, Plaintiff has suffered,
and will continue to suffer monetary damages in excess of in excess of fifteen thousand dollars
(\$15,000.00) subject to proof at trial.

94. Defendants acted wantonly, willfully, and in knowing disregard of the rights of
Plaintiff. Accordingly, an award of punitive damages is appropriate in an amount subject to proof
at trial.

1 95. As a result of the actions, practices and course of conduct of Defendants, Plaintiff
2 has been compelled to retain the services of an attorney for the protection of its interests

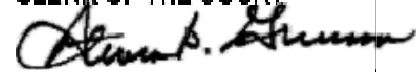
3 WHEREFORE, Plaintiff CLARK COUNTY requests that judgment be entered as
4 follows:

- 5 1. That a judgment be entered in favor of Plaintiff CLARK COUNTY;
- 6 2. That the Court issue a Declaratory Judgment consistent with the matters set forth
7 herein;
- 8 3. For compensatory damages in an amount in excess of Fifteen Thousand Dollars
9 subject to proof at trial;
- 10 4. For punitive damages in an amount subject to proof at trial;
- 11 5. For imposition of a constructive trust;
- 12 6. For costs of suit and reasonable attorney's fees; and,
- 13 7. For such additional or alternative relief as this Court deems appropriate under the
14 circumstances.

15 Respectfully Submitted this 14th day of May, 2020.

16 **CLARK HILL PLLC**

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

ORBITZ WORLDWIDE, LLC., et al.

Defendants.

Case No.: A-20-814111-B

Dept. No.: 13

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Plaintiffs by and through their counsel of record, of the law firm Clark Hill, PLLC, hereby responds to Defendants' Motion for Summary Judgment.

This Response is based upon and supported by the following Memorandum of Points and Authorities, the pleadings and papers on file and any exhibits attached hereto, and any argument that the Court may allow at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiffs/Relators herein have filed a qui tam action on behalf of and in the name of the State of Nevada pursuant to the Nevada False Claims Act, NRS 357.010 et seq. The qui tam action alleges, among other things, that Defendants failed to remit the transient lodging tax on the full

1 amount of rent charged to guests that is due and owing to the State of Nevada pursuant to Clark
2 County Code 4.08, *et seq.* and Nevada Revised Statute 244A, 244.335, *et seq.*

3 Subsequent to the filing of the qui tam action on behalf of and in the name of the State of
4 Nevada, Clark County filed a direct action against many of the same Defendants in the qui tam
5 action which direct action seeks to collect damages for unpaid transient lodging taxes due to Clark
6 County (the “Clark County Action”). Defendants maintain that the subsequent filing of the Clark
7 County Action triggers application of the so-called government action bar set forth in NRS
8 357.080(3)(b) and requires dismissal of the entire qui tam action.

9 While postured as a motion for summary judgment, the instant motion presents a pure
10 question of law for the Court. The Court must decide, after reviewing the allegations of the two
11 Complaints, whether NRS 357.080(3)(b) requires dismissal of the qui tam action. There are no
12 factual disputes as the parties all acknowledge that both Complaints were filed, and no
13 disagreement exists as to the express factual allegations made therein.

14 Defendants’ Motion must be denied because NRS 357.080(3)(b) is simply not implicated
15 by the filing of the Clark County Action. Defendants’ arguments fail because they rest upon the
16 false premise that the filing of a direct action by any county that is not named as a party plaintiff
17 in the qui tam action necessarily requires the dismissal of a qui tam action brought on behalf of
18 and in the name of the State of Nevada or any other political subdivision thereof if the allegations
19 of the direct action and the qui tam action are related in any way.

20 II.

21 **STATEMENT OF RELEVANT AND UNDISPUTED FACTS**

- 22 1. The Complaint in this matter was initially filed on April 24, 2020.
- 23 2. On June 2, 2021, the Court issued an Order Granting in part and Denying in part a Motion
24 to Dismiss filed by Defendants. The Order dismissed, with prejudice, the second through
25 the sixth claims for relief set forth in the Complaint, leaving Plaintiffs’ sole surviving claim
26 as one under the Nevada False Claims Act, NRS 357.010 *et seq.*¹

27
28

¹ The Order is attached hereto as Exhibit A. Plaintiffs ask the Court to take judicial notice of its own docket
and this Order in considering the instant Motion for Summary Judgment.

3. On May 14, 2021, Clark County filed a direct action against many of the same Defendants that are subject to the Complaint in this matter (the “Clark County Action”).²

III.

LEGAL ARGUMENT

A. Legal Standards for Summary Judgment

All facts and inferences drawn must be viewed in the light most favorable to the responding party when determining whether a genuine issue of material fact exists for summary judgment purposes. *Poller v. CBS, Inc.*, 368 U.S. 464, 473 (1962). Nevada law is in accord. See *Sawyer v. Sugarless Shops, Inc.*, 792 P.2d 14 (Nev. 1990); *Hidden Wells Ranch, Inc., v. Strip Realty, Inc.*, 83 Nev. 143, 425 P.2d 599 (1967) (All of the non-movant's statements must be accepted as true and a district court may not pass on the credibility of the opposing affidavits or evidence. That function is reserved for the trial court). "Summary judgment is inappropriate if reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict in the nonmoving party's favor." *Diaz v. Eagle Produce Ltd. P'ship*, 521 F.3d 1201, 1207 (9th Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103-04 (9th Cir. 1999)).

In determining summary judgment, a court applies a burden-shifting analysis. "When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case." *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In contrast, when the nonmoving party bears the burden of proving the claim or defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate an

² The Complaint in the Clark County Action is attached as Exhibit 1 to the Defendants' Motion.

1 essential element of the nonmoving party's case; or (2) by demonstrating that the nonmoving
2 party failed to make a showing sufficient to establish an element essential to that party's case
3 on which that party will bear the burden of proof at trial. See *Celotex Corp. v. Catrett*, 477
4 U.S. 317, 323-24 (1986). If the moving party fails to meet its initial burden, summary
5 judgment must be denied and the court need not consider the nonmoving party's evidence.
6 See *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159-60 (1970).

8 If the moving party satisfies its initial burden, the burden then shifts to the opposing
9 party to establish that a genuine issue of material fact exists. See *Matsushita Elec. Indus. Co.*
10 *v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual
11 dispute, the opposing party need not establish a material issue of fact conclusively in its favor.
12 It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve
13 the parties' differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec.*
14 *Contractors Ass'n*, 809 F.2d 626, 631 (9th Cir. 1987). The nonmoving party cannot avoid
15 summary judgment by relying solely on conclusory allegations that are unsupported by
16 factual data. See *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Rather, the nonmoving
17 party must go beyond the assertions and allegations of the pleadings and set forth specific
18 facts by producing competent evidence that shows a genuine issue for trial. See *Celotex*
19 *Corp.*, 477 U.S. at 324. At summary judgment, a court's function is not to weigh the evidence
20 and determine the truth but to determine whether there is a genuine issue for trial. See
21 *Anderson*, 477 U.S. at 249. The evidence of the nonmovant is "to be believed, and all
22 justifiable inferences are to be drawn in his favor." *Id.* at 255. The Court has the obligation
23 to view the evidence in a light most favorable to the non-moving party and to draw favorable
24 inferences therefrom for the non-moving party. *Doud v. Las Vegas Hilton Corporation*, 109
25 Nev. 1096, 864 P.2d 796 (1993).

1 After drawing inferences favorable to the respondent, summary judgment will be
2 granted only if all reasonable inferences defeat the respondent's claims. See *Washoe Medical*
3 *Center v. Churchill County*, 836 P.2d 624, 626 (Nev. 1992); *Nehls v. Leonard*, 97 Nev. 325,
4 630 P.2d 258 (1981); *Stone v. Mission Bay Mtg. Co.*, 99 Nev. 802, 672 P.2d 629 (1983);
5 *Shepard v. Harrison*, 100 Nev. 178, 678 P.2d 670 (1984) (all of the non-movant's factual
6 statements must be accepted as true and summary judgment is foreclosed when there is the
7 slightest doubt as to the operative facts). Similarly, the Court is not entitled to view the
8 evidence in favor of the moving party. *Charles v. J. Steven Lemons & Associates*, 104
9 Nev. 388, 760, P.2d 118 (1988). The "reasonable" inferences drawn need not be the most
10 likely, but merely rational or reasonable ones and the possibility that inferences other
11 than those favorable to the nonmoving party could be drawn does not entitle the moving
12 party to summary judgment. *Mendocino Environmental Center v. Mendocino County*,
13 192 F.3d 1283, 1293 (9th Cir. 1999).

14
15
16 Finally, "[I]n Nevada, issues of negligence and proximate cause are considered
17 issues of fact and not of law, and thus they are left for the jury to resolve." *Nehls v.*
18 *Leonard*, 97 Nev. 325, 630 P.2d 258, 260 (1981). See also *Merluzzi v. Larson*, 96 Nev.
19 409, 610 P.2d 739 (1980); *Drummond v. Mid-West Growers*, 91 Nev. 698, 542 P.2d 198
20 (1975).

21 **B. Defendants Misconstrue the Government Action Bar**

22
23 In the instant Motion, the Defendants have attempted to dissect and interpret different
24 subsections of NRS 357.080 as if they are stand-alone provisions that are unrelated to the other
25 paragraphs and subparagraphs set forth in that statutory provision. Thus, Defendants cite and
26 analyze NRS 357.080(3)(b) without reference to NRS 357.080(1) and/or NRS 357.080(2).
27 However, the interpretation and meaning of the government action bar set forth in NRS
28 357.080(3)(b) can only be understood with reference to those sections.

1 In its entirety, NRS 357.080 provides as follows:

2 **NRS 357.080 Action by private plaintiff; venue of actions.**

3 1. Except as otherwise provided in this section and NRS 357.100, a
4 private plaintiff may bring an action pursuant to this chapter for a violation
5 of NRS 357.040 on his or her own account and that of the State or a political
6 subdivision, or both the State and a political subdivision. The action must
7 be brought in the name of the State or the political subdivision, or both.
8 After such an action is commenced, it may be dismissed only with written
9 consent of the court and the Attorney General. The court and the Attorney
10 General shall take into account the public purposes of this chapter and the
11 best interests of the parties in dismissing the action or consenting to the
12 dismissal, as applicable, and provide the reasons for dismissing the action
13 or consenting to the dismissal, as applicable.

14 2. If a private plaintiff brings an action pursuant to this chapter, no
15 person other than the Attorney General or the Attorney General's designee
16 may intervene or bring a related action pursuant to this chapter based on the
17 facts underlying the first action.

18 3. An action may not be maintained by a private plaintiff pursuant to
19 this chapter:

20 (a) Against a member of the Legislature or the Judiciary, an elected
21 officer of the Executive Department of the State Government, or a member
22 of the governing body of a political subdivision, if the action is based upon
23 evidence or information known to the State or political subdivision at the
24 time the action was brought.

25 (b) If the action is based upon allegations or transactions that are the
26 subject of a civil action or an administrative proceeding for a monetary
penalty to which the State or political subdivision is already a party.

27 4. A complaint filed pursuant to this section must be placed under seal
28 and so remain for at least 60 days or until the Attorney General or a designee
of the Attorney General pursuant to NRS 357.070 has elected whether to
intervene. No service may be made upon the defendant until so ordered by
the court.

5. On the date the private plaintiff files a complaint, he or she shall
send a copy of the complaint to the Attorney General by mail with return
receipt requested. The private plaintiff shall send with each copy of the
complaint a written disclosure of substantially all material evidence and
information he or she possesses. If a district attorney or city attorney has
accepted a designation from the Attorney General pursuant to NRS
357.070, the Attorney General shall forward a copy of the complaint to the
district attorney or city attorney, as applicable.

6. An action pursuant to this chapter may be brought in any judicial
district in this State in which the defendant can be found, resides, transacts
business or in which any of the alleged fraudulent activities occurred.

27 In the clearest of terms, NRS 357.080(1) allows private plaintiffs (i.e. Relators Rogich and
28 Fierro) to "bring an action" on account of and on behalf of (i) the State of Nevada; (ii) a political

1 subdivision of the State of Nevada; or (iii) both the State of Nevada and a political subdivision of
2 the State of Nevada. If the Relators bring the action on behalf of the State of Nevada, the statute
3 expressly requires that the action be brought “in the name of the State.” Id. Likewise, if the
4 Relators bring an action on behalf of a political subdivision of the State, the statute expressly
5 requires that the action be brought “in the name of the ... political subdivision.” Id. If the Relators
6 bring an action on behalf of both the State of Nevada and a political subdivision of the State, the
7 statute expressly requires that the action be brought “in the name of ... both.” Id.

8 In this particular matter, Relators filed their action on behalf of and in the name of the State
9 of Nevada. [See Complaint]. They did not jointly file on behalf of or in the name of any political
10 subdivision of the State of Nevada. [Id.]. Having filed their action on behalf of and in the name
11 of the State of Nevada, it “may be dismissed only with written consent of the court and the Attorney
12 General.” [NRS 357.080(1)].

13 Once the action was filed, “no person other than the Attorney General or the Attorney
14 General’s designee may intervene or bring a related action pursuant to this chapter based on the
15 facts underlying the first action.” [NRS 357.080(2)]. NRS Chapter 357 does not set forth a special
16 definition of “person” to be applied in connection with the interpretation of the statute. As such,
17 the general definition of “person” as set forth in NRS 0.039 is applicable which sets forth the
18 following:

19 **NRS 0.039 “Person” defined.** Except as otherwise expressly
20 provided in a particular statute or required by the context, “person” means
21 a natural person, any form of business or social organization and any other
22 nongovernmental legal entity including, but not limited to, a corporation,
23 partnership, association, trust or unincorporated organization. The term
24 does not include a government, governmental agency or political
25 subdivision of a government.

26 Inasmuch as neither Clark County nor any other political subdivision of the State of Nevada is a
27 “person” as defined in NRS Chapter 357, the prohibition against a “person” bringing “a related
28 action pursuant to this chapter based upon the facts underlying” this action is not applicable to
actions brought by Clark County or any other political subdivision of the State of Nevada.³

³ California has a substantially identical provision. Cal. Gov’t Code § 12652(c)(10)
provides that “(w)hen a person brings an action under this subdivision, no other person may

1 Since a political subdivision of the State that is already a party to a qui tam action is not
2 barred from bringing a direct action by NRS 357.080(3), the so-called government action bar set
3 forth in NRS 357.080(3) addresses what should happen in the event such a political subdivision
4 subsequently filed a related direct action on its own behalf. Not surprisingly, if a qui tam action
5 was filed on behalf of and in the name of a County (i.e. a political subdivision) and that County
6 subsequently chose to file a direct action “based on the facts underlying” the qui tam action, the
7 government action bar defers prosecution of that case to the County in the subsequently filed direct
8 action rather than to the private persons acting on behalf of that County in the qui tam action.
9

10 Defendants herein are misreading the provisions of NRS 357.080(2) in advancing the
11 proposition that any direct action brought by any county in Nevada that is not a party in a pending
12 qui tam action would bar maintenance of a false claims act qui tam case that was filed on behalf
13 of the State and/or any other county. Such a construction of the statute leads to entirely illogical
14 and irrational outcomes. For instance, under Defendants’ interpretation, if a qui tam action was
15 filed on behalf of and in the name of the State of Nevada for tax receipts owed to the State, a direct
16 action by Storey County to collect unpaid taxes owed only to Storey County would require
17 dismissal of the qui tam action filed in the name of the State of Nevada. Likewise, a qui tam filed
18 in the name of Clark County for unpaid taxes owed to Clark County would need to be dismissed
19 by the subsequent filing of a direct action by Storey County seeking collection of taxes owed to
20 Storey County. Such an interpretation would essentially grant the power to cause the dismissal of
21 every false claims act qui tam action to each and every political subdivision of the state even
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26 bring a related action based on the facts underlying the pending action.” In *Rothschild v. Tyco*
27 *Internat. (US), Inc.*, 83 Cal.App.4th 488, 499, 99 Cal.Rptr.2d 721, 728 (2000), in interpreting §
28 12652(c)(10), the court held as follows: “we conclude that the bar on ‘related actions’ under
section 12652(c)(10) applies only to subsequent qui tam actions filed under the False Claims
Act.”

1 though the qui tam action was seeking to vindicate the rights and interests of other jurisdictions:
2 i.e. the State and/or the named political subdivision.

3 The Nevada Supreme Court has recognized that the statutory scheme envisions an ongoing
4 role of the Attorney General from the date of filing of the action through its completion. See *Int'l*
5 *Game Tech., Inc. v. Second Jud. Dist. Ct. of Nevada*, 122 Nev. 132, 138–39, 127 P.3d 1088, 1093–
6 94 (2006).

7
8 When the qui tam plaintiff files an action, he or she must send a copy of the
9 complaint and written disclosure of all material information to the Attorney
10 General.⁷ The complaint is then sealed until the Attorney General decides
11 whether to intervene;⁸ the defendants are not served until the complaint is
12 unsealed.⁹ If the Attorney General decides to intervene “and proceed with
13 the action,” the private plaintiff must cede control of the litigation¹⁰ but
14 nevertheless remains a party to the action.¹¹ But if the Attorney General
15 initially decides not to intervene, the private plaintiff may proceed alone,
16 with the same rights as the Attorney General would have had.¹² The Attorney
17 General may later intervene only upon timely application and “if the interest
18 of the State ... in recovery of the money or property involved is not being
19 adequately represented by the private plaintiff.”¹³ The Attorney General also
20 has authority to settle the action and “may move to dismiss the action for
21 good cause.”¹⁴ Generally, a false claims action may not be maintained if
22 administrative or court proceedings involving the same underlying facts and
23 allegations were previously instigated.¹⁵

24 *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct. of Nevada*, 122 Nev. 132, 138–
25 39, 127 P.3d 1088, 1093–94 (2006)

26 It would be entirely inconsistent with the statutory scheme to grant the Attorney General
27 oversight of the qui tam action and the right to intervene at any time (a) “if the interest of the State
28 ... in recovery of the money or property involved is not being adequately represented by the private
plaintiff” [NRS 357.130(2)] or (b) to settle the action and/or “move to dismiss the action for good
cause” [NRS 357.120(2), (3)] while at the same time giving a non-party political subdivision who
is not a party to the qui tam case the ability to cause termination of the qui tam case.

Further, the Supreme Court’s decision in *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct. of*
Nevada, supra. supports Relators’ position as advanced herein. Therein, the Supreme Court stated:
“Generally, a false claims action may not be maintained if administrative or court proceedings

1 involving the same underlying facts and allegations were previously instigated.” Id. at 1093–94.
2 That language relates to the “public disclosure bar” set forth in NRS 357.100 which has been the
3 subject of other motion practice in this case.

4 Unlike the situation presented herein, the “public disclosure bar” addresses civil actions
5 brought prior to the filing of the qui tam action not after the filing of the qui tam action. NRS
6 357.100 provides, in relevant part, as follows: “Unless the Attorney General objects, a court shall
7 dismiss an action or a claim made pursuant to this chapter that is substantially based on the same
8 allegations or transactions that have been disclosed publicly: 1. In a criminal, civil or
9 administrative hearing to which the State, a political subdivision, or an agent of the State or a
10 political subdivision is a party.” (emphasis added). Said Section makes clear that the previously
11 brought civil action includes civil actions brought by “a political subdivision” without reference
12 to whether the political subdivision is also a party to the qui tam action. Thus, any prior brought
13 civil action by any political subdivision could invoke the public disclosure bar. This is not so with
14 respect to subsequently filed actions by political subdivisions with respect to the government
15 action bar.

16 NRS 357.080(3)(b) is applicable to civil actions to which “the State or political subdivision
17 is already a party.” (emphasis added). “The political subdivision” in this section clearly relates to
18 “the political subdivision” on whose behalf and in whose name the qui tam action is brought as set
19 forth in NRS 357.080(1) and (2). Where the legislature wished to include actions brought by “any”
20 or “all” political subdivisions within the ambit of the provisions of the False Claims Act, it
21 expressly referred to “a political subdivision of the State.”

22 **C. The Government Action Bar of NRS 357.080(3)(b) Does Not Apply to this Case.**

23 Applying the above and foregoing principles to the case sub judice, Defendants’ Motion
24 for Summary Judgement must be denied because the government action bar, as a matter of law,
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1 does not apply to this case. The Clark County direct action is not a civil action to which “the State
2 or political subdivision” is already a party within the meaning of NRS 357.080(3)(b) .

3 The instant action is brought on behalf of and in the name of the State of Nevada. Clark
4 County is not a party to the instant matter. Plaintiffs are not advancing claims on behalf of Clark
5 County. While the initial Complaint on file herein alleged six (6) claims for relief, following the
6 Court’s ruling on Defendants’ Motion to Dismiss, only the first claim for relief survives.⁴

7
8 Plaintiffs’ sole remaining claim for relief is for violation of the False Claims Act, NRS
9 357.010 et seq. In paragraph 51, the Complaint states as follows:

10 51. Defendants knowingly and improperly avoided and/or decreased their
11 obligation to pay money to the State by failing to remit the transient
12 lodging tax on the full amount of rent charged to guests that is due and
13 owing to the State of Nevada pursuant to Clark County Code 4.08, et
seq. and Nevada Revised Statute 244A, 244.335, et seq. (*emphasis*
added)

14 Paragraph 54 of the Complaint alleges as follows:

15 54. As a direct and proximate result of the aforementioned actions of
16 Defendants, the State of Nevada has been deprived of substantial tax
17 revenues to which the State of Nevada is otherwise entitled.
18 Defendants are liable to the State of Nevada for three times the amount
19 of damages sustained by the State of Nevada in the form of unpaid
transient lodging tax, for the costs of bringing this action, and for a civil
penalty of not less than \$5,500 or more than \$11,000 for each act
constituting a violation. (*emphasis added*).

20 The Clark County Complaint in the direct action⁵ has one Plaintiff: i.e. Clark County. The
21 State of Nevada is not a party thereto. It asserts no claim under the False Claims Act for or on
22 behalf of either itself or the State of Nevada. Rather, Clark County alleges seven (7) statutory or
23 common law claims directly against the Defendants as follows:

- 24 1. Declaratory Judgment;
25 2. Violation of Clark County Ordinances;
26 3. Conversion;
27

28

⁴ See Order attached hereto as Exhibit A dismissing the second through the sixth claims set forth in the Complaint.

⁵ Attached as Exhibit 1 to the Motion.

4. Breach of Fiduciary Duty;
5. Unjust Enrichment;
6. Constructive Trust; and,
7. Deceptive Trade Practices.

All relief sought is for or on behalf of Clark County as the Plaintiff. No remedy or relief is sought for the State of Nevada or any other political subdivision thereof.

The Chart below compares relevant aspects of the two cases:

	This Action	Clark County Action
Plaintiff	State of Nevada Ex. Rel. Mark Fierro and Sig Rogich	Clark County
Date of Filing	April 24, 2020	May 14, 2021
Defendants	ORBITZ WORLDWIDE, LLC; ORBITZ, LLC; ORBITZ, INC.; TRAVELSCAPE, LLC; TRAVELOCITY, INC.; CHEAP TICKETS, INC., EXPEDIA INC., EXPEDIA GLOBAL, LLC; HOTELS.COM LP; HOTWIRE INC.; BOOKING HOLDINGS INC.; PRICELINE.COM LLC; TRAVELWEB LLC; TRAVELNOW.COM INC.; BOOKING.COM USA INC., AGODA INTERNATIONAL USA LLC; HOTEL TONIGHT, INC.; HOTEL TONIGHT, LLC; TRIPADVISOR LLC; TRIPADVISOR INC.; TRIP.COM, INC.; REMARK HOLDINGS, INC.; DOES I through XXX, inclusive and ROE BUSINESS ENTITIES I through XXX, inclusive	ORBITZ WORLDWIDE, LLC; ORBITZ, LLC; ORBITZ, INC.; TRAVELSCAPE, LLC; TRAVELOCITY, INC.; CHEAP TICKETS, INC., EXPEDIA INC., EXPEDIA GLOBAL, LLC; HOTELS.COM, LP; HOTWIRE INC.; BOOKING HOLDINGS INC.; PRICELINE.COM, LLC; TRAVELWEB, LLC; TRAVELNOW.COM, INC.; AGODA INTERNATIONAL USA LLC; HOTEL TONIGHT, INC.; HOTEL TONIGHT, LLC; DOES I through XXX, inclusive and ROE BUSINESS ENTITIES I through XXX, inclusive
Claims for Relief	False Claims Act (NRS 357.010 et seq.) for failing to remit the transient lodging tax on the full amount of rent charged to guests that is due and owing to the State of Nevada pursuant to Clark County Code 4.08, <i>et seq.</i> and Nevada Revised Statute	<ol style="list-style-type: none"> 1. Declaratory Judgment; 2. Violation of Clark County Ordinances; 3. Conversion; 4. Breach of Fiduciary Duty; 5. Unjust Enrichment; 6. Constructive Trust; and, 7. Deceptive Trade Practices

	244A, 244.335, <i>et seq.</i> [Complaint at para. 51]	[Clark County Complaint, Exhibit 1 to Motion].
Relief Requested	Defendants are liable to the State of Nevada for three times the amount of damages sustained by the State of Nevada in the form of unpaid transient lodging tax, for the costs of bringing this action, and for a civil penalty of not less than \$5,500 or more than \$11,000 for each act constituting a violation. [Complaint at para. 54]	Defendants are liable to Clark County and Clark County is entitled to Declaratory Relief, compensatory damages, punitive damages, imposition of a constructive trust, attorneys fees and costs and other relief that the Court deems just and proper.

The above and foregoing establishes that Clark County is not a political subdivision of the State of Nevada that is a party to the instant qui tam action. The action is for, on behalf of and in the name of the State of Nevada and it seeks to vindicate the rights of the State of Nevada. As such, the Motion should be denied because the subsequently filed direct action of Clark County does not implicate the government action bar.

Further, while it is true that both actions arise in connection with Defendants' failure to pay transient lodging taxes to various government entities pursuant to various statutes and ordinances, the qui tam action seeks money due and owing to the State of Nevada while the Clark County Action seeks money due and owing to Clark County. The two actions allege different legal theories as to how and why Defendants are liable to the respective Plaintiffs and the Clark County Action does not allege any claim for relief under the False Claims Act. Quite simply, since the State of Nevada is pursuing its own claims pursuant to its own legal theories in the qui tam action and since those claims are not being and cannot be advanced by Clark County in its direct action, the current qui tam action cannot be said to be one based upon "allegations or transactions that are the subject of a civil action" being pursued by Clark County.

Assuming arguendo that Clark County could be considered a party to the qui tam action

1 such that the government action bar has any relevance, so too would every other county in the
2 State of Nevada. In its direct action, Clark County does not allege nor can it assert standing to
3 proceed on behalf of either the State of Nevada or any other county in the State of Nevada for
4 transient lodging taxes owed to them. If the Clark County direct action required the dismissal of
5 the instant qui tam action as to the State of Nevada and all other counties, the impact of that would
6 be that the State of Nevada and all other counties would similarly have to file their own direct
7 actions to pursue their claims for unpaid taxes or walk away from their claims. Said outcome
8 would entirely gut the purpose of the Nevada legislature in enacting the False Claims Act and
9 authorizing qui tam actions.
10

11 If there is any application of the government action bar to the instant matter, it should be
12 limited to only barring the qui tam Relators from pursuing claims on behalf of Clark County. If
13 the qui tam action is deemed to include claims of the State of Nevada and all political subdivisions
14 thereof, the claims of the State and/or other counties being pursued by the Relators in the qui tam
15 action should be allowed to continue regardless of whether the qui tam Relators can also prosecute
16 the claims of Clark County.
17

18 Plaintiffs certainly concede that Clark County is not entitled to collect duplicative damages
19 in two separate proceedings. However, the State of Nevada is entitled to collect the portion of
20 unpaid taxes it is entitled to which emanate from unpaid taxes for transient lodging transactions
21 within Clark County and elsewhere in Nevada. That the State of Nevada has chosen to allow
22 private qui tam Relators to pursue those claims should be left undisturbed.
23

24 In the event Relators attempt, later in the litigation, to advance claims for or on behalf of
25 Clark County which might subject Defendants to an award of duplicative damages, the Court can
26 enter appropriate protective orders at that time.
27
28

1 IV.

2 CONCLUSION

3 For the above and foregoing reasons, the Defendants' Motion should be denied.

4 Dated this 10th day of March 2022.

5 CLARK HILL PLLC

6 /s/ Mark S. Dzarnoski, Esq.

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EXHIBIT A

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19 **EIGHTH JUDICIAL DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 **STATE OF NEVADA, EX REL,**
22 **Mark Fierro and Sig Rogich,**

23 **Plaintiffs,**

24 **v,**

25 **ORBITZ WORLDWIDE, LLC, et al.,**

26 **Defendants.**

Case No.: A-20-814111-B

Dept. No.: XIII

Hearing Date: May 17, 2021

Hearing Time: 9:00 a.m.

27 **ORDER GRANTING IN PART AND DENYING IN PART**
28 **DEFENDANTS' MOTION TO DISMISS**

On March 5, 2021, Defendants filed a motion to dismiss the Relators' complaint with prejudice. On May 3, 2021, the Relators filed their opposition to the motion, and on May 10, 2021, Defendants filed their reply in support of the motion. On May 17, 2021, the Court heard oral argument on the motion. Douglas W. Baruch, Esq., appeared on behalf of all moving Defendants with Maria A. Gall, Esq. as their Nevada counsel¹; Dominic Gentile, Esq. appeared on behalf of the Relators. Based on the foregoing papers and argument, as well as all other filings in this matter, the Court GRANTS the motion in part and DENIES the motion in part as follows:

1. The Relators asserted six claims for relief in their Complaint, styled as Counts One through Six.

2. As to Counts Two through Six, Relators conceded the Motion. Accordingly, and for good cause shown, Defendants' Motion is GRANTED as to Counts Two through Six and they are dismissed with prejudice.

3. The Court DENIES, without prejudice, the Motion as to Count One, which constitutes the Relators' claim under the Nevada False Claims Act ("NFCA"). The Court finds that whether the Relators are "original sources" for purposes of the NFCA public disclosure bar involves questions of fact that are not ripe for resolution on a motion to dismiss.

4. The Court will be scheduling a Rule 16 conference in this matter and anticipates discussing at that conference whether to bifurcate and/or phase discovery in this matter so that discovery proceeds first on the question of whether the Relators are proper Relators to bring claims under the NFCA.

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¹ Also present as counsel on behalf of certain Defendants were Tiffany J. deGruy, Esq. K. Laney Gifford, Esq, and Catherine Battin, Esq.

1 IT IS SO ORDERED.

2
3 ~~Dated this ____ day of ____, 2021.~~ Dated this 2nd day of June, 2021

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5
6 THE HONORABLE MARK R. DENTON
DISTRICT COURT JUDGE

7
8
9
10 Submitted by the following after providing
11 opposing counsel an opportunity to review and
comment:

12 BALLARD SPAHR LLP

13 By: /s/ Maria A. Gall
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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 State of Nevada Ex Rel Mark
7 Fierro, Plaintiff(s)

CASE NO: A-20-814111-B

8 vs.

DEPT. NO. Department 13

9 Orbitz Worldwide, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 6/2/2021

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