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Attorneys for Plaintiff, Kari Mucciariello

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

KARI MUCCIARIELLO,

Plaintiff,

v.

VIATOR, INC., TRIPADVISOR LLC,  
JOHN DOES 1-10 and ABC  
COMPANY 1-10

Defendants.

Civil Action No.

**COMPLAINT AND  
JURY DEMAND**

Plaintiff, Kari Mucciariello, by way of Complaint against Defendants, says:

**PARTIES**

1. Plaintiff, Kari Mucciariello, is a citizen of the State of New Jersey residing at 65 Sassafra Court, North Brunswick, New Jersey 08902.
2. Defendant, Viator, Inc. is a corporation with a principal place of business located at 360 3<sup>rd</sup> Street, #400, San Francisco, California 94107.
3. Defendant, Tripadvisor LLC, a corporation with a principal place of business of 141 Needham Street, Newton, Massachusetts 02464.
4. Defendant Tripadvisor LLC, acquired Viator, Inc., in 2014. The website, “viator.com” indicates that Viator is “A TripAdvisor® Company.”

### **JURISDICTION AND VENUE**

5. The Court has original jurisdiction over this action under 28 U.S.C. 1332 in that the amount of the controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, and Plaintiff is a citizen of a state which is different from the states where the defendants are incorporated and maintain their principal places of business.

6. Venue is proper in this district because Plaintiff completed her booking while she was in New Jersey and/or all of the defendants are subject to personal jurisdiction in this District.

### **BACKGROUND**

7. At all relevant times, Defendants operated a travel and tour service.

8. Defendants sell “tours and activities through the award-winning Viator.com website.”

9. The website describes Viator as “passionate travelers” who “research and book the world’s best travel experiences.”

10. Viator advertises that it has “curated the largest and most diverse selection of worldwide tours and activities . . . all provided by local tour operators we’ve pre-screened for quality, value and service.”

11. On April 24, 2017, Plaintiff booked a tour known as an “ATV Seashore Combo: Adventure to Mezcalitos plus Optional Snorkeling at Playa Uvas” (the “ATV Tour”) through the website “viator.com.”

12. The website is owned and operated by the defendants.

13. The ATV Tour itself was run by non-party “Playa Uvas,” which is located in

Mexico.

14. The website indicated that the ATV Tour would be conducted in a small group, with personal attention from Playa Uvas guides, and that it would take place on a scenic beach.

15. The Viator tour information section indicated that, “Our Product Managers select only the most experienced and reliable operators in each destination, removing the guesswork for you, and ensuring your peace of mind.”

16. Thereafter, Defendants booked the ATV Tour on behalf of Plaintiff who relied upon the representations of Defendants.

17. On or about May 3, 2017, Plaintiff participated in the ATV Tour.

18. The ATV Tour was conducted with a large group, not a small group as promised.

19. There was no personal attention or instruction from the Playa Uvas guides as promised.

20. The tour guides were very much in a rush to complete the tour and took off far ahead of the group which included Plaintiff – a participant with little to no prior experience -- in an attempt to “speed up” the tour participants.

21. Rather than riding through a scenic and level beach, the guides took Plaintiff over dangerous, treacherous and uneven terrain.

22. As a result of the aforementioned tour conditions, Plaintiff was violently thrown from the ATV when it tipped over on uneven terrain.

23. As a result of Plaintiff’s fall, she has sustained a serious and permanent injuries to her wrist which includes loss of function, as well as severe and continuing pain and suffering.

**FIRST COUNT**  
**(Breach of Fiduciary Duty)**

24. Plaintiff repeats the allegations as though fully set forth herein.

25. Defendants owed a fiduciary duty to Plaintiff to select safe and reliable tour operators which they recommended to Plaintiff.

26. Defendants owed Plaintiff a duty to possess reasonable knowledge of the types of carriers, lines and accommodations that they selected for Plaintiff as a novice, and all significant attendant matters.

27. Defendants failed to exercise the requisite skill in selecting the ATV Tour and accommodations that they booked for Plaintiff.

28. As a result of their failure to exercise the requisite skill, Defendants selected an ATV Tour that was unsafe and inappropriate for Plaintiff.

29. Defendants breached their duties of care to Plaintiff by failing to use reasonable care in selecting a safe tour operator.

30. As a direct and proximate result of Defendants' breach of its duties of care to Plaintiff, she participated in an unsafe ATV Tour wherein she sustained severe and permanent personal injuries.

**WHEREFORE**, Plaintiff Kari Mucciariello demands Judgment against Defendants for compensatory damages, incidental damages, consequential damages, pain and suffering, punitive and/or treble damages, costs of suit, attorneys' fees, pre- and post-judgment interest, and such other and further relief as the Court deems fair and just.

**SECOND COUNT**  
**(Negligence)**

31. Plaintiff repeats the allegations as though fully set forth herein.

32. The injuries sustained by Plaintiff were reasonably foreseeable at the time Defendants selected the ATV Tour for Plaintiff.

33. Defendants owed a duty of care in the selection of tour operators, as well as their representations regarding the vetting of tour operators.

34. Defendants breached their duty of care by failing to appropriately and reasonably vet the ATV Tour operator in question.

35. As a direct and proximate result of Defendants' breach of its duties of care to Plaintiff, she participated in an unsafe and inappropriate ATV Tour wherein she sustained severe and permanent personal injuries.

**WHEREFORE**, Plaintiff Kari Mucciariello demands Judgment against Defendants for compensatory damages, incidental damages, consequential damages, pain and suffering, punitive and/or treble damages, costs of suit, attorneys' fees, pre- and post-judgment interest, and such other and further relief as the Court deems fair and just.

**THIRD COUNT**  
**(Consumer Fraud Act, N.J.S.A. 56:8-1, et seq.)**

36. Plaintiff repeats the allegations as though fully set forth herein.

37. Defendants intended that consumers like Plaintiff rely on the omissions and misrepresentations set forth herein in order to sell its services.

38. The sales acts, advertisements and practices alleged by Defendants in connection with services actually provided constituted an unconscionable commercial practice in violation

of the New Jersey Consumer Fraud Act insofar as the statements were false or had the capacity to mislead the average consumer.

39. As a result of the violation of the New Jersey Consumer Fraud Act, Plaintiff was caused to suffer an ascertainable loss.

40. As a result of the violation of the New Jersey Consumer Fraud Act, Plaintiff was caused to sustain significant monetary damages, personal injuries, attorneys' fees, as well as other damages.

**WHEREFORE**, Plaintiff Kari Mucciariello demands Judgment against Defendants for compensatory damages, incidental damages, consequential damages, pain and suffering, punitive and/or treble damages, costs of suit, attorneys' fees, pre- and post-judgment interest, and such other and further relief as the Court deems fair and just.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury of all issues so triable as a matter of right.

**MANDELBAUM SALSBERG**  
Attorneys for Plaintiff, Kari Mucciariello

*/s/ Raj Gadhok*

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DATED: September 28, 2018

**CERTIFICATION PURSUANT TO L. CIV. R. 11.2**

In accordance with Local Civil Rule 11.2, I hereby certify that the within matter is not the subject of any pending or contemplated court, arbitration or administrative proceeding, and that there are no other parties who should be joined in this action at this time.

**MANDELBAUM SALSBURG**  
Attorneys for Plaintiff, Kari Mucciariello

*/s/ Raj Gadhok*

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS KARI MUCCIARIELLO DEFENDANTS VIATOR, INC., TRIPADVISOR LLC, JOHN DOES 1-10, and ABC COMPANY 1-10
(b) County of Residence of First Listed Plaintiff MIDDLESEX (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorneys (Firm Name, Address, and Telephone Number) Raj Gadhok, Esq., Mandelbaum Salsburg, P.C. 3 Becker Farm Road, Suite 105, Roseland, NJ 07068 Phone No. (973) 736-4600 Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Table with columns: PTF, DEF, Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C 1332
Brief description of cause: Plaintiff injured on motor vehicle while on a tour booked by Defendants.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 09/28/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Raj Gadhok

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE