**{Handwritten} 27193-05-17**

**Before the Magistrates Court**

**In Herzliya**

**The Plaintiffs:**

1. **Ilana Baz Golanski I.D. Number 057231524,**
2. **Moshe Golanski I.D. Number 056454622**
3. **Tal Golanski I.D. Number 203696521,**
4. **Dan Golanski I.D. Number 315788463,**
5. **Golanski Zev I.D. Number 058039371,**
6. **Golanski Carmen I.D. Number 014046296,**
7. **Golanski Ran I.D. Number 305738304,**
8. **Golanski Shir I.D. Number 313541518,**
9. **Chagit Ovadiah I.D. Number 033470980,**
10. **Shlomo Ovadiah I.D. Number 022499545,**
11. **Shalev Ovadiah I.D. Number (minor) 332883982,**
12. **Shuval Ovadiah I.D. Number (minor) 325363877,**
13. **Debach Meirav I.D. Number 038458659,**
14. **Debach Yaacov I.D. Number 027985191**
15. **Debach Elior I.D. Number 325719730 (minor)**
16. **Debach Harel I.D. Number 333613941 (minor)**
17. **Debach Osher I.D. Number 334881182 (minor)**
18. **Shimon Ochayon I.D. Number 024950701,**
19. **Karin Ochayon I.D. Number 037359643,**
20. **Eyali Ochayon I.D. Number 326195490 (minor),**
21. **Alin Ochayon I.D. Number 217143304 (minor)**
22. **Liyah Ochayon I.D. Number 219136090 (minor)**
23. **Nissim Eliezer I.D. Number 022532915,**
24. **Sigal Eliezer I.D. Number 022048011,**
25. **Titan Eliezer I.D. Number 206377384 (minor)**

Through their representatives Adv. Michal Aviely and Adv. Rom Nachman

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**- Versus –**

**The Defendants:**

1. **Carmel Tourism Services Ltd. Private Company no. 512295510**

By means of its representative Adv. Arnon Aviram,

52 Menachem Begin Street, Tel Aviv

Telephone: 03-7914447; Fax: 03-6880101

1. **Tiki Tours – Ofakim,**

By means of Ms. Tikva Sa'adah I.D. Number

49 Ha'Alon Street, Moshav Yatzitz

Telephone: 052-8895553, 08-6444300,

E-mail: [tikva@ofakim.co.il](mailto:tikva@ofakim.co.il)

**Nature of Claim: Financial – tortious – contractual claim**

**Amount of Claim: NIS 170,158**

**Statement of Claim**

Introduction:

It would have been better had the grounds of the claim before us never come into being, as they are a byproduct of faulty conduct of the Defendants throughout the engagement with the Plaintiffs.

Firstly, the Plaintiffs request permission from the Honorable Court to split their reliefs, enabling them to sue the Defendants in this claim for the monetary damage, loss of enjoyment from the product they purchased and the severe distress, while being able at a later date, to file a claim for the bodily injuries caused to them due to the factual events which will be set forth hereinafter. This is as the case deals, *inter alia*, with minors the extent of whose physical damage is as yet unknown.

**The Identity of the Parties**

1. The Plaintiffs are 6 families who, in late July 2016, purchased vacation packages for themselves and their families in Zanzibar, in the 'Hilton Doubletree' hotel (**hereinafter: the "Booked Hotel"**), between the dates October 14, 2016 and October 21, 2016, from the Defendants.
2. Defendant 1 is a travel agency which sold the vacation in Zanzibar to Plaintiffs 1-8, as set forth hereinafter.
3. Defendant 2 is a travel agency which sold the vacation in Zanzibar to Plaintiffs 9-25, as set forth hereinafter, by means of the agent Tikva Sa'adah.

**The facts relevant to the claim are as follows:**

1. As aforementioned, in late July 2016, the Plaintiffs purchased vacation packages in Zanzibar for themselves and their families in the 'Hilton Doubletree' hotel at full price which amounts to the sum of **NIS 163,575**.
2. The Plaintiffs selected this hotel specially, due to **the attractive northern area of the island in which it is situated, (hereinafter: the "Selected Tourist Area"**) as well as its high quality, following a prolonged period of gathering information about the recommended vacation area, study of all information relevant to arranging a successful trip and meticulous planning of the activities on the vacation.
3. May it be clarified, they made a deliberate choice due to compatibility with the needs of their children and the intention to exhaust the leisure and tourism opportunities offered specifically in this area. For this purpose, they preferred to purchase a more expensive transaction, including staying in said hotel and in said area, despite this being offered at a higher price than other transactions in other areas and hotels.
4. On August 10, 2016 booking confirmation for the vacation package purchased by Plaintiffs 1-8 was received. On October 5, 2016 Plaintiffs 1-8 received the vouchers for the flight and hotel they had booked – in the tourist area of the island.
5. On August 4, 2016, a written notice was received from Defendant 2 verifying confirmation of the hotel rooms booked for Plaintiffs 9-25. On August 7, 2016 an official booking confirmation was received for the vacation package purchased by Plaintiffs 9-25. On October 5, 2016, Plaintiffs 9-25 received the vouchers for the flight and the hotel, in the tourist area of the island, as they had booked.

**A copy of the confirmation vouchers of the Plaintiffs for the package in the 'Hilton Doubletree' hotel, by family (Dabach, Ochayun, Ovadiah, Eliezer and two Golanski families) are appended as Appendixes 1A – 1E, respectively.**

**A copy of the message confirming the rooms in the Booked Hotel, by Defendant 2, is appended as Appendix 2.**

**An example of the vacation packages offered on the "Haver" website and their various prices, including the package purchased by the Plaintiffs in contrast with the package they actually received, is appended as Appendix 3.**

**The payment receipt for the vacation packages booked for Plaintiffs 9-12 is appended as Appendix 4A – 4B.**

**The payment receipt for the vacation packages booked for Plaintiffs 18-22 is appended as Appendix 5A – 5E.**

**The payment receipt for the vacation packages booked for Plaintiffs 23-25 is appended as Appendix 6A – 6E.**

**The payment receipt for the vacation packages booked for Plaintiffs 13-17 is appended as Appendix 7A – 7D.**

**A receipt by e-mail for the vacation package booked for Plaintiffs 1-8 is appended as Appendix 8A and 8C.**

1. In the afternoon of the day before the planned date of the flight, representatives of the Defendants contacted the Plaintiffs (Defendant 1 made contact with Plaintiffs 1-8, Defendant 2 with Plaintiffs 9-25) and notified them about swapping the hotel, **without making any mention whatsoever of the change of the area it is located in, to the west of the island – the non-tourist area of the island,** to wit, a journey of an hour and a half from the location of the hotel originally booked and from the attractions which the Plaintiffs intended to take advantage of on their vacation.
2. Said notice left the Plaintiffs with no choice, as it was no longer possible to change the dates of the vacation at such a stage **and they were not even given any options to make choices regarding the hotel they would stay in, as well as the area in which it is situated.** The representatives of the Defendants dictated to the Plaintiffs their decision to replace the hotel which had originally been booked with the Kisiwa hotel which is situated on the eastern, non-tourist side of the island (hereinafter: **the "Replacement Hotel"**).
3. In addition, the representative of Defendant 1 notified that the Plaintiffs "will be compensated" for said exchange with credit of USD 100 per day, and a day trip on the island the day after their arrival, as well as an upgrade from half-board to full board, in an "all inclusive" framework. This compensation was provided in a meagre and partial manner, to say the least, as will be clarified below.
4. **In order to dispel doubt, may it be clarified and emphasized, that the Replacement Hotel in the eastern area of the island (hereinafter: the "Non-Tourist Area"), as aforementioned, was forced upon the Plaintiffs on the day before the date of the flight (October 13, 2016) despite that, post factum, the Plaintiffs discovered that the representatives of the Defendants knew about the lack of confirmation of the original hotel in the vacation package 10 days earlier, to wit, on October 4, 2016. For some reason, the Defendants chose to keep this information to themselves without giving the Plaintiffs any choice their vacation in a hotel chosen by the Defendants.**
5. In addition, in said e-mail from the representative of Defendant 1, it was promised that the Replacement Hotel chosen by the Defendants is at a higher level than the Booked Hotel. **This fact is devoid of any truth and amounts to actual deception,** and was claimed solely to entice the Plaintiffs to "swallow the bitter pill" without objecting.
6. The Booked Hotel and the Replacement Hotel may be rated with the same number of stars, but in reality, the level of the Replacement Hotel was clearly lower than the Booked Hotel, in every possible comparative parameter. For example: In the quality of the food served in the Hilton in comparison with the meagerness of the buffet in the Replacement Hotel; in the number of rooms (the Hilton has double the number of rooms of the Replacement Hotel); in the size of the facilities of the hotel; in the basic conditions (there was not even hot water for bathing for all members of the group in the Replacement Hotel)4; in the disappointing natural environment around the Replacement Hotel (the Hilton beach is fully equipped and bustles with activity whereas the beach of the Replacement Hotel is inaccessible and not visited by tourists); in evening recreational opportunities in the vicinity of the hotel (the Hilton has nightlife and places of entertainment whereas in the Replacement Hotel, it was forbidden to leave the territory of the Replacement Hotel after nightfall – due to safety issues) and more…
7. May it be emphasized and clarified once again that not only was an unsatisfactory hotel, to put it lightly, forced upon the Plaintiffs, but the area of the hotel was also changed to another area, without the agreement of the Plaintiffs.

**An e-mail from October 13, 2016 from a representative of Defendant 1 to the Plaintiffs notifying about the swap between the Booked Hotel and the Replacement Hotel, as aforementioned, is appended as Appendix 9.**

**An e-mail from October 4, 2016 from the management of the Booked Hotel notifying that it is not possible to carry out the booking in said hotel is appended as Appendix 10.**

**A copy of the confirmation vouchers of the package in the Replacement Hotel which was forced upon the Plaintiffs is appended as Appendixes 11A – 11D respectively.**

1. As aforementioned, in the absence of a proposal of any good quality alternatives from the Defendants, the Plaintiffs left for the vacation package on said date, lacking any other option, and arrived late at night at the Replacement Hotel.
2. If this was not enough, according to the promise of representatives of the Defendants, it was promised that a day trip on the island would be provided at no cost, selected by the Plaintiffs from a list of possible trips. In reality, surprisingly, the Plaintiffs were not given any choice and were not even presented with any list of possible trips, as promised. In reality, the Plaintiffs were presented with the fact that they will be taken on the promised trip immediately in the morning following their arrival on the island (the Plaintiffs arrived at the Replacement Hotel on the day of arrival close to midnight) with no ability to choose. This caused them inconvenience and to miss out on the enjoyment which was meant to be derived from such a day trip. Moreover, the alternative forced upon the Plaintiffs was discovered to be wholly unsatisfactory.
3. Moreover, the Plaintiffs had planned to participate in the Full Moon party which was to take place the day after arrival, close to the Booked Hotel, but due to the trip arranged for them as a fait accompli, on the same date, they were prevented from participating in said party. The Defendants promised the Plaintiffs that despite the aforementioned trip, they would arrange transport for them to the long-awaited party that evening, but this promise too was not kept.
4. Moreover, and even graver than the above, the Plaintiffs discovered that the Replacement Hotel is located far from the north of the island, and is also so secluded that there are no evening activities and the Plaintiffs were even warned by the hotel security guards not to leave it in the dark of night. This is in contrast with the north of the island, which has lively and active daytime activities and nightlife.
5. Likewise, the Plaintiffs planned to go diving in the well-known diving sites on the north of the island, but instead, had to compromise on another diving site on the eastern area of the island, due to their distant location in the Replacement Hotel, far from the original hotel in which they purchased the vacation package. In contrast with the beach in the vicinity of the original hotel, the beach the Replacement Hotel was located on did not meet the standards and did not have the qualities of a diving site or even a bathing site.
6. Despite the Plaintiffs having been promised that they would enjoy an "all inclusive" framework, they discovered in reality upon their arrival at the Replacement Hotel they were sent to, that it is not equipped to provide such a service. The representatives of the hotel expressly made clear to the Plaintiffs that this is the first day of the season in the hotel, and that in any event **it is not equipped to provide "all inclusive" full board service.**
7. In reality, the meals were arranged in an amateur and improvised fashion. The open buffet served in the Replacement Hotel was meager and paltry, and was not at all similar to that served in the Booked Hotel. Due to the attempts of the staff of the Replacement Hotel to fulfill the promised made by the Defendants in this regard, the representatives of the hotel arranged a makeshift kitchen, incompatible with any reasonable safety requirement. So for example, meals with an extremely poor menu were prepared, on makeshift cooking apparatus comprised of an open camping burner on a wooden board placed on improvised legs, and attached with a pipe to a gas balloon. Not only were the meals disappointing and not compatible with what is expected from meals on vacation in any hotel whatsoever but, must graver than this, this safety deficiency **led to a gas explosion which caused severe burns to the bodies of some of the Plaintiffs and to them being taken for many hours of treatment in the local hospital**, two days prior to the return flight.
8. Therefore, during the last two days of the vacation, some of the Plaintiffs suffered from intense pain as a result of the burns caused to them in the gas explosion which took place in the hotel, **leading the entire group to remain in the hotel compound and not to utilize even a single moment for recreational purposes.** In essence, a situation was created in which instead of using their limited time for the recreation for which they had come to the island, the injured Plaintiffs spent two days being treated in the hospital and recuperating in the hotel, while their friends, the Plaintiffs who were miraculously not injured, spent their time caring for them.

**A copy of photographs of the open buffet in the originally booked Hilton Hotel, in contrast with the improvised buffet in the Replacement Hotel the Plaintiffs stayed in – following the gas explosion, are appended as Appendixes 12A – 12B respectively.**

**A copy of photographs of the burns caused to the Plaintiffs by the gas explosion are appended as Appendixes 13A – 13F.**

**An example of a photograph of the low level of a room in the Replacement Hotel in which the air conditioner fell apart is appended as Appendix 14A – D.**

**Photographs of the bustling tourist beach in the booked area are appended as Appendix 15A - B.**

**Photographs of the non-touristy, distant and empty beach, which was forced upon the Plaintiffs are appended as Appendix 16A – 16D.**

**Medical documentation from the treatment given to the Plaintiffs following the gas explosion – in Zanzibar and in Israel is appended as Appendix 17.**

1. If this is not enough, the Plaintiffs arrived at the airport in order to fly back to Israel, some of them suffering from intense pain due to the burns they incurred, three of them pushed in wheelchairs by their friends and the others carrying the suitcases of the injured people.
2. The time of the flight booked by the Plaintiffs was set for 9:25 pm, but when they arrived at the airport they discovered that the flight had been delayed by several hours. Even though representatives of the Defendants know in advance about the delay to the flight as well as about the deficient state of health of some of the Plaintiffs due to the aforementioned, they did not take the time to inform them before they left for the airport, in order to shorten their painful and exhausting wait to board the airplane, as required from reasonable travel agents with basic human sensitivity.

**A copy of photographs of the pain-ridden Plaintiffs waiting for the flight to Israel, when their state of health is deficient as the result of the gas explosion are appended as Appendixes 18A – 18F.**

1. During the disappointing vacation, the Plaintiffs repeatedly contacted Defendant 2 and stated their many complaints to her, with an imploring request for her to help them contact Defendant 1, to change the hotel and to improve their terrible conditions (poor air conditioning, showers without hot water and more…), but to no avail. Her responses were simply that she has been unable to reach the representatives of Defendant 1 by telephone, while completely denying her liability and blaming the Hilton Hotel and Plaintiff 1 for all the omissions.

**A copy of the correspondence by SMS with Defendant 2 between the dates October 13, 2016 and October 25, 2016, is appended as Appendix 19.**

1. On December 6, 2016, a demand letter for compensation was sent on behalf of the Plaintiffs to the Defendants, including appendixes which prove the claims of the Plaintiffs, as appended to this Statement of Claim.

**A copy of the Demand Letter for Compensation, as sent to the Defendants, is appended as Appendix 20.**

1. The response of the representative of Defendant 1, which clearly demonstrates the extent to which Defendant 1 does not acknowledge its negligence, its liability for the severe failure (to say the least) of the vacation which it sold to the Plaintiffs, while denying them of their right to choose in advance whether to exchange or cancel it, was sent by fax to the offices of the representatives of the Plaintiffs on February 2, 2017.

**A copy of the response of the representative of Defendant 1 is appended as Appendix 21.**

1. The response of Defendant 2 was received on January 4, 2017 to the e-mail of the representatives of the Plaintiffs, in which she denies any liability whatsoever, as is her wont, for the many omissions and the tremendous injustice caused to the Plaintiffs during their vacation, just as she acted throughout the engagement with her.

**A copy of the response of Defendant 2 is appended as Appendix 22.**

1. After the Plaintiffs returned from the vacation under discussion, and due to their complaints before the Defendants, the Plaintiffs met with the CEO of Defendant 1 and stated all their complaints. This meeting too was unfruitful.
2. On December 12, 2016, the credit card of Plaintiffs 1-8 was credited with a refund of the sum of **NIS 2,987.60**, to wit, of the sum of NIS 373 per passenger, a refund which does not come close to the fitting amount of compensation for the aforementioned conduct.
3. **A copy of the row showing the credit in the credit card bill of Plaintiffs 1-8 is appended as Appended 23.**

**The Claims of the Plaintiffs:**

1. **The Plaintiffs will claim that the Defendants received the information that the Booked Hotel is not available to accept the Plaintiffs on October 4, 2016, but still sent confirmation of the flight and the hotel a day later, on October 5, 2016, in order to mislead the Plaintiffs into thinking that the transaction has been finalized.** Therefore, it can be seen from the facts that the Defendants, in clear lack of good faith and intentionally, concealed vital information which was in their possession from the Plaintiffs regarding the refusal of the Booked Hotel to accept the Plaintiffs due to over-booking, for 10 days before the Plaintiffs left for the vacation, **while sending a false hotel confirmation to the Plaintiffs,** solely and exclusively in order to prevent the transaction from being cancelled, and therefore at the very least, the Defendants intentionally deceived the Plaintiffs, and also denied the Plaintiffs of control and of the right of the choice to purchase the product suited to them. (See the e-mail in Appendix 9 and the confirmation of the hotel rooms in Appendixes 1 and 2).
2. The Plaintiffs will further claim that not only was the hotel swapped by the Defendants, but so was the area in which it is located, far from the area where they wished to go on vacation, breaching what is permitted by law.
3. The Plaintiffs will emphasize that if they had been supplied with the full information about the replacement vacation provided to them on the date it was received, they would have been able to deliberate and to decide what step to take and would certainly not have chosen the expensive but disappointing vacation package which was forced upon them, but would have chosen to cancel it and to look for a vacation package more satisfactory for them.
4. The Plaintiffs will claim that the travel agents, who are the Defendants, did not fulfill their role in a reasonable, responsible and skilled manner, as required from travel agents, both when they refrained from informing the Plaintiffs that their booking had been refused and chose to conceal this information and to transmit it to them the day before the flight and subsequently, throughout the engagement, when their help was requested in improving the conditions in which they were forced to stay, in changing hotels… etc. but no response was received. Thus a situation was created, practically, in which the Defendants, through their faulty and negligent conduct forced a vacation which was disappointing, to put it mildly, on the Plaintiffs, which was completely incompatible with their needs. This conduct attests to intentional deception from the offset, and subsequently negligent conduct of the highest level, in breach of the law in a manner which amounts to failure to fulfill the roles of the Defendants in a reasonable, responsible and skilled manner, as required from a travel agent.
5. The Plaintiffs will further claim that promising a high-quality hotel as a replacement (a fact which was revealed to be false), concealing the fact that the hotel is situated on the less attractive part of the island, promising various forms of compensation which were not fulfilled or were fulfilled in a partial and insufficient manner and more, is conduct which amounts to deception in act and omission in breach of all law.
6. The Plaintiffs will further claim, that the Defendants breached the duty of transparency and full disclosure of a travel agent toward its customers which is emphasized sevenfold in the Travel Agent Regulations (Full Disclosure), 2003. According to all the aforementioned laws, the conduct of the Defendants, in the case under discussion, amounted to clear deception in act and omission.
7. Moreover, the Plaintiffs will claim that the promise the Defendants made to them, that they will enjoy full board in the Replacement Hotel, a promise which was revealed in reality upon their arrival at the hotel under discussion, as false, as it was not at all equipped and organized to provide such a service, was deception or alternatively, if the hotel was not properly examined by representatives of the Defendants as being suitable for the needs of the Plaintiffs prior to sending them there and especially as it was deficient in safety, as gross negligence on the part of the Defendants, as providers of tourism services.
8. In summary of the claims of the Plaintiffs, the aforementioned conduct of the Defenders, who did not comply with the level of professionalism and credibility required from them, is in complete contradiction with the duty of good faith and full disclosure under the law, as prescribed in the Contracts Law (General Part), 5733-1973, the duty of good faith and full disclosure on the part of suppliers and service providers pursuant to the Consumer Protection Law 5741-1981, the Travel Agent Regulations, 2003, as well as gross negligence as this term is defined in the Torts Ordinance [New Version], 5728-1968.
9. The Plaintiffs claim that were it not for the omissions of the Defendants, they would not have been caused inconvenience, monetary damage, loss of enjoyment and pain and suffering, as they actually incurred, as the Defendants could have taken simple means to prevent this, with no need to correspond and to conduct this claim.
10. **Due to the aforementioned, hereinafter is the sum of the calculation of the compensation for the Plaintiffs:**

|  |  |
| --- | --- |
| 1. **60% of the cost of the vacation which was wasted due to the deficient conduct of the Defendants -** | **NIS 98,145** |
| 1. **Distress and loss of enjoyment caused to the Plaintiffs due to the deficient conduct of the Defendants (NIS 3,000 per person) -** | **NIS 75,000** |
| 1. **Credit to Plaintiffs 1-8 by credit card, at the sum of** | **NIS 2,987.60** |
| **Total -** | **NIS 170,158** |

1. **In order to dispel doubt, the Honorable Court is also asked, upon receiving this Statement of Claim, to approve splitting of reliefs:**
2. In addition to the monetary damage and loss of enjoyment described in this Statement of Claim, physical injury was caused to the Plaintiffs due to the injuries to the Plaintiffs and their children who are minors caused by the gas explosion in the Replacement Hotel.
3. Alongside the monetary damage, severe mental trauma was caused to them and their children who are minors, due to which they underwent treatment and are still undergoing treatment as of the date this Statement of Claim is filed. So for example, a seven year old child regressed to wetting himself, and another seven year old child who was injured experienced a trauma and starting stammering again, several toddlers have reactions of extreme fear to fire, loss of many work days of those who were injured and the parents of the minors who were injured due to sick days, and much more… damages which are ongoing and which have yet reach the stage of a claim.
4. **Due to the aforementioned, splitting of reliefs is required, enabling the physical injuries to be claimed at a later date.**

**In summation:**

1. From the facts described above it can be seen that due to the deficient conduct of the Defendants, not only were the Plaintiffs denied their right to take advantage of the potential enjoyment of the expensive trip they purchased at great expense, as they planned in advanced, but the Plaintiffs also suffered real pain and suffering.
2. In addition, needless to state that correcting the experience by means of another trip, with the composition of the group under discussion, to the location of the disappointing trip described above, is almost impossible and has an extremely high price, and the damage caused is therefore almost irreversible.
3. The Honorable Court is asked to charge the Defendants with the damages of the Plaintiffs by virtue of the duty of full disclosure according to the law as prescribed in the Contracts Law (General Part), 5733-1973, the duty of good faith and full disclosure on the part of suppliers and service providers pursuant to the Consumer Protection Law 5741-1981, the Travel Agent Regulations (Full Disclosure), 2003, by virtue of the Torts Ordinance [New Version], 5728-1968, as well as by virtue of general law and the principle of good faith and more…
4. The Honorable Court has the venue and subject-matter jurisdiction to hear the claim due to its nature, amount and the place of corporate engagement between the parties.
5. **Therefore, the Honorable Court is asked:**
6. **To authorize the Plaintiffs to split reliefs enabling the physical injuries to be claimed at a later date, when their extent becomes clear.**
7. **To send a copy of the Statement of Claim, the appendixes and the summons to trial to the Defendants.**
8. **To order the Defendants to pay compensation at the sum of NIS 170,158 to the Plaintiffs, with the addition of interest and indexation differentials as required by law from the day the claim was filed until the day the full payment is actually made.**
9. **To charge the Defendants with the legal expenses with the addition of interest and indexation differentials as required by law from the day of the filing of the claim until full payment is actually made.**