

situated as users, consumers, subscribers, and customers of FirstDIBZ.com, against Defendant The TicketReserve, Inc., (“Defendant”) in the State of Illinois for breach of contract, breach of express and implied warranties, fraud, unjust enrichment, and violations of Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*

PARTIES

2. Plaintiff Andrew Duffy is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 725 Brooke Road, in the city of Glenside, Montgomery County, Pennsylvania, 19038.

3. Plaintiff George Adams is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 877 North Karney Street, in the city of Allentown, Lehigh County, Pennsylvania, 18109.

4. Plaintiff Gregg Harder is an adult individual and citizen of the State of Iowa who resides at 1146 Sunset Street, in the city of Iowa City, Johnson County, Iowa, 52246.

5. Plaintiff Christopher Jackman is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 5471 Jillian Way, in the city of Pipersville, Bucks County, Pennsylvania, 18947.

6. Plaintiff Jason Lee is an adult individual and citizen of the State of Connecticut who resides at 221 Trumbull Street, apartment 1702, in the city of Hartford, Hartford County, Connecticut, 06103.

7. Plaintiff Jose Ordaz is an adult individual and citizen of the State of California who resides at 27614 Onyx Lane, in the city of Castaic, Los Angeles County, California, 91384.

8. Plaintiff Vincent Ruggiero is an adult individual and citizen of the State of New York who resides at 217 Bay 48th Street, in the city of Brooklyn, Kings County, New York, 11214.

9. Plaintiff Sohail Shah is an adult individual and citizen of the Commonwealth of Pennsylvania who resides at 621 S. Linden Avenue, in the city of Pittsburgh, Allegheny County, Pennsylvania, 15208.

10. Defendant TicketReserve is an Illinois corporation with its principal place of business at 20 North Wacker Drive, Suite 1100, Chicago, Illinois 60606.

JURISDICTION AND VENUE

11. This Court has personal jurisdiction over Defendant because Defendant is incorporated in this judicial district, has its principal place of business in this district, does business in this district, has committed and continues to commit the acts alleged in this Complaint in this district, and otherwise has sufficient contacts with this district.

12. The amount in controversy exceeds seventy-five thousand dollars (\$75,000.00) exclusive of costs and interest, and diversity jurisdiction exists under favor of 28 U.S.C. § 1332.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. The Defendant is a resident of this county, and all of Defendant's acts giving rise to this cause of action occurred in this county.

FACTUAL ALLEGATIONS

14. At all times relevant and since 2001, Defendant owned, managed and operated an internet marketplace called FirstDIBZ.com on which users, consumers, subscribers, and customers are able to purchase, trade, and sell

options to buy tickets at face-value to live sporting and entertainment events throughout the United States.

15. FirstDIBZ.com allows users, consumers, subscribers, and customers to purchase advanced reservations, known as “DIBZ,” for a specific team and event (e.g. New York Yankees to advance to the World Series).

16. If the event does not occur as reserved (e.g. Yankees do not advance to the World Series), then the DIBZ are unsuccessful and the customer loses the money they paid for the reservation.

17. If the event does occur as reserved (e.g. Yankees do advance to the World Series), then the DIBZ are successful and the customer is guaranteed the ability to buy face-value tickets for the event.

18. According to Defendant, “a ‘DIBZ’ is an instrument which: (i) gives the holder the right to purchase a product or ticket to a known or possible DIBZ event the occurrence of which may be known or is contingent upon one of more factors and (ii) obligates the holder to purchase the product or ticket if the event is scheduled to occur.” See FirstDIBZ User Agreement, attached as Exhibit A.

19. On FirstDIBZ.com, Defendant offers two marketplaces in which to purchase DIBZ: the “FirstDIBZ marketplace” in which DIBZ are supplied and sold by the Defendant, and the “uDIBZ marketplace” in which DIBZ are supplied, sold and/or traded by customers/subscribers of FirstDIBZ.com.

20. Defendant marketed and promoted its website, FirstDIBZ.com, as a place where users, consumers, subscribers, and customers could buy, sell, and trade reservations/options, “DIBZ,” for future sporting and entertainment events, and made specific claims including but not limited to:

- a. "One DIBZ guarantees one face-value ticket if your team makes it to the Super Bowl." See FirstDIBZ SuperBowl XLIII Information at 1, attached as Exhibit B.
- b. "You can also sell your DIBZ to other fans of your team at any point during the season." See Exhibit B at 1.
- c. "Super Bowl XLIII DIBZ From the Fans gives you the right and obligation to purchase face-value tickets to see your team play in Super Bowl XLIII." See Exhibit B at 2.
- d. "Ticket Reserve also touts as one of its advantages its high security. Unlike scalpers, who can easily scam unknowing victims, Ticket Reserve is fully legal and guaranteed." See "Big Game? Invest for Tickets" as accessed from FirstDIBZ.com, attached as Exhibit C.
- e. "FirstDIBZ requires the sellers to guarantee the tickets before they offer them for sale. The company promises buyers that they will receive tickets, even if the seller breaks the bargain." See "Fans willing to pay big bucks for the right to buy tickets that don't yet exist" as accessed from FirstDIBZ.com, attached as Exhibit D.
- f. "'Theoretically, we're not in the ticket business,' [Rick] Harmon [CEO of FirstDIBZ.com] said. But if a season ticket holder can't be found, he said, 'We go into the market place and we will get similar or better tickets to deliver to the Dibz holder.'" See Exhibit D.
- g. "Should the seller fail to deliver, FirstDIBZ will make good with similar tickets for the buyer while charging 'market value'—likely the huge markups the buyer is avoiding by buying early—to the

seller's credit card." See "Optimistic Cubs fans can lock up postseason tickets - that may never exist" as accessed on FirstDIBZ.com, attached as Exhibit E.

- h. "DIBZ purchased on the uDIBZ marketplace are the same as those purchased on the FirstDIBZ marketplace. All DIBZ are guaranteed, so if the seller cannot produce tickets, FirstDIBZ will produce equal or better seating." This exact statement or one substantially similar was made over the phone by an agent of FirstDIBZ.com to Plaintiff Adams on January 11, 2009, Plaintiff Jackman on January 12, 2009, and Plaintiff Lee on December 10, 2008.

21. As such, Defendant uniformly represented to users, consumers, subscribers, and customers of FirstDIBZ.com that any reservations purchased on FirstDIBZ.com, including on the uDIBZ marketplace, were guaranteed reservations, meaning that if the DIBZ were successful, then the customer was guaranteed the exclusive rights over the DIBZ, including the right to purchase tickets at face-value or sell/trade that option.

22. Defendant allowed fraudulent sellers to conduct transactions in the uDIBZ marketplace, and users, consumers, subscribers, and customers of FirstDIBZ.com were detrimentally affected and suffered economic damages.

23. Upon information from consumers, Defendant became aware that the uDIBZ marketplace was vulnerable to fraudulent activity in the Fall of 2008, when hundreds of fraudulent DIBZ for the Chicago Cubs and Chicago White Sox to advance to the World Series were sold on the uDIBZ marketplace.

24. On and before January 2009, Defendant had knowledge that FirstDIBZ.com was vulnerable to fraudulent sellers entering the marketplace. Despite this knowledge, Defendant failed to employ reasonable and available procedures and safeguards to protect the users, consumers, subscribers, and customers of FirstDIBZ.com from fraud.

25. Plaintiffs and Class members were users, consumers, subscribers, and customers of FirstDIBZ.com who purchased and, in some instances, resold fraudulent DIBZ on FirstDIBZ.com.

26. Plaintiffs and Class members relied on the representations made by Defendant, including those made in the articles posted on Defendant's website, when deciding to be users, consumers, subscribers, and customers of FirstDIBZ.com.

27. When Class Members purchased fraudulent DIBZ, Defendant did not:

- a. provide, as it had guaranteed, the right to purchase tickets at face value or the fair market value for said tickets;
- b. compensate them the difference between the price of the fraudulent DIBZ when purchased and the cost of replacing the DIBZ on the date that the Defendant cancelled the fraudulent transaction;
- c. allow Class members to retain their profits from the resale of their DIBZ.

FACTUAL ALLEGATIONS SPECIFIC TO CLASS REPRESENTATIVES

Plaintiff Andrew Duffy

28. Between January 4-11, 2009, Plaintiff Andrew Duffy purchased three DIBZ for the Philadelphia Eagles to advance to the SuperBowl for \$304.95 total and one DIBZ for the Arizona Cardinals to advance to the SuperBowl on the uDIBZ marketplace for \$289.00.

29. Under the terms of the FirstDIBZ website, upon purchasing DIBZ for the Philadelphia Eagles and Arizona Cardinals, Plaintiff Andrew Duffy was guaranteed exclusive rights over the DIBZ, including the option of trading or selling the DIBZ on the uDIBZ marketplace for a profit or the right to buy tickets to the SuperBowl at face-value if the DIBZ were successful.

30. On January 11, 2009, prior to the Philadelphia Eagles versus New York Giants game, Plaintiff Andrew Duffy sold one of his three Philadelphia Eagles DIBZ for \$200.00 on the uDIBZ marketplace.

31. Between January 13-16, 2009, Defendant informed Plaintiff Andrew Duffy that the DIBZ for the Arizona Cardinals and Philadelphia Eagles had been fraudulently sold to him, the transactions were voided, he would be refunded his purchase prices, and he would have to refund the sale price of the one DIBZ Philadelphia Eagles that was sold to the purchaser.

32. On January 16, 2009, Defendant informed Plaintiff Andrew Duffy that a reparation plan would be put into effect on January 20, 2009 to “each and everyone who was adversely affected by this fraud in the hopes of making amends for the harms suffered.” Defendant did not specify, and Plaintiff was uncertain,

as to whether the reparation plan would include replacement DIBZ for the SuperBowl.

33. Due to Plaintiff's uncertainty, and in reliance upon Defendant's promise to make amends for the harms suffered, Plaintiff Andrew Duffy did not attempt to purchase replacement DIBZ for the SuperBowl.

34. On January 20, 2009, after the Arizona Cardinals and Pittsburgh Steelers advanced to the SuperBowl, Defendant informed Plaintiff that: he would not be offered a replacement DIBZ, he would lose his profit from the sale of his DIBZ, and he would not be given the right to purchase SuperBowl tickets for face-value.

Plaintiff George Adams

35. On January 10, 2009, Plaintiff George Adams purchased two DIBZ for the Pittsburgh Steelers to advance to the SuperBowl on the uDIBZ marketplace for a total of \$417.30. On January 11, 2009, Plaintiff George Adams purchased two DIBZ for the Philadelphia Eagles to advance to the SuperBowl on the uDIBZ marketplace, prior to the Philadelphia Eagles v. New York Giants game, for a total of \$214.00.

36. Under the terms of the FirstDIBZ website, upon purchasing DIBZ for the Philadelphia Eagles and Pittsburgh Steelers, Plaintiff George Adams was guaranteed exclusive rights over the DIBZ, including the option of trading or selling the DIBZ on the uDIBZ marketplace for a profit or the right to buy three tickets to the SuperBowl at face-value if the DIBZ were successful.

37. On January 13, 2009, Defendant informed Plaintiff George Adams that the two DIBZ for the Pittsburgh Steelers and the two Dibs for the

Philadelphia Eagles had been fraudulently sold to him, the transactions for the purchase of the DIBZ were voided, and he would be refunded his purchase prices of \$417.30 and \$214.00.

38. On January 16, 2009, Defendant informed Plaintiff that a reparation plan would be put into effect on January 20, 2009 to “each and everyone who was adversely affected by this fraud in the hopes of making amends for the harms suffered.” Defendant did not specify, and Plaintiff was uncertain, as to whether the reparation plan would include replacement DIBZ for the SuperBowl.

39. Due to Plaintiff’s uncertainty, and in reliance upon Defendant’s promise to make amends for the harms suffered, Plaintiff did not attempt to purchase replacement DIBZ for the SuperBowl.

40. On January 20, 2009, after the Arizona Cardinals and Pittsburgh Steelers advanced to the SuperBowl, Defendant informed Plaintiff that he would not be offered a replacement DIBZ and he would not be given the right to purchase SuperBowl tickets for face-value.

Plaintiff Gregg Harder

41. On November 26, 2008, Plaintiff Gregg Harder purchased four DIBZ for the Arizona Cardinals to advance to the SuperBowl on the uDIBZ marketplace for a total of \$179.76.

42. Under the terms of the FirstDIBZ website, upon purchasing DIBZ for the Arizona Cardinals, Plaintiff Gregg Harder was guaranteed exclusive rights over the DIBZ, including the option of trading or selling the DIBZ on the uDIBZ

marketplace for a profit or the right of buying three tickets to the SuperBowl at face-value if the DIBZ were successful.

43. On January 17, 2009, Plaintiff Gregg Harder sold his four DIBZ for the Arizona Cardinals to advance to the SuperBowl for a total of \$1996.00, equaling a profit of \$1816.24.

44. On January 18, 2009, Plaintiff purchased two DIBZ for the Philadelphia Eagles to advance to the SuperBowl on the uDIBZ marketplace for \$1219.80. Plaintiff would not have purchases these DIBZ but for his reliance on the profit of \$1816.24 from the sale of the other DIBZ.

45. On January 27, 2009, Defendant informed Plaintiff Gregg Harder that the four DIBZ for the Arizona Cardinals had been fraudulently sold to him, the transactions for the purchase of the DIBZ and the subsequent sale of the DIBZ were voided, he would be refunded his purchase price, and he would have to refund the sale price for the four Arizona Cardinals DIBZ that were sold to the purchaser.

Plaintiff Christopher Jackman

46. On December 21, 2008, Plaintiff Christopher Jackman purchased two DIBZ for the Philadelphia Eagles to advance to the SuperBowl on the uDIBZ marketplace for a total of \$117.70. On January 3, 2009, Plaintiff Christopher Jackman purchased two DIBZ for the Indianapolis Colts to advance to the SuperBowl on the uDIBZ marketplace for a total of \$149.80.

47. Under the terms of the FirstDIBZ website, upon purchasing DIBZ for the Philadelphia Eagles and Indianapolis Colts, Plaintiff Christopher Jackman was guaranteed exclusive rights over the DIBZ, including the option of trading or

selling the DIBZ on the uDIBZ marketplace for a profit or the right of buying three tickets to the SuperBowl at face-value if the DIBZ were successful.

48. On January 12, 2009, Defendant informed Plaintiff Christopher Jackman that the two DIBZ for the Indianapolis Colts had been fraudulently sold to him, the transactions for the purchase of the DIBZ were voided, and he would be refunded his purchase price.

49. On January 16, 2009, an agent guaranteed Plaintiff that profit made from the sale of any DIBZ, fraudulent or otherwise, was guaranteed.

50. On January 17, 2009, Plaintiff sold his two DIBZ for the Philadelphia Eagles to advance to the SuperBowl on the uDIBZ marketplace for a total of \$1470.00, equaling a profit of \$1352.30. In reliance on that profit, Plaintiff then purchased two DIBZ on the FirstDIBZ marketplace for the Philadelphia Eagles to advance to the SuperBowl for a total of \$1498.00.

51. On January 23, 2009, Defendant informed Plaintiff Christopher Jackman that the two DIBZ for the Philadelphia Eagles had been fraudulently sold to him, the transactions for the purchase of the DIBZ and the subsequent sale of the DIBZ were voided, he would be refunded his purchase price, and he would have to refund the sale price of the two Philadelphia Eagles DIBZ that were sold to the purchaser.

Plaintiff Jason Lee

52. Between October 10, 2008 and January 10, 2009, Plaintiff Jason Lee purchased four DIBZ for the Indianapolis Colts to advance to the SuperBowl for \$235.50 total, four DIBZ for the Arizona Cardinals to advance to the SuperBowl for \$209.72 total, two DIBZ for the Carolina Panthers to advance to

the SuperBowl for \$374.50 total, four DIBZ for the Philadelphia Eagles to advance to the SuperBowl for \$395.90 total, two DIBZ for the Baltimore Ravens for \$181.90 to advance to the SuperBowl total, four DIBZ for the Pittsburgh Steelers to advance to the SuperBowl for \$1155.60 total, and two DIBZ for the San Diego Chargers to advance to the SuperBowl on the uDIBZ marketplace for \$203.30 total.

53. Under the terms of the FirstDIBZ website, upon purchasing DIBZ for the Indianapolis Colts, Arizona Cardinals, San Diego Chargers, Carolina Panthers, Baltimore Ravens, Philadelphia Eagles and Pittsburgh Steelers, Plaintiff Jason Lee was guaranteed exclusive rights over the DIBZ, including the option of trading or selling the DIBZ on the uDIBZ marketplace for a profit or the right to buy two tickets to the SuperBowl at face-value if the DIBZ were successful.

54. On January 5, 2009, Plaintiff Jason Lee sold his two DIBZ for the Carolina Panthers to advance to the SuperBowl on the uDIBZ marketplace for \$808.20 total, equaling a profit of \$433.70. On January 11, 2009, Plaintiff Jason Lee sold his four DIBZ for the Arizona Cardinals to advance to the SuperBowl on the uDIBZ marketplace for \$714.60 total, equaling a profit of \$504.88. On January 12, 2009, Plaintiff Jason Lee sold two of his DIBZ for the Philadelphia Eagles to advance to the SuperBowl on the uDIBZ marketplace for \$990.00 total, equaling a profit of \$797.40. On January 12, 2009, Plaintiff Jason Lee sold two DIBZ for the Pittsburgh Steelers to advance to the SuperBowl on the uDIBZ marketplace for \$896.40 total, equaling a profit of \$318.60.

55. On January 14, 2009, Defendant informed Plaintiff Jason Lee that all four of the DIBZ for the Pittsburgh Steelers, two of the DIBZ for the Philadelphia Eagles, two of the Dibs for the Arizona Cardinals, and two of the DIBZ for the San Diego Chargers had been fraudulently sold to him, all of the transactions for the purchase and sale of the DIBZ were voided, he would be refunded his purchase prices, and he would have to refund the sale price for the two Steelers DIBZ and two Cardinals DIBZ that were sold to the purchaser.

56. On January 16, 2009, Defendant informed Plaintiff Jason Lee that the two DIBZ for the San Diego Chargers and the two DIBZ for the Baltimore Ravens had been fraudulently sold to him, all of the transactions for the purchase of the DIBZ were voided, and he would be refunded his purchase prices.

57. On January 16, 2009, Defendant informed Plaintiff that a reparation plan would be put into effect on January 20, 2009 to “each and everyone who was adversely affected by this fraud in the hopes of making amends for the harms suffered.” Defendant did not specify, and Plaintiff was uncertain, as to whether the reparation plan would include replacement DIBZ for the SuperBowl.

58. Due to Plaintiff’s uncertainty, and in reliance upon Defendant’s promise to make amends for the harms suffered, Plaintiff did not attempt to purchase replacement DIBZ for the SuperBowl.

59. On January 20, 2009, after the Arizona Cardinals and Pittsburgh Steelers advanced to the SuperBowl, Defendant informed Plaintiff that: he would not be offered a replacement DIBZ, he would lose his profit from the sale of his

DIBZ, and he would not be given the right to purchase SuperBowl tickets at face-value.

60. On January 23, 2009, Defendant informed Plaintiff Jason Lee that all four of the DIBZ for the Indianapolis, two of the DIBZ for the Philadelphia Eagles, and two of the DIBZ for the Carolina Panthers had been fraudulently sold to him, all of the transactions for the purchase and sale of the DIBZ were voided, he would be refunded his purchase prices, and he would have to refund the sale price of the two Eagles DIBZ and two Panthers DIBZ that were sold to purchasers.

Plaintiff Jose Ordaz

61. On January 10, 2009, Plaintiff Jose Ordaz purchased eighteen DIBZ for the Arizona Cardinals to advance to the SuperBowl on the uDIBZ marketplace for a total of \$663.40.

62. Under the terms of the FirstDIBZ website, upon purchasing DIBZ for the Arizona Cardinals, Plaintiff Jose Ordaz was guaranteed exclusive rights over the DIBZ, including the option of trading or selling the DIBZ on the uDIBZ marketplace for a profit or the right to buy three tickets to the SuperBowl at face-value if the DIBZ were successful.

63. On January 11, 2009, Plaintiff Jose Ordaz sold all eighteen of his Arizona Cardinals DIBZ on the uDIBZ marketplace for a total of \$3,261.60, equaling a profit of \$2598.20.

64. On January 13, 2009, Defendant informed Plaintiff Jose Ordaz that the eighteen DIBZ for the Arizona Cardinals had been fraudulently sold to him, the transactions for the purchase and sale of the DIBZ were voided, he would be

refunded his purchase price, and he would have to refund the sale price of the eighteen DIBZ that were sold to the purchaser.

Plaintiff Vincent Ruggiero

65. Between December 16, 2008 and January 10, 2009, Plaintiff Vincent Ruggiero purchased two DIBZ for the New York Giants to advance to the SuperBowl for a total of \$428.00, two DIBZ for the Indianapolis Colts to advance to the SuperBowl for a total of \$96.30, two DIBZ for the Miami Dolphins to advance to the SuperBowl for a total of \$45.00, two DIBZ for the Arizona Cardinals to advance to the SuperBowl for a total of \$98.44, and two DIBZ for the Philadelphia Eagles to advance to the SuperBowl for a total of \$190.46 on the uDIBZ marketplace.

66. Under the terms of the FirstDIBZ website, upon purchasing DIBZ for the New York Giants, Indianapolis Colts, Miami Dolphins, Arizona Cardinals, and Philadelphia Eagles, Plaintiff Vincent Ruggiero was guaranteed exclusive rights over the DIBZ, including the option of trading or selling the DIBZ on the uDIBZ marketplace for a profit or the right to buy two tickets to the SuperBowl at face-value if the DIBZ were successful.

67. On January 14, 2009, Defendant informed Plaintiff Vincent Ruggiero that the DIBZ for the Indianapolis Colts, Miami Dolphins, Arizona Cardinals, and Philadelphia Eagles had been fraudulently sold to him, the transactions for the purchase of the DIBZ were voided, and he would be refunded his purchase prices.

68. On January 16, 2009, Defendant informed Plaintiff that a reparation plan would be put into effect on January 20, 2009 to “each and

everyone who was adversely affected by this fraud in the hopes of making amends for the harms suffered.” Defendant did not specify, and Plaintiff was uncertain, as to whether the reparation plan would include replacement DIBZ for the SuperBowl.

69. Due to Plaintiff’s uncertainty, and in reliance upon Defendant’s promise to make amends for the harms suffered, Plaintiff did not attempt to purchase replacement DIBZ for the SuperBowl.

70. On January 20, 2009, after the Arizona Cardinals and Pittsburgh Steelers advanced to the SuperBowl, Defendant informed Plaintiff that he would not be offered replacement DIBZ and he would not be given the right of purchasing SuperBowl tickets at face-value.

Plaintiff Sohail Shah

71. On January 11, 2009, Plaintiff Sohail Shah purchased eight DIBZ for upper level seats and eight lower level seats for the Arizona Cardinals to advance to the SuperBowl on the uDIBZ marketplace for a total of \$214.00 and \$856.00, respectively.

72. Under the terms of the FirstDIBZ website, upon purchasing DIBZ for the Arizona Cardinals, Plaintiff Sohail Shah was guaranteed exclusive rights over the DIBZ, including the option of trading or selling the DIBZ on the uDIBZ marketplace for a profit or the right of buying three tickets to the SuperBowl at face-value if the DIBZ were successful.

73. Between January 11-13, 2009, Plaintiff Sohail Shah sold all eight upper level DIBZ for the Arizona Cardinals to advance to the SuperBowl for a total of \$1080.00, equaling a profit of \$866.00

74. On January 15, 2009, Defendant informed Plaintiff Sohail Shah that the eight lower level DIBZ for the Arizona Cardinals had been fraudulently sold to him, the transactions for the purchase of the DIBZ were voided, and he would be refunded his purchase price of \$856.00.

75. On January 16, 2009, Defendant informed Plaintiff that a reparation plan would be put into effect on January 20, 2009 to “each and everyone who was adversely affected by this fraud in the hopes of making amends for the harms suffered.” Defendant did not specify, and Plaintiff was uncertain, as to whether the reparation plan would include replacement DIBZ for the SuperBowl.

76. Due to Plaintiff's uncertainty, and in reliance upon Defendant's promise to make amends for the harms suffered, Plaintiff did not attempt to purchase replacement DIBZ for the SuperBowl.

77. On January 20, 2009, after the Arizona Cardinals and Pittsburgh Steelers advanced to the SuperBowl, Defendant informed Plaintiff that he would not be offered replacement DIBZ and he would not be given the option of purchasing SuperBowl tickets at face-value.

CLASS ALLEGATIONS

78. Plaintiffs/Class Representatives bring this action on their own behalf and as a class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2) and (3) on behalf of the following proposed Plaintiffs Class:

All those users, consumers, subscribers, and customers of Defendant TicketReserve's website FirstDIBZ.com, including but not limited to users, consumers, subscribers, and customers

of the uDIBZ marketplace, who purchased a reservation or DIBZ to an event on the uDIBZ marketplace from a fraudulent seller and:

- (1) Were never refunded the price that they paid for the fraudulent DIBZ;
- (2) Were not provided the right to purchase a ticket to an event at face value or given the fair market value for a ticket to that event;
- (3) Were not able to retain profit earned from the resale of their DIBZ on the uDIBZ marketplace; and/or
- (4) Were not given the difference in price for a replacement DIBZ as of the date that Defendant revoked their DIBZ.

79. The class of persons affected by the Defendants' actions consists of hundreds of people and is so numerous that joinder of all members of the class is impracticable. The exact numbers of Class Members are unknown as such information is in the exclusive control of Defendant.

80. There are questions of both fact and law common to the class, and those common questions predominate over any questions affecting only individual members of the class. These include the following:

- a. Whether Defendant breached its contract with and warranties to Plaintiffs and Class Members by not employing all reasonable and available procedures and safeguards to prevent the fraudulent sale of DIBZ on its website, and

b. Whether Defendant made misrepresentations to Plaintiffs and Class Members about DIBZ sold on the uDIBZ marketplace.

81. Plaintiffs and Class Members suffered the same harm in the form of economic damages as a result of Defendant's breach of contract, breach of warranties, misrepresentation, and fraud.

82. Plaintiffs are members of the Class, and will fairly and adequately represent and protect the interests of the members of the Class.

83. Plaintiffs have retained Counsel who are experienced in prosecuting Class actions claims and will adequately represent the interests of the Class.

84. A class action is the most fair, just and convenient manner in which to adjudicate the claims arising out of Defendant's conduct. Should individual actions be brought, or be required to be brought by each individual class member, a multiplicity of lawsuits would result and cause undue hardship and expense for the Court and the litigants.

COUNT I – BREACH OF CONTRACT

85. Plaintiffs incorporate by reference paragraphs 1-84.

86. Defendant contracted with Plaintiffs and Class members to provide them the right to the purchase tickets for face value if they held successful DIBZ in return for Plaintiffs and Class members being users, consumers, subscribers, and customers of FirstDIBZ.com and paying Defendant's transaction fees.

87. Defendant contracted with Plaintiffs and Class members to provide them the right to the sell or trade purchased DIBZ for a profit in return for Plaintiffs and Class members being users, consumers, subscribers, and customers of FirstDIBZ.com and paying Defendant's transaction fees.

88. Defendant contracted with Plaintiffs and Class members to provide them the right to the sell or trade purchased DIBZ for a profit in return for Plaintiffs and Class members being users, consumers, subscribers, and customers of FirstDIBZ.com and paying Defendant's transaction fees.

89. Defendant breached said contract by failing to perform such services consistent with its contractual duties and obligations, including but not limited to failing to provide Plaintiffs and Class members the right to purchase tickets at face value or resell and/or trade their DIBZ for a profit.

90. As the proximate result of Defendant TicketReserve's breach of contract, Plaintiffs and other Class Members suffered economic harm.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, claim of Defendant compensatory damages, interest and allowable costs of suit.

COUNT II – BREACH OF EXPRESS WARRANTY

91. Plaintiffs incorporate by reference paragraphs 1-84.

92. Defendant expressly represented, warranted, and advertised to Plaintiffs and Class Members that FirstDIBZ.com was fit for its intended purpose, namely that any purchase of a DIBZ for an event from FirstDIBZ.com, including in the uDIBZ marketplace, would result in the ability to trade or sell the DIBZ and the option to buy tickets to the event at face-value if the DIBZ were successful.

93. Contrary to Defendant's representations and warranties, FirstDIBZ.com was unfit, materially deficient, and wholly lacking with respect to

providing Plaintiffs and Class Members with: protection from fraudulent transactions, the ability to buy, sell, and trade options on FirstDIBZ.com, and the right to purchase events tickets at face-value when DIBZ were successful.

94. As the proximate result of Defendant's breaches of warranty, Plaintiffs and other Class Members suffered economic harm.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, claim of Defendant compensatory damages, interest and allowable costs of suit.

COUNT III – BREACH OF IMPLIED WARRANTY

95. Plaintiffs incorporate by reference paragraphs 1-84.

96. Defendant impliedly represented, warranted, and advertised to Plaintiffs and Class Members that FirstDIBZ.com was fit for its intended purpose, namely that any purchase of a DIBZ for an event from FirstDIBZ.com, including in the uDIBZ marketplace, would result in the ability to trade or sell the DIBZ and the option to buy tickets to the event at face-value if the DIBZ were successful.

97. Defendant also impliedly represented, warranted, and advertised to Plaintiffs and Class Members that FirstDIBZ.com was a guaranteed marketplace that was adequately monitored for fraudulent activity and employed all reasonable safeguard and procedures to prevent fraudulent activity from taking place on FirstDIBZ.com.

98. Contrary to Defendant's representations and warranties, FirstDIBZ.com was unfit, materially deficient, and wholly lacking with respect to

providing Plaintiffs and Class Members with: protection from fraudulent transactions, the ability to buy, sell, and trade options on FirstDIBZ.com, and the right to purchase events tickets at face-value when purchased DIBZ were successful.

99. As the proximate result of Defendant's breaches of warranty, Plaintiffs and other Class Members suffered economic harm.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, claim of Defendant compensatory damages, interest and allowable costs of suit.

COUNT IV – FRAUD

100. Plaintiffs incorporate by reference paragraphs 1-84.

101. Defendant knowingly and intentionally made material and false and misleading representations to Plaintiffs and Class Members including that all DIBZ were guaranteed by FirstDIBZ.com, that Plaintiffs and Class Members would have to rights to purchase tickets at face-value and/or resell their DIBZ, and that Defendant was unaware of fraudulent activity taking place on FirstDIBZ.com at any time prior to January 2009.

102. Defendant's representations were, in fact, false, as Defendant was engaged in the intentional, deliberate, and systematic concealment of fraudulent activity on FirstDIBZ.com and also did not, and possibly never intended to, guarantee any DIBZ sold on the uDIBZ marketplace.

103. Defendant knowingly and intentionally concealed such information in order to retain the profits that it made from all of the fraudulent transactions

and in order to induce Plaintiffs and Class members to continue to use and subscribe to FirstDIBZ.com, including purchasing DIBZ and paying Defendant's transaction fees.

104. Plaintiffs and Class Members justifiably relied on the Defendant's concealment of the true facts and reasonably and justifiably relied upon Defendant's representations to them in their decision to purchase DIBZ and/or subscribe or use FirstDIBZ.com.

105. As a direct and proximate result of Defendant's intentional misrepresentations and concealment, Plaintiffs and other Class Members suffered economic harm.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, claim of Defendant compensatory damages, interest and allowable costs of suit.

COUNT V – UNJUST ENRICHMENT

106. Plaintiffs incorporate by reference paragraphs 1-84.

107. As a result of Defendant's intentional action and conscious wrongdoing involving the deceitful marketing and misrepresentation of its services on FirstDIBZ.com, Defendant has profited and benefited at the expense of its users, consumers, subscribers, and customers.

108. Furthermore, Defendant has purposefully retained monies due to Plaintiffs and Class Members, and has failed to refund monies that are rightfully Plaintiffs and Class Members. Upon information provided by Plaintiffs and Class members, Defendant has and intends to continue depriving Plaintiff and Class

members of their money for periods exceeding 45 days without payment of any interest. See “Urgent FirstDIBZ Withdraw Message” emailed to Plaintiffs and Class members by Defendant, attached as Exhibit F.

109. Defendant has voluntarily accepted and retained those profits and benefits, derived from Plaintiffs and Class Members, with full knowledge and awareness that, as a result of Defendant’s conscious and intentional wrongdoing, Plaintiffs and Class Members were not receiving a service of the quality, nature, or fitness that had been represented by Defendants, or that Plaintiffs and Class Members, as reasonable consumers, were expecting to receive.

110. By virtue of the conscious wrongdoing alleged above, Defendant has been unjustly enriched at the expense of Plaintiffs and Class Members, who hereby seek the disgorgement and restitution of Defendant’s wrongful profits, revenues and benefits including interest, to the extent and in the amount deemed appropriate by the Court; and such other relief as the Court deems just and proper to remedy Defendant’s unjust enrichment.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, claim of Defendant compensatory damages, interest and allowable costs of suit.

**COUNT VI – ILLINOIS CONSUMER FRAUD AND DECEPTIVE
BUSINESS PRACTICES ACT, 815 ILCS 505/1, ET. SEQ.**

111. Plaintiffs incorporate by reference paragraphs 1-84.

112. Pursuant to Illinois' Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et. seq.*, Defendant violated said Act by engaging in unfair business practices, unfair competition, and false advertising.

113. Specifically, Defendant violated 815 ILCS 505/2 by engaging in unfair or deceptive acts or practices, including but not limited to the misrepresentations previously described.

114. Plaintiffs and the class members were damaged as a result.

115. As Defendant is an Illinois resident and the unfair and deceptive acts and practices alleged in this Complaint occurred in Illinois, then Plaintiffs' prosecution of Defendant under this Illinois statute is proper.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, claim of Defendant compensatory and punitive damages, attorneys fees and litigation expenses, interest and allowable costs of suit.

Dated: March 20, 2009 Respectfully Submitted,

BY: s/Daniel A. Edelman

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JURY DEMAND

Plaintiffs demand trial by jury.

s/Daniel A. Edelman
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