

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JOANN BACHEWICZ

Plaintiff,

Civil Action No.

v.

JETSMARTER, INC., DREW DOIDGE
and JOHN DOES 1 - 4

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff Joann Bachewicz (“Plaintiff” or “Bachewicz”), by way of complaint against Defendants Jetsmarter, Inc., Drew Doidge and John Does 1-5, states as follows:

JURISDICTION AND VENUE

1. This Court has original jurisdiction over this action under 28 U.S.C. §1332 as this action seeks monetary damages resulting from the Defendants’ actions in an amount exceeding \$75,000.00, and there is complete diversity of citizenship between Plaintiff and all Defendants.

2. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to the claim were initiated and occurred there, including the marketing, advertising and trade practices at issue.

PARTIES

3 Plaintiff Bachewicz is an individual residing in Lansing, Ill.

4. Defendant Jetsmarter, Inc. (“Jetsmarter”) is a foreign corporation, organized under the laws of the State of Delaware and is registered to do business in the State of Florida. Jetsmarter’s world headquarters is located at 500 East Broward Blvd., Fort Lauderdale, Florida. Jetsmarter markets itself as a company that provides air transportation as an alternative to commercial carriers and private jet ownership.

5. Defendant Drew Doidge (“Doidge”) is or was a sales agent and representative of Jetsmarter.

6. John Does 1 – 4 are persons who are the officers or managers of Jetsmarter, who developed and approved the marketing and sales materials and may have otherwise been involve in the fraudulent sales practices made to Plaintiffs.

FACTUAL BACKGROUND

7. On or about January 30, 2018, having seen the advertising material placed into the marketplace by Defendant Jetsmarter about the benefits offered by Jetsmarter as well as having spoken to one of its other customers, Plaintiff Bachewicz was contacted by Jetsmarter’s representative Doidge. In that conversation, Defendant Doidge discussed membership options with Plaintiff and suggested that Plaintiff was an ideal candidate for an “elite” program offered by Jetsmarter entitled “Sophisticated.”

8. Defendant Doidge stated that the “membership” was a prepaid, three year program which would normally cost \$50,000.00 a year but would be offered to Plaintiff at

the “discounted rate” of \$87,092.72. This represented a discount from the standard \$150,000.00 fee and represented a further discount from a \$97,500.00 offer. As a further inducement, Plaintiff was advised that she would receive a \$15,000.00 credit to be used for other purchases.

9. Plaintiff was advised that the Sophisticated Membership provided the following:

- Free flights for Plaintiff within 3.5 hours from Plaintiff’s location;
- Free flights for up to three guests on all Jetdeals (defined as “one-off private jet flights”);
- 15% discount for all other seats utilized;
- The addition of more flights out of Chicago within the next few months;
- Free helicopter shuttle rides from White Plains, NY to NYC;
- Guaranteed rate lock for renewal at the initial rate on a multiple year package - or \$50,000.00 if renewed from year to year.

On February 1, 2018, Plaintiff’s membership plan was confirmed to include:

Jessica Dees

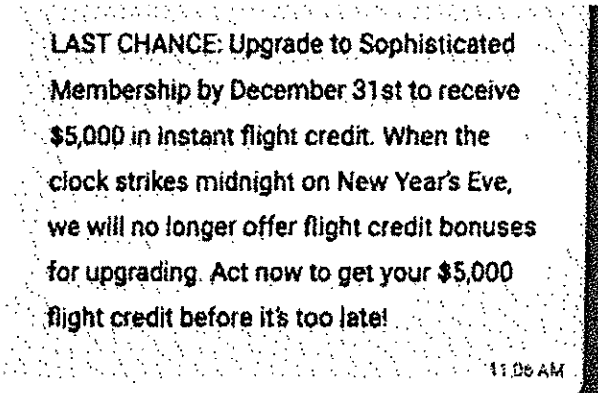
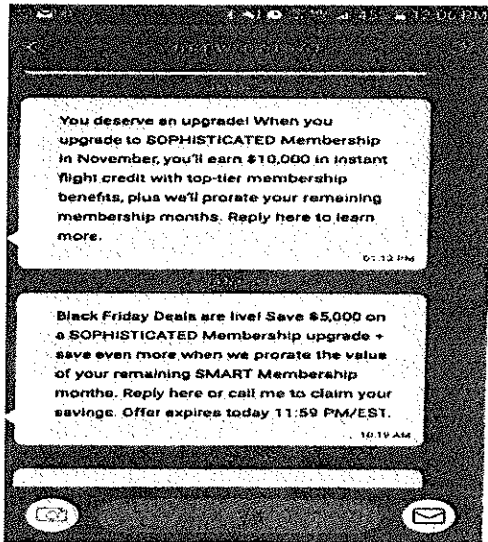
From: Drew Doidge <DDoidge@JetSmarter.com>
Sent: Thursday, February 1, 2018 11:39 AM
To: Jessica Dees
Subject: Re: New Membership - JoAnn Bachewicz

If JoAnn decides to renew on a year-to-year basis after her 3-year membership has expired, she will renew at the current \$50,000/year rate. If she buys into another multi-year plan, she will receive another substantial discount. This discount will be determined come year 4.

Best Regards,

Drew Doidge
Senior Membership Executive | USA

10. In order to motivate action on behalf of Plaintiff, Defendant Doidge stated that the offered “discount” would terminate if Plaintiff did not purchase into the program by January 31, 2018. Plaintiff did not do so and, as evidenced by the screenshots below, Defendants simply extended the “deadline.”



From: Drew Doidge <DDoidge@JetSmarter.com>
Date: 1/31/18 10:24 AM (GMT-06:00)
To: Jessica Dees <jdees@subfirst.com>
Subject: Re: New Membership - JoAnn Bachewicz

Hi Jessica!

Hope all is well. Just circling back from our last conversation to see if you or JoAnn had any additional questions regarding our Sophisticated tier membership. A friendly reminder that today is the last day to join for our 1 year Sophisticated plan, in addition to receive \$15,000 in flight credit should you proceed with our 3 year plan.

Please let me know your thoughts and I'm happy to assist. I look forward to your response.

Best Regards,

Drew Doidge
Senior Membership Executive | USA

11. Perhaps as a final push on February 5, 2018, Defendants sent an email (set forth below) to Plaintiff a promise to expand service in Burbank, East Bay, Las Vegas, San Jose and Oakland. This was as a result of a “huge investment” which included new flights on “well-appointed Embraer 135 aircraft with premium on-board amenities.”

From: Lolita Frangulyan <Lolita@JetSmarter.com>
Date: February 5, 2018 at 6:15:10 PM CST
To: JoAnn Bachewicz <jbachewicz@subfirst.com>
Subject: Good news about West Coast flights
Reply-To: Lolita Frangulyan <Lolita@JetSmarter.com>

JoAnn, I have big news to share...

JetSmarter is making a huge investment in our West Coast members in two important ways. First, we are just weeks away from opening our seventh global office – this one in Los Angeles! – so we'll have eyes and ears on the ground identifying growth opportunities and making sure everything is running smoothly.

Secondly, we just entered into an exciting partnership with JetSuiteX to significantly boost West Coast flight frequency, seat availability, and destination options.

We're talking multiple flights per day between major cities, including Burbank, the East Bay/Concord, Las Vegas, San Jose, and Oakland, as well as seasonal and pop-up flights to entertainment destinations like Mammoth Lakes – all out of private terminals and FBOs.

These new flights are on well-appointed Embraer 135 aircraft with premium on-board amenities, a professional flight attendant, ample leg room, and 30 leather

seats, so you have many more options available to you while still enjoying a high level of cabin service and comfort.

I'm thrilled to be able to share these new options and hope you enjoy the increased level of booking flexibility. I also hope you'll stop by our L.A. offices and say hello and feel free to call on our team there for anything you need.

Any questions, please let me know.

Best Regards,

.lolita

Lolita Frangulyan Chief Commercial Officer

Lolita@JetSmarter.com

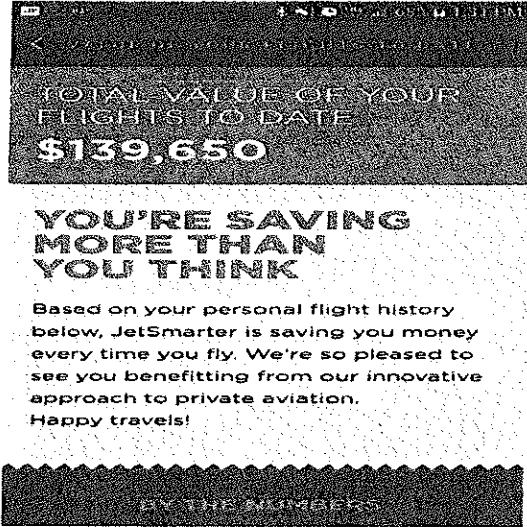
+1 (888) 9 VIP JET

JetSmarter.com

Twitter | Facebook | LinkedIn | Instagram

12. After confirming her understanding of the program, promises and guarantees, Plaintiff paid the full asking price in three tranches. The online contract at that time, Exhibit "A," did not provide any specifics of Plaintiff's "Sophisticated" program but merely mentioned that promised services were "based upon the tier of membership that the Member purchases." The subsequent contract now found on-line, Exhibit "B," mentions two tiers of "membership" with neither of the two being the "Sophisticated" program.

13. In or about April, 2018, Plaintiff was able to utilize the flight services. After its use, Defendants reported to Plaintiff that the "benefit" of that service had she instead used a competitor of Defendant Jetsmarter, would have been valued at \$139,650.00.



14. In that trip, Plaintiff requested that Defendant Jetsmarter - through its 24/7 concierge service - arrange Plaintiff's ground transportation. Defendants charged Plaintiff on two separate occasions for the same transportation and, to date, Defendant Jetsmarter has not returned the overcharge of \$506.13.

From: Jessica Dees <jdees@subfirst.com>
Date: Tuesday, April 24, 2018 at 10:27 AM
To: Drew Doidge <DDoidge@JetSmarter.com>
Subject: Another Charge?

Drew,
After talking with you for the charges in February for airport transfers, she has another charge on her credit card statement that posted on 4/12/18 for \$506.13.
Can you verify what this was for?

Thank you,

Jessica Dees
Subway I&I Development, Inc.



JoAnn Bochowicz DA Territory
16800 Chicago Avenue, Suite A
Lansing, IL 60438

(319) 545-1269 mobile
jdees@subfirst.com

15. Shortly After the payment to purchase the services promised by Defendants for the three year period, the program sold to Plaintiff was drastically changed and Plaintiff would no longer going to be allowed to fly for free as was promised. She came to learn that all flights would bear a charge and that virtually all of the programs she had just paid so dearly for were no longer going to be adhered to on the part of Defendants. Plaintiff was advised:

Helicopter rides were discontinued back in 2017 and there has been an update to the membership program mid June which our Customer Success team can discuss with you. They sent you a link below in which you can set a time to discuss these changes and solutions considering JoAnn is a Sophisticated member.

03:00 PM

when i talked to you before she moved to Sophisticated helicopter rides were still included... that was late Jan. 2018. And the change in June was never communicated! we do have a call set for Mon but i wanted to work directly with you since you are the one that sold the membership to JoAnn

03:05 PM

I understand and am happy to speak, however, my hands are completely tied in this situation as these changes had come from our investors. In addition, I do not have the authority to offer any sort of solutions for these changes. I completely understand JoAnn's frustration that all the rules have change and wish there was something I could personally do, but I want to get you in the right hands of the decision makers.

03:09 PM

16. Plaintiff has attempted to obtain a return of her purchase price for the services rendered by Defendant, but Defendant has failed and refused to provide the same.

17. As a result, Plaintiff has suffered damages.

COUNT I
Breach of Contract

18. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

19. Plaintiff and Defendant entered into an on-line agreement through which in exchange for the payment of \$87,092.72, Defendants Jetsmarter, through its agent Drew Doidge, agreed to provide certain travel benefits to Plaintiff.

20. The agreement entered into by the parties was in a format which was later changed by Defendants and Defendants failed to provide to Plaintiff a copy after its execution and entry.

21. After Plaintiff was able to use Defendant's services on a single occasion, Plaintiff came to learn that Defendant Jetsmarter had unilaterally changed the program and that the program offered to Plaintiff – and for which she had purchased – was no longer being offered. Plaintiff was now required to pay for her flights.

22. As a result of these changes, Plaintiff has been unable to utilize the services for which she contracted and purchased.

23. Based upon Defendants' own assessment of the cost which would be incurred by Plaintiff in order to retain duplicate services, the "benefit of the bargain," Plaintiff would

have to pay approximately \$87,000.00 per month.

24. As a result of their actions and conduct, Defendants have breach the contract with Plaintiff and caused Plaintiff damages.

COUNT II
Violation of Good Faith and Fair Dealing

25. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

26. Intrinsic in every contract is the duty to utilize good faith and fair dealing and imposes on each party a duty of good faith and fair dealing in its performance. Common law calls for substantial compliance with the spirit, not just the letter, of a contract in its performance.

27. In entering into an agreement there exists an implied covenant that the parties will act in good faith and deal fairly, and that neither party shall do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. Defendant Jetsmarter did not act consistent with this principal when it unilaterally changed the very basis of the agreement entered into with Plaintiff.

28. As a direct and proximate result of Defendant JetSmarter's conduct, Plaintiff has suffered damages.

COUNT III
Violation of the Consumer Fraud Act

29. Plaintiff incorporates paragraph 1-17, and 19-22 as if fully set forth herein.

30. In attempting to advertise, market and sell the flight services, Defendants Jetsmarter and Doidge made an express representation that Plaintiff's sole obligation was

to make her payments, in full and in advance, and in exchange therefor she would receive all of the benefits set forth in detail in Paragraph 9 hereof. Defendants specifically advertised that a customer would be able to obtain two seats on its planes with no additional charge. This statement was false.

31. The marketing platform was developed by John Doe 1 and 2, fictional persons who will be named after discovery is conducted, and such marketing was approved by Jetsmarter's supervisors/officers John Does 3 and 4, also fictional persons who will be named after discovery is conducted.

32. Within a couple of months for enrolling in a three year program with Defendants, Plaintiff discovered that the programs as sold to her were no longer available and that she would be required to purchase flights in the future. This, along with other components of the purchase which vanished, was contrary to the express representation made by Defendants in their marketing and advertising.

33. Defendants are "persons" as defined in the Illinois Consumer Fraud Act, 815 ILCS 505/1 *et. seq.*

34. Through the use of the communications and in connection with the sales and advertisement of its services to Plaintiffs, Defendants made misrepresentations and false promises. Moreover, Defendants' methods of wrongful charging constitute unconscionable practices.

35. As a result, Plaintiff has suffered an ascertainable loss and damages.

COUNT IV
Respondeat Superior

36. Plaintiff incorporates paragraphs 1-17, 19-22 and 30-35 as if fully set forth herein.

37. Jetsmarter and its agents, John Does 1 - 4 instructed or at least permitted Defendant Doidge to utilize its name in the carrying out of marketing and sales of flight services.

38. When marketing, advertising and selling the services which is the subject matter hereof, Defendant was acting within the scope of his agency or employment.

39. Jetsmarter and its agents, John Does 1 -4 had a duty to properly train and supervise Doidge which Jetsmarter and John Does 1-4 failed to carry out.

40. The actions taken by Defendant Doidge in the marketing and sale of the property to Plaintiff caused Plaintiff damages.

41. As a result, Plaintiff has suffered damages.

COUNT V
Fraud

42. Plaintiff incorporates paragraphs 1-17, 19-22 and 30-35 as if fully set forth herein.

43. In the January and February, 2018 communications from Jetsmarter and Doidge to Plaintiffs, Defendants made material representations about, *inter alia*, the cost of enrollment as well as stating that there would be no additional costs to fly through their

program.

44. These representations were false. In fact, other than a single flight there were significant costs imposed upon her in order to utilize the Jetsmarter services.

45. Defendants knew or should have known that these representations to Plaintiffs were false and misleading and that Plaintiffs would rely upon the same.

46. Plaintiffs reasonably relied upon Defendants' statements and enrolled with Jetsmarter paying the amounts quoted to them.

47. As a result, Plaintiffs have suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Joann Bachewicz demands judgment against defendants, jointly and severally, as follows:

- (1) Awarding judgment and damages of no less than \$300,000.00 sustained by Plaintiff Joann Bachewicz, together with pre-judgment interest;
- (2) Awarding punitive damages;
- (3) Awarding Plaintiff Joann Bachewicz her costs and disbursements and reasonable allowances for the fees of plaintiff's counsel and experts, and reimbursement of expenses;
- (4) Awarding Plaintiff Joann Bachewicz attorney fees;
- (5) Awarding Plaintiff Joann Bachewicz prejudgment interest; and
- (6) Awarding such other and further relief the Court deems just and equitable.

JURY TRIAL DEMAND

Plaintiffs requests a jury trial for any and all Counts for which a trial by jury is permitted by law.

Respectfully submitted this 25th day of October, 2018.

THE LAW OFFICES OF BRUCE E. BALDINGER, LLC
Attorney for Plaintiff Joann Bachewicz
365 South Street
Morristown, NJ 07960
Tel: (908) 218-0060

By: /s/ Bruce E. Baldinger
Bruce E. Baldinger
Fla. Bar No. 776696
bruce@baldingerlaw.com

KATZMAN WASSERMAN BENNARDINI
& RUBINSTEIN, P.A.
Attorney for Plaintiff Joann Bachewicz
7900 Glades Road, Suite 140
Boca Raton, FL 33434
Tel: (561) 477-7774
Fax: (561) 477-4774

By: /s/ Steven M. Katzman
Steven M. Katzman
Fla. Bar No. 375861
smk@kwblaw.com
mrm@kwblaw.com