

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARCELLO PORCELLI

Plaintiff,

Civil Action No.

against

JETSMARTER, INC., DAVID M. SHERIDAN,
CARLA YEROVI and JOHN DOES 1 - 4

Defendants

**COMPLAINT and
JURY DEMAND**

----- x

Plaintiff Marcello Porcelli (“Plaintiff” or “Porcelli”), by way of complaint against Defendants Jetsmarter, Inc., David M. Sheridan, Carla Yerovi 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 properly placed in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2), as Plaintiff works in New York, New York, a substantial part of the events or omissions giving rise to the claim occurred within New York.

PARTIES

3 Plaintiff Porcelli is an individual working in New York, New York with a residence New York as well.

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 allegedly has multiple other points throughout the world. Jetsmarter markets itself as a company that provides air transportation as an alternative to commercial carriers and private jet ownership.

5. Defendant David Sheridan (“Sheridan”) is a sales agent and Carla Yerovi is a Supervisor of Member Services. Each is a representative of Jetsmarter and is believed to be residing in the State of Florida

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 involved in the fraudulent sales practices made to Plaintiff.

FACTUAL BACKGROUND

7. On or about November, 2015, having already seen the advertising material placed into the marketplace by Defendant Jetsmarter promoting the benefits offered by its program, Plaintiff Porcelli was contacted by Jetsmarter’s representative Sheridan.

8. Defendant Sheridan stated that the “membership” was a one year, renewable,

commitment which would require an initial fee of \$1,500.00 with a locked in annual fee of \$9,000.00. Plaintiff was informed that this fee was provided at a substantial discount to that paid by others.

9. As described to him, his membership provided the following:

- Two “tokens” which would be renewed upon use.
- The ability to use two tokens to fly anywhere within the United States and that all flights under 3.5 hours would bear no further cost. After any leg utilizing a single, the token would be replenished upon completion.
- Free helicopter or ground transportation to and from the airport;
- A guaranteed rate-lock for future years.

10. Based upon these express representations, Plaintiff paid the entire \$10,500.00 receipt of which was acknowledged by Jetsmarter on November 24, 2015.

11. Plaintiff began to utilize the services and found the services to be excellent.

12. Prior to his renewal in July of 2016, Defendant Sheridan explained to Plaintiff that another “level” of the program, the “Sophisticated Membership,” was offered which provided additional benefits to the of the basic program already purchased and utilized.

The enhancements were as follows:

- An increase to four token
- Guaranteed and pre-assigned preferential seating and boarding;
- Priority visibility to access flight
- A dedicated concierge for the Sophisticated team
- Free catered meals

13. Defendant Sheridan exerted pressure upon Plaintiff to purchase a three year membership period providing inducements such as discounts, flight credits and benefits which were not of any interest to Plaintiff. Plaintiff refused the three year program but did agree to the one year “Sophisticated” upgrade.

14. For these enhancements, Plaintiff was charged \$39,990.00 along with a one-time

initiation fee of \$4,950.00 and made payment through his credit card *paying a fee of 5% therefore.*

15. Plaintiff utilized the Jetsmarter services and the same were acceptable for the year.

16. Again, prior to the expiration of the renewal period, in May, 2017, Defendant Sheridan tried to convince Plaintiff to upgrade to the three year program. Plaintiff refused to agree to the multiyear contract but renewed his membership for another year.

17. During the program year, Plaintiff realized that the free helicopter services were not being offered, but when Plaintiff inquired of Defendant Sheridan asking the reasons, Plaintiff was informed the cancellation was due to “the recent accident last week [and] we have suspended them short term.” The accident referred to was with a non-affiliated company however the free helicopter service never returned and no other alternative was provided to Plaintiff for ground transportation. Along with that discussion, Defendant Sheridan once more began pressing for Plaintiff to enter into a three year commitment.

18. Rejecting Defendants’ pressure for a long term contract, on or about June 11, 2018, Plaintiff renewed again for another single year.

19. Less than two months thereafter, Jetsmarter unilaterally terminated Plaintiff’s the ability for Plaintiff to fly for free within the United States under the long term and established token system. Instead a pay per flight system was imposed. While certain credits were offered as a consolation, Jetsmarter refused to refund the membership fee. This was a serious and material departure from the program that Plaintiff had purchased and was promised. In an effort to obtain information and details, Plaintiff reached out for Defendant Sheridan on numerous occasions but Plaintiff’s calls and emails went ignored.

20. Plaintiff did receive a response from Defendant Yerovi who apologized for the

change in the program and explained to him in greater detail the new pay-per-flight system and the program which was unilaterally imposed upon Plaintiff. In essence, the program provided to him \$2000.00 per month in flight credits to be paid against the cost of travel – which often ran over \$2500.00 per seat. This severely limited Plaintiff’s ability to travel and substantially diminished the program that he had just purchased weeks before.

21. When Plaintiff asked for his funds to be returned, he was told that such an option would not be available to him.

22. However, even this greatly reduced program was a misrepresentation by Defendant Yerovi and on October 9, 2018, she informed Plaintiff that she was “happy” to “offer” him the ability” to convert his membership to something entitled “Signature Plus.”

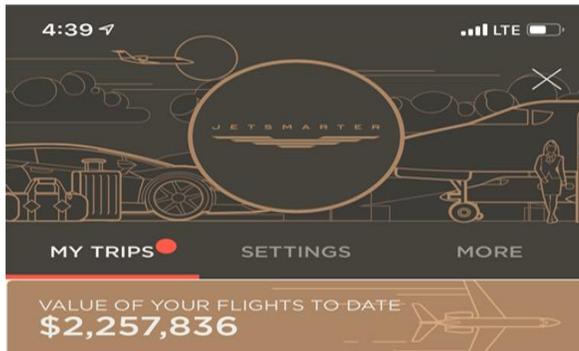
This offer provided -

- The issuing four additional “signature” members to his membership (an item of no benefit to him);
- A 2% flight credit rebate for flight purchases;
- Prior notification of flights before others
- A cap on his flight cost of \$600/hr.
- The purchase of empty legs for \$1.
- Book flight with Jetsmarter’s “low-price guaranty.”
- “Exclusive” access to events;
- 24/7 concierge services

23. Plaintiff stated to Defendant Yerovi that he had no interest in anything that deviated from his original membership. However, the Defendants Yerovi and Jetsmarter essentially converted his membership regardless of his desires and, to make matters all the worse, altered the program such that Plaintiff would only be able to utilize 25% of his credits toward travel and that he was required to pay for the balance in cash. Thus, not only had Plaintiff paid the entire year’s fee up front expecting the continuation of free travel, he was now required to expend 75% of the cost of any flight he wanted to utilize.

This made the program completely unusable for him.

24. Periodically, Defendant Jetsmarter represented to Plaintiff the “benefit” of the services he had from utilizing the Jetsmarter program versus other programs. The value of the free services to Plaintiff which was no longer available accrued to approximately \$60,000.00 per month or \$2,257,836.00 over the lifetime of his contracts prior to the unilateral changes imposed upon him.



As ten months remained on Plaintiff’s contract with Defendant, Defendant’s loss of his benefit of the bargain is \$600,000.00.

COUNT I Breach of Contract

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

26. Plaintiff and Defendant entered into an on-line agreement through which in exchange for annual payments, Defendants Jetsmarter, through its agents David Sheridan and Carla Yerovi, agreed to provide certain travel benefits to Plaintiff.

27. The agreement entered into by the parties was in a format which was later changed by Defendant Jetsmarter. Defendant Jetsmarter failed to provide to Plaintiff copies after

its execution. Defendant has since made changes to the on-line agreements such that the prior version entered into by Defendant is now lost to him. The link which existed to in the email only brings him to the current version of Jetsmarter's contract rather than the version he had executed.

28. Although Plaintiff had several years of use of Plaintiff's program - for which he made annual payments – less two months after renewing in 2018, Plaintiff came to learn that Defendant Jetsmarter had unilaterally changed the program and that the program offered to Plaintiff was no longer being offered. Plaintiff was now required to pay for his flights and was flatly refused a refund.

29. As a result of these changes, Plaintiff has been unable to utilize the services for which he had contracted and purchased. The very essence of the contract had been altered and done away with by Defendants.

30. In the first change imposed upon Plaintiff, he was provided certain credits but even that arrangement was changed by Defendant Jetsmarter within a few weeks requiring Plaintiff to pay for 75% of the cost of flights which cost was determined by Defendant Jetsmarter itself.

31. 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 \$60,000.00 per month.

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

COUNT II
Violation of Good Faith and Fair Dealing

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

34. 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.

35. 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 essence of the agreement entered into with Plaintiff.

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

COUNT III
(Violation of GBL §349, Unfair Trade Practices)

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

38. In attempting to advertise, market and sell the flight services, Defendants Jetsmarter and Sheridan and Yerovi made an express representation that Plaintiff's sole obligation was to make his payments, in full and in advance, and in exchange therefore he 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 a seat on its jets with no

additional charge. This statement was false.

39. 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.

40. Shortly after renewing with Defendants in August, 2018, Plaintiff discovered that the program sold to him would no longer be adhered to by Jetsmarter and that he would be required to utilize a credit system to utilize the travel features. However, in a very short period of time thereafter, Defendants, through Yerovi, once more changed Plaintiff's program permitting him the ability to utilize only 25% of the travel cost in credits and incurring the balance of the travel cost through separate payment.

41. Defendants, in seeking payment for travel, solicited, charged and received a 5% fee for the use by Plaintiff of his credit card in violation of GBL §518.

42. Defendants represented and sold to Plaintiff a renewable, yearly program represented as requiring only a single, one-time payment which permitted Plaintiff to fly on private jets - without further cost or expense - for travel within 3.5 hours. This representation was false and deceptive. Within weeks of purchasing the program from Defendants, Plaintiff was informed that the program as structured would no longer be offered and that the use would be limited through a "credit" system. Thereafter, Defendants unilaterally again made changes which disallowed any free travel whatsoever and required Plaintiff to pay 75% of the cost of the travel. Moreover, Defendants' methods of wrongful charging constitutes an unlawful practice.

43. As a result, Plaintiff has suffered loss and damages.

COUNT IV
(Respondeat Superior)

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

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

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

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

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

50. As a result, Plaintiff has suffered damages.

FIFTH COUNT
(Fraud)

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

52. In communications from Jetsmarter and Sheridan to Plaintiff prior to his renewal in August, 2018, Defendants made material representations about, *inter alia*, the cost and benefits of travel through Jetsmarter's program.

53. The representations made by Defendants were false. Within weeks of the renewal Defendants, through Defendant Yerovi, altered the program to a credit system and then altered the program yet again within another few weeks by requiring Plaintiff to pay separately 75% of the cost of travel.

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

55. Plaintiff reasonably relied upon Defendants' statements and enrolled with Jetsmarter paying the amounts quoted to him.

56. As a result, Plaintiff has suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Marcello Porcelli demands judgment against defendants, jointly and severally, as follows:

(1) Awarding judgment and damages sustained by Plaintiff Marcello Porcelli of no less than \$600,000.00, together with pre-judgment interest;

(2) Awarding punitive damages;

(3) Awarding Plaintiff Marcello Porcelli his costs and disbursements and reasonable allowances for the fees of plaintiff's counsel and experts, and reimbursement of expenses;

(4) Awarding Plaintiff Marcello Porcelli counsel fees prejudgment interest; and

(5) 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 17th day of December, 2018

THE LAW OFFICES OF BRUCE E. BALDINGER, LLC
Attorney for Plaintiff Marcello Porcelli
365 South Street
Morristown, NJ 07960
908.218.0060

By: /s/ Bruce E. Baldinger