

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

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MOSHE SCABA, STEVEN SCABA, JACK SCABA,
DALIA SCABA and PIA SCABA

Plaintiff,

Civil Action No.

against

JETSMARTER, INC., ERNEST BEYNARS,
VLAD KAYKOV and JOHN DOES 1 - 4

Defendants

**COMPLAINT and
JURY DEMAND**

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Plaintiffs Moshe Scaba, Steven Scaba, Jack Scaba, Dalia Scaba and Pia Scaba
(collectively “Plaintiffs”), by way of complaint against Defendants Jetsmarter, Inc., David
Ernest Beynars, Vlad Kaykov and John Does 1-4, 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 District of New Jersey pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to the claim occurred and the location to which the marketing and advertising was directed.

PARTIES

3 Plaintiffs are five family members each of who are individuals and have residences in New Jersey.

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.

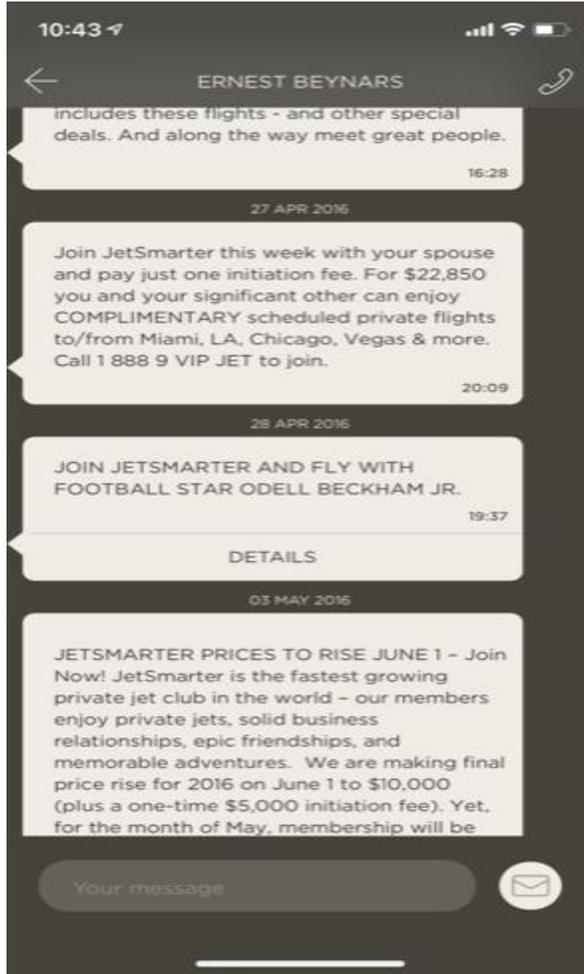
5. Defendant Ernest Beynars (“Beynars”) and Vlad Kaykov (“Kaykov”) are sales agents and representatives of Jetsmarter bearing the titles “Senior Membership Executive.”

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. In or about April, 2016, having seen the advertising material placed into the marketplace by Defendant Jetsmarter about the benefits offered by Jetsmarter, certain of the Plaintiffs were put into contact with Jetsmarter’s representative Defendant Beynars. In that conversation, Defendant Beynars described the highlights to the program as one which provides charter jet services throughout the United States. Defendants represented that for an annual, one-time payment, Plaintiffs would be able to fly “complimentary” to

certain cities inclusive of “Miami, LA, Chicago Vegas & More.”



8. Additional benefits were touted inclusive of helicopter shuttles and elite concierge services. Importantly, Plaintiffs were informed that they would be locked or “grandfathered” in the future such that any negative changes such as price elevation or alternation to the program would not impact them.

9. Based upon Defendants’ representations, in January, 2018, Plaintiffs decided to purchase five “Smart Memberships” and paid \$15,000.00 for each membership. In addition, they were each charged an “initiation fees” of \$2,500.00. Some of the Plaintiff members were provided an initiation credit offset having been referred by Plaintiff Steven Scaba.

10. Until the summer of 2018, the program which Plaintiffs purchased largely worked in keeping with the parties' agreement. They had the complimentary flights and all that was promised to them.

11. In March 2018, Plaintiff Steven Scaba was communicating with Defendant Kaykov to ensure that he and his other family members would have all of the same benefits when they renewed as Defendant Jesmarter had advertised that many of their programs would no longer be available. Defendant Kaykov responded on March 28, 2018 at 3:23 pm:

You are all grandfathered in. This is an email for any referrals you may have if in fact you want them under that same "all you can eat" token policy you all have.

12. Shortly after this period, Plaintiffs came to learn that the benefits experienced by them and reiterated as surviving had, in fact, been removed. Of greatest impact, Plaintiff was no longer able to avail themselves of flying for free. This was the very essence of the agreement between the parties and it was now being removed.

14. Plaintiffs have attempted to obtain that which they contracted and paid for, but Defendants have refused to provide the same.

15. As a result, Plaintiff has suffered damages.

COUNT I
Breach of Contract

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

17. Plaintiffs and Defendant Jetsmarter entered into (and renewed) through an on-line understanding which expressed that in exchange for the payment of their membership

price along with initiation fees, Defendants Jetsmarter, through its agents, agreed to provide certain travel benefits to Plaintiff.

18. The agreement entered into by the parties was in a format which was later changed online by Defendants. Defendants failed to ever provide to Plaintiffs an original copy after its execution and entry.

19. Commencing the summer of 2018, Defendants were unable to utilize the benefits as Defendants unilaterally altering the plan and rendering the very essence of the agreement void. Plaintiffs were thereafter required to pay for all flights.

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

21. 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," Plaintiffs would be required to pay monthly approximately \$10,000.00 for Jack, Pia, Dalia and Steven Scaba, \$20,000.00 for Moshe Scaba. As the membership was never honored from the inception, the cost to cover for the one year period is \$2,312,868.00 representing Plaintiffs' collective damages.

22. 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

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

24. 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.

25. 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.

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

COUNT III Consumer Fraud

27. Plaintiff repeats the averments in Paragraphs 1 through 18 as if set forth at length herein.

28. In attempting to advertise, market and sell the flight services, Defendants Jetsmarter, Beynar and Kaykov made express representations that Plaintiff's sole obligation was to make the initiation payments along with a payment of \$15,000.00/yr. Defendants specifically advertised that a customer would be able to get seats complimentary seats on its jets and that they would be grandfathered in. This statement was false and as it was presumably a program derived from the management of company, John Does 1 – 5 are responsible therefore.

29. When Plaintiff sought to utilize the program in the Summer of 2018, they were informed that th proigram had changed and that they would then be required to pay for the

Defendants' services.

30. As a demonstration of the benefit received by Plaintiffs, Defendants represented that the value received by her if she had flown without Jetsmarter would have been in excess of \$10,000.00 per month for each Plaintiff other than Moisha Scaba who had a benefit of \$20,000.00 per month.

31. The marketing platform was developed by John Does 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. Despite the express statement made in the advertisements and representations as developed and implemented by John Does 1 – 5, Jetsmarter changed the program and said that in the future it would charge Plaintiff a substantial fee for each leg of travel.

33. Defendants are "persons" as defined in the New Jersey Consumer Fraud Act, N.J.S. 56:8-1 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 assurances. These included, inter alia, the ability to fly for free with the tendering of a single, upfront payment.

35. Through the use of illegal terms in its contracts and the unilateral changing of terms of the services such that there was a lacking or unilateral reduction of consideration to be provided on the part of Jetsmarter, Defendant has utilized unconscionable business practices.

36. Under the agreement between Plaintiff and Defendant, the contract was to be

automatically renewable. Thus, Plaintiffs expected their benefit of the bargain for years to come.

37. Jetsmarter represented and promoted that the benefit of the bargain to Plaintiff would be greater than \$60,000.00 per month for Plaintiffs collectively.

38. As a result, Plaintiff has suffered damages.

WHEREFORE, Plaintiffs demand judgment against Defendants, Jetsmarter, Inc., Ernest Beynars, Vlad Kaykov and John Does 1-5, jointly and severally, as follows:

- a. Compensatory damages to be determined at trial but no less than \$360,000.00;
- b. Mandatory treble damages;
- c. Mandatory counsel fees;
- d. Costs of suit;
- e. Such further relief as the Court should deem appropriate.

COUNT IV
Respondeat Superior

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

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

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

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

43. The actions taken by Defendants Jetsmarter and Sheridan in the marketing and sale of the property to Plaintiffs caused Plaintiffs damages.

44. As a result, Plaintiffs have suffered damages.

COUNT V
Fraud

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

46. In communications from Jetsmarter and Sheridan to Plaintiffs prior to their purchase of memberships, through Defendant Beynars and Kaykov, made material representations about, inter alia, the cost and benefits of travel through Jetsmarter's program. Significantly, the representations confirmed that Plaintiffs would be able to fly for free (after payment of an annual fee) and that they would be grandfathered in for future years to come.

47. The representations made by Defendants were false. During the contract year Defendants, unilaterally altered the program by requiring Plaintiffs to pay for all flights, removing flights and abating benefits.

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

49. Plaintiffs reasonably relied upon Defendants' statements and enrolled with Jetsmarter paying the amounts, in full, quoted to them.

50. As a result, Plaintiff has suffered damages.

COUNT VI
Unjust Enrichment

51. Plaintiff repeats the averments in Paragraphs 1 through 50 as if set forth at length herein.

52. Plaintiffs paid moneys to Defendants for the promise to provide free flights n a token based system.

53. Defendants retained Plaintiffs' moneys but failed to provide the services.

54. As a result, Defendants have been unjustly enriched and Plaintiffs have suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Steve, Dalia, Moshe, Jack and Pia Scaba demands judgment against Defendants Jetsmarter, Inc., Ernest Beynars and Vlad Kaykov, jointly and severally, as follows:

- (1) Awarding judgment and damages of no less than \$360,000.00, together with pre-judgment interest;
- (2) Treble damages for violations of the CFA
- (3) Awarding punitive damages for fraud;
- (4) Awarding Plaintiffs their costs and disbursements and reasonable allowances for the fees of plaintiff's counsel and experts, and reimbursement of expenses made mandatory through the CFA; 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 17th day of December, 2018

THE LAW OFFICES OF BRUCE E. BALDINGER, LLC
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By: /s/ Bruce E. Baldinger
