

EXHIBIT 3

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 Attorney Id No.: **018371984**
 Law Firm: **The Law Offices of Bruce E. Baldinger, LLC**
 Address: **365 South Street - Suite 102**
Morristown, NJ 07960

Telephone No.: **(908) 218-0060**
 Fax No.: **(973) 290-0934**
 E-mail: **bruce@baldingerlaw.com**
 Attorney(s) for Plaintiff(s): **RENEE KESNER**

RENEE KESNER

Plaintiff(s)

vs.

JETSMARTER, INC., JAMES TORNABENE AND
JOHN DOES 1-10

Defendant(s)

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

ESSEX COUNTY

DOCKET NO.: **ESX-L-3072-19**

CIVIL ACTION

Summons

FROM THE STATE OF NEW JERSEY

To the Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is provided and available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$ **175.00** and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey statewide hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is provided and available in the Civil Division Management Office in the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf.

Date: **April 24, 2019**

/s/ Michelle M. Smith

Clerk of the Superior Court

Name of Defendant to be Served: **JETSMARTER, INC.**

Address of Defendant to be Served:

JETSMARTER, INC., 500 E. BROWARD BLVD. - SUITE 1900, FORT LAUDERDALE, FL 33394

Bruce E. Baldinger, Esq. (01837-1984)
THE LAW OFFICES OF BRUCE E. BALDINGER, LLC
365 South Street
Morristown, NJ 07960
908.218.0060
bbaldinger@baldingerlaw.com
Attorney for Plaintiff

----- x
RENEE KESNER

Plaintiff,

SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY – LAW DIVISION

Against

Docket No.

JETSMARTER, INC., JAMES
TORNABENE and JOHN DOES 1 - 10

COMPLAINT and JURY DEMAND

Defendants
----- x

Plaintiff Renee Kesner, by way of complaint against Defendants Jetsmarter, Inc.,
James Tornabene, and John Does 1-10, states as follows:

PARTIES

1. Renee Kesner (“Kesner” or “Plaintiff”) is an individual who, at all times relevant to these proceedings, resided in Essex County, New Jersey.
2. Defendant Jetsmarter, Inc. (“Jetsmarter”) is a foreign corporation, organized under the laws of the State of Delaware and 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.

3. Defendant James Tornabene (“Tornabene”) is a sales agent off Jetsmarter who worked with Plaintiff Kesner.

4. John Does 1 – 5 are persons who are the officers, managers, investors and board members of Jetsmarter, who developed, approved and implemented the marketing and sales materials and may have otherwise been involved in the fraudulent sales practices made to Plaintiff.

5. John Does 6-10 are the board members and investors who developed the scheme and tactic to alter, interfere and terminate the benefits which the Plaintiff purchased from Jetsmarter.

FACTUAL BACKGROUND

6. In or about December 2017 Plaintiff researched Jetsmarter’s offerings and purchased a membership in Jetsmarter following communications directed to Plaintiff and her husband by Jetsmarter employees. In connection with the purchase Plaintiff was advised by James Tornabene that she would be permitted to fly anywhere from a departure airport up to three hours without any cost to her, both with respect to her own membership and the existing membership for her husband.

7. Additional benefits were touted inclusive of helicopter shuttles and elite concierge services. Importantly, they were also informed that they would be locked-in or “grandfathered” in the future such that any negative changes such as price elevation or alternation to the program would not impact them. Both she and her husband would have the right to extend the terms of their existing membership, benefits, and import three hour flight benefits for no additional costs.

8. Based upon Defendants’ representations, in December 2018, a membership was

purchased for Renee and paid an additional \$14,000 for that membership. She received a flight origination credit and her husband a \$2,500 flight credit for referrals. The flight credit, membership, husband's membership and referral credit ultimately became worthless when Jetsmarter unilaterally eliminated the benefits offered, and refused to renew her husband's term which expired approximately six month after Plaintiff joined. Additionally, despite placing in writing to Harvey Kesner that Jetsmarter would waive the initiation fee of \$2500.00, when Tornabene invoiced Renee, he included that fee and thus overcharged Renee for her membership.

9. Until the summer of 2018, the program which the Kesners purchased largely worked in keeping with the parties' agreement. They had the complimentary flights and all that was promised to them in order to travel between their homes in Florida and New Jersey, the principal reason the three hour or less free benefit would benefit them and principal reason for their agreeing to join and pay the Jetsmarter fee.

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

11. Plaintiff has attempted to obtain that which they contracted and paid for, but Defendants have refused to provide the same.

12. As a result, Plaintiff has suffered damages.

COUNT I
Breach of Contract

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

14. Plaintiff and Defendant Jetsmarter entered into 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.

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

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

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

18. Based upon Defendants' own assessment of the cost which would be incurred by the Kesners in order to retain duplicate services, the "benefit of the bargain," Plaintiff would be required to pay approximately \$2,500 per flight one-way for Renee or approximately \$20,000 per month, instead of receiving free flights for travel between New Jersey and Florida. Plaintiff has also been damaged in the amount that her husband would have been able to benefit from his membership in that they were unable to travel together on Jetsmarter flights of an equal amount. Thus, the cost to cover benefits for which Renee has been damaged and as to which she was required to pay for flights for

both she and her husband is approximately \$240,000 representing Plaintiff's collective damages.

19. 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

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

21. 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.

22. 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.

23. As a direct and proximate result of Defendant JetSmarter's conduct, the Kesners have suffered damages.

COUNT III
Consumer Fraud

24. Plaintiff repeats the averments in Paragraphs 1 through 23 as if set forth at length herein.

25. In attempting to advertise, market and sell the flight services, Defendants Jetsmarter and Tornabene made express representations that Plaintiff's sole obligation was to make a payment of \$15,000.00/yr. and that Jetsmarter would waive the \$2500.00 initiation fee. 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 Jetsmarter and John Does 1 – 5, all Defendants are jointly responsible therefore. Moreover, although Defendants promised to Harvey Kesner in writing not to charge the initiation fee, the invoice provided to Renee Kesner included the fee.

26. When the Kesners sought to utilize the program in the Summer of 2018, they were informed that the program had changed fundamentally and that they would then be required to pay for all travel services, including flights of less than three hours. Plaintiff's husband was also unable to continue with his program benefits as previously existing.

27. This change in the program was an unconscionable business practice developed and implemented by John Does 1-10.

28. As a demonstration of the benefit received by the Kesners, Defendants represented that the value received by them if they had flown without Jetsmarter would have been in excess of \$182,000 and \$318,000.²⁹ Defendants are "persons" as defined in the New Jersey Consumer Fraud Act, N.J.S. 56:8-1 et. seq.

30. Through the use of the communications and in connection with the sales and advertisement of its services to the Kesners, Defendants made misrepresentations and false assurances. These included, inter alia, the ability to fly for free with the tendering of

a single, upfront payment.

31. Through the use of disallowed 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, Defendants have utilized unconscionable business practices.

32. Under the agreement between the Kesners and Jetsmarter, the contract was to be automatically renewable. Thus, the Kesners expected their benefit of the bargain for years to come.

34. As a result, the Kesners have suffered damages.

COUNT IV Respondeat Superior

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

36. Jetsmarter and its agents, John Does 1 - 5 instructed or at least permitted Defendant Tornabene to utilize Jetsmarters name in the carrying out of marketing and sales of flight services.

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

38. Jetsmarter and its agents, John Does 1 - 5 had a duty to properly train and supervise Tornabene which Jetsmarter and John Does 1-5 failed to carry out.

39. The actions taken by Defendants Jetsmarter and Tornabene in the marketing and sale of the property to the Kesners caused the Kesners damages.

40. As a result, the Kesners have suffered damages.

COUNT V
Fraud

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

42. In communications from Jetsmarter and Tornabene to the Kesners prior to their purchase of memberships, Jetsmarter, Tornabene and John Does 1-10, made material representations about, inter alia, the cost and benefits of travel through Jetsmarter's program. Significantly, the representations confirmed that the Kesners 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.

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

44. Defendants also represented in writing to Harvey Kesner that they would not charge Renee for the initiation fee, yet in the invoice sent to Renee the fee was included.

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

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

47. As a result, the Kesners have suffered damages.

COUNT VI
Unjust Enrichment

48. Plaintiff repeats the averments in Paragraphs 1 through 47 as if set forth at length herein.

49. The Kesners paid moneys to Defendants for the promise to provide free flights within three hours of the their departing city.

50. Defendants retained the Kesners' moneys but failed to provide the services.

51. As a result, Defendants have been unjustly enriched and the Kesners have suffered damages.

COUNT VII
Violation of TCCWNA

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

53. Defendants included provisions in their agreement which violated Plaintiff's established legal rights. These included the requirement to arbitrate when there was no disclosure of the waiver of statutory rights, the requirement of indemnification and hold harmless and the unilateral right to make changes to the contract.

54. Defendant Jetsmarter's contract provides under its paragraph entitled "Construction" that any provision deemed "invalid, illegal, and or unenforceable" by and arbitrator or court shall be void.

55. The Kesners were harmed by each of these provisions.

56. The provision entitled "Construction" does not specify which provisions are impacted in New Jersey and this, along with the other forementioned contractual provisions, violates New Jersey's Truth-In-Consumer Contract Warranty and Notice Act ("TCCWNA").

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Renee Kesner demands judgment against Defendants Jetsmarter, Inc., James Tornabene and John Does 1-10, jointly and severally, as follows:

- (1) Awarding judgment and damages of no less than \$500,000.00, together with pre-judgment interest;
- (2) Treble damages for violations of the CFA;
- (3) Statutory damages permitted by TCCWNA;
- (3) Awarding punitive damages for fraud;
- (4) Awarding Plaintiff ther 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
- (5) Interest;
- (6) Awarding such other and further relief the Court deems just and equitable.

JURY TRIAL DEMAND

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

Respectfully submitted this 23rd day of April, 2019

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



CERTIFICATION

I certify that the matter in controversy herein is not the subject of any other action pending in any court or of any pending arbitration proceeding, that no such action or arbitration proceeding is contemplated, and that I am not aware of any non-party who should be joined in this action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

/s/ Bruce E. Baldinger
BRUCE E. BALDINGER, Esq.

Dated: April 23, 2019

Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-003072-19

Case Caption: KESNER RENEE VS JETSMARTER, INC.

Case Initiation Date: 04/24/2019

Attorney Name: BRUCE ERIC BALDINGER

Firm Name: BRUCE E BALDINGER LLC

Address: 365 SOUTH STREET
MORRISTOWN NJ 07960

Phone:

Name of Party: PLAINTIFF : Kesner, Renee

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: CONTRACT/COMMERCIAL TRANSACTION

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO

Title 59? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

04/24/2019
Dated

/s/ BRUCE ERIC BALDINGER
Signed

Attorney(s): **Bruce E. Baldinger, Esq.**
Attorney Id No.: **018371984**
Law Firm: **The Law Offices of Bruce E. Baldinger, LLC**
Address: **365 South Street - Suite 102**
Morristown, NJ 07960

Telephone No.: **(908) 218-0060**
Fax No.: **(973) 290-0934**
E-mail: **bruce@baldingerlaw.com**
Attorney(s) for Plaintiff(s): **RENEE KESNER**

RENEE KESNER

Plaintiff(s)

vs.

**JETSMARTER, INC., JAMES TORNABENE AND
JOHN DOES 1-10**

Defendant(s)

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

ESSEX COUNTY

DOCKET NO.: **ESX-L-3072-19**

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Date: **April 24, 2019**

/s/ Michelle M. Smith

Clerk of the Superior Court

Name of Defendant to be Served:

JAMES TORNABENE

Address of Defendant to be Served: **C/O JETSMARTER, INC.**

500 E. BROWARD BLVD. - SUITE 1900, FORT LAUDERDALE, FL 33394

Bruce E. Baldinger, Esq. (01837-1984)
THE LAW OFFICES OF BRUCE E. BALDINGER, LLC
365 South Street
Morristown, NJ 07960
908.218.0060
bbaldinger@baldingerlaw.com
Attorney for Plaintiff

----- x
RENEE KESNER

Plaintiff,

SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY – LAW DIVISION

Against

Docket No.

JETSMARTER, INC., JAMES
TORNABENE and JOHN DOES 1 - 10

COMPLAINT and JURY DEMAND

Defendants
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Plaintiff Renee Kesner, by way of complaint against Defendants Jetsmarter, Inc.,
James Tornabene, and John Does 1-10, states as follows:

PARTIES

1. Renee Kesner ("Kesner" or "Plaintiff") is an individual who, at all times relevant to these proceedings, resided in Essex County, New Jersey.
2. Defendant Jetsmarter, Inc. ("Jetsmarter") is a foreign corporation, organized under the laws of the State of Delaware and 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.

3. Defendant James Tornabene (“Tornabene”) is a sales agent off Jetsmarter who worked with Plaintiff Kesner.

4. John Does 1 – 5 are persons who are the officers, managers, investors and board members of Jetsmarter, who developed, approved and implemented the marketing and sales materials and may have otherwise been involved in the fraudulent sales practices made to Plaintiff.

5. John Does 6-10 are the board members and investors who developed the scheme and tactic to alter, interfere and terminate the benefits which the Plaintiff purchased from Jetsmarter.

FACTUAL BACKGROUND

6. In or about December 2017 Plaintiff researched Jetsmarter’s offerings and purchased a membership in Jetsmarter following communications directed to Plaintiff and her husband by Jetsmarter employees. In connection with the purchase Plaintiff was advised by James Tornabene that she would be permitted to fly anywhere from a departure airport up to three hours without any cost to her, both with respect to her own membership and the existing membership for her husband.

7. Additional benefits were touted inclusive of helicopter shuttles and elite concierge services. Importantly, they were also informed that they would be locked-in or “grandfathered” in the future such that any negative changes such as price elevation or alternation to the program would not impact them. Both she and her husband would have the right to extend the terms of their existing membership, benefits, and import three hour flight benefits for no additional costs.

8. Based upon Defendants’ representations, in December 2018, a membership was

purchased for Renee and paid an additional \$14,000 for that membership. She received a flight origination credit and her husband a \$2,500 flight credit for referrals. The flight credit, membership, husband's membership and referral credit ultimately became worthless when Jetsmarter unilaterally eliminated the benefits offered, and refused to renew her husband's term which expired approximately six month after Plaintiff joined. Additionally, despite placing in writing to Harvey Kesner that Jetsmarter would waive the initiation fee of \$2500.00, when Tornabene invoiced Renee, he included that fee and thus overcharged Renee for her membership.

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11. Plaintiff has attempted to obtain that which they contracted and paid for, but Defendants have refused to provide the same.

12. As a result, Plaintiff has suffered damages.

COUNT I
Breach of Contract

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

14. Plaintiff and Defendant Jetsmarter entered into 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.

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

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

18. Based upon Defendants' own assessment of the cost which would be incurred by the Kesners in order to retain duplicate services, the "benefit of the bargain," Plaintiff would be required to pay approximately \$2,500 per flight one-way for Renee or approximately \$20,000 per month, instead of receiving free flights for travel between New Jersey and Florida. Plaintiff has also been damaged in the amount that her husband would have been able to benefit from his membership in that they were unable to travel together on Jetsmarter flights of an equal amount. Thus, the cost to cover benefits for which Renee has been damaged and as to which she was required to pay for flights for

both she and her husband is approximately \$240,000 representing Plaintiff's collective damages.

19. 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

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21. 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.

22. 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.

23. As a direct and proximate result of Defendant JetSmarter's conduct, the Kesners have suffered damages.

COUNT III
Consumer Fraud

24. Plaintiff repeats the averments in Paragraphs 1 through 23 as if set forth at length herein.

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27. This change in the program was an unconscionable business practice developed and implemented by John Does 1-10.

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COUNT IV Respondeat Superior

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39. The actions taken by Defendants Jetsmarter and Tornabene in the marketing and sale of the property to the Kesners caused the Kesners damages.

40. As a result, the Kesners have suffered damages.

COUNT V
Fraud

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

42. In communications from Jetsmarter and Tornabene to the Kesners prior to their purchase of memberships, Jetsmarter, Tornabene and John Does 1-10, made material representations about, inter alia, the cost and benefits of travel through Jetsmarter's program. Significantly, the representations confirmed that the Kesners 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.

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

44. Defendants also represented in writing to Harvey Kesner that they would not charge Renee for the initiation fee, yet in the invoice sent to Renee the fee was included.

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

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

47. As a result, the Kesners have suffered damages.

COUNT VI
Unjust Enrichment

48. Plaintiff repeats the averments in Paragraphs 1 through 47 as if set forth at length herein.

49. The Kesners paid moneys to Defendants for the promise to provide free flights within three hours of the their departing city.

50. Defendants retained the Kesners' moneys but failed to provide the services.

51. As a result, Defendants have been unjustly enriched and the Kesners have suffered damages.

COUNT VII
Violation of TCCWNA

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

53. Defendants included provisions in their agreement which violated Plaintiff's established legal rights. These included the requirement to arbitrate when there was no disclosure of the waiver of statutory rights, the requirement of indemnification and hold harmless and the unilateral right to make changes to the contract.

54. Defendant Jetsmarter's contract provides under its paragraph entitled "Construction" that any provision deemed "invalid, illegal, and or unenforceable" by and arbitrator or court shall be void.

55. The Kesners were harmed by each of these provisions.

56. The provision entitled "Construction" does not specify which provisions are impacted in New Jersey and this, along with the other forementioned contractual provisions, violates New Jersey's Truth-In-Consumer Contract Warranty and Notice Act ("TCCWNA").

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Renee Kesner demands judgment against Defendants Jetsmarter, Inc., James Tornabene and John Does 1-10, jointly and severally, as follows:

- (1) Awarding judgment and damages of no less than \$500,000.00, together with pre-judgment interest;
- (2) Treble damages for violations of the CFA;
- (3) Statutory damages permitted by TCCWNA;
- (3) Awarding punitive damages for fraud;
- (4) Awarding Plaintiff ther 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
- (5) Interest;
- (6) Awarding such other and further relief the Court deems just and equitable.

JURY TRIAL DEMAND

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

Respectfully submitted this 23rd day of April, 2019

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



CERTIFICATION

I certify that the matter in controversy herein is not the subject of any other action pending in any court or of any pending arbitration proceeding, that no such action or arbitration proceeding is contemplated, and that I am not aware of any non-party who should be joined in this action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

/s/ Bruce E. Baldinger
BRUCE E. BALDINGER. Esq.

Dated: April 23, 2019

Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-003072-19

Case Caption: KESNER RENEE VS JETSMARTER, INC.

Case Initiation Date: 04/24/2019

Attorney Name: BRUCE ERIC BALDINGER

Firm Name: BRUCE E BALDINGER LLC

Address: 365 SOUTH STREET

MORRISTOWN NJ 07960

Phone:

Name of Party: PLAINTIFF : Kesner, Renee

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: CONTRACT/COMMERCIAL TRANSACTION

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO

Title 59? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

04/24/2019

Dated

/s/ BRUCE ERIC BALDINGER

Signed

RETURN OF SERVICE

State of Florida

County of Broward

Small Claims Court

Case Number: COWE03000579

Plaintiff:

NCO FINANCIAL SYSTEM, INC., as assignee of MBNA America Bank

vs.

Defendant:

STEVE SHEA

For:

Melissa Comras

Hiday & Ricke, P.A.

Post Office Box 550858

Jacksonville, FL 32255



TPL2019071030

Received by TROPICAL SURVEILLANCE & INVESTIGATIONS, LLC on the **17th day of April, 2019** at **7:36 am** to be served on **ACTION AIR, INC., STEPHEN P. SHEA, 9360 SW 54 PLACE, DAVIE, FL 33328**.

I, **APRIL LEWIS**, do hereby affirm that on the **23rd day of April, 2019** at **4:50 pm**, I:

SUBSTITUTE served by delivering a true copy of the **SERVICE COVER LETTER, CONTINUING WRIT OF GARNISHMENT AGAINST SALARY AND WAGES, INFORMATION SHEET FOR EMPLOYER GARNISHEE, ANSWER OF GARNISHEE TO CONTINUING WRIT AND DESIGNATION OF EMAIL ADDRESS FORM** with the date and hour of service endorsed thereon by me, to: **CATHERINE SHEA** as **CO-RESIDENT/ WIFE** at the address of: **9360 SW 54 PLACE, DAVIE, FL 33328**, by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. Pursuant **F.S. 48.031(1)(a)**.

Military Status: Based upon inquiry of party served, defendant is not in the military service of the United States of America.

Marital Status: Based upon inquiry of party served, Defendant is married.

Description of Person Served: Age: 50, Sex: F, Race/Skin Color: White, Height: 5'5", Weight: 160, Hair: Dark Blonde, Glasses: N

I do hereby certify that I have no interest in the above action, that I am over the age of eighteen, and that I am a Special Process Server in the county in which it was served. Under penalty of perjury, I declare that I have read the foregoing and that the facts stated in it are true. No Notary Required Pursuant to F.S. 92.525(2).

DATE: _____

APRIL LEWIS
S.P.S. 1482

TROPICAL SURVEILLANCE & INVESTIGATIONS, LLC
P.O. BOX 173019
TAMPA, FL 33672
(813) 282-0074

Our Job Serial Number: TPL-2019071030
Ref: 201600812