

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

SHERI LAINE AND GARY SEIDLER

Plaintiff,

Civil Action No.

against

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

Defendants

COMPLAINT and
JURY DEMAND

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Plaintiffs Sheri Laine (“Plaintiff” or “Laine”) and Gary Seidler (“Seidler”) (“collectively “Plaintiff”), by way of complaint against Defendants Jetsmarter, Inc., David M. Sheridan 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 Defendants’ principal place of business is in Fort Lauderdale, Florida and a substantial part of the events or omissions giving rise to the claim were initiated and

occurred here, including the marketing, advertising and trade practices at issue.

PARTIES

3 Plaintiffs Laine and Seidler are individuals residing in Del Mar and Santa Monica, respectively. At all times relevant to these proceedings, Plaintiffs jointly retained an apartment in London, England. Plaintiffs are each senior citizens as defined by Section 501.2077, Fla. Stat., and Plaintiff Laine requires certain additional accommodations when traveling.

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 David Sheridan (“Sheridan”) is a sales agent of Defendant Jetsmarter who was assigned the title of 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. On or about April, 2018, having a family member who was a Jetsmarter member and also having seen the advertising material placed into the marketplace by

Defendant Jetsmarter about the benefits offered by Jetsmarter, Plaintiffs were contacted by Jetsmarter's representative Sheridan. In communications, Defendant Sheridan discussed various membership options inclusive of the "Smart" and "Sophisticated" membership. As part of the sale, Plaintiffs were told that the Smart level was being discontinued on April 2, 2018 and that they needed to join prior to that date. In an email of March 29, 2018 to Plaintiff Laine entitled "*Last chance to become a founding JetSmarter member,*" she was again specifically informed by Defendant Sheridan that she needed to join "this week to take advantage of complimentary seats on select flights under three hours."[emphasis supplied].

8. In their discussions, Defendant Sheridan explained that the Smart "membership" was a prepaid program which would permit the "member" the right to fly to locations within three hours of the departing city without cost to the member. The Sophisticated level, again prepaid, provided enhanced privileges such as advanced notification of flights, extended free flights and other discounts and benefits.

9. Plaintiffs informed Sheridan that the Smart level was more than sufficient for their needs and on March 31, 2018, they charged \$30,000.00 to their credit card. However, despite already informing Plaintiffs that they had until April 2, 2018 to join at the Smart level, on April 1, 2018 Defendant Sheridan wrote to Plaintiffs and said that he had obtained "permission for both of you to still execute today as discussed. Today would be the final day, after that my hands are tied. No pressure just wanted to send a final message."

10. Despite the analysis conducted with Defendant Sheridan and reaching the

collective conclusion that the Smart level was more than sufficient for Plaintiffs, within weeks after joining Defendant Sheridan sent an April 25, 2018 email to Plaintiff Laine.. In what indicates to be the start of high pressure attempts to “ratchet-up” the program level, the email, entitled “*Upgrade offer: This week only*” provided for an undetailed upgrade for \$85,445.21 (utilizing a credit for the moneys Plaintiff had just paid) for three years or \$35,945.21 for a single year. Plaintiffs rejected this offer making clear to Defendant Sheridan that they only wanted to stay within their present level.

11. One month to the day later (as if needing to meet quota), on May 25, 2018, Defendant Sheridan sent another email to Plaintiff providing her an “exclusive offer” to upgrade to the Sophisticated level. Again, Plaintiff rejected this “exclusive offer.” As if this was not enough pressure placed upon this elderly couple, on March 31, 2018, Defendant Sheridan sent yet another email creating urgency.

12. On June 14, 2018, less than a month later Defendant Sheridan sent to Plaintiff an email entitled “Just reviewed your account.” Without explanation of his reasoning Defendant Sheridan again took efforts to re-sell to Plaintiff the Sophisticated level for an upfront cost \$97,500.00 and stating that in converting the membership Plaintiff would be a “value that exceeds [her] current spend.” No details were provided as to how he had reached that conclusion. To put further usual additional pressure on Plaintiffs, the email closed that she should contact him “before month’s end.” Once more Plaintiff let Sheridan know that they wished to stay at the level they had just purchased.

13. Plaintiffs were able to utilize the free flight services on but a single occasion.

However, in the mid-summer of 2018, Defendants reported to Plaintiff that the benefits they had just purchased would no longer be available to Plaintiffs and that all future flights would require payment by Plaintiffs – thus undermining the very essence of the “membership.” Plaintiff did avail themselves of Defendants’ services once thereafter but was required to pay for that flight.

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

15. Although Defendants attempted to push Plaintiffs into a relatively worthless “Family Membership” which continued to require Plaintiffs to pay for flights, no arrangement could be reached which provided the promises which were made to induce the Plaintiffs to buy into the Jetsmarter “membership.” After not having use of the program, on October 10, 2018, Plaintiff Laine wrote to Defendant Sheridan:

Hello David,

I was so disappointed not to receive a call from you this morning after making an appt. to speak with you and calling your office several times during the day. Please reach out to us as Gary and I are concerned about our account, we are running out of time and unable to get on flights due to not having a membership we can use as our 3 hour and under flights were taken from us after paying you \$30,000 to join. Shane offered us a deal that is not satisfactory or fair. We look forward to having you help us work this out. We are an older couple who gave you and your company a significant amount of funding for a promise of travel that you have not fulfilled after your assurance that you would. We are both incredibly disappointed and hope that you can make this better for us.

Thank you,

Sheri Laine

16. After a brief conversation with Defendant Sheridan in which he said he would look into the issues, a sizeable period of time elapsed without hearing from Defendant Sheridan, prompting Defendant Laine to send an email dated October 19, 2018:

Hello David,
Gary and I had hoped to hear back from you after our conversation just last week and your promise to get back to us within 2 days- regarding your help in assisting us with Jetsmarter charters under 3 hours.
As Seniors we really believed in your pitch to get free flights under 3 hours, which is the only reason we joined.
You have promised us 3 times now to get back to us to rectify the membership.
Please help us to sort this mess out,
Gary is beyond disappointed in your company and your promises to assist us.
Every salesperson has said the final decision rests with you, yet you say your team has to get back to you.
Unfortunately it feels like we have been scammed by you and your company.
Please don't be that person.
Hope to hear from you.
Sheri Laine

17. In response, Defendant Sheridan sent this last communication:

Sheri,
Thank you. I am not avoiding you but waiting on our team to update me on resolutions. I will not forget about you both.
Thank you again.

18. As a result of Defendants actions, Plaintiffs have suffered damages.

COUNT I
Breach of Contract

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

20. Plaintiffs and Defendant entered into an on-line agreement through which in exchange for the payment of \$30,000.00, Defendant Jetsmarter, through its agent Defendant Sheridan, agreed to provide certain travel benefits to Plaintiff.

21. 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 of the contract after its execution and entry.

22. After Plaintiffs were able to use Defendant's free services as contacted for on one single occasion, Plaintiff came to learn that Defendant Jetsmarter had unilaterally changed the program and that the program offered to Plaintiffs – and for which they had purchased – was no longer being offered. Plaintiffs were now required to pay for their flights.

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

24. 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," each Plaintiff would have to pay approximately \$98,550.00 per month.

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

WHEREFORE, Plaintiffs Sheri Laine and Gary Seidler demand judgment against defendants, jointly and severally, as follows:

- (1) Awarding judgment and damages of no less than \$2,200,00.00 sustained by Plaintiffs, together with pre-judgment interest;
- (2) Awarding Plaintiffs Sheri Laine and Gary Seidler her costs and disbursements and reasonable allowances for the fees of plaintiff's counsel and experts, and reimbursement of expenses;
- (3) Awarding pre and post judgment interest as permitted by law.
- (4) Awarding such other and further relief the Court deems just and equitable.

COUNT II
Violation of Good Faith and Fair Dealing

26. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
27. Implied in every contract is the duty for each party to utilize good faith in its performance. Common law calls for substantial compliance with the spirit, not just the letter, of a contract in its performance.
28. In entering into the agreement at issue 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 Plaintiffs.
29. As a direct and proximate result of Defendant JetSmarter's conduct, Plaintiffs

have suffered damages.

WHEREFORE, Plaintiffs Sheri Laine and Gary Seidler demand judgment against defendants, jointly and severally, as follows:

- (1) Awarding judgment and damages of no less than \$2,200,00.00 sustained by Plaintiffs, together with pre-judgment interest;
- (2) Awarding Plaintiffs Sheri Laine and Gary Seidler her costs and disbursements and reasonable allowances for the fees of plaintiff's counsel and experts, and reimbursement of expenses;
- (3) Awarding pre and post-judgment interest as permitted by law.
- (4) Awarding such other and further relief the Court deems just and equitable.

COUNT III
Violation of the Deceptive and Unfair Trade Practices Act

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

31. In attempting to advertise, market and sell the flight services, Defendants Jetsmarter and Sheridan made an express representation that Plaintiffs' sole obligation was to make their payments, in full and in advance, and in exchange therefor they would receive all of the benefits described to them both verbally and in writing. Defendants specifically advertised that for flights under three hours in duration a customer would be able to obtain two seats on its planes with no additional charge. This statement was false.

32. 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.

33. Within a couple of months after purchasing the enrolling "membership" with Defendants, Plaintiffs came to learn that the programs as sold to them were no longer available and that they 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.

34. Plaintiffs are "Consumers" as defined in Section 501.203(7) Florida's Deceptive and Unfair Trade Practices Act. As they are each over the age of 60, Plaintiffs are also defined as "senior citizens" pursuant to Section 501.2077. Fla. Stat.

35. The advertising and selling of the "memberships" fall within the definition of "trade or commerce" as well as "things of value" as defined in Florida Statute 501.203(8) and (9) respectively.

36. 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 unilaterally changing the membership program and thereafter refusing to return the purchase price - and other similar and related activities - constitute unconscionable practices.

37. As a result, Plaintiff has suffered damages.

WHEREFORE, Plaintiffs Sheri Laine and Gary Seidler demand judgment against

defendants, jointly and severally, as follows:

- (1) Awarding judgment and damages of no less than \$2,200,00.00 sustained by Plaintiffs, together with pre-judgment interest;
- (2) Awarding statutory damages;
- (3) Awarding Plaintiffs Sheri Laine and Gary Seidler her costs and disbursements and reasonable allowances for the fees of plaintiff's counsel and experts, and reimbursement of expenses;
- (4) Awarding pre and post-judgment interest as permitted by law.
- (5) Awarding such other and further relief the Court deems just and equitable.

COUNT IV
Respondeat Superior

38. Plaintiff incorporates the prior Counts as if fully set forth herein.

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

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

41. 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.

42. The actions taken by Defendant Sheridan in the marketing and sale of the

property to Plaintiffs caused Plaintiffs damages.

WHEREFORE, Plaintiffs Sheri Laine and Gary Seidler demand judgment against defendants, jointly and severally, as follows:

- (1) Awarding judgment and damages of no less than \$2,200,00.00 sustained by Plaintiffs, together with pre-judgment interest;
- (2) Awarding Plaintiffs Sheri Laine and Gary Seidler her costs and disbursements and reasonable allowances for the fees of plaintiff's counsel and experts, and reimbursement of expenses;
- (3) Awarding pre and post-judgment interest as permitted by law.
- (4) Awarding such other and further relief the Court deems just and equitable.

COUNT V
Fraud

43. Plaintiff incorporates the prior Counts as if fully set forth herein.

44. In the March communications from Jetsmarter and Sheridan to Plaintiffs, Defendants made material representations about the program which Plaintiffs were purchasing and that upon prepayment, Plaintiffs would be able to fly on the Jetsmarter charters within three hours of their departure city without further charge.

45. These representations were false. In fact, other than one flight there were significant costs imposed upon them 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.

WHEREFORE, Plaintiffs Sheri Laine and Gary Seidler demand judgment against defendants, jointly and severally, as follows:

(1) Awarding judgment and damages of no less than \$2,200,000.00 sustained by Plaintiffs, together with pre-judgment interest;

(2) Awarding punitive damages;

(3) Awarding Plaintiffs Sheri Laine and Gary Seidler her costs and disbursements and reasonable allowances for the fees of plaintiff's counsel and experts, and reimbursement of expenses;

(4) Awarding pre and post-judgment interest as permitted by law.

(5) Awarding such other and further relief the Court deems just and equitable.

JURY TRIAL DEMAND

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

Respectfully submitted this 4 day of December, 2018.

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