

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

JONATHAN NORTON and KENNETH J. FLEISCHER, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

NIANTIC, INC., a Delaware corporation,

Defendant.

No. 2017 CH 10281

Jury Trial Demanded

2019 APR 20 PM 2:08
FILED

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs JONATHAN NORTON (“Mr. Norton”) and KENNETH J. FLEISCHER (“Mr. Fleischer”) (collectively, “Plaintiffs”) bring this action individually, and on behalf of all others similarly situated, by and through counsel at ZIMMERMAN LAW OFFICES, P.C., and against Defendant NIANTIC, INC. (“Niantic” or “Defendant”), as follows:

INTRODUCTION

1. Plaintiffs bring this suit individually and on behalf of a Class of similarly situated individuals regarding the Pokémon GO Fest (the “Fest”) in Chicago, Illinois on July 22, 2017. Niantic advertised the Fest as the one year anniversary celebration of one of the most popular mobile games—Pokémon GO (the “Game”)—played by millions of people around the world every day. Niantic advertised that those in attendance would be able to play the Game with thousands of other players from around the world in one location, and numerous special prizes, events, and rewards were available only to those who were in attendance at the Fest.

2. However, in reality, those in attendance at the Fest were unable to play the Game due to Defendant’s failure to account for the number of people that attended the Fest, and technical problems with the Game’s software. These factors led to, *inter alia*, the Game being

“unplayable” for those in attendance at the Fest. Accordingly, the basis for the claims in this lawsuit arise out of Plaintiffs’ and the Class members’ unnecessary travel to the Fest, and the only relief sought in this lawsuit is reimbursement of Plaintiffs’ and Class members’ travel and lodging expenses incurred in connection with their travel and lodging to attend the Fest.

3. Plaintiffs bring this action against Defendant for violations of the Illinois Consumer Fraud and Deceptive Practices Act (“ICFA”), 815 ILCS 505/1, *et seq.*, the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*, the California False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq.*, the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*, the Washington Consumer Protection Act (“WCPA”), RCW 19.86.010, *et seq.*, and negligent misrepresentation.

PARTIES

4. At all relevant times, Plaintiff JONATHAN NORTON was a natural person and resident and citizen of California.

5. At all relevant times, Plaintiff KENNETH J. FLEISCHER was a natural person and resident and citizen of Illinois.

6. At all relevant times, Defendant NIANTIC, INC. is a Delaware corporation, with its principal place of business located at 601 108th Avenue NE, Suite 1600, Bellevue, Washington 98004.

JURISDICTION AND VENUE

7. Jurisdiction over Defendant is proper under 735 ILCS 5/2-209(a)(1) (transaction of any business within this state), section 2-209(b)(4) (corporation doing business within this state), and section 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States).

8. Venue is proper in this County, pursuant to 735 ILCS 5/2-101, because this is the county in which a substantial portion of the transactions and occurrences relevant to this action took place. Venue is also proper in this County, pursuant to 735 ILCS 5/2-102, because Defendant is doing business in Cook County, Illinois.

FACTUAL ALLEGATIONS

9. Defendant bills itself as a “[l]eader in augmented reality,”¹ and is the creator of the Pokémon GO game, an augmented reality game wherein users “capture” 3D monsters, called Pokémon.

10. Defendant produced, advertised, and hosted the Fest in Grant Park in Chicago on July 22, 2017. The official website for the Fest promised a celebration of “one year of Pokémon GO together with thousands of Trainers from the community.”²

11. The website further promised increased Pokémon encounters, “including some that have never been seen before in Grant Park.” Attendees were led to believe that by attending the Fest, they could work with “Trainers” on challenges and receive rewards within the Game. Attendees also expected to receive an “Exclusive In-App Medal” for going to the Fest, along with “special 2 km Eggs” at PokéStops within Grant Park.³

12. Defendant charged each Fest-goer \$20 to attend the event⁴, which was scheduled to run from 10:00 a.m. until 7:00 p.m. on July 22, 2017.

13. Defendant anticipated that approximately 20,000 Pokémon GO players would be at the Fest.⁵

¹ <https://nianticlabs.com/> (last accessed July 26, 2017).

² <https://pokemongolive.com/events/fest/chicago> (last accessed July 26, 2017)

³ <https://pokemongolive.com/events/fest/chicago> (last accessed July 26, 2017)

⁴ *Pokemon Go Fest refunds all tickets as players can't get game to work*, available at: <http://www.chicagotribune.com/bluesky/originals/ct-bsi-pokemon-go-fest-day-20170722-story.html> (last accessed July 26, 2017)

14. Fest attendees, many of whom like Mr. Norton traveled to Chicago from other states or countries, had the reasonable expectation of arriving at Grant Park for a day of capturing rare 3D monsters with their friends, families, and other so-called Pokémon “Trainers,” but the reality of the Fest fell flat in comparison to Defendant’s promises.

15. Upon reaching Grant Park, Fest attendees encountered a “3 mile line,” and an “unplayable” Game.⁶

16. For example, due to Defendant’s failure to account and prepare for the number of attendees at the Fest, angry attendees found themselves waiting in line to enter the Fest hours after commencement of the event. At almost noon—two hours after the Fest kicked off—Twitter user @Rager67 commented, “Umm you know you have 75% of PAYING customers outside still? Probably 2-3 hours from getting in the very small park. What were you thinking?”⁷

17. Once Fest-goers were admitted into the Fest, the issues continued, as Pokémon GO users at the Fest were unable to log on to the Game due to technical issues with Defendant’s Game server(s) and software.⁸ These issues were compounded by the fact that the densely populated crowd overloaded cell towers in the area, resulting in the inability of Fest-goers to connect to the internet.⁹

⁵ *Pokemon Go Fest refunds all tickets as players can't get game to work*, available at: <http://www.chicagotribune.com/bluesky/originals/ct-bsi-pokemon-go-fest-day-20170722-story.html> (last accessed July 26, 2017)

⁶ *Pokemon Go Fest Is Having A Rough Start [UPDATES]*, available at: <http://kotaku.com/pokemon-go-fest-is-having-a-rough-start-1797156301> (last accessed July 26, 2017)

⁷ *Pokemon Go Fest Is Having A Rough Start [UPDATES]*, available at: <http://kotaku.com/pokemon-go-fest-is-having-a-rough-start-1797156301> (last accessed July 26, 2017)

⁸ *Pokemon Go Fest Is Having A Rough Start [UPDATES]*, available at: <http://kotaku.com/pokemon-go-fest-is-having-a-rough-start-1797156301> (last accessed July 26, 2017)

⁹ *Pokemon Go Fest Is Having A Rough Start [UPDATES]*, available at: <http://kotaku.com/pokemon-go-fest-is-having-a-rough-start-1797156301> (last accessed July 26, 2017)

18. Defendant attempted to reconfigure its servers to address the Game’s software glitches—of which it was, or should have been, aware as the designer of the Game—however, this did not resolve the technical issue for many Fest-goers.¹⁰

19. Defendant also attributed the ongoing lack of internet connectivity to overloaded mobile data networks, a widely-known problem at highly-populated festivals in Chicago—one that should have been anticipated by Defendant.¹¹

20. Although Defendant attempted to fix those connectivity issues with its vendors and telecom companies, many users continued to encounter problems connecting to the Game’s servers.¹² While multiple cellular carriers enabled wifi or “Cellular on Wheels” to lessen the burden on their networks, the connectivity problems nevertheless continued for many Pokémon Go players attending the Fest.¹³

21. Due to the delayed entry into the Fest, lack of connectivity to cell towers, technical problems with Defendant’s Game software, and the malfunction of Defendant’s Game server(s), attendees at the Fest were unable to play the Game as Defendant’s advertising had led them to anticipate. For example, Fest-goers were unable to, *inter alia*, complete timed in-Game challenges to collect special rewards, collect previously unavailable or “rare” Pokémon, and compete against other “Trainers” within the Game.

¹⁰ *An Update regarding Pokemon GO Fest in Chicago*, available at: <https://www.nianticlabs.com/blog/gofestupdate072517/> (last accessed July 26, 2017)

¹¹ *An Update regarding Pokemon GO Fest in Chicago*, available at: <https://www.nianticlabs.com/blog/gofestupdate072517/> (last accessed July 26, 2017)

¹² *An Update regarding Pokemon GO Fest in Chicago*, available at: <https://www.nianticlabs.com/blog/gofestupdate072517/> (last accessed July 26, 2017)

¹³ *An Update regarding Pokemon GO Fest in Chicago*, available at: <https://www.nianticlabs.com/blog/gofestupdate072517/> (last accessed July 26, 2017)

22. Had those people who purchased tickets (and paid money for travel expenses) to attend the Fest—*i.e.*, Plaintiffs and Class members—known that they would not be able to play the Game as advertised, they would not have paid money to travel to and attend the Fest.

23. Defendant knew, or should have known, that the aforementioned issues would manifest at the Fest, but failed to disclose them to Plaintiffs and Class members, and instead affirmatively misrepresented Plaintiffs' and Class members' abilities to play the Game at the Fest as advertised.

24. Accordingly, Plaintiffs and Class members were harmed by Defendant's failure to disclose these known issues, and Defendant's affirmative misrepresentations about the Game's capabilities, in the amounts that they spent for travel and lodging to attend the Fest that they otherwise would not have spent.

ALLEGATIONS RELATED TO PLAINTIFFS

25. Prior to the Fest, Plaintiffs saw the foregoing advertisements for the Fest, including the advertisements on Defendant's website, and purchased a ticket to the Fest. Plaintiffs relied on Defendant's representations on its website that Plaintiffs could play the Game with tens of thousands of other Trainers from around the world and would be able to collect the rewards, prizes, and Pokémon that are not available where they live, or anywhere else in the world.

26. Because Mr. Norton does not reside near Grant Park, he was required to pay for travel from California to Chicago, so that he could attend the Fest.

27. Mr. Fleischer resides in the suburbs of Chicago and does not reside near Grant Park. Therefore, he also was required to pay for travel from his home to Grant Park, so that he could attend the Fest.

28. However, Plaintiffs had to miss several hours of the limited event because of the long lines, and were not able to participate in the special events at the Fest due to the aforementioned problems with Defendant's Game.

29. Had Plaintiffs and the Class members known that they would spend most of the event waiting in lines, be unable to obtain cellular or internet service, and encounter technical problems with Defendant's Game software and servers—all of which caused them to be unable to fully play the Game, or obtain the prizes, rewards, and "Legendary" Pokémon which were supposed to be exclusively available at the Fest—they would not have spent money on travel and lodging accommodations to attend the Fest.

30. Accordingly, Plaintiffs—like members of the Class—were harmed by Defendant's failure to disclose these known issues, and Defendant's affirmative misrepresentations about their ability to play the Game at the Fest as advertised, in the form of the travel and lodging expenses they incurred to travel to and attend the Fest.

CLASS ALLEGATIONS

31. **Class Definition:** Plaintiffs bring this action pursuant to 735 ILCS 5/2-801, on behalf of a class of similarly situated individuals and entities ("the Class"), defined as follows:

All persons who had a valid ticket for and attended the Pokémon Go Fest in Chicago, Illinois on July 22, 2017.

The Settlement Class does not include Niantic, Inc., and its respective officers, directors, and employees, board members, affiliated, related companies, or any entity that has a controlling interest in Niantic, Inc., and all of its respective employees, agents, board members, affiliates, legal representatives, heirs, successors, or assigns, Class Counsel and their immediate family members, and the judge to whom this case is assigned and the judge's immediate family. The Settlement Class also does not include any persons who purchased a ticket to the Pokémon Go Fest but did not attend the event.

32. **Numerosity:** Upon information and belief, the Class is comprised of approximately 18,771 individuals who checked-in at the Fest. Therefore, the Class is so

numerous that joinder of all members of the Class is impracticable. Class members can be easily identified through Defendant's records or by other means.

33. **Commonality and Predominance:** There are several questions of law and fact common to the claims of Plaintiffs and members of the putative Class, which predominate over any individual issues, including:

- a. Whether Defendant knew, or should have known, that it would be unable to timely admit Plaintiffs and Class members into the Fest;
- b. Whether Defendant knew, or should have known, that technical issues with the Game's software and server(s) would render the Game unplayable;
- c. Whether Defendant knew, or should have known, that Plaintiffs and Class members would be unable to connect to the internet, rendering them unable to play the Game at the Fest;
- d. Whether Defendant should have disclosed, and failed to disclose, the aforementioned issues to Plaintiffs and Class members;
- e. Whether Defendant affirmatively misrepresented Plaintiffs' and Class members' abilities to play the Game at the Fest as advertised;
- f. Whether Plaintiffs and Class members were deceived by Defendant's omissions and misrepresentations;
- g. Whether Defendant's deception caused Plaintiffs and Class members to travel to the Fest that they otherwise would not have done;
- h. Whether Plaintiffs and Class members incurred travel and lodging expenses to travel to and attend the Fest, due to Defendant's failure to disclose the aforementioned issues;
- i. Whether Defendant's actions violated the ICFA, UCL, FAL, CLRA, and WCPA; and
- j. Whether Defendant's actions constituted negligent misrepresentation.

34. **Typicality:** Plaintiffs' claims are typical of the claims of the proposed Class. All claims are based on the same legal and factual issues. Plaintiffs and each of the Class members

purchased tickets to attend the Fest and spent money for travel and lodging accommodations to attend the Fest based on the Defendant's representations and omissions.

35. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent and protect the interests of the Class, and have retained counsel competent and experienced in complex class actions. Plaintiffs have no interest antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiffs. The questions of law and fact common to the proposed Class members predominate over any questions affecting only individual Class members.

36. **Superiority and Appropriateness:** A class action is superior to other available methods of adjudication, and is appropriate for the fair and efficient litigation of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. The trial and the litigation of Plaintiffs' claims are manageable.

COUNT I
Violation of the Illinois Consumer Fraud Act
(815 ILCS 505/1, *et seq.*)

37. Plaintiffs repeat and re-allege the allegations of the paragraphs 1-36 with the same force and effect as though fully set forth herein.

38. At all times relevant hereto, there was in full force and effect the ICFA, 815 ILCS 505/1, *et seq.*

39. Chapter 2 of the ICFA prohibits unfair or deceptive acts or practices used or employed in the conduct of any trade or commerce. *See* 815 ILCS 505/2.

40. Defendant's knowing and intentional misrepresentations and omissions set forth above are unfair and deceptive acts or practices prohibited by Chapter 2 of the ICFA. *See* 815 ILCS 505/2. Even negligent misrepresentations are actionable under the ICFA.

41. Defendant's conduct was an unfair and deceptive act or practice prohibited by Chapter 2 of the ICFA. *See* 815 ILCS 505/2.

42. Defendant's affirmative misrepresentations, omissions, and practices described herein were designed to, and did in fact, deceive and mislead members of the public, including Plaintiffs and Class members, to their detriment.

43. Defendant's conduct described herein also constitutes prohibited unfair conduct under the ICFA because misrepresentations and omissions offend public policy; are immoral, unethical, oppressive, and unscrupulous; and cause substantial injury to consumers.

44. Defendant intended to deceive and be unfair to Plaintiffs and members of the putative Class by engaging in the practices described herein so that Defendant could collect the ticket money from its customers as well as money from sponsors. Defendant's intent is evidenced by, *inter alia*, its advertising special Pokémon and other rewards that were limited to those who attended the Fest.

45. Defendant intended that Plaintiffs and members of the Class rely on its misrepresentations and omissions concerning the Pokémon GO Fest.

46. Plaintiffs and members of the Class relied on Defendant's misrepresentations and omissions to their detriment by paying for transportation to Chicago and paying for lodging accommodations while in Chicago to attend the Pokémon GO Fest.

47. The above-described deceptive and unfair acts and practices were used or employed in the conduct of trade or commerce.

48. As a direct and proximate result of the foregoing, Plaintiffs and members of the Class have been damaged in the form of their travel and lodging expenses they incurred to travel to and attend the Fest, an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs JONATHAN NORTON and KENNETH J. FLEISCHER, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class, and against Defendant, in a fair and reasonable sum for reimbursement of their travel and lodging expenses they incurred to travel to and attend the Fest;
- D. Awarding Plaintiffs and the Class actual damages, attorneys' fees and costs as allowed or required by law; and
- E. Granting all such further and other relief as the Court deems just and appropriate.

COUNT II

Violation of the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*)

49. Plaintiffs repeat and re-allege the allegations of paragraphs 1-36 with the same force and effect as through fully set forth herein.

50. At all relevant times, there was in full force and effect the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*, which prohibits any "unlawful, unfair, or fraudulent business act or practice."

51. Defendant is a "person" as defined by the UCL. *See* Cal. Bus. & Prof. Code § 17201.

52. By selling tickets to the Fest and requiring Plaintiffs and Class members to purchase transportation to and lodging accommodations in Chicago for the Fest, Defendant affected commerce and trade.

53. Defendant's conduct constitutes "unlawful" business acts and practices because it violates the FAL, the CLRA, and constitutes unjust enrichment.

54. Defendant profited from the unlawful, unfair, and fraudulent business acts by charging Fest-attendees for tickets to the Fest, and receiving money from sponsors for the event.

55. Defendant's conduct also constitutes "unfair" business acts and practices under the UCL in that Defendant's conduct is immoral, unscrupulous, and offends public policy because Defendant advertised the Fest as a special event where Trainers would be able to obtain 3D monsters and other special prizes, and participate in certain game events, that were only available to those Trainers who attended the event. However, Defendant did not adequately prepare for the Fest and attendees, including Plaintiffs and Class members, spent the event waiting in lines, not being able to play the Game, unable to participate in the special events, and unable to obtain the limited-edition rewards for attending.

56. The ability to obtain special Pokémon and other rewards for attending the Fest in Grant Park was material to Plaintiffs' and Class members' decision to travel to the Fest.

57. Defendant's conduct also constitutes "fraudulent" business acts and practices under the UCL in that Defendant advertised that Fest-attendees would be able to play the Game with thousands of other Trainers from around the world and be able to obtain special Pokémon and other rewards that were limited to only those people who attended the Fest, but Defendant was not able to deliver on those promises.

58. As a direct and proximate result of Defendant's unlawful, unfair, and fraudulent conduct, Plaintiffs and Class members suffered damages in the form of travel and lodging expenses they incurred to travel to and attend the Fest.

59. In prosecuting this action for the enforcement of important rights affecting the public interest, Plaintiffs seek the recovery of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5, which is available to a prevailing plaintiff who wins relief for the general public.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs JONATHAN NORTON and KENNETH J. FLEISCHER, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class, and against Defendant, in a fair and reasonable sum for reimbursement of their travel and lodging expenses they incurred to travel to and attend the Fest;
- D. Awarding Plaintiffs and the Class actual damages, attorneys' fees and costs as allowed or required by law; and
- E. Granting all such further and other relief as the Court deems just and appropriate.

COUNT III

**Violation of the California False Advertising Law
(Cal. Bus. & Prof. Code § 17500, *et seq.*)**

60. Plaintiffs repeat and re-allege the allegations of paragraphs 1-36 with the same force and effect as through fully set forth herein.

61. Cal. Bus. & Prof. Code § 17500 makes unlawful for any person to make any statement, in any manner whatsoever, concerning property, services, or any circumstance or matter of fact connected with the performance of any service, that is untrue or misleading, or to make any statement with the intent not to sell any services as advertised.

62. Defendant is a “person” as defined by Cal. Bus. & Prof. Code § 17506.

63. Defendant represented to Plaintiffs and Class members that they would be able to play Pokémon Go with thousands of other Trainers from around the world, and would be able to obtain special Pokémon and other rewards that were limited to only those Trainers who attended the Fest.

64. Defendant violated Cal. Bus. & Prof. Code § 17500 when, in advertising for the Pokémon GO Fest, Defendant made and make false or misleading statements, including that Fest-attendees, including Plaintiffs and Class members would be able to play Pokémon Go with thousands of other Trainers from around the world, and would be able to obtain special Pokémon and other rewards that were limited to only those Trainers who attended the Fest.

65. Defendant intended that Plaintiffs and the members of the Class rely upon Defendant’s misrepresentations concerning the special Pokémon and rewards for only those Trainers who attended the Fest, by purchasing tickets to the Fest, as well as purchasing means of travel and other lodging accommodations to attend the Fest.

66. Defendant’s misrepresentations possessed the tendency or capacity to mislead and create the likelihood of deception.

67. Defendant’s actions, as set forth herein, were acts related to the advertisement and sale of services, and constitute unfair and deceptive trade practices in violation of Cal. Bus. & Prof. Code § 17500.

68. Acting as reasonable consumers, had Plaintiffs and the Class members known that they would not be able to play the Game at the Fest, and that they would not be able to obtain the Pokémon and other rewards for attending the Fest, they would not have paid for transportation and lodging accommodations to attend the Pokémon GO Fest in Chicago.

69. As a direct and proximate result of these unfair, deceptive and unconscionable commercial practices, Plaintiffs and the members of the Class have suffered damages in the form of the money they spent on transportation to and lodging accommodations during the Pokémon GO Fest.

70. In prosecuting this action for the enforcement of important rights affecting the public interest, Plaintiffs seek the recovery of attorneys' fees pursuant to the California Code of Civil Procedure § 1021.5, which is available to a prevailing plaintiff who wins relief for the general public.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs JONATHAN NORTON and KENNETH J. FLEISCHER, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class, and against Defendant, in a fair and reasonable sum for reimbursement of their travel and lodging expenses they incurred to travel to and attend the Fest;
- D. Awarding Plaintiffs and the Class actual damages, attorneys' fees and costs as allowed or required by law; and
- E. Granting all such further and other relief as the Court deems just and appropriate.

COUNT IV

Violation of the California Consumer Legal Remedies Act (Cal. Civ. Code § 1750, *et seq.*)

71. Plaintiffs repeat and re-allege the allegations of paragraphs 1-36 with the same force and effect as through fully set forth herein.

72. At all times relevant herein, there was in full force and effect the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1770, which makes unlawful “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.”

73. Defendant is a “person” as defined by Cal. Civ. Code § 1761(c).

74. Plaintiffs and Class members are “consumers” as defined by Cal. Civ. Code § 1761(d).

75. By selling tickets to the Fest and requiring Plaintiffs and Class members to purchase transportation to and lodging accommodations in Chicago for the Fest, Defendant affected commerce and trade.

76. Defendant engaged in unfair or deceptive acts or practices in violation of the CLRA, by, *inter alia*, misrepresenting to Plaintiffs and Class members that they would be able to play Pokémon GO with thousands of other Trainers from around the world at the Fest, and that they would be able to obtain special Pokémon and other rewards that were limited to only those trainers who attended the Fest.

77. As a direct and proximate result of Defendant’s unfair, deceptive, and unconscionable practices, Plaintiffs and Class members suffered damages in the form of the money they spent on travel and lodging expenses to attend the Pokémon GO Fest.

78. On July 27, 2017, Mr. Norton sent notice to Defendant of their violations of Cal. Civ. Code § 1770 in accordance with Cal. Civ. Code § 1782. However, Defendant failed to make Mr. Norton’s demanded corrections within thirty (30) days of receipt of the notice. As such, Plaintiffs now seek an award of actual damages in this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs JONATHAN NORTON and KENNETH J. FLEISCHER, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class, and against Defendant, in a fair and reasonable sum for reimbursement of their travel and lodging expenses they incurred to travel to and attend the Fest;
- D. Awarding Plaintiffs and the Class actual damages, attorneys' fees and costs as allowed or required by law; and
- E. Granting all such further and other relief as the Court deems just and appropriate.

COUNT V

Violation of the Washington Consumer Protection Act (RCW 19.86.010, *et seq.*)

79. Plaintiffs repeat and re-allege the allegations of paragraphs 1-36 with the same force and effect as through fully set forth herein.

80. At all times relevant, there was in full force and effect the Washington Consumer Protection Act ("WCPA"), RCW 19.86.010, *et seq.*, which makes unlawful "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." RCW 19.86.020.

81. Defendant is a "person" as defined by RCW 19.86.010(1).

82. By selling tickets to the Fest and requiring Plaintiffs and Class members to purchase transportation to and lodging accommodations in Chicago for the Fest, Defendant affected commerce and trade.

83. Defendant engaged in unfair and deceptive acts or practices in violation of WCPA by, *inter alia*, mispresenting to Plaintiffs and Class members that they would be able to play Pokémon GO with thousands of other Trainers from around the world at the Fest, and that they would be able to obtain special Pokémon and other rewards that were limited to only those trainers who attended the Fest.

84. As a direct and proximate result of Defendant's conduct, Plaintiffs and Class members suffered damages in the form of the money they spent on travel and lodging expenses to attend the Pokémon GO Fest.

85. This action serves the public interest because other potential plaintiffs, including the Class members, were injured in the exact same fashion as Plaintiffs because they also paid travel and lodging expenses to attend the Fest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs JONATHAN NORTON and KENNETH J. FLEISCHER, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class, and against Defendant, in a fair and reasonable sum for reimbursement of their travel and lodging expenses they incurred to travel to and attend the Fest;
- D. Awarding Plaintiffs and the Class actual damages, attorneys' fees and costs as allowed or required by law; and
- E. Granting all such further and other relief as the Court deems just and appropriate.

COUNT VI
Negligent Misrepresentation

86. Plaintiffs repeat and re-allege the allegations of paragraphs 1-36 with the same force and effect as through fully set forth herein.

87. As set forth above, Defendant made numerous false representations of material fact with regard to the Fest.

88. Specifically, Defendant represented, *inter alia*, that Fest-attendees would be able to play Pokémon GO with thousands of other Trainers from around the world at the Fest, and that Fest-attendees would be able to participate in special events and obtain special Pokémon and other rewards that were only available to those Trainers who attend the Fest.

89. Those representations were false because, due to long lines to get into Grant Park for the Fest and numerous problems with accessing the Game at the Fest, attendees were not able to participate in the special events or obtain the Pokémon or rewards that were only offered at the Fest.

90. Defendant was negligent in making the representations because it should have known that the representations were false.

91. Defendant intended for the representations to induce the public, including Plaintiffs and Class members, to rely on the representations and incur travel and lodging expenses in order to attend the Fest.

92. Plaintiffs and Class members relied on Defendant's misrepresentations by incurring travel and lodging expenses to attend the Fest.

93. As a direct and proximate result of Defendant's negligent misrepresentations, Plaintiffs and Class members suffered damages, in the form of expenses for transportation and lodging accommodations to attend the Fest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs JONATHAN NORTON and KENNETH J. FLEISCHER, individually, and on behalf of the Class, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Class, and against Defendant, in a fair and reasonable sum for reimbursement of their travel and lodging expenses they incurred to travel to and attend the Fest;
- D. Awarding Plaintiffs and the Class actual damages, attorneys' fees and costs as allowed or required by law; and
- E. Granting all such further and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury on all counts so triable.

Plaintiffs JONATHAN NORTON and KENNETH J. FLEISCHER, individually, and on behalf of all others similarly situated,

By: _____

Thomas A. Zimmerman, Jr.

tom@attorneyzim.com

Sharon A. Harris

sharon@attorneyzim.com

Matthew C. De Re

matt@attorneyzim.com

Nickolas J. Hagman

nick@attorneyzim.com

Maebetty Kirby

maebetty@attorneyzim.com

ZIMMERMAN LAW OFFICES, P.C.

77 W. Washington Street, Suite 1220
Chicago, Illinois 60602
(312) 440-0020 telephone
(312) 440-4180 facsimile
www.attorneyzim.com
Firm ID No. 34418

Counsel for the Plaintiffs and Putative Class