

YES NO

EXHIBITS

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CASE NOTE

12-Person Jury

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Location: District 1 Court
Cook County, IL

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH06208

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

10723173

RYAN STRASSBURGER, individually,
and on behalf of all others similarly
situated,

Plaintiff,

v.

SIX FLAGS THEME PARKS INC., a
Texas corporation, SIX FLAGS
ENTERTAINMENT CORPORATION, a
Delaware corporation, and GREAT
AMERICA LLC, d/b/a SIX FLAGS
GREAT AMERICA, an Illinois limited
liability company,

Defendants.

No. 2020CH06208

CLASS ACTION

**CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF,
AND DEMAND FOR JURY TRIAL**

Plaintiff Ryan Strassburger, individually and on behalf of the Classes defined herein below, brings this Class Action Complaint against Defendants Six Flags Theme Parks Inc., Six Flags Entertainment Corporation, and Great America LLC (collectively, “Six Flags” or “Defendants”) for their violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*, the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/2, *et seq.*, and for breach of express warranties, negligent misrepresentation, fraud, unjust enrichment, money had and received, conversion, and breach of contract. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

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FACTS COMMON TO ALL CAUSES OF ACTION

1. Six Flags has made the unconscionable decision to keep charging its hundreds of thousands of membership and season pass holders monthly membership fees while closing 100 percent of its theme parks as the novel coronavirus, COVID-19, rages throughout the world and the United States economy has gone into a deep recession.

2. Six Flags is the “largest regional theme park operator in the world and the largest operator of waterparks in North America based on the number of parks ... operate[d]. Of [its] 26 regional theme parks and waterparks, 23 are located in the United States, two are located in Mexico and one is located in Montreal, Canada.”¹ Six Flags Great America – one of its largest theme parks in the United States – is located in Gurnee, Illinois. Another Six Flags theme park – Six Flags Hurricane Harbor Rockford – is located in Cherry Valley, Illinois.

3. To access Defendants’ parks, the vast majority of customers sign up for a monthly membership, paying a set fee every month along with an initiation fee. Monthly membership fees range between \$7.85 to \$42 per month depending on level purchased and any applicable incentives.

4. To sign up for Defendants’ memberships, customers provide Defendants with their credit card or debit card information. Defendants then automatically charge their customers’ credit or debit cards as payments are due on a monthly basis.

5. On March 13, 2020, Defendant announced that all of its parks would be closed through the end of March due to COVID-19.² On March 30, 2020, Defendant “announced that all

¹ <https://otp.tools.investis.com/clients/us/sixflags1/SEC/sec-show.aspx?Type=html&FilingId=13938752&CIK=0000701374&Index=10000>

² <https://www.foxla.com/news/six-flags-magic-mountain-latest-socal-theme-park-to-announce-temporary-closure-amid-coronavirus-concerns>.

the company's parks will remain closed until mid-May, or as soon as possible thereafter, reflecting federal and local restrictions in place to mitigate the spread of COVID-19."³

6. However, unlike other companies, Defendants continued charging their customers full price monthly payments fees even though every park they own was closed through at least mid-May, and the vast majority of parks remain closed to this day.

7. Defendants are able to unilaterally charge their customers monthly fees without their consent, as they are in possession of their customers' debit and credit card information. Thus, Defendants have made the deliberate decision to bilk their customers on a monthly basis as the country is effectively shut down.

8. The sole reason Defendants' customers pay monthly membership fees is to have *access* to Defendants' parks, which for some parks is advertised as being available every day of the year. Now, however, Defendants are charging their customers full price while denying customers all access to all parks nationwide, while simultaneously refusing to reimburse customers for payments already made while parks are closed.

9. Plaintiff seeks relief in this action individually, and on behalf of all of Defendants' customers nationwide that have paid or were charged fees while Defendants' parks were closed for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*, the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/2, *et seq.*, and for breach of express warranties, negligent misrepresentation, fraud, unjust enrichment, money had and received, conversion, and breach of contract.

10. Accordingly, this Complaint seeks an Order: (i) requiring Defendants to cease the unlawful activities discussed herein; and (ii) awarding damages to Plaintiff and the proposed

³ <https://investors.sixflags.com/news-and-events/press-releases/2020/03-30-2020-161511960> (last visited April 8, 2020).

Classes.

PARTIES

11. Plaintiff Ryan Strassburger is a natural person and citizen of Illinois, residing in Chicago. Mr Strassburger holds a monthly membership (the Gold Plus membership) with Defendants for access to their parks. Plaintiff has been a month-to-month member since at least 2019. On March 13, 2020, Defendants closed all of their parks nationwide, including the Six Flags Great America park that Plaintiff attended in Gurnee, Illinois. However, Defendants continued charging Plaintiff's card in the full amount of his month-to-month membership from March 2020 through at least July 2020, when Plaintiff did not have access to any of Defendants' parks. Further, Defendants have not refunded Plaintiff any part of his monthly fee for March 13 to date, when Defendants' parks were closed. Plaintiff signed up for Defendants' month-to-month membership with the belief and on the basis that he would have access to Defendants' parks every day of the typical season – and especially in the summer time. Plaintiff would not have paid for the membership, or would not have paid for it on the same terms, had he known that he would not have access to any of Defendants' parks.

12. Defendant Six Flags Theme Parks Inc. is a Texas corporation with its principal place of business located at 924 East Avenue J, Grand Prairie, TX 75050.

13. Defendant Six Flags Entertainment Corporation is a Delaware corporation in Grand Prairie, Texas. Defendant is the operator of 26 regional theme parks and waterparks, 23 of which are located in the United States. Two of those parks are located in Illinois.

14. Defendant Great America LLC is an Illinois limited liability corporation with its principal place of business located at 542 N Route 21 Gurnee, Illinois 60031, and is the local operator of Six Flags Great America, the primary park that Plaintiff Strassburger attended.

JURISDICTION AND VENUE

15. The Court has personal jurisdiction over Defendants pursuant to 735 ILCS 5/2-209(b)(4) because Defendants business within this state.

16. Venue is proper in Cook County because Defendants conduct business transactions in Cook County and the causes of action arose, in part, in Cook County.

CLASS ALLEGATIONS

17. **Class Definitions:** Plaintiff brings this action pursuant to 735 ILCS 5/2-801, *et seq.*, on behalf of himself and a Class consisting of all persons in the United States who were charged fees for memberships while Defendants' parks were closed. Plaintiff also seeks to represent a subclass defined as all members of the Class who were charged fees for memberships while Defendants' parks were closed in Illinois (the "Illinois Subclass"). Excluded from the Class are: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

18. **Numerosity:** The exact size of the Classes is unknown and not available to Plaintiff at this time, but it is clear that individual joinder is impracticable. On information and belief, there are at least hundreds of thousands of individuals in the Classes, making joinder of each individual member impracticable. Ultimately, members of the Classes will be easily identified through Defendants' records.

19. **Commonality and Predominance:** Common questions of law and fact exist as to

all members of the Classes and predominate over any questions affecting only individual members, including, but not limited to whether Defendants have breached their contracts with their customers and whether charging membership fees while Defendants' parks are closed is fraudulent and unlawful.

20. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Classes, and has retained counsel competent and experienced in complex class actions. Plaintiff has no interest antagonistic to those of the Classes, and Defendants have no defenses unique to Plaintiff.

21. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Classes is impracticable. The damages suffered by the individual members of the Classes are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' wrongful conduct. Thus, it would be virtually impossible for the individual members of the Classes to obtain effective relief from Defendants' misconduct. Even if members of the Classes could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

FIRST CAUSE OF ACTION
Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act
815 ILCS 505/1, *et seq.*
(On behalf of Plaintiff and all Classes)

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

23. Plaintiff brings this cause of action against Defendants on behalf of himself and the Class and Illinois Subclass. Alternatively, Plaintiff brings this action on behalf of himself and the Illinois Subclass.

24. Plaintiff asserts that Defendants violated Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* (“ICFA”), which prohibits the use of “unfair and deceptive practices” in the conduct of trade or commerce. The ICFA is to be liberally construed to effectuate that purpose.

25. Plaintiff and the Class and Illinois Subclass members are consumers as defined in 815 ILCS 505/1(c) and (e).

26. Defendants intended that Plaintiffs and the Class members would rely upon their deceptive conduct, including selling memberships under the guise that such memberships would entitle Class members to access to Defendants’ parks, and a reasonable person would in fact be misled by this deceptive conduct.

27. Defendants’ misconduct, including the misrepresentations and the omission of material facts, took place in the course of trade or commerce in Illinois, arose out of transactions that occurred in Illinois, and/or harmed individuals located in Illinois.

28. Defendants’ activities and actions, in particular with respect to theme parks located within Illinois, emanated from the State of Illinois.

29. By undertaking the conduct at issue herein, the Defendants have engaged in unfair or deceptive acts prohibited by the ICFA.

30. If not for Defendants' deceptive and unfair acts, including Defendants' false and misleading advertising of the memberships as purportedly giving customers access to Defendants' parks, as alleged herein, Plaintiffs and the Class members would not have purchased the memberships or would have paid significantly less for them.

31. Defendants, at all relevant times, knew or should have known that Plaintiff and the Class members did not know and could not have reasonably discovered their deceptive and unfair acts prior to their purchases of the memberships.

32. As a direct and proximate result of Defendants' violations of the ICFA, Plaintiffs and the Class members sustained damages in an amount to be proven at trial.

33. In addition, Defendants' conduct showed malice, motive, and the reckless disregard of the truth such that on account of Defendants' conduct, Plaintiff and the Class members seek statutory and actual damages, punitive damages, injunctive relief, attorneys' fees and costs, and all other relief allowed under the ICFA.

SECOND CAUSE OF ACTION
Violation of the Illinois Uniform Deceptive Trade Practices Act
815 ILCS § 510/2, et seq.
(On behalf of Plaintiff and all Classes)

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

35. Plaintiff brings this cause of action against Defendants on behalf of himself and the Class and Illinois Subclass. Alternatively, Plaintiff brings this action on behalf of himself and the Illinois Subclass.

36. Defendants are "persons" as defined by 815 ILCS §§ 510/1(5).

37. Defendants engaged in deceptive trade practices in the conduct of their business, in violation of 815 ILCS §§ 510/2(a), including knowingly advertising and selling memberships knowing that customers would not have access to Defendants' parks, that Defendants are unable

to keep or enforce promises to customers of giving access to their parks, and did not have adequate protocols, oversight, or control in place to ensure that those promises are kept to consumers.

38. Defendants representations and omissions were material because they were likely to deceive reasonable consumers.

39. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous. The acts caused substantial injury to Plaintiff and Class members that they could not reasonably avoid; this substantial injury outweighed any benefits to consumers or to competition.

40. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff and Class members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the memberships.

41. Plaintiff is entitled to such injunctive relief to ensure that Defendant stops charging its customers fees while its parks are closed.

42. Plaintiff and Class members seek all relief allowed by law, including injunctive relief, damages, and reasonable attorney's fees.

**THIRD CAUSE OF ACTION
Breach of Express Warranty
(On behalf of Plaintiff and all Classes)**

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

44. Plaintiff brings this cause of action against Defendants on behalf of himself and the Class and Illinois Subclass. Alternatively, Plaintiff brings this action on behalf of himself and the Illinois Subclass.

45. In connection with the sale of park memberships, Defendants issue an express

warranty that Defendants' parks are accessible every day of the year, excluding select holidays, or, at select parks, during every day of the relevant season.

46. Defendants' affirmation of fact and promise in Defendants' marketing and signage became part of the basis of the bargain between Defendants and Plaintiff and Class members, thereby creating express warranties that the services would conform to Defendants' affirmation of fact, representations, promise, and description.

47. Defendants breached their express warranty because Defendants' parks are not accessible every day of the year, and not available through the relevant seasons. In fact, Defendants charged customers the full amount of the monthly fees while 100 percent of their parks were closed, and while the vast majority remain closed to this day.

48. Plaintiff and the Class members were injured as a direct and proximate result of Defendants' breach because: (a) they would not have purchased or paid for Defendants' park memberships absent Defendants' representations and omission of a warning that it would continue charging customers' credit cards and debit cards while all parks nationwide were closed; (b) they would not have purchased park memberships on the same terms absent Defendants' representations and omissions; (c) they paid a price premium for Defendants' park membership based on Defendants' misrepresentations and omissions; and (d) Defendants' park memberships did not have the characteristics, benefits, or quantities as promised.

FOURTH CAUSE OF ACTION
Negligent Misrepresentation
(On behalf of Plaintiff and all Classes)

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

50. Plaintiff brings this cause of action against Defendants on behalf of himself and the Class and Illinois Subclass. Alternatively, Plaintiff brings this action on behalf of himself and the Illinois Subclass.

51. As discussed above, Defendants misrepresented that Defendants' parks are accessible every day of the year, excluding select holidays, or, at select parks, during every day of the relevant season. However, Defendants in fact charged full price for monthly memberships even when 100 percent of their parks were closed to the public.

52. At the time Defendants made these representations, Defendants knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

53. At an absolute minimum, Defendants negligently misrepresented and/or negligently omitted material facts about their park memberships and services.

54. The negligent misrepresentations and omissions made by Defendants, upon which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class members to purchase Defendants' park memberships.

55. Plaintiff and Class members would not have purchased Defendants' park memberships, or would not have purchased the services on the same terms, if the true facts had been known.

56. The negligent actions of Defendants caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

FIFTH CAUSE OF ACTION
Fraud
(On behalf of Plaintiff and all Classes)

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

58. Plaintiff brings this cause of action against Defendants on behalf of himself and the Class and Illinois Subclass. Alternatively, Plaintiff brings this action on behalf of himself and the Illinois Subclass.

59. As discussed above, Defendants misrepresented that Defendants' parks are

accessible every day of the year, excluding select holidays, or, at select parks, during every day of the relevant season. However, Defendants in fact charged full price for monthly memberships even when 100 percent of their parks were closed to the public.

60. The misrepresentations and omissions made by Defendants, upon which Plaintiff and Class members reasonably and justifiably relied, were intended and actually induced Plaintiff and Class members to purchase Defendants' park memberships.

61. The fraudulent actions of Defendants caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

SIXTH CAUSE OF ACTION
Unjust Enrichment
(On behalf of Plaintiff and all Classes)

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

63. Plaintiff brings this cause of action against Defendants on behalf of himself and the Class and Illinois Subclass. Alternatively, Plaintiff brings this action on behalf of himself and the Illinois Subclass.

64. Plaintiff and members of the Class conferred benefits on Defendants by paying, and being charged, membership fees while 100 percent of Defendants' parks were closed.

65. Defendants have knowledge of such benefits.

66. Defendants have been unjustly enriched in retaining the revenues derived from Plaintiff and Class members' membership fees. Retention of those moneys under these circumstances is unjust and inequitable because Defendants are charging their customers full price while their parks remain closed. These misrepresentations and charges caused injuries to Plaintiff and members of the Class because they would not have paid Defendants' membership fees had the true facts been known.

67. Because Defendants' retention of the non-gratuitous benefits conferred on them

by Plaintiff and members of the Class is unjust and inequitable, Defendants must pay restitution to Plaintiff and members of the Class for their unjust enrichment, as ordered by the Court.

**SEVENTH CAUSE OF ACTION
Money Had And Received
(On behalf of Plaintiff and all Classes)**

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

69. Plaintiff brings this cause of action against Defendants on behalf of himself and the Class and Illinois Subclass. Alternatively, Plaintiff brings this action on behalf of himself and the Illinois Subclass.

70. Defendants received money in the form of membership fees that were intended to be used for the benefit of Plaintiff and the Class, those membership fees were not used for the benefit of Plaintiff and the Class, and Defendants have not given back or refunded the wrongfully obtained money and membership fees to Plaintiff and the Class.

71. Defendants obtained roughly money in the form of membership fees that were intended to be used to provide park access to Plaintiff and the Class. However, Defendants have retained all of the membership fees while 100 percent of their parks were and remain closed.

**EIGHTH CAUSE OF ACTION
Conversion
(On behalf of Plaintiff and all Classes)**

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

73. Plaintiff brings this cause of action against Defendants on behalf of himself and the Class and Illinois Subclass. Alternatively, Plaintiff brings this action on behalf of himself and the Illinois Subclass.

74. Plaintiff and members of the Class had a right to retain their membership fees while all of Defendants' parks were and remain closed; Defendants intentionally charged Plaintiff's and Class members' debit and credit cards in the full amount of the monthly

membership fees while Defendants' parks were closed; Plaintiff and Class members did not consent to Defendants charging of their debit and credit cards while Defendants' parks are closed; Plaintiff and Class members were harmed through Defendants' charging of their debit and credit cards; Defendants' conduct was a substantial factor in causing Plaintiff's and Class members' harm.

NINTH CAUSE OF ACTION
Breach Of Contract
(On behalf of Plaintiff and all Classes)

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

76. Plaintiff brings this cause of action against Defendants on behalf of himself and the Class and Illinois Subclass. Alternatively, Plaintiff brings this action on behalf of himself and the Illinois Subclass.

77. Defendants entered into contracts with Plaintiff and Class members to provide access to park facilities in exchange for the payment of membership fees. Defendants have breached these contracts by continuing to charge Plaintiff's and Class members' debit and credit cards while 100 percent of the parks were closed. Plaintiff and Class members have suffered an injury through the payment of membership fees while not having access to Defendants' parks.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself individually and the respective Classes, respectfully requests that this Court issue an order:

A. Certifying this case as a class action on behalf of the Classes defined above, appointing Plaintiff as representative of the Classes, and appointing his counsel as class counsel;

B. Declaring that Defendants' actions, as described herein, constitute violations of the laws and statutes cited herein;

C. Awarding injunctive and other equitable relief as is necessary to protect the

interests of Plaintiff and the Classes, including, among other things;

D. Awarding Plaintiff and the Classes their reasonable litigation expenses and attorneys' fees;

E. Awarding Plaintiff and the Classes pre- and post-judgment interest, to the extent allowable; and,

F. Awarding such other and further relief as equity and justice may require.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can so be tried.

Respectfully Submitted,

RYAN STRASSBURGER, individually,
and on behalf of all others similarly situated,

Dated: October 8, 2020

By: s/ Michael Aschenbrener
One of Plaintiff's Attorneys

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