

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**JAMIE HEINDL, *individually and on
behalf of those similarly situated,***

Plaintiff,

vs.

**DISNEY DESTINATIONS, LLC
a Florida Limited Liability Company,**

Defendant.

CASE NO.

Jury Trial Demanded

CLASS ACTION

CLASS COMPLAINT

Plaintiff Jamie Heindl (“Ms. Heindl”), by and through the undersigned counsel and on her own behalf and on behalf of those similarly situated (“the Class”), hereby files the following Class Complaint against Defendant, Disney Destinations, LLC (“Defendant”), pursuant to Fed. R. Civ. P. 15(a)(1)(B), and alleges as follows:

1. This is an action for damages for breach of contract and violations of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.* (“EFTA”), and other causes of action, arising from unfairly charging unearned amounts after annual passes to the Defendant’s theme parks had already expired.

PARTIES

2. Ms. Heindl is an individual residing in Flagler County, Florida.
3. Defendant is a Florida Corporation with its principal place of business in Florida.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action under 15 U.S.C. § 1693m(g) (“EFTA”) and 28 U.S.C. § 1331 (federal question). The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. In addition, the Parties have signed agreements agreeing to jurisdiction in Orange County, Florida Circuit Court or in “such other court sitting in said county and having subject matter jurisdiction.” Because Plaintiff asserts claims arising out of a federal question, this Court has jurisdiction.

5. This Court also has jurisdiction over the action under 28 U.S.C. § 1332. The aggregated claims of the individual members of the proposed Class exceed the sum or value of \$5,000,000, exclusive of costs and interest, and this is a Class action in which some of the members of the Class are citizens of a state different than the Defendant.

6. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. § 1391(b) because the Defendant resides in this district.

FACTS RELEVANT TO ALL CLASS REPRESENTATIVES

7. Defendant operates theme parks around the world, including in Florida. Defendant offers consumers who wish to purchase annual passes to any of its parks an option to pay for the passes by providing a credit card, debit card, or bank account information. If a passholder elects to pay for all or part of his or her annual pass in monthly installments, Defendant automatically debits each installment from the consumer’s credit card, debit card, or bank account on a monthly basis.

8. The annual passholders give specific authorization to Defendant regarding these monthly automatic charges. That authorization specifies an amount that can be taken. No additional authority exists to take amounts in excess of the amount specified or outside of the dates specified in the agreement between Defendant and annual passholders.

9. In April 2020, Defendant closed its parks due to the COVID-19 pandemic.

10. Due to closing its parks, Defendant suspended the monthly auto-payments until the parks could reopen.

11. Upon determining that parks would reopen in July 2020, Defendant began the process of starting the auto-payments described above. However, in approximately the first few days of July annual passholders were shockingly and suddenly charged for several months' worth of payments all at once.

12. The amounts charged to annual passholders far exceeded any authority given to Defendant to take an auto-payment. This caused harm to annual passholders who were wrongly deprived of their assets and was a direct breach of the contract between Defendant and annual passholders.

13. Defendant's unauthorized debits included annual passholders whose annual passes had already expired. In other words, no amounts were due from those annual passholders at all because the payment plan those passholders had agreed to had ended.

FACTS RELEVANT TO MS. HEINDL

14. Ms. Heindl first purchased an annual pass to Defendant's theme parks in or around April 2018. The passes do not automatically renew. If a passholder wants to renew the pass for another year using the monthly installment payments, the passholder must renew the agreement and agree to additional installment payments.

15. On April 23, 2019, Ms. Heindl renewed the annual pass, made an additional down payment towards those passes, and agreed to additional monthly payments toward the cost of those passes.

16. Ms. Heindel did not thereafter renew the annual passes and therefore did not agree to any further payments towards such passes.

17. The annual passes expired on April 22, 2020 after Ms. Heindel had already made the required payments on those annual payments.

18. Despite Ms. Heindel's annual passes having expired months earlier, on or around July 3, 2020, Defendant withdrew unauthorized amounts from Ms. Heindel's bank account via her debit card. Defendant withdrew \$225.78 from Ms. Heindel's account without authorization. That amount is the same amount as Ms. Heindel's typical monthly payment for her annual passes. However, because the passes had expired and Ms. Heindel had paid all amounts due, no amounts were owed to Defendant.

19. Ms. Heindel called Defendant's customer service department and spoke to an employee (or "cast member") who informed Ms. Heindel that the withdrawal was an accounting error and that Defendant would be reimbursed. Ms. Heindel informed the cast member that she had not renewed her passes and did not intend to do so until the COVID-19 situation resolved enough to make attending a theme park safe again. The cast member assured her that the annual passes were already expired and had not been renewed. Ms. Heindel was reimbursed for the charge a few days later.

20. However, approximately ten days later, on or about July 13, 2020, Defendant once again charged Ms. Heindel's debit card \$225.78 without authorization. The automatic debit was drawn on a checking account via debit card, not a credit card.

21. Ms. Heindel again called Defendant's customer service line, but after an hour of waiting on hold, she gave up and instead used the online chat feature on Defendant's website.

22. She was connected to another “cast member” who informed Ms. Heindl that Defendant was aware of the new, unauthorized charges. Shockingly, the cast member also informed Ms. Heindl that Defendant would likely make another unauthorized withdrawal from Ms. Heindl’s account in August 2020.

23. Defendant’s representative informed Ms. Heindl that Defendant would then reimburse the August unauthorized charges in either late September or early October 2020.

24. Ms. Heindl reiterated that this was unacceptable, especially because she did not even have annual passes any longer.

25. On July 16, 2020, Ms. Heindl contacted her bank and attempted to block any future charges from Defendant. However, it is not guaranteed that the bank will be able to proactively block such charges. For instance, if Defendant charges an amount that is different by even \$0.01 from the prior charge, it will likely not be blocked.

26. On July 27, 2020, Ms. Heindl again contacted Defendant and another customer service representative again confirmed that Defendant would not return the unauthorized charges to Ms. Heindl until September or October, months after the charges were debited from her bank account. On July 28, 2020, in another online chat session with Defendant’s customer service representative, the representative confirmed that the July 13, 2020 payment improperly taken by Defendant “should never have been taken out because your pass expired.”

27. This sudden, unexpected, and unauthorized reduction in Ms. Heindl’s funds has caused stress and aggravation. Ms. Heindl had not planned on this large expense. Ms. Heindl has also had to waste time and energy because of Defendant’s unauthorized charges. She has repeatedly spent hours on hold waiting to speak to Defendant’s customer service representatives. She has also had numerous online chat conversations with Defendant’s customer service representatives.

Moreover, Ms. Heindl has had to spend hours dealing with her bank, including writing a letter detailing the unauthorized charges in an effort to dispute those charges and block future charges. In addition, Ms. Heindl had to transfer money from her savings account in order to pay other bills due to Defendant's unauthorized withdrawal. She has also had to retain the undersigned attorneys in an effort to resolve this matter by litigation due to Defendant being unwilling to return the money it improperly took from Ms. Heindl.

CLASS ALLEGATIONS

28. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Fed. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rule 23.

29. Plaintiff proposes two classes (the "Classes") defined as follows:

FIRST BREACH CLASS ("OVERBILLING CLASS")

- a. All natural persons in the United States;
- b. who purchased an annual pass to one of Defendant's Florida theme parks;
- c. who funded the annual pass through Defendant's automatic debit system; and
- d. who were charged any additional amounts beyond what was authorized by contract;
- e. after the expiration of the annual pass;
- f. within the applicable statute of limitations in their respective states.

ELECTRONIC FUNDS TRANSFER CLASS ("EFTA CLASS")

- a. All natural persons in the United States;
- b. who purchased an annual pass to one of Defendant's theme parks, and who funded the annual pass through Defendant's automatic debit system using a debit card or by providing bank account information; and
- c. who were charged through an electronic fund transfer to their debit or bank account any additional amounts beyond what was authorized.

30. The members of the Classes are so numerous that joinder is impractical. The Classes consist of thousands of members, the identity of whom is within the knowledge of and can be ascertained only by resort to Defendant's records.

31. The claims of the representative Plaintiff are typical of the claims of all class members in all three classes in that everyone purchased an annual pass with Defendant and were to be charged an agreed amount monthly in exchange for specific access and services. Plaintiff, like all Class members, all experienced the same issues regarding overbilling. For the EFTA Class, the Plaintiff, like all Class members, had the overbilling occur to their debit or bank account beyond the amount authorized and/or outside the authorized dates, per the contract terms, and the Defendant did not possess the contractual right to charge any additional amounts beyond what was authorized or outside the authorized dates. The representative Plaintiff, like all Class members, have been damaged by Defendant's misconduct in that Defendant charged additional payments when the Defendant did not have the contractual right to do so. Even if funds were later refunded, Plaintiff, like all Class members, were deprived of their funds and wrongfully exposed to financial hardship and anguish, including the inability to pay bills and the stress such financial hardships cause.

32. The Class action poses questions of law and fact that are common to and affect the rights of all members of the Classes. Such questions of law and fact common to the Classes and include, but are not limited to, the following:

- a. Whether or not Defendant breached the contract with the Class members by charging an amount that Defendant had no contractual right nor authorization to do so under the form contract;
- b. If Defendant breached the contracts, what is the proper measure to be applied in determining damages;

- c. Whether Defendant obtained valid authorization from all EFTA Class members to electronically withdraw the funds from the Class's members' debit or bank accounts;
- d. Whether the periodic electronic withdrawals from EFTA Class Members' accounts initiated by Defendant are "preauthorized electronic fund transfers" within the meaning of the EFTA, 15 U.S.C. § 1693a(9) and § 1693e.;
- e. Whether Defendant complied with the requirements of the EFTA in connection with the debits and/or EFTs initiated from EFTA Class Members' accounts;
- f. Whether Defendant has violated the EFTA with respect to representative Plaintiff, and the EFTA Class Members.

33. Based on the facts and circumstances set forth herein, Plaintiff's claims are typical of the claims of the members of the Classes, in that they arise out of the same uniform contract. Plaintiff's claims and the claims of all Class members arise out of Defendant's common course of conduct and Plaintiff's claims and the claims of all Class members are based upon the same legal theories.

34. Plaintiff will fairly and adequately protect and represent the interests of each member of the Classes. Plaintiff understands the issues in this case and are committed to vigorously pursuing this claim on behalf of the Classes. Plaintiff has suffered the damages alleged and has no interests antagonistic to the interests of any other Class member. Further, neither Plaintiff nor counsel have any interests that might cause them not to vigorously pursue this action.

35. Plaintiff is committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions and, in particular, class actions

on behalf of consumers. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Classes.

36. A Class action is superior to other available methods for the fair and efficient adjudication of the controversy. Prosecuting separate actions by individual members of the Classes would create the risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendant.

37. Further, prosecuting separate actions by individual members of the Classes would create the risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications. Further, individualized litigation would significantly increase the delay and expense to all parties and to the Court. A Class action presents far fewer management difficulties, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

38. Questions of law or fact common to the Classes predominate over any questions affecting only individual members as the claims are amenable to common proof based on the Defendant's uniform standardized contract. Since the reasonable expectations of a party to a standardized form contract are judged objectively, the entire Class will win or lose on their claims based upon the same evidence and legal standards.

FIRST CLAIM FOR RELIEF - BREACH OF CONTRACT
(OVERBILLING CLASS)

39. Plaintiff and the Class members incorporate by reference paragraphs 1 through 38 of this Class Complaint as though stated fully herein.

40. Plaintiff and the Class members entered into contracts with the Defendant for an annual pass.

41. Defendant charged Plaintiff and the Class members amounts Defendant had no contractual right nor authorization to charge. By charging Plaintiff and the Class members beyond what was authorized, Defendant breached its contract.

42. Plaintiff and the Class members have performed all, or substantially all, of the obligations imposed on them under the contract with Defendant.

43. Plaintiff and the Class members have sustained damages as a result of Defendant's breach of contract. Even if the overbilled funds were later refunded, Plaintiff and class members were deprived of their funds and suffered economic hardship and mental anguish.

WHEREFORE, Plaintiff and the Class request that the Court enter Judgment in their favor for: (1) Certification of this matter to proceed as a class action; (2) actual damages in an amount according to proof; and (3) for such other and further relief as the Court deems just and proper.

SECOND CLAIM FOR RELIEF – UNJUST ENRICHMENT

44. Plaintiff and the Class members incorporate by reference paragraphs 1 through 38 of this Class Complaint as though stated fully herein.

45. Plaintiff and the Class conferred a benefit on Defendant, specifically the money that Defendant improperly withdrew from their bank accounts and debit cards.

46. Defendant had knowledge of those transactions and accepted and retained the monetary benefit conferred under circumstances that are inequitable and unjust in light of the retention of the benefit without repayment to the Plaintiff and the Classes of any amounts due or incidental amounts, such as overdraft fees incurred due to improper the withdrawals.

47. As a result, Plaintiff and members of the Classes have suffered monetary damages.

WHEREFORE, Plaintiff and the Class request that the Court enter Judgment in their favor for: (1) Certification of this matter to proceed as a class action; (2) actual damages in an amount

according to proof; (3) punitive damages; and (4) for such other and further relief as the Court deems just and proper.

THIRD CLAIM FOR RELIEF - VIOLATION OF THE EFTA

48. Plaintiff and the EFTA Subclass, incorporate by reference paragraphs 1 through 38 of this Class Complaint as though fully stated herein.

49. Plaintiff and each EFTA Class member maintained an “account” as that term is defined by 15 U.S.C. § 1693(a)(2). Plaintiff and all EFTA Class members, are “consumers” within the meaning of 15 U.S.C. § 1693(a)(5). At all times material hereto, Defendant was a “person” subject to liability under § 1693m of the EFTA.

51. Plaintiff and all EFTA Class members entered into the Defendant’s uniform contract for an annual pass with the agreement that Defendant would automatically withdraw funds from their debit card or bank account only as agreed and authorized. The foregoing qualifies as a preauthorized electronic fund transfer (“EFT”) under the EFTA as the EFT was authorized in advance to recur at substantially regular intervals.

52. Defendant has violated 15 U.S.C. § 1693e(a), in that Defendant failed to obtain the required authorization from the Plaintiff and the EFTA Class members, in writing, of the EFT(s) assessed by Defendant beyond the amounts authorized in the contract. As described in Defendant’s contract, Defendant did not have authority to charge the accounts of Plaintiff and the EFTA Class Members beyond agreed amounts or outside the authorized time frame.

53. Defendant transferred funds from Plaintiff’s and the EFTA Class members’ accounts as set forth above without actual authority to initiate those transfers, and for which Plaintiff and the EFTA Class members received no benefit.

WHEREFORE, Plaintiff and the EFTA Class request that the Court enter judgment in their favor for: (1) Certification of this matter to proceed as a class action; (2) actual damages, statutory damages, reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 1693m(a)(1), 1693m(a)(2)(A), 1693m(a)(B), and 1693m(a)3; and (3) For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff and the Classes demand a trial by jury for all issues so triable.

Dated: August 3, 2020

Respectfully Submitted,

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