

09 CV 5951

JUDGE BAIRD

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SOUTHERN DISTRICT OF NEW YORK

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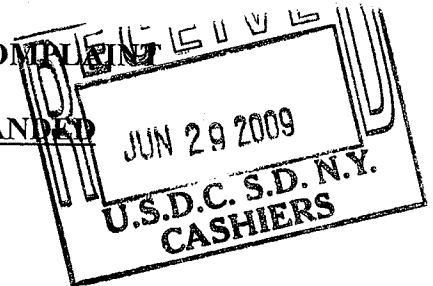
Stephen W. Perkins, *and all others similarly situated*,
Plaintiffs,
v.
Verified Identity Pass, Inc., and Doe
Defendants 1-25.
Defendants.

) Case No.:

) U.S. DISTRICT COURT
) S.D.N.Y.

) CLASS ACTION COMPLAINT

) JURY TRIAL DEMANDED



Plaintiff alleges the following on behalf of himself and a class of similarly situated persons based upon information and belief and an investigation by his counsel.

I. NATURE OF THE ACTION

1. This consumer class action involves an airport check-in membership program called CLEAR, which at all times material hereto has been offered and operated by Defendant Verified Identity Pass, Inc. (“VIP”). Shortly before CLEAR ceased operations on June 22, 2009, VIP was selling to consumers extended memberships in its CLEAR program, which featured special security lanes in airports that allowed its members to bypass long lines at check-in and proceed directly to airport screening.

2. Although VIP was selling and renewing extended CLEAR memberships as recently as a few weeks ago, when VIP notified Plaintiff and its other CLEAR customers on June 22, 2009 that VIP was ceasing operations, VIP advised Plaintiff and its other customers (“the Class”), in an electronic mail, that “[a]t the present time, Verified Identity Pass, Inc. cannot issue refunds [to CLEAR members] due to the company’s financial condition.”

3. VIP with its cut-and-run gambit wrongfully converted monies of Plaintiff and the Class, defrauded Plaintiff and the Class, breached contracts with Plaintiff and the Class, acted

negligently with respect to Plaintiff and the Class and was unjustly enriched at the expense of Plaintiff and the Class.

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because Plaintiff and Defendant VIP are of diverse citizenship and the matter in controversy exceeds seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs, and pursuant to 28 U.S.C. § 1332(d)(2). The aggregate amount in controversy here exceeds five million dollars (\$5,000,000.00) exclusive of interest and costs.

5. Venue is proper here pursuant to 28 U.S.C. § 1391 because a substantial part of the events and/or omissions giving rise to Plaintiff's claims occurred in this District and defendant VIP has its corporate headquarters in this District.

6. This Court has personal jurisdiction over the VIP because VIP resides here, VIP's corporate headquarters is located in this District and at all times material hereto VIP has conducted extensive and systematic business operations in this District.

III. PARTIES

7. Plaintiff Stephen W. Perkins is a resident of Indianapolis, Indiana. Plaintiff recently purchased an extended CLEAR membership from Defendant.

8. Defendant VIP is a Delaware corporation headquartered in New York, New York. New York law applies to VIP's conduct, and, upon information and belief, the State of New York has a substantial, significant and continuing interest in applying its laws to VIP's business conduct.

9. Doe Defendants 1-25 are individuals, business organizations and affiliates and/or subsidiaries of VIP that funded and otherwise aided and implemented VIP's wrongful operations; their identities will be uncovered during discovery.

IV. FACTUAL BACKGROUND

10. VIP until recently provided biometric system solutions for airports, airlines, travel agents, and business travelers in the United States. VIP offered a registered traveler program called CLEAR that enabled airports to provide enhanced customer service to their passengers while addressing security concerns and allowing for resource allocation at checkpoints. With nearly 700 million passengers traveling domestically in 2006, VIP touted the CLEAR program as a way to help avoid bottlenecks and, in some instances, reduce the wait time in security lines to as little as five minutes. CLEAR's "fast-lane" program began at Orlando International Airport in 2005 and was expanded to at least 18 airports including New York's John F. Kennedy, Washington, D.C.'s Dulles and Reagan National, Denver, Atlanta, San Jose, and San Francisco airports.

11. During the CLEAR program's existence, in exchange for paying VIP substantial annual membership fees of at least \$199 and completing extensive prescreening procedures in accordance with Transportation Security Administration guidelines (including the provision of Social Security numbers, fingerprints, and, in some cases, iris scans), CLEAR members were provided with a card that allowed them to access designated airport security fast lanes. USA Today reported that the CLEAR program had about 250,000 members.

12. On June 22, 2009, the CLEAR program ceased operations. On that day, the CLEAR airport kiosks were unstaffed with a paper note stating that CLEAR had "ceased operations" and that passengers should "please utilize regular security checkpoint lanes." The content of the VIP Web site was removed, and replaced with a statement that the company was ceasing operations, effective immediately.

13. An electronic mail from the CLEAR program to Plaintiff and the Class on June 22, 2009 stated that the CLEAR program was ceasing operations because CLEAR's "parent

company,” *i.e.*, VIP – which, upon information and belief, was the corporate alter ego for any and all of its subsidiaries and/or corporate affiliates that were involved in the CLEAR program – was unable to negotiate an agreement with its senior creditor to continue operations.

14. The June 22nd electronic mail to Plaintiff and the Class also stated that “[a]t the present time, Verified Identity Pass, Inc. cannot issue refunds due to the company’s financial condition.” This despite that in the weeks leading up to June 22, 2009, VIP was both selling and renewing extended CLEAR program memberships to Plaintiff and the Class and charging Plaintiff and the Class hundreds of dollars in fees for those memberships – monies that VIP now refuses to return to Plaintiff and the Class

V. CLASS ALLEGATIONS

15. Plaintiff brings this action on behalf of a class defined as:

All persons in the United States who purchased CLEAR program memberships from VIP and who were enrolled as CLEAR program members as of June 22, 2009.

16. Class certification is appropriate under Fed.R.Civ.P. 23(a) and (b)(1), (b)(2), and/or (b)(3).

17. The class satisfies the numerosity requirement because it is composed of thousands of persons in numerous locations. The number of class members is so large that joinder of all its members is impracticable.

18. Common questions of law and fact include:

- A. Whether VIP wrongfully converted monies or property of Plaintiff and the Class;
- B. Whether VIP acted negligently with respect to Plaintiff and the Class;
- C. Whether VIP breached contracts into which it entered with Plaintiff and the Class;

- D. Whether VIP defrauded Plaintiff and members of the Class;
- E. Whether VIP was unjustly enriched at the expense of Plaintiff and members of the Class;
- D. Whether Plaintiff and the Class suffered damages a result of VIP's

wrongful conduct.

19. Plaintiff's claims are typical of the claims of the Class. Plaintiff has no interests that are antagonistic to the claims of the Class. Plaintiff understands that this matter cannot be settled without the Court's approval.

20. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is committed to the vigorous representation of the Class. Plaintiff's counsel are experienced in consumer class action litigation. Counsel have agreed to advance the costs of the litigation contingent upon the outcome. Counsel are aware that no fee can be awarded without the Court's approval.

21. A class action is the superior method for the fair and efficient adjudication of this controversy. Joinder of all members of the class is impracticable. The losses suffered by some of the individual members of the Class may be relatively small, and it would therefore be impracticable for individual members to bear the expense and burden of individual litigation to enforce their rights. Individual proceedings here would pose the risk of inconsistent adjudications. Plaintiff is unaware of any difficulty in the management of this action as a class action.

22. This Class may be certified under Rule 23(b).

A. 23(b)(1). Prosecution of separate actions by individual members of the Class would create the risk of (A) inconsistent or varying adjudications with respect to

individual members of the Class that would establish incompatible standards of conduct for VIP with respect to the Class, or (B) adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.

B. 23(b)(2). This action is suitable as a class action under 23(b)(2) because VIP has acted or refused to act on grounds generally applicable to the Class as a whole, thereby making appropriate final declaratory or other appropriate equitable relief with respect to the Class.

C. 23(b)(3). This action is suitable to proceed as a class action under 23(b)(3) because questions of law and fact common to the members of the Class predominate over individual questions, and this class action is superior to other available methods for the fair and efficient adjudication of this controversy. Given the nature of the allegations, no class member has an interest in individually controlling the prosecution of this matter, and Plaintiff is aware of no difficulties likely to be encountered in the management of this matter as a class action.

VI. CLAIMS FOR RELIEF

COUNT I

Conversion

23. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

24. VIP in its operation of the CLEAR program intentionally and without authority for doing so assumed and/or exercised control over personal property of Plaintiff and the Class.

25. Plaintiff and the Class had a possessory right and/or interest in their personal property, which was taken by VIP.

26. VIP nonetheless interfered with the property of Plaintiff and the Class and exercised dominion over it wrongfully and in derogation of the rights of Plaintiff and the Class.

27. VIP's conversion of the property of Plaintiff and the Class caused damage to Plaintiff and the Class.

COUNT II

Fraud

28. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

29. This claim is brought by Plaintiff and the Class against all Defendants based upon common law principles of fraud.

30. Defendants owed to Plaintiff and the Class a duty of full disclosure, honesty, and complete candor.

31. VIP made material misrepresentations to Plaintiff and the Class that were false. Specifically, VIP represented to Plaintiff when he purchased his extended CLEAR membership in 2009 that in exchange for paying a membership fee, VIP would provide services to Plaintiff including but not limited to ensuring expedited airport check-in privileges at airports participating in VIP's CLEAR program.

32. VIP made those representations to Plaintiff and the Class knowing based on the aforementioned facts that those representations were false. VIP made these representations with the intent to deceive Plaintiff and the Class.

33. Plaintiff and the Class justifiably relied upon the aforementioned representations when they purchased their CLEAR memberships from VIP.

34. Plaintiff and the Class were injured and damaged as a result of VIP's fraudulent representations.

COUNT III

Breach of Contract

35. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

36. Plaintiff and the Class entered into valid contracts with VIP concerning VIP's CLEAR membership program. Under these contracts, Plaintiff and the Class became members of the CLEAR program; VIP, in return, was obligated to give Plaintiff and the Class the benefits and privileges of CLEAR membership established in these contracts.

37. Plaintiff and the Class performed their obligations under these contracts with VIP by, among other things, paying VIP membership fees to become members of the CLEAR program.

38. VIP has failed to perform its duties to Plaintiff and the Class under these contracts. VIP has breached its contracts with Plaintiff and the Class.

39. VIP's breach of these contracts has caused damage to Plaintiff and the Class.

COUNT IV

Negligence

40. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein with the exception that previously stated assertions of intentional or reckless misconduct of defendants and all references to fraud are not incorporated herein for purposes of this claim. For purposes of this claim, Plaintiff alleges that defendants' conduct was negligent and not intentionally, recklessly and/or grossly negligent.

41. VIP at all times material hereto owed a duty of reasonable care to Plaintiff and the Class.

42. VIP breached that duty by terminating the aforementioned services to Plaintiff and the Class without taking reasonable precautions and/or other actions to ensure continuation of those services, even in modified form.

43. VIP's breach of duty damaged Plaintiff and the Class and was the proximate cause of harm and damage to Plaintiff and the Class.

44. VIP's breach of duty to Plaintiff and the Class foreseeably caused harm and damage to Plaintiff and the Class.

COUNT V

Unjust Enrichment

45. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

46. Plaintiff and the Class assert their claim for unjust enrichment in the alternative to their breach of contract claim; if the contracts between Plaintiff and the Class and VIP are rescinded due to fraud in the inducement of those contracts or for other reasons, then Plaintiff and the Class are entitled to restitution of their damages based on the doctrine of unjust enrichment.

47. VIP has received from Plaintiff and the Class benefits and/or was enriched at the expense of Plaintiff and the Class under circumstances that make it unjust and against equity and good conscience for VIP to retain the monies of Plaintiff and the Class.

WHEREFORE, plaintiff prays for judgment as follows:

A. Declaring the action to be a proper class action pursuant to Fed. R. CIV. P. 23;

- B. Awarding plaintiff and the members of the Class damages, including punitive damages and interest;
- C. Awarding plaintiff's reasonable costs and attorneys' fees; and
- D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: June 29, 2009



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