

IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS

2017 JUN 22 AM 11 12

CHAD PARNELL, an Arkansas citizen
on behalf of himself and all other Arkansas
citizens similarly situated,

JEANNIE PIKE
GARLAND CO. CIRCUIT CLERK

BY Melissa E. Ewald

PLAINTIFF

v.

Case No.: 26CV-17-639-III

FANDUEL, INC.,

DEFENDANT

CLASS ACTION COMPLAINT

Plaintiff Chad Parnell, brings this action on behalf of himself and all other Arkansas citizens similarly situated, against Defendant FanDuel, Inc. ("FanDuel" or Defendant) and, based on information and belief, alleges:

1. This action is for damages arising from Defendant's knowing and willful "bait and switch" deception of Arkansas consumers regarding its promotion of its online fantasy sports "game of skill."

2. The Class is defined as follows:

All citizens of the State of Arkansas that subscribed to FanDuel's service by opening an account with a sum of \$200.00 from August 1, 2015 to December 31, 2015 (the "Class Period"). Excluded from the Class are the presiding judge, and his/her immediate family members, and Defendant's officers, directors, employees, and agents.

JURISDICTION, PARTIES, AND VENUE

3. Plaintiff Chad Parnell is a citizen of Arkansas and a resident of Garland County, Arkansas. He opened an account with Defendant FanDuel by depositing a sum of \$200.00 during the Class Period.

4. Defendant FanDuel, Inc. (“Defendant” or “FanDuel”) is a Delaware corporation with its principal place of business in New York, New York. FanDuel is not registered to do business in the State, and also fails to have a registered agent for service of process. Thus, FanDuel may be properly served at its headquarters at FanDuel, Inc., 19 Union Square West, 9th floor, New York, NY 10003.

5. FanDuel is present and doing substantial business in the State of Arkansas and in this County, and further, the wrongdoing alleged in this complaint occurred within the State.

6. The venue is proper here, because Plaintiff resides in this County, and because the Defendant conducts substantial business in this County.

FACTUAL ALLEGATIONS

7. During the Class Period, FanDuel ran television ads in Arkansas promoting its fantasy football electronic game by promising new subscribers that if they deposited \$200.00 into a new FanDuel account it would match their deposit with another \$200.00.

8. The television ads make this promise:

Try FanDuel today! We'll match your first deposit up to 200 bucks!

9. The ads then instructed Plaintiff and the Class to go to FanDuel.com and enter a particular promotion code to receive the matching \$200.00.

10. The television ads were false, deceptive, unconscionable, and operated as “bait and switch” advertising, because they made an attractive, but insincere offer as FanDuel did not intend to match the initial \$200.00 deposit with another \$200.00.

11. Although Plaintiff and Class members were new subscribers and deposited \$200.00 into the new account, FanDuel did not match the Plaintiff’s or the Class members’ deposits.

CLASS REPRESENTATION ALLEGATIONS

12. Plaintiff brings this case as a class action under Arkansas Rule of Civil Procedure 23.

13. Plaintiff sues on his behalf and for the following Class:

All citizens of the State of Arkansas that subscribed to FanDuel’s service by opening an account with a sum of \$200.00 from August 1, 2015 to December 31, 2015 (the “Class Period”). Excluded from the Class are the presiding judge, and his/her immediate family members, and Defendant’s officers, directors, employees, and agents.

14. Although the precise number of members of the Class is presently unknown, upon information and belief, there are sufficient minimum numbers of Class members under Arkansas law, and they are scattered across Arkansas rendering joinder of all residents with similar claims as impractical.

15. Plaintiff is a member of the Class.

16. Plaintiff's claims are typical of the claims of all Class members in that all putative Class members subscribed to FanDuel and deposited \$200.00 during the Class Period and during the time that FanDuel's television ad ran offering a \$200.00 match.

17. No antagonism exists between the interests of the representative Plaintiff and the interests of other Class members, and Plaintiff is fully prepared to pursue diligently this case for all Class members.

18. Plaintiff's counsel is experienced in class action litigation and well-qualified to conduct this litigation.

19. There exist numerous common questions of law or fact in this action within the meaning of Arkansas Rule of Civil Procedure 23 and these common questions predominate over any questions affecting only individual Class members within the meaning of Arkansas Rule of Civil Procedure 23.

20. Common questions of law or fact here include, without limitation:

- a. Whether FanDuel's ads offering a \$200.00 match for the initial \$200.00 deposit were false, deceptive, unfair or unconscionable in violation of the Arkansas Deceptive Trade Practices Act (ADTPA);
- b. Whether FanDuel's ads offering a \$200.00 match for the initial \$200.00 operated as "bait and switch" advertising in violation of the ADTPA;

- c. Whether FanDuel intended to cause reasonable consumers, such as Plaintiff and the Class members, to subscribe to its service based on its ads offering the matching \$200.00;
- d. Whether FanDuel's offer in its ads offering a \$200.00 match was insincere;
- e. Whether Defendant has been unjustly enriched as a result its wrongdoing described herein; and,
- f. Whether Plaintiffs and Class members have sustained damages.

21. Under Arkansas Rule of Civil Procedure 23, a class action is superior to the other available methods for the fair and efficient adjudication of the controversy because it is desirable to concentrate the litigation of the Class members' claims to one forum because it will conserve party and judicial resources and facilitate the consistency of adjudications. As the individual damages suffered by individual Class members are relatively modest, their interest in maintaining separate actions is low. The expense and burden of individual litigation make it impracticable for them to seek individual redress for the wrongs done to them.

COUNT I

VIOLATIONS OF THE ARKANSAS DECEPTIVE TRADE PRACTICES ACT

22. Plaintiff and the Class re-allege and incorporate by reference each preceding paragraph as if fully set forth.

23. The ADTPA is designed to protect consumers from deceptive, unfair and unconscionable trade practices. The ADTPA is a remedial statute and is liberally construed in favor of consumers.

24. The practices employed by Defendant in marketing and selling its service, as detailed above, are false, deceptive, unfair, unconscionable and misleading.

25. Defendant's wrongful actions relating to its marketing of its services violate A.C.A. §§ 4-88-107(a)(1), (3), (5) and (10), and 4-88-108(1) and (2).

26. Defendant intended for Plaintiff and the Class members to subscribe to its service based upon its attractive, but insincere offer described herein.

27. Defendant's actions were intended to deceive reasonable consumers, such as Plaintiff and the Class members. Soley as a result of Defendant's actions in violation of A.C.A. §§ 4-88-107(a)(1), (3), (5) and (10), and 4-88-108(1) and (2), Plaintiffs and Class members subscribed to Defendant's service.

28. Plaintiff and the Class members suffered actual monetary damages because of Defendant's violations of the ADTPA.

COUNT II

UNJUST ENRICHMENT

29. Plaintiff and the Class members re-allege and incorporate each of the preceding paragraphs as if fully restated here.

30. Defendant's actions were intended to deceive reasonable consumers, such as Plaintiff and the Class members. Soley as a result of Defendant's actions, Plaintiff and Class members subscribed to Defendant's service.

31. Immediately upon the subscription of Defendant's service, Defendant received from Plaintiff and the Class certain monies because of Defendant's misconduct detailed above, which were excessive and unreasonable, and result from overcharging and overreaching.

32. As a result, Plaintiff and the Class have conferred a benefit on Defendant, and Defendant has knowledge of this benefit and has voluntarily accepted and retained the benefit unjustly conferred on them.

33. Defendant will be unjustly enriched if it is allowed to retain such funds.

34. Plaintiff and each Class member are entitled to an amount equal to the amount Defendant has been unjustly enriched.

JURY DEMAND

Plaintiff demands a trial by a jury of twelve on all issues so triable.

PRAYER FOR RELIEF

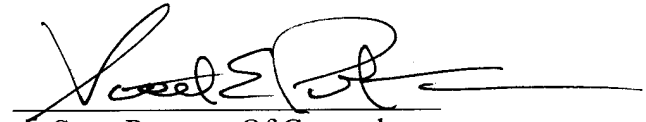
WHEREFORE, Plaintiff and Class pray for judgment against Defendant as follows:

- a. Certification of the Class under ARCP 23;
 - b. Appointment of Plaintiff as the Class Representative and his counsel as Class Counsel;
 - c. An award of damages against Defendant for its violations of the ADTPA;
- and,

d. An award of against Defendant in amounts equal the amount Defendant was unjustly enriched;

Respectfully submitted,

**STEEL, WRIGHT, GRAY
& HUTCHINSON, PLLC**



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June 20, 2017

Jeannie Pike
Garland Co. Circuit Clerk
501 Ouachita Ave., Ste 207
Hot Springs, AR 71901-5154

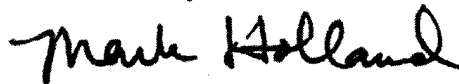
Re: *Chad Parnell v. FanDuel, Inc.*
Garland County Circuit Court

Dear Ms. Pike:

Please find enclosed for filing a Class Action Complaint and Summons. A firm check for \$165.00 is also enclosed for the filing fee. Upon filing, please return file-marked copies in the envelope enclosed.

If you have any questions, please feel free to contact me.

Sincerely,



Mark Holland
Paralegal

Enclosures