



controversy exceeds \$75,000, exclusive of interest and costs. Plaintiff is a citizen of Texas and Defendants are citizens of Ohio. Plaintiff seeks monetary relief over \$100,000.

5. This Court has personal jurisdiction over Defendants because (1) they transact business within the State of Texas; (2) they have continuous and systematic contacts with the State of Texas; (3) they purposefully availed themselves of the laws of the State of Texas and had sufficient contacts with the State of Texas; (4) a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Texas and involved Defendants; and (5) the assertion of personal jurisdiction over Defendants does not offend traditional notions of fair play and substantial justice.

### **III. FACTUAL BACKGROUND**

#### **A. Sports Cards and the PSA Grading System**

6. Plaintiff is an avid collector of sports cards. Sports cards have been a collectible for over 150 years. In the last 20 years, the hobby and business of collecting sports cards has exploded due to new grading standards, the Internet, and the nostalgia of sports. Each sports card features a different player, and whichever player your card features (along with the condition of the card) dictates the value of your card – the more popular the player or rare the card (depending on the grade of the card), the more valuable the card.

7. Collecting sports cards has thus become a hobby and investment for many. According to Forbes, sports memorabilia is a multi-billion-dollar industry. Certain sports cards have become scarce sports memorabilia and consequently, the value of those cards has skyrocketed. For example, in 2016, a 1909 T206 Honus Wagner baseball card was sold for \$3.12 million. The 1986 Fleer #57 rookie card of Michael Jordan is the “most recognizable basketball card and the most important modern card from any sport in the entire hobby.” *See* <https://www.psacard.com/cardfacts/basketball-cards/1986-fleer/michael-jordan-57/5003>.

8. At the same time, counterfeits and unlicensed reproductions of these cards, especially of the most valuable ones, have proliferated. To ensure the authenticity and quality of these cards, third-party grading and authentication companies started to form. Professional Sports Authenticator (“PSA”), based in Newport Beach, California, is considered the largest and most prominent of these companies. Collectors and investors often submit sports cards to PSA to have the cards authenticated and graded – with a PSA Gem Mint (GEM-MT) 10 (hereinafter “PSA 10”) rating as the highest grade possible, signifying a virtually perfect card. *See* <https://www.psacard.com/resources/gradingstandards>. PSA also provides its own seal or holder and label on a card to protect against tampering and counterfeiting. A buyer of a graded sports card will pay a premium price for the card because the buyer has confidence that the card is authentic and properly graded, ensuring the market value of the card.

**B. Defendants CCC and Dutro**

9. CCC is in the business of buying and selling collectible items such as coins, gold, silver, paper currency, jewelry, bronze, watches, and sports memorabilia, including sports cards. Dutro is the owner of CCC.

10. CCC maintains a website at <http://commoncentscoinscincinnati.com/> (the “CCC Website”). The CCC Website has tabs that, when clicked, redirect individuals to the CCC eBay store where they can purchase certain products, including sports cards. The CCC Website also advertises specific sports cards that may be purchased at the CCC eBay store. The CCC Website states there is “100% Satisfaction Guaranteed”, “Hassle Free Returns”, and “Free Returns” and that CCC is “Your Trusted Source for Coins + Collectibles.” The CCC Website states:

At Common Cents Coins + Collectibles, our mission is to build strong relationships with our customers, by having a more transparent buying and selling process. This allows our customers to be able to make intelligent, informed decisions about their valuable items. This goal is only achieved, because of our top-rated professional

staff with over 50+ years of combined numismatic experience. We understand the market, and by taking a personalized customer service approach coupled with the understanding that each transaction is different has led to our years of success in the numismatic industry!

The CCC Website also includes a blog, which contains articles about making money collecting sports memorabilia and the top five highest paid baseball memorabilia items.

11. CCC also maintains a Facebook page at [https://www.facebook.com/commoncentscoins/?ref=page\\_internal](https://www.facebook.com/commoncentscoins/?ref=page_internal) (the “CCC Facebook Page”).

The CCC Facebook Page has tabs that, when clicked, redirect individuals to the CCC eBay store where they can review and purchase certain products, including sports cards. The CCC Facebook Page also advertises specific sports memorabilia, including sports cards, that may be purchased at the CCC eBay store. The CCC Facebook Page also contains posts, when clicked, redirect individuals to the CCC Website where they can review articles about making money collecting sports memorabilia and the top five highest paid baseball memorabilia items. The CCC Facebook Page states: “We Will Earn Your Trust.”

12. CCC also maintains an eBay store at <https://www.ebay.com/usr/commoncentscoinscincinnati> (the “CCC eBay Store”). The CCC eBay Store is maintained by eBay account “commoncentscoinscincinnati” (the “CCC eBay Account”). According to eBay, the CCC eBay Account has been an eBay member since March 17, 2010. The CCC eBay Store displays certain products, including sports cards, that individuals can bid on or directly purchase. The CCC eBay Store has a similar design layout to the CCC Website. The CCC eBay Store contains similar tabs and information as the CCC Website. The CCC eBay Store states: “We Will Earn Your Trust.”

**C. Defendants Post Information on the CCC Website, CCC eBay Store, and CCC eBay Account Regarding the Sale of a Purported Jordan Rookie Card in December 2016.**

13. In or around December 2016, Defendants posted information on the CCC Website, CCC eBay Store, and CCC eBay Account regarding the potential sale of a purported 1986 Fleer #57 PSA 10 rookie card of Michael Jordan (PSA Certification No. 20020188) (the “Purported Jordan Rookie Card”).

14. In May 2017, Defendants updated the information regarding the Purported Jordan Rookie Card on the CCC Website, CCC eBay Store, and the CCC eBay Account. At that time, Defendants made certain representations regarding the Purported Jordan Rookie Card on the CCC Website, CCC eBay Store, and the CCC eBay Account, including representations that the card was an “original” and had a “PSA 10” grade:

Description
Shipping and payments
Report item

eBay item number: 252682282533

Seller assumes all responsibility for this listing.

Last updated on May 03, 2017 14:24:38 PDT [View all revisions](#)

**Item specifics**

Card Manufacturer:	Fleer	Grade:	10
Team:	Chicago Bulls	Player:	Michael Jordan
Card Attributes:	Rookie	Country/Region of Manufacture:	United States
Original/Reprint:	Original	Professional Grader:	Professional Sports (PSA)
Certification Number:	#57	Season:	1986-87
Era:	Modern (1981-Now)	Card Number:	#57
Sport:	Basketball	Series:	FLEER
Product:	Single	League:	NBA

See full item description

Under the “See full item description” tab referenced in the photo above, Defendants made additional representations regarding the Purported Jordan Rookie Card:

This is an listing for the KING OF BASKETBALL ROOKIES, the 1986-87 Fleer Michael Jordan Rookie card #57 graded by PSA Gem mint 10. Winning buyer gets free insured shipping. Please check out my other items on ebay. There are no returns on graded cards unless it is misrepresented in any way.

In May 2017, Defendants also made certain representations about the Purported Jordan Rookie Card on the CCC Website, CCC eBay Store, and the CCC eBay Account as to shipping and payments:

Description

Shipping and payments

Seller assumes all responsibility for this listing.

**Shipping and handling**

Item location: Milford, Ohio, United States

Shipping to: United States

Excludes: Angola, Cameroon, Cayman Islands, French Polynesia, Libya, Mongolia, Suriname, Guyana, Panama, Mauritius, Brunei Darussalam, Chad, Madagascar, New Caledonia, Bahamas, Bermuda, Iran, Saint Kitts-Nevis, Western Sahara, Bolivia, Laos, Congo, Republic of the, Seychelles, Sudan, Guadeloupe, Venezuela, Somalia, Burma, Cuba, Republic of Reunion, Yemen, Barbados, Belize, Liberia, Sierra Leone, Central African Republic, Martinique, Dominica, Niger, French Guiana, Saint Pierre and Miquelon

Change country:  ZIP Code:  [Get Rates](#)

Shipping and handling	To	Service	Delivery*
Free shipping	United States	Standard Shipping	On or before <b>Mon. Nov. 16</b> to

\* [Estimated delivery dates](#) include seller's handling time, origin ZIP Code, destination ZIP Code and time of acceptance and will depend on shipping service selected and receipt of cleared payment. Delivery times may vary, especially during peak periods.

Taxes

Taxes may be applicable at checkout. [Learn more](#)

**Return policy**

After receiving the item, contact seller within	Refund will be given as	Return shipping
14 days	Money back	Buyer pays for return shipping

Refer to [eBay Return policy](#) for more details. You are covered by the [eBay Money Back Guarantee](#) if you receive an item that is not as described in the listing.

**Payment details**

Payment methods

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**Seller's payment instructions**

There is no return on bullion bars/coins and multiple coin lots.

**D. Plaintiff Purchases the Purported Jordan Rookie Card from Defendants in May 2017 for \$19,999.99.**

15. In the spring of 2017, Plaintiff was attempting to compile a complete 1986 Fleer basketball set with PSA 10 ratings. There are 132 cards in a complete 1986 Fleer basketball set, including the #57 Michael Jordan rookie card. Plaintiff was looking to purchase, among other cards, a 1986 Fleer #57 PSA 10 Michael Jordan rookie card, to complete his set.

16. In connection with his search for a PSA 10 Michael Jordan rookie card, Plaintiff searched the Internet and found the listing for the Purported Jordan Rookie Card on the CCC Website, CCC eBay Store, and CCC eBay Account. Plaintiff reviewed Defendants' representations on the CCC Website, CCC eBay Store, and CCC eBay Account that the Purported Jordan Rookie Card was an "original", had been graded by PSA, and had a "PSA 10" grade. Plaintiff also reviewed the Defendants' photographs of the Purported Jordan Rookie Card on the CCC Website, CCC eBay Store, and CCC eBay Account, which depicted a label, certification number, and seal from PSA. Below are photographs of the Purported Jordan Rookie Card:



17. On May 18, 2017, in reliance upon Defendants representations regarding the Purported Jordan Rookie Card—including the representations that the card was an original and had been certified by PSA as a PSA 10 card—Plaintiff purchased the Purported Jordan Rookie Card for \$19,999.99.

18. Plaintiff purchased the Purported Jordan Rookie Card using eBay’s “buy it now” feature through the CCC eBay Store and CCC eBay Account. There was no bidding or auction process for the purchase of the Purported Jordan Rookie Card that is typical of some eBay purchases.

19. The eBay item number for Plaintiff’s purchase of the Purported Jordan Rookie Card was 252682282533. Plaintiff made payment for the purchase of the Purported Jordan Rookie Card through PayPal and immediately received confirmation of the sale from Defendants through eBay. Plaintiff’s PayPal payment for the purchase of the Purported Jordan Rookie Card was sent to Defendants through Dutro’s email address, [bradleydutro@yahoo.com](mailto:bradleydutro@yahoo.com).

20. Throughout the course of the sale, Defendants were fully aware of Plaintiff’s identity, his residence in the State of Texas, and even his background as a buyer on eBay. As a professional online seller of collectible items, Defendants conducted research on Plaintiff and concluded that he was a “strong respectful honest eBay buyer.” On May 19, 2020, Dutro sent Plaintiff the following message through eBay:

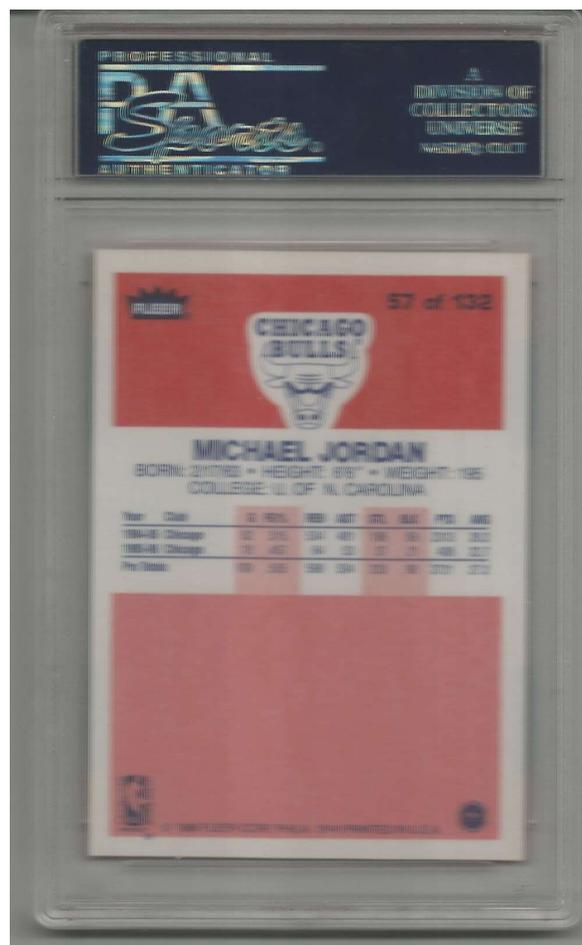
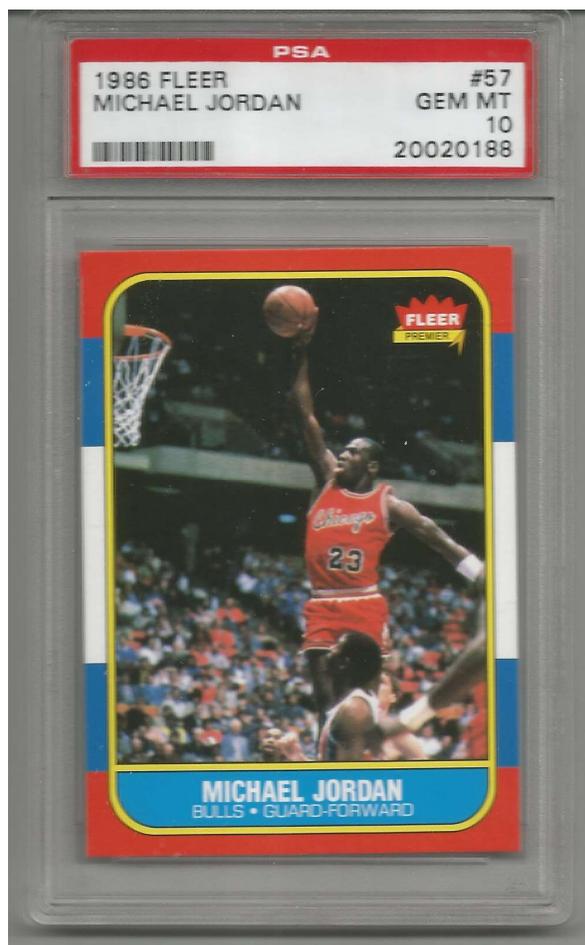
I got the message from Ebay that you bought the card. I very much appreciate it. You look like a strong respectful honest eBay buyer, so I’m very happy about that. I’m at a coin show in Las Vegas and I will be returning Saturday to Cincinnati where I live. I will ship the card either overnight Saturday if I get there in time, or overnight Monday. I will send you the tracking information as soon as I get it in the mail. I hope you enjoy the card.

21. In late May 2017, Defendants shipped the Purported Jordan Rookie Card directly to Plaintiff's residence in Plano, Texas via the United States Postal Service. Plaintiff received the Purported Jordan Rookie Card soon thereafter.

**E. Plaintiff Registers the Purported Jordan Rookie Card With His PSA Registry in Early June 2020.**

22. Soon after receiving the Purported Jordan Rookie Card from Defendants, Plaintiff attempted to register the card with his PSA set registry.

23. On June 4, 2017, Plaintiff emailed PSA to request that the Purported Jordan Rookie Card be removed from another person's registry so that Plaintiff could list the card on his registry. Plaintiff included the following scanned photographs of the Purported Jordan Rookie Card in his correspondence to PSA:



24. After registering the Purported Jordan Rookie Card with PSA, Plaintiff put the card—along with the rest of his complete 1986 Fleer basketball set with PSA 10 ratings—in two boxes in a storage unit under lock and key. The Purported Jordan Rookie Card (and the rest of Plaintiff's complete 1986 Fleer basketball set) remained in the storage unit for the next approximately three years.

**F. Plaintiff Decides to Sell the Purported Jordan Rookie Card in the Summer of 2020.**

25. In the summer of 2020, other 1986 Fleer #57 PSA 10 rookie cards of Michael Jordan were being sold for \$85,000 to \$90,000. Due to the rise in the value of the 1986 Fleer #57 rookie card of Michael Jordan, Plaintiff decided to sell his complete 1986 Fleer basketball set, which included the Purported Jordan Rookie Card.

26. Plaintiff retained Memory Lane Inc. (“Memory Lane”), a sports memorabilia auction company, to sell his 1986 Fleet basketball set, which included the Purported Jordan Rookie Card. As part of the sale process, Memory Lane sent the Purported Jordan Rookie Card to PSA to have the card placed into a new holder to make the card look more attractive.

**G. Plaintiff Discovers the Purported Jordan Rookie Card is Fraudulent on August 21, 2020.**

27. On August 21, 2020, Jackie Curiel, Chief of Staff for PSA, sent a letter to Jonathan Cohen of Memory Lane regarding the Purported Jordan Rookie Card (the “PSA Letter”). In the PSA Letter, Mr. Curiel informed Mr. Cohen that the Purported Jordan Rookie Card is “not an authentic PSA-graded item” and that “the entire product is fraudulent.” Mr. Curiel stated in the letter that PSA examined the Purported Jordan Rookie Card and found that the plastic holder and PSA labeled had been tampered with and the PSA labeled and card inside were fraudulent. A copy of the PSA Letter is attached hereto as Exhibit A.

28. Memory Lane sent a copy of the PSA letter to Plaintiff that same day.

29. Prior to August 21, 2020 Plaintiff believed the Purported Jordan Rookie Card was an original card, had been certified by PSA, and had received a PSA 10 grade from PSA.

**H. Plaintiff Contacts Defendants in Attempt to Resolve the Dispute.**

30. After being made aware that that the Purported Jordan Rookie Card was fraudulent, Plaintiff immediately contacted Defendants.

31. On August 21, 2020, the same day he received the PSA letter and discovered the Purported Jordan Rookie Card was a counterfeit, Plaintiff contacted Defendants and spoke with Durato. Plaintiff told Durato about the PSA letter and that the Purported Jordan Rookie Card was a fake. Dutro told Plaintiff that Defendants had purchased the card from a third party. Dutro was unwilling to discuss steps to reimburse Plaintiff for his losses.

32. On August 25, 2020, Plaintiff sent correspondence to Dutro:

Hi Brad,

It has been a couple of days since my first email to you and telephone conversation with you. I have heard no reply. I understand that this is a bad situation. Not only am I out the cost of the card but, the appreciation in the value of this card. Jordan PSA 10 cards are selling for \$85,000 - \$90,000. My loss is greater...very upsetting. I respectfully request that you respond and indicate to me how you are going to proceed. I prefer not to file [sic] a Civil Law Suit or get the FBI involved. This was a Federal Offense. Please reply.

Donald Spence

33. On September 8, 2020, Plaintiff's counsel William J. Toppi sent an email and demand letter to Defendants attaching the PSA letter and asking Defendants to reimburse Plaintiff for the \$19,999.99 he paid for the Purported Jordan Rookie Card, plus 10% per annum interest (the "September 8th Letter"). A copy of the September 8th Letter is attached hereto as Exhibit B. Defendants did not respond to the September 8th letter.

34. On October 12, 2020, Mr. Toppi sent another email and demand letter to Defendants, again attaching the PSA letter and asking Defendants to reimburse Plaintiff for the \$19,999.99 he paid for the Purported Jordan Rookie Card, plus 10% per annum interest (the “October 12th Letter”). A copy of the October 12th Letter is attached hereto as Exhibit C. Defendants did not respond to the October 12th letter.

#### **IV. CAUSES OF ACTION**

##### **COUNT 1: BREACH OF CONTRACT**

35. Plaintiff repeats and re-alleges the allegations set forth in all preceding paragraphs of this Complaint, as if fully set forth herein.

36. Plaintiff entered into a contract with Defendants for the purchase of an original 1986 Fleer #57 rookie card of Michael Jordan that was authenticated and graded by PSA as a PSA 10 (the “Contract”).

37. Plaintiff complied with all of his duties and obligations under the Contract, including paying \$19,999 to Defendants.

38. To Plaintiff’s detriment, Defendants breached their obligations under the Contract by, among other things, failing to sell Plaintiff an original 1986 Fleer #57 rookie card of Michael Jordan that was authenticated and graded by PSA as a PSA 10.

39. Defendants’ material breach of the Contract directly and proximately caused damages to Plaintiff.

40. As a result of the breach of the Contract, Plaintiff has suffered actual damages in excess of the minimum jurisdictional limits of this Court.

## **COUNT 2: NEGLIGENT MISREPRESENTATION**

41. Plaintiff repeats and re-alleges the allegations set forth in all preceding paragraphs of this Complaint, as if fully set forth herein.

42. Defendants made representations to Plaintiff in the course of Defendants' business and in connection with the sale of the Purported Jordan Rookie Card—a transaction in which Defendants had a pecuniary interest.

43. Defendants supplied false information to Plaintiff regarding the Purported Jordan Rookie Card, including false information that the Purported Jordan Rookie Card was an original card, was certified by PSA, and received a PSA 10 grade from PSA.

44. Defendants did not use reasonable care in obtaining or communicating the information regarding the Purported Jordan Rookie Card.

45. Plaintiff justifiably relied on the representations made by Defendants in purchasing the Purported Jordan Rookie Card.

46. Defendants' negligent misrepresentations proximately caused Plaintiff's injury.

47. As a direct and proximate result of Defendants' negligent misrepresentations, Plaintiff has suffered actual damages – both direct and consequential, including damages resulting from his inability to sell the Purported Jordan Rookie Card for profit – for which Plaintiff now seeks recompense by this suit.

48. As a result of the conduct of Defendants, Plaintiff has suffered actual and exemplary damages in excess of the minimum jurisdictional limits of this Court.

49. Based upon Defendants' misrepresentations and other conduct, Plaintiff did not know and in the exercise of reasonable diligence should not have known of Defendants' misrepresentations, or his resulting injury until he received the PSA letter on August 21, 2020.

**COUNT 3: FRAUD / FRAUDULENT INDUCEMENT**

50. Plaintiff repeats and re-alleges the allegations set forth in all preceding paragraphs of this Complaint, as if fully set forth herein.

51. In seeking to induce Plaintiff to purchase the Purported Jordan Rookie Card, Defendants made material representations to Plaintiff regarding the Purported Jordan Rookie Card that were false. Specifically, Defendants represented to Plaintiff that the Purported Jordan Rookie Card was an original card, was certified by PSA, and received a PSA 10 grade from PSA. All of these representations were material and false.

52. Defendants knew the representations were false or made them recklessly as a positive assertion without any knowledge of their truth.

53. Defendants intended to induce Plaintiff to act upon the representations.

54. Plaintiff actually and justifiably relied on the representations, which caused Plaintiff's injury.

55. As a result of the conduct of Defendants, Plaintiff has suffered actual and exemplary damages in excess of the minimum jurisdictional limits of this Court.

**COUNT 4: VIOLATION OF THE DECEPTIVE TRADE PRACTICES ACT (DTPA)**

56. Plaintiff repeats and re-alleges the allegations set forth in all preceding paragraphs of this Complaint, as if fully set forth herein.

57. Plaintiff is a consumer, as that term is defined under the Texas Deceptive Trade Practices Act. As a consumer, Plaintiff acquired collectible goods from Defendants by purchase. Specifically, these goods were the Purported Jordan Rookie Card.

58. Defendants committed false, misleading, and deceptive acts or practices, in violation of the DTPA, in connection with the transaction for the sale of the Purported Jordan

Rookie Card to Plaintiff. As previously recited, these violations included Defendants' deceptive misrepresentations to Plaintiff regarding the authenticity and grading of the Purported Jordan Rookie Card. Defendants' false, misleading, and deceptive acts or practices include:

- a. Passing off goods or services as those of another in violation of TEX. BUS. & COM. CODE § 17.46(b)(1);
- b. Causing confusion or misunderstanding about the source, sponsorship, approval, or certification of goods in violation of TEX. BUS. & COM. CODE § 17.46(b)(2);
- c. Causing confusion or misunderstanding about affiliation, connection, or association with, or certification by, another in violation of TEX. BUS. & COM. CODE § 17.46(b)(3);
- d. Representing that goods have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have in violation of TEX. BUS. & COM. CODE § 17.46(b)(5);
- e. Representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand in violation of TEX. BUS. & COM. CODE § 17.46(b)(6); and
- f. Representing that goods are of a particular standard, quality, or grade, if they are not, in violation of TEX. BUS. & COM. CODE § 17.46(b)(7).

59. Plaintiff relied on Defendants' representations to Plaintiff's detriment.

60. Defendants' actions were a producing cause of Plaintiff's damages.

61. As a result of the conduct of Defendants, Plaintiff has suffered actual damages in excess of the minimum jurisdictional limits of this Court.

**V. DISCOVERY RULE AND FRAUDULENT CONCEALMENT**

62. Plaintiff repeats and re-alleges the allegations set forth in all preceding paragraphs of this Complaint, as if fully set forth herein.

63. The accrual date of Plaintiff's causes of action are deferred under the discovery rule and/or fraudulent concealment.

64. The discovery rule applies because Plaintiff's injury was inherently undiscoverable and objectively verifiable.

65. Moreover, Defendants' fraudulent concealment deferred the accrual of Plaintiff's causes of action because (1) Defendants had actual knowledge of the wrong; (2) Defendants concealed the wrong by making a misrepresentation or by remaining silent when they had a duty to speak; (3) Defendants had a fixed purpose to conceal the wrong; and (4) Plaintiff reasonably relied on the misrepresentation.

**VI. ATTORNEYS' FEES AND COSTS**

66. Plaintiff repeats and re-alleges the allegations set forth in all preceding paragraphs of this Complaint, as if fully set forth herein.

67. As a result of Defendants' conduct, as described herein, Plaintiff has retained the law firm of Bradley Arant Boult Cummings LLP to prosecute this action on its behalf and has agreed to pay the firm's reasonable and necessary attorneys' fees.

68. Plaintiff is entitled to recover its reasonable and necessary attorneys' fees and costs for its breach of contract claims pursuant to Chapter 38 of the Texas Civil Practices and Remedies Code.

69. Plaintiff is entitled to recover its reasonable and necessary attorneys' fees and costs for its DTPA claims pursuant to Chapter 17 of the Texas Business and Commerce Code.

**VII. CONDITIONS PRECEDENT**

70. All conditions precedent to Plaintiff's right to obtain the relief requested herein have been performed or have occurred.

**VIII. JURY DEMAND**

71. Plaintiff respectfully requests a trial by jury.

**IX. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Donald E. Spence respectfully prays that Defendants Common Cents Coins, LLC and Bradley Dutro be cited to appear and answer and that, on final trial, the Court render a judgment against Defendants containing the following:

1. An award of all damages, actual, special, and/or exemplary to which Plaintiff is entitled;
2. An award of all reasonable and necessary attorneys' fees and costs;
3. An award of pre-judgment and post-judgment interest at the maximum rates permitted by law;
4. An award of all costs of court; and
5. Such other and further relief to which it may show itself to be justly entitled.

Dated: November 19, 2020

Respectfully submitted,

**BRADLEY ARANT BOULT CUMMINGS LLP**

By: */s/ Robert L. Sayles*

**ROBERT L. SAYLES**

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