

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

STEVE SIMMS, MIKE DOLABI, and WES
LEWIS, individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

vs.

JERRAL “JERRY” WAYNE JONES,
NATIONAL FOOTBALL LEAGUE, DALLAS
COWBOYS FOOTBALL CLUB, LTD., JWJ
CORPORATION, COWBOYS STADIUM, L.P.,
COWBOYS STADIUM GP, LLC, and BLUE &
SILVER, INC.,

Defendants.

Civil Action No. 3:11-CV-00248 M

FIRST AMENDED COMPLAINT – CLASS ACTION

Plaintiffs Mike Dolabi, Steve Simms and Wes Lewis (collectively, “Plaintiffs”) bring this suit against Defendants National Football League, Dallas Cowboys Football Club, Ltd., JWJ Corporation, Cowboys Stadium, L.P., Cowboys Stadium GP, LLC, Blue & Silver, Inc. and Jerral “Jerry” Wayne Jones (collectively, “Defendants”) to recover the damages owed to themselves and others similarly situated.

I. JURISDICTION

1.1 This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), as the proposed class contains more than 100 members, at least one of whom maintains citizenship in a state diverse from the defendant, and seeks in the aggregate more than \$5,000,000, exclusive of costs and interest. On information and belief, more than two-thirds of the members of the Classes defined below are residents of states other than Texas.

II. VENUE

2.2 The events as alleged herein arose within this District, pursuant to 28 U.S.C. § 1391(a), and within this Division, and one or more of the Defendants are subject to personal jurisdiction in the District and Division to which this action has been assigned.

III. PARTIES

3.1 Plaintiff Steve Simms (“Simms”) is an individual residing in Lycoming County, Pennsylvania, a citizen of the State of Pennsylvania and a recipient of tickets to Super Bowl XLV. Simms is the representative plaintiff for the “Displaced Class” defined below.

3.2 Plaintiff Mike Dolabi (“Dolabi”) is an individual residing in Tarrant County, Texas, a citizen of the State of Texas and a purchaser of tickets to Super Bowl XLV. Dolabi is the representative plaintiff for the “Founders Class” defined below.

3.3 Plaintiff Wes Lewis (“Lewis”) is an individual residing in Los Angeles County, California, a citizen of the State of California and a purchaser of tickets to Super Bowl XLV. Lewis is the representative plaintiff for the “Relocated/Delayed Class” defined below.

3.4 Defendant Jerral “Jerry” Wayne Jones (“Jones”) is an individual who on information and belief resides in Dallas County, Texas¹ and is the owner and general manager of the NFL team, the Dallas Cowboys. Jones may be served with process at his residence or at One Cowboys Parkway, Irving, Texas 75063 in Dallas County, Texas.

3.5 Defendant National Football League (“NFL”) is a business entity of unknown form which Plaintiffs are informed and believe is licensed to conduct business in the State of Texas. Defendant NFL may be served with process on its registered agent, CT Corporation System, 350 N. St. Paul Street, Ste. 2900, Dallas, TX 75201.

3.6 JWJ Corporation (“JWJ”) is a Texas corporation which is registered to conduct business in the State of Texas and has its principal place of business at One Cowboys Parkway, Irving, Texas 75063 in Dallas County, Texas. Defendant JWJ may be served with process on its registered agent, CT Corporation System, 350 N. St. Paul Street, Ste. 2900, Dallas, TX 75201.

¹ Because of the sensitive nature and need to protect Jones’ personal privacy, Plaintiffs have redacted Jones’ home address.

3.7 Defendant Cowboys Stadium, L.P. is a Texas Domestic Limited Partnership which is registered to conduct business in the State of Texas and has its principal place of business at One Cowboys Parkway, Irving, Texas 75063 in Dallas County, Texas. Defendant Cowboys Stadium, L.P. may be served with process on its registered agent, CT Corporation System, 350 N. St. Paul Street, Ste. 2900, Dallas, TX 75201.

3.8 Defendant Cowboys Stadium GP, LLC is the general partner of Defendant Cowboys Stadium, L.P. and a Texas Domestic Limited Liability Company which is registered to conduct business in the State of Texas and has its principal place of business at One Cowboys Parkway, Irving, Texas 75063 in Dallas County, Texas. Defendant Cowboys Stadium GP, LLC may be served with process on its registered agent, CT Corporation System, 350 N. St. Paul Street, Ste. 2900, Dallas, TX 75201.

3.9 Defendant Blue & Silver, Inc. (“Blue & Silver”) is the managing member of Cowboys Stadium, L.P. and a Texas corporation which is registered to conduct business in the State of Texas and has its principal place of business at One Cowboys Parkway, Irving, Texas 75063 in Dallas County, Texas. Defendant Blue & Silver may be served with process on its registered agent, CT Corporation System, 350 N. St. Paul Street, Ste. 2900, Dallas, TX 75201.

IV. BACKGROUND

4.1 On February 6, 2011, Cowboys Stadium in Arlington, Texas was host to Super Bowl XLV. In anticipation of the Super Bowl, thousands of fans, including but not limited to Plaintiffs, paid hundreds of dollars per ticket for a seat at the game. In many instances, putative class members paid thousands of dollars to be seated at the Super Bowl and traveled to Cowboys Stadium from around the country, and in some cases the world, in order to witness the Green Bay Packers play the Pittsburgh Steelers at Super Bowl XLV.

4.2 In addition to numerous fans who specially purchased tickets to Super Bowl XLV, hundreds of the Dallas Cowboys’ best season ticket holders, including Plaintiff Dolabi, known as the “Founders” of Cowboys Stadium (“Founders”), each paid at least \$100,000 per seat for a personal seat license at Cowboys Stadium, which the Cowboys and Defendant Jones represented would entitle them

to the “best sightlines in the stadium” and the right to purchase a ticket to Super Bowl XLV at face value. On information and belief, the “Founders” season ticket holders collectively account for over \$100 million in personal seat licenses Defendant Jones sold to help pay for the construction of the stadium, as well as over \$3,000,000 in annual season ticket sales.

4.3 On Sunday, February 6, 2011, approximately 103,000 people appeared at Cowboys Stadium with tickets in hand, excited to witness Super Bowl XLV in person. On information and belief, these tickets were originally sold to the public by one or more of the Defendants.

4.4 According to statements made publicly, Defendant Jones made it a goal for Super Bowl XLV to break attendance records and conducted himself accordingly. For instance, Defendants Jones and the NFL outfitted the end zone open areas, space which is normally reserved for standing-room only tickets, with temporary seating.

4.5 On information and belief, approximately 103,219 people ultimately crammed into Cowboys Stadium to watch the Steelers-Packers game, ranking Super Bowl XLV as the fourth most attended Super Bowl and missing the all-time attendance record by 766. The attendance included 91,060 fans -- including approximately 3,000 who purchased tickets to watch Sunday’s game on screens outside of Cowboys Stadium -- and 12,159 credentialed personnel (including the media and league and team officials).

4.6 Unfortunately, not all of the ticket holders to Super Bowl XLV got what they bargained for or what was promised to them. Specifically, most of the “Founders” fans, including but not limited to Plaintiff Dolabi, arrived at the stadium on Sunday to discover that Jones and the Cowboys had assigned them to seats with obstructed views and temporary metal fold out chairs, which had been installed in an effort to meet Jones’ goal of breaking the attendance record. In addition, almost all of these seats lacked any reasonable view of the stadium’s prized “video board,” which Defendant Jones and the Cowboys routinely claim is the one of the most unique and best features of Cowboys Stadium.

4.7 In addition, over 2,400 ticket holders, including but not limited to Plaintiffs Simms and Lewis, were unreasonably delayed, relocated or completely displaced from their seats at Super Bowl XLV as a result of the incomplete installation of temporary seats, which were deemed unsafe and unusable. For example, approximately 864 ticket holders, including Plaintiff Lewis, arrived to the

February 6, 2011 Super Bowl game and, after being identified through a scanning process, were told that there were problems with their assigned seats at Cowboys Stadium and that personnel were looking for different seats to which to relocate them. Ultimately, these individuals were provided with different seats than they had anticipated which were inferior in location and/or quality than the seats that these ticket holders had previously purchased and/or acquired.

4.8 Furthermore, a subset of this group comprising approximately 400 ticket holders, including but not limited to Plaintiff Simms, were completely displaced from their seats in the end zone at Super Bowl XLV as a result of the incomplete installation of temporary bleachers, which were deemed unsafe and unusable. Accordingly, these approximate 400 ticket holders were denied seats to the game altogether, and forced to watch the game on monitors in the Miller Lite Club, where they had no view of the field whatsoever.

4.9 In addition, a subset of this group comprising approximately 1,200 ticket holders were significantly delayed in gaining pre-game access to their seats due to the problems with the installation of some of the temporary seats at Cowboys Stadium.

4.10 On Monday, February 7, 2011, Defendants openly conceded that they knew of the seating dilemma earlier in the week and had hoped until hours before kickoff that these problems could be fixed, but failed and refused to advise the ticket holders of these problems until they reached the stadium.

4.11 On information and belief, on Monday, February 7, 2011, Defendant Jones admitted to the error, stating: "The incomplete installation of temporary seats left a limited number of sections unusable for yesterday's game. Manpower and timing issues caused inconveniences to some fans. At the end of the preparations, approximately 400 fans attending the game were not able to watch from those installed seats. We deeply regret their Super Bowl experience was impacted by this error, and we share that responsibility with the NFL." Likewise, on information and belief, NFL Commissioner Roger Goodell conceded to the wrongdoing, stating: "It was obviously a failure on our behalf, and we have to take responsibility for that." On information and belief, NFL Executive Vice President Eric Grubman admitted that the NFL knew well before the game that the seats were not going to be available stating that he "felt in the middle of the week that it was going to be a problem."

4.12 On Monday, February 7, 2011, in an effort to compensate the 400 displaced ticket holders, Defendants promised to give displaced ticket holders free tickets to next year's Super Bowl and a refund of triple the cost of the \$800 face value of the ticket. Then, on Tuesday, February 8, 2011, the NFL announced that these 400 displaced fans could choose instead to receive a ticket to any future Super Bowl, including the 2012 Super Bowl, along with round-trip airfare and hotel accommodations. However, on information and belief, if fans choose that option, they will not get the \$2,400. Furthermore, on information and belief, the 400 displaced ticket holders may be permitted to make their selection after the conference championship games each season to learn whether their favorite team will play in the Super Bowl.

4.13 However, these offers are wholly insufficient to compensate Plaintiffs for all of their expenses, including but not limited to travel costs, or for their disappointment and frustration in not being able to properly enjoy Super Bowl XLV. Moreover, triple the face value does not in many cases begin to approach the cost of the tickets paid by many class members. In addition, due to a looming labor dispute between the NFL and its players, the NFL cannot presently guarantee that next year's Super Bowl will even be played, let alone which teams will participate.

4.14 On information and belief, Defendant Jones and the Cowboys were fully aware well before February 6, 2011 that the Founders had been assigned to temporary, obstructed view seats and yet concealed it from the Founders. Indeed, in written correspondence with the Founders relating to seat assignments for the Super Bowl, the Cowboys deliberately and with the intent to deceive failed to disclose that the members of the "Founders Class" would be assigned to temporary, obstructed view seats. On information and belief, these Founders have been offered nothing to compensate them for their obstructed and illegitimate seats.

V. CLASS ACTION ALLEGATIONS

5.1 Plaintiffs bring this action on their own behalf, and as a class action on behalf of the Class defined herein, pursuant to, and properly maintainable under Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3). The Class consists of potentially thousands of ticket holders to Super Bowl XLV

victimized by Defendants' deceptive practices. Specifically, Plaintiffs bring this suit on behalf of the following three Classes:

The "Displaced Class": All persons who paid for and/or acquired tickets to Super Bowl XLV and were denied seats to the game. The class excludes counsel representing the class and all persons employed by said counsel, governmental entities, Defendants, any entity in which Defendants have a controlling interest, Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns, any judicial officer presiding over this matter, the members of their immediate families and judicial staff, and any individual whose interests are antagonistic to other class members.

The "Relocated/Delayed Class": All persons who paid for and/or acquired tickets to Super Bowl XLV and were relocated to seats that differed from their assigned seating as set forth on the tickets or were significantly delayed in gaining pre-game access to their seats due to the problems with the installation of temporary seats at Cowboys Stadium. The class excludes counsel representing the class and all persons employed by said counsel, governmental entities, Defendants, any entity in which Defendants have a controlling interest, Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns, any judicial officer presiding over this matter, the members of their immediate families and judicial staff, and any individual whose interests are antagonistic to other class members.

The "Founders Class": All persons who comprise "Founders" season ticket holders who purchased and/or acquired tickets to Super Bowl XLV and who were assigned to temporary obstructed view seats. The class excludes counsel representing the class and all persons employed by said counsel, governmental entities, Defendants, any entity in which

Defendants have a controlling interest, Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns, any judicial officer presiding over this matter, the members of their immediate families and judicial staff, and any individual whose interests are antagonistic to other class members.

5.2 Defendants subjected Plaintiffs and each of their respective Classes to the same unfair, unlawful, and deceptive practices and harmed them in the same manner. Now, Plaintiffs and each of their respective Classes seek to enforce the same rights and remedies pursuant to the same legal theories: (A) breach of contract; (B) breach of the covenant of good faith and fair dealing; (C) fraud, deceit and concealment; (D) negligent misrepresentation; and (E) Texas Deceptive Practices Act.

5.3 Numerosity: The proposed classes are so numerous that individual joinder of all their members is impracticable. While the exact number and identities of the Class Members are unknown at this time, such information can be ascertained through appropriate investigation and discovery. It is estimated that the "Dislocated Class" consists of approximately 400 members. It is estimated that the "Founders Class" consists of approximately 400 members who purchased over 1,000 tickets. It is estimated that the "Relocated/Delayed Class" consists of approximately 2,000 members. The disposition of the claims of these Class Members in a single class action will provide substantial benefits to all parties and to the Court.

5.4 Typicality: Plaintiffs' claims are typical of the claims of their respective Classes in that they suffered similar damages resulting from a single course of conduct by Defendants. Each of the class members asserts the same legal causes of action.

5.5 Adequacy of Representation: Plaintiffs will fairly and adequately represent and protect the interests of the Classes. Plaintiffs have retained counsel with substantial experience in prosecuting complex lawsuits and class action litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Classes, and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interests adverse to the Classes.

5.6 Superiority of Class Action and Impracticability of Individual Actions: Plaintiffs and the members of the Classes suffered harm as a result of Defendants' unlawful, fraudulent and unfair conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Individual joinder of all members of the Classes is impractical. Even if individual Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendants' common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all Class Members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system, and protects the rights of the Class Members. Adjudication of individual Class Members' claims with respect to Defendants would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other Class Members to protect their interests.

5.7 Common Questions of Law and Fact Predominate: In addition, the requirements of Federal Rule of Civil Procedure 23 are satisfied by questions of law and fact common to the claims of Plaintiffs and of each member of the Classes and which predominate over any question of law or fact affecting only individual members of the Classes. Common questions of law and fact include, but are not limited to, the following:

- a. Whether Defendants breached their contracts with Plaintiffs by not providing them with the seats as promised to Super Bowl XLV;
- b. Whether Defendants breached their duty of good faith and fair dealing with Plaintiffs by not providing them with the seats as promised to Super Bowl XLV;
- c. Whether Defendants' conduct was fraudulent, deceptive and/or designed to conceal from Plaintiffs the fact that Plaintiffs would not receive their assigned and/or promised seats to Super Bowl XLV;
- d. Whether Defendants made negligent misrepresentations to Plaintiffs regarding their assigned seats to Super Bowl XLV;

e. Whether Defendants' conduct was unfair, fraudulent, or within the meaning of the Texas Deceptive Practices Act;

f. Whether Defendants' conduct caused harm to Plaintiffs and the Class; and

g. Whether Plaintiffs and the members of the Class suffered damages.

5.8 Notice: Notice can be provided via internet publication, published notice and/or through mail and paid for by Defendants.

VI. FIRST CLAIM FOR RELIEF

BREACH OF CONTRACT

(By all Plaintiffs Against all Defendants)

6.1 The allegations of paragraphs 1.1 through 5.8 are re-alleged and incorporated herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and the classes of similarly situated ticket holders.

6.2 Plaintiffs entered into an agreement with Defendants whereby Defendants sold to Plaintiffs tickets for seats to Super Bowl XLV on February 6, 2011. These tickets comprise valid and enforceable contracts entitling Plaintiffs to seats at Sunday's game.

6.3 Plaintiffs fully and properly performed all conditions, covenants, and acts required to be performed on their part in accordance with the terms and conditions of the ticket purchases.

6.4 Defendants breached their obligations under the agreement to the "Dislocated Class" by, among other things, failing and refusing to provide any seats to these ticket holders.

6.5 Defendants breached their obligations under the agreement to the "Founders Class" by, among other things, providing temporary and obstructed view seating without proper disclosure and contrary to prior representations.

6.6 Defendants breached their obligations under the agreement to the "Relocated/Delayed Class" by, among other things, failing to provide the assigned seat purchased by the ticket holder and/or significantly delaying ticket holders in gaining pre-game access to their seats due to the problems with the installation of some of the temporary seats at Cowboys Stadium.

6.7 As a direct and proximate result of Defendants' breaches, Plaintiffs have sustained damages including but not limited to the cost of their tickets and travel-related expenses, in a total amount to be determined at trial.

6.8 Plaintiffs accordingly seek relief set forth herein.

VII. SECOND CLAIM FOR RELIEF
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING
(By all Plaintiffs Against all Defendants)

7.1 The allegations of paragraphs 1.1 through 6.8 are re-alleged and incorporated herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and the classes of similarly situated ticket holders.

7.2 As set forth above, Plaintiffs entered into an agreement with Defendants whereby Defendants sold to Plaintiffs tickets for seats to Super Bowl XLV on February 6, 2011. These tickets comprise valid and enforceable contracts entitling Plaintiffs to seats at the Super Bowl. All of the contracts contained an implied covenant of good faith and fair dealing.

7.3 Plaintiffs performed all, or substantially all, of the conditions, covenants, and acts required to be performed on their part in accordance with the terms and conditions of the ticket purchases.

7.4 Defendants unilaterally interfered with Plaintiffs' rights to receive the benefits of their agreement by: (a) failing to provide seats to the Dislocated Class; (b) providing temporary, obstructed view seating to the Founders Class without prior disclosure; (c) failing to provide the assigned seats purchased by the Relocated/Delayed Class; and/or significantly delaying the Relocated/Delayed Class in gaining pre-game access to their seats.

7.5 As a direct and proximate result of Defendants' breaches, Plaintiffs have sustained damages, including but not limited to the cost of their tickets and travel-related expenses, in a total amount to be determined at trial.

7.6 Plaintiffs accordingly seek relief set forth herein.

VIII. THIRD CLAIM FOR RELIEF
FRAUD, DECEIT AND CONCEALMENT
(By all Plaintiffs Against all Defendants)

8.1 The allegations of paragraphs 1.1 through 7.6 are re-alleged and incorporated herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and the classes of similarly situated ticket holders.

8.2 In selling Plaintiffs tickets for Super Bowl XLV, Defendants made affirmative representations in the course of their business to Plaintiffs that they would have an assigned seat inside of Cowboys Stadium to personally witness the game.

8.3 Defendants fraudulently concealed and failed to disclose to Plaintiff Simms and members of the Displaced Class that they knew at least several days prior to the February 6, 2011 Super Bowl that their seats were not likely to be available.

8.4 Defendants fraudulently concealed and failed to disclose to Plaintiff Dolabi and members of the Founders Class that they would be assigned to temporary, fold out metal chairs and obstructed view seating, and that the seats would not have clear views of the stadium's "prized" video board.

8.5 Defendants fraudulently concealed and failed to disclose to Plaintiff Lewis and members of the Relocated/Delayed Class that they knew at least several days prior to the February 6, 2011 Super Bowl that their assigned seats were not likely to be available.

8.6 Even though Defendants were aware of these facts, they continued to deceive Plaintiffs by representing to them, up to and including game time, that they would have seats with unobstructed views to personally witness Super Bowl XLV.

8.7 Defendants knew these representations were false well before game time on February 6, 2011. Indeed, on information and belief, such knowledge is demonstrated by statements made by Defendant Jones and Mr. Goodell, among others, that Defendants withheld this information as part of a failed attempt to finalize seating arrangements before kickoff.

8.8 Plaintiffs justifiably relied on Defendants' representations in paying money for seats to Super Bowl XLV and spending the time, vacation time from work, and substantial money to travel to

Arlington, Texas in order to attend the Super Bowl. Had Plaintiffs known the full, accurate and complete information that Defendants fraudulently failed to disclose, they would not have expended such amounts.

8.9 As a result, Plaintiffs have sustained substantial damages including but not limited to the cost of their tickets and travel-related expenses in a total amount exceeding \$5,000,000, to be determined according to proof at trial.

8.10 Defendants' conduct as described herein was extreme and outrageous, entitling Plaintiffs to punitive damages.

IX. FOURTH CLAIM FOR RELIEF
NEGLIGENT MISREPRESENTATION
(By all Plaintiffs Against all Defendants)

9.1 The allegations of paragraphs 1.1 through 8.10 are re-alleged and incorporated herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and the classes of similarly situated ticket holders.

9.2 In selling Plaintiffs tickets for Super Bowl XLV, Defendants made affirmative representations in the course of their business to Plaintiffs that they would have an assigned seat inside of Cowboys Stadium to personally witness the game, which were false.

9.3 Defendants negligently represented to Plaintiffs in the course of their business that Plaintiffs had assigned seats with unobstructed views to personally witness Super Bowl XLV. However, the seats that had been assigned to the Founders Class were actually temporary, fold out metal chairs with obstructed views. The seats that had been assigned to the Dislocated and Relocated/Delayed Classes were not going to be completed in time, resulting in the Dislocated Class being denied a seat to personally witness Super Bowl XLV and the Relocated/Delayed Class being reassigned to a different and inferior seat and/or being significantly delayed in gaining pre-game access to their seats.

9.4 Defendants did not exercise reasonable care or competence in communicating to Plaintiffs the true information about their assigned seats.

9.5 Plaintiffs justifiably relied on Defendants' representations in paying money for seats to Super Bowl XLV and spending the time, vacation time from work, and substantial money to travel to Arlington, Texas in order to attend the Super Bowl. Had Plaintiffs known the full, accurate and complete information that Defendants failed to disclose, they would not have expended such amounts.

9.6 As a result, Plaintiffs have sustained substantial damages including but not limited to the cost of their tickets and travel-related expenses in a total amount exceeding \$5,000,000, to be determined according to proof at trial.

X. FIFTH CLAIM FOR RELIEF

VIOLATIONS OF TEXAS DECEPTIVE TRADE PRACTICES ACT, Business and Commerce

Code § 17.41 *et seq.*

(By all Plaintiffs Against all Defendants)

10.1 The allegations of paragraphs 1.1 through 9.6 are re-alleged and incorporated herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and the class of similarly situated ticket holders.

10.2 Plaintiffs are "consumers" as they sought and acquired tickets to Super Bowl XLV that were supposed to provide them with their assigned seats offering the represented views of the playing field and video board.

10.3 Defendants are proper "persons" or defendants under the Texas Deceptive Trade Practices Act, who either used or employed false, misleading, deceptive or unconscionable acts or practices, or were directly connected with the transaction with Plaintiffs.

10.4 Defendants committed multiple violations and wrongful acts under the Texas Deceptive Trade Practices Act, including the following:

- (a) Making or committing, false, misleading or deceptive acts and/or practices, including but not limited to violations of Tex. Business & Commerce Code § 17.46(b) (5), (7), (9), (10), (12), (20), and (24). Plaintiffs relied on such acts and/or practices to their detriment.
- (b) Breach of contract and covenant of good faith and fair dealing in ticket sales.
- (c) Committing unconscionable act(s) in connection with ticket sales to Plaintiffs.

10.5 Plaintiffs will show that the violation and actions of Defendants were a producing cause of their damages.

10.6 Plaintiffs will show that the violations and actions of Defendants were done intentionally or knowingly, entitling Plaintiffs to treble damages.

10.7 Plaintiffs will show that the violations and actions of Defendants entitle them to reasonable and necessary attorney's fees under the Texas Deceptive Trade Practices Act, specifically Tex. Business & Commerce Code § 17.50(d).

XI. CONDITIONS PRECEDENT

11.1 All conditions proceeding to Plaintiffs' claims for relief have been performed or have occurred.

XII. DAMAGES AND RELIEF SOUGHT

12.1 Plaintiffs hereby incorporate paragraphs 1.1 through 11.1, verbatim, as set forth at this point.

12.2 Plaintiffs seek to recover actual damages outlined below from Defendants as a direct and proximate result of the unlawful conduct of Defendants.

12.3 Plaintiffs will show that the conduct of Defendants constitutes "gross negligence," "malice," and "actual malice" under Texas law. Plaintiffs therefore request the assessment of exemplary or punitive damages in an amount as may be necessary to punish Defendants and to deter other with similar lawless inclinations in the future.

12.4 Plaintiffs seek to recover the following damages and obtain the following relief from Plaintiffs:

- (a) Economic loss suffered by Plaintiffs;
- (b) Treble damages under the Texas Deceptive Trade Practices Act;
- (c) Punitive or exemplary damages;
- (d) All reasonable and necessary attorneys' fees;
- (e) Court costs; and

(f) Pre and post-judgment interest.

XIII. PRAYER

WHEREAS, PREMISES CONSIDERED, Plaintiffs pray the Defendants be cited in terms of law to answer herein and that upon final trial, Plaintiffs have and recover all damages which they are entitled, all costs of Court, attorneys' fees, pre and post-judgment interest, and for further and other relief, whether in law or in equity, to which Plaintiffs may show themselves justly entitled.

DATED: February 11, 2011

s/ Michael J. Avenatti

Michael J. Avenatti (*Pro Hac Vice* pending)

Bar Number: 206929

Jason M. Frank (*Pro Hac Vice* pending)

Bar Number: 190957

Lisa A. Wegner (*Pro Hac Vice* pending)

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s/ Christopher S. Ayres

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DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand trial of all causes by jury.

DATED: February 11, 2011

s/ Michael J. Avenatti

Michael J. Avenatti (*Pro Hac Vice* pending)

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Jason M. Frank (*Pro Hac Vice* pending)

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s/ Christopher S. Ayres

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