

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

STEVEN M. MENDELSON, individually)	CIVIL ACTION NO. _____
and on behalf of all others similarly situated,)	
)	
PLAINTIFF,)	
)	
v.)	DEMAND FOR JURY TRIAL
)	
BIDCACTUS, LLC,)	
)	
DEFENDANT.)	September 29, 2011

CLASS ACTION COMPLAINT

Plaintiff, Steven M. Mendelsohn, individually and on behalf of all others similarly situated, brings suit against Defendant, BidCactus, LLC (“BidCactus”) and for such would respectfully show the Court as follows:

NATURE OF THE COMPLAINT

1. Plaintiff brings a class action arising from BidCactus’ operation of BidCactus.com (the “Site”), an interactive website on which consumers are enticed to buy “bids” for use in on-line auctions of consumer products with the promise of obtaining those consumer products at significant discounts from retail prices. The Site offers consumers the chance to bid on a variety of consumer products, including high-ticket items (items with a value stated by BidCactus as \$100 or more) such as high-definition televisions, laptop computers, other electronic equipment, and high value gift cards. At any given time, the Site conducts multiple “auctions,” including of such high-ticket items. The auctions typically last many hours, sometimes even days. Each bid purchased from BidCactus costs \$0.75, and each \$0.75 bid placed by a consumer raises the purchase price of the item by \$.01.

2. BidCactus promotes itself (on the Site and through widespread internet advertising) as providing an opportunity for consumers to purchase luxury items at significant discounts compared to retail stores and E-Bay, and it claims that its customers typically save up to 90% compared to retail prices. In one advertised “win,” BidCactus cites a customer purchasing an iPad 32GB 3G for \$104.91 for 84% savings. A price of \$104.91 means that consumers used 10,491 bids at a cost of \$0.75 each to reach the final winning price. Accordingly, BidCactus grossed \$7,868.25 in revenue on this “auction” from bids alone, an amount that dwarfs not only any savings realized by the winning bidder individually but the retail cost of the iPad. This illustrates the critical difference between BidCactus and E-Bay or traditional auctions: losing bidders on E-Bay or in traditional auctions do not pay anything.

3. That difference is critical because while the transactions are disguised as bids in an auction, BidCactus is in reality receiving wagers and entering into wagering contracts in violation of Connecticut law. Furthermore, this distinction makes BidCactus’ “auctions” a lottery under Connecticut law, such that BidCactus is violating Connecticut law by engaging in professional gambling. Simply put, because each bid costs \$0.75, consumers spend money to place bets with BidCactus in the hopes of winning a prize — a consumer product at a significant discount — based upon chance. Thus, BidCactus is distributing property by chance among numerous persons who have paid valuable consideration for the chance of obtaining such property. Under the system set up by BidCactus, most consumers using the Site will not win a significant percentage of the auctions for low-ticket items on which they bid and will rarely, if ever, win auctions of high-ticket items. Thus, as is true with traditional gambling, the overwhelming majority of customers who use the Site will lose money doing so; that is, the total amount they spend between purchasing bids, paying for any merchandise from auctions they win

and paying for the cost of shipping the items they win will exceed the Retail Prices as stated on the Site of the merchandise they receive, if any.

4. Unlike a traditional gambling website, a traditional lottery, or a casino, however, the Site does not disclose its true nature as gambling. It also does not disclose the very low probability of a customer receiving a financially positive outcome from using the Site. In contrast, the odds of winning a lottery are calculable and publicized. Likewise, the payback percentages of various casino games are calculable and widely available. Indeed, slot machines are regulated as to the percentage of money put into them that they will pay back. Nowhere on the Site, however, does BidCactus provide information on what percentage of the money spent by its customers is returned to the customers as merchandise, nor does BidCactus provide any basis for calculating same.

5. BidCactus' failures to disclose that it accepts wagers and wagering contracts in the form of bids, that its operation constitutes professional gambling, including a lottery, that the overwhelming majority of customers will lose money by using the Site, and the percentage of money returned to customers as merchandise constitute violations of the Connecticut Unfair Trade Practices Act ("CUTPA"). Furthermore, regardless of disclosure, BidCactus' conduct of professional gambling, including conducting a lottery and its acceptance of wagers and entering into wagering contracts violates CUTPA. Plaintiff seeks to represent a class of all persons who lost money using the Site, that is, a class of all customers for whom the total amount spent between purchasing bids, paying for any auction items won, and paying for the items to be shipped exceeded the "Retail Prices" as stated on the Site of the items they received, if any.

JURISDICTION

6. Pursuant to 28 U.S.C. § 1332(d)(2)(A) (“the Class Action Fairness Act”), this Court has jurisdiction over this action because it is filed as a class action, the amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs, and many members of the Class, including Plaintiff, are citizens of states other than BidCactus’ states of citizenship — Delaware and Connecticut.

7. This Court has personal jurisdiction over BidCactus because its headquarters, management and, upon information and belief, the physical servers that control the Site are all located within the State of Connecticut and the acts of wrongdoing by BidCactus alleged herein all took place in Connecticut.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because BidCactus is a resident of this District and all of the acts in furtherance of the wrongdoing alleged herein occurred within this District.

PARTIES

9. Plaintiff Steven M. Mendelsohn (“Mendelsohn” or “Plaintiff”) is and was at all relevant times domiciled in Buckeye, Arizona, and is and was at all relevant times a citizen of Arizona.

10. Defendant BidCactus, LLC (“BidCactus”) is a Delaware Limited Liability Company, which has its principal place of business in Westport, Connecticut. Accordingly, BidCactus is a citizen of both Delaware and Connecticut. BidCactus may be served with process through its registered agent for service of process, Business Filings, Inc., 108 West 13th Street, Wilmington, Delaware 19801.

FACTUAL ALLEGATIONS

11. BidCactus purports to be a web-based auction site but differentiates itself from

traditional auctions by dubbing itself an “entertainment auction.” At the Site, BidCactus offers an interactive service through which customers purchase bids and attempt to win various consumer goods, including items such as HP laptops, Sony Cameras, Kitchen Aid appliances, high-value gift cards and other high-ticket, highly coveted items. BidCactus has operated the Site since April 2009. The Site is voluminous, with dozens of links on the Home Page that branch out into hundreds of links from there.

THE WEBSITE DESIGN AND LAYOUT

Creating the False Impression

12. The Site is carefully designed to create for the typical consumer the false impression that users of the Site will routinely win the right to buy valuable merchandise at very significant discounts and, thus, that the overwhelming majority of users will financially benefit from using the Site, while at the same time providing widely fragmented disclosures that it can use to defend lawsuits such as this one. Specifically, the Home Page and the Registration Pages are designed to encourage consumers to begin bidding under a false impression without ever visiting the other portions of the Site that might allow a consumer willing to spend a significant amount of time to read a voluminous amount of material to reach the conclusion that the impression created by the Home Page and Registration Pages is not accurate. Even a consumer reading every word of the Site could not, however, discover the true facts regarding BidCactus, which would cause the overwhelming majority of consumers to avoid the Site altogether.

13. When a consumer conducts a search for “penny auctions” on Google.com, the first result (a paid advertisement) is usually the Site. The search result reads: “Penny Auctions – Mind Blowing Savings – Discounts Up to 90%...” Similarly, a consumer clicking on an advertisement by BidCactus somewhere else on the Internet (which typically contain similar

claims of discounts of up to 90%) or conducting another search on a search engine in which BidCactus comes up as a result or typing in BidCactus' web address is directed to the Site's Home Page (<http://www.bidcactus.com>).

14. Attached hereto as **Exhibits 1-4** are screen shots of the Home Page. The Home Page is dynamic, regularly changing the content and layout of the center box in an effort to attract a consumer's interest and generate excitement. There are two different versions of the rectangular center box of the home page ("Banner"): one that advertises promotions such as the Site's Happy Hour Friday ("Happy Hour Home Page") and another that has three alternating banners ("Primary Home Pages"). The Happy Hour Home Page is set up to generate excitement and interest in bidding while also encouraging the consumer to register immediately without reading any disclosure or information as to how the Site works. In the Banner, the Site promotes "Happy Hour Friday" during which a consumer can receive five additional bids with the purchase of a 50 "Bidpack" along with a picture of a cactus and a mini umbrella reminiscent of the sort found in tropical beverages. However, the most prominent features of the Banner are the words "Online auctions of your favorite products for less than retail price" and a large box stating "Register Now!" The large, exciting colorful Happy Hour Home Page is designed to and does create the false impression that, and collectively falsely represents that, users of the Site will routinely win the right to purchase valuable merchandise at significant discounts, such that the overwhelming majority of users will benefit financially from using the Site.

15. Similarly, the Primary Home Pages are also designed to generate interest and excitement and encourage the consumer to immediately register without reading any additional information. As a consumer views the Primary Home Pages with their alternating Banners, BidCactus rotates different content in the Banner approximately every 5-30 seconds. Each

Banner addresses one of three topics: (1) BidCactus is the “The auction site you can trust”; (2) it is possible to save up to “90% on your favorite products”; and (3) a customer can “Earn Prizes” at a reward store. The large, exciting colorful Primary Home Pages are designed to and do create the false impression that, and collectively falsely represent that, users of the Site will routinely win the right to purchase valuable merchandise at significant discounts, such that the overwhelming majority of users will benefit financially from using the Site.

16. More specifically, the second version of the Banner displayed on the Primary Home Pages states “Save Up to 90% Off your favorite products” and displays a picture of a Sony Camera, a laptop, a retail gift card and a Kitchenaid mixer — all wildly popular and highly coveted products that appeal to a great range of consumers. This is intended to and does create the false impression and constitutes a false representation that users of the Site will routinely win the right to purchase valuable merchandise at significant discounts and, thus, that users will overwhelmingly financially benefit from using the Site. It also provides a link in the form of a bright red box to “Start Now!,” which lures consumers to register and begin bidding without any mention of the need to study materials on the Site in order to have a chance at winning auctions.

17. Immediately below the Banner on all versions of the Home Page is a lengthy section entitled “Live Auctions” with instructions to “Log in to Bid.” This is a list of approximately 15 auctions that are purportedly live and available for bidding. Each of these auctions shows the time remaining to the end of the auction, a price, a bidder name, a picture of the product, and a colored banner with a cent number displayed in the upper left corner. All of these live auctions show valuable and coveted merchandise, including high-ticket items like \$100 gas cards, \$100 Home Depot cards, and electronic merchandise, many with only seconds remaining and incredibly low prices (often below \$1.00) or no bids at all, thereby creating the

impression that they can be immediately be won for only a few pennies. The display of these auctions, without more information, is incredibly misleading because (as described in more detail below) each bid in a BidCactus auction, after a certain time period, can and does trigger the addition of more time to the auction. Accordingly, these auctions that apparently are just about to end will likely go on for many more hours or even days with the prizes being sold at significantly higher prices than those shown. Indeed, the winners of many of these auctions will place so many bids to win that, between the value of the bids used, the purchase price and shipping costs, they will end up paying more than the stated retail value of the item. Nevertheless, the number of these auctions shown, the time left, and their prices are intended to and do create the false impression and constitute false representations that users of the Site will routinely win the right to purchase valuable merchandise at significant discounts and that the overwhelming majority of users will financially benefit from using the Site.

18. Additionally, all versions of the Home Page display a supposed running total of the nearly 300,000 “auctions won on BidCactus by real people like you” and a box entitled “Auctions Won.” The Auctions Won section purports to show recently completed auctions, most supposedly completed within the past few minutes and all won for only cents or a few dollars, far less than the values of the items, including many high ticket items. But the display of these purportedly completed auctions, without more information, is incredibly misleading in three respects. First, these auctions are not typical of the auctions on BidCactus, especially as to high-ticket items, which typically sell for significantly higher prices. Second, it does not reveal that many of these winners placed so many of the bids on an item that they end up paying more than the stated retail value of the item between the cost of the bids used, the purchase price and shipping costs. Third, it does not reveal the large numbers of bidders who bid on those items and

lost, losing the money they spent on the bids in the unsuccessful attempts to win gift cards and merchandise at significant discounts. Thus, the display of the number of auctions won in the history of the Site and of supposedly recent and typical auctions won is intended to and does create the false impression and constitutes false representations that users of the Site will routinely win the right to purchase valuable merchandise at significant discounts and that the overwhelming majority of users will financially benefit from using the Site.

19. On all versions of the Home Page, BidCactus displays several supposed user testimonial videos wherein “real people” discuss the valuable items they won for only a fraction of their value. The display of these testimonials, without more information, is incredibly misleading. The testimonials do not give information on how many bids each user was required to spend before winning the products, the amount of time they spent bidding, or information on how many other bidders were bidding in those specific auctions. The testimonials also do not reveal how many auctions these users unsuccessfully bid in before and after the “win” or whether these users are net losers or winners based upon their total use of the Site. The Site can only be profitable if the majority of customers are net losers and can only be very profitable if the overwhelming majority of customers are losers, which is the case. These testimonials were strategically placed to create and do create the false impression and constitute false representations that users of the Site will routinely win the right to purchase valuable merchandise at significant discounts and that the overwhelming majority of users will benefit financially from using the Site.

Creating False Credibility

20. The Site is cleverly designed to provide legitimacy to itself through a series of strategic logo placements and the user testimonials mentioned above. As discussed above, the

first banner a user sees upon visiting the Primary Home Page states, “Proven. The auction site you can trust,” and a large orange arrow directs a user to a “button” where he or she can register. If a user clicks on the first banner, he or she is directed to another page dependent on the cookies installed by the Site on the user’s computer. If the user is not logged in as a registered user, clicking the first banner will direct the user to the Registration Page. If the user is registered and logged in, he or she is directed to a page to purchase bids. Clicking on that first banner does not offer more information on why BidCactus supposedly is the “auction site you can trust” or why it should be considered “Proven.”

21. Nevertheless, the first banner is just the first of many ploys designed to promote the Site’s credibility and legitimacy. For example, the top right side of the Home Page displays an icon of a ribbon that states “BidCactus Gives Back” next to a trustmark symbol for McAfee SECURE, with the message “Tested Daily” and the current date. Clicking on the McAfee SECURE trustmark directs a user to an external page for McAfee SECURE that represents BidCactus.com to be a “Certified McAfee Secure Site.”

22. Additionally, BidCactus provides not one, but two emblems relating to payment security on its home page, the Authorize.net Verified Merchant Emblem and the PayPal verified logo. Each of these emblems is meant to bring a level of comfort to the consumer that the Site is a legitimate business, but in reality each merely constitutes an affirmation that the Site follows the guidelines of these private companies, which it pays to use their respective payment processing services. If a consumer happens to click on one of the emblems for further research, the consumer will see that both PayPal and Authorize.net have disclaimers that specify the limitations of the logo and acknowledge that the emblems do not signify any endorsement of the

business practices of the organizations utilizing its emblems.¹ The Authorize.net and PayPal Verified symbols each constitute a false express or implied representation that BidCactus is an honest, legal business that will financially benefit those who use it.

23. Further, the Home Page displays an Ernst & Young symbol, which contains an embedded link that leads to a “Report for Independent Accountants.” At first glance, the report appears to be an independent audit of the company’s operations. This is quite impressive given that Ernst & Young (“E&Y”) has historically been considered a top national accounting firm. However, only through an in-depth reading of the “Independent Report” could a consumer learn that the accounting firm is simply expressing an opinion as to the accuracy of very specific statements made by BidCactus to E&Y; it is not an endorsement of the Site or of any of BidCactus’ practices based on any independently selected criteria not in the control of BidCactus. The Ernst & Young symbol constitutes a false express or implied representation that BidCactus is an honest, legal business that will financially benefit those who use it.

24. Further, the Site displays a Better Business Bureau (“BBB”) symbol proclaiming it to be an “Online Accredited Business,” which is meant to assuage any concerns about its legitimacy, but in truth merely speaks to BidCactus’ history of responding to complaints; it does not verify the legitimacy of the Site, nor does it signify any kind of endorsement by Connecticut’s Better Business Bureau. The BBB symbol constitutes a false express or implied representation that BidCactus is an honest, legal business that will financially benefit those who use it.

¹ See https://cms.paypal.com/cgi-bin/marketingweb?cmd=_render-content&content_ID=security/verification_faq (PayPal’s Verification system does not constitute an endorsement of a member or a guarantee of a member’s business practices.) and <http://verify.authorize.net/anetseal/?pid=c6349146-11be-4474-ba87-a1d77ba6aac2&rurl=http%3A//www.bidcactus.com/> (Disclaimer: Merchant verification refers to the merchant’s status as an [active] Authorize.Net customer. Authorize.Net does not guarantee, represent or warrant the performance of the merchant or that the merchant will securely or accurately process all of its transactions through the Authorize.Net Payment Gateway, or complies with applicable federal or state data protection laws.)

25. Additionally, the Site displays a logo for the Entertainment Auction Association (“EAA”). Upon clicking the link to the EAA, a user is taken to an external site that shows BidCactus is a member of the organization and describes the EAA as “[a] California nonprofit corporation that formed an industry trade association, with the sole purpose of promoting integrity within the entertainment auction industry.” Thus, it initially appears as though this trade group provides some sort of credibility to the Site; however, investigation of the EAA site reveals that BidCactus is actually a founding member of the organization. Accordingly, BidCactus in reality is simply accrediting itself via promotion of the EAA. The EAA symbol constitutes a false express or implied representation that BidCactus is an honest, legal business that will financially benefit those who use it.

26. Finally, BidCactus attempts to still further accredit itself by giving itself the “BidCactus Seal of Assurance,” an emblem reminiscent of the gold ribbons often used by other watch-dog organizations. Clicking on it takes a consumer to an explanation of the “Seal” and the “BidCactus Bill of Rights,” which purports to lay out to the consumer what the consumer can expect from BidCactus. These representations are not found in either the FAQs or the Terms of Use. The “BidCactus Seal of Assurance” constitutes an express or implied false representation that BidCactus is conducting an honest, legitimate business, the use of which will financially benefit a customer.

Rushing the Customer into Bidding and Further Creation of a False Impression

27. The Site is designed to lure consumers into quickly beginning bidding without reading the FAQs and Terms of Use, which might discourage bidding at all or increase the probability of winning and from researching the many external sources explaining the problems with and true nature of Penny Auction Sites, including BidCactus. For example, the Home Page

displays a bright green and blue section at the very top on the right that simply states: (1) “register”; (2) “buy bids”; (3) “bid & win!” This section is intended to and does create the false impression and falsely represents that it is simple and routine to register, begin bidding, and win and that typical users will routinely win the right to buy valuable merchandise at significant discounts such that the overwhelming majority of users will benefit financially from doing so. Notably, the first and last words “register” and “win” are in navy blue, while the middle, the part that states you must “buy bids,” is “white” — a color intended to disappear and be skimmed, to convey the false impression that you simply “register” and “win!” Further, this ad does not disclose that bidding on BidCactus is highly competitive, that bidding skills may make a difference or that a consumer should read other materials on the Site about bidding before beginning the bidding process. Rather, it encourages consumers to simply register and begin bidding.

28. Further, clicking on almost any link on the Home Page directs a consumer to the Registration page. Nothing on the face of the Home Page shows the existence of parts of the website such as “How BidCactus Works,” “Frequently Asked Questions,” and “Tricks & Tips.” Rather, a consumer must scroll over the “Help” tab at the top of the Home Page in order to reveal the existence of these sections of the Site, and nothing on the Home Page suggests that the “Help” tab or any of its subsections should be reviewed *before* a user registers and begins bidding.

29. Registering is a two-step process. When a customer clicks on “Register” or “Register Now” or almost any other link on the Home Page, he or she is brought to a page where basic information such as name, email address, user name, and password is entered. A screen shot of the First Registration Page is attached hereto as **Exhibit 5**. This page is strategically

designed to induce consumers to continue the registration process and begin bidding without reading other materials on the Site or otherwise investigating BidCactus and to create the false impression and falsely represent that users of the Site will routinely win auctions and obtain valuable merchandise at huge discounts and, consequently, that the overwhelming majority of users will financially benefit from using the Site.

30. Specifically, immediately to the left and top of the Registration box is a display, similar to the one found on the Home Page, of the recent “Auctions Won,” most within the past few minutes, and most for only a few cents. Additionally, immediately below the “Auctions Won” display is a display box entitled “How to Bid!” This box sets forth a four-step process: (1) Register; (2) Buy Bids; (3) Bid on Items; (4) Win - thus representing that with only four steps the consumer can easily win prizes. On the other side of the registration box is a larger display that states “Win Brand New Products Save up to 90% off retail prices!” This representation is contained in a large box, in equal size to and immediately to the right of the box in which the consumer inputs his registration information, and it contains pictures of a laptop computer with a \$5.15 price tag, a computer monitor with a \$19.49 price tag, a GPS navigation device with a \$3.47 price tag, a DSLR Camera with a price tag of \$7.18, and a Target gift card with a price tag of \$0.05.

31. The registration box does not require a user to check off a box agreeing that the user has read and agreed to BidCactus’ “Terms of Use.” Nor does anything on the Registration Page suggest that a user should review the Terms of Use, “Frequently Asked Questions,” “How BidCactus Works” or “Tricks and Tips” before registration or before beginning bidding. In fact, this page is designed to and does encourage persons to proceed with registration and bidding without reviewing any other materials.

32. Once the information is filled in the Registration Box and “Register” is clicked, the customer is sent to the page for purchasing bids. A screen shot of the Purchase Bids Page is attached hereto as **Exhibit 6**. A consumer must purchase a minimum of 30 bids at \$0.75 each, which means a new user must invest a minimum of \$22.50 to even begin using the Site. Bids can be purchased in amounts of 30 bids for \$22.50, 50 bids for \$37.50, 100 bids for \$75.00, 150 bids for \$112.50 and 250 bids for \$187.50. As with the Registration and Home Page, this Purchase Bids Page is also designed to and does create the false impression and falsely represents that users will routinely win the right to buy valuable merchandise at huge discounts and, thus, that the overwhelming majority of users will financially benefit from the Site. These representations include, but are not limited to, the same display of “Auctions Won” on the left side and the same symbols of credibility at the bottom.

33. Like the preceding pages, the Purchase Bids Page is also designed to lure consumers into registering and bidding without ever reviewing materials on the Site that might discourage them from registering or improve their chances of winning and from investigating BidCactus or Penny Auction Sites in general with other sources. Nothing on the Buy Bids Page suggests that a user should review the Terms of Use, How BidCactus works, FAQs or Tips and Tricks before purchasing the bids or actually beginning to bid. Also, nothing on the Purchase Bids Page suggests that 30 or 50 or even 100 bids will not be a sufficient number of bids to win the overwhelming majority of high-ticket items (\$100 and above). Nor does that page reveal that there will not be time to buy additional bids during the course of an auction if a user runs out, which is also the case. Indeed, it is extremely common for customers to run out of bids in the process of bidding on a particular item and, thus, lose the opportunity to win that auction. Notably, nowhere on the Site, does BidCactus provide information on the average number of

bids it takes to win different types and values of merchandise.

Mechanics and Rules of the Site

34. Only one account per customer is permitted. Upon information and belief, BidCactus keeps electronic records of all activity within each account, including all purchases of bids, all auctions in which bids were placed, and all auction items won and purchased. Once an account has been opened, customers can buy additional bids, which are sold in “packs” of varying number. As set forth above, there are five different sizes of bid packs to buy from BidCactus, and for all of them, the cost per bid is \$0.75.²

35. In the auctions, the purchase price increases by \$0.01 each time a bid is placed. Each \$1.00 increase in price in a one-cent auction results in \$75.00 additional revenue to BidCactus. The purchase price represents what the consumer who wins the auction will have to pay to obtain the product if the auction were to end at that point. An auction winner ends up paying the cost of all the bids he or she placed on the item, plus the purchase price of the item, plus shipping costs. Thus, the true cost of the item won, if any, is not just the purchase price, but rather the cost of the bids the consumer had to expend to win the items, plus the purchase price, plus shipping costs.

Gambling

36. Toward the end of each auction, each additional bid adds three to thirty seconds back to the clock to allow additional bidders to respond. The Site is contradictory as to when this occurs. The FAQs say that such additional time will be added within the last two minutes of each auction, but according to the Ernst & Young auditors, time is added when there is less than

² Once registered and once Bids have been purchased, the user may bid on Bid Packs being auctioned. These are sold in different denominations than the ones that can be purchased and may average less than \$0.75 per bid; however, the user must use his bids to bid on these bids, which decreases the number of bids available and thereby prevents a user from minimizing the average price per bid.

thirty seconds left in the auction. Because of this feature, auctions frequently last many hours, including the substantial majority of auctions on high-ticket items. The last bidder “wins” the auction and the right to purchase the item.

37. Unlike traditional auctions, every bidder on BidCactus must expend money for the chance to win an auction. When a BidCactus consumer bids on an item, the consumer pays \$0.75 for each bid, regardless of whether or not the consumer actually wins the item. For example, in a traditional auction, a consumer who bids \$1.00 on an item but loses the auction does not pay the \$1.00 losing bid. Under BidCactus’ scheme, however, a consumer may bid multiple times on an item, ultimately lose the auction, and will have lost the price of the losing bids. For example, BidCactus may be in the process of conducting a one-cent auction for an item that has a \$10.00 bid with 60 seconds left on the timer. If customer A places one \$0.75 bid on the item, the price will be raised to \$10.01, and customer A will have paid \$0.75. A dozen subsequent bids could be made on the item by customers B-M, which will raise the price to \$10.13 and eliminate customers A-L as high bidders, but customers A-L will each have paid the amount of their bids, and BidCactus will have collected an additional \$9.75.

38. For this reason, each bid by a BidCactus consumer constitutes a bet or wager received by BidCactus that no one else will bid within the remaining time and, thus, that this particular bid will win the auction. Whether the bet is won depends almost entirely upon chance, in that the consumer does not have control over the result, which depends upon uncertain conditions, including how many other people are bidding on the item, what prices those persons are willing to pay, and whether the other persons have sufficient bids left to enable them to pay more, if they choose, than the consumer; thus, the consumer has almost a complete lack of control of the factors that will impact the outcome, no matter how wisely the consumer bids.

And, because the average user has been guided by BidCactus into registering and bidding without perusal of the voluminous materials on the Site, winning an auction becomes for the average user a matter almost entirely of luck. Thus, BidCactus is distributing property by chance among persons who have paid a valuable consideration for the chance of obtaining such property. In other words, BidCactus is running a disguised lottery; accordingly, BidCactus is engaged in Professional Gambling, as that term is defined in Conn. Gen. Stat. § 53-278a.

39. Moreover, each bid is truly a wager that the bid will win the auction. Furthermore, each time a consumer bids in an auction, BidCactus is promising that if the bid wins that particular auction, it will sell the merchandise to the consumer for the bid price. Thus, each bid initiates a wagering contract between the consumer and BidCactus. Moreover, each series of bids by a customer represents a wager that the customer will ultimately win the auction and constitutes a wagering contract between BidCactus and the customer that if the customer wins the auction, BidCactus will sell the merchandise at the final bid price. All of these wagers and wagering contracts are void under Conn. Gen. Stat. § 52-553. Consequently, all losing bidders who made at least two (2) bids constitute persons who, by playing a game, lost at least \$1.00 under Conn. Gen. Stat. § 52-554.

40. As with traditional lotteries and other types of gambling and wagering, BidCactus exploits a number of common decision-making flaws. Most notably, many people struggle with the concept of *sunk costs*, meaning they do not realize that all of their previous bids on an item have already been lost and do not make them any more likely to win the auction. In other words, many people struggle to understand that each 75-cent bid is a brand new chance to win and, once another bid follows it, that prior bid will play no role in who wins the auction going forward and should not affect a decision as to whether to bid again. Yet, often people do look at the past bids

and see merely that they lost, not the cost. Thus, BidCactus preys on this fallacy. Indeed, BidCactus' actions feed the temptation to continue to bid and bid, and to acquire new bids, with the single goal of winning by offering Bid Packs throughout the live auctions. BidCactus' auctions also exploit the difficulty consumers have in making snap decisions, especially regarding small amounts of money, and take advantage of fallacies such as (a) *loss aversion*, where one's urge to avoid a loss is typically much more powerful than one's urge to seek a gain, (b) *anchoring* — where one focuses on a particular number and loses track of the larger picture, and (c) the irrational impulse to believe there is always a strategy to beat the system. It is, in part, its exploitation of these factors that make the Site deceptive and likely to deceive.

41. Indeed, these fallacies often lead BidCactus customers into the remarkable mistake of “winning” auctions by spending more on the merchandise than its stated retail values. Specifically, customers often become engaged in bidding wars where they focus on the price of the merchandise and make so many bids that the combined price of the bids they placed, the final price of the merchandise, and the shipping costs exceeds the stated retail value of the merchandise.

42. Significantly, nowhere does the Site disclose that while it purports to conduct auctions, it actually conducts a lottery or some other type of gambling or, at a minimum, wagering, that any property won will be primarily distributed by chance, and that it truly constitutes a professional gambling website. Nor does the Site disclose that each bid is truly a wager that a certain condition will occur, namely, that it will be the last bid before the clock hits zero. Nor does the Site disclose that the bids by the customers constitute wagering or gambling contracts between the customer and BidCactus whereby each consumer risks the cost of the bids in exchange for promises by BidCactus that if the consumer is the last bidder when the clock hits

zero, the consumer will win the prize — the right to buy merchandise at a substantially reduced price, sometimes for pennies on the dollar. Nor does BidCactus adequately disclose to the consumer that he or she has almost no control of the factors that will determine the outcome of the auction. The failure to disclose these facts is unfair, deceptive and illegal, and in pure contravention of Connecticut's well-established public policy against illegal gambling and wagering.

43. Thus, the true nature of the Site as a form of gambling and as a lottery is not disclosed, much to the detriment of the overwhelming majority of its users. BidCactus offers nothing more to its customers than the opportunity to make a very low probability bet that they will be able to purchase merchandise at a discount. Those customers will not win the majority of the auctions in which they participate and will win very few, if any, auctions on high-ticket items (items with a stated value of \$100 or greater). Consequently, for the overwhelming majority of customers who play BidCactus' game, the money they will spend to purchase bids and pay for any items that they are lucky enough to win will greatly exceed the retail value of any items they win and purchase.

44. Crucially, unlike legal lotteries and games of chance played in traditional legal casinos, which may only be operated under specific statutory authority, BidCactus provides no information to its customers of their odds of winning or what percentage the "house" keeps. Nowhere on the Site does BidCactus disclose the very low probability of benefitting financially from using the Site, as revealed by the low percentage of money spent on the Site returned in the form of merchandise. Its failure to do so is unfair, deceptive, and in contravention of Connecticut law. Moreover, BidCactus' professional gambling and conduct of an illegal lottery or other form of gambling or wagering is, under Connecticut law, both unfair and deceptive.

45. Because of the deceptive nature of the Site, Plaintiff and the members of the Class did not know that the use of the Site constituted wagering or that BidCactus was engaged in professional gambling. BidCactus, on the other hand, knew or should have known this.

FACTS SPECIFIC TO THE NAMED PLAINTIFF

46. Plaintiff is an Arizona citizen who became a registered user of Bidcactus on November 12, 2010, after discovering the website and being lured in with what appeared to be very low-bid wins.

47. On the first day he registered, Plaintiff won a total of four auctions: a Eureka Steam Mop, a \$50 Starbucks Gift Card, a \$50 Target Gift Card plus a 50-count Bidpack, and a \$100 Wal-Mart Gift Card plus a 100-count BidPack. The suggested retail value of these prizes stated on the Site was \$392.49. The total actual cost to Plaintiff (based on the number of bids he used, plus the auction prices of the item, plus shipping costs) was \$705.51. However, the sum of the displayed winning prices for all four items equaled \$14.41³ — a substantial difference between the actual cost (when the cost of the bids and shipping costs are taken into consideration) and the cost Plaintiff was led to believe he had incurred. Additionally, of the \$392.49 stated on the Site as the retail value of the prizes won, \$112.50 represents the supposed value of the Bids that were included in the prizes purchased. Accordingly, the retail value of the four *real* (non-bids) prizes that he won was only \$279.99. Thus, on the first day of bidding, Plaintiff paid more than twice the retail value for the prizes he won — a figure nowhere near the 90% savings he was led to believe he could achieve. Plaintiff failed to realize the actual costs he was expending for the prizes he won and those he did not.

48. In order to continue his quest for the elusive “win,” it was necessary for Plaintiff

³ He won the four auctions at the following prices: Eureka Steam Mop (\$0.08); \$50 Starbucks Gift Card (\$2.24); \$50 Target Gift Card + 50 Bidpack (\$8.43); and \$100 Wal-Mart Gift Card + 100 Bidpack (\$3.66).

to repeatedly purchase bids and Bidpacks. Indeed, on the very first day he registered, Plaintiff spent about \$800.00 on the Site in the form of eight (8) separate transactions using a combination of four different accounts and credit cards in an attempt to acquire bids for the chance to win prizes from BidCactus.

49. Over the next approximately 30 days following registration, Plaintiff continued to spend money on the Site, and he ultimately paid at least \$15,219.56 to BidCactus for the ability to bid on and the chance to win prizes — a staggering amount of money for which he received back less than half of that value in the form of items won. Upon review of the prizes he “won,” Plaintiff dishearteningly realized that he had spent \$6,574.94 to win a total of 26 auctions with the stated retail prices on the Site of the prizes he won totaling \$6032.00, for a net loss of \$543.27, nowhere near a 90% savings.⁴ His total net loss from using the Site was at least \$9,187.59 (\$15,219.59 total spent on the Site less \$6,032.00 in prizes).

50. However, the shocking amount of money he lost was not immediately noticeable to Plaintiff. It took weeks for Plaintiff to realize that he had lost and the total amount he had lost.

CLASS ACTION ALLEGATIONS

51. Plaintiff seeks to represent the following class:

All persons in the United States (the 50 states, Washington, D.C., Guam, the U.S. Virgin Islands and Puerto Rico) who, during the period April 1, 2009, to the present (“Class Period”), spent more money on BidCactus.com than the value of the goods they received, if any; that is, persons for whom the total amount spent on purchasing bids and on paying for any auction items they won (including shipping costs) exceeded the “Retail Prices” as listed on BidCactus.com of the goods they received (the “Class”).

52. This action has been brought and may properly be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3).

⁴ When one considers that he won a number of bidpacks with no real value and that BidCactus’ stated retail prices often exceed real prices, Plaintiff’s true net loss in the items he “won” is probably considerably greater.

53. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of members in the Class is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, BidCactus claims on the Site that over “Over 277,235 auctions have been won on BidCactus by real people like you!” Even assuming that some consumers won multiple times, in all probability there are tens of thousands of class members.

54. Because customers of the Site have to provide email addresses in order to register and have to provide mailing addresses in order to purchase bids and merchandise using credit cards, Plaintiff believes that BidCactus has the information necessary to allow notice to be sent individually to each member of the Class.

55. Common questions of law and fact exist as to all members of the Class, which common question predominates over any questions affecting only individual class members. Among others, these common questions include, but are not limited to:

- a. Whether BidCactus engaged in void wagering or illegal gambling under Connecticut law;
- b. whether members of the Class are entitled to recover money lost in betting or playing in games during the 90 days preceding the filing of the Complaint;
- c. whether BidCactus’ conduct constituted violations of the Connecticut Unfair Trade Practices Act (CUTPA);
- d. whether Class members suffered ascertainable losses as a result of BidCactus’ violations of CUTPA;

- e. whether, as a result of violations of CUTPA stated herein, the members of the Class are entitled to recover actual and punitive damages, and, if so, the amount and nature of such damages;
- f. whether BidCactus should refund the net losses of Class members it unjustly retained pursuant to the Connecticut cause of action for unjust enrichment; and
- g. whether BidCactus should, in equity and good conscience, refund to the members of the Class their net losses pursuant to Connecticut's cause of action for money had and received.

56. Plaintiff's claims are typical of the claims of the members of the Class, as he and all the members of the Class were similarly affected by BidCactus' wrongful uniform conduct and seek to recover under the same legal theories. Plaintiff has no interests antagonistic to the interests of the other members of the Class. Plaintiff and all members of the Class have sustained similar economic injuries arising out of BidCactus' violations of common and statutory law as alleged herein.

57. Plaintiff is an adequate representative of the Class because his interests and those of his counsel do not conflict with the interests of the members of the Class he seeks to represent; he has retained counsel competent and experienced in complex class action litigation; and Plaintiff intends to prosecute this action vigorously. Plaintiff and his counsel will fairly and adequately protect the interests of all of the members of the Class.

58. A class action is superior to all other available methods for the fair and efficient adjudication of these controversies because joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members will be relatively small, the expense and burden of individual litigation make it impossible for Class members to individually

redress the wrongs done to them. There will be no difficulty in the management of this class action, whereas individualized litigation presents the potential for inconsistent or contradictory judgments. A class action presents far fewer management difficulties and provides the benefits of a single adjudication, economy of scale, comprehensive supervision by a single court, and the conservation of scarce judicial resources.

COUNT I
RECOVERY OF MONEY LOST IN WAGERING

59. Plaintiff incorporates all of the allegations of Paragraphs 1 through 58 into Count I as if they were fully set forth here verbatim.

60. Pursuant to Conn. Gen. Stat. § 52-544, any person who, “by playing at any game” has lost at least \$1.00 is entitled, within three (3) months thereafter, to recover from the winner the money so lost along with costs of suit in a civil action.

61. All members of the Class who lost money during the three (3) months preceding the filing of this suit who lost \$1.00 or more using the Site lost that money by playing a game and are entitled to recover that money pursuant to § 52-544.

COUNT II
CUTPA – UNFAIR TRADE PRACTICES

62. Plaintiff incorporates all of the allegations of Paragraphs 1 through 61 into Count II as if they were fully set forth here verbatim.

63. The Connecticut Unfair Trade Practices Act (“CUTPA”), Conn. Gen. Stat. § 42-110a (2011), provides in pertinent part that “[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Conduct is unfair within the meaning of CUTPA if it: (a) offends public policy as it has been established by statutes, common law or otherwise; (b) was immoral, unethical, oppressive and

unscrupulous; or (c) caused substantial injury to consumers.

64. BidCactus, Plaintiff, and all the members of the Class are “persons” within the meaning of CUTPA. At all times relevant herein, BidCactus was engaged in “trade” or “commerce” within the meaning of CUTPA. At all times relevant herein, BidCactus engaged in unfair acts and practices that have caused Plaintiff and the members of the Class to suffer ascertainable losses in the form of the net losses they sustained using the Site.

65. Specifically, since April 2009, BidCactus has accepted wagers and entered into wagering contracts not authorized by law, disguised as bids, with the consumers visiting its Site without disclosing the true nature of the transactions. Indeed, every bid submitted by a consumer constitute a wager accepted by BidCactus and formed a wagering contract with BidCactus in that the consumer risked the consideration he or she paid for the price of the bid, \$0.75, for the chance to win a prize (the right to buy merchandise at a substantial discount).

66. Additionally, and in the alternative, since April 2009, BidCactus has engaged in professional gambling in violation of Conn. Gen. Stat. § 53-278b. Specifically, Conn. Gen. Stat § 53-278a defines “Professional Gambling” as “accepting or offering to accept, for profit, money, credits, deposits or other things of value risked in gambling, or any claim thereon or interest therein.” Conn. Gen. Stat. § 53-278a. “Gambling” is defined, in part as “risking any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance or the operation of a gambling device....” Conn. Gen. Stat. § 53-278a.

67. BidCactus accepted, for profit, the money risked by Plaintiff and the members of the Class through the purchase and use of Bids in gambling. In order to bid on an item, Plaintiff and the members of the Class were required to purchase bids at a cost of \$0.75 each. To win an item offered via the Site, Plaintiff and the members of the Class were required to submit bids at a

cost of approximately \$0.75 each; there are no limits on the number of bidders or even the number of bids any particular bidder submits; furthermore, no bid is guaranteed to win. The element of chance is present in each bid and each auction because whether any bid would win or whether Plaintiff and members of the Class would win a particular auction were the result of factors outside Plaintiff's and the Class's control. Indeed the actions of prior bidders, the number of bidders, the timing of bidders, and the amount of time the Site decides to add to a depleting timer are all out of the control of the hopeful bidder and impact the ability of the bidder to achieve any kind of financial gain. Thus, customers were risking money for gain contingent in whole or in part upon chance.

68. In the alternative, and additionally, BidCactus engaged in professional gambling because it accepted or offered to accept, for profit, the money Plaintiff and the Class risked for gain contingent in whole or in part upon the operation of a gambling device.⁵ Specifically, the Site and/or the servers on which the Site is hosted constitute a device or mechanism by the operation of which a right to things of value; that is, the right to win the items available on the auctions may be created as the result of the operation of an element of chance. Additionally, and/or alternatively, the Site and/or the servers on which the Site is hosted constitute a gambling device because when Plaintiff or another member of Class purchased bids and used the purchased bids to bid on an item, they did not receive the same value or thing of value every time they bid; they only received the chance to receive the thing of value.

⁵ See Conn. Gen. Stat. § 53-278(a)(4) (“*Gambling device*’ means any device or mechanism by the operation of which a right to money, credits, deposits or other things of value may be created, as the result of the operation of an element of chance; any device or mechanism which, when operated for a consideration, does not return the same value or thing of value for the same consideration upon each operation thereof; any device, mechanism, furniture or fixture designed primarily for use in connection with professional gambling; and any subassembly or essential part designed or intended for use in connection with any such device, mechanism, furniture, fixture, construction or installation, provided an immediate and unrecorded right of replay mechanically conferred on players of pinball machines and similar amusement devices shall be presumed to be without value. ‘Gambling device’ does not include a crane game machine or device or a redemption machine.”).

69. In the alternative, and additionally, BidCactus is engaged in professional gambling because it is operating an illegal lottery. Conducting an illegal lottery is an activity that falls within the definition of “Professional Gambling.” Conn. Gen. Stat. § 53-278a. A lottery is generally composed of three essential elements, consideration for a chance to win a prize or, put another way: a price, a chance, and a prize. By purchasing bids and using the bids to bid on items available for auction through the website, as to which there is no guarantee of success, Plaintiff and members of the Class paid consideration to BidCactus for the chance to win a prize (the right to buy valuable merchandise at a significant discount).

70. The State of Connecticut considers wagers and wagering contracts and professional gambling, not expressly authorized by law, to be offensive to the state’s historic and longstanding public policy, as that policy has been established by statutes, common law, or otherwise. Additionally, accepting wagers and entering into wagering contracts and professional gambling, especially without disclosing the true nature of the transactions, is immoral, unethical, oppressive and unscrupulous. Finally, BidCactus’ acceptance of wagers, its entry into wagering contracts, its engaging in professional gambling and its lack of disclosure of same caused Plaintiff and the members of the Class to suffer substantial injury.

71. BidCactus’ conduct in accepting wagers, entering into wagering contracts and engaging in professional gambling, and its failure to disclose these facts, thus constituted the commission of acts or practices that violated CUTPA pursuant to Conn. Gen. Stat. § 42-110a, *et seq.*, in that they constituted unfair trade practices in the conduct of trade or commerce. BidCactus’ conduct constituted unfair practices because it violated Connecticut’s statutes; it offended the State’s public policy against wagering and gambling not authorized by law, as that policy has been established by statutes and common law; and the conduct was immoral,

unethical, oppressive and unscrupulous. Furthermore, by engaging in this offensive and illegal conduct, BidCactus caused substantial injury to Plaintiff and the members of the Class by causing them to lose substantial amounts of money.

72. As a result of BidCactus' unfair conduct in violation of CUTPA, Plaintiff and the other members of the Class have sustained ascertainable losses of money equal to the net losses they have suffered from using the Site – the amount by which the costs of all bids purchased and used, plus the costs of all items won and purchased, plus shipping costs exceed the stated retail values of all the items they received, if any.

73. BidCactus is liable to Plaintiff and the other members of the Class for those actual damages caused by BidCactus' violation of CUTPA and for their reasonable costs and attorneys' fees. Conn. Gen. Stat. § 42-110g. In addition, because BidCactus acted with reckless indifference to the rights of Plaintiff and the Class and intentionally and wantonly violated those rights, Plaintiff and the Class seek punitive damages as authorized pursuant to § 42-110g(a) of the Act.

74. In compliance with Connecticut General Statutes § 42-110g(c), a copy of this Complaint has been mailed to the Attorney General of the State of Connecticut and the Commissioner of Consumer Protection on this date.

COUNT III
CUTPA – DECEPTIVE TRADE PRACTICES

75. Plaintiff incorporates all of the allegations of Paragraphs 1 through 74 into Count III as if they were fully set forth here verbatim.

76. CUTPA provides in pertinent part in that “[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Conduct is deceptive within the meaning of CUTPA if it is actually deceptive or if

it has the capacity to deceive.

77. BidCactus, Plaintiff, and all the members of the Class are “persons” within the meaning of CUTPA. At all times relevant herein, BidCactus was engaged in “trade” or “commerce” within the meaning of the Act. At all times relevant herein, BidCactus engaged in deceptive acts and practices that have caused Plaintiff and the members of the Class to suffer ascertainable losses as demonstrated by their net losses suffered on the Site. More specifically, the Site is designed to create and does create the false impression and makes false representations that users of the Site will routinely win the right to purchase valuable merchandise at significant discounts and that the overwhelming majority of users will benefit financially from using the Site. Moreover, the Site is intended to and does create the false impression and makes false representation that the consumer is participating in an auction when in reality, BidCactus is accepting wagers, entering into wagering contracts, and engaging in Professional Gambling, including conducting an illegal lottery. Moreover, the Site is intended to and does create the false impression and makes false representation that it is an honest, legitimate business from which its customer will financially benefit. Based upon these misrepresentations, the Site is incredibly misleading, actually deceptive, has the capacity to deceive and is likely to deceive. These misrepresentations constitute deceptive acts or practices.

78. BidCactus further failed to inform its customers:

- (a) That it is accepting wagers and entering into wagering contracts in violation of Connecticut law;
- (b) That it is engaged in Professional Gambling, including conducting a lottery, under Connecticut law;

- (c) Of the percentage of the money spent by customers on the Site that is returned to customers in the form of merchandise; and
- (d) That the overwhelming majority of the customers using the Site will lose money by doing so.

These failures to disclose, by themselves and in combination with the affirmative misrepresentations set forth above, are actually deceptive, have the capacity to deceive and are likely to deceive and thus constitute deceptive acts or practices.

79. As a result of BidCactus' deceptive acts and practices, Plaintiff and the other members of the Class have sustained ascertainable losses of money equal to the net losses they suffered using the Site — the amount by which the dollars they spent in purchasing bids and purchasing any auction items, including shipping costs, exceeded the Retail Values of the purchased items as set forth on BidCactus.com.

80. BidCactus is liable to Plaintiff and the other members of the Class for those actual damages caused by BidCactus' violation of CUTPA and for their reasonable costs and attorneys' fees. Conn. Gen. Stat. § 42-110g. In addition, because BidCactus acted with reckless indifference to the rights of Plaintiff and the Class and intentionally and wantonly violated those rights, Plaintiff and the Class seek punitive damages as authorized pursuant to § 42-110g(a) of CUTPA.

81. In compliance with Connecticut General Statutes § 42-110g(c), a copy of this Complaint has been mailed to the Attorney General of the State of Connecticut and the Commissioner of Consumer Protection on this date.

COUNT IV
UNJUST ENRICHMENT

82. Plaintiff incorporates all of the allegations of Paragraphs 1 through 81 into

Count IV as if they were fully set forth here verbatim.

83. The money lost by Plaintiff and the members of the Class using the Site — the amount by which the money they paid for the bids, plus the money they paid to purchase the items won in auctions (including shipping costs) exceeded the total “Retail Prices” as stated on the Site of the items they received — constitutes a benefit conferred upon BidCactus by Plaintiff and the Class and a detriment to Plaintiff and the members of the Class. Under the circumstances, and as a matter of equity, BidCactus was unjustly enriched by its receipt of that money and it should return that money to Plaintiff and the members of the Class.

84. There is no express contract to stand as a bar to this claim for unjust enrichment because any potential contracts between Plaintiff and the members of the Class and BidCactus constituted wagering contracts, which were void under Conn. Gen. Stat. § 52-553.

COUNT V
MONEY HAD AND RECEIVED

85. Plaintiff incorporates all of the allegations of Paragraphs 1 through 84 into Count V as if they were fully set forth here verbatim.

86. The money lost by Plaintiff and the members of the Class using the Site - the amount by which the money they paid for the bids, plus the money they paid to purchase the items won in auctions (including shipping costs) exceeded the total “Retail Prices” as stated on the Site of the items they received — constitutes money in BidCactus’ possession, which Plaintiff and the members of the Class had no moral or legal obligation to pay to BidCactus and which BidCactus has no right, in equity and good conscience, to retain.

87. There is no express contract to stand as a bar to this claim for money had and received because any potential contracts between Plaintiff and the members of the Class and BidCactus constituted wagering contracts, which were void under Conn. Gen. Stat. § 52-553.

REQUEST FOR RELIEF

Individually, and on behalf of the Class, Plaintiff Stephen M. Mendelsohn respectfully requests the Court to award the following relief:

- a. An order certifying the proposed Class under Fed. R. Civ. P. 23(a) and (b)(3) and appointing Plaintiff and Plaintiff's counsel to represent the Class;
- b. A judgment finding that BidCactus is liable for all claims asserted herein;
- c. A judgment awarding actual damages and/or restitution and/or disgorgement as set forth above;
- d. A judgment awarding punitive damages;
- e. A judgment awarding attorneys' fees and litigation costs;
- f. A judgment awarding pre-judgment and post-judgment interest at the maximum rates allowable at law or in equity; and
- g. A judgment awarding all such other legal or equitable relief as justice requires.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

PLAINTIFF STEVEN M.
MENDELSON,

BY MOTLEY RICE LLC,
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