

IN THE CHANCERY COURT OF TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

GREG CARL, BOB CLAYTON,)
MATTHEW INGBER, LAWRENCE)
KAHLDEN, TIM LEAHY,) Case No:
CHRIS MERRITT, MICHAEL MORGAN,)
JON MORRELL, EDDIE PORTER,)
STEVE SUSCE, and JOHN ECKERT,)
)
Plaintiffs,)
)
v.)
)
TENNESSEE FOOTBALL, INC. and)
CUMBERLAND STADIUM, INC.,)
)
Defendants.)

COMPLAINT

Plaintiffs Greg Carl, Bob Clayton, Matthew Ingber, Lawrence Kahlden, Tim Leahy, Chris Merritt, Michael Morgan, Jon Morrell, Eddie Porter, Steve Susce, and John Eckert, for their Complaint against Defendants, Tennessee Football, Inc. and Cumberland Stadium, Inc., for, among other things, declaratory judgment, breach of contract, and violation of the Tennessee Consumer Protection Act, allege the following:

INTRODUCTION

1. In the recent past, Tennessee Football, Inc. and Cumberland Stadium, Inc. (together, the “Tennessee Titans” or the “Titans”) began to change the way they interacted with individuals and/or entities who engage in the resale of National Football League (“NFL”) tickets. Prior to this time, the Titans openly acknowledged to the media and otherwise that owners of permanent seat licenses (“PSLs”)¹ who resell their tickets were a

¹ A PSL is often sold by a professional sports team to transfer some of the cost of building a stadium to those who wish to become season ticket holders. These PSLs come with

“common and accepted” part of the NFL-ticket landscape and treated them no differently than any other PSL owner. Indeed, in many instances, the Titans, knowing full well that they were interacting with PSL owners who resell their tickets, actively encouraged these individuals to purchase additional PSLs or, in other instances, helped facilitate the transfer of PSLs to these individuals when it behooved the Titans to do so.

2. In fact, even now, the Titans routinely encourage season ticket holders to resell tickets through emails and literature included with their season tickets. The Titans encourage resale through their team page via the NFL Ticket Exchange and, when sold through the NFL Ticket Exchange, the team benefits from the sale. Plaintiffs here have utilized this option, as well as other secondary ticketing websites with which the NFL has contractual agreements, such as, for example, StubHub and SeatGeek, to facilitate the sale of tickets. The Titans then utilize this resale data to assist them in planning price increases for all PSL holders and—more specifically—Plaintiffs here, effectively using a PSL holder’s own sales data against them. This has resulted in hefty price increases for all PSL holders at Nissan Stadium on average over the past four years. This includes price increases for the 2021 season, even though PSL holders were not given the opportunity to use their tickets during 2020 due to COVID-19 capacity restrictions.

3. The Titans, however, changed course at some point after various media outlets reported that the Titans were partnering with Cole Rubin, a ticket broker in Florida,

certain rights, such as the right to purchase season tickets for the designated seats. Generally, this allows a team to build a stadium using financial backing from private individuals, rather than spending its own money or financing, and promises those parties benefits in exchange. The Tennessee Titans and the St. Louis Rams were the first NFL teams known to use this source of funding for their stadiums. The St. Louis Rams were recently sued for violations of their promises and duties to their PSL holders and entered into a \$24M class-action settlement.

to make sure that the Titans sold out every game. In connection with this arrangement, it was alleged that the Titans had not paid certain taxes to Metro Nashville and/or that certain of the tickets were designated as military “comps” when those tickets were not (as military comps were not subject to certain taxes). Since that time, the Titans have actively attempted to restrict the ability of PSL owners who resell their tickets to enjoy the full benefits of PSL ownership and, additionally, have actively attempted to squeeze these individuals out of the market by, among many other things, most recently grossly inflating the price of season tickets connected to their PSLs compared to the price of season tickets for similarly situated seats.

4. The Titans, in fact, have openly stated that they currently have a “policy” of increasing the season ticket prices for PSLs in the “lower bowl” of Nissan Stadium owned by those they deem to be “ticket resellers.” According to the Titans, “ticket resellers” are “not entitled to profit by reselling [tickets] at inflated prices....” Of course, no such restriction exists in the PSL Agreements at issue and this new “policy” flies in the face of years of statements and actions by the Titans.

5. In the end, the Titans admittedly actively discriminate against PSL owners who resell their tickets and hope that, by making ticket sales to these individuals more and more onerous, these individuals will simply abandon the PSLs, so that the Titans can snatch back ownership of them and resell the PSLs/tickets for their own profit. In short, the Titans are systematically attempting to destroy the value of any PSLs owned by individuals the Titans deem “ticket resellers” for the Titans’ own benefit.

PARTIES, JURISDICTION, AND VENUE

6. Plaintiff Bob Clayton is a citizen and resident of Montgomery County, Tennessee. Mr. Clayton is a long-time owner of Tennessee Titans PSLs, as well as a fan of the Tennessee Titans. He resells a number of tickets associated with the PSLs that he owns and has been deemed a “ticket reseller” by the Titans. The seats associated with his PSLs are detailed on **Exhibit A**.

7. Plaintiff Greg Carl is a citizen and resident of Charlotte, North Carolina. Mr. Carl is also an owner of Tennessee Titans PSLs and has been deemed a “ticket reseller” by the Titans. The seats associated with his PSLs are detailed on **Exhibit B**.

8. Plaintiff Matthew Ingber is a citizen and resident of Brooklyn, New York. Mr. Ingber is also an owner of Tennessee Titans PSLs and has been deemed a “ticket reseller” by the Titans. The seats associated with his PSLs are detailed on **Exhibit C**.

9. Plaintiff Lawrence Kahlden is a citizen and resident of St. Petersburg, Florida. Mr. Kahlden is also an owner of Tennessee Titans PSLs and has been deemed a “ticket reseller” by the Titans. The seats associated with his PSLs are detailed on **Exhibit D**.

10. Plaintiff Tim Leahy is a citizen and resident of West Dundee, Illinois. Mr. Leahy is also an owner of Tennessee Titans PSLs and has been deemed a “ticket reseller” by the Titans. The seats associated with his PSLs are detailed on **Exhibit E**.

11. Plaintiff Chris Merritt is a citizen and resident of Texas. Mr. Merritt is also an owner of Tennessee Titans PSLs and has been deemed a “ticket reseller” by the Titans. The seats associated with his PSLs are detailed on **Exhibit F**.

12. Plaintiff Michael Morgan is a citizen and resident of Maryville, Tennessee. Mr. Morgan is also an owner of Tennessee Titans PSLs and has been deemed a “ticket reseller” by the Titans. The seats associated with his PSLs are detailed on **Exhibit G**.

13. Plaintiff Jon Morrell is a citizen and resident of Franklin, Tennessee. Mr. Morrell is also an owner of Tennessee Titans PSLs and has been deemed a “ticket reseller” by the Titans. The seats associated with his PSLs are detailed on **Exhibit H**.

14. Plaintiff Eddie Porter is a citizen and resident of Robertson County, Tennessee. Mr. Porter is also an owner of Tennessee Titans PSLs and has been deemed a “ticket reseller” by the Titans. The seats associated with his PSLs are detailed on **Exhibit I**.

15. Plaintiff Steve Susce is a citizen and resident of Birmingham, Alabama. Mr. Susce is also an owner of Tennessee Titans PSLs and has been deemed a “ticket reseller” by the Titans. The seats associated with his PSLs are detailed on **Exhibit J**.

16. Plaintiff John Eckert is a citizen and resident of Nashville, Tennessee. Mr. Eckert is also an owner of Tennessee Titans PSLs and has been deemed a “ticket reseller” by the Titans. The seats associated with his PSLs are detailed on **Exhibit K**.

17. Defendant Tennessee Football, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business located at 460 Great Circle Road, Nashville, Tennessee 37228. Tennessee Football, Inc. owns and operates the NFL football team known as the Tennessee Titans.

18. Defendant Cumberland Stadium, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business located at 460 Great Circle Road, Nashville, Tennessee 37228. Cumberland Stadium, Inc. is the contracting party on

behalf of Tennessee Football, Inc. in the PSL agreements referenced below. Upon information and belief, Cumberland Stadium, Inc. is owned and operated by Tennessee Football, Inc.

19. Jurisdiction is proper in the courts of the State of Tennessee because Defendants conduct business in this State and have engaged in conduct that has caused injury in this State. Venue is appropriate in Davidson County because Plaintiffs suffered injury in this County and the causes of action arose in this County.

FACTS

20. Traditionally, the Titans expressed no concern with the fact that many individuals purchased large numbers of Tennessee Titans PSLs and then resold the tickets associated with those PSLs. The Titans, indeed, made public statements to the media that “[r]esale of tickets to NFL games is a common and accepted practice,” <https://www.usatoday.com/story/sports/nfl/2015/05/19/titans-investigating-irregularities-in-ticket-sales/27602583/>, and that the Titans “use many strategies to sell tickets, including ticket brokers.” <https://www.tennessean.com/story/sports/columnist/dave-ammenheuser/2015/05/19/time-question-integrity-titans-ticket-sales/27585405/>.

21. Further, in some instances, the Titans actively courted PSL owners who resell their tickets to buy additional PSLs and provided those PSL owners with exclusive access to premium PSLs. In particular, in July 2012, Tim Zenner, a Titans Assistant Ticket Manager, encouraged Mr. Clayton to buy a number of PSLs in premium seat locations. Although the Titans had stated to the public that, on this occasion, there was a four PSL limit per person, Mr. Zenner encouraged Mr. Clayton to buy more than that limit and Mr.

Clayton ultimately purchased approximately eighteen PSLs at that time. Mr. Zenner then allowed Mr. Clayton to pay for these PSLs over the course of approximately six months.

22. Other Plaintiffs had similar experiences in which the Titans encouraged them to continue to buy additional PSLs or else facilitated sales of PSLs to them in situations outside of the transfer window or when someone needed to sell a PSL quickly.

23. In 2015, however, various media outlets reported that the Titans were partnering with Cole Rubin, a ticket broker in Florida, to make sure that the Titans “sold out” every game. In connection with this arrangement, it was alleged that the Titans had not paid certain taxes to Metro Nashville and/or that certain of the tickets were designated as military “comps” when they were not.

<https://www.usatoday.com/story/sports/nfl/2015/05/19/titans-investigating-irregularities-in-ticket-sales/27602583/>. None of the Plaintiffs here were in business with Mr. Rubin.

24. More recently, the Titans have actively changed the way they interact with PSL owners who resell their tickets. These efforts have become more and more egregious, such that, now, the Titans admittedly actively discriminate against individuals they deem “ticket resellers” and hope that, by making sales to these individuals more and more onerous, those PSL owners will simply abandon the PSLs. In short, in a classic “bait and switch,” the Titans appear to be systematically attempting to destroy the value of any PSLs owned by those whom the Titans deem “ticket resellers.”

25. These acts include but are not limited to the following:

- The Titans will no longer allow PSLs to be sold or “transferred” to any person or entity they consider a “ticket reseller.” It is not clear what criteria the Titans use to determine this arbitrary designation. Such a restriction, however, substantially impacts the value of a PSL;

- In 2020, the Titans began to charge those they have deemed ticket resellers, including, but not limited to, Plaintiffs, a grossly inflated amount for season tickets, which is far higher than other tickets in the same section—or even the same row—sold to other PSL owners;
- In 2020, the Titans provided at least some of those they have deemed ticket resellers only two weeks to purchase their season tickets when other PSL owners were provided far longer. If a PSL owner does not purchase season tickets by the deadline, the owner is in danger of losing the PSL;
- In 2020, the Titans did not allow some of those they have deemed ticket resellers to utilize a payment plan during this two-week window and provided no notice of the removal of the payment plan in a blatant attempt to force a default;
- The Titans have removed those they have deemed ticket resellers from any of the “perks” provided to PSL owners. These include concession gift cards, special events, gifts, and, in general, email communications from the team;²
- Seat relocation used to be allowed based on tenure—that is, the longest PSL owners would be allowed the first opportunity to relocate to a better seat. Now, those the Titans have deemed ticket resellers are confined to the very final slot when good seats are, typically, no longer available; and
- Because the Titans have transitioned to solely electronic tickets, tickets are no longer provided in hard copy form; tickets cannot be left at “will call;” the Titans have not cooperated when there have been electronic difficulties in accessing the tickets at issue; and, as noted above, the Titans are able to track the data of who has acquired the season ticket and who is using the season ticket, which the Titans are using in their efforts to squeeze those they have deemed ticket resellers out of the market.

By restricting the ability of willing individuals to purchase seats—especially, for example, during a time of poor team performance—the Titans have substantially and negatively impacted the value of all PSLs. This includes PSLs held by Plaintiffs, as well as those held by all other individuals.

² For instance, the Titans website currently offers a “referral program” that gives a PSL owner a bonus for referring someone to buy a PSL; however, as stated on the website, this program “does not apply for resellers.” <https://www.tennesseetitans.com/tickets/season-ticket-members/referral-program>.

PSL AGREEMENTS

26. There have been four separate “Reserved Seat License Agreements” issued by the Titans.³ The first two on March 15, 1996 and March 15, 1999 (the “1996/1999 Agreements”), respectively, contain functionally equivalent terms and conditions.⁴

27. Certain relevant contractual provisions from the 1996/1999 Agreements are the same and are as follows:

- Section 2(b) provides: “So long as Licensee timely makes each such payment and subject to the provisions hereof, Licensee shall have the right to maintain the Permanent Seat License in force and to purchase season tickets with respect to the Seats covered hereby for so long as the Team plays its NFL home games in the Stadium. *The price of season tickets for the Seats shall be established by the Team.*” (Emphasis added).
- Section 3(a): “Tickets for all team Games will be mailed to the individual, corporation or other organization in whose name the Permanent Seat License for such Team Games is held at the then current address of such entity in Licensor’s records. Licensor shall not have any responsibility for *subsequent distribution of tickets* in the event that tickets are held for group purposes.” (Emphasis added).
- Section 3(c): “*Subject to restrictions and guidelines established by Licensor*, Licensee has the right to transfer by gift, bequest or otherwise the Permanent Seat License and its rights under this Reserved Seat Agreement.” (Emphasis added).
- Section 3(f): “Licensor, *in its sole and absolute discretion*, may limit the number of seats licensed to any one individual or entity.” (Emphasis added).
- Section 7: “This Reserved Seat Agreement contains the entire agreement of the parties with respect to the matters provided for herein, and shall supersede any and all oral or written agreements and discussions previously made or entered into concerning the subject matter hereof. *No modification hereto shall be valid and enforceable unless in writing and signed by both parties.*” (Emphasis added).

³ Defendants have copies of all four of these documents.

⁴ The March 15, 1996 Agreement contains some additional payment deadlines and a “Special Termination” provision should the stadium not be built, because, at that point in time, the Titans had not relocated from Houston.

28. As noted above, Section 3(f) purports to provide some leeway as to limits that the Titans can place on the number of PSLs owned by an individual or entity. The Titans, however, failed to put this same level of discretion in place in, for example, Section 2(b) or 3(c). Thus, pursuant to black-letter contract law, the Titans' changes to the price of tickets cannot be arbitrary, *i.e.* the Titans have a contractual duty to act in good faith and deal fairly with all PSL owners, including those they have deemed ticket resellers, and it is a violation of the duty of good faith and fair dealing for the Titans to target a specific type of individual based on the fact that they resell their tickets and simply charge them more for season tickets. Likewise, pursuant to Section 3(c), a PSL owner has the "right" to transfer both a PSL as well as the reseller's "rights under this Reserved Seat Agreement." The Titans' efforts to cut off transfers to anyone it unilaterally determines is a "ticket reseller" violate this provision and the duty of good faith and fair dealing contained therein.

29. Sometime in late 2014 or 2015, the Titans created a document entitled "Additional Terms and Conditions," which is, in essence, a slightly revised version of the 1996/1999 Agreements; indeed, the document states that it is "[r]evised 9/2014." Notable changes are as follows, although, due to Section 7 referenced above, these changes would not apply to the 1996/1999 Agreements:

- Section 3(a) provides: "Tickets (or PDF versions of same) for all team Games will be sent via first class mail (or electronic mail) to the individual, corporation or other organization in whose name the Permanent Seat License for such Team Games is held at the then current address of such entity in Licensor's records. Licensor shall not have any responsibility for subsequent distribution of tickets in the event that tickets are held for group purposes."
- The old 3(e) and 3(f) provisions appear to have been combined into Section 3(e), which provides: "LICENSOR, IN ITS SOLE AND ABSOLUTE DISCRETION AND WITHOUT REGARD TO GOOD FAITH OR ANY OTHER STANDARD, MAY (i) LIMIT THE NUMBER OF SEATS LICENSED TO ANY ONE INDIVIDUAL OR ENTITY, AND (II) PROHIBIT THE TRANSFER OF

PERMANENT SEAT LICENSE(S) TO INDIVIDUALS OR ENTITIES WHICH IT BELIEVES ARE TICKET RESELLERS AND/OR TICEKET [sic] BROKERS. IN THE EVENT A TICKET RESELLER OR TICKET BROKER INTENTIONALLY VIOLATES THE SPIRIT OF THIS SECTION 3(e) BY PURCHASING PERMANENT SEAT LICENSES WITH AFFILIATED AND/OR RELATED INDIVIDUALS AND/OR ENTITIES, LICENSOR RETAINS THE RIGHT TO TERMINATE, UPON DISCOVERY, ALL OF SUCH TICKET RESELLER OR TICKET BROKER'S [sic] (ALONG WITH THE AFFILIATED AND/OR RELATED INDIVIDUAL OR ENTITIES) PERMANENT SEAT LICENSES WITHOUT ANY COMPENSATION TO SAME.

30. Finally, the Titans revised the 2014 document as of "7/2019." This 2019 document is entitled "Permanent Seat License Agreement" and consists of a "Signature Page" which contained a "consent" to receive information from the Titans, along with an "[e]xecution" provision related to executing the document in more than one counterpart. Attached to this "Signature Page" are "Additional Terms and Conditions" which are similar to the provisions in the 2014 document, including Section 3(e). Strangely, the 2019 document appears to revert to the 1996/1999 Agreements language for Section 3(a). The 2019 document also includes the following:

- Section 3(h)(iv): Licensee agrees that it will not "[v]iolate (a) any of Licensor, Team, NFL and/or any of their third party ticketing vendor's (including, but not limited to, Ticketmaster) rules or regulations regarding the issuance, printing or resell [sic] of any admission ticket, (b) the printed terms on any admission ticket, (c) any Stadium or Licensor rule or regulation, or (d) fail to follow the instructions of Stadium personnel...."
- Section 3(k): "Upon the termination of this Agreement or any Permanent Seat License granted under this Agreement, Licensor may relicense the Seats formerly subject to this Agreement or such Permanent Seat Licenses or otherwise sell season tickets or individual game tickets with respect to such Seats on terms and conditions established by Licensor in its sole discretion, without any further compensation to Licensee."
- Section 3(m): "In the event any of Licensee's Permanent Seat Licenses granted herein are transferred or terminated, all parking rights of Licensee, if any, shall be terminable by Licensor, in Licensor's sole discretion."

31. The Titans also have utilized “transfer forms.”⁵ Certain of the transfer forms note that the transferee “agrees to abide by all rules and regulations applicable to the subject PSL/Club Seat(s) including, but not limited to, the contract. THIS AGREEMENT CONSISTS OF THE TERMS AND CONDITIONS ON THIS PAGE AND THE ADDITIONAL TERMS AND CONDITIONS CONTAINED IN YOUR PSL/CLUB SEAT CONTRACT WHICH ARE INCORPORATED BY REFERENCE AS A PART OF THIS AGREEMENT.”

32. The Titans’ website at various times has contained a host of information related to some of these same issues. For instance, the “Nissan Stadium Seating Guide” provided a “pricing map” for particular sections and rows (and for different opponents). Another section of the website states that “prices of PSLs and season tickets are associated with specific zones.” The website also lays out payment plans and references “seat relocation” as follows: “PSL accounts in good standing will have the option to search available inventory through an online interactive seat map.” In at least one part of the website, the Titans explicitly state that certain perks are not available to “resellers.”

33. Finally, as noted above, in a response to a complaint filed with the Tennessee Division of Consumer Affairs, the Titans have openly stated that they are, indeed, engaging in this policy: “The PSL Agreement does not obligate the team to specific increases...does not require the team to charge the same price for all seats, and does not require the team to charge the same price for similar-situated seats in the same section of Nissan Stadium.... [A ticket reseller] does not have the right to purchase season tickets at a certain price with a specific increase. He also does not have the right to pay for the tickets

⁵ Defendants also have copies of these transfer forms.

for his licensed seats at the same price as any other season ticketholder.” The Titans also specifically stated that they believe that those they deem ticket resellers are “not entitled to profit by reselling [tickets] at inflated prices....” (*See* Response, attached hereto as **Exhibit L**). That is, the Titans have openly stated that they believe they can do what they are doing and that it is not unlawful.

34. In the end, as it relates to the grossly inflated prices for similarly-situated tickets, the Titans instituted this policy in conjunction with the sale of tickets for the 2020 NFL season. Due to the COVID-19 pandemic, however, the Titans ultimately refunded (or rolled over) the payments for 2020 season tickets. The Titans, however, recently sent invoices to all PSL owners to make payment for season tickets for the 2021 NFL season. These invoices contained grossly inflated prices similar to those that had appeared on the 2020 invoices. As noted, if a PSL owner does not pay for the upcoming season tickets associated with his PSL, the PSL owner loses the PSL and the right to purchase tickets associated with that PSL in the future.

35. The Titans’ actions in intentionally discriminating against Plaintiffs in an effort to destroy the value of the Plaintiffs’ PSLs and in violation of the relevant PSL Agreements has caused Plaintiffs substantial damage.

CAUSES OF ACTION
COUNT I

Declaratory Judgment, pursuant to Tenn. Code Ann. § 29-14-101, et seq.

36. Plaintiffs restate and incorporate the allegations set forth in the foregoing paragraphs.

37. The Titans have a contractual duty to act in good faith and deal fairly with all PSL owners, including those they have deemed ticket resellers. As detailed above, the

Titans have systematically targeted Plaintiffs, including, but not limited to, by charging Plaintiffs a grossly inflated amount for season tickets, which is far higher than other tickets in the same section—or even the same row—sold to other PSL owners. In short, the Titans have breached the PSL Agreements by setting ticket prices in a discriminatory fashion and/or otherwise discriminating against those they have deemed ticket resellers. The standard by which they were required under the law to set prices and/or otherwise act was the standard of good faith and fair dealing.

38. Likewise, it is a violation of the 1996/1999 Agreements to restrict PSL owners from transferring their PSLs and the rights contained within those agreements to any willing purchasers.

39. As detailed above, a genuine dispute exists between the parties with respect to their legal rights and obligations and, in particular, whether the Titans can actively discriminate against those they have deemed ticket resellers and/or treat these individuals fundamentally differently than other PSL owners. Plaintiffs seek a judgment declaring, among other things:

- a. That the Titans cannot discriminate against those they have deemed ticket resellers by, among other things, charging these individuals a grossly inflated amount for season tickets;
- b. That it is a violation of the Titans' duty of good faith and fair dealing to target those they have deemed ticket resellers and treat them differently than other PSL owners;
- c. That, for any PSLs governed by the 1996/1999 Agreements, a PSL owner can transfer their PSLs and the rights contained within those agreements to

willing purchasers—regardless of whether the purchaser has been deemed a “ticket reseller” by the Titans; and

- d. That, pursuant to the plain language of the various PSL agreements at issue, tickets associated with any Titans PSLs must be mailed to the PSL owner, so that a PSL owner’s data and privacy can be protected against unlawful use by the Titans.

COUNT II

Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing

40. Plaintiffs restate and incorporate the allegations set forth in the foregoing paragraphs.

41. As detailed above, Plaintiffs and the Titans have entered into certain PSL Agreements.

42. The Titans have a contractual duty to act in good faith and deal fairly with all PSL owners, including those they have deemed ticket resellers. As detailed above, the Titans have systematically targeted Plaintiffs, who the Titans have deemed ticket resellers, including, but not limited to, by charging Plaintiffs a grossly inflated amount for season tickets, which is far higher than other tickets in the same section—or even the same row—sold to other PSL owners. In short, the Titans have breached the PSL Agreements by setting ticket prices in a discriminatory fashion and/or otherwise discriminating against Plaintiffs. The standard by which they were required under the law to set prices and/or otherwise act was the standard of good faith and fair dealing.

43. Likewise, it is a violation of the 1996/1999 Agreements to restrict PSL owners from transferring their PSLs and the rights contained with those agreements to any willing purchasers.

44. The agreement between the parties has implied in law a covenant of good faith and fair dealing by which the Titans promised to fulfill their contractual obligations.

45. As a direct and proximate result of Titans' breaches of contract and breaches of the duty of good faith and fair dealing, Plaintiffs have been damaged.

46. The Titans committed these breaches of contract intentionally, fraudulently, maliciously, and/or recklessly, entitling Plaintiffs to punitive damages.

COUNT III
Violation of the Tennessee Consumer Protection Act (the "TCPA"), Tenn. Code Ann. § 47-18-101, et seq.

47. Plaintiffs restate and incorporate the allegations set forth in the foregoing paragraphs.

48. The TCPA provides, in part, as follows: "The following...acts or practices... are declared to be unlawful: (5) Representing that goods...have...characteristics...[or] benefits...that they do not have..." Tenn. Code Ann. § 47-18-104(b)(5).

49. Likewise, the TCPA prohibits "[a]dvertising goods or services with intent not to sell them as advertised." *Id.* at § 104(b)(9).

50. As detailed above, the Titans represented that PSLs had certain characteristics that they did not have—namely, the right to purchase season tickets at a fair and reasonable rate comparable to similarly situated seats, that the PSL owners had the right to transfer their PSLs and the rights contained within their PSL agreements, and that the PSL owners would be treated fairly and reasonably by the Titans and similarly to other PSL owners.

51. Further, the TCPA provides that a consumer can request declaratory judgment or an injunction for unfair or deceptive trade practices: “Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this part may bring an action to obtain a declaratory judgment that the act or practice violates this part and to enjoin the person who has violated, is violating, or who is otherwise likely to violate this part....” Tenn. Code Ann. § 47-18-109(b).

52. As a direct and proximate cause of the Titans’ conduct, Plaintiffs have been damaged and are entitled to all remedies and damages permitted under the TCPA.

COUNT IV
Negligent Misrepresentation

53. Plaintiffs restate and incorporate the allegations set forth in the foregoing paragraphs.

54. The Titans negligently failed to inform Plaintiffs, when they had a duty to do so, that, if they were to buy PSLs, they would be treated fundamentally differently than other PSL owners and that the Titans would actively attempt to destroy the value of the PSLs that Plaintiffs had purchased by, among other things, grossly inflating the prices of the season tickets in an effort to force Plaintiffs to abandon the PSLs and restricting their right to transfer the PSLs to willing purchasers.

55. Plaintiffs reasonably relied on these statements and/or material omissions made by the Titans.

56. Plaintiffs have been damaged as a result of the Titans’ conduct.

COUNT V
Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing
(Course-of-Dealing) (in the alternative)

57. Plaintiffs restate and incorporate the allegations set forth in the foregoing paragraphs.

58. As detailed above, Plaintiffs and the Titans have entered into certain PSL Agreements.

59. As detailed above, the Titans have systematically targeted the Plaintiffs, who the Titans have deemed ticket resellers, including, but not limited to, by charging Plaintiffs a grossly inflated amount for season tickets, which is far higher than other tickets in the same section—or even the same row—sold to other PSL owners.

60. To the extent a court were to determine that the Titans do have discretion to engage in the discriminatory policy detailed above—which, by law, they do not—due to the course of dealing between Plaintiffs and the Titans over the course of many years, the Titans have waived any purported right to exercise such discretion to, for instance, charge Plaintiffs more for tickets, restrict Plaintiffs from transferring their PSLs and the rights contained with those agreements to any willing purchasers, or simply treat Plaintiffs substantially differently than other PSL owners.

61. Plaintiffs relied on the longstanding actions of the Titans to continue to buy additional PSLs under the assumption that, if they purchased additional PSLs, they would not be discriminated against based on the fact that the Titans deemed them to be ticket resellers and that those PSLs could be transferred pursuant to the plain language of the 1996/1999 Agreements—that is, they relied on the course of dealing between the parties that the PSLs would continue to have value. Assuming *arguendo* that the Titans ever had

discretion to enact the unfair practices detailed above, they have waived that right, and, thus, their actions constitute a breach of contract.

62. As a direct and proximate result of Titans' breaches of contract and breaches of the duty of good faith and fair dealing, Plaintiffs have been damaged.

63. The Titans committed these breaches of contract intentionally, fraudulently, maliciously, and/or recklessly, entitling Plaintiffs to punitive damages.

JURY DEMAND

Plaintiffs demand a jury to try this cause.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against the Titans for the following relief:

1. Declaratory relief, as detailed above, on an expedited basis pursuant to Tennessee Rule of Civil Procedure 57;

2. In particular, pursuant to Tenn. Code Ann. § 29-14-101 and § 47-18-109, that the Court enter a permanent injunction enjoining the Titans from further engaging in the wrongful conduct detailed above;

3. Compensatory damages as set forth above, including accrued interest;

4. Treble, statutory and/or punitive damages as permitted by law;

5. Attorneys' fees pursuant to the Tennessee Consumer Protection Act and/or as otherwise permitted by law;

6. Such and further general relief as the Court deems appropriate.

Respectfully submitted,

/s/ John R. Jacobson

John R. Jacobson (BPR#14365)
Timothy L. Warnock (BPR#12844)
Riley Warnock and Jacobson, PLC
1906 West End Ave.
Nashville, TN 37203
(615) 320-3700
jjacobson@rwjplc.com
twarnock@rwjplc.com

Gary C. Adler (*pro hac vice forthcoming*)
Adler Law, PLLC
1818 Library Street, Suite 500
Reston, Virginia 20190
(703) 956-3505
gadler@adlerlawpllc.com
Attorneys for Plaintiffs

VERIFICATION

I, Bob Clayton, have read the foregoing Verified Complaint and declare under penalty of perjury that the allegations stated in Paragraphs 6 and 21 are true and correct to the best of my knowledge, information and belief.

Bob Clayton



A handwritten signature in cursive script, reading "Bob Clayton", is written over a horizontal line.

VERIFICATION

I, Greg Carl, have read the foregoing Verified Complaint and declare under penalty of perjury that the allegations stated in Paragraphs 7, 29, and 30 are true and correct to the best of my knowledge, information and belief.

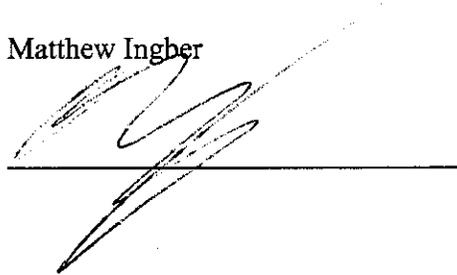
Greg Carl

A handwritten signature in black ink, appearing to read "Greg Carl", is written over a horizontal line.

VERIFICATION

I, Matthew Ingber, have read the foregoing Verified Complaint and declare under penalty of perjury that the allegations stated in Paragraph 8 are true and correct to the best of my knowledge, information and belief.

Matthew Ingber

A handwritten signature in black ink, appearing to be 'M. Ingber', is written over a solid horizontal line. The signature is stylized and somewhat cursive.

VERIFICATION

I, Lawrence Kahlden, have read the foregoing Verified Complaint and declare under penalty of perjury that the allegations stated in Paragraph 9 are true and correct to the best of my knowledge, information and belief.

Lawrence Kahlden



VERIFICATION

I, Tim Leahy, have read the foregoing Verified Complaint and declare under penalty of perjury that the allegations stated in Paragraph 10 are true and correct to the best of my knowledge, information and belief.

Tim Leahy

Tim Leahy

VERIFICATION

I, Chris Merritt, have read the foregoing Verified Complaint and declare under penalty of perjury that the allegations stated in Paragraph 11 are true and correct to the best of my knowledge, information and belief.

Chris Merritt



VERIFICATION

I, Michael Morgan, have read the foregoing Verified Complaint and declare under penalty of perjury that the allegations stated in Paragraph 12 are true and correct to the best of my knowledge, information and belief.

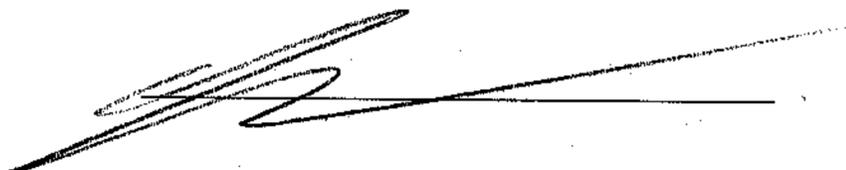
Michael Morgan

A handwritten signature in cursive script that reads "Michael D Morgan". The signature is written in black ink and is positioned above a solid horizontal line.

VERIFICATION

I, Jon Morrell, have read the foregoing Verified Complaint and declare under penalty of perjury that the allegations stated in Paragraphs 13, 24, 25, 26, 27, 31, 32, and 34 are true and correct to the best of my knowledge, information and belief.

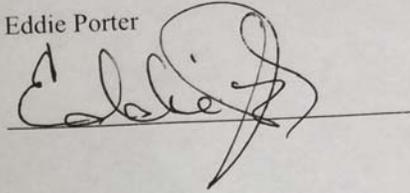
Jon Morrell

A handwritten signature in black ink, appearing to read 'Jon Morrell', written over a horizontal line.

VERIFICATION

I, Eddie Porter, have read the foregoing Verified Complaint and declare under penalty of perjury that the allegations stated in Paragraph 14 are true and correct to the best of my knowledge, information and belief.

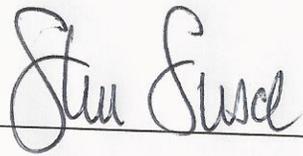
Eddie Porter

A handwritten signature in black ink, appearing to read "Eddie Porter", is written over a horizontal line. The signature is stylized and cursive.

VERIFICATION

I, Steve Susce, have read the foregoing Verified Complaint and declare under penalty of perjury that the allegations stated in Paragraph 15 are true and correct to the best of my knowledge, information and belief.

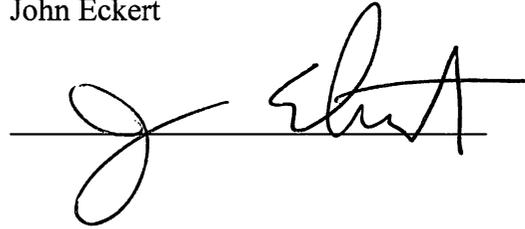
Steve Susce

A handwritten signature in cursive script that reads "Steve Susce". The signature is written in black ink and is positioned above a horizontal line.

VERIFICATION

I, John Eckert, have read the foregoing Verified Complaint and declare under penalty of perjury that the allegations stated in Paragraph 16 are true and correct to the best of my knowledge, information and belief.

John Eckert

A handwritten signature in black ink, appearing to read "John Eckert", is written over a horizontal line. The signature is stylized and cursive.