

IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT  
ST. CLAIR COUNTY, ILLINOIS

LAURIE PIECHUR, individually and on behalf  
of all others similarly situated,

Plaintiff.

09 L. 0562  
Case No. ~~0000~~

v.

REDBOX AUTOMATED RETAIL, LLC.,

Defendant.

CLASS ACTION COMPLAINT

FILED  
ST. CLAIR COUNTY  
OCT 21 2009  
Circuit Clerk

Plaintiff, on behalf of herself and all others similarly situated, and based upon the investigation of counsel, alleges as follows:

INTRODUCTION

1. Defendant Redbox Automated Retail, LLC. (hereinafter "Redbox" or "Defendant") is the nation's leading, low-cost alternative for consumers to rent DVDs for home entertainment. Redbox rents and sells digital video disks ("DVDs") to consumers through innovative, consumer-friendly means: automated, self-service kiosks located at various retail outlets. Consumer demand for Redbox has exploded since the company's inception in 2002, primarily due to Redbox's efficient means of providing consumers with low-cost, easily accessible DVD releases on the day those new-release DVDs become available to the general public.

2. Redbox offers those new-release DVDs, as well as older DVDs to millions of consumers across the United States and Illinois through a \$1.00 per night value proposition. While it boasts "easy \$1 a night DVD Rentals" "[w]ith no late fees ... ever" that is not the truth. Instead, Redbox charges its customers who return a movie even one minute late a late fee in the

form of an illegal penalty. The illegal penalties are charged in connection with rented DVDs returned even one minute late. From January 1, 2002 up to present, the class period at issue in this case, Redbox has, on information and belief, collected more than \$100 million dollars in illegal and punitive late fees from its customers.

3. Plaintiff seeks to represent two nationwide classes of Redbox customers. Described in more detail below, the Late Fee class contains those who, since January 1, 2002, paid \$1 to rent a DVD for a specific amount of time – 1 night – and then breached the agreement by returning the DVD late. Rather than charging its customers legal late fees (which would be a reasonable estimate of the actual damages that Redbox incurs as a result of the late return), Redbox charged them late fees that are of such an excessive amount as to constitute unlawful penalties. The Maximum Charge class comprises all those who were charged \$25 – far in excess of the price of a new, retail DVD – for failing to return the DVD. Plaintiff, individually and on behalf of the classes, seek to recover the unlawful penalties that Redbox imposed against her.

#### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this case pursuant to 735 ILCS § 5/2-209. Plaintiff is a citizen of St. Clair, Illinois, and the events that form the basis for her complaint occurred in St. Clair County, Illinois, at the Redbox location where Plaintiff was charged illegal and excessive late fees for returning DVDs late. Redbox conducts business in St. Clair County, Illinois, and has, within the relevant time period, transacted substantial business in St. Clair County, Illinois.

5. Venue is properly laid in this Court because the transaction or some part thereof occurred in St. Clair County. 735 ILCS §§ 5/2-101(2), 102(a)(b); 815 ILCS § 505/10a(b).

6. Defendant's Terms of Use, attached hereto as Exhibit 1 and incorporated by reference herein, is an adhesion contract which contains a voluntary, broadly worded and mandatory choice-of-law provision and forum selection clause, both drafted by Redbox to determine the validity and legality of a provision within the same contract - the Disc Rental fee. The Terms of Use state in relevant part:

**Disputes.**

These Terms of Use, your access and use of the Kiosks, and the relationship between you and us are governed by the laws of the state of Illinois, without giving effect to its conflict of law provisions. **You and Redbox both agree to submit to the personal and exclusive jurisdiction of the courts of the state of Illinois.** Regardless of any statute or law to the contrary, any claim or cause of action (whether arising in contract or tort, law or equity) by you arising out of or related to these Terms of Use, your access and use of the Kiosks, or the relationship between you and us, must be filed within one (1) year after such claim or cause of action arose or be forever barred.

*Ex. 1* (emphasis added.)

7. As such, there is no federal jurisdiction over this action because Defendant waived its right to invoke federal jurisdiction in its Terms of Use. *Ex. 1.*

**PARTIES**

8. Plaintiff LAURIE PIECHUR is a citizen of St. Clair County, Illinois and rented many DVDs from Defendant within the last twelve (12) months as of the date of this Complaint, returned them late and was charged excessive and illegal late fees. Two of those DVDs were "Fool's Gold" and "27 Dresses" which were not returned on time such that Plaintiff was charged excessive and illegal late fees along with a "Maximum Charge" (*see infra*) of \$25 (plus tax).

9. Defendant Redbox is a Delaware limited liability corporation with its principal place of business in Oakbrook Terrace, Illinois. It is thus a citizen of Illinois.

## FACTUAL ALLEGATIONS

### Redbox's Operations in the DVD Marketplace

10. Since the introduction of DVDs into the marketplace, the DVD has become the dominant medium for the distribution of movies for home viewing.

11. Redbox was founded in July 2002, when the company deployed DVD rental kiosks in a test market in Washington, D.C. After initial success in that market, Redbox chose Las Vegas, Nevada as a second test market in 2003. These test markets established that consumers would enthusiastically turn to this source for new-release DVD rentals and sales, and the company greatly expanded.

12. Redbox provides DVDs to consumers through a nationwide network of over 17,000 self-service kiosks. Each kiosk features an interactive touch screen and sign, a robotic disk array system and a web-linked electronic communications system that allows consumers to rent or buy DVDs. Kiosks typically hold up to 700 DVDs comprising 70 to 200 titles. The kiosks are updated weekly with a supply of new-release DVDs. A single kiosk may hold up to as many as forty-five (45) copies of a popular new-release DVD.

13. Redbox requires consumers to use only credit or debit cards to rent or purchase DVDs. They can also search for and reserve DVDs only through Redbox's website. Consumers can rent DVDs at one location and return them at any other Redbox location due to a patented rent and return system developed by Redbox.

14. Consumer demand for Redbox rentals and sales has grown substantially in the last five years. Redbox had 125 kiosks in 2004, had nearly 6,500 by the end of 2007 and had over 12,000 kiosks nationwide at the end of 2008. Consumer demand has enabled Redbox to surpass Blockbuster, Inc. in that Redbox has nearly four times the number of DVD rental locations in the

United States compared to Blockbuster. To date, consumers have rented nearly 500 million DVDs from Redbox. Consumers average approximately 50 DVD rentals per day per kiosk, and in the first half of 2009, Redbox rented an average of 27 million DVDs per month. In 2009 alone, Redbox has installed a new kiosk, on average, every 58 minutes somewhere in the United States. To support its rapid expansion, Redbox has hired over 600 employees during the past year.

### **Redbox's "No Late Fees Ever" Fiction**

15. Redbox advertises and tells consumers on its website and at its kiosks that there are "[n]o late ... fees ever." When a customer rents a DVD for \$1 a night, she must return it by 9:00 p.m. the next night.

16. If a DVD is returned late, Redbox charges late fees in the amount of \$1 to the customer's account, which it has already secured and made a part of its web-based database during the previous night's rental.

17. While Redbox claims that it never has late fees, Plaintiff alleges that this is a sham because its rental terms and conditions incorporate a fiction that is both deceptive and fraudulent. Specifically, it imposes the fiction that, if the customer does not return the movie by the 9:00 p.m. deadline, then the customer must have wished to enter into a second rental whereby he would re-rent the movie for an additional rental period for another \$1 a night. *Ex. 1.*

18. The customer never actually entered into a contract for a re-rental, nor signed an agreement that contains this re-rental fiction. Instead, the fiction was unilaterally imposed by Redbox upon its customers to covertly impose this \$1 late fee.

19. Its fiction continues to collect even more late fees than what is seen at first glance. Redbox actually prefers that its customers fail to return movies by the 9:00 p.m. deadline,

because such failure triggers the additional \$1 late fees that increase the profits of Redbox, at an amount equal to the initial rental (\$1). First, the automatic re-rental fee (\$1) is immediately charged to the customer as soon as the 9:00 p.m. deadline passes, e.g., at 9:00:01 p.m. Redbox can then collect another rental fee even if the DVD is turned in a mere few minutes late, by immediately re-renting the same DVD that same night to a different customer. Under this scenario, Redbox collects a total of three rentals during the time that only two rentals would normally have been collected – the initial \$1 rental; the \$1 late fee (the fictional re-rental period) and the \$1 rental to a new customer. So while Redbox boasts that it is the low-cost alternative to renting DVDs elsewhere, and in particular, is a low-cost alternative to stores like Blockbuster that charge upwards of \$3-4 per DVD rental, in this scenario, Redbox can effectively double, if not triple its revenue on a single DVD, with virtually no increase in its costs, thus in fact closely matching the point of sales price of its competitors, meaning Redbox is not a lower-cost alternative at all.

20. Redbox limits the \$1 per night late fees to a total of \$25 after a customer retains the DVD for 24 additional nights. *Ex. 1* (“... you will be charged a total of \$25.00 (the “Maximum Charge”), which Maximum Charge includes the Rental Charge for the initial Rental Period, plus tax, if applicable, if you do not return the Disc to any of our Kiosks before the expiration of the 24th Rental Period, in which event the Disc is yours to keep.”) Like the late fees, however, this “Maximum Charge” is also an unlawful penalty because while Redbox boasts the “Disc is yours to keep” it is only so at prices much higher than compared to retail prices for the same disc, which would not be previously viewed or used. Indeed, Redbox itself only charges \$7 for used DVDs at its kiosks – less than one third the amount it charges its customers for a used DVD. In this scenario, the customer pays an inflated price for an inferior quality disc,

compared to what could be purchased brand new at a retail store, or even used from Redbox itself.

21. In the alternative, if customers did choose to enter into a re-rental period by keeping the DVD, then Defendant's Terms of Use impose an automatically renewing contract (via the automatic charges) without clearly and conspicuously disclosing the cancellation procedure for same, in violation of Illinois law.

### **CLASS ACTION ALLEGATIONS**

22. Plaintiff brings this action as a class action pursuant to 735 ILCS 5/2-801 of the Illinois Code of Civil Procedure.

23. Defendant and Plaintiff (and class members) chose and expressly agreed to apply Illinois law to govern the validity of the use of Redbox DVD rentals. *Ex. 1.* For example, Defendant's uniform Terms of Use contain a choice-of-law provision which states in relevant part:

These Terms of Use, your access and use of the Kiosks, and the relationship between you and us are governed by the laws of the state of Illinois, without giving effect to its conflict of law provisions.

*Ex. 1.*

24. Thus, Plaintiff seeks certification of the following nationwide classes:

#### **Late Fee Class:**

All persons in the United States, who, from January 1, 2002 until the date of final judgment, rented a DVD disc from a Redbox kiosk, returned the disc within 24 hours after 9:00 p.m. of the initial rental date and incurred a \$1 fee.

#### **Maximum Charge Class:**

All persons in the United States, who, from January 1, 2002 until the date of final judgment, rented a DVD disc from a Redbox kiosk and were charged the "Maximum Charge" for the disc.

25. Excluded from the classes are: (a) Redbox: any entity in which it has a controlling interest; any of its parents, subsidiaries, affiliates, officers, directors, employees and members of their immediate families; and (b) members of the Illinois state court judiciary and their immediate families; and (c) Plaintiff's counsel.

**B. Numerosity**

26. The classes are so numerous that joinder of all its members are impracticable. The classes includes thousands of persons who were charged a late fee after returning a DVD late or were charged the "Maximum Charge" for the DVD.

**C. Community of Interest**

27. Questions of law or fact of common and general interest to the class exist, and include:

- a) Whether Redbox's Terms of Use contain a mandatory forum selection clause;
- b) Whether through its mandatory forum selection clause, Redbox waived federal jurisdiction by agreeing to submit to the personal and exclusive jurisdiction of the courts of the state of Illinois;
- c) Whether Illinois law applies to this action given Redbox's voluntary and broadly worded choice-of-law provision selecting Illinois law that it drafted as part of its Terms of Use;
- d) Whether Redbox's late fees (so-called re-rental period fees) are unenforceable penalties;
- e) Whether Redbox committed statutory fraud by failing to disclose to customers that its re-rental fees are in truth late fees;
- f) Whether Redbox is unjustly enriched through its manner of charging re-rental fees;



- g) Whether Redbox's conduct as alleged herein constitutes an unfair practice;
- h) Whether Redbox must disgorge the monies by which it has been unjustly enriched;
- i) Whether Redbox's conduct as alleged herein constitutes a violation of the Illinois Rental-Purchase Agreement Act;
- j) Whether Redbox's conduct as alleged herein alternatively constitutes a violation of the Illinois Automatic Contract Renewal Act;
- k) Whether Defendant clearly and conspicuously disclosed in its Terms of Use the automatic renewal clause and cancellation procedure; and
- l) Whether Plaintiff and class members are entitled to damages and if so, what is the proper measure of damages?

28. These common questions predominate over any individual questions or issues.

29. All class claims arise from the same practice and are all based on the same legal theories.

**D. Adequate Representation**

30. Plaintiff will fairly and adequately represent and protect the interests of the class members and has no interests antagonistic to those of the class members.

31. Plaintiff has retained competent counsel experienced in the prosecution and successful settlement of class actions.

**E. Appropriate Method of Adjudication.**

32. A class action is an appropriate method for the fair and efficient adjudication of this controversy. Individual joinder of all members of the class is impractical, if not impossible. Furthermore, as the economic damages suffered by each individual member of the class are relatively small – likely less than \$100 per claimant – the expense and burden of individual

litigation would make it difficult, if not impossible, for individual members of the class to redress the wrongs done to them. Moreover, almost all class members are unaware that the Defendant engages in the improper conduct alleged herein. Absent a class action, Defendant will continue to perpetrate its deceptive course of conduct and retain its ill-gotten profits at the expense of the class.

33. The cost to the court system of individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments and would magnify the delay and expense to all parties and the court system in multiple trials of identical or similar complex factual issues. Conversely, this class action presents fewer management difficulties, conserves the resources of the parties and the court system, protects the rights of each class member and maximizes recovery to them. Most importantly, without this class action, Plaintiff and class members will effectively be left without remedy or redress.

### CAUSES OF ACTION

#### COUNT I

#### (Statutory Fraud by Omission)

34. Plaintiff refers to and incorporates herein by reference the allegations contained in the preceding paragraphs of the Complaint.

35. At all times relevant hereto, there was in full force and effect the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*

36. Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act provides, in relevant part:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, ... concealment, suppression or omission of any material fact ... in the

conduct of trade or commerce are hereby declared unlawful ....

815 ILCS 505/2.

37. At all relevant times, Plaintiff, class members and Redbox were "persons" within the meaning of 815 ILCS § 505/1(c).

38. The product or service at issue that was (and still is) marketed and sold by Redbox is merchandise within the meaning of the Illinois Consumer Fraud and Deceptive Business Practices Act, and Plaintiff and class members are consumers within the meaning of the Illinois Consumer Fraud and Deceptive Business Practices Act.

39. By failing to disclose the aforementioned material facts and by engaging in the aforementioned conduct, Redbox reasonably knew and intended to deceptively charge illegal and excessive late fees to unsuspecting and unknowing customers.

40. By concealing from Plaintiff and class members the material facts alleged herein (i.e., that Redbox does indeed charge "late fees"), Redbox engaged in unfair and/or deceptive practices. The conduct of Redbox (as alleged herein) constitutes unlawful, unfair and fraudulent business practices within the meaning of the Illinois Consumer Fraud and Deceptive Business Practices Act.

41. The unlawful, unfair and fraudulent business practices (as described above) of Redbox continue to present a threat to members of the consuming public.

42. As a result of the conduct described above, Redbox is, and continues to be, unjustly enriched at the expense of Plaintiff and class members.

43. Redbox's conduct has proximately caused damage to Plaintiff and class members, in an amount to be proven at trial.

WHEREFORE, for the foregoing reasons, Plaintiff individually and on behalf of all others similarly situated, humbly requests that this Honorable Court (1) certify the foregoing classes, (2) appoint Plaintiff as class representative and Plaintiff's counsel as class counsel, (3) award Plaintiff, and the foregoing classes actual and other appropriate damages in an amount in excess of \$50,000.00, (4) award Plaintiff's counsel an appropriate attorneys' fee, and (5) such other, further, and different relief as is appropriate under the circumstances, and as allowed by law.

**COUNT II**  
**(Unfair Practice)**

44. Plaintiff refers to and incorporates herein by reference the allegations contained in the preceding paragraphs of the Complaint.

45. At all times relevant hereto, there was in full force and effect the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*

46. Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act provides, in relevant part:

... [U]nfair... acts or practices ... in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

815 ILCS 505/2.

47. Plaintiff and class members, as purchasers of products and/or services sold by Defendant, are consumers within the meaning of the Illinois Consumer Fraud and Deceptive Business Practices Act given that Defendant's practices were addressed to the market generally and/or otherwise implicate consumer protection concerns.

48. Defendant has committed unfair acts by engaging in the practices alleged herein including, but not limited to, charging unlawful penalties in the form of hidden late fees.

49. The nature of Defendant's scheme violates public policy because consumers, such as Plaintiff and class members herein, have no other choice but to submit to Defendant's practices. Without being informed of the true rental fee policy, the customer has no meaningful choice but for the payment of the unlawful fees.

50. Charging unlawful fees offends public policy, is unethical, immoral, oppressive and causes injury in the amount of the unlawful fees.

51. Defendant intended that Plaintiff and class members rely on its unfair practices alleged herein.

52. Defendant's unfair practices as alleged herein, were willful and wanton and constitute intentional violations of the Illinois Consumer Fraud and Deceptive Business Practices Act.

53. Defendant's unlawful and/or unfair practices alleged herein are continuing in nature and are widespread practices.

54. Plaintiff and the classes have been damaged as a proximate result of Defendant's course of conduct and violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, in that Plaintiff (and class members) paid unlawful penalties.

WHEREFORE, for the foregoing reasons, Plaintiff individually and on behalf of all others similarly situated, humbly requests that this Honorable Court (1) certify the foregoing classes, (2) appoint Plaintiff as class representative and Plaintiff's counsel as class counsel, (3) award Plaintiff, and the foregoing classes actual and other appropriate damages in an amount in excess of \$50,000.00, (4) award Plaintiff's counsel an appropriate attorneys' fee, and (5) such

other, further, and different relief as is appropriate under the circumstances, and as allowed by law.

**COUNT III**  
**(Unlawful Penalties)**

55. Plaintiff refers to and incorporates herein by reference the allegations contained in the preceding paragraphs of the Complaint.

56. Plaintiff rented DVDs from Redbox and paid a rental fee in exchange for the right to rent DVDs for a specific night. Plaintiff breached her agreements with Redbox by returning the DVDs late.

57. Rather than charge Plaintiff an appropriate or *pro rata* late fee for the late returns, Redbox charged them late fees amounting to unenforceable penalties.

58. Redbox's late fees constitute unlawful penalties in that: a) they are wholly disproportionate to the harm caused to Redbox by late DVD returns, b) they are not based on a *bona fide* reasonable estimate of the likely damages that Redbox will incur if customers return DVDs late, and c) the damage that Redbox may incur as a result of late DVD returns is not difficult to ascertain.<sup>1</sup>

59. Unlawful penalties are against public policy in Illinois and in all states throughout the country, and are void and unenforceable.

60. Plaintiff and class members are entitled to recover all unlawful penalties paid to Redbox, in an amount to be proven at trial.

WHEREFORE, for the foregoing reasons, Plaintiff individually and on behalf of all others similarly situated, humbly requests that this Honorable Court (1) certify the foregoing

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<sup>1</sup> For example  $\$1 \div 24$  (the number of hours in a rental period) =  $\$0.042$  per hour.  $\$0.042$  per hour equals  $\$0.0007$  per minute ( $\$0.042 \div 60$  minutes) which is approximately  $\$0.01$  every 15 minutes. Instead of charging this actual damage for a DVD returned between 1 and 15 minutes late, Redbox charges 99 times more -  $\$1!$

classes. (2) appoint Plaintiff as class representative and Plaintiff's counsel as class counsel. (3) award Plaintiff, and the foregoing classes actual and other appropriate damages in an amount in excess of \$50,000.00, (4) award Plaintiff's counsel an appropriate attorneys' fee, and (5) such other, further, and different relief as is appropriate under the circumstances, and as allowed by law.

**COUNT IV**  
**(Unjust Enrichment)**

61. Plaintiff refers to and incorporates herein by reference the allegations contained in the preceding paragraphs of the Complaint.

62. A party is unjustly enriched when it retains a benefit to the detriment of another party against fundamental principles of justice, equity and good conscience.

63. When a customer returns a DVD late, Redbox charges late fees that amount to unenforceable and unlawful penalties.

64. Redbox's late fees constitute unlawful penalties in that: a) they are wholly disproportionate to the harm caused to Redbox by late DVD returns, b) they are not based on a *bona fide* reasonable estimate of the likely damages that Redbox will incur if customers return DVDs late, and c) the damage that Redbox may incur as a result of late DVD returns is not difficult to ascertain.<sup>2</sup>

65. Unlawful penalties are against public policy in Illinois and in all states throughout the country, and are void and unenforceable.

66. Redbox has reaped millions of dollars in profits as a result of its collection of illegitimate late fees, *i.e.* unlawful penalties. That Redbox has amassed such earnings, and retains such benefit to Plaintiff's and class members' detriment, violates fundamental principles

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<sup>2</sup> See note 1, *supra*.

of justice, equity and good conscience.

67. Plaintiff and class members conferred a benefit upon Defendant by paying illegitimate late fees.

68. Defendant has reaped the benefit of substantial monetary profits by improperly converting to its use the excess and illegal fees it retained

69. Redbox has been and continues to be unjustly enriched through its above-described conduct.

70. Redbox should be required to disgorge the monies it has unjustly obtained to Plaintiff's and class members' detriment, in an amount to be proven at trial.

WHEREFORE, for the foregoing reasons, Plaintiff individually and on behalf of all others similarly situated, humbly requests that this Honorable Court (1) certify the foregoing classes, (2) appoint Plaintiff as class representative and Plaintiff's counsel as class counsel, (3) award Plaintiff, and the foregoing classes actual and other appropriate damages in an amount in excess of \$50,000.00, (4) award Plaintiff's counsel an appropriate attorneys' fee, and (5) such other, further, and different relief as is appropriate under the circumstances, and as allowed by law.

**COUNT V**

**(Violation of the Illinois Rental-Purchase Agreement Act, 815 ILCS 655/0.01 *et seq.*)**

71. Plaintiff refers to and incorporates herein by reference the allegations contained in the preceding paragraphs of the Complaint.

72. At all times relevant hereto, there was in full force and effect the Rental-Purchase Agreement Act, 815 ILCS 655/0.01 *et seq.*, which provides in pertinent part in Section 2:

(c) A rental-purchase agreement may not contain a provision:

\* \* \*



- (5) *requiring the payment of a late charge or reinstatement fee unless a periodic payment is delinquent for 3 days and the charge or fee is in an amount not more than \$5; or*
- (d) *Only one late charge or reinstatement fee may be collected on a payment regardless of the period during which it remains in default.*
- (e) A rental-purchase agreement must provide that:
  - (1) *a charge in addition to periodic payments, if any, must be reasonably related to the service performed;*

\* \* \*

815 ILCS 2(c)(5), 2(d), 2(e) (emphasis added.)

73. Plaintiff and class members are consumers within the meaning of the Rental-Purchase Agreement Act because she leased personal property, *i.e.*, DVDs under a rental-purchase agreement, *i.e.*, Defendant's Terms of Use. *Ex. 1.*

74. The DVDs rented are merchandise within the meaning of the Rental-Purchase Agreement Act because they are personal property of Defendant's that is the subject of a rental-purchase agreement, *i.e.*, Defendant's Terms of Use. *Ex. 1.*

75. Defendant is a merchant within the meaning of the Rental-Purchase Agreement Act because it, in the ordinary course of business, regularly leases and offers to lease merchandise under a rental-purchase agreement, *i.e.*, its Terms of Use. *Ex. 1.*

76. In violation of 815 ILCS 2(c)(5), Defendant charges a late fee for a delinquency less than 3 days.

77. In violation of 815 ILCS 2(d), Defendant charges multiple late fees in the amount of \$1.00 per 24-hour rental period for each 24 hour period after the initial rental period when the DVD is not returned.

78. In violation of 815 ILCS 2(e), Defendant charges a "Maximum Charge" of \$25 for ownership of the DVD if it is not returned, which is not reasonably related to the price of a new, retail DVD.

79. The Rental-Purchase Agreement Act, 815 ILCS 655/0.01 *et seq.*, also states in relevant part in section 4:

- (a) A consumer damaged by a violation of this Act by a merchant is entitled to recover from the merchant:
  - (1) actual damages;
  - (2) 25% of an amount equal to the total amount of payments required to obtain ownership of the merchandise involved, except that the amount recovered under this item (2) may not be less than \$250 nor more than \$1,000; and
  - (3) reasonable attorney's fees and court costs.

815 ILCS 4(a) (emphasis added.)

WHEREFORE, for the foregoing reasons, Plaintiff individually and on behalf of all others similarly situated, humbly requests that this Honorable Court (1) certify the foregoing classes, (2) appoint Plaintiff as class representative and Plaintiff's counsel as class counsel, (3) award Plaintiff, and the foregoing classes actual and other appropriate damages in an amount in excess of \$50,000.00, (4) award Plaintiff's counsel an appropriate attorneys' fee, and (5) such other, further, and different relief as is appropriate under the circumstances, and as allowed by law.

**COUNT VI**  
**(Automatic Contract Renewal Act)**

80. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-33 of the Complaint.

81. Plaintiff pleads this Count in the alternative to Counts I-V.

82. Defendant's Terms of Use is a contract that provides the rental period shall automatically renew every 24 hours for 24 subsequent rental periods. *Ex. 1.*

83. At all times relevant hereto, there was in full force and effect the Automatic Contract Renewal Act, 815 ILCS 601/1 *et seq.*, which provides in pertinent part:

Sec. 10. Automatic renewal: requirements.

- (a) Any person, firm, partnership, association, or corporation that sells or offers to sell any products or services to a consumer pursuant to a contract, where such contract automatically renews unless the consumer cancels the contract, ***shall disclose the automatic renewal clause clearly and conspicuously in the contract, including the cancellation procedure.*** [emphasis added.]

84. Defendant's Terms of Use are printed in only small print and thus do not clearly and conspicuously disclose the automatic renewal clause in violation of the Automatic Contract Renewal Act. *Ex. 1.*

85. Defendant's Terms of Use do not clearly, conspicuously or otherwise disclose the cancellation procedure in violation of the Automatic Contract Renewal Act.

86. Defendant has not, as part of its routine business practice, established and implemented written procedures to comply with the Automatic Contract Renewal Act and does not enforce compliance with those procedures.

87. Defendant's failure to comply with the Automatic Contract Renewal Act is not

the result of error.

88. Even if Defendant's failure to comply with the Automatic Contract Renewal Act is the result of an error, Defendant has failed to provide a full refund or credit for all amounts billed to or paid by Plaintiff and class members from the date of renewal until the date of termination of their accounts or the date of the subsequent notice of renewal, whichever occurred first.

WHEREFORE, for the foregoing reasons, Plaintiff individually and on behalf of all others similarly situated, humbly requests that this Honorable Court (1) certify the foregoing classes, (2) appoint Plaintiff as class representative and Plaintiff's counsel as class counsel, (3) award Plaintiff, and the foregoing classes actual and other appropriate damages in an amount in excess of \$50,000.00, (4) award Plaintiff's counsel an appropriate attorneys' fee, and (5) such other, further, and different relief as is appropriate under the circumstances, and as allowed by law.

**COUNT VII**

**(Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act by Virtue of Violation of the Illinois Automatic Contract Renewal Act)**

89. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1-33 and 81-88 of the Complaint.

90. A violation of the Automatic Contract Renewal Act is an unlawful act for purposes of the Consumer Fraud and Deceptive Business Practices Act. *815 ILCS 601/15.*

91. Defendant's contract with Plaintiff and class members affected trade or commerce in the State of Illinois, and the unlawful actions in violation of the Automatic Contract Renewal Act were intended to and did in fact cause Plaintiff and class members to rely on said unlawful actions in renewing their contracts, proximately causing them damages in the amount of all late

fees and "Maximum Charges."

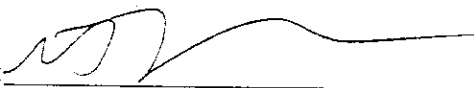
92. Treble damages and attorneys' fees are provided for under the Consumer Fraud and Deceptive Business Practices Act.

WHEREFORE, for the foregoing reasons, Plaintiff individually and on behalf of all others similarly situated, humbly requests that this Honorable Court (1) certify the foregoing classes, (2) appoint Plaintiff as class representative and Plaintiff's counsel as class counsel, (3) award Plaintiff, and the foregoing classes actual and other appropriate damages in an amount in excess of \$50,000.00, (4) award Plaintiff's counsel an appropriate attorneys' fee, and (5) such other, further, and different relief as is appropriate under the circumstances, and as allowed by law.

DATED: October 20, 2009

Respectfully submitted,

**LAURIE PIECHUR,**  
Class Plaintiff,

By:   
One of Her Attorneys

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