

NO. _____

ADAM WALLACH, on behalf of himself	§	IN THE DISTRICT COURT OF
and all others similarly situated,	§	
	§	
PLAINTIFF	§	
	§	
v.	§	
	§	HARRIS COUNTY, TEXAS
HOUSTON ASTROS, LLC	§	
and	§	
HOUSTON ASTROS MANAGEMENT,	§	
INC.,	§	
	§	_____ JUDICIAL DISTRICT
DEFENDANT	§	

CLASS ACTION PETITION AND JURY DEMAND

TO THE HONORABLE COURT:

Plaintiff Adam Wallach (“Plaintiff”), for himself and all similarly situated individuals and entities (the “Class Members”), complains of the actions of Defendants Houston Astros, LLC and Houston Astros Management, Inc. (together, “Astros” or “Defendants”), and respectfully shows the following.

NATURE OF THE CASE

1. This is a class action against Defendants on behalf of 2017, 2018, 2019 and 2020 full and partial season ticket holders for deceptively overcharging them for season tickets¹ while Defendants and their employees and representatives knowingly and surreptitiously engaged in a sign stealing scheme in violation of Major League Baseball (“MLB”) Rules and Regulations, and secretly put a deficient product on the field that could result (and now has resulted) in severe

¹ As used in this Class Action Petition and Jury Demand, the term “season tickets” includes both full and partial season tickets.

penalties instituted by MLB. Plaintiff, for himself and Class Members, seeks to recover damages in the form of the inappropriate increases in the 2017, 2018, 2019, and 2020 season ticket prices, diminished value of their personal seat licenses, and an injunction prohibiting Defendants from raising season ticket prices for at least two years.

DISCOVERY PLAN

2. Plaintiff, for himself and Class Members, intends to seek entry of a Level 3 order requiring a discovery control plan tailored to the specific circumstances of this action. TEX. R. CIV. P. 190.4.

PARTIES

3. Plaintiff Adam Wallach is a citizen and resident of Humble, Harris County, Texas. Plaintiff Wallach was an Astros season ticket holder during the damages period. Plaintiff Wallach suffered injury, harm, and damages as a direct and/or proximate result of Defendants overcharging, and him overpaying, for season tickets while Defendants and their employees and representatives knowingly and surreptitiously engaged in a sign stealing scheme in violation of MLB Rules and Regulations and secretly put a deficient product on the field.

4. Defendant Houston Astros, LLC is a Texas limited liability company with its principal place of business in Houston, Texas. Defendant Houston Astros, LLC owned and operated the Houston Astros Major League Baseball Club during the illicit sign stealing scheme (and continues to do so). Defendant Houston Astros, LLC may be served with Citation and a copy of this Class Action Petition and Jury Demand by serving its registered agent for service of process, Corporate Creations Network, Inc., 5444 Westheimer, Ste. 1000, Houston, Texas 77056.

5. Defendant Houston Astros Management, Inc. is a Texas corporation with its principal place of business in Houston, Texas. On information and belief, Defendant Houston

Astros Management, Inc. is an affiliate of Defendant Houston Astros, LLC, and participated in the operation and management of the Houston Astros Major League Baseball Club during the illicit sign stealing scheme (and continues to do so). Defendant Houston Astros Management, Inc. may be served with Citation and a copy of this Class Action Petition and Jury Demand by serving its registered agent for service of process, Giles Kibbe, 501 Crawford Street, Fifth Floor, Houston, Texas 77002.

JURISDICTION AND VENUE

6. This Court has subject jurisdiction over Plaintiff's claims under TEX. GOVMT CODE § 24.007(b).

7. Plaintiff, for himself and Class Members, seeks damages within the jurisdictional limits of this Court; to wit, monetary relief in excess of \$1,000,000 (TEX. R. CIV. P. 47(c)(5)) and equitable relief, including an injunction.

8. This case is not removable to federal court because (i) more than two-thirds of the Class Members in the aggregate are Texas citizens, (ii) Class Members seek significant relief from both Defendants whose alleged conduct forms a significant basis for Plaintiff's and Class Members' claims, and who are Texas citizens, (iii) the principal injuries, harm, and damages resulting from Defendants' alleged wrongful conduct were incurred by Plaintiff and Class Members in Texas, and (iv) two-thirds or more of the Class Members in the aggregate and both Defendants are Texas citizens. 28 U.S.C. § 1331(d)(4).

9. This Court has *in personam* jurisdiction over Defendants because at all relevant times, Defendants, directly and/or through their employees, agents, and representatives resided, were found, and conducted business in Harris County, Texas, and continue to do so.

10. At all relevant times, Defendants, directly and/or through their employees, agents, and representatives, resided, were found, and conducted business in Harris County, Texas, and continue to do so. A substantial part, if not all, of the events giving rise to Plaintiff's and Class Members' claims occurred in Harris County, Texas. Accordingly, venue is proper in Harris County, Texas under TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1); (a)(2).

FACTS

I. Origin of the Illicit Sign Stealing Scheme: "Codebreaker."

11. As reported by the Wall Street Journal, in 2016, Astros third baseman Alex Bregman mentioned to video room staffers that other teams were better at stealing signs when runners were on second base than the Astros. *See* Jared Diamond, *The Astros' Front Office Created Codebreaker. The Players Took It From There*, WALL ST. J., Feb. 12, 2020 (**Error! Hyperlink reference not valid.**) (last visited Feb. 12, 2020).

12. The conversation eventually resulted in Derek Vigoa, then an intern and now the Astros' director of team operations, delivering a PowerPoint presentation to General Manager Jeff Luhnow in September 2016 featuring a slide devoted to an Excel-based application programmed with an algorithm that could decode opposing catchers' signs. *Id.* It was called "Codebreaker." *Id.*

13. This was the beginning of what has turned into one of the biggest cheating scandals in American sports history. During the 2017 and 2018 seasons (and possibly longer), Astros baseball operations employees and video room staffers used Codebreaker to illegally steal signs, which were then relayed to batters in real time.

14. The way Codebreaker worked was simple: Someone would watch an in-game live feed and log the catcher's signs and type of pitch thrown into the spreadsheet. *Id.* With this

information, Codebreaker determined how the signs corresponded to different pitches. *Id.* Once decoded, the information would be communicated through intermediaries to a baserunner, who would relay them to the hitter. *Id.*

15. Once Codebreaker went into action, the people most interested in sign stealing were Carlos Beltrán and bench coach Alex Cora. *Id.*² But the involvement of numerous Astros players and executives in the sign stealing scheme existed from the get-go.

16. For example, Luhnnow acknowledged to investigators that he recalled Vigoa's Codebreaker PowerPoint presentation and even asked questions about how it worked. *See* Jared Diamond, "Dark Arts" and "Codebreaker": The Origins of the Houston Astros' Cheating Scheme WALL ST. J., Feb. 7, 2020 (https://www.wsj.com/articles/houston-astros-cheating-scheme-dark-arts-codebreaker-11581112994?mod=article_inline) (last visited Feb. 12, 2020).

17. Vigoa told investigators that he presumed Luhnnow knew it would be used in games because that was "where the value would be," according to the letter. *Id.*

18. But Vigoa's PowerPoint presentation wasn't the only time Astros employees say Luhnnow was informed about Codebreaker. *Id.* Tom Koch-Weser, the Astros' director of advance information, said he discussed Codebreaker with Luhnnow in one to three meetings after the 2016 season. *Id.* Koch-Weser told MLB that Luhnnow "giggled" at the title and appeared "excited" about it. *Id.* Koch-Weser also said that Luhnnow sometimes entered the Astros' video room during road games and made comments, such as "You guys Codebreaking?" *Id.*

² Beltrán, who retired after the 2017 campaign, was the only player named in MLB Commissioner Rob Manfred's public report for his involvement in the sign stealing scheme. It cost Beltrán his job as manager of the New York Mets before he even worked a single game. Cora was fired as the manager for the Boston Red Sox. Manfred is expected to level severe discipline against Cora when he releases MLB's findings regarding allegations of similar cheating by the Red Sox in 2018.

19. Other Astros employees told MLB’s investigators that they believed Luhnnow knew about Codebreaker. *Id.* Matt Hogan, now the Astros’ manager of pro scouting analysis, told MLB investigators there was no effort to hide the use of Codebreaker in front of Luhnnow when he visited the video room. *Id.* In fact, he told them, “it would have been something to show we were working and get validation of our work.” *Id.* Koch-Weser also used the term “dark arts” to describe Codebreaker in the Astros’ Advanced Scouting Department’s 2019 budget Excel spreadsheet. *Id.*

20. A May 24, 2017 email, entitled “Road Notes (April-May),” sent by Koch-Weise to Luhnnow and others included six underlined topic headings; the fifth one was called, “The System”—a reference to what Koch-Weser described to investigators as “all kinds of covert operations,” including sign-stealing. *Id.* Luhnnow responded to that email a day later: “These are great, thanks.” *Id.* He wrote another response email to Koch-Weiser about three hours later. “How much of this stuff do you think [Hinch] is aware of?” *Id.*

21. The May 24, 2017 email also highlights Cora and Beltrán’s roles. *See* Jared Diamond, *The Astros’ Front Office Created Codebreaker. The Players Took It From There*, WALL ST. J., Feb. 12, 2020. “I don’t want to electronically correspond too much about ‘the system’ but Cora/Cintron³/Beltran have been driving a culture initiated by Bregman/Vigoa last year and I think it’s working,” Koch-Weser wrote. *Id.* “I have no proof that it has worked, but we get real good dope on pitchers tipping and being lazy. That information, if it’s not already, will eventually yield major results in our favor once players get used to the implementation.” *Id.*

³ Alex Cintrón, the Astros’ current hitting coach, was an Astros assistant coach in 2017. On information and belief, he was involved in transmitting information from the video room to the dugout.

22. An August 26, 2017 email sent by Koch-Weser to several colleagues in the Astros front office, including Luhnnow, included an update on the state of the team’s “dark arts, sign-stealing department.” *Id.* Utility man Marwin González, Koch-Weser wrote, was having great success with the information procured by the Astros’ illicit efforts, cutting down on his rate of swinging at pitches out of the strike zone. *Id.* But somebody else was actually having trouble with it: veteran outfielder Carlos Beltrán. *Id.*

23. “Beltrán, who is the godfather of the whole program, ironically just swings at everything after taking a strike and probably does the worst with the info,” Koch-Weser wrote. *Id.* The Astros’ rule-breaking permeated the organization, involving executives, coaches, and players. And it all started with an Excel-based application internally named “Codebreaker” designed to decode opposing catchers’ signs.

II. The Banging Scheme.

24. On information and belief, starting around June 2017, the sign stealing scheme was expanded and embellished by Astros players. *Id.* They started watching a live game feed on a monitor near the dugout and then bang on a trash can to communicate the coming pitch to the batter. *Id.* The “banging scheme” lasted at least through the 2017 World Series, which the Astros won over the Los Angeles Dodgers. *Id.*

25. Cora and Beltrán were the most responsible for implementing the banging scheme. *Id.* On further information and belief, Cora had a tech worker install the monitor the Astros’ players watched before banging on the trash can.⁴ *Id.*

⁴ Koch-Weser and other Astros video room staffers told MLB investigators that they were unaware of the Astros’ banging scheme until September 2017, when Danny Farquhar, then a pitcher for the Chicago White Sox, noticed the banging noise emanating from the Astros’ dugout. *Id.* Manfred later wrote in his report that the incident caused a sense of “panic,” so a group of players removed the monitor near the dugout and hid it in an office. *Id.*

26. But while the banging scheme started with Cora and Beltrán, it quickly spread. *Id.* In a January 2, 2020 letter to Luhnow, Manfred said that, “Most or all Astros players were active participants in the Banging Scheme by the conclusion of the 2017 World Series,” which ended with Houston winning in seven games over the Los Angeles Dodgers. *Id.* “The Banging Scheme was so prevalent,” Manfred wrote, “that witnesses regularly describe that everyone in and around the Astros dugout was presumptively aware of it.” *Id.*

27. Koch-Weser’s August 26, 2017 email that called Beltrán the “godfather,” which was quoted in Manfred’s letter to Luhnow, referred to the video room sign-stealing operation. *Id.* It singled out González as particularly benefiting from it. “Marwin I’d say does the best job with getting this info,” Koch-Weser wrote. *Id.*

28. González had by far his best season in 2017, hitting .303 with a .907 OPS in 455 at-bats, up from his career totals of .264 and .737, respectively. He also set personal bests with 23 home runs and 90 RBIs. Tony Adams, an Astros fan who watched 8,274 pitches from 58 home games during the 2017 season and logged every instance he could hear a banging sound, heard banging on 147 pitches thrown to González, the most of anybody on the team. *Id.* “We’ve seen huge declines from him in chase and swing rates,” Koch-Weser wrote. *Id.*

III. MLB Commissioner Rob Manfred’s Report.

29. On November 12, 2019, former Astros player Mike Fiers publicly alleged in an article published by Ken Rosenthal and Evan Drellich of The Athletic that the Astros had engaged in sign-stealing methods in 2017 that violated MLB Rules. Fiers’ allegations created significant concern among many other MLB baseball clubs regarding the Astros’ adherence to the MLB Rules and the principles of sportsmanship and fair competition.

30. As a result, MLB Commissioner Rob Manfred initiated an investigation covering the period 2016-2019. During the investigation, MLB investigators interviewed 68 witnesses, including 23 current and former Astros players. Some witnesses were interviewed multiple times. The investigators also reviewed tens of thousands of emails, Slack communications, text messages, video clips, and photographs. Certain Astros employees' cellphones were imaged and searched.

31. On January 13, 2020, Manfred issued his report (*see* **Error! Hyperlink reference not valid.** (last visited Feb. 12, 2020)), detailing the following findings and penalties.

A. The Astros' MLB Rules violations in the 2017 season.

32. "At the beginning of the 2017 season, employees in the Astros' video replay review room began using the live game feed from the center field camera to attempt to decode and transmit opposing teams' sign sequences (*i.e.*, which sign flashed by the catcher is the actual sign) for use when an Astros runner was on second base. Once the sign sequence was decoded, a player in the video replay review room would act as a "runner" to relay the information to the dugout, and a person in the dugout would notify the players in the dugout or signal the sign sequence to the runner on second base, who in turn would decipher the catcher's sign and signal to the batter from second base." *Id.*

33. "Early in the season, Alex Cora, the Astros' Bench Coach, began to call the replay review room on the replay phone to obtain the sign information. On at least some occasions, the employees in the replay review room communicated the sign sequence information by text message, which was received on the smart watch of a staff member on the bench, or in other cases on a cell phone stored nearby. Approximately two months into the 2017 season, a group of players, including Carlos Beltrán, discussed that the team could improve on

decoding opposing teams' signs and communicating the signs to the batter. Cora arranged for a video room technician to install a monitor displaying the center field camera feed immediately outside of the Astros' dugout. (The center field camera was primarily used for player development purposes and was allowed under MLB rules at the time when used for that purpose.)” *Id.*

34. “Witnesses have provided largely consistent accounts of how the monitor was utilized. One or more players watched the live feed of the center field camera on the monitor, and after decoding the sign, a player would bang a nearby trash can with a bat to communicate the upcoming pitch type to the batter. (Witnesses explained that they initially experimented with communicating sign information by clapping, whistling, or yelling, but that they eventually determined that banging a trash can was the preferred method of communication.). Players occasionally also used a massage gun to bang the trash can. Generally, one or two bangs corresponded to certain off-speed pitches, while no bang corresponded to a fastball. Witnesses consistently describe this new scheme as player-driven, and with the exception of Cora, non-player staff, including individuals in the video replay review room, had no involvement in the banging scheme.” *Id.*

35. “However, witnesses made clear that everyone proximate to the Astros' dugout presumptively heard or saw the banging. In addition to players using the monitor installed near the dugout to decode signs, employees in the Astros' replay review room continued to decode sign sequences using the monitors in the room and communicate those sequences to the dugout for use when a runner was on second base. Both methods of sign stealing were used by the team in parallel throughout the 2017 season. In August 2017, the Boston Red Sox were caught transmitting sign information from their replay review room to individuals in the dugout wearing

smart watches. The incident received significant media attention, and [Manfred] issued a press release on September 15, 2017 announcing the fine of the Red Sox (and a fine of the New York Yankees for improperly using the replay review room phone) that stated in relevant part:

At the outset, it is important to understand that the attempt to decode signs being used by an opposing catcher is not a violation of any Major League Baseball Rule or Regulation. Major League Baseball Regulations do, however, prohibit the use of electronic equipment during games and state that no such equipment “may be used for the purpose of stealing signs or conveying information designed to give a Club an advantage.” Despite this clear Regulation, the prevalence of technology, especially the technology used in the replay process, has made it increasingly difficult to monitor appropriate and inappropriate uses of electronic equipment. Based on the investigation by my office, I have nonetheless concluded that during the 2017 season the Boston Red Sox violated the Regulation quoted above by sending electronic communications from their video replay room to an athletic trainer in the dugout.”

Id.

36. “Following the issuance of the press release announcing the results of the Red Sox investigation, [Manfred] issued a memorandum that same day to all Clubs reiterating the rules regarding the use of electronic equipment to steal signs, and putting all Clubs on notice that future violations would be taken extremely seriously by my office. [Manfred] specifically stated in the memorandum that the General Manager and Field Manager of Clubs would be held accountable for any violations of the rules in the future. Thus, all Clubs were put on notice as of September 15, 2017 that any use of electronic equipment to steal signs would be dealt with more severely by my office. Notwithstanding the publicity surrounding the Red Sox incident, and the September 15th memorandum that I sent to all Clubs, the Astros continued to both utilize the replay review room and the monitor located next to the dugout to decode signs for the remainder of the regular season and throughout the Postseason.” *Id.*

B. The Astros’ MLB Rules violations in subsequent seasons.

37. “During the 2017-2018 offseason, and following a discussion at the General Managers’ Meetings, the Commissioner’s Office notified Clubs that the phone connecting the replay review room and the dugout would be monitored to ensure that it was not used for any purpose other than discussing a challenge of a play on the field. In addition, in March 2018, Joe Torre issued a memorandum to all Clubs that expanded upon the prohibition against using electronic equipment to steal signs. The memorandum stated in relevant part:

Major League Baseball Regulation 1-1 prohibits all uniformed personnel, clubhouse staff and equipment staff from using or possessing telephones or similar electronic devices, including any type of walkie-talkies, mobile phones, ‘smart watches’ (e.g., Apple watches), laptop computers, tablets or other communication devices, in or near the dugout, in the bullpens or on the playing field once batting practice has begun. MLBR 1-1 also prohibits the use of such devices in the clubhouse within 30 minutes of the start of a game. The prohibition includes the use of any electronic equipment that has the capability to receive electronic messages by any person occupying the bench or in the bullpen.

* * *

Electronic equipment, including game feeds in the Club replay room and/or video room, may never be used during a game for the purpose of stealing the opposing team’s signs. In this respect, MLBR 1-1 expressly provides that “under no circumstance may electronic equipment or devices be used for the purpose of stealing signs or conveying other information designed to give a Club a competitive advantage.” **To be clear, the use of any equipment in the clubhouse or in a Club’s replay or video rooms to decode an opposing Club’s signs during the game violates this Regulation.** ... Clubs (and Club employees) who are found to have utilized equipment in the replay or video rooms for such purposes during a game will be subject to discipline by the Commissioner’s Office.”

Id. (emphasis in original).

38. “Prior to the 2018 season, and with MLB approval, the Astros relocated their replay review system to a video room located much closer to the dugout, as is the case in many ballparks throughout the league. The investigation uncovered no evidence that Astros players utilized the banging scheme in 2018. However, the Astros’ replay review room staff continued,

at least for part of the 2018 season, to decode signs using the live center field camera feed, and to transmit the signs to the dugout through in-person communication. At some point during the 2018 season, the Astros stopped using the replay review room to decode signs because the players no longer believed it was effective. The investigation did not reveal any attempt by the Astros to utilize electronic equipment to decode and transmit signs in the 2018 Postseason.” *Id.*

39. “Prior to the 2019 season, the Commissioner’s Office issued a revised policy governing sign stealing, which, among other things, included the placement of individuals retained by the Commissioner’s Office in the Club’s replay review rooms to ensure that no rules violations occurred (a practice that began in the 2018 Postseason). The investigation revealed no violations of the policy by the Astros in the 2019 season or 2019 Postseason.” *Id.*

C. Culpability of Astros players and employees for the MLB Rules violations.

1. Astros Players.

40. “Most of the position players on the 2017 team either received sign information from the banging scheme or participated in the scheme by helping to decode signs or bang on the trash can. Many of the players who were interviewed admitted that they knew the scheme was wrong because it crossed the line from what the player believed was fair competition and/or violated MLB rules. Players stated that if Manager A.J. Hinch told them to stop engaging in the conduct, they would have immediately stopped.” *Id.*

41. “Although the Astros’ players did not attempt to hide what they were doing from Hinch or other Astros employees, they were concerned about getting caught by players from other teams. Several players told [MLB] investigators that there was a sense of “panic” in the Astros’ dugout after White Sox pitcher Danny Farquhar appeared to notice the trash can bangs. Before the game ended, a group of Astros players removed the monitor from the wall in the

tunnel and hid it in an office. For the Postseason, a portable monitor was set up on a table to replace the monitor that had been affixed to the wall near the dugout.” *Id.*

42. “Some Astros players told [MLB] investigators that they did not believe the sign-stealing scheme was effective, and it was more distracting than useful to hitters. ... But for purposes of [Manfred’s] decision, regardless of whether the scheme was effective or not, it violated the rules and, at a minimum, created the appearance of unfairness, and for that, it necessitates severe discipline.” *Id.*

43. “[But Manfred did] not assess discipline against individual Astros players. [He] made the decision in September 2017 that [he] would hold a Club’s General Manager and Field Manager accountable for misconduct of this kind [A] Club’s General Manager and Field Manager are responsible for ensuring that the players both understand the rules and adhere to them. [The Commissioner’s] office issues a substantial number of detailed rules and procedures to Clubs – many of which, including the sign stealing rules, are not sent directly to players. It is the obligation of the Club, and, in this case, the General Manager and Field Manager, to educate and instruct their players on the rules governing play on the field.” ... *Id.*

2. Jeff Luhnow (General Manager).

44. “Luhnow adamantly denies knowledge of both the banging scheme and the efforts by the replay review room staff to decode signs and transmit them to the dugout. The investigation revealed no evidence to suggest that Luhnow was aware of the banging scheme. The investigation also revealed that Luhnow neither devised nor actively directed the efforts of the replay review room staff to decode signs in 2017 or 2018.” *Id.*

45. “Although Luhnow denies having any awareness that his replay review room staff was decoding and transmitting signs, there is both documentary and testimonial evidence that

indicates Luhnnow had some knowledge of those efforts, but he did not give it much attention. Irrespective of Luhnnow's knowledge of his Club's violations of the rules, [Manfred held] him personally accountable for the conduct of his Club. It is the job of the General Manager to be aware of the activities of his staff and players, and to ensure that those activities comport with both standards of conduct set by Club ownership and MLB rules." *Id.*

46. "Despite his knowledge of the Red Sox incident in September 2017, and receipt of both [Manfred's] September 15, 2017 memorandum and Joe Torre's March 2018 memorandum, Luhnnow failed to take any adequate steps to ensure that his Club was in compliance with the rules. Luhnnow did not forward the memoranda and did not confirm that the players and field staff were in compliance with MLB rules and the memoranda. Had Luhnnow taken those steps in September 2017, it is clear to me that the Astros would have ceased both sign-stealing schemes at that time." *Id.*

3. A.J. Hinch (Field Manager).

47. "Hinch neither devised the banging scheme nor participated in it. Hinch told [the MLB] investigators that he did not support his players decoding signs using the monitor installed near the dugout and banging the trash can, and he believed that the conduct was both wrong and distracting. Hinch attempted to signal his disapproval of the scheme by physically damaging the monitor on two occasions, necessitating its replacement." *Id.*

48. "However, Hinch admits he did not stop it and he did not notify players or Cora that he disapproved of it, even after the Red Sox were disciplined in September 2017. Similarly, he knew of and did not stop the communication of sign information from the replay review room, although he disagreed with this practice as well and specifically voiced his concerns on at least one occasion about the use of the replay phone for this purpose. As the person with

responsibility for managing his players and coaches, there simply is no justification for Hinch's failure to act." *Id.*

49. "If Hinch was unsure about how to handle the situation, it was his responsibility to bring the issue to the attention of Luhnow. Hinch expressed much contrition both to [Manfred] and [his] investigators for allowing the conduct to continue. Although [Manfred] appreciate[d] Hinch's remorsefulness, [Manfred held] him accountable for the conduct of his team, particularly since he had full knowledge of the conduct and chose to allow it to continue throughout the 2017 Postseason." *Id.*

4. Alex Cora (Bench Coach).

50. "Cora was involved in developing both the banging scheme and utilizing the replay review room to decode and transmit signs. Cora participated in both schemes, and through his active participation, implicitly condoned the players' conduct." *Id.* But to date, Manfred has declined to discipline Cora until after an investigation of allegations that the Red Sox engaged in impermissible electronic sign stealing in 2018 while Cora was the manager is completed.

51. The investigation continues. On information and belief, Defendants may have engaged in other cheating schemes during the 2019 season.

IV. Commissioner Manfred's disciplinary measures.

52. "[Manfred found] that the conduct of the Astros, and its senior baseball operations executives, merits significant discipline. [He] base[d] this finding on the fact that the Club's senior baseball operations executives were given express notice in September 2017 that [he] would hold them accountable for violations of [MLB] policies covering sign stealing, and those individuals took no action to ensure that the Club's players and staff complied with those policies during the 2017 Postseason and the 2018 regular season. The conduct described herein

has caused fans, players, executives at other MLB Clubs, and members of the media to raise questions about the integrity of games in which the Astros participated. ...” *Id.*

53. For engaging in the sign stealing scheme, Defendants forfeited their regular first and second round selections in the 2020 and 2021 First-Year Player Drafts and were assessed a fine of \$5 million, which is the highest allowable fine under the MLB Constitution.

54. For his engagement in, knowledge about, and/or responsibility for the sign stealing scheme, Luhnow was suspended without pay for the period beginning on January 13, 2020 and ending on the day following the completion of the 2020 World Series. During the period of his suspension, Luhnow is prohibited from performing any services for or conducting any business on behalf of the Astros or any other Major League Club. Luhnow must not be present in any major league, minor league, or spring training facilities, including stadiums, and he may not travel with or on behalf of the Astros. If Luhnow is found to engage in any future material violations of the MLB Rules, he will be placed on the permanently ineligible list.

55. For his engagement in, knowledge about, and/or responsibility for the sign stealing scheme, Hinch was suspended without pay for the period beginning on January 13, 2020 and ending on the day following the completion of the 2020 World Series. During the period of his suspension, Hinch is prohibited from performing any services for or conducting any business on behalf of the Astros or any other Major League Club. Hinch must not be present in any major league, minor league, or spring training facilities, including stadiums, and he may not travel with or on behalf of the Astros. If Hinch is found to engage in any future material violations of the MLB Rules, he will be placed on the permanently ineligible list.

V. The aftermath.

56. On January 13, 2020, shortly after the MLB Commissioner issued his report, Jim Crane, Defendants' principal owner, convened a news conference admitting that Defendants broke the MLB Rules and accepting MLB's decisions, findings, and penalties. He also fired Luhnow and Hinch.

57. Hours later, Luhnow issued a statement accepting responsibility for the MLB Rules violations that occurred on his watch as President of Baseball Operations and General Manager of the Astros. Otherwise, he has been silent.

58. Hinch issued a similar statement on January 13, noting that it was his "responsibility to lead players and staff with integrity" and he failed to stop the sign stealing scheme. Later, in a February 7, 2020 interview that aired on MLB TV, Hinch took responsibility for his role in the sign stealing scheme, stating "I still feel responsible and will always feel responsible as the man out front. As the leader, I was in charge of the team. ... It happened on my watch," Hinch said. "I'm not proud of that. I'll never be proud of it. I didn't like it. But I have to own it because [I was] in a leadership position. And the commissioner's office made very, very clear that the GM and the manager were in position to make sure that nothing like this happened. And we fell short." See <https://abc13.com/sports/apologetic-aj-hinch-takes-blame-for-astros-cheating-scandal-it-happened-on-my-watch/5912285/> (last visited on Feb. 12, 2020).

59. Despite MLB Commissioner Manfred's findings that "[m]ost of the position players on the 2017 team either received sign information from the banging scheme or participated in the scheme by helping to decode signs or bang on the trash can" and "[m]any of the players who were interviewed admitted that they knew the scheme was wrong because it crossed the line from what the player believed was fair competition and/or violated MLB rules," those players were not punished.

60. From the advent of Codebreaker in 2016 until their cheating scheme was first revealed on January 13, 2020, Defendants and their employees and representatives knowingly and surreptitiously engaged in a sign stealing scheme in violation of MLB Rules and Regulations, and secretly put a deficient product on the field that could result (and now has resulted) in severe penalties instituted by MLB—all the while substantially increasing season ticket prices and overcharging Plaintiff and Class Members for 2017, 2018, 2019, and 2020 season tickets. This case has resulted.

CLASS ACTION ALLEGATIONS

61. Pursuant to Rule 42 of the Texas Rules of Civil Procedure, Plaintiff brings this action against Defendants as a class action, for himself and all members of the following class of similarly situated individuals and entities (“Class Members”):

All individuals and entities that prior to January 13, 2020, purchased Houston Astros Baseball Club full and partial season tickets for the 2017, 2018, 2019, and/or 2020 seasons.

62. Excluded from the proposed class are Defendants; their current owners, officers, directors, employees, agents, and representatives; and the Court and its personnel.

63. The proposed class consists of several thousand Class Members, the joinder of whom in one action is impracticable. The precise number and identities of the Class Members are readily ascertainable from Defendants’ internal season ticket holder records.

64. By their wrongful actions, inaction, and/or omissions, Defendants violated the rights of Plaintiff and each Class Member in the same way by overcharging them for season tickets while Defendants and their employees and representatives knowingly and surreptitiously engaged in a sign stealing scheme in violation of MLB Rules and Regulations, and secretly put a deficient product on the field that could result (and now has resulted) in severe penalties instituted by MLB—thereby inflicting injury, harm, and damages on Plaintiff and Class

Members in the form of the amounts they overpaid for 2017, 2018, 2019, and 2020 season tickets, the diminished value of their seat licenses, and a future diminished product in the field.

65. Certain questions of law and fact common to the proposed Class predominate over any questions affecting individual Class Members, including:

- (i) whether Defendants' wrongful actions, inaction, and omissions constitute negligence and/or gross negligence at Texas common law;
- (ii) whether Defendants' wrongful actions, inaction, and omissions constitute negligence *per se* at Texas common law;
- (iii) whether Defendants' wrongful actions, inaction, and omissions constitute breach of implied contract at Texas common law;
- (iv) whether Defendants' wrongful actions, inaction, and omissions constitute breaches of the Texas Deceptive Trade Practices-Consumer Protection Act;
- (v) whether Defendants' wrongful actions, inaction, and omissions constitute money had and received at Texas common law;
- (vi) whether Defendants' wrongful actions, inaction, and omissions constitute unjust enrichment/assumpsit/*quantum meruit* at Texas common law;
- (vii) whether Defendants' wrongful actions, inaction, omissions directly or proximately caused Plaintiff and Class Members to suffer injury, harm, and damages;
- (viii) whether Plaintiff and Class Members are entitled to recover actual, consequential, and/or compensatory damages, treble damages, pre- and post-judgment interest, attorneys' fees, litigation expenses, and court costs and, if so, the amount of such recoveries; and
- (ix) whether Plaintiff and Class Members are entitled to injunctive relief.

66. Plaintiff's claims are typical of Class Members' claims because Plaintiff and Class Members are all victims of the above-described sign stealing scheme carried out by Defendants and their employees and representatives and being overcharged and overpaying for full and partial season tickets.

67. Plaintiff and his counsel will fairly and adequately represent the interests of Class Members. Plaintiff has no interests antagonistic to, or in conflict with, the interests of any Class

Members. Plaintiff's counsel are experienced in leading and prosecuting large consumer class actions, complex commercial litigation, and complex mass torts.

68. A class action is superior to all other available methods for fairly and efficiently adjudicating Plaintiff's and Class Members' claims. Plaintiff and Class Members have been (and will continue to be) harmed as a direct and proximate result of Defendants' above-described wrongful actions, inaction, and/or omissions. Litigating this case as a class action is appropriate because (i) it will avoid a multiplicity of suits and the corresponding burden on the courts and Parties, (ii) it would be virtually impossible for all Class Members to intervene as individual parties-plaintiff in this action, and (iii) it will provide court oversight of the claims process once Defendants' liability is adjudicated.

69. Certification, therefore, is appropriate under TEX. R. CIV. P. 42(b)(3) because the above-described common questions of law or fact predominate over any questions affecting individual Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

70. Certification also is appropriate under TEX. R. CIV. P. 42(b)(2) because Defendants have acted (or refused to act) on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

71. Certification also is appropriate under TEX. R. CIV. P. 42(b)(1) because the prosecution of separate actions by individual Class Members would create a risk of (i) inconsistent or varying adjudications with respect to individual Class Members which would establish incompatible standards of conduct for Defendants, and/or (ii) adjudications with respect to individual Class Members which that as a practical matter would be dispositive of the interests

of other Class Members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

72. Defendants' above-described wrongful actions, inaction, and/or omissions are applicable to the Class as a whole, for which Plaintiff seeks damages and other equitable remedies, including injunctive relief. Absent a class action, Defendants will retain the benefits of their wrongdoing despite inflicting injury, harm, and damages on Plaintiff and Class Members.

CLAIMS FOR RELIEF/ CAUSES OF ACTION

COUNT I

NEGLIGENCE/GROSS NEGLIGENCE

73. The preceding factual statements and allegations are incorporated by reference.

74. Defendants had a duty to Plaintiff and Class Members to use reasonable care in managing and operating the Houston Astros Baseball Club, refrain from engaging in a surreptitious sign stealing scheme in violation of MLB Rules and Regulations, refrain from secretly putting a deficient product on the field that could result (and now has resulted) in severe penalties instituted by MLB, and in light of the above, refrain from deceptively overcharging Plaintiff and Class Members for 2017, 2018, 2019, and 2020 season tickets. Plaintiff had no knowledge that Defendants breached the above-referenced duties until January 13, 2020.

75. By their above-described wrongful actions, inaction, and/or omissions, however, Defendants failed to use reasonable care and breached the above-referenced duties owed to Plaintiff and Class Members. Defendants knew or should have known that their wrongful actions, inaction, and/or omissions in failing to carry out their above-described duties could (and would) result in injury, harm, and damages to Plaintiff and Class Members in the form of deceptively overpriced 2017, 2018, 2019, and 2020 season tickets purchased and paid for by

Plaintiff and Class Members, the diminished value of their personal seat licenses, and a future diminished product in the field.

76. It was also imminently foreseeable to Defendants that if they failed to exercise reasonable care in carrying out their above-described duties that Plaintiff and Class Members would suffer injury, harm, and damages that they, in fact, have suffered (and will continue to suffer). There is no other readily identifiable and foreseeable group of individuals and entities that would be directly and/or proximately injured or harmed by Defendants' above-described wrongful actions, inaction, and/or omissions other than Plaintiff and Class Members.

77. As a direct and proximate result of Defendants' above-described wrongful actions, inaction, omissions, negligence, and/or gross negligence, Plaintiff and Class Members have suffered (and will continue to suffer) injury, harm, and damages in the form of, *inter alia*, overpayments they unknowingly made for 2017, 2018, 2019, and 2020 season tickets, the diminished value of their personal seat licenses, and a future diminished product in the field. Defendants' above-described wrongful actions, inaction, and/or omissions, and the resulting injury, harm, and damages inflicted on Plaintiff and Class Members constitute negligence and/or gross negligence at Texas common law.

COUNT II

NEGLIGENCE PER SE

78. The preceding factual statements and allegations are incorporated by reference.

79. The Official Baseball Rules (*i.e.*, MLB Rules) govern “the playing of baseball games by professional teams of Major League Baseball” (*id.* at iv), including Defendants. The MLB Rules note that “[t]he popularity of the game will grow only so long as its players,

managers, coaches, umpires and administrative officers respect the discipline of its code of rules.” *Id.*

80. Major League Baseball Regulation (MLBR) 1-1 prohibits all uniformed personnel, clubhouse staff, and equipment staff from using or possessing telephones or similar electronic devices, including any type of walkie-talkies, mobile phones, smartwatches (*e.g.*, Apple watches), laptop computers, tablets, or other communication devices, in or near the dugout, in the bullpens or on the playing field once batting practice has begun.

81. MLBR 1-1 also prohibits the use of such electronic devices in the clubhouse within thirty minutes of the start of a game. This prohibition includes the use of any electronic equipment that has the capability to receive electronic messages by any person occupying the bench or in the bullpen.

82. A March 2018 memorandum from MLB Commissioner Manfred to all Major League Baseball Clubs provided further instruction regarding MLBR 1-1: “Electronic equipment, including game feeds in the Club replay room and/or video room, may never be used during a game for the purpose of stealing the opposing team’s signs. In this respect, MLBR 1-1 expressly provides that ‘under no circumstance may electronic equipment or devices be used for the purpose of stealing signs or conveying other information designed to give a Club a competitive advantage.’ *To be clear, the use of any equipment in the clubhouse or in a Club’s replay or video rooms to decode an opposing Club’s signs during the game violates this Regulation.* Clubs (and Club employees) who are found to have utilized equipment in the replay or video rooms for such purposes during a game will be subject to discipline by the Commissioner’s Office.” (emphasis in original).

83. As determined by the MLB Commissioner Manfred, Defendants failed to comply with the MLB Rules, MLBR 1-1, and the March 2018 directive, and the investigation continues.

84. The injury, harm, and damages Plaintiff and Class Members, in fact, have suffered (and will continue to suffer) due to Defendants' above-described wrongful actions, inaction, and/or omissions (*inter alia*, unknowingly being overcharged and overpaying for 2017, 2018, 2019, and 2020 season tickets and the diminished value of their personal seat licenses) are precisely the types of injury, harm, and damages the MLB Rules, MLBR 1-1, and the March 2018 directive are designed to guard against and prevent.

85. As a direct and proximate result of Defendants' above-described wrongful actions, inaction, omissions, and violation of the MLB Rules, MLBR 1-1, and the March 2018 directive (and possibly others), Plaintiff and Class Members have suffered (and will continue to suffer) injury, harm, and damages in the form of, *inter alia*, overpayments they unknowingly made for 2017, 2018, 2019, and 2020 season tickets, the diminished value of their personal seat licenses, and a future diminished product in the field. Defendants' above-described wrongful actions, inaction, omissions, violations of the MLB Rules, MLBR 1-1, and the March 2018 directive, and the resulting injury, harm, and damages inflicted on Plaintiff and Class Members constitute negligence *per se* at Texas common law.

COUNT III

BREACH OF IMPLIED CONTRACT

86. The preceding factual statements and allegations are incorporated by reference.

87. Plaintiff and Class Members, on the one hand, and Defendants, on the other hand, mutually intended to form and, in fact, entered into valid and enforceable implied contracts arising from, and evidenced by, the Parties' acts and conduct, including the purchase and sale of

Astros season tickets. Such implied contracts governed the Parties' business relationships. Plaintiff, Class Members, and Defendants entered into the implied contracts at the time Plaintiff and Class Members purchased season tickets from Defendants.

88. Under the terms of the implied contracts, in exchange for the payment of money by Plaintiff and Class Member, Defendants impliedly promised to, *inter alia*, properly manage and operate the Houston Astros Baseball Club, refrain from engaging in a surreptitious sign stealing scheme in violation of MLB Rules and Regulations, refrain from secretly putting a deficient product on the field that could result (and now has resulted) in severe penalties instituted by MLB, and in light of the above, refrain from deceptively overcharging Plaintiff and Class Members as described above.

89. By paying money to Defendants for their season tickets, Plaintiff and Class Members performed all conditions precedent to such implied contracts. Defendants, however, repeatedly and systematically breached such implied contracts with Plaintiff and Class Members by, *inter alia*, knowingly, willfully, wantonly, surreptitiously, negligently, and/or wrongfully engaging in the sign stealing scheme, fielding a deficient product that could be (and now has been) penalized for violating the MLB Rules, MLBR 1-1, and the March 2018 directive, and deceptively overcharging Plaintiff and Class Members for their season tickets.

90. As a direct and proximate result of Defendants' above-described wrongful actions, inaction, omissions, violations of the MLB Rules, MLBR 1-1, and the March 2018 directive (and possibly others), and breached of their implied contracts with Plaintiff and Class Members, Plaintiff and Class Members have suffered (and will continue to suffer) injury, harm, and damages in the form of, *inter alia*, overpayments they unknowingly made for 2017, 2018, 2019, and 2020 season tickets, the diminished value of their personal seat licenses, and a future

diminished product in the field. Defendants' above-described wrongful actions, inaction, omissions, violations of the MLB Rules, MLBR 1-1, and the March 2018 directive, and the resulting injury, harm, and damages inflicted on Plaintiff and Class Members constitute breach of implied contract at Texas common law.

COUNT IV

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER TRADE ACT

91. The preceding factual statements and allegations are incorporated by reference.

92. Pursuant to TEX. BUS. & COM. CODE §17.45(4), Plaintiff and Class Members are “consumers” under the Texas Deceptive Trade Practices-Consumer Protection Act (“DTPA”).

93. Pursuant to TEX. BUS. & COM. CODE § 17.45(3), Defendants are “persons” that may be sued under the DTPA.

94. Plaintiff prospectively asserts that Defendants knowingly and intentionally violated (i) TEX. BUS. & COM. CODE § 17.50(a)(1) by violating TEX. BUS. & COM. CODE §§ 17.46(b)(5); (b)(7); and (b)(24) and (ii) TEX. BUS. & COM. CODE § 17.50(a)(3) by engaging in unconscionable actions and/or an unconscionable course of action; to wit, knowingly, willfully, wantonly, surreptitiously, and/or wrongfully engaging in a sign stealing scheme in violation of MLB Rules and Regulations, and secretly put a deficient product on the field that could result (and now has resulted) in severe penalties instituted by MLB—all the while deceptively and substantially increasing 2017, 2018, 2019 and 2020 season ticket prices and overcharging Plaintiff and Class Members. Defendants' wrongful actions, inaction, and/or omissions were committed in complete disregard of Plaintiff's and Class Members' rights and interests and the consequences of their actions. Defendants' wrongful actions, inaction, and/or omissions took advantage of Plaintiff's and Class Members' lack of knowledge, ability, and experience to a

grossly unfair degree to Defendants' financial benefit and Plaintiff's and Class Members' financial detriment.

95. Defendants' above-described wrongful violations of the Texas DTPA directly and proximately caused Plaintiff and Class Members to suffer injury, harm, and damages in the form of, *inter alia*, overpayments for 2017, 2018, 2019, and 2020 season tickets, the diminished value of their personal seat licenses, and a future diminished product in the field.

96. Concurrent with filing and serving this Class Action Petition and Jury Demand, Plaintiff served a 60-day DTPA demand letter on Defendants pursuant to TEX. BUS. & COM. CODE § 17.505. Should this matter not be resolved to Plaintiff's satisfaction within the 60-day period, Plaintiff, without further notice, intends to amend this Class Action Petition and Jury Demand to formally assert the above claims and causes of action pursuant to the Texas DTPA.

COUNT V

MONEY HAD AND RECEIVED

97. The preceding factual statements and allegations are incorporated by reference.

98. As a direct and proximate result of their above-described wrongful actions, inaction, and/or omissions, Defendants hold money—*i.e.*, *inter alia*, the 2017, 2018, 2019, and 2020 season ticket overcharges paid by Plaintiff and Class Members to Defendants—that, in equity and good conscience, belong to Plaintiff and Class Members. Defendants, therefore,

should be compelled to refund to Plaintiff and Class Members such overpayments for 2017, 2018, 2019, and 2020 season tickets under the equitable doctrine of money had and received.

COUNT VI

UNJUST ENRICHMENT/ASSUMPSIT/QUANTUM MERUIT

99. The preceding factual statements and allegations are incorporated by reference.

100. Plaintiffs plead this Count in the alternative to their breach of implied contract claim (Count III) because they cannot recover under this Count and under Count III.

101. As Defendants' customers, Plaintiff and Class Members conferred valuable benefits on Defendants in the form of, *inter alia*, overpayments for 2017, 2018, 2019, and 2020 season tickets.

102. Defendants accepted such valuable benefits from Plaintiff and Class Members. As such, Defendants have been (and continue to be) unjustly enriched by, *inter alia*, (i) such wrongfully charged and collected overpayments from Plaintiff and Class Members for 2017, 2018, 2019, and 2020 season tickets, and (ii) the return on investment generated by Defendants on such amounts.

103. Defendants, therefore, as a matter of justice, equity, and good conscience, should be compelled to refund (or disgorge) such wrongfully charged and collected season ticket overpayments for 2017, 2018, 2019, and 2020 season tickets and the corresponding return on investment under the common law doctrines of unjust enrichment and *quantum meruit*, and the duty to make restitution under the common law equitable doctrine of assumpsit.

COUNT VII

INJUNCTIVE RELIEF

104. The preceding factual statements and allegations are incorporated by reference.

105. As a direct and/or proximate result of Defendants' above-described wrongful actions, inaction, and/or omissions, Plaintiff and Class Members will be further damaged for at least two more seasons by Defendants' forfeiture of their regular first and second round selections in the 2020 and 2021 First-Year Player Drafts. As such, Plaintiff and Class Members also are entitled to injunctive relief prohibiting Defendants from increasing 2021 and 2022 season ticket prices.

RESPONDEAT SUPERIOR/AGENCY

106. The preceding factual statements and allegations are incorporated by reference.

107. Defendants also are liable for the above-described wrongful actions, inaction, and/or omissions committed by their officers, directors, employees, agents, and/or representatives during the course and scope of their employment while they were under Defendants' employ, command, supervision, direction, and control under the doctrine of *respondeat superior* and/or agency theory; to wit, such wrongful conduct was committed (i) within their general authority while they were under Defendants' employ, command, supervision, direction, and control, (ii) in furtherance of Defendants' operations and commercial activity in the United States, and (iii) while accomplishing the objectives for which they were hired—all of which directly and proximately caused Plaintiffs and Class Members to suffer (and continue to suffer) the above-described injury, harm, and damages.

RELIEF REQUESTED

108. The preceding factual statements and allegations are incorporated by reference.

109. ACTUAL, CONSEQUENTIAL, AND/OR COMPENSATORY DAMAGES AND/OR ALTERNATIVE EQUITABLE RELIEF. As a direct and proximate result of Defendants' above-described wrongful actions, inaction, and/or omissions, Plaintiff and Class Members have suffered

(and will continue to suffer) actual, consequential, and/or compensatory damages in the form of, *inter alia*, overpayments for 2017, 2018, 2019, and 2020 season tickets, the diminished value of their personal seat licenses, and a future diminished product in the field—for which they are entitled to compensation. Alternatively, Plaintiff and Class Members are entitled to equitable relief in the form of a refund, restitution and/or disgorgement. All injury, harm, and damages suffered (and to be suffered) by Plaintiff and Class Members were reasonably foreseeable by Defendants. All conditions precedent to Plaintiff’s and Class Members’ claims for relief have been performed or occurred.

110. TREBLE DAMAGES. Plaintiff and Class Members also are prospectively entitled to treble damages for Defendants’ knowing, willful, intentional, surreptitious, wrongful, and unconscionable conduct, in violation of TEX. BUS. & COM. CODE §17.50(a)(1) and (a)(3), under TEX. BUS. & COM. CODE §17.50(b)(1). All conditions precedent to Plaintiff’s and Class Members’ claims for relief have been performed or occurred.

111. INJUNCTIVE RELIEF. Plaintiff and Class Members also are entitled to the above-requested injunctive relief prohibiting Defendants from increasing 2021 and 2022 season ticket prices. All conditions precedent to Plaintiff’s and Class Members’ claims for injunctive relief have been performed or occurred.

112. ATTORNEYS’ FEES, LITIGATION EXPENSES, AND COURT COSTS. Plaintiff and Class Members also are entitled to recover their attorneys’ fees, litigation expenses, and court costs in prosecuting this action pursuant to, *inter alia*, TEX. BUS. & COM. CODE § 17.50(d) and Chapter 38 of the Texas Civil Practice and Remedies Code. All conditions precedent to Plaintiff’s and Class Members’ claims for attorneys’ fees, litigation expenses, and court costs have been performed or occurred.

WHEREFORE, Plaintiff, for himself and Class Members, respectfully requests that (i) Defendants be cited to appear and answer this lawsuit, (ii) this action be certified as a class action, (iii) Plaintiff be designated the Class Representative, and (iv) Plaintiffs' counsel be appointed Class Counsel. Plaintiff, for himself and Class Members, also requests that upon final trial or hearing, judgment be awarded against Defendants in Plaintiff's favor for:

- (i) actual, consequential, and/or compensatory damages or, in the alternative, a refund, restitution or disgorgement, in an amount to be determined by the trier of fact;
- (ii) treble damages;
- (iii) injunctive relief as set forth above;
- (iv) pre- and post-judgment interest at the highest legal rates;
- (v) attorneys' fees, litigation expenses, and court costs through the trial and any appeals of this case; and
- (vi) such other and further relief the Court deems just and proper.

JURY DEMAND

Plaintiff, for himself and all other similarly situated individuals and entities, respectfully demands a trial by jury on all claims so triable.

Date: February 14, 2020

Respectfully submitted,

By: /s/ Mitchell A. Toups
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**ATTORNEYS FOR PLAINTIFF AND THE
PUTATIVE CLASS**