

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

DAVID N. WILLIAMS,)
)
 Plaintiff,)
)
 vs.) CASE NO. EV 01-75-C-Y/H
)
 AZTAR INDIANA GAMING CORPORATION)
 f/d/b/a CASINO AZTAR, and)
 AZTAR INDIANA GAMING COMPANY, LLC)
 d/b/a CASINO AZTAR,)
)
 Defendants.)

THIRD AMENDED COMPLAINT FOR DAMAGES

Plaintiff, David N. Williams, by counsel, **noffsinger.barnett, llp**, for his Third Amended Complaint against Defendants, Aztar Indiana Gaming Corporation f/d/b/a Casino Aztar and Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar, alleges and states as follows:

JURISDICTION

1. Count I of this action is brought pursuant to the provisions of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), codified at 18 U.S.C. §§ 1961 *et seq.* As such, the Court has jurisdiction over the subject matter of Count I of this proceeding pursuant to 28 U.S.C. § 1331. The Court has jurisdiction over the subject matter of the remaining Counts of this action pursuant to 28 U.S.C. § 1367, as the claims set forth in each of those Counts are so related to the claims set forth in Count I that they form part of the same case or controversy under Article III of the United States Constitution.

VENUE

2. Venue is proper in this judicial district, pursuant to 28 U.S.C. § 1391(b) and (c), because Defendants reside, are licensed to do business and are doing business, and/or are found in this judicial district, and further because all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district.

GENERAL ALLEGATIONS

3. Plaintiff, David N. Williams ("Williams"), is and at all times material has been a resident of the city of Evansville, Vanderburgh County, Indiana.

4. Defendant Aztar Indiana Gaming Corporation f/d/b/a Casino Aztar ("Aztar Corporation") is, and at all times material has been, a corporation organized and existing under the laws of the state of Indiana and having its principal place of business located in Evansville, Vanderburgh County, Indiana, which operated as "Casino Aztar" until some time in 1999.

Defendant Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar ("Aztar LLC"), is, and has been since approximately July 15, 1999, a limited liability company organized and existing under the laws of the state of Indiana and having its principal place of business located in Evansville, Vanderburgh County, Indiana, and has operated as "Casino Aztar" since approximately December 31, 1999. The name "Aztar" is used herein to refer to Aztar Corporation with respect to any and all acts or omissions alleged herein to have occurred before December 31, 1999, to refer to Aztar LLC with respect to any and all acts or omissions alleged herein to have occurred on or after December 31, 1999, and to refer to both Aztar Corporation and Aztar LLC with respect to any and all allegations herein which are not date-specific.

5. Aztar is licensed to own and operate a riverboat casino, pursuant to I.C. 4-33-1-1 *et seq.*, and does in fact own and operate a riverboat casino, under the name “City of Evansville” (the “Casino”), in Evansville, Vanderburgh County, Indiana.

6. Williams first became a patron of Aztar’s Casino after receiving a mailing from Aztar offering a twenty-dollar (\$20.00) coupon good for use at the Casino. He boarded the boat, and later departed, having lost twenty dollars (\$20.00).

7. On his second visit to the Casino, Williams lost approximately eight hundred dollars (\$800.00).

8. Soon after he first gambled at the Casino, Aztar issued Williams a “Fun Card,” a personally identifying device which permitted Aztar to track Williams’ Casino boardings and his patronage of its gambling activities.

9. In 1997, Williams lost approximately twenty-one thousand dollars (\$21,000.00) on one Aztar slot machine in two days. In March 1998, Williams lost another thirty-four thousand dollars (\$34,000.00) to Aztar.

10. In late March 1998, Aztar received correspondence from a friend of Williams concerning the problem gambling behavior which Williams developed after first visiting the Casino. Williams had never had a gambling problem prior to visiting the Casino.

11. Aztar acknowledged that it had received “disturbing information” about Williams’ “gaming habits” in a letter to Williams dated March 27, 1998, from Ken Hampton, Chairperson of Aztar’s “Responsible Gaming Committee” (the “Cease Admissions Letter”). A true and accurate copy of the Cease Admissions Letter is attached hereto and incorporated by reference herein as Exhibit “1.”

12. The Cease Admissions letter references a prior conversation between David Williams and Aztar's Ken Hampton regarding the same subject matter.

13. Compulsive gambling is a form of addiction which is recognized generally, in pertinent medical literature, and by Aztar itself

14. Aztar's Cease Admissions Letter noted the "medical/psychological" nature of problem gaming behavior and advised Williams that Aztar would "insist that prior to gaming with [Aztar], at any time in the future, [Williams would be required to] present [Aztar] with medical/psychological information which demonstrate[d] that [his] patronage of [Aztar's] facility pose[d] no threat to [Williams'] safety and/or well being."

15. Despite never receiving such information from Williams, Aztar continued to ply him with marketing materials designed to lure him back to the Casino, including but without limitation the following:

- A. On or about September 3, 1999, Aztar mailed to Williams' home address Aztar's September/October 1999 Newsletter, which stated, among other things, that ". . . Players Win!," knowing that such representations were false and misleading when made; a sample copy of such document is attached hereto and incorporated by reference herein as Exhibit "2-A."
- B. On or about October 7, 1999, Aztar mailed to Williams' home address Aztar's November/December 1999 Newsletter, which stated, among other things, that "Casino Aztar gives you more cash, just in time for the holidays," "[f]ree money, just when you need it most from your friends at Casino Aztar!" and "[a]s always, our top priority is simply this: to ensure

your complete, 100% satisfaction,” knowing that such representations were false and misleading when made; a sample copy of such document is attached hereto and incorporated by reference herein as Exhibit “2-B.”

- C. On or about November 4, 1999, Aztar mailed to Williams’ home address Aztar’s December/January offer, which stated, among other things, that “no one gives you more in December than Casino Aztar!” knowing that such representation was false and misleading when made; a sample copy of such document is attached hereto and incorporated by reference herein as Exhibit “2-C.”
- D. On or about November 13, 1999, Aztar mailed to Williams’ home address Aztar’s Holiday Party High, which stated, among other things, that Williams was one of Aztar’s “very best players,” knowing that such representation was false and misleading when made; a sample copy of such document is attached hereto and incorporated by reference herein as Exhibit “2-D.”
- E. On or about May 9, 2000, Aztar mailed to Williams’ home address Aztar’s June Newsletter Offer, which stated, among other things, that, “you are our most loyal guest,” and “check out the **Hot Slots 100** posted in the Fun Center to find out where the big payouts are,” knowing that such representations were false and misleading when made; a sample copy of such document is attached hereto and incorporated by reference herein as Exhibit “2-E.”

- F. On or about July 18, 2000, Aztar mailed to Williams' home address Aztar's August Newsletter Offer, which stated, among other things, that "[n]ew machines are arriving all the time so you'll have even more chances to win. And check out the **Hot 100 Slots** posted in the Fun Center and discover where the big payouts are," knowing that such representations were false and misleading when made; a sample copy of such document is attached hereto and incorporated by reference herein as Exhibit "2-F."
- G. On or about August 17, 2000, Aztar mailed to Williams' home address Aztar's September Newsletter Offer, which stated, among other things, that "the winning is big!", knowing that such representation was false and misleading when made; a sample copy of such document is attached hereto and incorporated by reference herein as Exhibit "2-G."
- H. On or about September 7, 2000, Aztar mailed to Williams' home address Aztar's October/November Newsletter Offer, which stated, among other things, that "[a]s a premium player, you deserve the best possible service," and "[e]very month we're adding new hot slots [c]ome get your share!", knowing that such representations were false and misleading when made; a sample copy of such document is attached hereto and incorporated by reference herein as Exhibit "2-H."
- I. On or about September 13, 2000, Aztar mailed to Williams' home address Aztar's \$25,000 Slot Tournament Invitation, which stated, among other things, that Williams was "one of a select few elite players," knowing that

such representation was false and misleading when made; a sample copy of such document is attached hereto and incorporated by reference herein as Exhibit “2-I.”

COUNT I
(Racketeering Activity – Federal Law)

16. Plaintiff incorporates by reference and realleges as if set forth fully herein the foregoing allegations contained in rhetorical paragraphs 1 through 15, inclusive, in this Count I of the Complaint.

17. Aztar constitutes an “enterprise” as that term is defined in the RICO statutes.

18. Aztar has engaged in a “pattern of racketeering activity” by intentionally engaging in at least two acts of “racketeering activity” as defined by RICO.

19. The acts of “racketeering activity” in which Aztar has engaged are acts of “mail fraud” as defined by 18 U.S.C. § 1341.

20. Aztar has committed mail fraud by utilizing the United States Mail as part of a scheme or artifice to defraud Williams, and/or to obtain from him money or property by means of false or fraudulent pretenses, representations, or promises.

21. Aztar has done so by, among other things, using the mail to assert that Aztar, by and through Ken Hampton and/or other identified representatives or agents, would not permit Williams to enter and gamble at the Casino without first providing “medical/ psychological information which demonstrate[d] that [his] patronage of [Aztar’s] facility pose[d] no threat to [Williams’] safety and/or well being[,]” and on multiple occasions thereafter to issue promotional

materials to Williams designed to lure him to the Casino for purposes of gambling, as shown in rhetorical paragraph 15 of this Complaint.

22. Aztar has intentionally engaged in multiple incidents of such conduct with respect to Williams.

23. Aztar has received income derived, directly or indirectly, from a pattern of racketeering activity and has used or invested, directly or indirectly, some part or all of such income, or the proceeds of such income, in the acquisition of an interest in, or the establishment or operation of, an enterprise which is engaged in, or the activities of which affect, interstate commerce, to-wit: Aztar.

24. Aztar has, through a pattern of racketeering activity, acquired or maintained, directly or indirectly, an interest in or control of an enterprise which is engaged in, or the activities of which affect, interstate commerce, to-wit: Aztar.

25. The employees, agents, and/or other representatives of Aztar have conducted or participated, directly or indirectly, in the conduct of, the affairs of an enterprise, to-wit: Aztar, through a pattern of racketeering activity.

26. The employees, agents, and/or other representatives of Aztar have conspired to commit some or all of the activities alleged herein.

27. Persons whose property or reputation is injured by such a pattern of racketeering activity are permitted to bring an action to recover an amount equal to three (3) times their actual damages, the costs of the action, and reasonable attorneys' fees.

WHEREFORE, Plaintiff, David N. Williams, by counsel, **noffsinger.barnett, llp**, demands judgment against Defendants, Aztar Indiana Gaming Corporation f/d/b/a Casino Aztar

and Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar, and damages from said Defendants as a result of Defendants' pattern of racketeering activity in violation of 18 U.S.C. §§ 1961 *et seq.*, and as otherwise set out above, and seeks the following damages pursuant to said statutes:

- A. An amount equal to three times his actual damages;
- B. The costs of the action; and
- C. Reasonable attorneys' fees.

COUNT II
(Racketeering Activity - Indiana Law)

28. Plaintiff incorporates by reference and realleges as if set forth fully herein the foregoing allegations contained in rhetorical paragraphs 1 through 27, inclusive, in this Count II of the Complaint.

29. Aztar has, by its words or actions, including, but not limited to, the delivery to Williams of the Cease Admissions Letter, followed by the delivery to him of the materials referred to in Paragraph 15 herein, with knowledge that he was a compulsive gambler and with the intent that he engage in conduct against his will, *i.e.*, gambling at Aztar, communicated a threat to expose Williams to hatred, contempt, disgrace, or ridicule, resulting from such gambling and the losses Aztar knew Williams would thereby incur, or has attempted to do so, all in violation of I.C. 35-45-2-1 (Intimidation), which conduct constitutes racketeering activity, as defined at I.C. 35-45-6-1.

30. Aztar has knowingly or intentionally exerted unauthorized control over the property of Williams, *i.e.*, money he lost gambling at Aztar, with intent to deprive him of its value

or use, all in violation of I.C. 35-43-2-1 (Theft), which conduct constitutes racketeering activity, as defined at I.C. 35-45-6-1.

31. Aztar constitutes an enterprise, as defined at I.C. 35-45-6-1.

32. Aztar has engaged in a pattern of racketeering activity against Williams, by intentionally engaging in at least two incidents of racketeering activity as contemplated by I.C. 35-45-6-1.

33. Aztar has knowingly and intentionally received proceeds directly or indirectly derived from the aforesaid pattern of racketeering activity directed toward Williams, and has used or invested those proceeds, or the proceeds derived from them, to maintain, establish, and otherwise operate its enterprise, Aztar.

WHEREFORE, Plaintiff, David N. Williams, by counsel, **noffsinger.barnett, llp**, demands judgment against Defendants, Aztar Indiana Gaming Corporation f/d/b/a Casino Aztar and Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar, and damages from said Defendants as a result of Defendants' corrupt business influence in violation of I.C. 35-45-6-2 and as otherwise set out above, and seeks the following damages pursuant to I.C. 34-4-30.5-5:

- A. An amount equal to three times his actual damages;
- B. The costs of the action;
- C. A reasonable attorneys' fee; and
- D. Punitive damages.

COUNT III
(Tortious Breaches of Duty)

34. Plaintiff incorporates by reference and realleges as if set forth fully herein the foregoing allegations contained in rhetorical paragraphs 1 through 33, inclusive, in this Count III of the Complaint.

35. In light of its knowledge and its relationship with him, Aztar owed Williams a duty of reasonable care to avoid causing him injuries or harm.

36. Aztar intentionally, recklessly, and/or negligently breached the duty of care it owed to Williams by failing, *inter alia*, to:

- A. Personally meet with Williams to offer him any help;
- B. Deny Williams access to the Casino by refusing to honor his “Fun Card” and/or by refusing to provide him with any credit for use at the Casino;
- C. Ban Williams from the Casino by notification to Aztar security personnel to deny him entry and/or to remove him from the premises upon learning of his presence;
- D. Remove Williams’ name from Aztar’s mailing list(s) so he would not continue to receive coupons for meals, “VIP Passes,” or other promotional offers designed to lure him back to the Casino;
- E. Train Aztar personnel to recognize individuals who exhibit signs of compulsive gambling behavior and to take appropriate steps to help such individuals; and/or

- F. Attempt to obtain any sort of “medical/psychological information” as was indicated, by Aztar’s Cease Admissions Letter, would be required to protect Williams’ safety and/or well-being.

37. Aztar’s breaches of its duty to exercise reasonable care toward Williams caused him injuries and damages, more particularly described as follows:

- A. Economic losses in the approximate amount of one hundred seventy-five thousand dollars (\$175,000.00);
- B. Past, present, and future mental, emotional, and psychological distress, suffering, and anguish;
- C. Destroyed and/or strained relationships with family members and friends;
- D. Reasonable and necessary doctor, hospital, pharmaceutical, or other medical expenses required for the treatment of the above-described injuries in a total amount not yet known to Williams, as his treatment is ongoing and is expected to continue into the future;
- E. Loss of his quality and enjoyment of life and its daily activities; and
- F. Other expenses sustained as a result of being unable to perform regular duties in a total amount not yet known to Williams.

WHEREFORE, Plaintiff, David N. Williams, by counsel, **noffsinger.barnett, llp**, demands judgment against Defendants, Aztar Indiana Gaming Corporation f/d/b/a Casino Aztar and Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar, for all damages as may be shown by the evidence sufficient to compensate Plaintiff for his injuries and damages sustained, costs of this action, and all other just and proper relief.

COUNT IV
(Premises Liability)

38. Plaintiff incorporates by reference and realleges as if set forth fully herein the foregoing allegations contained in rhetorical paragraphs 1 through 37, inclusive, in this Count IV of the Complaint.

39. Aztar owns and operates the Casino for commercial business purposes.

40. Aztar invited Williams to the Casino by way of its multiple mailings directed to him.

41. As an owner and occupier of business premises, Aztar owed a duty to Williams, as its business invitee, to exercise reasonable care for Williams' safety and protection while on Aztar's premises.

42. Aztar failed to exercise reasonable care for Williams while he was on its premises by failing, *inter alia*, to:

- A. Personally meet with Williams to offer him any help;
- B. Deny Williams access to the Casino by refusing to honor his "Fun Card" and/or by refusing to provide him with any credit for use at the Casino;
- C. Ban Williams from the Casino by notification to Aztar security personnel to deny him entry and/or to remove him from the premises upon learning of his presence;
- D. Train Aztar personnel to recognize individuals who exhibit signs of compulsive gambling behavior and to take appropriate steps to help such individuals; and/or

E. Attempt to obtain any sort of “medical/psychological information” as was indicated, by Aztar’s Cease Admissions Letter, would be required to protect Williams’ safety and/or well-being.

43. Aztar’s breaches of its duty to exercise reasonable care toward Williams caused him injuries and damages, more particularly described as follows:

- A. Economic losses in the approximate amount of one hundred seventy-five thousand dollars (\$175,000.00);
- B. Past, present, and future mental, emotional, and psychological distress, suffering, and anguish;
- C. Destroyed and/or strained relationships with family members and friends;
- D. Reasonable and necessary doctor, hospital, pharmaceutical, or other medical expenses required for the treatment of the above-described injuries in a total amount not yet known to Williams, as his treatment is ongoing and is expected to continue into the future;
- E. Loss of his quality and enjoyment of life and its daily activities; and
- F. Other expenses sustained as a result of being unable to perform regular duties in a total amount not yet known to Williams.

WHEREFORE, Plaintiff, David N. Williams, by counsel, **noffsinger.barnett, llp**, demands judgment against Defendants, Aztar Indiana Gaming Corporation f/d/b/a Casino Aztar and Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar, for all damages as may be shown by the evidence sufficient to compensate Plaintiff for his injuries and damages sustained, costs of this action, and all other just and proper relief.

COUNT V
(Intentional Infliction of Emotional Distress)

44. Plaintiff incorporates by reference and realleges as if set forth fully herein the foregoing allegations contained in rhetorical paragraphs 1 through 43, inclusive, in this Count V of the Complaint.

45. In tortiously breaching its above-described duties with respect to Williams, by continuing to lure him to the Casino and take his money with its knowledge that he was helplessly addicted to gambling, Aztar engaged in extreme and outrageous conduct, knowingly, intentionally, or recklessly causing severe emotional distress to Williams.

46. In so doing, Aztar exceeded all bounds of conduct usually tolerated by a decent society and caused mental, emotional, and psychological distress, suffering, and anguish, of a very serious kind to Williams.

WHEREFORE, Plaintiff, David N. Williams, by counsel, **noffsinger.barnett, llp**, demands judgment against Defendants, Aztar Indiana Gaming Corporation f/d/b/a Casino Aztar and Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar, for all damages as may be shown by the evidence sufficient to compensate Plaintiff for his injuries and damages sustained, costs of this action, and all other just and proper relief.

COUNT VI
(Breach of Constructive or Implied Contract)

47. Plaintiff incorporates by reference and realleges as if set forth fully herein the foregoing allegations contained in rhetorical paragraphs 1 through 46, inclusive, in this Count VI of the Complaint.

48. Aztar's conduct with respect to Williams evidenced an agreement with Williams that Aztar would not permit him to enter Aztar's premises under circumstances in which Williams' safety and/or well being might be threatened.

49. Aztar's later actions violated the premises of such agreement by coaxing him to return to the Casino, permitting him unfettered access to the Casino, and continuing to take substantial sums of money from him.

50. Aztar was unjustly enriched at Williams' expense, and justice demands that Williams recover from Aztar.

WHEREFORE, Plaintiff, David N. Williams, by counsel, **noffsinger.barnett, llp**, demands judgment against Defendants, Aztar Indiana Gaming Corporation f/d/b/a Casino Aztar and Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar, for all damages as may be shown by the evidence sufficient to compensate Plaintiff for his injuries and damages sustained, costs of this action, and all other just and proper relief.

COUNT VII
(Fraudulent Misrepresentation)

51. Plaintiff incorporates by reference and realleges as if set forth fully herein the foregoing allegations contained in rhetorical paragraphs 1 through 50, inclusive, in this Count VII of the Complaint.

52. Aztar published to the community before it began operations in Evansville, Indiana, that it had or it would institute an effective program to adequately deal with compulsive/addictive gamblers. It did not, and has not, and, at the time such statements were

made, knew that it did not and would not. Williams was among those who reasonably relied upon said representations.

53. Aztar's false representations lulled Williams into a false sense of security with respect to Aztar's actual and pre-existing corporate policy of not only welcoming, but in fact, targeting compulsive/addictive gamblers to become patrons of its Casino.

54. Williams' reasonable reliance upon such misrepresentations caused him injuries and damages, more particularly described as follows:

- A. Economic losses in the approximate amount of one hundred seventy-five thousand dollars (\$175,000.00);
- B. Past, present, and future mental, emotional, and psychological distress, suffering, and anguish;
- C. Destroyed and/or strained relationships with family members and friends;
- D. Reasonable and necessary doctor, hospital, pharmaceutical, or other medical expenses required for the treatment of the above-described injuries in a total amount not yet known to Williams, as his treatment is ongoing and is expected to continue into the future;
- E. Loss of his quality and enjoyment of life and its daily activities; and
- F. Other expenses sustained as a result of being unable to perform regular duties in a total amount not yet known to Williams.

WHEREFORE, Plaintiff, David N. Williams, by counsel, **noffsinger.barnett, llp**, demands judgment against Defendants, Aztar Indiana Gaming Corporation f/d/b/a Casino Aztar and Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar, for all damages as may be shown

by the evidence sufficient to compensate Plaintiff for his injuries and damages sustained, costs of this action, and all other just and proper relief.

COUNT VIII
(Breach of Contract)

55. Plaintiff incorporates by reference and realleges as if set forth fully herein the foregoing allegations contained in rhetorical paragraphs 1 through 54, inclusive, in this Count VIII of the Complaint.

56. On or about March 24, 1998, a letter was sent to Aztar by Darlene Tempel, asking it to ban Williams from the Casino because of his compulsive gambling.

57. Thereafter, Aztar, by Ken Hampton, Chairperson of the “Responsible Gaming Committee,” sent the Cease Admissions letter.

58. Williams was, thus, a third-party beneficiary of the agreement between Aztar and Darlene Tempel detailed in paragraphs numbers 56 and 57.

59. Aztar’s breach of said agreement caused Williams injuries and damage, more particularly described as follows:

- A. Economic losses in the approximate amount of one hundred seventy-five thousand dollars (\$175,000.00);
- B. Past, present, and future mental, emotional, and psychological distress, suffering, and anguish;
- C. Destroyed and/or strained relationships with family members and friends;

- D. Reasonable and necessary doctor, hospital, pharmaceutical, or other medical expenses required for the treatment of the above-described injuries in a total amount not yet known to Williams, as his treatment is ongoing and is expected to continue into the future;
- E. Loss of his quality and enjoyment of life and its daily activities; and
- F. Other expenses sustained as a result of being unable to perform regular duties in a total amount not yet known to Williams.

WHEREFORE, Plaintiff, David N. Williams, by counsel, **noffsinger.barnett, llp**, demands judgment against s, Aztar Indiana Gaming Corporation f/d/b/a Casino Aztar and Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar, for all damages as may be shown by the evidence sufficient to compensate Plaintiff for his injuries and damages sustained, costs of this action, and all other just and proper relief.

COUNT IX
(Punitive Damages)

60. Plaintiff incorporates by reference and realleges as if set forth fully herein the foregoing allegations contained in rhetorical paragraphs 1 through 59, inclusive, in this Count VII of the Complaint.

61. In tortiously breaching its above-described duties with respect to Williams, Aztar has acted with malice, gross negligence, and/or oppressiveness which was not the result of a mistake of fact or law, honest error of judgment, overzealousness, mere negligence, or other human failing.

WHEREFORE, Plaintiff, David N. Williams, by counsel, **noffsinger.barnett, llp**, demands judgment against Defendants, Aztar Indiana Gaming Corporation f/d/b/a Casino Aztar and Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar, for all damages as may be shown by the evidence sufficient to compensate Plaintiff for his injuries and damages sustained, punitive damages in an amount sufficient to punish Defendants, and each of them, for their actions and conduct alleged herein and to deter Defendants and others similarly situated from engaging in such malicious, grossly negligent, and/or oppressive conduct in the future, costs of this action, and all other just and proper relief.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands that all issues herein triable of right by jury be so tried.

Respectfully submitted,

noffsinger.barnett, llp

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Attorneys for Plaintiff

DATED this 21st day of December, 2001.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading or paper has been served on the following person(s), by depositing same in the United States mail, first-class postage prepaid, on this 11th day of January, 2002:

Patrick A. Shoulders, Esq.
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